Whose Rights?

A Brief Look at a Landmark Case in the Reproductive Justice Movement

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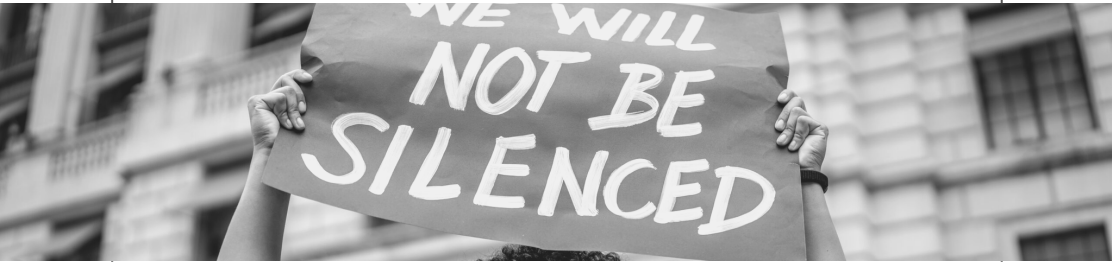
Our *Purpose*

In the spring of 2022, one headline continued to resurface in online media: **“Black Mothers Keep Dying After Giving Birth.”** Black women in local communities were losing their lives after childbirth, and their stories about medical racism and lack of access to healthcare were finally coming to light. This issue is wholly connected to our country’s current conversation surrounding reproductive justice as a whole.

Nearly a year after the United States Supreme Court released its decision in **Dobbs v. Jackson Women's Health Organization**, overturning the constitutional right to abortion granted in **Roe v. Wade**, this zine aims to take a look into history and uncover what abortion access means for reproductive freedom. Examining one of the Supreme Court cases that started it all, this zine explores the implications of restricted abortion access, both in history and this post-Roe world, and how it could mean an even greater burden for marginalized communities, and specifically, Black women.

What is *Reproductive Justice?*

Coined by a group of Black women activists in 1994, the term **“reproductive justice”** is most plainly defined as **the right to maintain personal bodily autonomy, the right to have a child, the right to not have a child, and the right to parent a child or children in safe and healthy environments**. It revolves around a critical feminist framework to include social, economic, and health factors that may impact reproductive experiences. The starting goal of the reproductive justice movement was to expand the women’s movement to include women of color, socially marginalized women, and LGBTQ+ people.



In contrast with **reproductive rights**, reproductive justice provides a more comprehensive view on reproduction aside from a purely legal lens. It includes matters of sex education, family planning, prenatal and pregnancy care, and even domestic violence assistance. Reproductive justice framework considers reproductive rights as human rights.

