When Giving Birth Becomes a Liability: The Intersection of Reproductive Oppression and the Motherhood Wage Penalty for Latinas in Texas

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WHEN GIVING BIRTH BECOMES A LIABILITY: THE INTERSECTION OF REPRODUCTIVE OPPRESSION AND THE MOTHERHOOD WAGE PENALTY FOR LATINAS IN TEXAS

DANIA Y. PULIDO*

“There’s a sorry situation in the United States, which is essentially that poor women don’t have choice. Women of means do... If you can afford a plane ticket, a train ticket or even a bus ticket you can control your own destiny but if you’re locked into your native state then maybe you can’t. That we have one law for women of means and another for poor women is not a satisfactory situation.”

– Ruth Bader Ginsburg

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I. Introduction

If you are a woman living on the United States side of the U.S.–Mexico border, it is frighteningly simple to obtain medication to perform a self-induced abortion. The process is as easy as Google-ing the name of the prescription drug (most commonly misoprostol, a drug approved by the Food and Drug Administration (FDA) to treat gastric ulcers), traveling across the border to Mexico, purchasing the medication at the nearest pharmacy without a prescription, and returning to the United States in less than an hour. The only complication is hiding the medication from a


3. See Jennifer S. Lee & Cara Buckley, For Privacy’s Sake, Taking Risks to End Pregnancy, N.Y. TIMES (Jan. 4, 2009), http://www.nytimes.com/2009/01/05/nyregion/05abortion.html?pagewanted=1&_r=3&hp [https://perma.cc/NPW9-LPKH] (describing misoprostol, which is commonly used for abortions, as well as various other prescription pills utilized by women to end pregnancies); see also The Abortion Pill, PLANNED PARENTHOOD, https://www.plannedparenthood.org/learn/abortion/the-abortion-pill [https://perma.cc/F6KY-4UQX] (last visited Oct. 28, 2016) (providing basic information about the abortion pill, its effects, and procedures for consuming it).

4. See Lunday, supra note 2 (discussing the influx of pharmacies providing discounted medications on the Mexican-American border and the convenience it provides to consumers); see also Alexa Garcia-Ditta, Report: In Texas Hundreds of Thousands Have Attempted Self-Induced Abortions, TEX. OBSERVER (Nov. 17, 2015, 11:21 AM), http://www .texassobserver.org/txpep-texas-self-induced-abortions-study [https://perma.cc/F9LK-2BNY] (stating, although the medication may be obtained only by prescription in the United States, misoprostol is sold over-the-counter at Mexican pharmacies).
customs agent. Even then, one can simply claim the medicine is for an ulcer.

It is common for people living along the U.S.–Mexico border to obtain prescription drugs at cheaper prices in Mexico; indeed, it is unlikely a customs agent will even ask for a prescription. Although this procedure is easy for the average woman living on the United States side of the U.S.–Mexico border, it is substantially more difficult for teenage girls. For an undocumented woman, this procedure is nearly impossible.

Modern medicine and technology allow women to control their own abortion procedures to the extent that they are able to do so in the privacy of their own homes. Women alone should make their healthcare choices or decide whether to have an abortion, not compromise their health, safety, and well-being because they have no alternatives. Yet, Texas’s House Bill 2 (H.B. 2)—an omnibus abortion bill aimed at se-

5. See Lunday, supra note 2 (explaining the legal procedures for Americans transporting prescription medication into the United States from Mexico). To import prescription medicine legally, one must have a prescription from an American doctor and such prescription must not be for highly addictive narcotics or exceed fifty doses approved for consumption by the FDA. Id.; see also Imported Drugs Raise Safety Concerns, U.S. FDA, http://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm143561.htm [https://perma.cc/6THP-VZVC] (last visited Oct. 14, 2016) (detailing what circumstances allow for the importation of unapproved medication).

6. See Lee & Buckley, supra note 3 (pointing out misoprostol is a drug used to reduce gastric ulcers).

7. See Lunday, supra note 2 (noting the disparity in pricing for drugs between the United States and Mexico and the increasing number of people heading to Mexico to buy medication).

8. See id. (observing border crossings are too busy for custom agents to inspect every person). At times, fifty to ninety doses of a drug were imported without a prescription because the laws for declaring prescription drugs are largely inconsistent. Id.


11. See Is It Difficult to Do a Medical Abortion by Yourself?, WOMEN ON WEB, https://www.womenonweb.org/en/page/482/is-it-difficult-to-do-a-medical-abortion-by-yourself [https://perma.cc/6MND-ZZDR] (last visited Oct. 28, 2016) (explaining a woman can simply take Mifepristone and Misoprostol in order to have an abortion, and a medical abortion does not have to be performed in a hospital or first aid clinic).

verely restricting access to medical abortions—has forced women in south and west Texas into exactly that position.\(^{13}\)

According to The National Campaign to Prevent Teen and Unplanned Pregnancy, an estimated one-third of Hispanic teenage girls will experience a pregnancy by the age of twenty.\(^ {14}\) Further, in 2014 approximately half of all pregnancies in the United States were unplanned.\(^ {15}\) Among unmarried women between the ages of twenty to twenty-nine, the number rises to 70%\(^ {16}\). Before the *Roe v. Wade* decision,\(^ {17}\) the process of performing or obtaining an abortion was a criminal offense.\(^ {18}\) The legal consequences of violating abortion laws were severe not only for women, but also for the providers.\(^ {19}\) Although it was rare for states to prosecute women for obtaining an abortion, they often used the threat of prosecution “to encourage [women] to testify against the provider.”\(^ {20}\) Additionally, prior to *Roe v. Wade* many young women risked their freedom and safety by traveling to Mexico for abortions while exploring other illegal methods of terminating a pregnancy.\(^ {21}\) Forty-two years after *Roe v.

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16. Id.


18. Id. at 119; see also Rachel Benson Gold, Lessons from Before Roe: Will Past Be Prologue? 5 (2003), https://www.guttmacher.org/pubs/gr06/1/gr060108.html [https://perma.cc/CN6X-M9BR] (discussing the legal status of abortion throughout American history, with Massachusetts enacting the first state law making abortion a criminal offense, and almost all states following suit by the 1900s).

19. See Gold, supra note 18 (observing, in the early 1960s nine states considered it a criminal offense to aid, assist, abet, or counsel women attempting to obtain an abortion).

20. Id. at 6.

Wade, women across the United States still find themselves fighting the same battle for their reproductive rights.22

At the forefront of this battle was the opposition to H.B. 2, which threatened to shut down all but ten abortion clinics in Texas.23 The Bill affected women across Texas, but Latinas faced the harshest repercussions.24 Low-income and undocumented Latinas had particular difficulty accessing abortion care because, in many instances, H.B. 2 required women to travel over 100 miles to procure an abortion.25 Women in El Paso, for instance, either traveled across state or national boundaries to access abortion care or drove over 550 miles to San Antonio, where the nearest abortion clinic is located.26 Furthermore, because border checkpoints in Texas heighten the risk of deportation, undocumented Latinas are often too afraid to make the necessary travel arrangements.27 As a result, undocumented women, low-income Latinas, and women living in south and west Texas were more likely to resort to dangerous self-induced abortions.28

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22. See Konner, supra note 21 (observing the risks women confronted with the passage of H.B. 2 and the Republican Party’s threat to shut down the federal government in an attempt to defund Planned Parenthood); see also Pearson, supra note 10 (discussing the hardships women across Texas experienced with the implementation of H.B. 2). See generally Nancy Northup, The Supremes Take Up Abortion Rights, Again: Column, USA Today (Nov. 25, 2015, 5:01 AM), http://www.usatoday.com/story/opinion/2015/11/25/supreme-court-abortion-rights-roe-texas-column/76253966 [https://perma.cc/3ZH4-G3Z9] (delegating the Supreme Court’s decision to review the most significant case on abortion access since Roe v. Wade).


