

## *Dobbs Online*

### *Digital Rights as Abortion Rights*

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Even when legal, safe abortions have not been easy to obtain. Poverty, distance, youth, and domestic violence have all posed barriers.<sup>1</sup> But even so, the guarantee of a constitutionally protected right to legal abortion provided a bulwark against outright prohibition. That is why the Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization* was a "jolt to the legal system."<sup>2</sup> The Court not only upheld a Mississippi state ban on abortions after fifteen weeks, it used the *Dobbs* case as an opportunity to overturn the nearly fifty-year-old constitutional right to legal abortion in the United States.

*Dobbs* has been called a turning back on the clock for abortion rights, women's rights, and pregnant people's rights. But that is not quite accurate. The Court has decided *Dobbs* at a time when unprecedented amounts of digital data about us now exist thanks to an enormous surveillance infrastructure. These digital trails we all leave everywhere are ripe for criminal investigation. And those trails may also be useful now that abortion can be a crime. The Supreme Court's decision in *Dobbs* doesn't just spell the loss of control over women's bodies. *Dobbs* reminds us of how little control we have over our digital selves, and emphasizes how digital rights are also reproductive rights.

The first place to begin is *Dobbs* itself. In 1973, the Supreme Court first recognized a woman's fundamental right to a legal abortion, grounded in the Fourteenth Amendment's "concept of personal liberty," and part of a family of rights including marriage, procreation, birth control, family relationships, and childrearing.<sup>3</sup> Despite numerous calls to overturn that decision, the Court reaffirmed the *Roe* right in its 1992 decision in *Planned Parenthood v. Casey*.<sup>4</sup> The ability to choose abortion was linked to those matters "central to personal dignity and autonomy,"

and thus “central to the liberty protected by the Fourteenth Amendment.”<sup>5</sup> After *Roe* and *Casey*, states could not ban abortion outright, although they could impose bans after the point of fetal viability, so long as there were exceptions to preserve the pregnant woman’s life or health.<sup>6</sup>

*Dobbs* upended this framework. The *Dobbs* court overruled both *Roe* and *Casey*, with the observation that the “Constitution makes no reference to abortion.”<sup>7</sup> Although the *Dobbs* majority acknowledged that the liberty referred to in the Fourteenth Amendment’s due process clause protected some fundamental but unexpressed rights, abortion was, in its view, different. According to the Court, abortion is not “deeply rooted in the Nation’s history and tradition.”<sup>8</sup> Abortion is also distinct from marriage, sexual relationships, and birth control because it “uniquely involves what *Roe* and *Casey* termed ‘potential life.’”<sup>9</sup>

The *Dobbs* majority claimed to be returning the issue of abortion to “the people and their elected representatives.”<sup>10</sup> Put differently, after *Dobbs*, states are free to criminalize abortion—completely. Some states had passed “trigger laws” intended to ban or severely restrict abortion if the Court overturned *Roe* and *Casey*. Other states with abortion bans that existed before the Court decided *Roe* in 1973 may now enforce those laws.<sup>11</sup> Other states may soon see laws passed that similarly restrict or ban abortion outright. Some states will continue to permit access to legal abortion,<sup>12</sup> but in at least half of the states, legal abortion will be practicably unavailable.<sup>13</sup>

The post-*Roe* world has begun to take shape, but one thing is clear. When abortion is a crime, either by criminalizing the provision of abortion or by targeting pregnant people themselves, the ordinary mechanisms of criminal justice apply. That includes today’s digital surveillance infrastructure.

We leave streams of sensitive personal digital data everywhere in our browser searches, online chats and emails, browser searches, and even our physical movements captured by surveillance technology. This surveillance economy often operates without our practical knowledge, our meaningful consent, or robust legal protections. All of that data supplies the enormous and vastly underregulated marketplace where data brokers can buy information on millions of American.<sup>14</sup> The initial motivation to create this digital surveillance infrastructure may have been to sell us ads, but today that surveillance infrastructure powers authoritarian governments abroad.<sup>15</sup> That surveillance economy also aids ordinary criminal investigations at home.