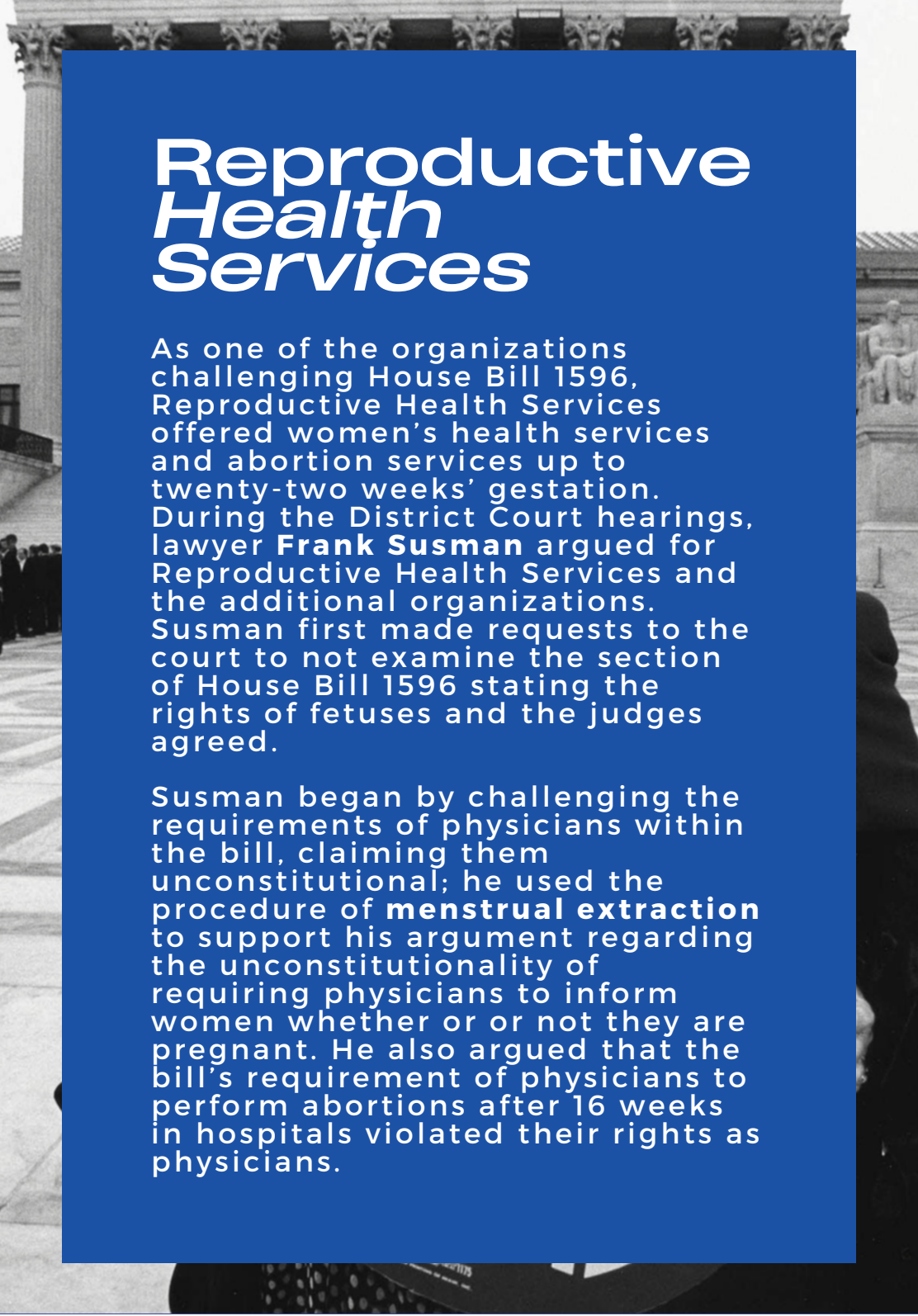
Webster v. Reproductive Health Services was a major blow for abortion rights.

Background

In the landmark 1973 **Roe v. Wade** decision, the U.S. Supreme Court struck down several Texas laws criminalizing abortion; ruled that the right to privacy implied in the 14th Amendment protected abortion as a fundamental right; and retained the power of states to regulate or prohibit abortions at different stages during pregnancy. As time went on, multiple states enacted laws and regulations to narrow the scope of **Roe**.

In 1986, the state of Missouri passed **House Bill 1596,** which most importantly prohibited the use of public services from providing or assisting in unnecessary abortions; prohibited the use of public services to "encourage or counsel" a woman to have an unnecessary abortion; and required physicians to perform viability tests when the pregnancy was at least 20 weeks. Its preamble stated **"the life of each human being begins at conception,"** and **"unborn children have protectable interests in life, health, and well-being."**

Later that year, a number of organizations, healthcare providers, and social workers joined to file a case against then-**Attorney General William L. Webster**, claiming the laws as unconstitutional. The U.S. District Court of Missouri struck down a majority of the provisions of the legislation and prohibited their enforcement. In 1988, Webster appealed the decision to the U.S. Court of Appeals for the Eighth Circuit in St. Louis, Missouri. The court left House Bill 1596 invalid once again, and **Webster appealed to the U.S. Supreme Court.**