24. See Pearson, supra note 10 (explaining how H.B. 2 disproportionately affected Latinas); see also Garcia-Ditta, supra note 4 (discussing a study finding Latinas living near the Texas-Mexico border were more likely to have attempted to induce their own abortions).


27. Id.

28. See id. (suggesting more women performed self-induced abortions during the promulgation of H.B. 2 because it severely limited access to abortion clinics); see also Lee & Buckley, supra note 3 (discussing the reasons Latinas throughout the United States self-induce abortions and the procedures they used).
In addition to fighting for their reproductive rights, Latinas living in Texas face another challenge: the wage gap.29 On average, women in the United States are paid 79 cents for every dollar men earn; this gap is even larger for Latinas, who are paid 55 cents to the dollar.30 Texas has one of the largest populations of Latinas employed full-time, yet Latinas are paid 44 cents for every dollar earned by non-Hispanic white men.31 Moreover, becoming a mother contributes to the wage gap by imposing an additional 7% wage penalty per child.32 In fact, while each child costs a mother more of her wages, men actually earn more after becoming fathers.33

The implementation of H.B. 2 denied countless women across Texas access to abortion care and thereby forced them into motherhood.34 Indeed, 67% of women who carry an unwanted pregnancy to term after seeking an abortion fall below the poverty line, and obstructing a woman’s effort to obtain an abortion generally increases her likelihood of falling below the poverty line threefold.35 One study also found an association between poverty and women who attempted to terminate their own pregnancies.36 Because Latinas comprise about 40% of all women living in Texas anti-abortion laws like H.B. 2 disproportionately affected them.37

This Comment analyzes the detrimental reproductive and economic effects of H.B. 2 on Latinas in Texas had the U.S. Supreme Court not struck down its ASC and admitting privileges requirements. At first glance, these two issues appear seemingly unrelated; however, reproductive freedom and the motherhood wage penalty have interrelated conse-

30. Id. at 1.
31. Id.
32. Michelle J. Budig & Paula England, The Wage Penalty for Motherhood, 66 Am. SOC. REV. 204, 204 (2001); see also Jane Waldfogel, Understanding the “Family Gap” in Pay for Women with Children, 12 J. ECON. PERSP. 137, 137, 143 (1998) (claiming the gender gap has narrowed while the gap between mothers and non-mothers has widened).
34. Garcia-Ditta, supra note 4.
36. Garcia-Ditta, supra note 4.
37. Id.
quences, particularly for Latinas residing in south and west Texas. This Comment looks at the key provisions of H.B. 2 and the resulting negative repercussions on teenage Latinas, undocumented women, and Latina mothers. This Comment then discusses the motherhood wage penalty, its significance, and various methodologies utilized to explain the penalty. Using an intersectional approach, this Comment analyzes the dynamics of reproductive oppression and gender subordination and the resulting detrimental effects. Lastly, this Comment proposes a model to shift stereotypes faced by this group of marginalized women.

When a female becomes pregnant, her choices are inevitably thrust into public opinion, robbing her of both privacy and autonomy. Unfortunately, public opinion serves as a pathway to impose traditional notions of how society should treat pregnant women. This Comment thus seeks to transform the discussion about anti-abortion policies from one that stigmatizes, shames, and degrades women to one describing how the state engages in reproductive oppression and reinforce racial and gender subordination. Finally, it is the author’s hope that, by documenting the devastating effects such legislation has had on an already oppressed group of people, we can avoid implementation of similar legislation in the future.

II. Legal Background

A. Proposal and Enactment of House Bill 2

Texas Governor Rick Perry signed H.B. 2 into law after convening the second special legislative session of 2013. The Bill placed strenuous limitations on reproductive health clinics and abortion services in Texas. Out of H.B. 2’s many provisions, the most harmful to Latinas in Texas include: (1) a twenty-week abortion ban; (2) requiring a physician performing an abortion to have admitting privileges at a hospital located

39. See Roxane Gay, Bad Feminist 269 (Harper Perennial 2014) (asserting pregnancy is “the least private experience of a woman’s life”).
within thirty miles from where the abortion is performed;\(^{43}\) (3) mandating that abortion facilities meet the same standards as an ambulatory surgical center (ASC);\(^{44}\) (4) reporting requirements;\(^{45}\) and (5) restrictions on abortion-inducing medication.\(^{46}\)

House Bill 2 included legislative findings based on “substantial medical evidence,” purporting that a fetus is capable of experiencing pain at twenty weeks.\(^{47}\) The law further established that the “state has a compelling state interest in protecting the lives of unborn children” to the extent medical findings indicate such unborn children “are capable of feeling pain.”\(^{48}\)

Under H.B. 2, “abortion” is defined as the act of terminating a “clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the woman’s unborn child.”\(^{49}\) However, the Bill includes several exceptions, stating that an act was not an abortion if it was done to: (1) save the life or preserve the health of an unborn child;\(^{50}\) (2) remove a dead, unborn child whose death was caused by spontaneous abortion;\(^{51}\) (3) remove an ectopic pregnancy;\(^{52}\) or (4) treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated.\(^{53}\) The Bill also defines “unborn child” as the “offspring of human beings from conception until birth.”\(^{54}\)


Notwithstanding the twenty-week abortion ban, under H.B. 2 a physician may perform an abortion after twenty weeks if the physician believes doing so would prevent the death of, or severe physical consequences to, the mother.\(^\text{55}\) Moreover, physicians are exempt from this provision if the abortion involves an “unborn child who has a severe fetal abnormality” or if the physician believes the woman will “engage in conduct [resulting] in her death or in substantial and irreversible physical impairment of a major bodily function.”\(^\text{56}\)

House Bill 2 imposed various restrictions on physicians, including requiring them to: (1) have admitting privileges at a hospital located within a thirty-mile radius of where they are performing the abortion;\(^\text{57}\) (2) provide pregnant women seeking an abortion with a telephone number where a physician or healthcare professional is available twenty-four hours a day;\(^\text{58}\) and (3) provide an age estimate of the unborn child to the mother.\(^\text{59}\)

In addition to imposing restrictions on physicians, H.B. 2 regulates hospitals as well.\(^\text{60}\) For example, one of H.B. 2’s most controversial provisions was the ASC requirement, which ordered abortion-providing facilities to have the same construction and design, professional qualifications, essential equipment, sanitary and hygienic conditions, and quality assurance program as an ASC.\(^\text{61}\)


Finally, H.B. 2 prohibited the dispensing of abortion-inducing drugs by anyone other than a physician. While administering abortion-inducing medicine, H.B. 2 also obligates the physician to adhere to applicable FDA regulations. Additional constraints H.B. 2 places on physicians include requiring them to schedule a follow-up visit with the patient within fourteen days of the procedure, exert reasonable efforts to encourage the patient attend the follow-up visit, and keep detailed notes in the patient’s medical record regarding such efforts. Physicians who fail to adhere to H.B. 2’s heightened requirements may be subject to disciplinary action.

B. The First Challenge to House Bill 2: Planned Parenthood of Greater Texas Surgical Health Services v. Abbott

In September 2013, Planned Parenthood filed a lawsuit challenging two provisions of H.B. 2: (1) its restrictions on drug-induced abortions (known as “medication abortion restrictions”); and (2) the admitting privileges requirement. Planned Parenthood argued the medication abortion restrictions “violated patients’ substantive due process rights” and was “unconstitutionally vague.” Planned Parenthood also asked the court to strike down the admitting privileges requirement because it violated both due process and privacy rights of the patient and the physician and unconstitutionally limited the services the physician could adequately provide. The federal district court ultimately ruled the admitting privileges requirement unconstitutional and permanently enjoined it. However, the court only partially enjoined the medication abortion restriction, which remained largely intact.

