12

Business Responses to *Dobbs*

The Return to a "Reproductive Rights" Approach, and Suspicions around Corporate Care

Asees Bhasin

12.1 INTRODUCTION

On June 24, 2022, *Roe v. Wade* was officially overturned by the Supreme Court of the United States, causing abortion care, an already inaccessible and stigmatized health care option, to become further out-of-reach for people. The decision in *Dobbs* received widespread resistance, including in the form of protests, civil society activism, advocacy, and legislative and administrative action. Several corporations doing business in the United States also condemned this ruling and took action to signal their commitment to reproductive rights.

This chapter engages with the hypothesis that while private action undertaken by corporations may in some cases enhance individuals' access to reproductive rights and supports, a general reliance on corporations to meet reproductive needs and demands of people and communities may be ill-advised. Section 12.2 of this chapter asks the question of *how* corporations responded in support of reproductive rights in the aftermath of *Dobbs*. Section 12.3 of this chapter asks *why* they were motivated to do so. Section 12.4 unpacks the broader societal impacts of these responses in juxtaposition to demands made by the Reproductive Justice (RJ) movement. Section 12.5 sets out a research agenda that, if undertaken, will allow us to get clearer answers about the overall desirability for reliance on private law to provide reproductive health care.

12.2 THE CORPORATE RESPONSES TO *DOBBS*

There is a broad literature documenting the evolution of corporate form and purpose.[1]

[1] See Elizabeth Pollman, Reconceiving Corporate Personhood, Penn L.: Legal Scholarship Repository (2011), https://scholarship.law.upenn.edu/faculty_scholarship/2563/; Milton Friedman, The Social Responsibility of Business Is to Increase Its Profits, N.Y. Times

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Debates about corporate purpose touch on important ethical questions about the involvement of corporations in social, political, and economic spheres. In the recent past, Corporate Social Responsibility (CSR) has gained traction as a corporate practice, with businesses considering the social, economic, political, and environmental impacts of their actions, and engaging in philanthropy or volunteering as a result. According to a poll conducted in 2019, 41 percent of Fortune 500 CEOs viewed "solving social problems" as part of their strategy to conduct business.[2] A separate but related framework, the Environmental, Social, and Governance (ESG) framework, is also gaining popularity, accompanied by an increase in rating agencies quantifying corporate performance in these areas and measuring how sustainable a corporation is.

Due to these shifts in the conceptualizations of corporate purpose (from a shareholder wealth maximization approach to a more progressive stakeholder theory), there has been a rapid increase in corporations publicly engaging with social and political issues. As per a survey of at least 274 US corporations, a relatively significant number of corporations had taken public stances on issues of racial equality (61 percent), LGBTQ+ rights (44 percent), and gender equality (39 percent).[3] These engagements influence social policy on many fronts, including health policy.

All social issues do not receive equal attention. A study found that only 10 percent of corporations had responded or planned to respond to the *Dobbs* decision with public statements.[4] Additionally, only about 51 percent of corporations had addressed or planned to address the issue of reproductive rights in the aftermath of *Dobbs*.[5] Given the importance of the moment and its implications for people of reproductive age, this response seemed very muted. The following paragraphs will briefly describe some of the ways corporations publicly and internally addressed the implications of *Dobbs*.

Publicly, some corporations made statements denouncing the Supreme Court's decision.

Corporations such as Johnson & Johnson used this opportunity to emphasize how decisions about reproductive care must be left to individuals and their healthcare providers.[6] Corporate statements, such as that of Reddit, also framed reproductive rights as an issue concerning the health and safety of their own employees. Importantly, some corporations such as Levi Strauss & Co. implored other business

(Sept. 13, 1970), at SM17, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html; See generally Andrew Keay, Stakeholder Theory in Corporate Law: Has It Got What It Takes?, 9 Rich. J. Global L. & Bus. 249 (2010).

[2] Alan Murray, America's CEOs Seek a New Purpose for the Corporation, Fortune (Aug. 19, 2019), https://fortune.com/longform/business-roundtable-ceos-corporations-purpose/.

[3] The U.S. Corporate Response to Recent Supreme Court Decisions, The Conf. Bd. (2022), https://www.conference-board.org/pdfdownload.cfm?masterProductID=39648.

[4] Id.

[5] Id.