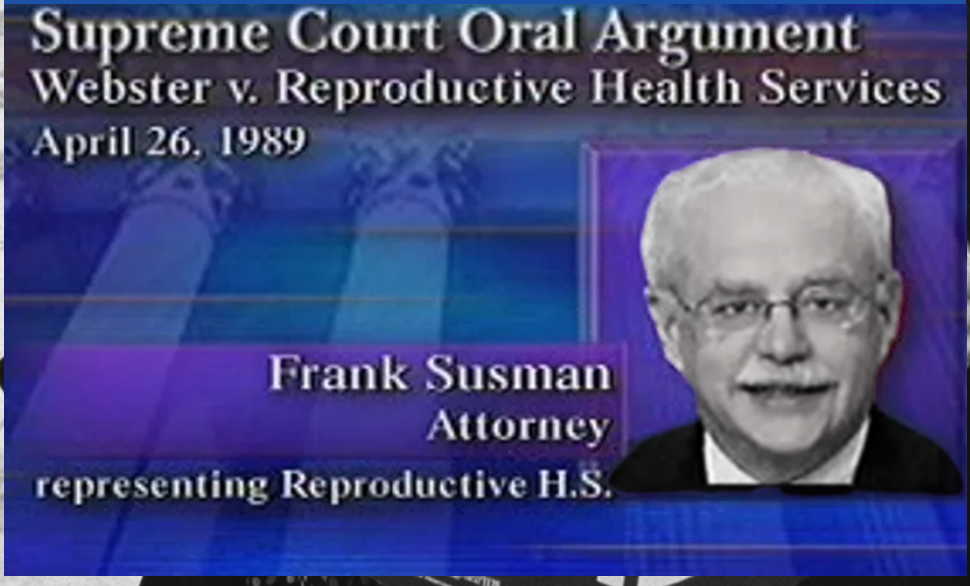


Reproductive *Health Services*

As one of the organizations challenging House Bill 1596, Reproductive Health Services offered women's health services and abortion services up to twenty-two weeks' gestation. During the District Court hearings, lawyer **Frank Susman** argued for Reproductive Health Services and the additional organizations. Susman first made requests to the court to not examine the section of House Bill 1596 stating the rights of fetuses and the judges agreed.

Susman began by challenging the requirements of physicians within the bill, claiming them unconstitutional; he used the procedure of **menstrual extraction** to support his argument regarding the unconstitutionality of requiring physicians to inform women whether or or not they are pregnant. He also argued that the bill's requirement of physicians to perform abortions after 16 weeks in hospitals violated their rights as physicians.

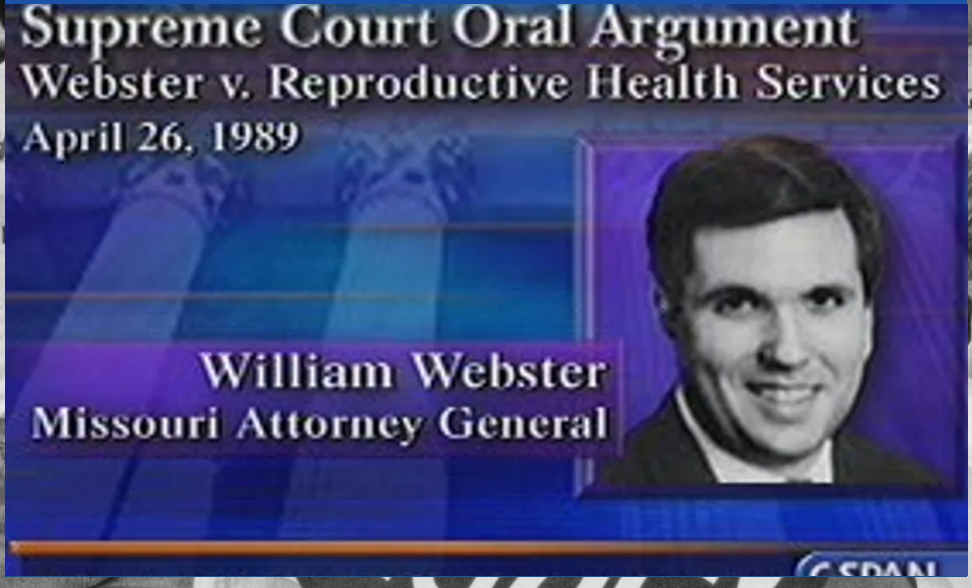
Susman stated that fetal viability tests at 20 weeks gestation were unconstitutional, and lastly argued that the prohibition of the use of public services to provide abortions was unconstitutional and in direct contradiction to women's established abortion rights under Roe.



William *L. Webster*

Attorneys Michael Boicourt and **Jerry E. Short** represented Webster during the District Court hearings. After Susman's initial arguments, Boicourt and Short responded to each of his claims. They rebutted Susman's example of menstrual extractions by stating that some pregnancy tests could detect pregnancies before a desire for the procedure and that menstrual extractions are not forbidden under the requirement of physicians to inform women of their pregnancy. They stated that the requirement of viability tests at 20 weeks was, in fact, constitutional because it did not prohibit abortions prior to 20 weeks. In regards to the requirement of abortions at 16 weeks to be performed in hospitals, Boicourt and Short argued that it was for the medical safety of the woman.