While most pre-*Roe* bans targeted those who provided abortion services, after *Dobbs* nothing bars the passage of state laws targeting those who seek abortions themselves.<sup>16</sup> States could create new crimes that specifically allow the criminal punishment of abortion patients.<sup>17</sup> Others might classify abortion as a traditional criminal homicide.<sup>18</sup> The scope of these laws may extend beyond conventional abortion. A state’s declaration that legal personhood begins at fertilization might criminalize the use of contraceptive IUDs and emergency contraception.<sup>19</sup>

Such laws may even lead to bans on IVF technologies to help couples become parents at all.<sup>20</sup>

And when abortion is a crime, the massive amounts of digital data we produce every day become potential criminal evidence. Period tracking apps, which can document a sudden change in your menstrual cycle, are ready-made sources of potentially incriminating information.<sup>21</sup> But a focus on specialized fertility or health apps overlooks the many other forms of digital data that police and prosecutors can turn to for evidence. Online searches for medication abortions, geolocation data (from cell phone towers, apps, or license plate readers) tracing movements to suspected abortion providers, online conversations, and even the use of DNA databases to identify fetal remains may support criminal prosecutions.<sup>22</sup>

Ordinary criminal investigations already take advantage of the massive amount of data that “shows the whole pattern of life.”<sup>23</sup> Consider some of the tools. A reverse location or “geofence” warrant tries to identify every person who has been within a certain geographic area at a time and place. This technique takes advantage of the nearly constant location data collected from Google users and the company’s storage of that information. Investigators may eventually narrow down a pool of suspects, but only after identifying hundreds, or perhaps thousands of innocent people who are unlucky targets of ubiquitous data collection practices. If police use these tools to investigate the theft of \$650 worth of stolen tires, they will surely apply them to some abortion investigations as well.<sup>24</sup> In the first half of 2021 alone, Google reported that it received more than forty-five thousand subpoenas and search warrants for subscriber information by the government.<sup>25</sup>

In other cases, the government does not even face the hurdle of a seeking a subpoena or search warrant. The location data marketplace is large, lucrative, and open to both private and government customers. Federal agencies have purchased access to cell phone location data for use in immigration enforcement.<sup>26</sup> In the murky world of data brokers, information from seemingly unrelated cell phone apps for weather or recreation can have their users’ location sold, repackaged, and resold in data products, including patterns of travel to and from abortion services providers.<sup>27</sup> In 2022, one journalist bought a week’s worth of location data of those traveling to more than six hundred Planned Parenthood offices for just over \$160.<sup>28</sup> The company providing this data claims it can identify “how often people visit, how long they stay, where they came from, where else they go, and more.”<sup>29</sup>

Even internet searches can become incriminating evidence. Federal investigators successfully identified the person responsible for a 2019 arson through the use of a “keyword warrant”: asking Google for information on any “users who had searched the address of the residence close in time to the arson.”<sup>30</sup> If these searches supported a prosecution, so too could searches for home abortion methods, underground providers, and appeals for help in states where abortion is a crime. Text messages, emails, payment data are part of the many streams of data available, too.

We can predict that this information will drive prosecutions because some prosecutors have already aggressively investigated women who have experienced miscarriages or stillbirths as potential criminal homicides or feticides.<sup>31</sup> The most infamous pre-*Dobbs* case involved the prosecution of Purvi Patel, whom hospital employees suspected of having induced her own abortion although she claimed that she had had a miscarriage.<sup>32</sup> Prosecutors charged Patel under Indiana's laws criminalizing feticide as well as child neglect for attempting to have a medication abortion. Key evidence included text messages in which Patel told a friend about ordering abortion medication from a Hong Kong pharmacy, her browsing history—including a website about abortion—and her emails from an online pharmacy where abortion medications could be ordered without a prescription.<sup>33</sup>

The digital net becomes wider still when we consider criminal law's traditional doctrines. If abortion is a crime, then attempts, aid, and agreements to aid all become part of the prosecutor's toolbox. The crimes of attempt and conspiracy can be completed even if the contemplated act never takes place. If the criminal law can punish the half-hearted thief or a bank robbery lookout with a negligible role, then it can also punish the pregnant woman who buys abortion medication but does not take it, or the person who texts that they will drive a pregnant woman to an underground abortion provider.