[6] Emma Goldberg et al., Here Are the Companies That Will Cover Travel Expenses for Employee Abortions, N.Y. Times (June 24, 2022), https://www.nytimes.com/2022/06/24/business/abortion-companies-travel-expenses.html.

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leaders to make their voices heard, given that the protection of reproductive rights "is a critical business issue impacting [the] workforce, []economy, and progress towards racial and gender equity."[7]

In addition to making public statements, some corporations also pledged donations to reproductive rights organizations including the Planned Parenthood Federation of America and the Center for Reproductive Rights. While some organizations donated to the National Network of Abortion Funds, it seems that most corporate donations went toward national-level reproductive rights and advocacy organizations instead of state or local organizations or those working specifically on issues of RJ – organizations that often require resources due to being underfunded.[8]

Many corporations responded to the abortion ruling internally. This included making announcements around travel stipends or reimbursements for expenditures related to travel undertaken to receive reproductive care out of state. Internal policies differed by the amount reimbursable, travel miles required to be able to take advantage of the policy, and the provision of other travel benefits such as the cost of lodging, childcare, and taking a support person. Some corporations also made changes to employer health plans to include the provision of reproductive health care services.[9]

Companies responded by adopting other policies as well.[10] For instance, some companies announced that they would cover legal costs that may arise under new abortion state laws. An example of this is the costs related to transporting individuals to abortion clinics by Lyft and Uber drivers.[11] Patagonia, on the other hand, announced the creation of a bail fund for employees who were protesting antiabortion measures.[12] Some corporations, such as Google, also announced the option for employees to relocate without justification to states where abortion is legal.[13]

There is literature on whether and how there should be legal enforcement of CSR, and whether CSR codes are binding depends on several factors – which makes

[7] Id.

[8] Narciso Novogratz, 9 Reproductive Justice Organizations You Can Support, Latina (2022), https://latina.com/9-reproductive-justice-organizations-you-can-support/.

[9] See Haleluya Hadero, Walmart Expands Abortion Coverage for Employees, PBS (Aug. 19, 2022), https://www.pbs.org/newshour/economy/walmart-expands-abortion-coverage-for-employees; Chapter 10 in this volume.

[10] See generally #WhatAreYourReproBenefits, Rhia Ventures, https://rhiaventures.org/corporate-engagement/whatareyourreprobenefits/; Abortion Care Benefits at Tech Companies, Leopard.fyi, https://leopard.fyi/abortion-care-database/.

[11] Shannon Bond, Lyft and Uber Will Pay Drivers' Legal Fees If They're Sued under Texas Abortion Law, NPR (Sept. 3, 2021), https://www.npr.org/2021/09/03/1034140480/lyft-and-uber-will-pay-drivers-legal-fees-if-theyre-sued-under-texas-abortion-la.

[12] Kim Bhasin, Patagonia Will Bail Out Employees Arrested in Abortion Protests, Bloomberg (June 24, 2022), https://www.bloomberg.com/news/articles/2022-06-24/patagonia-to-bail-out-employees-arrested-in-abortion-protests.

[13] Igor Bonifacic, Google Tells Workers They Can Relocate "Without Justification" Following Supreme Court Decision, Engadget (June 25, 2022), https://www.engadget.com/google-tells-employees-they-can-relocate-following-supreme-court-abortion-ruiling-181926101.html.

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it hard to discuss whether they are enforceable in general.[14] Professor Anna Beckers importantly discusses the "self-regulating" nature of CSR, and how "private law, exemplified with the contract law regarding CSR self-regulation, currently adopts a predominantly facilitative approach towards CSR self-regulation in the sense that it allows for its adoption and interprets its legal consequences in the light of the intention of the company having adopted it."[15] Consequently, the way in which private law operates, in status quo, has upheld a system where CSR and ESG initiatives lack enforceability and teeth and are left to be shaped by the corporation itself.

Regardless of whether CSR initiatives are enforceable, private law and action impact social policy, and there is a more important question about whether corporate action on certain subjects is desirable, and more beneficial than harmful to social movements.

12.3 ANALYZING CORPORATE MOTIVATION

The following paragraphs seek to dive into the different reasons that drove corporations to signal their support for reproductive rights. There are two reasons why such an analysis may be important. First, it may weaken claims that corporations participating in proabortion politics are doing so purely altruistically and show how their participation is self-interested. Second, they may help us identify strategies and pressure points when thinking about ways to influence corporate behavior or facilitate private law interventions.