Lastly, they argued that prohibiting the use of public services for abortion care was constitutional because it only forbade advocating for dangerous abortions; it did not prohibit the physicians' ability to help patients make informed decisions; it did not affect physicians or their right of free speech to counsel women about abortions; and the U.S. Supreme Court had already ruled that the government was not required to fund abortions.



The Supreme *Court*

When the case reached the Supreme Court on **April 26th, 1989**, nine justices heard the case: **William Rehnquist, Byron White, Anthony Kennedy, Sandra Day O'Connor, Antonin Scalia, Harry Blackmun, William Brennan, Thurgood Marshall, and John Paul Stevens.** The Supreme Court only considered parts of the originally challenged law, including the definition of life, the prohibition of the use of public services (and funding), and the requirement of viability tests.

Justice Rehnquist wrote the Court's opinion, explaining why the Court found each of House Bill 1596's requirements constitutional. He began as the sole author of his opinion and was then joined by Justices White and Kennedy. Aside from the Court's main arguments, Rehnquist also challenged the **trimester framework** established in **Roe**, instead opting to switch to a **viability framework**.

Several other Supreme Court justices wrote their own opinions about the case decision:

Justice O'Conner provided a different reasoning for her support of the constitutionality and justification of viability tests;

Justice Scalia argued that O'Conner's reasoning was redundant in its relation to the definition and constitutionality of the concept of viability;

Justice Blackmun wrote a dissenting opinion on the Court's decision on viability tests, and he was joined by **Justices Brennan and Marshall**; and

Justice Stevens disagreed with the Court's decision on the definition of life. Blackmun also presented other disagreements in which he noted how the Court's decision on the viability framework and states' rights both violated and practically overruled **Roe**.

What *Happened?*

The Court upheld that **the Missouri Law did not violate the Fourteenth Amendment.**

In a **5-to-4** vote **in favor of Webster,** the U.S. Supreme Court **reversed the decisions of the appeals court**, thereby upholding the constitutionality of the challenged provisions of House Bill 1596. The Court had **four main points**:

1. The preamble of the legislation (which declared that life begins at conception) was not applied to specifically restrict abortions, so **the Court did not need to consider its constitutionality.**
2. According to the **Due Process Clause,** states were not required to use public services to fund abortions, failing to create an affirmative, constitutional right for the use of governmental aid to do so.

3. **No case or controversy** existed surrounding the **abortion counseling provisions** of the law.

4. Provisions requiring testing for **viability** after 20 weeks of pregnancy were **constitutional**, but those limiting abortions in the **second trimester** of pregnancy were **unconstitutional**.

So *What?*

After **Roe** was decided, the Supreme Court was on an **upward trend of protecting abortion rights.** Many abortion restrictions were struck down—**until Webster**. The Court reversed course, making it evident to the public that abortion was not a protected right—that **Roe** was not **"settled law"**—and that states did not have to provide women with the means for an abortion. To take regional factors into consideration, a woman seeking an abortion in an area that used **Webster** to its advantage would face incredible difficulty. Abortion access became a monopoly.

Webster was an invitation for states to regulate abortion in a way that was thought to be illegal under **Roe**. The **Webster** decision also revealed that the majority of the Court was willing to target abortion. During the hearing, **Justice Antonin Scalia** even suggested that the court overturn **Roe**.

Then *What?*

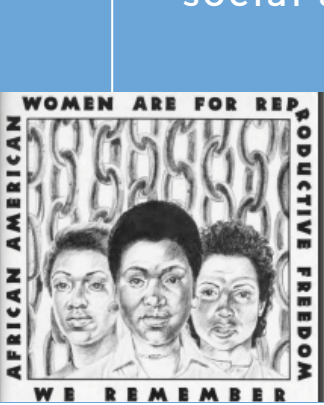
The States

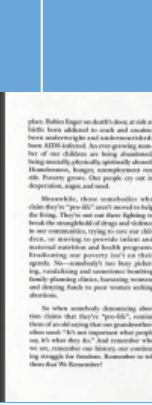
After **Webster**, the Supreme Court upheld further state restrictions on abortion. Three years after the decision, the 1992 U.S. Supreme Court case **Planned Parenthood of Southeastern Pennsylvania v. Casey** used the **Webster** decision to affirm that states could regulate abortion care—even in the first trimester. The case also used **Webster** to more vehemently apply the **viability framework** instead of the trimester framework in terms of the legality of abortions. After **Casey**, abortions were illegal if performed after the fetus was viable.