Texas appealed the ruling to the Fifth Circuit Court of Appeals and moved for an emergency stay of the district court’s ruling. On October

67. Id. at 587.
68. Id.
69. Id. at 588.
70. Id.
71. Id.
31, 2013, the Fifth Circuit granted the emergency stay, holding “the State made a substantial showing of its likelihood of success on the merits [regarding] the admitting privileges requirement . . . and demonstrated likely success as to . . . [the] medication abortion requirements.” 72 The Fifth Circuit lifted the injunction on the admitting privileges requirement, allowing it to take effect and effectively close about half of Texas’s forty-one abortion clinics. 73

On the same day the Fifth Circuit announced its ruling, Planned Parenthood filed for emergency relief with the U.S. Supreme Court to block it. 74 Within a matter of weeks, the Supreme Court, in a 5-4 decision, refused to vacate the Fifth Circuit’s stay. 75 A three-judge panel of the Fifth Circuit subsequently upheld the constitutionality of both the medication abortion restrictions and the admitting privileges requirement. 76 In response, Planned Parenthood sought rehearing before the full U.S. Court of Appeals for the Fifth Circuit, but the court denied their request. 77

C. The Second Challenge to House Bill 2: Whole Woman’s Health v. Cole (formerly Whole Women’s Health v. Lakey)

The second challenge to H.B. 2 came on behalf of abortion clinics in McAllen, Texas and El Paso, Texas, who challenged the ASC requirement and the admitting privileges requirement. 78 Because physicians at both clinics could not comply with the admitting privileges requirement, the clinics were forced to close immediately. 79

72. Id.
73. See id. at 419 (lifting the permanent injunction on the admitting privileges requirement by way of staying the district court’s judgment); Adam Liptak & Manny Fernandez, Supreme Court Allows Texas Abortion Clinics to Remain Open, N.Y. TIMES (June 29, 2015), http://www.nytimes.com/2015/06/30/us/supreme-court-allows-texas-abortion-clinics-to-remain-open.html [https://perma.cc/DB76-HC5J] (reporting more than half of Texas’s abortion clinics closed after H.B. 2 took effect).
75. Id.
78. Whole Woman’s Health v. Cole, 790 F.3d 563, 577 (5th Cir. 2015).
On August 29, 2014, the federal district court issued injunctive relief to the clinics and held the ASC requirement unconstitutional because it imposed "an undue burden on the right of women throughout Texas to seek a previability abortion." The court also held the admitting privileges requirement, as applied to the clinics in McAllen and El Paso, was likewise unconstitutional because it had "the ultimate effect of erecting a substantial obstacle for women in Texas who seek to obtain a previability abortion." Again, Texas appealed to the Fifth Circuit, who stayed the district court’s ruling and allowed both the ASC and admitting requirements to remain in effect. Consequently, all but eight abortion facilities in Texas immediately shut down, forcing approximately one million Texas women to travel over 150 miles to access a legal abortion facility. The clinics then appealed to the U.S. Supreme Court a majority of whom denied the clinics’ application to vacate the Fifth Circuit’s decision.

On June 9, 2015, the Fifth Circuit upheld the challenged provisions of H.B. 2 in large part and allowed the state to enforce them. Nevertheless, the court exempted the McAllen clinic from the ASC requirement and Dr. Sherwood Lynn, the McAllen clinic’s physician, from the admitting privileges requirement while working at the McAllen facility. Surprisingly, the U.S. Supreme Court granted Whole Woman’s Health’s stay while awaiting the timely filing of a writ of certiorari. Thus, the ASC requirement remained banned statewide and the admitting privileges requirement remained banned with respect to the clinics in McAllen and El Paso pending review of the writ.

Within a few months, Whole Woman’s Health filed their petition for a writ of certiorari to the Supreme Court of the United States, which the

81. Id. at 685.
82. Whole Women’s Health v. Lakey, 769 F.3d 285, 305 (5th Cir. 2014).
84. Whole Woman’s Health v. Lakey, 574 U.S. ___, 135 S. Ct. 399, 399 (2014) (mem.).
85. Whole Woman’s Health v. Cole, 790 F.3d 563, 564 (5th Cir. 2015).
86. Id. at 567.
Court granted. After hearing oral arguments, the Court, in a groundbreaking 5-3 majority opinion written by Justice Stephen Breyer, held both the ASC and the admitting privileges requirements unconstitutional. Specifically, the majority held that both requirements placed "a substantial obstacle in the path of women seeking a previability abortion, [and] constitute[d] an undue burden on abortion access, [which] violate the Constitution."91

III. THE IMPACT OF HOUSE BILL 2 ON LATINA POPULATIONS IN TEXAS

A. Teenage Girls

In 2013, over 37,000 teenage girls gave birth in Texas.92 Of that number, Latinas accounted for nearly 24,000, or roughly 64%.93 Catholicism—which is prevalent in Hispanic culture and strictly forbids sex outside of marriage, the use of contraception, and abortion—is part of the reason for this disparity.94 For Catholic Latinas, then, premartial sex is socially unacceptable and unthinkable.95 Indeed, many Latina teenagers seek abortions because they feel that having a baby out-of-wedlock

91. Id. at 2298.
93. Id.
95. See Sue Alford, The Sexual Health of Latina Adolescents—Focus on Assets, ADVOC. FOR YOUTH at 4 (Jan. 2006), http://www.advocatesforyouth.org/storage/advf/docu-ments/latina.pdf [https://perma.cc/JP9B-RWGA] (observing Hispanic parents may be hesitant to discuss sexuality with their children, even though studies show discussion of sexual topics with teens may increase their ability to make responsible decisions); see also Hetherington & Burleson et al., supra note 94 ("Catholicism is a contributing factor to the overall idea of sex as a ‘taboo’ topic in Latino culture.").
will bring them and their families shame—while others fear being disowned by their families. In contemporary society, Latinas are prevented from pursuing reproductive healthcare because they fear the virgin/whore dichotomy—a stereotype to which Latinas are particularly vulnerable.

Regardless of the countless reasons teenage Latinas may have for terminating an unwanted pregnancy, their ability to do so is highly limited. For instance, teenage girls often lack both the financial means of traveling alone and the health insurance to search for abortion care. This could lead pregnant teens living along the U.S.–Mexico border to purchase the “abortion pill” on the black market. Physicians use misoprostol—the abortion pill also identified by the brand name Cytotec—to induce labor and to treat ulcers, and post-partum hemorrhaging. Consuming this medication to induce an abortion results in a miscarriage-like experience resembling one that might occur early on in a woman’s pregnancy. While the use of misoprostol is common, the side effects—rupture of the uterus, severe bleeding, and shock—are severe. Furthermore, teenage girls are often misinformed about the ramifications of taking misoprostol, which can have fatal consequences. For example, in 2007 an 18-year-old Dominican teen consumed misoprostol during her twenty-fifth week of pregnancy. Unfortunately, her baby was born weighing just one-pound and died four days later. Shortly thereafter, a

96. Hyams, supra note 94, at 640 (asserting young high school Latinas feel pressured by their parents not to get pregnant).

97. See Gomez, supra note 38, at 106–07 (analyzing how Latinas seeking reproductive healthcare simultaneously face scrutiny for being sexually promiscuous and for being puritanical); see also Hyams, supra note 94, at 638 (observing the paradoxical nature of adolescent females who engage in sex as an embodiment of both danger and desire).

98. See Hyams, supra note 94, at 639 (stating there are economic obstacles which prompt Latinas to choose early childbearing).


100. Garcia-Ditta, supra note 4.

101. Hellerstein, supra note 99; Lee & Buckley, supra note 3.

102. Hellerstein, supra note 99.

103. Lee & Buckley, supra note 3.

104. Id.

105. Id.

106. Id.
court sentenced her to probation and therapy. In another case, a study found that, while seven out of ten women who reported using misoprostol were successful, the remaining three required extra medication or a surgical abortion. Thus, while misoprostol may seem like a relatively simple method of inducing an abortion, positive results are not guaranteed and unsupervised consumption could have dire health consequences.

