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A GAP IN COVERAGE: HOW NCAA AND COLLEGE ATHLETICS POLICIES ARE LACKING IN THE WAKE OF *DOBBS*

I. KICKOFF: THE IMPACT OF UNINTENDED PREGNANCY ON THE LIVES OF COLLEGE ATHLETES

In 1991, Crissy Perham, a student-athlete at the University of Arizona, won a national championship in the 100-meter butterfly event.¹ This hard-fought win catapulted Perham's swimming career, as she would go on to win the National Collegiate Athletic Association (NCAA) title the following year and attend the 1992 Barcelona Olympics.² Perham (née Ahmann), co-captain for the United States' swim team, won three medals in Barcelona, two of which were gold.³ What many did not know was just seven months prior to Perham's first NCAA win, she was a nineteen-year-old woman sitting in a Planned Parenthood office, waiting to obtain an abortion for an unintended pregnancy.⁴ Perham did not fit into societal stereotypes surrounding women in need of abortion care, as she was on birth control, and in

1. See Kurt Streeter, *Why Scores of Female Athletes Are Speaking Out on Abortion Rights*, N.Y. TIMES (Oct. 6, 2021), <https://www.nytimes.com/2021/09/27/sports/women-athletes-abortion-rights-brief.html> [https://web.archive.org/web/20240509180738/https://www.nytimes.com/2021/09/27/sports/women-athletes-abortion-rights-brief.html] (providing Crissy Perham's story as support for abortion access for athletes).

2. See *id.* (stating Perham's NCAA titles); see also Sean Gregory, *After 'Devastating' Supreme Court Decision Overturning Roe v. Wade, Women Athletes Worry About Their Future*, TIME (June 24, 2022, 5:46 PM), <https://time.com/6190819/women-athletes-ro-abortion-reactions/> [https://web.archive.org/web/20240509181111/https://time.com/6190819/women-athletes-ro-abortion-reactions/] (detailing Perham's Olympic career). Perham also won two international titles in 1991. See *Christine Ahmann-Leighton*, OLYMPICS, <https://olympics.com/en/athletes/christine-ahmann-leighton> [https://perma.cc/ZVX4-ASUR] (last visited Jan. 6, 2024) (describing [Perham]'s wins in World Championships and Pan Pacific Championships in 1991). Crissy attempted to make the 1996 Olympic team but was unsuccessful. See Greg Hansen, *Where Are They Now? Crissy Perham's Passions are CrossFit, Family*, TUSCON.COM (Aug. 6, 2019), https://tucson.com/sports/greghansen/where-are-they-now-crissy-perhams-passions-are-crossfit-family/article_14926d9e-6bff-52cf-a168-7f22b64bc6b4.html [https://perma.cc/399W-9WQV] ("Perham finished just 48/100ths of a second from making the Olympic team.").

3. See Gregory, *supra* note 2 (stating Perham's success at 1992 Olympics); see also Hansen, *supra* note 2 (noting Crissy competed under her maiden name, Ahmann). Perham and her teammates broke the world record for the women's 4x100-meter medley relay during the 1992 Olympics. See *Christine Ahmann-Leighton*, *supra* note 2 (detailing Perham's biography and Olympic results).

4. See Streeter, *supra* note 1 (describing Perham's abortion experience in 1990).

a committed relationship.⁵ Now, over thirty years later, Crissy credits abortion access in part for her success in athletics, academics, and motherhood.⁶ If Crissy Perham was unable to compete in and win the 100-meter butterfly in 1991, her future achievements might not have been possible.⁷

Unintended pregnancy can wreak havoc on anyone's life.⁸ Young women, who are sexually active, spend a substantial portion of their lives focused on preventing unwanted pregnancy.⁹ Nearly half of recorded pregnancies in the United States are unplanned.¹⁰

5. See Gregory, *supra* note 2 (providing background on Crissy's life leading up to her unplanned pregnancy). Perham describes struggling academically and athletically prior to her abortion. See *id.* (noting how Perham's abortion propelled her to make better life for herself). Stereotypes surrounding women facing unintended pregnancies include "promiscuity," and "irresponsibility." See Whitney Smith, Janet M. Turan, Kari White, Kristi L. Stringer, Anna Helova, Tina Simpson & Kate Cockrill, *Social Norms and Stigma Regarding Unintended Pregnancy and Pregnancy Decisions: A Qualitative Study of Young Women in Alabama*, 48 PERSPECTIVES ON SEXUAL & REPROD. HEALTH 73, 76 (2016) (finding research study participants' commonly held stereotypes towards unintended pregnancy).

6. See Brief for Over 500 Women Athletes, the Women's National Basketball Players Association, the National Women's Soccer League Players Association, and Athletes for Impact Who Have Exercised, Relied On, or Support the Constitutional Right to Abortion as Amici Curiae in Support of Respondents at 5, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) [hereinafter *Amici Curiae Brief*] ("I made the choice that was right for me and my future, and I stand by my decision. That choice ultimately led me to being an Olympian, a college graduate, and a proud mother today.").

7. See *id.* (detailing how Perham's abortion changed her life trajectory). If Perham was forced to continue her pregnancy, she would not have been able to compete in the 1991 NCAA championship which led to her Olympic career. See Gregory, *supra* note 2 ("My life would be drastically different if I had been pregnant and forced to sit that race out, because that race changed the course of my life.").

8. See *Unintended Pregnancy*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 27, 2023), <https://www.cdc.gov/reproductivehealth/contraception/unintendedpregnancy/index.htm#:~:text=Unintended%20pregnancy%20is%20associated%20with,the%20health%20of%20the%20baby> [<https://perma.cc/ZUK3-9548>] ("Unintended pregnancy is associated with an increased risk of problems for the mom and baby."). Unintended pregnancy is defined as a pregnancy that is unwanted or mistimed. See *id.* (providing information on unintended pregnancy and pregnancy prevention methods). This Comment uses gendered language and terms like "women" and "female" because those are the terms frequently utilized by the law and scholars in this area, but this Comment acknowledges that people of all gender identities can get pregnant and seek abortions. See *Gender Inclusive Language Statement*, INNOVATING EDUC. REPROD. HEALTHCARE, <https://www.innovating-education.org/2021/01/gender-inclusive-language-statement/#:~:text=We%20recognize%20that%20people%20who,become%20pregnant%20and%20seek%20abortions.> [<https://perma.cc/A7NR-VNQP>] (last visited Nov. 1, 2023) (indicating need for reproductive healthcare for people of all genders).

9. See Deborah L. Brake & Joanna L. Grossman, *Reproducing Inequality Under Title IX*, 43 HARV. J.L. & GENDER 171, 203-04 (2020) (acknowledging how many women spend their fertile years working to prevent and dealing with unintended pregnancies).

10. See Erika Guenther, Elizabeth Sorensen & Lance Champagne, *Title IX Information Increases Female Collegiate Athletes' Intent to Seek Help*, 16 J. INTERCOLLEGIATE SPORT 54, 55 (2023) (finding about forty-five percent of U.S. pregnancies are unintended).

While unintended pregnancy disproportionately impacts various demographics, it is most common in women ages eighteen to twenty-four.¹¹ In the United States, the average age of a full-time college student is 22.5 years of age.¹² Studies have shown that ten percent of women have an unexpected pregnancy while in college, and a majority of students that have children while enrolled in college drop out.¹³ While unintended pregnancy can result from practicing safe and consensual sex, as was the case with Crissy Perham, sexual assault is also prevalent in colleges and universities, resulting in many unintended pregnancies.¹⁴

Access to abortion has historically helped women excel in college athletics.¹⁵ As Title IX catapulted women's participation in sports, just a year later the Supreme Court decided *Roe v. Wade*¹⁶ and established a woman's right to choose whether to have an

11. See *Unintended Pregnancy*, *supra* note 8 (reporting unintended pregnancy rates per 1,000 women). Unintended pregnancy was most common in low-income women, those without a high school diploma, Black women, and those unwed living with a partner. See *id.* (indicating groups with higher rates of unintended pregnancy).

12. See Lyss Welding, *College Enrollment Statistics in the U.S.*, BESTCOLLEGES (Feb. 7, 2024), <https://www.bestcolleges.com/research/college-enrollment-statistics/> [<https://perma.cc/V64T-AMA3>] (reporting college enrollment statistics in spring 2023). Women's reproductive years and years in college coincide. See Brake & Grossman, *supra* note 9, at 172 (describing how pregnancy can impact women's education).

13. See Nancy Hogshead-Makar & Elizabeth A. Sorensen, *Pregnant and Parenting Student-Athletes: Resources and Model Policies*, NCAA GENDER EQUITY 1, 8 (2008), <https://s3.amazonaws.com/ncaa.org/documents/2021/1/18/PregnancyToolkit.pdf> [<https://perma.cc/BFH5-Q3Z2>] (explaining sixty percent of students who have kids drop out of college); see also Victoria Jackson, *The Demise of Roe v. Wade is a Threat to College Sport*, GLOB. SPORT MATTERS (Sept. 27, 2022), <https://globalsportmatters.com/health/2022/09/27/demise-roe-v-wade-threat-college-sport/> [<https://perma.cc/RU3K-WMQ7>] (explaining how pregnancy often leads to women dropping out); see also Loreto Jackson, *Student-Athlete Pregnancy Management*, CLEMSON UNIV. ATHLETIC DEP'T 1, 3 (2008), https://clemsontigers.com/wp-content/uploads/2018/05/pregnancy_management.pdf [<https://perma.cc/7ZBB-GE52>] (providing background on unexpected pregnancy in college).

14. See Hogshead-Makar & Sorensen, *supra* note 13, at 14 (asserting that pregnancy can occur when practicing safe sex); see also Amici Curiae Brief, *supra* note 6, at 29 (finding "nearly one in five women are sexually assaulted during their time in college"); *Pregnancy Resulting from Rape*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 1, 2020), https://www.cdc.gov/violenceprevention/sexualviolence/understanding-RRP-inUS.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fdatasources%2Fnisvs%2Funderstanding-RRP-inUS.html [<https://perma.cc/QVX9-5JQ2>] ("Almost 3 million women in the U.S. experienced [rape-related pregnancy] during their lifetime."). For further discussion of Crissy Perham's experience, see *supra* notes 1-7 and accompanying text.

15. See Amici Curiae Brief, *supra* note 6, at 2 ("Amici are united in their deeply-held belief that women's athletics could not have reached its current level of participation and success without the constitutional rights recognized in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).").

16. *Roe v. Wade*, 410 U.S. 113 (1973).

abortion.¹⁷ Athletes have spoken about the need for abortion access during their time in college, noting that they would not have been able to excel in their athletic careers after college without access to reproductive healthcare, and abortion specifically.¹⁸ There are also privacy concerns surrounding college athletes, as they are required to provide medical data in more extensive detail than the average student.¹⁹ State-specific abortion restrictions may have even greater consequences on student-athletes, many of whom are attending college on scholarship and may have fewer funds to travel out of state for reproductive healthcare.²⁰

This Comment analyzes the response — or lack thereof — to changes in reproductive healthcare laws by the NCAA and college athletics.²¹ In Section II, this Comment offers background on the impact of unplanned pregnancy on college athletes, and Title IX regulations on pregnancy discrimination.²² Section II also provides background on reproductive healthcare in the United States and the impact of the *Dobbs v. Jackson Women’s Health Organization*²³ decision on college admissions.²⁴ In Section III, this Comment analyzes the NCAA’s 2008 Pregnancy and Parenting Policy as well as current college athletics policies on reproductive healthcare, arguing for updates that support pregnant student-athletes.²⁵ Finally, in Section IV, this Comment concludes that the NCAA and college

17. See Amici Curiae Brief, *supra* note 6, at 16 (explaining Title IX and *Roe v. Wade*’s proximity in timing and interaction). Both Title IX and the Court’s decision in *Roe* focused on “women’s liberty and equality.” See *id.* at 16–17 (“Indeed, Title IX’s implementing regulations directly connect reproductive freedom to gender equality.”).