The initial advice after *Dobbs* to people in states where abortion will be banned or practically unavailable has taken the form of digital self-defense. Privacy advocates have urged that anyone who might ever seek an abortion to delete period tracking apps, erase browsing and location history, forgo health tracking devices, "properly" erase files, and use encrypted channels for communication.<sup>34</sup> Other varieties of advice include using a "burner" phone (one not connected to an ordinary cell phone account), turning to virtual private networks, or even leaving phones and other digital devices at home.<sup>35</sup> Others might advise abortion seekers to engage in anti-surveillance techniques, such as obscuring facial features to thwart facial recognition programs<sup>36</sup> or, like pro-democracy protestors in Hong Kong, vandalizing the technologies that would collect information in the first place.<sup>37</sup>

But these solutions aren't practical ones at all when we consider the realities of abortion in the United States. The typical abortion patient is in her late twenties, is unmarried, and is poor.<sup>38</sup> Abortion access was a hurdle even before *Dobbs*. In states where there were few, or just one, abortion services provider,<sup>39</sup> traveling for an abortion meant finding childcare, taking time off work, and the costs associated with travel: all of which are high hurdles and will be higher still for women who can, in theory, travel to other states where abortion remains legal, but whose biggest hurdle is poverty.<sup>40</sup>

Asking low-income people to engage in digital self-help to avoid abortion prosecutions ignores the "matrix of vulnerabilities" they face.<sup>41</sup> While we are all subject

to the pervasive forms of private and public surveillance around us, poor people have always faced particularly intense forms of surveillance.<sup>42</sup> The acceptance of government benefits often requires accepting close scrutiny of one's personal habits. Receiving food stamps leads to monitoring of spending habits.<sup>43</sup> Signing up for state sponsored prenatal care may require divulging everything from the identities of partners, experiences with substance use or abuse, mental health problems, and personal finances.<sup>44</sup> A call to a hotline about a suspected case of neglect or abuse may lead to a predictive risk assessment that includes factors heavily correlated to poverty like sustained reliance on government benefits and exposes a parent to a potential investigation.<sup>45</sup>

Poor people not only experience greater surveillance over their lives, they also face greater hurdles when it comes to protecting their privacy. Here too we can point to the byzantine corporate privacy policies and the lack of a general data protection scheme faced by all Americans, but poverty exacerbates these problems.<sup>46</sup> Being poor often means buying a (cheaper) phone with less privacy protective features,<sup>47</sup> having less "digital literacy" to identify and take appropriate privacy protective steps,<sup>48</sup> and lacking the means to pay for apps or other services that might afford greater privacy.<sup>49</sup>

Greater surveillance and fewer privacy protections means that poor women—the typical abortion patients—are ill-served by a tool kit of digital self-help. Such advice proceeds as if individual digital responsibility and risk assumption were the primary or even sufficient policy choice for limitless intrusions upon our privacy and the ability to control our information. In states where abortion providers, patients, and their families and friends are potential suspects, digital evidence will be easy to find. Law enforcement officials will be able to rely on the lack of individual control and choice over personal information embedded into the structure of digital life itself.

Structural solutions are the answer to structural problems. For reproductive rights, the initial responses may come from the private sector. Platforms can delete sensitive location data connecting users to abortion service providers and other now suspicious places.<sup>50</sup> Or they can stop from collecting the information in the first place, from everyone.<sup>51</sup> A federal administration supportive of reproductive rights can decline to assist state and local law enforcement agencies in abortion related prosecution, such as providing technology and personnel to analyze digital evidence.<sup>52</sup> Congress could shore up digital protections that have been flagged for years, including the government's current ability to buy digital information in the marketplace like any other customer. Further still, Congress could provide a statutory right to abortion that would apply nationwide. The Supreme Court decided that the structure of the Constitution would not protect reproductive rights. Pregnant people must now find a protective framework elsewhere.

## NOTES

1. See, e.g., Lindsay E. Clark, et al., *Reproductive Coercion and Co-occurring Partner Violence in Obstetrics and Gynecology Patients*, 210 AM. J. OBSTET. GYNECOL. 42 (2014)(reporting prevalence of “male behavior to control contraception and pregnancy outcomes of female partners” including “birth control sabotage and forcing unwanted pregnancy”); Jonathan M. Bearak, et al., *Disparities and Change over Time in Distance Women Would Need to Travel to Have an Abortion in the USA: A spatial Analysis*, 2 THE LANCET 493 (2017) (reporting results of 2017 study showing that some women in South Dakota traveled more than three hundred miles to obtain a legal abortion).

