



Issue Brief

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## Truth is Truth: U.S. Abortion Law in the Global Context

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Justice Anthony Kennedy's retirement from the U.S. Supreme Court, and the effort to fill his seat, have brought the fate of reproductive rights to the fore. During Justice Kennedy's tenure, the Court repeatedly affirmed the constitutional right to abortion established in *Roe v. Wade*,<sup>1</sup> including most recently in *Whole Woman's Health v. Hellerstedt*.<sup>2</sup> But abortion opponents have actively prepared for the moment when a new Justice will join the Court and an altered judicial line-up may have an opportunity to revisit the fundamental right to abortion and the robust constitutional framework protecting core personal liberty interests.<sup>3</sup>

Indeed, anti-abortion state legislators around the country have been busy. In 2017 alone, state legislatures enacted 63 laws restricting women's access to reproductive health care.<sup>4</sup> In recent years, several states have enacted laws outlawing the standard procedure for abortions performed after approximately 15 weeks of pregnancy.<sup>5</sup> Others have enacted more general pre-viability bans on abortion,<sup>6</sup> including a ban on abortions performed at as early as six weeks of

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<sup>1</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>2</sup> *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

<sup>3</sup> CENTER FOR REPRODUCTIVE RIGHTS, ROE AND INTERSECTIONAL LIBERTY DOCTRINE (Apr. 20, 2018), <https://www.reproductiverights.org/document/report-roe-and-intersectional-liberty-doctrine>.

<sup>4</sup> Elizabeth Nash et al., *Policy Trends in the States, 2017*, GUTTMACHER INSTITUTE (Jan. 2, 2018), <https://www.guttmacher.org/article/2018/01/policy-trends-states-2017>.

<sup>5</sup> Alabama, Arkansas, Kansas, Kentucky, Louisiana, Mississippi, Oklahoma, Texas, and West Virginia have all passed laws prohibiting the most common second trimester abortion procedure, dilation & evacuation (D&E). See *Bans on Specific Abortion Methods Used After the First Trimester*, GUTTMACHER INSTITUTE (July 1, 2018), <https://www.guttmacher.org/state-policy/explore/bans-specific-abortion-methods-used-after-first-trimester>.

<sup>6</sup> Alabama, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia, and

pregnancy.<sup>7</sup> And many have enacted and expanded regulations targeting abortion providers and other barriers making abortion increasingly inaccessible.<sup>8</sup> The result is a patchwork of access to abortion care across the United States,<sup>9</sup> with restrictions on abortion access particularly impacting marginalized communities, including immigrants, low-income women, and women of color.<sup>10</sup>

Despite this reality, as part of the effort to enact new abortion restrictions, abortion opponents increasingly characterize laws regarding abortion access in the United States as being far more permissive than the rest of the world. To support this argument, they point to a rudimentary global tally of national laws on abortion and urge policymakers to enact bans and further

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Wisconsin all ban abortion pre-viability at 20 weeks or earlier with limited exceptions. See *An Overview of Abortion Laws*, GUTTMACHER INSTITUTE (July 1, 2018), <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>.

<sup>7</sup> Iowa and North Dakota. See Kristine Phillips, *Iowa Governor Signs ‘Heartbeat’ Bill Banning Abortion After Six Weeks*, WASH. POST (May 4, 2018), [https://www.washingtonpost.com/news/to-your-health/wp/2018/05/02/iowa-lawmakers-just-passed-one-of-the-most-restrictive-abortion-bills-in-the-u-s/?utm\\_term=.ab664da112ed](https://www.washingtonpost.com/news/to-your-health/wp/2018/05/02/iowa-lawmakers-just-passed-one-of-the-most-restrictive-abortion-bills-in-the-u-s/?utm_term=.ab664da112ed); Press Release, Center for Reproductive Rights, *Federal Judge in ND Blocks the Nation’s Earliest and Most Extreme Abortion Ban* (July 22, 2013), <https://www.reproductiverights.org/press-room/federal-judge-in-nd-blocks-the-nations-earliest-and-most-extreme-abortion-ban>.