Evidence has shown that CSR initiatives lead to improved bottom lines for corporations by gaining competitive advantages and developing reputational capital.[16] For starters, providing reproductive supports and taking pro-choice stances internally and externally may be an important strategy to attract and retain employees. Studies have shown that women in states with better access to contraception have higher rates of labor force participation and more frequently pursue full-time employment.[17] People in the workforce themselves have expressed a preference to work in states where abortion is legal. A study has also shown that 63 percent of college-educated workers would not apply for a job in a state that has recently

[14] Jan M. Smits, Enforcing Corporate Social Responsibility Codes under Private Law: On the Disciplining Power of Legal Doctrine, 24 Ind. J. Global Legal Stud. 99 (2017).

[15] Anna Beckers, Towards a Regulatory Private Law Approach for CSR Self-Regulation? The Effect of Private Law on Corporate CSR Strategies (Tilburg Priv. Law, Working Paper No. 3, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3369596.

[16] Matteo Tonello, The Business Case for Corporate Social Responsibility, Harvard L. School F. on Corp. Governance (June 26, 2011), https://corpgov.law.harvard.edu/2011/06/26/the-business-case-for-corporate-social-responsibility/.

[17] Kate Bahn et al., Linking Reproductive Health Care Access to Labor Market Opportunities for Women, Ctr. for Am. Progress (Nov. 21, 2017), https://www.americanprogress.org/article/linking-reproductive-health-care-access-labor-market-opportunities-women/.

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banned abortion.[18] Not only do corporations need fresh talent, but they also are obliged to meet their gender and racial diversity commitments.

A new study by Adrjan et al. utilized data on job satisfaction, job search behavior, and wages from Glassdoor and Indeed to analyze how companies that offered abortion-related benefits in the wake of *Dobbs* fared compared to companies that did not provide those benefits.[19] This has been among the first and only studies that have documented the causal impact of the announcements of such benefits. Their research found that from July 2022 (the month after the *Dobbs* decision) through January 2023, job seekers explicitly included abortion or related words in their search criteria 147 percent more often relative to job seekers in January 2019. In relation to this, they also observed two other phenomena: (1) that the increase in clicks on the job postings of announcing firms is particularly pronounced in female-dominated job postings – particularly, among high-wage women in trigger states; and (2) smaller firms enjoyed the largest increase in job seeker clicks, and while they may typically struggle to stand out and compete for labor, the announcement of abortion benefits may have helped them to attract job seekers.

In addition to the issues of attracting and retaining talent, companies face a lot of pressure to adopt certain policies from their investors and stakeholders. For instance, in 2019, in an initiative organized by Rhia Ventures, a cohort of forty institutional investors, signed a letter to over thirty corporations to inquire about reproductive health-related insurance policies and benefits, as well as about public policy and political positions that would impact reproductive rights.[20]

Chapter 20 in this volume describes how shareholder proposals serve as a vehicle for participation in corporate governance, and as a tool for raising existential questions about corporate purpose.[21] Post-*Dobbs*, several shareholder proposals were introduced where shareholders actively put pressure on companies to issue public reports on the impact of the abortion ruling on their employees. For instance, a shareholder proposal introduced by shareholders at TJX asked for the public report to "evaluate any risks and costs to the company associated with new laws and legislation severely restricting reproductive health care" and "include any effects on employee hiring, retention, and productivity, and decisions regarding closure or

[18] How "Top Talent" Views Politics and Social Issues in Their Workplace: Findings from a National Survey, Perry Undem Rsch. & Commc'n (Oct. 4, 2022), https://perryundem.com/wp-content/uploads/2022/03/PerryUndem-Tara-Health-Report.pdf.

[19] Pawel Adrjan et al., We've Got You Covered: Employer and Employee Responses to Dobbs v. Jackson SSRN (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4531372&isid=hiringlab_us&ikw=hiringlab_us_2023%2F08%2F09%2Fjobs-after-dobbs%2F_textlink_https%3A%2F%2Fpapers.ssrn.com%2Fsol3%2Fpapers.cfm%3Fabstract_id%3D4531372.