B. Undocumented Women

Immigrants comprise approximately one-sixth of all Texans. In fact, 68.2% of the roughly 4.5 million immigrants in the state are Latinos. In 2013, there were approximately 1.4 million immigrant females between the ages of fifteen and fifty, and over 98,000 of them gave birth during that year. Among immigrant females who gave birth, 76.4% were married and 23.6% were unmarried.

Since 2001, deportations in the United States have steadily increased, especially in Texas. Furthermore, between 2013 and 2014, the arrival of immigrant women and children from Central America resulted in an increase in immigration enforcement along the U.S.–Mexico border. Such an increase resulted in a stronger, more visible occupation of immigration officials in border towns, as well as a general policy shift establishing detention as a “deterrent” mechanism. Current immigration policy gives government officials wide discretion to apprehend persons, and if the apprehended person cannot provide proper documentation proving

107. Id.
108. Garcia-Ditta, supra note 4.
109. See id. (emphasizing the risk of abortion-related complications rises if misoprostol is taken without physician supervision).
112. Id.
113. Id.
115. Gomez, supra note 38, at 92.
116. Id. at 91–92.
their lawful presence in the country, the officials may detain the person for an unspecified amount of time.\textsuperscript{117}

Immigrant communities along the Texas–Mexico border are especially vulnerable to the increased presence of enforcement officers and the tactics they use to deport undocumented immigrants.\textsuperscript{118} One approach is creating "tactical checkpoints" in addition to the fixed checkpoints near the main highways.\textsuperscript{119} Enforcement agencies place these "tactical checkpoints" within 100 miles of the Texas–Mexico border on roads that lead north.\textsuperscript{120} Thus, for an undocumented Latina living along the border, the danger of being apprehended by DHS, ICE, or CBP is imminent if she decides to travel farther north into Texas.\textsuperscript{121} Once apprehended, it is possible she will be placed in a detention center or be deported.\textsuperscript{122}

Women living in the Rio Grande Valley region cannot avoid the highways on which these checkpoints are located when traveling north.\textsuperscript{123} Had the Supreme Court not struck down H.B.2's ASC requirement, the Rio Grande Valley's only clinic would have to close, and undocumented women would be forced to travel to the nearest abortion clinic in San Antonio, carry their pregnancies to full term, or self-terminate their pregnancies.\textsuperscript{124} Moreover, the risk of encountering immigration officials keeps undocumented Latinas effectively "landlocked," which further lim-

\textsuperscript{117} Id. at 93. \textit{See generally AM. CIVIL LIBERTIES UNION \& AM. CIVIL LIBERTIES UNION OF TEX., WAREHOUSED AND FORGOTTEN: IMMIGRANTS TRAPPED IN OUR SHADOW PRIVATE PRISON SYSTEM 2 (2014), https://www.aclu.org/sites/default/files/ assets/060614-aclu-car-reportonline.pdf [https://perma.cc/BHD2-635E] (reporting the growing criminalization of immigration over the past decade, with more people entering the federal prison system for immigration offenses than for violent, property, and weapons offenses combined).

\textsuperscript{118} See Gomez, supra note 38, at 94 (commenting on how the Rio Grande Valley's location makes it susceptible to widespread immigration enforcement).

\textsuperscript{119} Id. at 95; \textit{see also} Cristina Constantini, \textit{For Undocumented Immigrants, It's Nearly Impossible to Get an Abortion in South Texas}, \textit{Fusion} (Oct. 9, 2014 12:57 PM), http://fusion.net/story/20689/for-undocumented-immigrants-its-nearly-impossible-to-get-an-abortion-in-south-texas [https://perma.cc/PP2P-PDGA] (investigating the checkpoints stationed along the Texas-Mexico border and the highways women would take to reach the few abortion clinics still open).

\textsuperscript{120} Constantini, supra note 119. There are some reports showing up to seventy-one total checkpoints, both tactical and permanent, could exist in South Texas, but the geographical limits of these regions in Texas in the reports are ambiguous. Gomez, supra note 38, at n.52.

\textsuperscript{121} Gomez, supra note 38, at 95.

\textsuperscript{122} Id.

\textsuperscript{123} \textit{See} Constantini, supra note 119 (claiming permanent checkpoints are situated on highway US-281, which one would need to take to make the four-hour road trip from the Rio Grande Valley to San Antonio).

\textsuperscript{124} \textit{See} Pearson, supra note 10 (describing the limitations H.B. 2 placed on "landlocked" immigrant women in south Texas).
its their access to healthcare. Those who manage to travel to a northern clinic also struggle with other challenges, such as facing language barriers or lacking the financial means required for the necessary medical attention.

The Texas Policy Evaluation Project (TxPEP) evaluates the daily effects of the state’s reproductive health legislation and found that fewer Latinas are seeking help at Texas abortion clinics. According to TxPEP, 12% of women living along the Texas–Mexico border self-induced their abortion before obtaining clinical care in 2012 (compared to 7% of women statewide). In their attempts to self-induce, women used methods like consuming herbs, hitting themselves in the stomach, or throwing themselves down the stairs.

In addition to the risks undocumented women face, for women traveling with their children apprehension by immigration officials can lead to the “mommy penalty,” a term describing how immigration officials enforce harsher penalties on undocumented immigrant families than on individual undocumented immigrants. For instance, before the influx of undocumented women and children in 2013 and 2014, DHS policy permitted asylum-seekers to stay with family or friends residing in the United States while their applications were processed. However, in 2014 they implemented a “no release” policy for detained women and children. Consequently, immigration officials often discharged individuals apprehended while traveling alone from custody while they forced women and children into the perilous and intolerable conditions of detention.

125. Id.
126. Gomez, supra note 38, at 103.
128. Id.
129. Id.
131. See Hoffman, supra note 130 (discussing the sudden mass migration of families from Central America seeking refuge in the U.S., which ICE declared a national security threat).
132. Gomez, supra note 38, at 96.
133. Id.
134. Id. Complaints have been filed on behalf of detainees alleging sexual assault by the guards and inadequate detention conditions such as a deficiency of baby formula and warm clothing. Hoffman, supra note 130. There were numerous outrages and “reports of poor conditions, abuses and attempted suicides in three detention centers.” Cindy Carpcano, U.S. Policy Change May Enable Speedy Release of Detained Immigrant Families,
tion centers.\textsuperscript{135} DHS Secretary Jeh C. Johnson later announced that, in most instances, immigration officials would release detained families eligible for relief,\textsuperscript{136} but this policy did not put an end to family detention, as two detention facilities remain open in Texas.\textsuperscript{137} In addition, despite the recent changes made to the “no release” policy, DHS can still justify detaining women and children on other grounds, such as not being able to afford paying their bond if released.\textsuperscript{138} As a result, undocumented Latinas traveling past checkpoints to access healthcare facilities still face the risk of being apprehended by immigration authorities and placed in a family detention center.\textsuperscript{139}


\textsuperscript{136} Gomez, supra note 38, at 96. Immigrants who were apprehended alone and were seeking asylum were allowed to pay bond and pledge to show up to their court settings, while ICE denied mothers with children from bonding out of detention as a deterrent for other families illegally immigrating to the United States. Hoffman, supra note 130.


\textsuperscript{139} See Olga Byrne & Eleanor Acer et al., \textit{Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers} 26 (Kara McBride et al. eds., 2016), http://www.humanrightsfirst.org/sites/default/files/Lifeline-on-Lockdown.pdf [https://perma.cc/ST8Q-G2S8] (pointing out high bonds keep asylum-seekers and immigrants in detention); see also Foley, supra note 137 (reporting DHS Secretary Jeh C. Johnson announced detained immigrants pursuing relief would be released, except in certain circumstances, and for those who could be released on bond, the amounts would be set at “‘reasonable and realistic’ levels the women can afford”).