18. See Gregory, *supra* note 2 (describing Crissy Perham’s decision to receive abortion care during college, going on to win three Olympic medals in 1992).

19. See Molly Hensley-Clancy, *With NCAA Silent on Abortion Bans, College Sports Face Confusion*, WASH. POST (July 28, 2022, 3:57 PM), <https://www.washingtonpost.com/sports/2022/07/27/college-sports-ncaa-abortion-bans/> [https://perma.cc/YQ8Z-Y6MS] (describing how student-athletes lack medical privacy).

20. See *id.* (quoting college athletic department official from state with abortion ban) (“The general student body here has enough money to get out of state if they need to. Our student-athletes don’t necessarily have that money.”).

21. For further discussion of the fallout from *Dobbs*, see *infra* notes 69–85 and accompanying text.

22. For further discussion of impacts of unplanned pregnancy on student-athletes and Title IX protections, see *infra* notes 27–51 and accompanying text.

23. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

24. For further discussion of reproductive healthcare in the United States and the impact of changing laws on college athletics, see *infra* notes 52–85 and accompanying text.

25. For further discussion of current policies and the ways in which the NCAA can support its athletes, see *infra* notes 86–211 and accompanying text.

athletics should provide updated guidance and work to support their athletes' access to reproductive healthcare.²⁶

II. PRESEASON INJURIES: BACKGROUND ON PREGNANCY DISCRIMINATION, ABORTION POLICIES, AND COLLEGE ADMISSIONS

A. The Effect of Unplanned Pregnancies on College Athletes

An unplanned pregnancy in a college athlete's life brings additional challenges.²⁷ College athletes utilize their bodies to obtain an education, and for some, a professional sports career.²⁸ As such, an unplanned pregnancy can interfere with an athlete's vehicle for success.²⁹ Pregnant athletes have an increased risk of injury compared to nonpregnant athletes.³⁰ Pregnancy also reduces an athlete's ability to perform during the prepartum and postpartum period.³¹

26. For further discussion of the impact which laws regulating reproductive healthcare can continue to have on college athletics, see *infra* notes 212–218 and accompanying text.

27. See Hogshead-Makar & Sorensen, *supra* note 13, at 14 (“Pregnancy is an emotion-laden process for all women, and is especially so for a student-athlete.”). Many women suffer psychologically during and following pregnancy. See *Pregnancy and Mental Health*, STAN. MED. CTR. FOR NEUROSCIENCE WOMEN'S HEALTH, https://med.stanford.edu/womensneuroscience/wellness_clinic/Pregnancy.html#:~:text=Given%20the%20numerous%20physiological%20and,disturbances%20during%20the%20perinatal%20period. [https://perma.cc/J8QU-ZLAQ] (last visited Jan. 6, 2024) (finding “up to 20% of women suffer from mood or anxiety disorders during the gestation and postpartum periods”); see also Talking Title IX and College Sports, *Reproductive Rights of Women Athletes in Title IX's 50th Anniversary Year and Post-Dobbs*, HIGH TOPS MEDIA, at 29:07 (July 25, 2023), <https://podcasts.apple.com/us/podcast/reproductive-rights-of-women-athletes-in-title-ixs/id1687388645?i=1000621239724> [https://perma.cc/X2HW-YUSD] (acknowledging college athlete training can be emotionally exhausting).

28. See Amici Curiae Brief, *supra* note 6, at 4 (detailing how athletic recruitment and scholarships aid student athletes in search of higher education opportunities); see also David McArdle & Sylvia de Mars, *Your Body is a Battleground: Pregnancy Discrimination and College Sports After 50 Years of Title IX*, 33 J. LEGAL ASPECTS SPORT 3, 7 (2023) (“In most disciplines a successful college sports career provides the only route into women's professional or elite amateur participation, while academic success brings employment and other opportunities beyond the game.”).

29. See Amici Curiae Brief, *supra* note 6, at 18–19 (detailing how changes which come along with pregnancy can harm athlete's ability and opportunity for competition).

30. See *id.* at 19 (explaining how pregnancy “loosens a woman's joints and ligaments, putting her at greater risk of injury”). Pregnant women athletes also put increased strain on their hearts. See *id.* (finding woman's “blood volume increases almost 50% during pregnancy”).

31. See *id.* (detailing how breastfeeding and recovery from childbirth requires additional time from mothers' schedules).

At the very least, an athlete who becomes pregnant may lose their starting position.³²

Additionally, unintended pregnancy can have massive psychological impacts on athletes of all genders.³³ When a pregnancy ends in a miscarriage or abortion, those who have lost or terminated the pregnancy will likely need to grieve.³⁴ Pregnancies that continue full-term can impact a woman's body image, which may be particularly detrimental to a student-athlete.³⁵ An athlete's identity can be even more shaken when the athlete goes from "body as self" to "body as host to another."³⁶ Unintended pregnancy and abortion may exacerbate the mental health issues many student-athletes already face.³⁷ Unplanned pregnancy can also impact the mental health of male athletes whose partners become pregnant, in part because they may

32. See Hogshead-Makar & Sorensen, *supra* note 13, at 40–41 (declaring post-pregnancy, student-athletes "need not necessarily be reinstated to a specific position she formerly held, such as being a starter").

33. See *id.* at 14 (finding pregnancy can increase risk of depression); see also Talking Title IX and College Sports, *supra* note 27, at 28:54 (discussing how unintended pregnancies are "psychological crisis" for student-athletes).

34. See Kimberly Drake, *Coping with Grief and Depression After an Abortion*, PSYCHCENTRAL (July 25, 2022), <https://psychcentral.com/depression/understanding-abortion-grief-and-the-recovery-process> [<https://perma.cc/9FJK-V7PR>] (noting how people that experience abortion may go through five stages of grief). The Centers for Disease Control and Prevention ("CDC") reported that in 2021, over 600,000 legally induced abortions were performed in the United States. See Jeff Diamant, Besheer Mohamed & Rebecca Leppert, *What the Data Says About Abortion in the U.S.*, PEW RSCH. CTR. (Mar. 25, 2024), <https://www.pewresearch.org/short-reads/2023/01/11/what-the-data-says-about-abortion-in-the-u-s-2/> [<https://perma.cc/4LJL-CHHN>] (providing yearly abortion statistics, changing abortion rates, and most common abortion types).

35. See Hogshead-Makar & Sorensen, *supra* note 13, at 14–15 (stating that weight gain from pregnancy may impact athlete's body image and identity). Non-pregnant student-athletes, especially ones participating in gymnastics, figure skating, and diving, face problems with body image. See *Student Athletes - Body Image/Disordered Eating*, UNIV. MICH. COUNSELING & PSYCH. SERVS., <https://caps.umich.edu/content/student-athletes-body-imagedisordered-eating> [<https://perma.cc/BQE4-6P7U>] (last visited Nov. 1, 2023) (referring to risk factors for disordered eating and unhealthy body image).

36. See Hogshead-Makar & Sorensen, *supra* note 13, at 15 (detailing various psychological transitions athletes must undergo when pregnant). Pregnant women may feel a loss of identity when starting to envision themselves as a mother. See Chiara Ionio, Martina Smorti, Eleonora Mascheroni, Giulia Ongaro, Elena Cattaneo, Angelo Gemignani, Silvia Von Wunster & Lucia Bonassi, *What is the Role Played By Pregnancy in the Construction of a Woman's Identity and Her Association With Her Child-To-Be?*, 39 J. REPROD. & INFANT PSYCH. 250, 251 (2021) (describing pregnancy as "complex" transition for women).

37. See GOALS Study: *Understanding the Student-Athlete Experience*, NCAA (2019), https://ncaaorg.s3.amazonaws.com/research/goals/2020AWRES_GOALS2020con.pdf [<https://perma.cc/2Q3A-HE99>] (finding "[n]early 30% of female student-athletes compared to one-quarter of male student-athletes have felt difficulties piling up so high that they could not overcome them in the month prior to taking the survey.").

have to take on new responsibilities which can put additional strain on their careers.³⁸

B. Title IX Pregnancy Discrimination

The United States Congress enacted Title IX of the Education Amendments of 1972, prohibiting sex discrimination in education, concerning most colleges and universities.³⁹ Title IX protects students from discrimination or exclusion from educational activities “on the basis of . . . pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.”⁴⁰ Under Title IX, pregnancy must be treated like “any other temporary disability,” and pregnant students cannot “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under” any education program receiving federal funds.⁴¹ Students also cannot be harassed for “pregnancy and related conditions” under Title IX.⁴² While “related conditions” includes pregnancy termination, there have been few cases focused on this aspect of Title IX.⁴³

38. See Hogshead-Makar & Sorensen, *supra* note 13, at 7 (considering how male athletes may disagree with their partner’s decision about carrying child).

39. See 20 U.S.C. § 1681(a) (prohibiting sex discrimination in education); see also Guenther et al., *supra* note 10, at 54 (describing Congress’s goal in enacting Title IX). Some schools, namely military schools and private religious schools are exempt from Title IX. See *Title IX: What to Know*, PA. COAL. TO ADVANCE RESPECT, <https://pcar.org/what-know-about-title-ix#:~:text=Enacted%20in%201972%2C%20Title%20IX,schools%20and%20private%20religious%20schools>. [https://perma.cc/SR2L-ELP5] (last visited Nov. 1, 2023) (recounting Title IX exceptions and updates).

40. See 45 C.F.R. § 86.40(b)(1) (2024) (indicating protections based on pregnancy and related conditions). Educational activities include extracurriculars. See *Discrimination Based on Pregnancy and Related Conditions*, U.S. DEP’T EDUC. 1, 1 (Oct. 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-pregnancy-resource.pdf> [https://perma.cc/95BA-WKKX] (presenting what falls under education program or activity).

41. See 45 C.F.R. § 86.40(b)(4) (2024) (announcing how pregnancy related conditions should be treated by educational programs); see also *Protecting Students With Disabilities*, U.S. DEP’T EDUC. (July 18, 2023), <https://www2.ed.gov/about/offices/list/ocr/504faq.html> [https://perma.cc/D7SN-PDML] (providing text for Section 504); *OCR Complaint No. 08-22-2021*, U.S. DEP’T EDUC. 1, 3 (June 14, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-a.pdf> [https://perma.cc/826A-BBEU] (“Although a normal, healthy pregnancy is generally not considered a disability, a pregnant student may become temporarily disabled and thus entitled to the same rights and protections of other students with a temporary disability.”).

42. See *Discrimination Based on Pregnancy and Related Conditions*, *supra* note 40, at 1 (explaining Title IX protections against harassment).

43. See Brake & Grossman, *supra* note 9, at 178 (finding limited attention focused on abortion in Title IX enforcement). There is sparse case law surrounding Title IX and abortion because students are likely to keep this information private, and religious universities have exemptions to Title IX including exemptions for the provision on pregnancy and pregnancy termination. See *id.* (describing reasons for limited caselaw on abortion and Title IX).