[20] Hidden Value: The Business Case for Reproductive Health, Rhia Ventures (June 2022), https://rhiaventures.org/wp-content/uploads/2022/08/Hidden-Value-The-Business-Case-for-Reproductive-Health-2022.pdf.

[21] Chapter 20 in this volume.

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expansion of operations in states proposing or enacting restrictive laws."[22] While the Board of Directors unanimously voted against this proposal and other proposals similar to this one, they mark the arrival of abortion as a new ESG frontier, and similar reproductive health-related proposals are expected in the upcoming proxy seasons.[23]

Finally, in addition to pressure from investors, corporations are susceptible to pressure from their employees and consumers. A notable example of this pressure can be seen in Wayfair's decision to enter into a contract with an immigrant detention center, leading to widespread employee protests and walk-outs, which eventually led to their share price falling by more than 10 percent.[24] While understanding that the pressure from various stakeholders described above is offered to explain why corporations have acted in support of reproductive rights, it is important to note that such phenomena are not limited to social issues associated only with left-leaning politics. For example, Target received considerable opposition from Conservatives for their Pride Month-related merchandise, causing Target to remove some of the items it was selling.[25]

12.4 ANALYZING CORPORATE POWER THROUGH A REPRODUCTIVE JUSTICE LENS

Having discussed how and why corporations weighed in during the aftermath of *Dobbs*, this section will now discuss the impact of private law as it engages in reproductive rights politics. To analyze this question, this chapter will look at the goals and visions of the RJ movement and look at how corporate action falls within this framework.

The RJ movement was conceptualized by Black women activists who met before the International Conference on Population and Development in 1994. The framework considers how individuals negotiate intersecting identities including race, class, gender, and sexuality, and how those, in turn, impact their reproductive decisions. The RJ framework has three foundational principles – the right *not* to

[22] Proposal 7: Shareholder Proposal, Report on Risk Due to Restrictions on Reproductive Rights, TJX Companies (2022), https://www.sec.gov/Archives/edgar/data/109198/000010919822000024/a2022proxystatement.htm#ibd1d957d8d0d47d598341251f8d5d525_1099511628918.

[23] Michelle N. Diamond et al., Shareholder Focus on Reproductive Rights Post-Dobbs, WilmerHale (Oct. 4, 2022), https://www.wilmerhale.com/en/insights/blogs/esg-epicenter/20221003-shareholder-focus-on-reproductive-rights-post-dobbs.

[24] Abha Bhattarai, Wayfair Is Supplying Beds to Texas Detention Centers for Children – and Its Employees Are Protesting, Wash. Post (June 25, 2019), https://www.washingtonpost.com/business/2019/06/25/wayfair-is-supplying-beds-texas-detention-centers-children-its-employees-are-protesting/.

[25] Emily Stewart, Target Giving in to Conservative Pressure on Pride Is Not a Great Sign, Vox (May 25, 2023), https://www.vox.com/politics/2023/5/25/23737338/target-abprallen-pride-boycott-bud-light-trans-controversy-stock-price.

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have a child; the right to have a child, and the right to parent children with dignity in a safe and healthy environment.[26]

The following sections will build on the foundation of this tension between corporate reproductive politics and RJ visions and discuss the impacts of adopting the former framework on different stakeholders.

12.4.1 *"Choice as a Marketplace Concept"*

It is important to preface that the vision of the RJ movement is at odds with the profit-maximization-centered approach of corporations. The RJ framework roots the rights it advocates for in a human rights framework – one that posits that any interference with the rights and dignity of reproducing persons is a "blow against their humanity."[27] For this reason, it also champions the existence of positive rights – focused on the government's obligation to create conditions so that people can enjoy their freedoms.

On the other hand, the neoliberal worldview, championed by corporations and businesses, "inscribes on politics and culture the needs of a global capitalism that sustains itself on the free flow of capital, goods, disembedded labor, and market-friendly state policies."[28] It relies on institutional supports and business-friendly measures taken by the state, while simultaneously promoting the idea that government should be restrained in almost all other ways, including in the provision of welfare and social services. Neoliberal policy initiatives, championed by some of these corporations acting in the wake of *Dobbs*, can be traced to the dilution of worker protections, the expansion of the carceral state, and the sync between money and political campaigns.[29] A manifestation of the tension between neoliberalism and RJ, and an example of the shortcomings of private law in providing reproductive care, can be seen starkly as we observe how several corporations that have taken pro-abortion stances in the wake of *Dobbs* have been making significant political donations to antiabortion policymakers in the hope that they can gain influence over their agendas and receive other advantages that often entail deregulatory aims.[30]