\textsuperscript{139} Pearson, supra note 10 (identifying the difficulty with arranging transportation for much farther distances, childcare, and lodging as factors contributing to Latinas canceling medical appointments).
IV. ANALYSIS OF THE MOTHERHOOD WAGE PENALTY

The motherhood wage penalty intensifies the gender pay gap and contributes to societal instability. The prevalence of the gender pay gap—the disparity between men and women’s earnings—has been a cause for concern for many decades. Discussing it is commonplace among Americans, and it has long been a subject of debate for politicians.

Becoming a mother comes with numerous consequences, including the fact that mothers earn less in hourly wages than do childless women. However, the root of the resulting “motherhood pay penalty” or “motherhood wage gap” is difficult to explain and even harder to measure. Nevertheless, the motherhood wage penalty creates problems for gender equality and society’s ability to balance the economic objective of robust female participation in the labor market and the social objective of “providing a fair distribution of income to support the reproduction and rearing of children.”

140. See Budig, supra note 33, at 22–23 (observing how the wage gap increases between men and women once women become married and start having children, and noting this motherhood wage penalty is commonplace in other westernized countries such as Austria and Germany).


142. Budig, supra note 33, at 3.


144. See Budig & England, supra note 32, at 204 (reporting women suffer a wage penalty of 7% per child).


There are many studies analyzing the motherhood wage penalty, but differences in procedures and data sets make comparing results a difficult task.\textsuperscript{147} However, the global trend suggests a positive correlation between the motherhood wage gap and the number of children a woman bears.\textsuperscript{148}

Two main analytical frameworks exist to explain the motherhood wage penalty: (1) the rationalist economics approach; and (2) the sociological approach.\textsuperscript{149} Researchers use the rationalist economics approach "to identify the precise independent effect of selected variables on pay assuming perfect competition in labour markets and relatively unconstrained individual rational choice."\textsuperscript{150} This approach focuses on economic factors such as how "human capital"\textsuperscript{151} depreciates following either a break in employment\textsuperscript{152} or employment in family-friendly jobs.\textsuperscript{153}

On the other hand, the sociological approach "considers the role of societal expectations, stereotyping, status and discrimination in shaping pay, as well as the structural constraints and opportunities that influence labour market choice."\textsuperscript{154} Even when controlling for industry type, education, and occupation, a wage gap persists due to employer bias and discrimination.\textsuperscript{155} According to sociologists, many employers presume children impose a burden on mothers so they engage in discriminatory practices when making decisions about hiring, pay, and career tracks.\textsuperscript{156} Coupled with the lack of investment in childcare services and employers' refusal to accommodate work schedules, employers often do not promote women.\textsuperscript{157} This approach also emphasizes that society tends to understand how women make up nearly half of the workforce and their wages are vital to families and the economy).

\textsuperscript{147} Grimshaw & Rubery, supra note 146, at v.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id. at 2.
\textsuperscript{151} "Human capital" is defined as "any stock of knowledge or characteristics the worker has (either innate or acquired) that contributes to his or her 'productivity'" Daron Acemoglu & David Autor, Lectures in Labor Economics 3, http://economics.mit.edu/files/4689 [https://perma.cc/WV65-5M2E] (last visited Oct. 29, 2016).
\textsuperscript{152} Grimshaw & Rubery, supra note 146, at v (arguing women who face employment interruptions are less likely to search for training or higher paying jobs).
\textsuperscript{153} Id. (claiming women usually obtain part-time jobs with less responsibility after having children).
\textsuperscript{154} Id. at 2.
\textsuperscript{155} Nat'L P'Ship for Women & Families, supra note 145, at 1.
\textsuperscript{156} Grimshaw & Rubery, supra note 146, at 6; see also Budig & England, supra note 32, at 208 (discussing how employer discrimination is based on the assumption most women are or will become mothers).
\textsuperscript{157} Grimshaw & Rubery, supra note 146, at vi.
value a female’s competence, knowledge, and experience, which leads to lower compensation.\textsuperscript{158}

A. The Rationalist Economics Approach

The rationalist economics approach measures the motherhood pay gap while controlling only for dependent children and factoring in how “human capital” impacts the efficiency of labor market participants.\textsuperscript{159} According to this approach, in the absence of a broader range of contributing factors that influence pay and productivity, there is no motherhood pay gap.\textsuperscript{160} Using the human capital model, rationalist economists claim the motherhood pay gap is comprised of a range of procurable human capital characteristics “to control for what are usually claimed as ‘observed productivity differences.’”\textsuperscript{161} However, these “observed productivity differences” are themselves composed of a more narrow group of variables related to age, education, and work experience.\textsuperscript{162} Furthermore, this framework adjusts a woman’s work experience to reflect whether she worked full-time or part-time.\textsuperscript{163}

Professors Michelle J. Budig and Paula England, who were the first researchers to control for full- and part-time employment, investigated the causes of the wage penalty by looking at American women of childbearing age.\textsuperscript{164} According to Budig and England:

Motherhood is associated with lower hourly pay, but the causes of this are not well understood. Mothers may earn less than other women because having children causes them to (1) lose job experience, (2) be less productive at work, (3) trade off higher wages for mother-friendly jobs, or (4) be discriminated by employers.\textsuperscript{165}

As such, Budig and England concluded a motherhood wage penalty does exist, with the gap measured at “approximately 7% per child among young American women.”\textsuperscript{166} The study also considered whether race affected child penalties, but restricted its analysis to non-Hispanic whites,

\begin{itemize}
\item \textsuperscript{158} Id.
\item \textsuperscript{159} Id. at 10. “Human capital” includes the education, training, and work experience that produces higher competency, efficiency, and wages. Id.
\item \textsuperscript{160} Id.
\item \textsuperscript{161} Id.
\item \textsuperscript{162} Id.
\item \textsuperscript{163} Id. (pointing out variables such as working full-time or part-time are entered separately into regression models to account for “other differences between mothers’ and non-mothers’ employment patterns that may have independent effects on earnings”).
\item \textsuperscript{164} Budig & England, supra note 32, at 204.
\item \textsuperscript{165} Id.
\item \textsuperscript{166} Id. at 219.
\end{itemize}
non-Hispanic blacks, and Latinas. Additionally, although African-American women and Latinas experience slightly smaller penalties after their third child, the motherhood wage penalty for minority groups generally remains the same.

Approximately one-third of the 7% per child penalty is attributed to job experience and seniority. As Budig and English explain, “employment breaks, part-time employment, and the accumulation of fewer years of experience and seniority” all diminish a mother’s future earnings. Additionally, a shocking “two-thirds of the child penalty still remains after controlling for elaborate measures of work experience,” and each subsequent child a woman has results in lesser earnings. In short, the rationalist economics approach gives three main explanations for the motherhood wage gap: (1) depreciated human capital; (2) reduced commitment; (3) and employment in a less productive job after considering the role of caring in the respective explanation.

The basic human capital model assumes a correlation between investment in education and expected wages. Thus, an individual’s break in employment results in “diminished human capital through forgone employment experience, lost skills through returning to a different occupation or job and direct depreciation of the education acquired at school and the skills, knowledge, and expertise accumulated at work.” Further, this model views caring for dependent children as failing to regenerate, enhance, or expand human capital.

Research suggests women prioritize caring for their children over work “even during working hours.” As such, the human capital model views women as “intrinsic mothers” rather than “intrinsic workers,” meaning women are more likely than men to face career breaks caused by childbirth and family care duties, are less dedicated to their careers, and refrain from investing in training that may enhance their occupational

167. Id.
168. See id. (finding the penalties for number of children did not differ by race).
169. Id.
170. Id.
171. See id. at 219–20 (exploring how adding other numerous job characteristics to the model only had a minimal effect in explaining the child penalty).
172. Grimshaw & Rubery, supra note 146, at 37 (containing the main three explanations for the motherhood wage penalty). “Caring” includes both personal care of dependent children and household work. Id. at 32.
173. Id. at 32.
174. Id.; see also Waldfogel, supra note 32 (stating there is research which indicates breaks in employment for women at childbirth cause long lasting effects on their pay).
175. Grimshaw & Rubery, supra note 146, at 35.
176. Id.
skills. As "intrinsic mothers" women may change their behavior, including increasing their rate of abandoning jobs, working shorter hours, and suppressing career ambitions. In fact, studies indicate that knowledge of potential discontinuity impedes women from obtaining more occupational training than men with similar education before they even become mothers.