Educational institutions do not have to provide abortion services or aid a student in obtaining them under Title IX.⁴⁴ Moreover, institutions “controlled by a religious organization” do not have to comply with Title IX provisions if such compliance is inconsistent “with the religious tenets of such organization.”⁴⁵ Under Title IX, students must be given leave for pregnancy or termination of pregnancy and must be reinstated after the leave.⁴⁶ The Department of Education’s Office for Civil Rights (“OCR”), tasked with enforcing Title IX compliance, has clarified the protections available to pregnant athletes to include scholarship protection.⁴⁷ Nevertheless, advocating for their protections under Title IX may not be a priority or a necessarily comfortable experience for athletes facing an unexpected pregnancy.⁴⁸

There appears to be a lack of knowledge amongst student-athletes about protections for pregnancy and related conditions under Title IX.⁴⁹ Almost half of NCAA Division I athletes surveyed believed that if they informed their athletic staff about their pregnancy and their intention to keep the child, they would be cut from their sport.⁵⁰

44. *See id.* at 172 (explaining “legislative compromise” around “an abortion carve-out”). Abortion is not recognized as a sex equality issue under Title IX. *See id.* at 173 (observing how abortion carve-out impacts sex equality). Educational institutions do not have to provide support for students seeking abortions under Title IX. *See id.* at 179 (stating that schools are not obligated to provide “referrals to abortion providers, education about abortion as an option, or access to abortion as part of a student health services plan”).

45. *See* 34 C.F.R. § 106.12(a) (2024) (providing exemptions for private schools controlled by religious organizations).

46. *See* Hogshead-Makar & Sorensen, *supra* note 13, at 40 (detailing leave procedures for pregnant athletes).

47. *See* Deborah L. Brake, *The Invisible Pregnant Athlete and the Promise of Title IX*, 31 HARV. J.L. & GENDER 323, 329 (2008) (summarizing Dear Colleague letter sent by OCR on protections for pregnant athletes). This clarified guidance was issued in part because of a 2007 ESPN “Outside the Lines” episode which exposed discrimination of pregnant athletes, including having their scholarships taken away. *See id.* at 327 (describing “Outside the Lines” episode “Pregnant Pause”). Pregnant athletes cannot have their scholarship taken away because of their pregnancy. *See* Stephanie J. Monroe, *Dear Colleague Letter*, U.S. DEP’T EDUC. (June 25, 2007), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070625.html> [<https://perma.cc/XQ3F-F5RD>] (responding to media reports about colleges terminating scholarships based on pregnancy).

48. *See* Brake, *supra* note 47, at 363 (acknowledging how shame may influence pregnant student-athlete actions).

49. *See* Guenther et al., *supra* note 10, at 54 (indicating unfamiliarity amongst student-athletes about their pregnancy rights).

50. *See id.* at 63 (finding 46.6% would expect to be “released or cut from the team”). Almost half reported they were “unsure” if they would be able to return to their sport after childbirth. *See id.* at 63, 67 (finding “a lack of knowledge about healthy pregnancy, healthy athletic participation while pregnant, and federal protections for pregnant individuals” amongst study participants).

Athletes were even less likely to know about NCAA protections for pregnancy.⁵¹

C. Access to Reproductive Healthcare in the United States

In 1973, the United States Supreme Court held in *Roe v. Wade*, that the Fourteenth Amendment's protections for privacy guarantee the right to an abortion of a pre-viable pregnancy.⁵² As a result, the state could not place any restrictions on abortion during the first trimester of a pregnancy.⁵³ The Court found that the fetus lacked constitutional personhood and the state's interest in the life of the fetus began at viability.⁵⁴ At the time of the Court's ruling, over sixty percent of Americans believed that the decision as to whether to have an abortion or not should be made between a woman and her doctor.⁵⁵

In 1980, the Supreme Court held in *Harris v. McRae*⁵⁶ that abortion funding for Medicaid recipients did not have to be provided by either state or federal government.⁵⁷ As a result of the Hyde Amendment, upheld in *Harris*, Medicaid recipients, who are disproportionately people of color and members of the LGBTQ+ community, do not have the same access to abortion as affluent women.⁵⁸ This inequity is exacerbated by the fact that Black women

51. See *id.* at 63 (finding 90.3% were unaware of NCAA's rules on pregnancy). For further discussion of NCAA's bylaws on pregnancy, see *infra* notes 86–104 and accompanying text.

52. See *Roe v. Wade*, 410 U.S. 113, 150 (1973) (balancing women's privacy rights with state rights to protect women and fetus health); see also Brake & Grossman, *supra* note 9, at 210 (providing background for right to privacy framework established in *Griswold v. Connecticut*).

53. See *Roe*, 410 U.S. at 164 (explaining trimester framework).

54. See Brake & Grossman, *supra* note 9, at 210–11 (providing explanation of majority opinion in *Roe v. Wade*).

55. See Linda Greenhouse & Reva B. Siegel, *Before (and After) Roe v. Wade: New Questions About Backlash*, 120 YALE L.J. 2028, 2067 (2011) (finding that in 1972, more Republicans than Democrats believed abortion decision making should be between woman and her doctor).

56. *Harris v. McRae*, 448 U.S. 297 (1980).

57. See *id.* at 326 (holding “the funding restrictions of the Hyde Amendment violate neither the Fifth Amendment nor the Establishment Clause of the First Amendment”).

58. See *Historical Abortion Law Timeline: 1850 to Today*, PLANNED PARENTHOOD ACTION FUND, <https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america/historical-abortion-law-timeline-1850-today> [https://web.archive.org/web/20240509182122/https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america/historical-abortion-law-timeline-1850-today] (last visited Sept. 1, 2023) (analyzing how Medicaid serves primarily marginalized populations).

and indigent women have a disproportionate likelihood of facing unintended pregnancies.⁵⁹

The Supreme Court continued to narrow abortion access in 1992.⁶⁰ In *Planned Parenthood v. Casey*,⁶¹ the Court affirmed the right to abortion but broadened states' regulatory authority.⁶² The Court utilized an undue burden standard, meaning that a law would be unconstitutional if it creates a "substantial obstacle" in the way of a woman's ability to abort a nonviable fetus.⁶³ Based on this decision, states began to pass abortion restrictions which could be upheld under the undue burden framework.⁶⁴

The issue of abortion access faced the Court again in 2021, when the Supreme Court in *Dobbs* weighed in on the constitutionality of Mississippi's Gestational Age Act.⁶⁵ While the case was before the Supreme Court, over 500 women athletes filed an amici brief to the Court in support of maintaining access to abortion.⁶⁶ The amici stated that there would be severe consequences to women's athletics if the Court were to eliminate protections for access to reproductive healthcare.⁶⁷ The majority not only upheld the Mississippi law but

59. See Brake & Grossman, *supra* note 9, at 214–15 ("Black women are more than twice as likely to have unintended pregnancies as non-Hispanic white women, and poor women are more than five times as likely as women at the highest income level."). Reduced access to abortion reduces Black women's college enrollment. See Shelly J. Lundberg & Dick Startz, *The End of Roe Creates New Challenges in Higher Education*, BROOKINGS (Aug. 9, 2022), <https://www.brookings.edu/articles/the-end-of-roe-creates-new-challenges-in-higher-education/> [<https://perma.cc/SQ95-38P9>] (providing evidence that lack of abortion access harms Black women's educational opportunities).

60. See Brake & Grossman, *supra* note 9, at 211 (discussing reasoning in *Planned Parenthood v. Casey*). The Court in *Casey* granted more influence on the states over child birthing decision making. See *id.* (recognizing state's interest in "fetal life").

61. *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833 (1992).

62. See *id.* at 878 ("[T]he State may enact regulations to further the health or safety of a woman seeking an abortion. Unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.").

63. See *id.* at 877 (defining undue burden standard).

64. See *Historical Abortion Law Timeline: 1850 to Today*, *supra* note 58 (summarizing fallout from *Casey*). The restrictions upheld in *Casey* include a twenty-four-hour waiting period provision and an informed consent provision. See Deepa Shivaram, *Roe Established Abortion Rights. 20 Years Later, Casey Paved the Way for Restrictions*, NPR (May 6, 2022, 5:00 AM), <https://www.npr.org/2022/05/06/1096885897/roe-established-abortion-rights-20-years-later-casey-paved-the-way-for-restricti> [<https://perma.cc/5EWY-WMSW>] (listing various restrictions upheld under standard).

65. See *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 348 (2022) (Roberts, C.J., concurring) ("Mississippi's Gestational Age Act, Miss. Code § 41-41-191 (2018), generally prohibits abortion after the fifteenth week of pregnancy.").

66. See Amici Curiae Brief, *supra* note 6, at 2 (announcing athletes' support for abortion access).

67. See *id.* at 32 (detailing dire consequences for athletes who lack access to reproductive healthcare). Lack of access to reproductive healthcare may hinder sexual assault survivors' recovery and retraumatize them. See *id.* at 29–30 (including

also overturned *Roe* and *Casey*, finding no federal constitutional right to abortion at any stage of pregnancy.⁶⁸

D. *Dobbs*' Impact on College Admissions and Athletics

A majority of Americans disapproved of the Court's decision in *Dobbs*.⁶⁹ The decision was even less popular with college-aged Americans, as nearly seventy percent of Americans aged eighteen to thirty-four consider themselves pro-choice.⁷⁰ This sentiment amongst college students has impacted college decision making.⁷¹ A recent study reported that a significant majority of students consider state reproductive health laws when deciding whether to enroll, or remain enrolled, in a university.⁷² A vast majority of students want to attend a university where there is more access to reproductive healthcare, rather than less.⁷³

story of Division I field hockey player who was sexually assaulted). Without abortion access, many female athletes would be unable to excel in their sports resulting in a long-term decline of women in sports. *See id.* at 18 (describing how lack of access to reproductive healthcare could reverse "gender equality in sports").

68. *See Dobbs*, 597 U.S. at 302 (overruling cases previously upholding limited access to abortion).

69. *See Majority of Public Disapproves of Supreme Court's Decision to Overturn Roe v. Wade*, PEW RSCH. CTR. (July 6, 2022), <https://www.pewresearch.org/politics/2022/07/06/majority-of-public-disapproves-of-supreme-courts-decision-to-overturn-roe-v-wade/#:~:text=More%20than%20twice%20as%20many,set%20their%20own%20abortion%20policies> [<https://perma.cc/6YF7-6Z6R>] ("Nearly six-in-ten adults (57%) disapprove of the court's sweeping decision, including 43% who strongly disapprove.").

70. *See Sarah Wood, How the Overturning of Roe v. Wade May Affect Student's College Decisions*, U.S. NEWS & WORLD REP. (Aug. 4, 2022), <https://www.usnews.com/education/best-colleges/applying/articles/how-the-overturning-of-roe-v-wade-may-affect-students-college-decisions> [<https://perma.cc/99ZG-QTF6>] (reporting age breakdown amongst pro-choice Americans); *see also, e.g.,* Welding, *supra* note 12 (providing average ages of college students).

71. *See Philip Elliott, Abortion Access is Affecting Where College Students Decide to Study*, TIME (Apr. 20, 2023, 5:37 PM), <https://time.com/6273561/abortion-ban-colleges-red-states/> [<https://web.archive.org/web/20240509182608/https://time.com/6273561/abortion-ban-colleges-red-states/>] (finding both Democrats and Republicans consider reproductive health laws during college decision making).