2. 142 S.Ct. 2288, 2316 (2022)(Roberts, C.J., concurring in judgment)(“The Court’s decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases”).

3. 410 U.S. 113, 153 (1973).

4. 505 U.S. 833 (1992).

5. 505 U.S. at 852.

6. 505 U.S. at 879 (“We also reaffirm *Roe*’s holding that ‘subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother’”).

7. 142 S.Ct. at 2242.

8. *Id.*, at 2253.

9. *Id.*, at 2280.

10. *Id.*, at 2259.

11. See, e.g., Ken Paxton, Updated Advisory on Texas Law Upon Reversal of *Roe v. Wade* (July 27, 2022), [https://texasattorneygeneral.gov/sites/default/files/images/executive-management/Updated%20Post-Roe%20Advisory%20Upon%20Issuance%20of%20Dobbs%20Judgment%20\(07.27.2022\).pdf](https://texasattorneygeneral.gov/sites/default/files/images/executive-management/Updated%20Post-Roe%20Advisory%20Upon%20Issuance%20of%20Dobbs%20Judgment%20(07.27.2022).pdf) (observing “local prosecutors may choose to immediately pursue criminal prosecutions based on violations of Texas abortion prohibitions predating *Roe* that were never repealed by the Texas Legislature”); cf. Karen Brooks Harper, *Abortion-Rights Groups Sue Texas AG, Prosecutors to Protect Ability to Help Pregnant Texans Seek Legal Abortions in Other States*, TEXAS TRIBUNE (Aug. 23, 2022), <https://www.texastribune.org/2022/08/23/abortion-funds-lawsuit-texas-travel/>.

12. See, e.g., Officer of Governor Gavin Newsom, *West Coast States Launch New Multi-State Commitment to Reproductive Freedom, Standing United on Protecting Abortion Access* (June 24, 2022), <https://www.gov.ca.gov/2022/06/24/west-coast-states-launch-new-multi-state-commitment-to-reproductive-freedom-standing-united-on-protecting-abortion-access/> (publishing commitment of governors in California, Oregon, and Washington states to “defend access to reproductive healthcare, including abortion and contraceptives”).

13. Amy Schoenfeld Walker & Allison McCann, *How State Abortion Laws are Changing*, NEW YORK TIMES (June 24, 2022), <https://www.nytimes.com/2022/06/20/us/how-state-abortion-laws-are-changing.html> (observing that “about half of states are expected to ban or further restrict access to abortion following the Supreme Court’s decision to overturn *Roe v. Wade*”).

14. See, e.g., Stuart A. Thompson & Charlie Warzel, *Twelve Million Phones, One Dataset, Zero Privacy*, NEW YORK TIMES (Dec. 19, 2019), <https://www.nytimes.com/interactive/2019/12/19/opinion/location-tracking-cell-phone.html> (“In the United States, as in most of the world, no federal law limits what has become a vast and lucrative trade in human tracking”).

15. See, e.g., Paul Mozur & Aaron Krolik, *A Surveillance Net Blanket’s China’s Cities, Giving Police Vast Powers*, NEW YORK TIMES Dec. 17, 2019, <https://www.nytimes.com/2019/12/17/technology/china-surveillance.html>

16. Safia Samee Ali, *Prosecutors in States Where Abortion Is Now Illegal Could Begin Building Criminal Cases against Providers*, NBC News, June 24, 2022, <https://www.nbcnews.com/news/us-news/prosecutors-states-abortion-now-illegal-begin-prosecute-abortion-provi-rcna35268> (noting that “a path has been cleared for at least 13 states -those with ‘trigger laws’-to begin penalizing and prosecuting people who violate abortion bans”).

17. Even before *Dobbs*, there have been several cases of prosecutions of pregnant women for violating state laws against self-induced abortions, harm to fetuses, and expansive interpretations of other criminal laws. See, e.g. *If/When/How, Roe’s Unfinished Promise: Decriminalizing Abortion Once and For All* (Nov. 28, 2017) (noting that even as of 2017 that there were “7 states with laws directly criminalizing self-induced abortions, 10 states with laws criminalizing harm to fetuses that lack adequate exemptions for the pregnant person, and 14 states with criminal abortion laws that have been and could be misapplied to people who self-induce”).