Moreover, because many women expect to experience a break in their careers and rational employers make hiring and promotion decisions based on prospective "future returns to an individual's productivity," employers often overlook women. This "taste discrimination," leads women—even those without career interruptions—to suffer a participation disadvantage in the labor market. Due to this discrimination, women are unable to demonstrate a long-term dedication to employers even if they do not plan on disrupting their careers. In turn, employers calculate women's wages based on the expectation that women are going to put their careers on hold at some point.

The rationalist economics approach also emphasizes that, after having children, women tend to find employment requiring less productivity, less time restraint, or less intensive-effort. Furthermore, the argument goes, these women tend to forego superior job status because affordable childcare may be hard to acquire and caring for their children requires major work schedule flexibility. Indeed, a year of childcare expenses can add up to approximately a year of in-state tuition at most colleges in the United States. If the wage gap closed, "a mother working full time, year round would have enough money for approximately ... 25 more months of child care." Additionally, the high cost of childcare, which

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177. Id. at 33.
178. Id. at 35.
179. Id. at 33; Jacob Mincer & Solomon Polachek, Family Investments in Human Capital: Earnings of Women, 82 J. Pol. Econ. 76, 83 (1974).
180. Grimshaw & Rubery, supra note 146, at 36.
181. See id. (showing no specific advantages for women who do not take any career breaks); see also Budig & England, supra note 32, at 208 (describing how economists distinguish between taste discrimination and statistical discrimination).
182. Grimshaw & Rubery, supra note 146, at 36.
183. Id.
184. Id. (claiming one economics-based explanation for women selecting lower productivity jobs is children occupy a large portion of their time, thus women opt into less time consuming jobs).
185. Id.
186. NAT'L P'SHIP FOR WOMEN & FAMILIES, supra note 145, at 4.
187. Id.
amounts to 37% of a single mother’s monthly budget on average, impacts low-income women and single mothers the most.\textsuperscript{188}

Some employers assume that mothers preserve their energy at work for household work.\textsuperscript{189} Consequently, economists theorize, “employers are able to offer lower wages to certain groups of workers who are attracted to non-pecuniary benefits, such as . . . mother-friendly practices that . . . do not require weekend working, make demands for travel, offer part-time hours, or offer on-site childcare.”\textsuperscript{190} Employers may also pay mothers less because there is an overall deficiency in supportive workplace policies like paid leave or flexible scheduling options.\textsuperscript{191}

Budig and England’s study included a test to determine if mothers sacrifice higher wages in exchange for mother-friendly jobs, which are considered less demanding.\textsuperscript{192} Under that test, the estimated wage penalty of 5% per child decreases to 4%, but the variable most responsible for this change was whether the mother works full-time or part-time.\textsuperscript{193} Although working a part-time job may correlate with that job being mother-friendly, there is no definitive correlation between the types of jobs women work and whether they have children.\textsuperscript{194}

Other rationalist economics-based studies suggest depreciated experience, skillset, mother-friendly job attributes, or other measures of career commitment do not fully explain the motherhood wage penalty.\textsuperscript{195} Instead, the pay gap is best explained by the “unobserved differences in productivity between mothers and non-mothers.”\textsuperscript{196} Such a disparity in productivity is supported by studies suggesting a number of factors increase the motherhood wage penalty, including: (1) the probable relationship between the number of children dependent on their mothers; (2) the threat of fatigue and distraction among mothers in the labor market; and (3) the unlikeliness that employers discriminate based on the number of children.\textsuperscript{197} That said, there are some factors, such as employer sexual discrimination, the rationalist economics approach cannot measure, which the sociological approach aims to explain.\textsuperscript{198}

\textsuperscript{188} Id.
\textsuperscript{189} Grimshaw & Rubery, supra note 146, at 36.
\textsuperscript{190} Id.; see also Budig & England, supra note 32, at 207 (examining how “mother friendly” jobs provide lower earnings, but the features in these jobs make it easier to combine work with motherhood).
\textsuperscript{191} NAT’L P’SHP FOR WOMEN & FAMILIES, supra note 145, at 5.
\textsuperscript{192} Grimshaw & Rubery, supra note 146, at 36.
\textsuperscript{193} Id. at 36–37.
\textsuperscript{194} Budig & England, supra note 32, at 216.
\textsuperscript{195} Grimshaw & Rubery, supra note 146, at 37.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
B. *The Sociological Approach*

The sociological method suggests employers may rely on patriarchal stereotypes—such as assuming mothers spending all their time and energy caring for their families—when making promotion decisions. Moreover, employers may view mothers as either a high-risk investment predisposed to inconsistent employment participation, or with diminished time commitment, experience, and expertise. Such stereotypes inflict a price on motherhood beyond a mother’s control. In other words, women can only engage in “individual agency” in the context of a pre-determined set of limitations. As a result, these societal presumptions may be perceived as a “negative externality” of childbirth to mothers.

Some sociological reports continue to embrace the stereotype that mothers assume the primary caring role for their families despite the fact women are becoming more educated and active in the labor market. Unless radical policy reform or a significant change in employer behavior occurs, these societal expectations will continue to influence the labor market for women greatly. In fact, sociological experiments indicate an immediate decrease in how people perceive a woman’s competence once she reveals she is a mother. For example, participants in one experiment were noticeably less enthusiastic about hiring, promoting, or educating women with children. In another, participants regarded visibly pregnant mothers as “less committed and less dependable than non-pregnant female managers.” A third experiment observed the tension between cultural perceptions of motherhood and the “ideal worker,” a phenomenon known as the “perceived cultural tension” theory. Moreover, society’s expectations that mothers must always be available for

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199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.*
205. *See id.* (asserting the status quo is not likely to change without a drastic shift in employer behavior).
206. *See Amy J. Cuddy & Susan T. Fiske et al., When Professionals Become Mothers, Warmth Doesn’t Cut the Ice, 60 J. Soc. Issues 701, 711 (2004) (explaining the results of a study wherein women lost the appearance of competence, but gained the appearance of warmth once they revealed they were mothers).*
207. *Id.*
208. *Grimshaw & Rubery, supra note 146, at 38; see also Cuddy & Fiske et al., supra note 206, at 714 (observing pregnant women were rated as less competent than non-pregnant women).*
their families and that the ideal worker should be unburdened by outside demands exacerbate the tension between motherhood and employment.\textsuperscript{210}

Furthermore, some studies observed specific examples of employer discrimination against mothers in organizational settings.\textsuperscript{211} For instance, many employers utilize “twin career tracks . . . to fit high and low human resource investments with those employee groups expected to show high/low commitment.”\textsuperscript{212} Rather than being based on differences in the capabilities of mothers and non-mothers, this practice assumes mothers are unlikely to remain on a set career track.\textsuperscript{213} In addition, the implementation of demanding job requirements is meant to discourage mothers from applying for certain positions.\textsuperscript{214} These conditions not only force women onto a slower career track with reduced wages, they confirm employers’ perceptions about the “appropriateness of ‘mommy track’ careers.”\textsuperscript{215} Essentially, these “mommy tracks” reinforce the motherhood wage penalty and the underlying stereotypes that perpetuate it and set women up for failure.\textsuperscript{216}

According to a gender inequality study, employers even questioned childless women’s career commitment because they perceived such women as prospective mothers.\textsuperscript{217} What is more, these discriminatory views linger despite the fact that both mothers and fathers cut back on their work hours after having children.\textsuperscript{218} Indeed, the study found mothers who worked 8% less than fathers only made half of what the fathers earned, while fathers who worked 10% less than non-fathers made 22% more.\textsuperscript{219} This result is consistent with the “fatherhood bonus,” which indicates that men’s wages remain the same or increase after becoming a father.\textsuperscript{220}

Another sociological explanation for the motherhood wage penalty is that societal standards of women’s capabilities and bargaining power en-

\textsuperscript{210} Grishaw & Rubery, supra note 146, at 38; see also Corrill & Stephen Bernard et al., supra note 209 (noting how U.S. culture assumes a good mother will focus on her children and be a less committed worker).