<sup>8</sup> These include restrictive clinic licensing systems; requirements that women delay obtaining an abortion after receiving state-mandated information; and requirements that a woman make two separate trips to and from the clinic before she can obtain an abortion. For an overview of barriers to access and their impact, see *Targeted Regulation of Abortion Providers (TRAP) Laws*, GUTTMACHER INSTITUTE (Feb. 2018), <https://www.guttmacher.org/evidence-you-can-use/targeted-regulation-abortion-providers-trap-laws>; *Counseling and Waiting Periods for Abortion*, GUTTMACHER INSTITUTE (July 1, 2018), <https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion>; Jenna Jerman et al., *Barriers to Abortion Care and Their Consequences For Patients Traveling for Services: Qualitative Findings from Two States*, 49 PERSP. ON SEXUAL AND REPRODUCTIVE HEALTH 95 (2017).

<sup>9</sup> Six states have only one abortion provider, and many of those providers are at risk of closing due to additional restrictions. Linley Sanders, *Inside the States with One Abortion Clinic: Kentucky Fights for its Last Provider in 2018*, NEWSWEEK (Jan. 8, 2018, 8:00 AM), <http://www.newsweek.com/state-without-abortion-clinic-kentucky-772692>. A recent study found that there are over 27 cities in the United States where the lack of abortion facilities may force people to travel over 100 miles to get abortion services. Alice Cartwright et al., *Identifying National Availability of Abortion Care and Distance from Major US Cities: Systematic Online Search*, 20 J. MED. INTERNET RES. 186 (2018).

<sup>10</sup> Indeed, as the U.N. Special Rapporteur on Poverty recently recognized, numerous legal and practical limitations on abortion access in the United States, such as mandatory waiting periods and long driving distances to clinics, have a particular impact on people who are poor and trap them in poverty. Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶ 56, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

restrictions on abortion access in order to bring the United States more in step with “international norms” on abortion access.<sup>11</sup>

This message is gaining traction both with the media and lawmakers looking for bite-sized memes to support further abortion restrictions. But international norms on abortion access cannot be portrayed through a “yes-no” tally, and uncritical reliance on a simplified scorecard is misleading, inaccurate, and ignores important protections for women’s health. This Issue Brief examines access to abortion care in light of both global practice and international human rights law and provides analysis for a more accurate and reliable comparison between the U.S. and its international counterparts.

## I. Abortion Opponents’ Embrace of Foreign Law

The crux of abortion opponents’ comparative law argument is that the legal and policy framework regarding abortion access in the United States is far more permissive than in the vast majority of other countries and thus runs counter to international norms on abortion.

As support for this argument, abortion opponents frequently cite a report by the conservative Charlotte Lozier Institute, published in 2014, that compares U.S. gestational limits on abortion to gestational limits in the abortion laws of other countries in order to determine “where the United States stands in comparison to international norms.”<sup>12</sup> The report asserts that the U.S. is one of seven nations that permits elective abortion after twenty weeks.<sup>13</sup> Characterizing the United States as on the “fringe, ultra-permissive end of the spectrum,”<sup>14</sup> the report states that the United States “is within the top 4% of most permissive abortion policies in the world (7 out of 198) when analyzing restrictions on elective abortion based on duration of pregnancy.”<sup>15</sup> It concludes that legislative efforts to enact later-term abortion bans would move the United States closer “to international norms” on abortion.<sup>16</sup>

State lawmakers have seized on these conclusions and their underlying rationale. In 2018, the Mississippi legislature enacted a pre-viability abortion ban justified, in part, on this comparative analysis. The bill, H. B. No. 1510,<sup>17</sup> bans abortion after 15 weeks with limited exceptions for “a medical emergency or in the case of a severe fetal abnormality.” The legislative findings underlying the law note that:

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<sup>11</sup> See notes 12-24, and accompanying text, *infra*.

<sup>12</sup> ANGELINA BAGLINI, GESTATIONAL LIMITS ON ABORTION IN THE UNITED STATES COMPARED TO INTERNATIONAL NORMS 3, CHARLOTTE LOZIER INSTITUTE (2014), <https://s27589.pcdn.co/wp-content/uploads/2014/02/American-Reports-Series-INTERNATIONAL-ABORTION-NORMS.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> H.B. No. 1510, Reg. Sess. (Miss. 2018) (The Gestational Age Act).