18. Veronica Stracqualursi, et al., *Louisiana Lawmakers Pull Back from Classifying Abortion as Homicide*, CNN (May 13, 2022), <https://www.cnn.com/2022/05/13/politics/louisiana-abortion-bill-criminalize-women/index.html> (describing Louisiana House Bill 813 which allowed for “women to be criminally charged for terminating their pregnancies”).

19. Greg Hilburn, *Louisiana Wants to Make Abortion a Crime of Murder. Supporters Even Say It’s Unconstitutional* (May 5, 2022), <https://www.usatoday.com/story/news/nation/2022/05/05/louisiana-abortion-bill-would-make-crime-murder/9656102002/> (“Opponents argued the bill would not only put the mother and doctor at risk of murder prosecution, but criminalize in vitro fertilization and perhaps some forms of birth control”).

20. See, e.g., Jan Hoffman, *Infertility Patients and Doctors Fear Abortion Bans Could Restrict I.V.F.*, NEW YORK TIMES (July 5, 2022), <https://www.nytimes.com/2022/07/05/health/ivf-embryos-roe-dobbs.html> (observing that “many fear that regulations on unwanted pregnancies could, unintentionally or not, also control people who long for a pregnancy”).

21. Hannah Norman and Victoria Knight, *Should You Worry about Data from Your Period-Tracking App Being Used Against You?*, KAISER HEALTH NEWS (May 13, 2022), <https://khn.org/news/article/period-tracking-apps-data-privacy/>.

22. See, e.g., Russell Brandom, *Police Are Using DNA Testing to Track Down a Fetus’s Mother*, THE VERGE (May 10, 2018), <https://www.theverge.com/2018/5/10/17340666/dna-testing-georgia-fetus-codis-abortion-genetics-investigation> (reporting Georgia case of discovered fetal remains sent for testing to compare to state DNA database and to identify woman involved).

23. Jennifer Valentino-DeVries, *Tracking Phones, Google Is a Dragnet for the Police*, NEW YORK TIMES (Apr. 13, 2019), <https://www.nytimes.com/interactive/2019/04/13/us/google-location-tracking-police.html> (quoting deputy police chief Mark Bruley of Brooklyn Park, Minn.).

24. Tony Webster, *How Did the Police Know You Were Near a Crime Scene? Google Told Them*, MPR NEWS (Feb. 7, 2019), <https://www.mprnews.org/story/2019/02/07/google-location-police-search-warrants>.

25. Google, *Global Requests for User Information* (Jan. 2021–June 2021), [https://transparencyreport.google.com/user-data/overview?user\\_requests\\_report\\_period=series:requests,accounts;authority:US;time:2021H1&lu=user\\_requests\\_report\\_period](https://transparencyreport.google.com/user-data/overview?user_requests_report_period=series:requests,accounts;authority:US;time:2021H1&lu=user_requests_report_period).

26. Byron Tau and Michelle Hackman, *Federal Agencies Use Cellphone Location Data for Immigration Enforcement*, WALL STREET JOURNAL (Feb. 7, 2020), <https://www.wsj.com/articles/federal-agencies-use-cellphone-location-data-for-immigration-enforcement-11581078600> (reporting that “the Trump administration has bought access to a commercial database that maps the movements of millions of cellphones in American and is using it for immigration and border enforcement”).

27. Joseph Cox, *Data Broker Is Selling Location Data of People Who Visit Abortion Clinics*, VICE (May 3, 2022), <https://www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood>



("Often app developers install code, called software development kits (SDKs), into their apps that sends users' location data to companies in exchange for the developer receiving payment. Sometimes app users don't know that their phone—be that via a prayer app, or a weather app—is collecting and sending location data to third parties").

28. *Id.*

29. *Id.*

30. Isobel Asher Hamilton, *Documents from an Arson Attack Linked to the R Kelly Investigation Show How Google Hands "Keyword" Search Data to Police*, BUSINESS INSIDER (Oct. 9, 2020), <https://www.businessinsider.com/google-can-give-police-keyword-data-from-search-histories-2020-10>; see also Nina Pullano, *R. Kelly Associate Get 8 Years for Setting Fire Outside a Victim's Home*, COURTHOUSE NEWS (June 29, 2022), <https://www.courthousenews.com/r-kelly-associate-gets-8-years-for-setting-fire-outside-a-victims-home/> (noting that in defendant's search history, federal agents also "found that he Googled how fertilizer and diesel fuel bombs work, where to buy a custom machine gun, and laws related to federal witness intimidation").