72. *See Stephanie Marken & Zach Hrynowski, Reproductive Health Laws Factor Into Many College Decisions*, GALLUP (Apr. 20, 2023), <https://news.gallup.com/poll/474365/reproductive-health-laws-factor-college-decisions.aspx> [<https://perma.cc/H47M-LXH7>] (providing statistics on role of reproductive health laws in college decision making). While more women than men said that reproductive healthcare laws would impact their decision making, a majority of both men and women said these laws would have an influence. *See id.* (describing gender breakdown of Gallup study).

73. *See id.* ("[M]ore than eight in 10 currently enrolled students (81%) and unenrolled students (85%) say they would prefer to attend a university in a state with greater access to reproductive health services, while fewer than two in 10 would prefer to attend college in a more restrictive state.").

Unfortunately, it may be hard to attend a university in a state with both access to reproductive healthcare and an elite sports program.⁷⁴ Upon the *Dobbs* decision, thirteen states had trigger laws in place which immediately banned abortion.⁷⁵ Twenty-two states and counting now have abortion bans, or heavily restricted access to abortion, forcing women who can afford it to cross state lines in order to obtain access to reproductive healthcare.⁷⁶ States with abortion access are home to only one of the top ten women's volleyball programs, and four of the top twenty-five women's basketball and softball programs.⁷⁷ These statistics may continue to worsen as more states pass abortion restrictions.⁷⁸

While the reaction to the *Dobbs* decision was widespread, college athletics officials stayed largely silent.⁷⁹ When asked, the NCAA stated that they would continue to monitor the fallout from the decision and suggested schools obey state laws and support their athletes.⁸⁰ This minimal reaction differed from that of the National

74. See Hensley-Clancy, *supra* note 19 (observing concentration of elite sports programs in states where abortion is limited). States with top athletic programs and limited reproductive access include Oklahoma, Texas, and more. See *id.* (explaining prominence of softball in Oklahoma and prominence of gymnastics, soccer, and more in Texas).

75. See Jesus Jiménez, *What is a Trigger Law? And Which States Have Them?*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2022/05/04/us/abortion-trigger-laws.html> [<https://perma.cc/VF3V-5TXT>] (defining trigger laws which went into place almost immediately following judicial decisions). The thirteen states with trigger laws are: Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming. See *id.* (listing thirteen states with trigger laws).

76. See Oriana González, *Where Abortion Has Been Banned Now That Roe v. Wade is Overturned*, AXIOS (Aug. 23, 2023), <https://www.axios.com/2022/06/25/abortion-illegal-7-states-more-bans-coming#> [<https://web.archive.org/web/20240509182924/https://www.axios.com/2022/06/25/abortion-illegal-7-states-more-bans-coming>] (describing current landscape of abortion access). Abortion is banned or restricted in the following states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin. See *id.* (listing states that, as of August 23, 2023, banned or restricted abortion); see also Debbie Elliott & Sarah McCammon, *A Year After the Dobbs Abortion Ruling, the Impact Nationwide Has Been Dramatic*, NPR (June 23, 2023, 5:12 AM), <https://www.npr.org/2023/06/23/1183931379/a-year-after-the-dobbs-abortion-ruling-the-impact-nationwide-has-been-dramatic> [<https://perma.cc/P4DQ-R897>] (finding “Americans, on average, now have to travel more than three times farther than they did one year ago to get to a facility that provides abortions”); Hensley-Clancy, *supra* note 19 (describing current state landscape of abortion access).

77. See Hensley-Clancy, *supra* note 19 (surveying abortion access in states with top women's athletic programs).

78. See González, *supra* note 76 (concluding twenty-four states will likely ban abortion).

79. See Hensley-Clancy, *supra* note 19 (recounting lack of response from NCAA).

80. See *id.* (providing NCAA's statement to Washington Post).

Basketball Association (NBA) and the Women's National Basketball Association (WNBA), whose commissioners stated their support for reproductive freedom and that they would work to promote their employees' access to reproductive healthcare nationwide.⁸¹

Some college coaches stated that they were nervous to speak out against the *Dobbs* decision, worrying about the professional and political ramifications of doing so.⁸² Other coaches expressed concern as to why there was such little reaction.⁸³ Some applauded the *Dobbs* decision, like famed college and professional football coach, Jim Harbaugh.⁸⁴ Some, like Michigan State University softball coach, Jacquie Joseph, were left wondering what to do.⁸⁵

III. THE PASSING GAME: NCAA PREGNANCY AND PARENTING POLICIES, COLLEGE POLICIES, AND RECOMMENDATIONS

A. NCAA 2008 Pregnancy and Parenting Policy

In 2008, the NCAA released a Pregnancy and Parenting Policy which has not been updated in the sixteen years following its release.⁸⁶ At the time, the NCAA acknowledged that a vast majority of schools did not have any policy on student-athlete pregnancy.⁸⁷ The document included a synopsis of the law and NCAA bylaws,

81. See Anne M. Peterson, *Athletes React to the Supreme Court's Abortion Decision*, SEATTLE TIMES (June 25, 2022, 4:51 AM), <https://www.seattletimes.com/sports/college/athletes-react-to-the-supreme-courts-abortion-decision/> [https://perma.cc/8JMQ-4PML] (providing responses from athletes and commissioners to *Dobbs*). The National Women's Soccer League Players Association ("NWSLPA") released a similar statement. See Julia Shapero, *Sports Leagues Signal Support for Abortion Rights in Light of Roe Decision*, AXIOS (June 24, 2022), <https://www.axios.com/2022/06/24/sports-leagues-signal-support-for-abortion-rights-in-light-of-ro-decision> [https://web.archive.org/web/20240521135736/https://www.axios.com/2022/06/24/sports-leagues-signal-support-for-abortion-rights-in-light-of-ro-decision] ("The NWSLPA will support the work that is again necessary to libertate all of us from today's devastating ruling.")

82. See Hensley-Clancy, *supra* note 19 (indicating concern from Division I coaches who spoke anonymously to Washington Post).

83. See *id.* (providing story of Coach Randy Lane, who tried but failed to get other colleagues to sign statement about *Dobbs*).

84. See *id.* (discussing Jim Harbaugh's vigorous support for pro-life politics).

85. See *id.* (reporting Michigan State University coach expressing concern).

86. See Hogshead-Makar & Sorensen, *supra* note 13, at 5 ("The NCAA Model Pregnancy and Parenting Policy ("Model Policy") is designed to provide information and resources to member institutions and their student-athletes to effectively meet the needs of student-athletes dealing with a pregnancy."); see also Talking Title IX and College Sports, *supra* note 27, at 26:25 (detailing NCAA's history of slow responses). The Model Policy was distributed to every NCAA school. See Guenther et al., *supra* note 10, at 58 (discussing method of providing policy to schools in paper and electronic copies).

87. See Hogshead-Makar & Sorensen, *supra* note 13, at 8 (recounting lack of pregnancy and parenting policies in NCAA schools).

a model policy, and a model statement.⁸⁸ Throughout the policy, there is repeated focus on the athlete having the right to choose whether or not to continue a pregnancy.⁸⁹ The policy recommends providing “neutral counsel” on the student-athlete’s pregnancy to “empower” the student’s decision making.⁹⁰

The NCAA policy discusses the Title IX protections for pregnancy and related conditions.⁹¹ Pregnancy or related conditions can allow for a “red-shirted” year so the athlete can have another year of athletic eligibility.⁹² The policy notes that the pregnant student’s athletic scholarship will be protected.⁹³ However, the NCAA states that upon return to their sport, the athlete does not have to be reinstated to their previous position or starting position.⁹⁴

Regarding abortion specifically, the policy holds that a school cannot penalize a student for having a legal abortion.⁹⁵ The NCAA provided a model decision flow chart for pregnancy, which starts off with the formation of a “decision-making team,” including doctors, counselors, and coaches.⁹⁶ The flow chart then suggests

88. See McArdle & de Mars, *supra* note 28, at 12 (analyzing NCAA guide format).

89. See Hogshead-Makar & Sorensen, *supra* note 13, at 14 (“The student-athlete must decide whether to continue or terminate the pregnancy.”). The policy stresses that the student needs time to make this decision. See *id.* at 17 (considering weight of decision of whether to maintain pregnancy).

90. See *id.* at 19 (“This ‘neutral counsel’ may include the Faculty Athletics Representative, professionals in nursing, medicine, counseling, women’s services, and student health services.”).

91. See *id.* at 32 (presenting background on federal law). For further discussion of Title IX protections regarding pregnancy, see *supra* notes 39–51 and accompanying text.

92. See Hogshead-Makar & Sorensen, *supra* note 13, at 34 (“These rules allow student-athletes to complete four seasons of competition during five consecutive calendar years after initial full time collegiate enrollment for Division I or four seasons of participation during the first 10 semesters or 15 quarters in which the student is enrolled in a collegiate institution in at least a minimum full-time program of studies for Divisions II and III.”); see also Guenther et al., *supra* note 10, at 58 (explaining NCAA bylaw 12.8.1.5, which grants an additional year of eligibility).

93. See Guenther et al., *supra* note 10, at 58 (explaining NCAA Bylaw 15.3.4.3, protecting institutional financial aid); see also Hogshead-Makar & Sorensen, *supra* note 13, at 37 (announcing pregnant athletes are entitled to keep their scholarships).

94. See Hogshead-Makar & Sorensen, *supra* note 13, at 40–41 (stating athlete’s starting position may not remain theirs). But see *id.* at 67–68 (detailing how other students have gotten back to their original playing positions post-pregnancy).

95. See *id.* at 42 (“Institutions may not impose a penalty on a student, withhold a benefit or retaliate against her, because she is seeking, has received, or is recovering from a legal abortion.”).

96. See *id.* at 66 (providing model decision flow chart on how to respond to pregnancy); see also *id.* at 33 (“Where the opinions or recommendations of these professionals differ from those of team physicians or trainers, coaches should defer to the student-athlete’s health care providers who are obstetricians or other experts in pregnancy and related conditions.”).

student-athletes decide how to proceed with the pregnancy.⁹⁷ The guide also provides suggestions for what athletic trainers should say in the case of a student-athlete coming to them about a pregnancy.⁹⁸ These suggestions include telling the student-athlete that she has time to make her decision.⁹⁹

The 2008 NCAA guide prompted very little immediate response from educational institutions.¹⁰⁰ In the year following the guide, less than five percent of female student-athletes reported knowing Title IX protections for pregnancy, and less than twenty percent reported knowing NCAA rules on pregnancy.¹⁰¹ A more recent study found that over ninety percent of female athletes still did not know any NCAA protections for pregnant athletes.¹⁰² There have been notable changes in the laws surrounding reproductive healthcare since 2008, especially around abortion care and the ability and time constraints around pregnant student-athletes.¹⁰³ When asked about whether the guide would be updated in 2022, a spokesperson for the NCAA said they would not speculate but that the organization is continually focused on health issues that may impact their athletes.¹⁰⁴

B. Where is the NCAA?

Many collegiate athletic events occur in states where abortion now is prohibited or severely limited.¹⁰⁵ For example, the softball

97. *See id.* at 67 (arguing that students must decide whether to carry pregnancy to term but should not be rushed to do so).