The United States is one (1) of only seven . . . nations in the world that permits nontherapeutic or elective abortion-on-demand after the twentieth week of gestation. In fact, fully seventy-five percent (75%) of all nations do not permit abortion after twelve weeks' gestation, except (in most instances) to save the life and to preserve the physical health of the mother.<sup>18</sup>

The state of Texas similarly relied on the justification. In 2017, the state enacted S.B. 8, containing a number of abortion restrictions, including a law criminalizing performance of the standard dilation and evacuation (D&E) abortion procedure, the safest and most common abortion procedure available after approximately 15 weeks of pregnancy.<sup>19</sup> In defending the constitutionality of the law, the state asserted that its interest in instituting the ban is “reinforced by considering the context of the State’s abortion law among the international community.”<sup>20</sup> The state draws on a comparative analysis performed by University of Notre Dame law professor Carter Snead to assert that “92% of the world’s countries—the overwhelming international consensus—ban abortion outright after the first trimester (12 weeks), with some exceptions,” and that Texas’s abortion law is “more permissive than 95% of other countries in terms of gestational limits.”<sup>21</sup>

Some federal lawmakers have embraced the rationale, as well. During U.S. Senate debates on the Pain-Capable Unborn Child Protection Act of 2015,<sup>22</sup> which would have banned abortions at or after 20 weeks’ gestation, with very limited exceptions,<sup>23</sup> numerous U.S. Senators cited to the “one of seven” statistic. A spokesman for at least one Senator confirmed that the Charlotte Lozier Institute report was the source for the Senator’s argument.<sup>24</sup>

Comparative abortion statistics are also increasingly cited in the media. In 2017, *The Washington Post* published an article purportedly “fact-checking” the claim that the U.S. was one of seven nations that allow elective abortions after twenty weeks of pregnancy,<sup>25</sup> concluding that the “one

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<sup>18</sup> *Id.* at § 1(2)(a).

<sup>19</sup> S.B. No. 8, 85th Leg. Sess. (Tex. 2017).

<sup>20</sup> Brief for Appellants at 23, *Whole Woman’s Health v. Paxton* (5th Cir. 2018) (No. 17-51060).

<sup>21</sup> *Id.*

<sup>22</sup> 162 CONG. REC. S6,822-47 (daily ed. Sept. 21, 2015), <https://www.congress.gov/crec/2015/09/21/CREC-2015-09-21-pt1-PgS6822-2.pdf> (statements on the Pain-Capable Unborn Child Protection Act—Motion to Proceed).

<sup>23</sup> *Id.* The bill has passed the House and is in the Senate Committee on the Judiciary. See H.R. 36, 115th Cong. (2018).

<sup>24</sup> W. Gardner Selby, *Is U.S. Nearly Alone in Allowing Late-Term Abortions? Not Exactly*, POLITIFACT (Nov. 5, 2015, 11:07 AM), <http://www.politifact.com/texas/article/2015/nov/05/us-nearly-alone-allowing-late-term-abortions-not-e//>.

<sup>25</sup> Michelle Ye Hee Lee, *Is the United States One of Seven Countries That Allow Elective Abortions After 20 Weeks of Pregnancy?*, WASHINGTON POST (Oct. 9, 2017), <https://www.washingtonpost.com/news/fact->

of seven” statistic, sourced to the 2014 Charlotte Lozier Institute report, was “surprisingly true.”<sup>26</sup> The conservative *National Review* praised the *Post*’s article.<sup>27</sup> Boston NPR station WBUR published an op-ed by a conservative commentator that relied upon the one of seven statistic to argue “that the rest of the world is not so ardent” about unrestricted abortion access.<sup>28</sup>

Anti-abortion activists’ embrace of a comparative law approach may seem to spring from their own inventiveness. In fact, the tactic was foreshadowed, and perhaps inspired, by Justice Scalia’s critique of U.S. courts’ consideration of foreign law in domestic constitutional cases. Dissenting in *Roper v. Simmons*, Justice Scalia criticized the Court’s citation to international and foreign law in support of its holding that the juvenile death penalty violates the Eighth Amendment’s prohibition on cruel and inhuman treatment.<sup>29</sup> Justice Scalia expressed particular concern with what he characterized as the Court’s effort to conform American law to the laws of the rest of the world. Asserting that the United States is “one of only six countries that allow abortion on demand until the point of viability,”<sup>30</sup> he urged the Court to “either profess its willingness to reconsider matters in light of the views of foreigners, or else cease putting forth foreigners’ views as part of the *reasoned basis* of its decision.”<sup>31</sup> He further asserted that, “[t]o invoke alien law when it agrees with one’s own thinking, and ignore it otherwise, is not reasoned decision-making, but sophistry.”<sup>32</sup>

Abortion opponents have picked up the mantel, undergirding legal and policy justifications for abortion restrictions with reference to foreign law. In this Issue Brief, we demonstrate that a

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checker/wp/2017/10/09/is-the-united-states-one-of-seven-countries-that-allow-elective-abortions-after-20-weeks-of-pregnancy/?noredirect=on&utm\_term=.35a47a714787.