31. Cat Zakrewski, Pranshu Verma & Claire Parker, *Texts, Web Searches about Abortion have Been Used to Prosecute Women*, WASHINGTON POST (July 3, 2022), <https://www.washingtonpost.com/technology/2022/07/03/abortion-data-privacy-prosecution/>.

32. See, e.g., Mary Ziegler, *Some Form of Punishment: Penalizing Women for Abortion*, 26 WILLIAM & MARY BILL OF RIGHTS J. 735, 774–75 (2018) (recounting details of Patel prosecution).

33. Emily Bazelon, *Purvi Patel Could Be Just the Beginning*, NEW YORK TIMES MAGAZINE (Apr. 1, 2016), <https://www.nytimes.com/2015/04/01/magazine/purvi-patel-could-be-just-the-beginning.html>. Patel's conviction was later overturned on appeal. Associated Press, *Purvi Patel Is released after Feticide Conviction Overturned*, INDY STAR (Sept. 2, 2016), <https://www.indystar.com/story/news/crime/2016/09/01/purvi-patel-releases-feticide-conviction-overturned/89707582/>.

34. See, e.g., Heather Kelly, Tatum Hunter & Danielle Abril, *Seeking an Abortion? Here's How to Avoid Leaving a Digital Trail*, WASHINGTON POST (June 26, 2022), <https://www.washingtonpost.com/technology/2022/06/26/abortion-online-privacy/> (providing advice on encrypting messaging, secure internet browsing, etc.).

35. See, e.g., Daly Barnett, *Security and Privacy Tips for People Seeking An Abortion*, Electronic Frontier Foundation (June 23, 2022), <https://www.eff.org/deeplinks/2022/06/security-and-privacy-tips-people-seeking-abortion>; see also Sarah Emerson & Emily Baker-White, *In a Post-Roe America, Googling "Abortion" Could Put You at Risk. Here's How to Protect Yourself*, BUZZFEEDNEWS (May 4, 2022), <https://www.buzzfeednews.com/article/sarahemerson/abortion-digital-privacy-guide> (suggesting the use of professional deletion services).

36. See, e.g., Radhamely De Leon, *Researchers Defeated Advanced Facial Recognition Tech Using Makeup*, VICE (Sept. 17, 2021), <https://www.vice.com/en/article/k78v9m/researchers-defeated-advanced-facial-recognition-tech-using-makeup> (reporting that researchers "have found a new and surprisingly simple method for bypassing facial recognition software using makeup patterns").

37. Sidney Fussell, *Why Hong Kongers Are Toppling Lampposts*, THE ATLANTIC (Aug. 30, 2019), <https://www.theatlantic.com/technology/archive/2019/08/why-hong-kong-protesters-are-cutting-down-lampposts/597145/> (noting that protestors have been cutting down "smart" lampposts out of fear that they contain sensors and cameras); see also Alex Lee, *This Ugly T-shirt Makes You Invisible to Facial Recognition Tech*, WIRED (Nov. 5, 2020), <https://www.wired.co.uk/article/facial-recognition-t-shirt-block> (reporting that researchers have designed shirt with "a design that can confuse the AI network's classification and labelling system").

38. Margot Sanger-Katz, Claire Cain Miller & Quoc Trung Bui, *Who Gets Abortions in America?*, NEW YORK TIMES (Dec. 14, 2021), <https://www.nytimes.com/interactive/2021/12/14/upshot/who-gets-abortion-in-america.html>.



39. The respondent in *Dobbs*, Jackson Women's Health Organization, was the *only* abortion services provider in the state. See *How Mississippi Ended Up with One Abortion Clinic and Why It Matters*, WASHINGTON POST (Nov. 30, 2021), <https://www.washingtonpost.com/dc-md-va/2021/11/30/abortion-mississippi-closed-clinics/>; see also Jolie McCullough, *After Losing Battle to Preserve Roe v. Wade, Mississippi's Last Abortion Clinic Is Moving to New Mexico*, TEXAS TRIBUNE (June 29, 2022), <https://www.texastribune.org/2022/06/29/mississippi-abortion-new-mexico/> (reporting that respondent clinic in *Dobbs* has relocated to Las Cruces, New Mexico).