98. *See id.* at 73 (presenting guidelines for certified athletic trainers confronted with pregnancy in female student-athletes).

99. *See id.* at 74–77 (providing model statements for athletic trainers). One example of a model statement provided is: “I’m glad you’re telling me about this and understand you may have many questions. I want to provide you with the information, time and support you need to make these personal decisions. Let’s figure out how we can do that.” *See id.* at 74 (describing how athletic trainers can provide emotional support to pregnant athletes).

100. *See* McArdle & de Mars, *supra* note 28, at 12 (“An early investigation found only 68 pregnancy policies in the 1,066 schools that competed across the three Divisions of college sports.”).

101. *See* Guenther et al., *supra* note 10, at 59 (detailing results of 2009 study on NCAA Division I female athletes).

102. *See id.* at 63 (describing results from 2021 survey).

103. For further discussion of changing reproductive healthcare laws, see *supra* notes 52–68 and accompanying text.

104. *See* Isabella Douglas, *UF Athletes, Athletic Leaders Speak on Reproductive Health in Sports*, INDEP. FLA. ALLIGATOR (Nov. 29, 2022, 9:00 AM), <https://www.alligator.org/article/2022/11/uf-athletes-athletic-leaders-speak-on-reproductive-health-in-sports> [<https://perma.cc/2DUS-MJAJ>] (reporting statement from NCAA spokesperson Chris Radford).

105. *See* Nancy Armour & Lindsay Schnell, *States with Laws Hostile to Women’s Rights After Roe Overturned See No Barrier to Get Sports Events*, USA TODAY (Jan. 20, 2023, 7:06 AM), <https://www.usatoday.com/story/sports/2023/01/19/roe-v-wade-over->

World Series is held each year in Oklahoma City where abortion is prohibited except in cases to save the mother's life.¹⁰⁶ The same is true for the gymnastics final, and the men's and women's basketball Final Fours.¹⁰⁷ When pressed on the location of the Final Fours, NCAA leadership stated that they choose locations based on where their fans will feel safe.¹⁰⁸ These events bring economic gain to states and cities where they are held.¹⁰⁹ Many of the NCAA championships have already been scheduled for the next ten years, with a significant number scheduled to occur in states where abortion access is limited.¹¹⁰ Additionally, the NCAA headquarters is in Indianapolis, Indiana, where there is a total abortion ban.¹¹¹

Some have called for the NCAA to move these events, but the prospect of doing so appears bleak.¹¹² The risk of right-wing political backlash may be a reason for why the NCAA has not considered moving its events.¹¹³ Republican politicians could use the move as a way to attack the NCAA and portray it as a liberal organization.¹¹⁴

turned-states-hostile-laws-women-get-sports/11034745002/ [https://perma.cc/N885-BFC4] (listing sporting events held in states with restrictive abortion laws post-*Dobbs* decision).

106. See Jacey Fortin, *Oklahoma Supreme Court Rules New Abortion Bans Unconstitutional*, N.Y. TIMES (May 31, 2023), <https://www.nytimes.com/2023/05/31/us/oklahoma-supreme-court-abortion-bans.html> [https://perma.cc/X3V2-3PHT] (providing description of reproductive laws in Oklahoma); see also Hensley-Clancy, *supra* note 19 (describing location and viewership of college sporting events).

107. See Hensley-Clancy, *supra* note 19 (listing locations of events); Armour & Schnell, *supra* note 105 (noting basketball Final Fours were both held in Texas in 2023).

108. See Lia Assimakopoulos, 'So Many Shades of Awful': Texas, States with Controversial Laws Still Host NCAA Events, DALL. MORNING NEWS (Mar. 29, 2023, 2:31 PM), <https://www.dallasnews.com/sports/college-sports/2023/03/22/why-the-ncaa-hosts-final-four-other-championships-in-states-with-controversial-laws/> [https://web.archive.org/web/20240509184552/https://www.dallasnews.com/sports/college-sports/2023/03/22/why-the-ncaa-hosts-final-four-other-championships-in-states-with-controversial-laws/] (providing NCAA vice president of women's basketball Lynn Holzman's statement on site selection).

109. See *id.* ("The Dallas Sports Commission estimates a \$30 million economic impact for the city from having the women's Final Four at American Airlines Center . . .").

110. See *id.* ("Of the 149 NCAA championships announced through 2035, 105 are scheduled to take place in states that restrict abortion and/or ban transgender athlete participation.").

111. See Armour & Schnell, *supra* note 105 (stating location of NCAA headquarters and NCAA's lack of comment on abortion laws); see also *Indiana*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/state/indiana/> [https://perma.cc/PPG4-ZRGV] (last visited Sept. 21, 2023) (explaining Indiana's abortion ban).

112. See Armour & Schnell, *supra* note 105 (supporting calls to consider reproductive healthcare when choosing where to hold large events).

113. See Assimakopoulos, *supra* note 108 (noting how moving NCAA events may have limited impact).

114. See *id.* (suggesting Republican politicians may characterize NCAA as "woke").

Another potential concern around moving events is the logistics, as many athletic events have restrictions based on weather and arena capabilities.¹¹⁵

C. Current College Policies

The lack of recent guidance from the NCAA has left universities and their athletic departments to establish their own policies.¹¹⁶ As a consequence of the *Dobbs* decision, campuses will likely see higher rates of pregnancy, resulting in more questions for colleges to answer about handling pregnancy and more requests from college students and employees for leave and other accommodations.¹¹⁷ This Comment focuses on Division I Institution policies within states where abortion is either limited or banned.¹¹⁸ It is worth noting, however, that almost ninety-eight percent of Division I female student-athletes, from colleges nationwide, report their athletic department has not provided them with instructions of what to do in the event of pregnancy.¹¹⁹

In Florida, where abortion is now banned after six weeks, the University of Florida (“UF”) Athletic Department has tiptoed around the new reproductive landscape.¹²⁰ One UF women’s basketball player reported that no one in the university’s Athletic Department has spoken to its athletes about reproductive healthcare following

115. See Armour & Schnell, *supra* note 105 (detailing arena requirements for USA Gymnastics Championships including “a minimum of 40-foot clear height,” and diving trials requiring “a 10-meter platform”).

116. See Guenther et al., *supra* note 10, at 63–64 (finding athletes are not likely to hear from their athletics department or any other source regarding pregnancy). A vast majority of women student-athletes believe their athletics department should do more to inform their athletes on pregnancy rights and unintended pregnancy. See *id.* at 65 (reporting 97.6% of participants believe athletic departments should “provide more information” to those “at risk for an unplanned pregnancy”).

117. See Daniel Dench, Mayra Pineda-Torres, Caitlin Myers, *The Effects of the Dobbs Decision on Fertility*, IZA INST. OF LAB. ECON. 1, 1 (2023) (finding “states with abortion bans experienced an average increase in births of 2.3 percent relative to states where abortion was not restricted.”); Melissa Carleton & Bindu Jayne, *Pregnancy Discrimination Updates*, NAT’L ASS’N COLL. & UNIV. ATT’YS, https://www.uc.edu/content/dam/d-ready-to-delete/equity-inclusion/titleix/docs/NACUA_10.19.22_pregnancy%20discrim%20slides%20PDF.pdf [<https://perma.cc/JX8C-ZXQ9>] (last visited Jan. 7, 2023) (discussing impact of *Dobbs* on colleges and universities).

118. For further discussion of laws varying on reproductive healthcare by state and college policies, see *infra* notes 120–164 and accompanying text.

119. See Guenther et al., *supra* note 10, at 63 (reporting 97.8% of student-athletes were not provided with instructions in case of pregnancy).

120. See Douglas, *supra* note 104 (reporting that UF athletics has not reached out to its athletes following *Dobbs* decision); see also Florida, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/state/florida/#:~:text=Restrictions,Sess.> [<https://perma.cc/3GM4-EACY>] (last visited Sept. 21, 2023) (noting Florida’s six-week abortion ban and other requirements such as mandatory waiting period).

the *Dobbs* decision.¹²¹ UF's student-athlete handbook includes ten pages on sports health, discussing issues like concussions, nutritional supplements, and substance abuse, but lacks any guidance on reproductive healthcare.¹²² The UF athletic staff has emphasized their commitment to student-athlete healthcare, noting that they aim "to empower student-athletes to take ownership of all facets of their lives..."¹²³ However, these staff members ignore the fact that UF student-athletes are not empowered to make their own decisions when it comes to their reproductive health.¹²⁴ A spokesperson for the university's Student Health Care Center said that discussions of reproductive health are the same for students and student-athletes.¹²⁵ This lack of distinction ignores the additional challenges athletes face when making decisions about their reproductive healthcare.¹²⁶

Conversely, Clemson University has some of the clearest guidance on pregnancy and childbirth for its students and student-athletes.¹²⁷ This guidance may be in response to a 2007 scandal surrounding a Clemson track coach, whose comments reportedly led to seven athletes having abortions, due to fear of losing their scholarships.¹²⁸ The school's policy suggests that the pregnant student advise the

121. See Douglas, *supra* note 104 (recounting experience of one UF athlete).

122. See *id.* (summarizing UF's 2021–2022 student-athlete handbook); see also *Student-Athlete Handbook 2021-2022*, UNIV. FLA. 1, 1 (2021), https://floridagators.com/documents/2021/8/26/2021_22_Student_Athlete_Handbook.pdf [<https://perma.cc/3XNA-J6FF>] (listing topics discussed in handbook's Table of Contents).

123. See Douglas, *supra* note 104 (including response from Assistant Athletics Director Denver Parler, stating in part that "[s]tudent-athlete health and well-being are of the greatest importance to us, and our policies, commitment of resources, and care provided reflect that.").

124. See *Florida*, *supra* note 120 (reporting very limited abortion access for people living in Florida). For further discussion of reproductive healthcare access in Florida, see *supra* note 120 and accompanying text.

125. See Douglas, *supra* note 104 ("We discuss reproductive health with student athletes in the same way we discuss it with students.").

126. For further discussion of the impact unintended pregnancy has on student-athletes specifically, see *supra* notes 27–38 and accompanying text.

127. See *Title IX - Pregnancy and Childbirth*, CLEMSON UNIV., <https://www.clemson.edu/campus-life/campus-services/access/title-ix/pregnancy.html#:~:text=Pregnant%20students%20cannot%20have%20their,doctor%20says%20it%20is%20necessary> [<https://perma.cc/C8FF-EYGA>] (last visited Jan. 7, 2024) (outlining protections for pregnant or parenting students). Guidance from Clemson includes prompt notification of pregnancy and information about Title IX rights and mimics NCAA bylaws. See *id.* (explaining how Title IX can help protect pregnant and parenting students). For further discussion of NCAA bylaws, see *supra* notes 86–99 and accompanying text.

128. See *Clemson Athletes Say They Had Abortions, School Policy to Blame*, NEWS 19 (May 15, 2007, 11:20 AM), <https://www.wltx.com/article/news/clemson-athletes-say-they-had-abortions-school-policy-to-blame/101-382219073> [<https://perma.cc/5798-GYME>] (recounting how Clemson coach told athletes they could lose their scholarships if they got pregnant).