<sup>26</sup> *Id.*

<sup>27</sup> Jonah Goldberg, ‘*That’s Barbaric,*’ NAT’L REV. (Oct. 10, 2017, 8:44 PM), <https://www.nationalreview.com/corner/abortion-washington-post-fact-check-international-limits/>. See also Dexter Dugen, *Media Technology Advances... But Newsrooms Live 45 Years in The Past On Knowing Abortion Law*, THE WANDERER (Oct. 24, 2017), <http://thewandererpress.com/catholic/news/frontpage/media-technology-advances-but-newsrooms-live-45-years-in-the-past-on-knowing-abortion-law/>.

<sup>28</sup> Rich Barlow, *It’s OK To Be Conflicted About Abortion — You’re Not Alone*, WBUR (Apr. 18, 2018), <http://www.wbur.org/cognoscenti/2018/04/18/pro-life-pro-choice-rich-barlow>.

<sup>29</sup> *Roper v. Simmons*, 543 U.S. 551, 607–30 (2005) (Scalia, J., dissenting).

<sup>30</sup> *Id.* at 625.

<sup>31</sup> *Id.* at 628.

<sup>32</sup> *Id.* Justice Scalia again brought up comparative abortion law in a 2005 published conversation with Justice Breyer, examining U.S. judges’ consideration of international and foreign law. Justice Scalia argued that justices utilize foreign law only when it supports “what the justices would like the case to say,” and as an example stated that the U.S. is “one of only six countries in the world that allows abortion on demand any time prior to viability.” Norman Dorsen, *The Relevance of Foreign Legal Materials in U.S. Constitutional Cases: A Conversation Between Justice Antonin Scalia and Justice Stephen Breyer*, 3 INT’L J. OF CONST. L. 519 (2005).



deeper analysis of facts and context, as well as international human rights law, discredits both their approach and their conclusions.

## II. Debunking the Myth

There is nothing inherently troubling about looking beyond U.S. borders to inform legal and policy approaches. Both foreign law (the domestic laws of countries other than the United States) and international human rights law (derived from international and regional human rights treaties and the conclusions and analyses of international and regional human rights bodies and experts) can provide a useful perspective for U.S. courts as well as policymakers as they assess legal questions, policy, and practice.<sup>33</sup> As Justice Breyer has stated, the experience of respected international bodies and courts can “cast an empirical light on the consequences of different solutions to a common legal problem.”<sup>34</sup> However, to be useful, comparative analysis must be based upon careful accounts and relevant comparisons. In this section, we discuss the ways in which the global tally cited by abortion opponents rests on both a flawed methodology and an inaccurate portrayal of international norms around abortion.

First, to truly provide insight into the existence of an international norm or consensus, a global comparative approach must give an accurate account of the laws that are being compared. As we demonstrate below, the descriptions that underlie the global abortion tally fail to meet this threshold standard.

Second, even when relevant laws are accurately described, a valid comparative analysis requires more than just nose-counting. As set out succinctly by Edward Eberle in his article *The Methodology of Comparative Law*, “[i]t is not enough simply to compare words on the page. Law sits within a culture.”<sup>35</sup> Scholars Mark Van Hoecke and Mark Warrington concur, stating that it

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<sup>33</sup> For example, in *Graham v. Florida*, a case challenging the practice of sentencing juveniles to life in prison without the possibility of parole, the Supreme Court continued its “longstanding practice” of looking “beyond our Nation’s borders for support for its independent conclusion that a particular punishment is cruel and unusual.” *Graham v. Florida*, 560 U.S. 48, 80 (2010). See also *Lawrence v. Texas*, 539 U.S. 558, 572–73 (2003) (citing a European Court of Human Rights decision and a special committee report to the British Parliament in holding that Texas law criminalizing consensual sexual conduct between same-sex partners was at odds with norms of Western civilization); Martha F. Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, in 2 BRINGING HUMAN RIGHTS HOME 127 (Cynthia Soohoo et al. eds., 2008); BARBARA M. OOMEN, MARTHA F. DAVIS & MICHELE GRIGOLO, *GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES* (2016).