Some may argue that a neoliberal approach is baked into our jurisprudence around reproduction. The constitutional right to abortion was recognized in *Roe v. Wade* and was rooted in the right to privacy, giving women the "right to choose"

[26] Loretta J. Ross & Rickie Solinger, Reproductive Justice: An Introduction 9 (1st ed. 2017).
[27] Id. at 10.
[28] Daniel Rodgers, The Uses and Abuses of "Neoliberalism," Dissent Mag. (2018), https://www.dissentmagazine.org/article/uses-and-abuses-neoliberalism-debate.
[29] Id. at 101.
[30] See Jedd Legum & Rebecca Crosby. These 13 Corporations Have Spent $15 Million Supporting Anti-Abortion Politicians since 2016, Popular Info. (May 4, 2022), https://popular.info/p/these-13-corporations-have-spent.

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whether they wish to continue their pregnancy or not. The "choice" framing has been criticized as it does not consider the other barriers, including financial, social, religious, and geographical factors that impact an individual's ability to make choices. Instead, it implies (by design) that every woman can enter the marketplace of options and pay for whatever option she chooses – a neoliberal approach that prioritizes private relationships and is contingent on the possession of resources. The blind spots of the choice framework are evident in *Harris v. McRae*, where the Supreme Court of the United States held that the Hyde Amendment, which blocked the use of Medicaid funding for abortions in most circumstances, was constitutional because it did not impinge on choice, given that it was poverty, not state action, that impeded a woman from having an abortion.[31] This case had devastating effects and led to the denial of abortion care for scores of individuals who were left to the devices of private law – particularly those who are low-income people, young people, and racial and ethnic minorities.[32]

Due to the embrace of a pro-choice paradigm leaving individuals to fend for themselves, and in the absence of public law stepping in to protect reproductive rights, the reliance on private law and corporations to provide abortion care has increased. About 48.5 percent of Americans are covered by employer health plans,[33] and therefore rely on their employers for their health care, including access to reproductive health care. In their chapter in this volume, Chapter 10, *Employer-Sponsored Abortion Coverage: Private Law's Role in Reproductive Freedom*, Valarie K. Blake and Elizabeth Y. McCuskey analyze how a regime that fosters reliance on private relationships, particularly with one's employers, to provide reproductive health care continues to exclude those who are most in need of financial assistance, including those who do not receive health care coverage through their jobs, and those who are on Medicare, Medicaid, or are federal workers. This chapter also discusses how, for employees who may receive health care coverage from their employers, claiming that they have the right to "choice" is a falsity.

Data has shown that about 75 percent of employers only offer one health plan to their employees.[34] Moreover, what is covered within those plans is also left up to the

[31] See Harris v. McRae, 448 U.S. 297, 316 (1980) ("The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency").

[32] Alina Salganicoff et al., The Hyde Amendment and Coverage for Abortion Services, Kaiser Fam. Found. (Mar. 5, 2021), https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/.

[33] Health Insurance Coverage of the Total Population, Kaiser Fam. Found. (2021), https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&selectedRows=%7B%22wrapups%22:%7B%22united-states%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[34] 2022 Employer Health Benefits Survey, Kaiser Fam. Found. (Oct. 27, 2022), https://www.kff.org/report-section/ehbs-2022-section-4-types-of-plans-offered/.

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discretion of corporations.[35] Using the specific example of abortion, employers have near total discretion in their decision to cover abortion care or not, resulting in about 10 percent of all employees being covered by plans that exclude abortion care.[36] Corporations may also design plans with restrictions on service providers and impose cost-sharing arrangements that may impinge on an individual's choice-making. While some may argue that individuals "choose" to work at the firms and corporations they are at, most people may have no option but to accept the terms of coverage they are being provided.

12.4.2 *Hyper-Focus on Abortion and Disregard for the Right to Parent and Raise Children in Safe Environments*

One major critique of the mainstream movement for reproductive rights was that it did not address or grapple with the concept of "stratified reproduction" or the idea that reproductive labor is differently valued and rewarded based on where they fall in intersecting hierarchies of race, class, gender, and so forth.[37] Consequently, this movement ignored the demands of people who desired to become parents but faced significant barriers to doing so from the state.