Title IX Coordinator of her pregnancy as soon as possible.¹²⁹ The policy also details the rights that student-athletes have under Title IX and mimics NCAA bylaws, noting that athletes cannot lose their athletic scholarship due to pregnancy.¹³⁰ Clemson states that athletic directors and coaches cannot pressure students to end their pregnancy, but it also does not say whether these individuals can assert pressure on students to continue said pregnancies.¹³¹ In 2008, the Clemson University Athletic Department also released a student-athlete pregnancy management manual.¹³² The manual notes that athletes should know their options according to state law.¹³³ Clemson's policy mirrors some of the language of the 2008 Pregnancy and Parenting Policy put forward by the NCAA.¹³⁴

Clemson's website includes a link to an accommodations request form for pregnancy and pregnancy related conditions.¹³⁵ The form states that along with providing reasonable accommodations, Clemson will not exclude students based on "termination of pregnancy."¹³⁶ The state of South Carolina, where Clemson University is located, bans abortions after six weeks.¹³⁷

129. See *Title IX - Pregnancy and Childbirth*, *supra* note 127 (urging importance of communication between "the student, instructors, and the Title IX Coordinator").

130. See *id.* (describing Title IX rights available to students at Clemson University). For further discussion of NCAA bylaws, see *supra* notes 86–99 and accompanying text.

131. See *id.* ("Professors, administrators, athletic directors, and coaches cannot pressure pregnant or parenting students to get an abortion or alter their educational plans.").

132. See Jackson, *supra* note 13, at 5 (providing guidance for student-athlete pregnancies).

133. See *id.* at 3 (noting rights of athletes who get pregnant and whose partners get pregnant).

134. See Hogshead-Makar & Sorensen, *supra* note 13, at 5 ("The NCAA Model Pregnancy and Parenting Policy ("Model Policy") is designed to provide information and resources to member institutions and their student-athletes to effectively meet the needs of student-athletes dealing with a pregnancy.").

135. See *Pregnancy, Pregnancy Related Condition or Childbirth Accommodations Request Form*, CLEMSON UNIV., https://cm.maxient.com/reportingform.php?ClemsonUniv&layout_id=42 [<https://perma.cc/FX98-TK8S>] (last visited Jan. 7, 2024) (including questions issue urgency, involved parties, and types of accommodations needed). Clemson University has five listed categories for accommodations including prenatal, postnatal, miscarriage/loss/termination, recent childbirth, and lactation support. See *id.* (asking "[w]hat condition are you seeking accommodations, action and/or support for with this request?").

136. See *id.* (describing "welcoming, accessible, and inclusive environment" Clemson wants to create).

137. See *South Carolina*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/state/south-carolina/> [<https://perma.cc/5Q4K-PB4T>] (last visited Jan. 7, 2023) ("In August 2023, the court allowed a six-week ban to stand, despite the acknowledgement that this ban infringes on the right to privacy and bodily autonomy, holding that a pregnant person's interest in their bodily autonomy is outweighed by the state's interest in fetal life.").

Certain universities have not updated their policies to reflect accurate information on reproductive healthcare laws.¹³⁸ Missouri State University approved a pregnant student-athlete policy in 2016.¹³⁹ The policy requests that the pregnant student-athlete notify the athletic training staff of their pregnancy.¹⁴⁰ The policy also notes that the athlete will bear all pregnancy related costs.¹⁴¹ The university states that the athletic trainer should be able to help the athlete access the resources they need.¹⁴² When the Court overturned *Roe*, the state of Missouri enacted a complete ban on abortion.¹⁴³ However, Missouri State's website providing information on what students should do when faced with an unexpected pregnancy, suggests students follow their own wishes, and lacks necessary updates based on changed abortion laws.¹⁴⁴ The webpage then provides a link to the Planned Parenthood website.¹⁴⁵ While there are multiple Planned Parenthood branches in Missouri providing care, due to *Dobbs*, these locations do not provide abortion services.¹⁴⁶ If the student wishes

138. See *Pregnancy*, MO. STATE, <https://www.missouristate.edu/StudentConduct/pregnancy.htm> [<https://perma.cc/5KCS-CZFX>] (last visited Sept. 22, 2023) (including information on pregnancy termination resources which are no longer available to Missouri residents because of updated Missouri law).

139. See *Pregnant Student-Athlete Policy*, MO. STATE (Feb. 1, 2016), https://www.missouristate.edu/Policy/Chapter6/Op6_04_PregnantStudentAthlete.htm [<https://perma.cc/P79N-3W7T>] (imposing uniform guidelines on pregnant student-athletes).

140. See *id.* (“For the medical safety of the student-athlete and the unborn child, [Missouri State University] athletic training staff and its team physician request that the student-athlete notifies the athletic trainer assigned to her team as well as the team physician immediately upon learning of the pregnancy.”).

141. See *id.* (noting how Missouri State will not take any financial responsibility for pregnancy related care). Pregnancy related care is incredibly costly in the United States. See Pooja Shah, *Bearing the Financial Cost of Pregnancy: What Expecting Parents Should Expect*, CNET (Dec. 26, 2022, 1:00 PM), <https://www.cnet.com/personal-finance/bearing-the-financial-cost-of-pregnancy-what-expecting-parents-should-expect/> [<https://perma.cc/W9XR-443R>] (“For parents with insurance, the average out-of-pocket expense for traditional childbirth is \$2,854, while a C-section . . . averages \$3,214, according to the Kaiser Family Foundation.”).

142. See *Pregnant Student-Athlete Policy*, *supra* note 139 (describing role of sports medicine staff at Missouri State). Resources available to students include counseling, and medical and obstetrical care. See *id.* (stating these resources may be through school or through off-campus services, as financial responsibility of athlete).

143. See *Missouri*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/state/missouri/> [<https://perma.cc/5ZRV-3Z7R>] (last visited Sept. 21, 2023) (stating how abortion is now banned entirely in Missouri).

144. See *Pregnancy*, *supra* note 138 (“Only you can know what is right for you.”).

145. See *id.* (listing resources for student's faced with unintended pregnancy). The resources include Planned Parenthood, Medline Plus, Pregnancy, and Choices and Counseling Services. See *id.* (providing helpful websites).

146. See *Rolla Health Center of Rolla, MO*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/health-center/missouri/rolla/65401/rolla-health-center-3876-90770> [<https://perma.cc/SDC4-7W3K>] (last visited Jan. 7, 2023) (“Unfortunately, due to state law, this health center is unable to provide abortion services at this time.”); see also *Central West End Health Center of Saint Louis, MO*, PLANNED PARENTHOOD,

to legally and safely terminate the pregnancy, she must travel out of state to get this care, likely to Southern Illinois, where abortion is still legal.¹⁴⁷ In an effort to stop such out of state conduct, Missouri representatives proposed a bill allowing residents to sue “anyone who helps a Missouri resident have an abortion.”¹⁴⁸ This legislation was not passed, though there have been similar proposals made since.¹⁴⁹

Some schools have updated their policies since the *Dobbs* decision.¹⁵⁰ Butler University’s Pregnancy and Parenting webpage includes a statement about Indiana’s new abortion law and a frequently asked questions section.¹⁵¹ The site states that abortion is prohibited with limited exceptions in Indiana, and Butler acknowledges the difficulties state law may have on its students, affirming its commitment to student healthcare.¹⁵² Butler notes that accommodations must be made for abortion related travel and students should contact the University’s Title IX Coordinator.¹⁵³ While the university

<https://www.plannedparenthood.org/health-center/missouri/saint-louis/63108/central-west-end-health-center-3301-90770> [<https://perma.cc/G3PK-T6LM>] (last visited Jan. 7, 2023) (providing same disclosure under “Services Offered”). There are twelve Planned Parenthood locations in Missouri. See *Schedule an Appointment*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/health-center?location=Missouri&service=&channel=any> [<https://perma.cc/7C7A-9JTN>] (last visited Jan. 9, 2023) (listing Planned Parenthood locations in Missouri).

147. See *Planned Parenthood of the St. Louis Region and Southwest Missouri*, PLANNED PARENTHOOD ST. LOUIS REGION & SW. MO., <https://www.plannedparenthood.org/planned-parenthood-st-louis-region-southwest-missouri> [<https://perma.cc/H4PL-TH8G>] (last visited Jan. 7, 2023) (stating Missouri’s abortion ban and listing locations in Illinois where abortion is still available).

148. See Alice Miranda Ollstein & Megan Messerly, *Missouri Wants to Stop Out-of-State Abortions. Other States Could Follow.*, POLITICO (Mar. 19, 2022, 7:00 AM), <https://www.politico.com/news/2022/03/19/travel-abortion-law-missouri-00018539> [<https://web.archive.org/web/20240509191122/https://www.politico.com/news/2022/03/19/travel-abortion-law-missouri-00018539>] (noting “the out-of-state physician who performs the procedure,” and “whoever helps transport a person across state lines to a clinic” could be sued).

149. See Anna Sporre, *With Most Abortions Illegal in Missouri, Few Expect New Bills Will Get Traction This Year*, MO. INDEP. (Jan. 5, 2024, 10:00 AM), <https://missouriindependent.com/2024/01/05/missouri-abortion-legislative-session/> [<https://perma.cc/U5MX-XS5N>] (describing one proposal making “it illegal for employers to assist employees in getting abortions”).

150. See *Pregnancy and Parenting*, BUTLER UNIV., <https://www.butler.edu/student-life/pregnancy-and-parenting/> [<https://perma.cc/S83E-LWQ8>] (last visited Jan. 7, 2023) (including statement from Butler on Indiana’s new abortion law under “Policy and Procedures”).

151. See *id.* (providing resources for pregnant students). These resources include pregnancy testing, contraception, long-acting reversible contraceptives, and more. See *id.* (answering “[w]hat sexual and reproductive health services does Butler provide for students?”).

152. See *id.* (“I understand this new state law impacts our students differently and on deeply personal levels.”).

153. See *id.* (suggesting what students should do if they are seeking abortions). Butler University recommends that students reach out to the school’s Title IX Coordinator if they need to miss class for pregnancy termination, including the

states that accommodations and support for abortion care are required by Title IX, it also states that Butler is “proud” to do so.¹⁵⁴ Butler provides various resources to all students, including care packages for pregnancy termination, a pregnant and parenting support group, and lactation rooms.¹⁵⁵ However, Butler does not specify student-athletes in its policies and does not include any information on pregnancy or parenting in their student-athlete handbook.¹⁵⁶ While Missouri and Indiana have similar state laws regarding abortion, the resources available to students and student-athletes at Missouri State and Butler University vary significantly.¹⁵⁷

Other schools have taken a clear stance against student abortion access, even before the Court’s ruling in *Dobbs*.¹⁵⁸ Creighton University, a Big East Conference school, is located in Omaha, Nebraska, where abortion is banned after twelve weeks.¹⁵⁹ Creighton University includes its abortion policy in its student handbook as the first policy applicable to students.¹⁶⁰ The policy states that abortion services are not provided by Creighton and affirms that the University

necessary travel time. *See id.* (answering “[w]hat happens if I want to pursue voluntary termination of pregnancy?”).

154. *See Your Body & Title IX*, BUTLER UNIV. DIV. STUDENT AFFS., <https://www.butler.edu/student-life/wp-content/uploads/sites/22/2022/09/Resource-Flier.pdf> [<https://perma.cc/6Q42-3UDS>] (last visited Feb. 6, 2024) (acknowledging school’s support for students’ undergoing voluntary termination).

155. *See id.* (listing resources for pregnant and parenting students and where they can access University resources). Support from Butler also comes in the form of academic accommodations and mental health support. *See id.* (stating these resources can be accessed “without explanation or embarrassment”).