The People

In the summer of 1989, a group of 16 Black women published a collective statement advocating for equal access to abortion in response to **Webster**. Signed by civil rights activists such as Shirley Chisholm, Dorothy Height, and Faye Wattleton, **"We Remember: African American Women are for Reproductive Freedom"** served as a wake-up call to the lack of reproductive freedom as a continuity of the oppression Black women face. The document defined reproductive freedom and laid out a deep historical context. **250,000 pamphlets** were produced.

Organizations in support of the brochure continued to grow into mainstream reproductive justice non-profits as the movement bloomed. Founded by Byllye Avery, the National **Black Women's Self Health Project** is now **the Black Women's Health Imperative**—an organization at the forefront of women's health issues in both a social and policy lens.





What *Now?*

Minutes after the Supreme Court overturned **Roe v. Wade**, Missouri became one of the first states to make abortion illegal. Under a 2019 **"trigger law"** designed to go into effect once Roe was overturned, **"no abortion shall be performed or induced upon a woman, except in cases of medical emergency."** The law does not allow abortions for instances of rape or incest, and it makes performing an abortion a felony punishable by **five to 15 years in prison.**

Missouri has a long history of restricting abortion even before it was legalized in 1973. Its first law was passed in **1825**, becoming the second U.S. state to restrict abortions. Since Roe, Missouri has remained at the forefront of the pro-life movement and has prioritized **target regulation of abortion providers (TRAP) laws.** These laws hurt local abortion clinics by enforcing difficult-to-meet requirements.

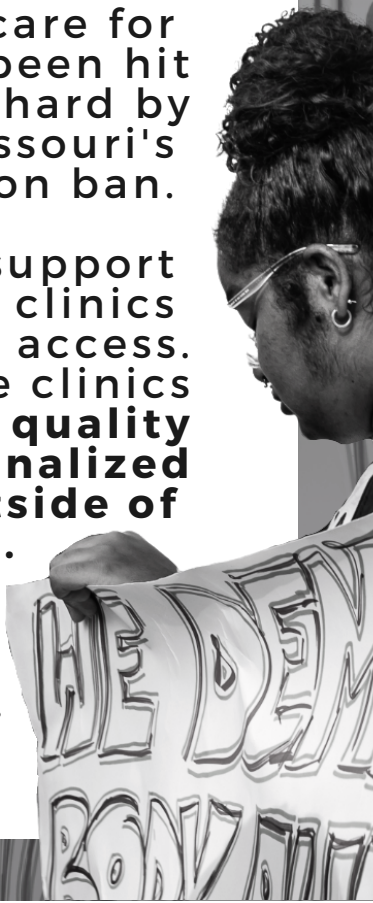
With only one abortion clinic, **a St. Louis Planned Parenthood,** left standing in the state, Missouri is already on track to become **the first state without any functioning abortion clinic since Roe.** Missouri also has the highest ratio of women of reproductive age to abortion provider of any state in the country, but state representatives are unwavering in their support to protect the lives of unborn children.

However, the lives of Missouri's mothers deserve protection as well. Mothers are dying at a rate of **40.7 deaths per 100,000 live births**—the sixth highest in the nation (2019). Those with **Medicaid-covered births make up more than half of pregnancy-related deaths** (2017-2019). Even more, **Black women are three times more likely to die within a year of pregnancy than white women** (2017-2019).

Inequities in healthcare access are a major cause of Black women's high maternal mortality rate; Missouri's abortion ban presents barriers to Black maternal healthcare. To help lower Black maternal mortality rates, **midwifery clinics and pregnancy care centers** across the state have been providing culturally sensitive care for years. They have been hit exceptionally hard by Missouri's abortion ban.

It is integral to support reproductive health clinics fighting for abortion access. The presence of these clinics means **providing quality healthcare to marginalized women—even outside of abortions.**

All of these women deserve a voice to achieve reproductive justice.



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happy

Black Maternal Health

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