This ignorance of the *right to parent* and the *right to raise one's children in safe and healthy environments* is mirrored by corporations. While they continue to signal their support for reproductive rights, their supports are inadequate for parents and parenthood. This is not shocking, given the anti-pregnancy environment in the United States, which is among the only developed nations not to mandate paid parental leave. Despite legislation such as the Pregnancy Discrimination Act, pregnancy discrimination is rampant, particularly in corporations. Research has shown that 23 percent of parents reported that they "considered leaving a job because of discrimination or lack of reasonable accommodations during a pregnancy."[38] In addition to being perpetrators of this type of discrimination, businesses have also lobbied against federal paid parental leave, and when they have supported it, they "have advocated for preemption from state and local standards by organizations that meet a minimum floor of coverage."[39]

[35] Chapter 10 in this volume.

[36] Michelle Long et al., Exclusion of Abortion Coverage from Employer-Sponsored Health Plans, Kaiser Fam. Found. (May 12, 2020), https://www.kff.org/womens-health-policy/issue-brief/exclusion-of-abortion-coverage-from-employer-sponsored-health-plans/.

[37] See Shellee Colen, "Like a Mother to Them": Stratified Reproduction and West Indian Childcare Workers and Employers in New York, in Conceiving the New World Order: The Global Politics of Reproduction 78 (Faye D. Ginsburg & Rayna Rapp eds., 1995).

[38] Voter Opinions on the Pregnant Workers Fairness Act, Nat'l Women's L. Ctr. (Oct. 2022), https://nwlc.org/wp-content/uploads/2022/10/NWLC-Pregnant-Workers-Fairness-Act-Morning-Consult-PPT-10.21.pdf.

[39] See Valarie Blake & Elizabeth McCuskey, Employer-Sponsored Reproduction, 124 Colum. L. Rev. 273, 323(2024) (quoting Letter from The ERISA Indus. Comm. to Deputy Director Joan Harrigan-Farrelly, the Letter from IBM to Deputy Dir. Joan Harrigan-Farrelly, and the

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There are reports of corporations cutting parental leave, in response to inflationary pressures, while at the same time responding to *Dobbs* by creating new abortion benefits.[40] A survey by the Society for Human Resource Management (SHRM) found that organizations that had increased parental leave during the pandemic were now scaling back – and the number of organizations offering paid maternity leave dropped to 35 percent in 2022, from 53 percent in 2020.[41] During the same period, the number of corporations granting paid paternity dropped as well – from 44 percent to 27 percent.[42] These rates indicate a return to pre-pandemic levels, showing that gains, in terms of progressive parental leave policies that were achieved during the pandemic, were short-lived and not consolidated. Additionally, it shows that corporations may be expanding abortion provisions in response to the political moment but may scale these back in a few years when attention on this subject reduces.

All of these examples of such seemingly inconsistent behavior show just how, in the absence of public law providing adequate reproductive supports to parents and children, corporations are left to fill the gaps and are afforded a wide amount of flexibility and discretion in their approaches.

12.4.3 *Accounting for Intersectional Harms*

The RJ movement was conceptualized by Black women activists in 1994 and broadened in scope by women of color coalitions. Women of color groups, who were originally seen as objects of reproductive control, demonstrated the power in their collective organizing work that was rooted in the needs of their communities. The RJ movement's strengths lie in its understanding that "the impacts of race, class, gender, and sexual identity oppressions are not additive but integrative. For each individual and each community, the effects of these impacts will be different, but they share some of the basic characteristics of intersectionality: universality, simultaneity, and interdependence."[43] In this way, it does not only address women of color but also looks at how issues intersect with one another, thereby impacting the reproductive lives of people.

In the aftermath of *Dobbs*, any assessment of corporate reproductive politics failed to focus on groups of individuals or workers who were situated at the intersections of

Letter from HR Pol'y Ass'n to Deputy Dir. Joan Harrigan-Farrelly), https://ssrn.com/abstract=4388974.

[40] Brit Morse, Women to Pay the Price as Companies Cut Parental Leave Benefits and Abortion Trigger Bans Take Effect, Inc. (Sept. 9, 2022), https://www.inc.com/brit-morse/abortion-trigger-bans-parental-leave-benefits.html.