156. *See Butler Student-Athlete Handbook*, BUTLER SPORTS 1, 3 (2023), https://butlersports.com/documents/2023/10/19/Student_Athlete_Handbook_101923_web.pdf [https://web.archive.org/web/20240509215358/https://butlersports.com/documents/2023/10/19/Student_Athlete_Handbook_101923_web.pdf] (listing topics covered in Butler’s student-athlete handbook, not including topic of pregnancy or parenting).

157. For further discussion of resources available for students attending Missouri State and Butler University, see *supra* notes 138–156 and accompanying text.

158. *See Creighton University Student Handbook 2021-2022*, CREIGHTON UNIV. 1, 24 (2021), <https://www.creighton.edu/sites/default/files/2021-2022-Student-Handbook-April-2022-Update.pdf> [<https://perma.cc/7C8P-7UP8>] (“We value the dignity of life and the goodness of sexual expression according to the teachings of the Catholic faith.”).

159. *See Creighton University Locations*, CREIGHTON UNIV., <https://www.creighton.edu/about/locations> [<https://perma.cc/E6ZQ-W2AT>] (last visited Mar. 26, 2024) (listing Creighton’s three campus locations: Omaha, Nebraska; Phoenix, Arizona; and the Dominican Republic); *see also Nebraska*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/state/nebraska/> [<https://perma.cc/TL6L-77MT>] (last visited Oct. 9, 2023) (detailing Nebraska’s restrictions on abortion).

160. *See Creighton University Student Handbook 2021-2022*, *supra* note 158 (including school’s abortion statement in policies which are most relevant to Creighton University students).

follows Catholic teachings.¹⁶¹ Interestingly, Creighton's Student-Athlete Handbook from 2017–2018, the most recent edition available online, includes a pregnant student-athlete policy that provides a description of NCAA protections for pregnancy.¹⁶² The policy does not mention pregnancy loss or termination.¹⁶³ Creighton states that it is mandatory for student-athletes to notify athletic staff of their pregnancy, a requirement which in today's climate could cause complications and additional stress to a pregnant athlete.¹⁶⁴

D. Recommendations

At a minimum, the NCAA should update its pregnancy and parenting policy to reflect the laws of the post-*Dobbs* world.¹⁶⁵ The policy must reflect the reality that many student-athletes will have little or no time to consider their options in regard to having a child.¹⁶⁶ It will be hard for the NCAA to create a uniform policy given the differences in state law.¹⁶⁷ However, it should modify its model policy to include guidance for schools where reproductive healthcare is (1) not limited, (2) limited, or (3) banned entirely.¹⁶⁸ This information, combined with the rights of pregnant student-athletes through Title IX, could also be disseminated by the NCAA's Committee on Women's Athletics, which was created to ensure gender equity in college athletics.¹⁶⁹ While the NCAA's Sport Science Institute, which focuses on athlete safety and wellness, has a page on sexual assault and interpersonal violence, it does not include information about

161. *See id.* (“Services for the purpose of abortion are not available to students through Creighton University. Creighton University, a Jesuit, Catholic University, is convinced that the hope of humanity is the ability of men and women to seek the truths and values essential to human life.”).

162. *See 2017-2018 Student-Athlete Handbook*, CREIGHTON UNIV. ATHLETICS 1, 59 (2017), https://gocreighton.com/documents/2017/7/24//SA_Handbook_1718.pdf?id=12533 [https://perma.cc/VJA4-AB8P] (declaring Creighton follows NCAA guidelines).

163. *See id.* at 60 (excluding abortion from pregnancy protections).

164. *See id.* (demanding athletes inform staff of pregnancy as early as possible as safety measure). For further discussion of student-athletes' potential reluctance to disclose pregnancy, see *infra* notes 175–178 and accompanying text.

165. For further discussion of changing laws in the reproductive healthcare space, see *supra* notes 52–68 and accompanying text.

166. *See* Hensley-Clancy, *supra* note 19 (describing how choice has “disappeared” for college athletes in top programs).

167. *See id.* (providing statement from NCAA describing how reproductive healthcare occurs at local level).

168. For further discussion of how state law differs on abortion, see *supra* notes 75–76 and accompanying text.

169. *See* Guenther et al., *supra* note 10, at 67 (analyzing Committee on Women's Athletics' role in tackling issues of “equitable opportunities, fair treatment, and respect for all women in all aspects of intercollegiate competition”).

pregnancy, pregnancy loss, or abortion.¹⁷⁰ The NCAA should forcefully restate that under Title IX, all universities receiving federal fundings are still prohibited from discriminating against students or eliminating their scholarships because of pregnancy termination.¹⁷¹ Universities should also update their policies and websites to no longer include erroneous information, including resources which were formerly available.¹⁷² Pregnant student-athletes who may be searching their college's website feverishly for any guidance should not be given false hope that their state allows access to abortion care.¹⁷³

The NCAA has an opportunity to provide updated guidance to college athletic directors and staff, regarding how to support athletes when they disclose a pregnancy.¹⁷⁴ However, athletic directors and coaches must first be aware that many athletes will not come to them to disclose an unintended pregnancy.¹⁷⁵ Athletes, particularly women, appear reluctant to go to their coaches with their mental health struggles and could likely feel the same about other sensitive health matters.¹⁷⁶ An NCAA report from 2017 found that roughly two-thirds of athletes report trusting their coaches.¹⁷⁷ Coaches should work to increase trust by creating a space where their athletes

170. See *Sexual Assault and Interpersonal Violence*, NCAA, <https://www.ncaa.org/sports/2021/2/10/sport-science-institute-sexual-assault-and-interpersonal-violence.aspx> [<https://perma.cc/2GLZ-KDHZ>] (last visited Oct. 9, 2023) (providing educational resources, data and research, and summits and task forces on sexual assault and interpersonal violence); see also *About the SSI*, NCAA, <https://www.ncaa.org/sports/2016/8/23/about-the-ssi.aspx> [<https://perma.cc/7JVR-L2BJ>] (last visited May 9, 2024) (stating Sports Science Institute's mission "[t]o promote and develop safety, excellence and wellness in college student-athletes, and to foster life-long physical and mental development.").

171. For further discussion of Title IX pregnancy discrimination, see *supra* notes 39–48 and accompanying text.

172. For further discussion of individual college resources, see *supra* notes 116–164 and accompanying text.

173. See *Pregnant Student-Athlete Policy*, *supra* note 139 (providing information on Planned Parenthood resources in Missouri).

174. For further discussion of the NCAA's most recent published guidance in response to an athlete's pregnancy, see *supra* notes 86–104 and accompanying text.

175. See Brake, *supra* note 47, at 362 ("A young woman who finds herself in such a situation may well withdraw from many persons in her life, including her coach and teammates."); see also Guenther et al., *supra* note 10, at 64 (finding roughly twenty-five percent of athletes say it is "unlikely" and twenty percent say it is "very unlikely" they would go to someone in their athletic department for help in event of pregnancy).

176. See *GOALS Study: Understanding the Student-Athlete Experience*, *supra* note 37 (summarizing study from 2019 that found less than fifty percent of Division I female athletes felt comfortable discussing mental health issues with their coaches).

177. See *NCAA Study of Student-Athlete Social Environments (2012-2016)*, NCAA 1, 17 (2017), https://ncaaorg.s3.amazonaws.com/research/wagering/2017RES_NCAAConventionSocialEnvironments.pdf [<https://perma.cc/S5J7-7JXY>] (finding sixty-seven percent of men and sixty-eight percent of women say their coaches can be trusted).

feel safe and comfortable to divulge this personal information, while recognizing that the changing landscape in reproductive healthcare laws may cause some athletes to be more reluctant to do so.¹⁷⁸

Athletic department officials are only useful if they are knowledgeable on the student's rights under both state abortion laws and Title IX.¹⁷⁹ Additionally, athletic directors living in a state where abortion is banned or limited should be armed with information about organizations which help student-athletes cover the cost of travel necessary to obtain an abortion.¹⁸⁰ Colleges must acknowledge the societal forces in place which can make it more difficult for a student-athlete to travel to access abortion than an average student.¹⁸¹

The NCAA should also consider limiting events held in states with restrictive abortion access.¹⁸² Though there may be backlash from residents of states where reproductive rights are threatened, the NCAA should prioritize the health and safety of their athletes.¹⁸³ This would not be the first time the NCAA decided against holding events in a state due to their laws.¹⁸⁴ In response to anti-transgender legislation, the NCAA pulled its basketball tournament from North

178. See Jackson, *supra* note 13 (indicating student-athletes may be reluctant to disclose unintended pregnancies); see also Talking Title IX and College Sports, *supra* note 27, at 26:00 (recounting need for safe spaces).

179. See Guenther et al., *supra* note 10, at 68 (suggesting athletic staff be prepared to answer questions of pregnant student-athletes). Athletic trainers may be another useful resource for pregnant student-athletes if armed with accurate information on reproductive healthcare. See *id.* (providing background on athletic trainers' role and interaction with student-athletes).

180. See Áine Cain, *After Roe, People Seeking Abortion Face Long Travel, Steep Costs. Grassroots Organizations are Stepping in to Help*, BUS. INSIDER (June 29, 2022, 12:43 PM), <https://www.businessinsider.com/abortion-travel-assistance-organizations-roe-dobbs-2022-6> [<https://web.archive.org/web/20240509220310/https://www.businessinsider.com/abortion-travel-assistance-organizations-roe-dobbs-2022-6>] (listing grassroots organizations helping women travel to access abortions).

181. See Hensley-Clancy, *supra* note 19 (implying student-athletes may not have same resources available to them as other college students).

182. See Armour & Schnell, *supra* note 105 (advocating for consideration of reproductive healthcare laws when choosing where to hold events).

183. See *id.* (discussing how people in states with limited access to reproductive healthcare still want NCAA events to occur in their state). But see Hensley-Clancy, *supra* note 19 (describing how athletes may not feel safe playing in states where their reproductive rights are limited).

184. See Armour & Schnell, *supra* note 105 (recounting NCAA's past response to policies with which it disagreed). The NCAA has responded to transgender issues, racial issues, and sports betting issues in the past. See David A. Graham, *Why the NCAA is Pulling Championships From North Carolina*, ATLANTIC (Sept. 13, 2016), <https://www.theatlantic.com/politics/archive/2016/09/ncaa-kos-nc-on-hb2/499733/> [<https://web.archive.org/web/20240509220708/https://www.theatlantic.com/politics/archive/2016/09/ncaa-kos-nc-on-hb2/499733/>] (explaining NCAA's response to anti-transgender legislation in 2016); see also *S. Carolina's Removal of Confederate Flag Leads to NCAA Decision*, ESPN (July 9, 2015, 5:20 PM), https://www.espn.com/college-sports/story/_/id/13229344/ncaa-drop-postseason-ban-south-carolina-opts-remove-confederate-flag-state-capitol-grounds [<https://perma.cc/KC4YJZT2>]

Carolina in 2016.¹⁸⁵ Additionally, the NCAA did not hold events in South Carolina for many years because of the Confederate flag flying over their state capitol.¹⁸⁶ Beyond issues of gender identity and race, the NCAA also refused to hold events in Las Vegas for many years because of the state's laws on sports betting.¹⁸⁷ However, varying abortion bans across twenty states differ from these isolated policies, which makes it more difficult for the NCAA to work around them.¹⁸⁸

Nevertheless, the NCAA has the institutional structure in place to consider issues of gender equity, including reproductive rights, when choosing an event location.¹⁸⁹ The NCAA has an Office of Inclusion, though this office does not focus on the NCAA's championships but instead focuses on serving NCAA membership.¹⁹⁰ The NCAA's latest Gender Equity Assessment, released in July 2023, asserts that a championship venue has a significant impact on student-athletes and that the NCAA has been largely reactive when it comes to its decision making on championship hosts.¹⁹¹ The Assessment focused on the athlete experience, but ignored how the reproductive policies of the states holding these events can impact athletes.¹⁹² The NCAA should become proactive in choosing the locations of its events to correspond to where their athletes and attendees can feel most safe and in full access of their rights.¹⁹³

(detailing NCAA's response to South Carolina state flag); Armour & Schnell, *supra* note 105 (noting NCAA's response to sports betting in Nevada).