40. See Sanger-Katz, *supra* note 38 ("About half of women who had an abortion in 2014 were below the poverty line, with another quarter very close to poverty"); *Dobbs*, 142 S.Ct., at 2345 (2022) (Breyer, Sotomayor, and Kagan, J.J., dissenting) ("In States that bar abortion, women of means will still be able to travel to obtain the services they need. It is women who cannot afford to do so who will suffer most").

41. Marry Madden, et al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 WASH. U. L. REV. 53, 122 (2017) (discussing "a matrix of overlapping vulnerabilities that low-income communities face in the big data era").

42. Michele Gilman & Rebecca Green, *The Surveillance Gap: The Harms of Extreme Privacy and Data Marginalization*, 24 N.Y.U. REV. L & SOCIAL CHANGE 253, 255 (2018).

43. Madden, *supra* note 41, at 63.

44. Khiara M. Bridges, *THE POVERTY OF PRIVACY RIGHTS* 4–5 (2017).

45. Virginia Eubanks, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* 127–73 (2017) (describing use of Allegheny Family Screening Tool by Allegheny County, PA Office of Children, Youth, and Families).

46. See, e.g., Geoffrey A. Fowler, *"I Tried to Read All My App Privacy Policies. It Was 1 Million Words,"* WASHINGTON POST (May 31, 2022), <https://www.washingtonpost.com/technology/2022/05/31/abolish-privacy-policies/> ("There's a big little lie at the center of how we use every website, app and gadget. We click 'agree,' saying we've read the data policy and agree to the terms and conditions. Then, legally speaking, companies can say we've given them consent to use our data"); Nuala O'Connor, *Reforming the U.S. Approach to Data Protection and Privacy*, COUNCIL ON FOREIGN RELATIONS (Jan. 30, 2018), <https://www.cfr.org/report/reforming-us-approach-data-protection> ("The United States lacks a single, comprehensive federal law that regulates the collection and use of personal information.").

47. Madden, *supra* note 41, at 62 ("Poor Americans are considerably less likely to use Apple phones, which provide more robust encryption and are generally less susceptible to being hacked compared to their less expensive Android counterparts").

48. Digital literacy here refers to the set of "technical, cognitive, and sociological skills" people need "in order to perform tasks and solve problems in digital environments." Madden, *supra* note 41, at 117.

49. See, e.g., Heather Kelly, *How to Scrub Yourself from the Internet, the Best That You Can*, WASHINGTON POST (June 24, 2022), <https://www.washingtonpost.com/technology/2022/06/24/delete-yourself-online/> (noting "paid services that . . . are a good option if you're worried about your personal [digital] safety").

50. Jen Fitzpatrick, *Protecting People's Privacy on Health Topics*, GOOGLE (July 1, 2022), <https://blog.google/technology/safety-security/protecting-peoples-privacy-on-health-topics/> (announcing that Google intends to delete entries from its Location History from "abortion clinics, fertility centers," etc., soon after users visit); see also Alexandra Kelley, *2 Data Brokers Pledge to Halt Location Data Collection after Abortion Ruling*, NEXTGOV (July 7, 2022), <https://www.nextgov.com/analytics-data/2022/07/2-data-brokers-pledge-halt-location-data-collection-after-abortion-ruling/373944/> (reporting that Safegraph and Placer.ai pledged to stop selling user location regarding abortion clinic visits).

51. Geoffrey Fowler, *Okay, Google, To Protect Women, Collect Less Data about Everyone*, WASHINGTON POST (July 1, 2022), <https://www.washingtonpost.com/technology/2022/07/01/google-privacy-abortion/> (outlining steps Google could take to "build civil rights into its products").

52. See, e.g. Riana Pfefferkorn, *Federal Government Will Help States Punish Abortion—Using Our Phones*, THE HILL (July 1, 2022), <https://thehill.com/opinion/criminal-justice/3543721-federal-government-will-help-states-punish-abortion-using-our-phones/> (noting that the federal government often provides equipment, technology, training, and personnel help to state and local law enforcement for digital evidence gathering).