<sup>34</sup> *Printz v. United States*, 521 U.S. 898, 977 (1997) (Breyer, J., dissenting) (supporting Justice Stevens’ dissent by arguing that looking to the federalist systems of other countries might provide insight into the question of whether U.S. Constitutional law permits Congress to impose an obligation on state governments). See also Sarah H. Cleveland, *Our International Constitution*, 31 YALE J. INT’L L. 1, 11–88 (2006) (cataloging the ways in which the Supreme Court has drawn on foreign and international law in cases throughout its history).

<sup>35</sup> Edward J. Eberle, *The Methodology of Comparative Law*, 16 ROGER WMS. U. L. REV. 51, 65 (2011).

is not words alone, but “social practice which is determining the actual meaning of the rules and concepts, their weight, their implementation, and their role in society.”<sup>36</sup> In the case of abortion regulation, that social practice is captured in the wider set of laws concerning women’s reproductive health, a context which abortion opponents’ global tally completely ignores.

### A. The Misleading Nature of the Statistics

When used irresponsibly, statistics can as easily mislead as inform. In this instance, they are misleading: the “one of seven” and “92%” statistics rest on inaccurate descriptions of the surveyed laws, cherry-picking portions of the abortion regulations under examination and ignoring their full scope.

For example, the global tally cites legislative limitations in isolation, without reading the full law and noting the exceptions to these limits, painting a misleading picture of the global reality. Many countries’ laws impose gestation limits on abortion access while simultaneously allowing for broad exceptions after the gestational limit has expired, thus permitting abortion access later in pregnancy. Exceptions for social or economic circumstances allow women in many countries to access abortion later than the gestation period identified in a blindered reading of the law’s text.<sup>37</sup> Similarly, exceptions for health, including mental health, allow women to access abortion care in many countries (including the vast majority of European countries), despite nominal gestation limits.<sup>38</sup>

The global tally also fails to examine the broader context of overall access to reproductive care, including (i) contraception, (ii) maternal health care, (iii) access to medical information, and (iv) availability of early abortions (both in terms of cost and access to providers). This contextual information is critical to understand the rationales animating the comparative legislative schemes and the true impacts of legislative provisions on abortion access globally.<sup>39</sup>

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<sup>36</sup> Mark Van Hoecke & Mark Warrington, *Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law*, 47 INT’L AND COMP. L. Q. 495, 496 (1998). See also Mark Van Hoecke, *Methodology of Comparative Legal Research* at 1, LAW AND METHOD (Dec. 2015) (“In all cases, however, comparison should never stop at the level of legislation, and even not at the level of case law, as the social reality may be more different than similar rules suggest (and sometimes more similar than different rules would suggest).”).

<sup>37</sup> LOVITIDENDE FOR KONGERIGET DANMARK, Part A, no. 32, 993–95 (July 6, 1973) (Den.), *translation at* <https://cyber.harvard.edu/population/abortion/Denmark.abo.htm>; Penal Law, 5737-1977 § 316(a), 5 LSI 98 (2005) (Isr.); Choice on Termination of Pregnancy Act 92 of 1996 (S. Afr.).

<sup>38</sup> See, e.g., CODE DE LA SANTÉ PUBLIQUE [PUBLIC HEALTH CODE] art. L2213-1 (Fr.); SCHWEIZERISCHES STRAFGESETZBUCH [STGB] [CRIMINAL CODE] art. 119 (Switz.); Medical Termination of Pregnancy Act, No. 34 of 1971, INDIA CODE (1993), vol. 33 (Ind.); Termination of Pregnancy Act, Cap. 304 (1994) § 3(1)(a)(ii) (Zam.).