[41] Simon Read, Employers in the US Are Cutting Back on Parental Leave, Survey Shows, World Econ. F. (Oct. 3, 2022), https://www.weforum.org/agenda/2022/10/maternity-paternity-parental-leave-employers/#:~:text=The%20number%20of%20organizations%20offering,foster%20is%20also%20becoming%20rarer.

[42] Id.

[43] Ross & Solinger, supra note 26, at 75.

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different identities and were sidelined or excluded by "reproductive rights" politics. In other words, some of the most vulnerable people did not receive priority or protection from corporations. An example of this can be seen in the case of independent contractors.

Several corporations such as Uber and Lyft have been at the forefront of a battle to classify their workers (particularly workers for rideshare companies, delivery service, etc.) as independent contractors instead of employees. This dualism has been powerfully critiqued as creating precarious working conditions in terms of pay and working conditions, as well as disrupting worker collectivities.[44] In the aftermath of *Dobbs*, various corporations held that independent contractors were excluded from receiving abortion benefits by corporations. While these policies implicate a larger issue of worker misclassification, in the short run, it may lead to denying individuals crucial reproductive supports they may need.

For instance, Amazon's US$4,000 reimbursement for travel expenses only applies to those US employees who are enrolled in employer-sponsored health plans, thereby excluding about 115,000 delivery drivers. This also excludes Amazon's 2.9 million gig workers who work on the Amazon Flex app and thousands of Amazon warehouse employees who work under twenty hours a week, on a so-called flex schedule, or receive Medicaid as their health insurance.[45] In corporations such as Amazon, Uber, and Doordash, independent contractors are often the most vulnerable workers. For instance, the average income of Amazon delivery workers is about US$43,207 per year or about US$21 per hour.[46] The average cost of an in-clinic first-trimester abortion before *Dobbs* was estimated to be about US$800,[47] which in itself (if paid out of pocket) would amount to the wages earned in a full week by an independent contractor – not counting the travel costs, costs of lodging, child care, and other related costs. This cost may be prohibitively high and have dire consequences for individuals, particularly those who may also have caregivers and breadwinners. The corporate decision to leave out gig workers earning minimum wage may put abortion out of bounds for many individuals, with Hispanic and Black people being disproportionately impacted.[48]

[44] See Veena Dubal, Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities, 105 Cal. L. Rev. 101 (2017).

[45] Lauren K. Gurley, Amazon's Abortion Travel Benefit Doesn't Include Its Most Vulnerable Workers, Motherboard (May 3, 2022), https://www.vice.com/en/article/7kbnpd/amazons-abortion-travel-benefit-doesnt-include-its-most-vulnerable-workers.

[46] Clare Mulroy, How Much Do Amazon Delivery Drivers Make? Annual and Hourly Wage Breakdown, USA Today (Nov. 3, 2022), https://www.usatoday.com/story/money/careers/2022/10/24/how-much-do-amazon-drivers-make/10350464002/.

[47] See Attia, How Much Does an Abortion Cost?, Planned Parenthood (Apr. 29, 2022), https://www.plannedparenthood.org/blog/how-much-does-an-abortion-cost.

[48] Risa Gelles-Watnick & Monica Anderson, Racial and Ethnic Differences Stand Out in the U.S. Gig workforce, Pew Rsch. Ctr. (Dec. 15, 2021), https://www.pewresearch.org/short-reads/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/.

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As seen above, some corporations seemingly ignored the needs of their most vulnerable workers. A similar example can be seen in the context of unionizing employees who have received threats that their reproductive benefits would be lost for union organizing.[49] This selective approach was possible due to the existing lack of public law protections and regulations in support of these workers, thereby allowing for conditions of precarity to prevail.

12.5 RESEARCH AGENDA

This chapter has shown how and why pro-choice corporations have participated in reproductive politics in the aftermath of *Dobbs* and has analyzed the shortcomings of private law in providing important reproductive health care services, in the absence of adequate state-funded supports. That said, there are several gaps in the literature on corporate involvement in reproductive politics which, if filled, may help us adequately assess the value of private law specifically in achieving the goals set out by the RJ movement.

Some open questions that may be explored in potential research are explored below.