185. See Graham, *supra* note 184 (detailing NCAA's decision to pull its championships from North Carolina due to North Carolina's 2016 anti-transgender bathroom bill).

186. See *S. Carolina's Removal of Confederate Flag Leads to NCAA Decision*, *supra* note 184 (describing NCAA's decision to ban championships in South Carolina for fifteen years).

187. See Armour & Schnell, *supra* note 105 (providing NCAA's response to sports betting legalization in Nevada).

188. See *id.* (highlighting difference between individual state laws and rollback on reproductive healthcare laws); see also Assimakopoulos, *supra* note 108 ("It's not easy for the NCAA or anyone else to say, 'Oh we can go here, and we can't go here,' because there's so many shades of awful that are happening in states and cities across the country.").

189. For further discussion of NCAA institutions, see *supra* notes 182–188 and accompanying text.

190. See *Gender Equity Assessment*, LEWIS RICE 1, 7 (2023), https://ncaaorg.s3.amazonaws.com/inclusion/titleix/Jul2023NCAA_GenderEquityAssessmentReport.pdf [<https://perma.cc/QE4T-32XV>] (describing role of NCAA's Office of Inclusion).

191. See *id.* at 8 (providing results from July 2023 Gender Equity Assessment).

192. See *id.* at 12 (finding some athletes had "less favorable experience" during women's championships).

193. See Armour & Schnell, *supra* note 105 (discussing sentiment from one NCAA athlete).

The NCAA should incorporate access to reproductive healthcare when conducting its next Gender Equity Assessment.¹⁹⁴ The 2023 Assessment concluded that the NCAA had heightened focus on gender equity but a lack of ownership of the issue among its leadership, due to high turnover rates in its leadership team and the organization’s “divided governance structure,” which harms the NCAA’s ability to implement consistent changes.¹⁹⁵ The Assessment found that men and women were given substantially the same healthcare but it is unclear whether this considered reproductive healthcare.¹⁹⁶ While there is not a regular training program for staff on gender equity issues, if the NCAA is to craft one, it should include issues of reproductive healthcare access.¹⁹⁷

If the NCAA continues to hold events in states where access to reproductive healthcare is limited, teams should take it upon themselves to bring attention to the issue.¹⁹⁸ One example is the Howard’s men’s basketball team who chose the impact of the *Dobbs* decision as part of its social justice project for the 2023 season.¹⁹⁹ Athletes themselves can bring attention to the issue on the field and through social media.²⁰⁰ The NCAA could also partner with its athletes on access to reproductive healthcare.²⁰¹ It may also be useful to follow

194. For further discussion of how access to abortion has historically helped athletes, see *supra* notes 15–20 and accompanying text.

195. See *Gender Equity Assessment*, *supra* note 190, at 7 (“This lack of ownership seems to have been proliferated and prolonged by significant turnover in the NCAA’s senior leadership over the last three years, including in the positions of NCAA President, Chief Financial Officer and the Senior Vice President over the Office of Inclusion. The NCAA’s divided governance structure – a National Office staff coupled with a robust member-run committee structure – also seems to have contributed to a lack of clarity over who “owns” gender equity....There is no lack of talent at the NCAA National Office or in the composition of its governing committees, but there is a lack of communication and coordination that, at times, has stood as an obstacle to implementing consistent and Association-wide changes in line with Kaplan’s recommendations.”).

196. See *id.* at 15 (considering healthcare provided to men and women athletes).

197. See *id.* at 23 (“While the Office of Inclusion recently provided a training session for Championships Managers on gender equity issues, the NCAA has not yet implemented staff on-boarding or a regular training program or protocol designed to increase existing staff’s awareness of, and ability to address, any gender equity issues.”).

198. See Armour & Schnell, *supra* note 105 (suggesting ways to advocate for reproductive healthcare without moving events out of states with limited access).

199. See *id.* (citing reproductive advocacy examples).

200. See *id.* (“Use your platform, whether that’s social media, wearing a wristband or an armband – whatever tool is in your toolbox, use that to uplift attention on abortion access.”).

201. See Michael Pina, ‘We Have a Lot More to Do’: Inside the NBA’s Unprecedented Social Justice Coalition, *SPORTS ILLUSTRATED* (Jan. 17, 2022), <https://www.si.com/nba/2022/01/17/national-basketball-social-justice-coalition-one-year-later-daily->

the NBA's Social Justice Coalition as a model and apply the same framework to reproductive justice.²⁰² The NBA's approach utilized its influence to advocate for legislation, build a coalition, and support player advocacy.²⁰³

Given that new laws may lead to more athletes having to give birth as a result of strict limitations on abortion access, the NCAA should encourage colleges to increase funding for childcare to support student-athletes.²⁰⁴ In 2020 the WNBA updated its collective bargaining agreement to include maternity leave, dedicated nursing areas, and childcare stipends.²⁰⁵ However, a 2015 study found that less than half of public universities provide on-campus childcare services.²⁰⁶ There are private funds in place to aid student-athletes with childcare, but the NCAA should contribute to these funds to support the student-athletes that allow their Association to thrive.²⁰⁷ In addition, the NCAA and universities should consider creating funds for the healthcare costs of pregnant

cover [<https://perma.cc/78MR-VBTS>] (describing framework of NBA's Social Justice Coalition including players, officials, and staff).

202. See *id.* (detailing formation of NBA's Social Justice Coalition); Armour & Schnell, *supra* note 105 (describing NBA's Social Justice coalition work and mission). The NBA's Coalition formed in 2020 in response to police brutality and consequential protests around the country. See Pina, *supra* note 201 (providing background for coalition). The Social Justice Coalition tackles issues of voting rights, policing, and criminal justice. See *Our Priorities*, NAT'L BASKETBALL SOC. JUST. COAL., <https://coalition.nba.com/priorities/> [<https://perma.cc/D4EW-VVVB>] (last visited Sept. 22, 2023) (listing issues on which National Basketball Social Justice Coalition focuses).

203. See *Our Priorities*, *supra* note 202 ("Formed jointly by the NBA, NBPA, and NBCA in 2020, the Coalition leverages the game of basketball's influence to promote policy (advocate for federal, state, and local laws advancing racial and social justice), build strategic partnerships (facilitate collective impact), and empower action (support player, team and NBA-wide advocacy).").

204. See Brittani Williams, Jinann Bitar, Portia Polk, Andre Nguyen, Gabriel Montague, Carrie Gillispie, Antoinette Waller, Azeb Tadesse & Kayla C. Elliot, *For Student Parents, the Biggest Hurdles to a Higher Education are Costs and Finding Child Care*, EDUC. TR. (Aug. 17, 2022), <https://edtrust.org/resource/for-student-parents-the-biggest-hurdles-to-a-higher-education-are-costs-and-finding-child-care/> [<https://perma.cc/PKL4-T6KB>] (finding that paying for childcare and college is very expensive).

205. See Amira Rose Davis, *Athlete Moms are Fighting Battles In and Out of Sports. What Will It Take to Win?*, GLOB. SPORTS MATTERS (July 19, 2023), <https://globalsportmatters.com/health/2023/07/19/women-athletes-fighting-battles-mothers-alex-morgan-serena-williams/> [<https://perma.cc/HN6Y-UVF4>] (describing how America's maternal health crisis intersects with women athletes).

206. See Williams et al., *supra* note 204 ("In 2015, 49% of four-year public colleges provided on-campus services, down from 55% in 2003.").

207. See Jackson, *supra* note 13 (arguing NCAA could help in paying for childcare for student-athletes).

students.²⁰⁸ Universities should look at their student health plans to make sure they provide maternity coverage, as many do not.²⁰⁹ While being forced to have a child will undoubtedly derail the lives of a student-athlete, providing funding for pregnant and parenting athletes can give them the best shot at a successful collegiate and professional career.²¹⁰ It is the least the NCAA and universities can do for their student-athletes.²¹¹

IV. POST GAME HUDDLE: CLOSING THOUGHTS

In the time since the Court handed down the *Dobbs* decision, states have not hesitated in taking away access to reproductive health-care.²¹² Yet the NCAA and college athletics appear to be waiting this one out.²¹³ This lack of guidance leaves student-athletes uncertain about what rights they have and how — or if — their athletic departments will support them.²¹⁴ When the NCAA provides new guidance, it must accurately reflect both federal and state law.²¹⁵ The NCAA can show support for its athletes in a number of ways.²¹⁶ The issue of abortion is not going anywhere, and could lead to long-term complications for college admissions, recruiting, and most importantly the health of student-athletes.²¹⁷ Despite celebrating fifty years

208. See Megan Leonhardt, *This 24-Year-Old Mistakenly Thought Her Health Insurance Covered Her Pregnancy—and 4.2 Million Others Like Her May Be At Risk*, CNBC (Nov. 26, 2019, 10:02 AM), <https://www.cnbc.com/2019/11/26/when-your-insurer-does-not-cover-your-maternity-costs.html> [<https://perma.cc/FVV8-ZQ4B>] (considering how student-health plans may lack important coverage).

209. See *id.* (finding lack of maternity coverage in many university student health plans, which cover “about 3 million young people”).

210. See Amici Curiae Brief, *supra* note 6, at 7 (“If the State compelled women athletes to carry pregnancies to term and give birth, it could derail women’s athletics careers, academic futures, and economic livelihoods at a large scale.”).

211. See *Mission and Priorities*, NCAA, <https://www.ncaa.org/sports/2021/6/28/mission-and-priorities.aspx> [<https://perma.cc/T7RK-48EZ>] (last visited Nov. 1, 2023) (explaining NCAA’s mission is to “[p]rovide a world-class athletics and academic experience for student-athletes that fosters lifelong well-being”).

212. For further discussion of state laws limiting reproductive healthcare, see *supra* notes 75–76 and accompanying text.

213. For further discussion of the NCAA’s lack of response to the *Dobbs* decision, see *supra* notes 79–85 and accompanying text.

214. For further discussion of current college policies, see *supra* notes 116–164 and accompanying text.

215. For further discussion of recommendations for NCAA policy, see *supra* notes 165–173 and accompanying text.

216. For further discussion of ways in which the NCAA can show support for pregnant and parenting athletes, see *supra* notes 174–211 and accompanying text.

217. For further discussion of *Dobbs* impact on college admissions, see *supra* notes 69–85 and accompanying text.

of Title IX, without accessible reproductive healthcare, women's athletics and women's futures will suffer.²¹⁸

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218. For further discussion of Title IX's interaction with reproductive health restrictions, see *supra* notes 15–20 and accompanying text.

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