\textsuperscript{211} Grishaw & Rubery, supra note 146, at 38.

\textsuperscript{212} Id.

\textsuperscript{213} Id.

\textsuperscript{214} Id.

\textsuperscript{215} Id.

\textsuperscript{216} See id. (arguing organizations’ anti-motherhood discrimination practices are set up to confirm employers’ stereotypes about mothers).

\textsuperscript{217} Id. (emphasis added).

\textsuperscript{218} Id.

\textsuperscript{219} Id. (emphasis added).

\textsuperscript{220} Budig, supra note 33.
courage undercutting and undervaluing a woman’s efforts. Consequen-
tly, mothers are pushed toward low-wage, high turnover, and part-
time employment. For example, one study suggests that mothers who
return to work after giving birth failed to utilize their prior training and
skills to their full potential, and found that many mothers working in sales
or customer service were over-qualified for those positions.

C. Consequences of the Motherhood Wage Penalty

According to the National Partnership for Women and Families, the
wage gap causes women who work full-time to lose $490 billion in the
aggregate every year. Because closing the gap would provide women
with the economic means to purchase basic necessities and because Lat-
inas are more likely to raise children as single mothers than white or
Asian-American women, they deserve special attention. Moreover,
Latina mothers working full-time struggle the most because the wage gap
disproportionately affects them. On average, the median annual pay
for Latina mothers is $30,000 compared to a non-Hispanic white father’s
median annual pay of $61,000.

Despite the fact that some suggest the wage gap results out of a wo-
man’s choice to start a family and, thus, to change their participation in
the labor market, others believe a broader framework is necessary to de-
termine the costs of the motherhood wage penalty. Such a framework
requires considering “constraints on [a woman’s] choice; the long-term
effect of the gap on lifetime income and poverty; the impact of the costs
on children and the role of children as a public good; and evidence that
the gap represents more than a productivity loss.”

The restraint on a woman’s choice arises out of gender role stereotypes
and a lack of outside financial support, which prevents fathers from help-
ing with childrearing and household duties and causes mothers to work
longer hours. With the accompanying employment discrimination, wo-

221. Grimshaw & Rubery, supra note 146, at 39.
222. Id.
223. Id. at 40.
224. NAT’L P’SHIP FOR WOMEN & FAMILIES, supra note 145, at 2.
225. See id. at 4 (claiming nearly 85% of women will become mothers at some point in
their working lives).
226. Id. at 6.
227. See id. (emphasizing how Latinas make “49 cents to every dollar” earned by non-
Hispanic white men).
228. Id. at 7.
230. Id. at 30-31.
231. Id. at 31.
men with children are effectively precluded from pursuing a profitable and satisfying career despite their superior education, efficiency, talent, or skill.\textsuperscript{232}

Moreover, these limitations may result in "long-lasting and spillover effects."\textsuperscript{233} For most women, pursuing motherhood is likely to generate serious long-term costs because of the possibility that mothers will either be unable to compensate for pay disparity or find themselves obligated to pursue careers with limited growth opportunities.\textsuperscript{234} These costs do not include lost pay due to unemployment or fewer working hours.\textsuperscript{235}

Evidence also suggests that budget constraints impose additional pressure on single mothers, which may further result in a mother's inability to find a more rewarding job.\textsuperscript{236} Accordingly, these circumstances lead to suffering for both the mother and her children—the former because she is expected to cover all the costs, and the latter because they may not receive necessities.\textsuperscript{237} Indeed, we must recognize the existence of the shared dependency between mothers and their children and how it affects society.\textsuperscript{238} In the words of anthropologist Eleanor Leacock: "In some ways it is the ultimate alienation of our society that the ability to give birth has been transformed into a liability."\textsuperscript{239}

Lastly, studies acknowledge the motherhood wage penalty imposes long-term costs on women even though these costs do not result from a woman's anticipated loss of efficiency, productivity, or commitment to work.\textsuperscript{240} These results indicate discriminatory employment practices and wages against mothers are an urgent and inescapable issue in today's society and suggest that we consider "the spillover and lifetime costs [of the motherhood wage penalty] and the disproportionate size of these costs[.]"\textsuperscript{241}

\textsuperscript{232} Id.
\textsuperscript{233} Id.
\textsuperscript{234} Id.
\textsuperscript{235} Id.
\textsuperscript{236} Id.
\textsuperscript{237} Id.
\textsuperscript{239} Id.
\textsuperscript{240} Grimshaw & Rubery, \textit{supra} note 146, at 31.
\textsuperscript{241} See id. (stressing multiple studies have demonstrated the prevalence of discriminatory wage and employment practices against mothers).
V. THE INTERSECTION OF H.B. 2 AND THE MOTHERHOOD WAGE PENALTY

Due to the disproportionate impact reproductive oppression and the motherhood wage penalty have on already-marginalized communities along the Texas–Mexico border, the resulting hardships on teenage Latinas, undocumented Latinas, and Latina mothers require closer examination. Using an intersectional framework to discuss how the subjugation of these groups is interrelated reveals the consequences of their interactions with private institutions and state police powers.\textsuperscript{242} Further, understanding the manner in which abortion regulations and motherhood wage penalties relate to each other also shows how Latinas in Texas are unfairly disadvantaged.\textsuperscript{243}

Most analyses of abortion regulations fail to address the direct and immediate effect such regulations have on women.\textsuperscript{244} To be sure, the government uses abortion laws as a birth control mechanism.\textsuperscript{245} In the past, marginalized women—especially women of color—have experienced “forced sterilizations, lack of access to culturally sensitive birthing care, family caps on welfare benefits, and the criminalization of miscarriages[.]”\textsuperscript{246} Restrictive abortion regulations have also subjected women to the inhumane and humiliating practice of “back-alley” abortions, which threaten their lives and fertility.\textsuperscript{247} Given the possible harsh consequences of restrictive abortion regulations, ignoring marginalized Latinas’ hardships and reproductive health needs renders them particularly vulnerable to further gender and racial subjugation on behalf of the state.\textsuperscript{248}

As previously discussed, the forced shutdown of most of Texas’s reproductive health clinics was particularly devastating for Latinas in south and west Texas—especially in south Texas, which was already lacking in medical care.\textsuperscript{249} For example, divesting in family planning has been especially burdensome on Latinas in general and on undocumented women in par-

\textsuperscript{243} See, e.g., id. (utilizing an intersectional approach to discuss the relationship between surveillance and punishment and how such a relationship affects minority women).
\textsuperscript{244} Gomez, supra note 38, at 87–88.
\textsuperscript{245} GAY, supra note 39, at 268.
\textsuperscript{246} Gomez, supra note 38, at 86.
\textsuperscript{247} See GAY, supra note 39, at 274 (stating women were performing back alley abortions in the early 1900s).
\textsuperscript{248} Gomez, supra note 38, at 88 (arguing Latinas are especially exposed to suffering when it is combined with prevalent societal shame associated, reproductive health needs, and the cultural expectations of Latinas in the labor market).
\textsuperscript{249} Id. at 100.
ticular because they are more unlikely to have health insurance or other access to reproductive healthcare options.\textsuperscript{250} In fact, out of the 25\% of Texans who lack health insurance, Latinas are two times more likely than whites to lack health insurance.\textsuperscript{251} Within this group of uninsured Latinas, nearly half of those who are of fertile age do not have medical insurance.\textsuperscript{252}

Furthermore, undocumented women are unlikely to have government jobs, which offer health insurance benefits, because federal law requires state-issued government identification or a social security number for government employment.\textsuperscript{253} The federal government imposes burdensome requirements on undocumented immigrants to prevent them from acquiring subsidized healthcare.\textsuperscript{254} If Latina mothers do not have access to abortion care, they will continue to suffer the motherhood wage penalty.\textsuperscript{255} For the women struggling to make ends meet, giving birth pushes them further into poverty.\textsuperscript{256} Latinas struggling to find a well-paying job with benefits are particularly vulnerable to these repercussions because the costs of child rearing are borne disproportionately by mothers.\textsuperscript{257} When faced with choices, women often forego healthcare and instead choose to enter the workforce to provide for their families.\textsuperscript{258} Latinas, therefore, face higher health risks that may result in “unwanted preg-

\textsuperscript{250} Id.