12.5.1 *Corporate Action on Reproductive Rights*

At the outset, there is a lack of data at the national level that analyzes how corporations are responding to issues of RJ in the post-*Dobbs* landscape. Researchers can conduct a comprehensive analysis of how corporations responded to the ruling in *Dobbs*, and where they stand on reproductive rights and RJ issues. This analysis could include examining factors that may have influenced corporate decision-making in this realm. Some important factors to consider include whether the corporation is public or private, the size of the corporation taking the action, the state in which the corporation is headquartered, the gender and racial makeup of the Board of Directors, and if the corporation provides campaign finance to antiabortion policymakers.

Additional research is also required to assess the impact of these political stances on different stakeholders, including employees, shareholders, investors, and consumers. For instance, Adrjan et al. found that job satisfaction appeared to have declined among workers at firms announcing abortion benefits, especially for workers in male-dominated jobs.[50] This study leaned toward accepting a finding that this may be caused due to a newfound political misalignment, and there could

[49] Alisha Humphrey, Starbucks's Abortion Promises for Workers Are PR Stunts. We Want a Union Contract, Jacobin (Aug. 11, 2022), https://jacobin.com/2022/08/starbucks-abortion-transgender-health-care-promises-pr-stunt-union-contract.

[50] See Adrjan et al., supra note 19.

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be a vocal minority of workers who are angered by these announcements while the "silent majority" of existing employees do not change their opinions. Despite the reason behind the decline in job satisfaction, it might be interesting to study how corporations respond to such a dip in job satisfaction or other variables such as worker productivity.

More broadly, this research may help us compare the approaches taken by different corporations and better understand motivations underlying private action and corporate decision-making.

12.5.2 *Legal Risks and Liabilities*

Private action is also subject to the law and is significantly shaped by the laws of the state it is conducted in. In light of the fact that abortion is not legal in several states, private action by corporations is under scrutiny. For starters, corporations were warned of criminal and civil liabilities for providing benefits such as travel stipends for employees in states that banned abortion.[51] The provision of these benefits is also accompanied by privacy risks for employers under state and federal law. Recently, there were reports that a Republican Commissioner of the Equal Employment Opportunity Commission (EEOC) opened up at least three discrimination probes into companies providing abortion-related travel benefits, alleging that they were discriminating against pregnant and disabled workers by providing different treatment to those seeking reproductive care.[52] As these risks play out, it would be valuable to have a state-by-state analysis of lawsuits and corporate responses to liability, lawsuits, and the strategies they adopt to protect themselves and their employees. It would also be important to keep an eye out for how corporations deal with stakeholders they consider "disposable." For instance, would corporations protect certain classes of workers more than others if they were implicated in lawsuits arising out of *Dobbs*? It would also be interesting to study whether there is an increase or decrease in corporate action in the reproductive rights space in response to activity in the legal realm.

12.5.3 *Normative Involvement of Corporations in Reproductive Politics*

The truth is that regardless of one's assessment of the harms and benefits of corporate participation in reproductive politics, it is likely to continue, motivated by the

[51] Daniel Wiessner, Legal Clashes Await U.S. Companies Covering Workers' Abortion Costs, Reuters (June 27, 2022), https://www.reuters.com/world/us/legal-clashes-await-us-companies-covering-workers-abortion-costs-2022-06-26/.

[52] Ari Blaff, Equal Employment Opportunity Commissioner Opens Discrimination Probes into Companies That Fund Abortion Travel, Nat'l. Rev. (Nov. 14, 2023), https://www.nationalreview.com/news/equal-employment-opportunity-commissioner-opens-discrimination-probes-into-companies-that-fund-abortion-travel/.

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reasons outlined in Section 12.2 of this chapter. One important question for RJ advocates and scholars is regarding the normative involvement of corporations in reproductive politics. How can private law step in to offset the harms created in states where there are legislative and administrative barriers to accessing reproductive health care? Is it sufficient for corporations to merely increase attention on social issues by taking public stances, and implementing internal policies? If not, what does an expanded vision look like?

Movement actors must also weigh in on the type of economic support that is desirable from corporations. What type of economic involvement should corporations have, and what are acceptable conditions attached to providing such support? At the same time, what are the harms of allowing corporations to co-opt progressive politics?

Finally, researchers could assess the long-term impact of corporations' involvement in reproductive politics on public perception, corporate reputation, and social change, and examine the sustainability of corporations' commitments to RJ over time and their alignment with broader corporate practices.

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