\textsuperscript{251} Id. at 105; see also Risha Foulkes & Raquel Donoso et al., Opportunities for Action: Addressing Latina Sexual and Reproductive Health 39 (2005), https://www.guttmacher.org/pubs/journals/3703905.pdf (stating low-income Latinas are less likely to have health insurance than low-income whites or blacks)

\textsuperscript{252} Gomez, supra note 38, at 105.


\textsuperscript{254} Gomez, supra note 38, at 105.

\textsuperscript{255} Budig & England, supra note 32, at 220.

\textsuperscript{256} See Grimshaw & Rubery, supra note 146, at 31 (stating motherhood leads to long term lifetime costs); see also Kristin Row-Finkbeiner, The Motherhood Penalty, POLITICO MAG. (Apr. 30, 2014), http://www.politico.com/magazine/story/2014/04/the-motherhood-penalty-106173_Page2.html [https://perma.cc/4A5D-EFZW] (“[H]aving a baby is a leading cause of ‘poverty spells.’”).

\textsuperscript{257} Budig & England, supra note 32, at 204.

\textsuperscript{258} Gomez, supra note 38, at 105.
nancy [or] maternal death." Therefore, tight budgets force women to sacrifice medical care without having any meaningful choice.

The effects of H.B. 2 on teenage Latinas underscores pre-existing stigma about sexuality in the Latino culture, which is further perpetuated by the racist misconception that Latinas are sexually reckless. Stereotypical perceptions of Latinas as "irresponsible for their sexuality and family structures" inhibit access to reproductive healthcare. For example, former Arkansas Governor Mike Huckabee insinuated that Democrats want to provide access to reproductive healthcare to women because women "cannot control their libido or reproductive system"—a claim Planned Parenthood argued evinced his lack of understanding on the issue. Governor Huckabee also implied that women are "victims of their gender" if they believe Democrats' promises to expand reproductive healthcare. Additionally, in an effort to alleviate concerns about Pennsylvania's harsh mandatory pre-abortion ultrasound law, Governor Tom Corbett stated that women should "simply close their eyes during the ultrasound." Last, but certainly not least, in his support for anti-abortion legislation Georgia State Representative Terry England proposed, "women should carry stillborn fetuses to term because cows and pigs do it, too." Unsurprisingly, although the national debate surrounding abortion, birth control, and reproductive freedom permeates the media, men often orchestrate and lead these debates.

Latinas not only face the dichotomy of virginal sanctity and sexual promiscuity, they also face that of shame and irresponsibility. Under federal immigration law, for example, some Latinas may be regarded as "public charges," thereby perpetuating the misconception that Latinas depend heavily on social services and freeload off American taxpayers. In sum, reproductive oppression, coupled with the negative consequences of being an undocumented woman and gender discrimination in the labor

259. Id. at 106.
260. Id.
261. Hyams, supra note 94, at 635.
262. Gomez, supra note 38, at 106.
264. Id.
265. GAY, supra note 39, at 272.
266. Id.
267. Id. at 267.
268. Gomez, supra note 38, at 106.
269. Id.
market, reinforces societal beliefs that characterize Latinas as “irresponsible, expensive victims of their own irrepressible sexuality.”

The Texas government has been explicit about its goal to end abortion by overregulating reproductive health clinics. After all, the legislature incessantly interferes with pregnancy and a woman’s right to terminate a pregnancy and make her own healthcare choices. In effect, the state deprives women from accessing numerous necessary healthcare procedures and violates their constitutional rights. Although women of means may not face the same barriers toward obtaining abortion or healthcare services, less fortunate women are forced to suffer the consequences of the Texas legislature’s attempts to curtail their Constitutional right to seek a pre-viability abortion. As Supreme Court Justice Ruth Bader Ginsburg has noted, the general concept of “choice” for poor women is futile or nonexistent.

VI. The Equal Dignity Model

The intersecting systems of racial and gender oppression are comfortably situated in contemporary society because courts, advocates, the legislature, and the media neglect the experiences of women who are subjected to such oppression. Instead, the focus should be on how oppressed women’s circumstances affect the stigma imposed on them and on providing them much-needed access to adequate and necessary healthcare. Moreover, courts must recognize how lacking adequate healthcare makes women vulnerable and subjects them to structural inferiority.

One approach towards reproductive justice is utilizing an “equal dignity” jurisprudential model. As one author puts it, such a model is exemplified in the Supreme Court’s Obergefell v. Hodges decision, which “acknowledged . . . ‘women have their own equal dignity’ and reinforced the important Constitutional right to liberties that ‘extend to certain personal choices central to individual dignity and autonomy’ [.]”

270. Id. at 107.
271. See id. at 116 (observing how anti-abortion laws and policies have resulted in outcomes far beyond simply lack of access to abortions).
272. GAY, supra note 39, at 270.
273. Gomez, supra note 38, at 103.
274. Id.
275. Lachman, supra note 1.
276. Gomez, supra note 38, at 117.
278. Id. at 2602, 2606; Gomez, supra note 38, at 117.
Restrictions on reproductive freedom impose financial strains, instability, pain, stigma and humiliation on oppressed women. In some ways, the legal system provides criminals with more human rights than it does non-offending women. Similar to denying the liberty interest in marriage, anti-abortion legislation provokes questions of autonomy, and those regulations prevent women from obtaining necessary healthcare, being productive members of society, and participating in the labor market. When the state imposes and reinforces oppression on marginalized women, they demean the equal dignity and freedom that women have ardently fought for and that the judiciary has acknowledged. Freedom does not exist in any situation where control over one's body is legislated.

VII. Conclusion

If the Supreme Court had not struck down H.B. 2's ASC and admitting privileges requirements, which forced the closure of a majority of Texas's abortion clinics, Latina communities throughout Texas would remain socially, economically, and geographically handicapped. Imposing such unnecessary restraints on the overwhelming majority of health care clinics in Texas would also serve to stigmatize Latinas in Texas. Further, standing idly by as states attempt to pass similarly oppressive legislation exacerbates the harmful repercussions of gender and racial discrimination nationwide. If state governments cannot stop women from obtaining abortions, they will likely promulgate mechanisms to punish these women.

Only by dismantling the heavily sexist and discriminatory laws regulating the lives and bodies of marginalized Latinas can we achieve justice. So long as reproductive freedom remains negotiable, humanity will suffer through endless cycles of racism and inequality. In addition, the existence of the gender and motherhood wage penalties will continue to force mothers, children and families into a lifetime of poverty. To eliminate the stigma of abortion, we must shift the conversation from discrimina-

279. Gomez, supra note 38, at 117.
280. See GAY, supra note 39, at 271 (underlining how the Eight Amendment provides more rights to criminals than it does for women).
281. Gomez, supra note 38, at 118.
282. Id.
283. GAY, supra note 39, at 274.
284. See Grimshaw & Rubery, supra note 146, at 31 (examining how budget constraints for mothers may lead to poverty as a result, in part, due to barriers to entry into well-paying jobs).
tory designations to humanized perceptions and an understanding of the absence of "choice" experienced by women, who unfortunately find themselves at the intersection of such subjugating mechanisms.