<sup>39</sup> See generally Vicki Jackson, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA 217–18 (2013) (“In social welfare states that provide support, as a matter of right, for the health care needs of pregnant

For example, the global tally relies on isolated provisions of German abortion law to count Germany as more restrictive than the U.S., yet Germany's reproductive health laws provide significantly more support for women seeking to avoid and end unintended pregnancies. Unlike the U.S., Germany offers citizens and permanent residents universal health insurance, and provides health care for refugees and undocumented immigrants who are acutely ill, in pain, or pregnant.<sup>40</sup> Germany also subsidizes contraception for women under 20 years of age.<sup>41</sup> For many women, that health insurance covers abortion care as well; abortion is publicly funded for low-income women, when medically indicated, and in cases of rape.<sup>42</sup> In addition, German laws ease the financial burdens of parenting, providing mothers with vocational training and entitlement to supported daycare for children, starting at 12 months of age.<sup>43</sup>

In comparison, restrictive abortion laws adopted by U.S. states are typically part of a larger web of obstructions to reproductive health care access. For example, the state of Texas has made a concerted effort to reduce access to abortions. Texas has attempted to ban a common abortion procedure, dilation and evacuation (D&E), something that no country in the world has done.<sup>44</sup> With narrow exceptions, public health insurance through Texas Medicaid does not cover abortions, and the state recently passed a law preventing private insurers from covering abortion care unless it is offered under a separate premium and signed for separately.<sup>45</sup> Burdensome and

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women and their children . . . the effects of more restrictive time periods, or of limited reasons for abortion, might be less harmful to women's equality.").

<sup>40</sup> BUNDESMINISTERIUM FÜR GESUNDHEIT, HEALTH GUIDE FOR ASYLUM SEEKERS IN GERMANY 3 (2016), [https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/5\\_Publikationen/Gesundheit/Broschuren/Ratgeber\\_Asylsuchende\\_EN\\_web.pdf](https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/5_Publikationen/Gesundheit/Broschuren/Ratgeber_Asylsuchende_EN_web.pdf).

<sup>41</sup> SOZIALGESETZBUCH V GESETZLICHE KRANKENVERSICHERUNG [SGB V] [SOCIAL HEALTH INSURANCE CODE], § 24a(2) (Ger.) (under universal health insurance in Germany, all insured persons are entitled to prescription contraceptives up to the age of twenty, including emergency contraception).

<sup>42</sup> Daniel Grossman et al., *Public Funding for Abortion Where Broadly Legal*, 94 CONTRACEPTION 453, 458 (2016).

<sup>43</sup> *Id.* at 153. See also Friederike Heine, *Birth Rate Boon? Germany Promises Daycare for All*, DER SPIEGEL (Aug. 1, 2013, 10:07 PM), <http://www.spiegel.de/international/germany/law-goes-into-effect-requiring-child-care-for-most-german-children-a-914320.html>; Caitlyn Collins, *In Germany, Parents Can Sue the Government for Failing to Provide Child Care*, THE ATLANTIC (Jan. 10, 2017), <https://www.theatlantic.com/business/archive/2017/01/german-childcare/512612/>.

<sup>44</sup> Texas is not alone in this effort. D&E procedures have also been targeted in other U.S. states, including Mississippi and West Virginia. See *Bans on Specific Abortion Methods Used After the First Trimester*, GUTTMACHER INSTITUTE (July 1, 2018), <https://www.guttmacher.org/state-policy/explore/bans-specific-abortion-methods-used-after-first-trimester>. Yet the World Health Organization recommends that abortion providers employ this very procedure as a method of safe abortion for pregnancies over 12 to 14 weeks in gestation age. WORLD HEALTH ORGANIZATION, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 4, 31–32 (2012), [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf).

<sup>45</sup> TEX. HUM. RES. CODE ANN. § 32.024(c-1) (West 2017); TEX. INS. CODE ANN. § 1218.004–06 (West 2017). Texas Medicaid will cover only abortions that result from rape or incest, or that threaten the life of the



medically unnecessary regulations targeting abortion care providers have also rendered abortion care difficult to access, preventing providers from making abortion care available.<sup>46</sup> This reduced access has forced some women to obtain abortions later in pregnancy than they would otherwise choose.<sup>47</sup> Yet at the same time, one-quarter of Texas public schools do not include sex education in their curricula,<sup>48</sup> and access to contraception has been further curtailed by Texas's exclusion of Planned Parenthood centers from receiving public funds for family planning services.<sup>49</sup> Texas is just one example; 19 states enacted new abortion restrictions in 2017.<sup>50</sup>

Given the larger contexts in which these laws are enacted, it is clear that a superficial comparison of different jurisdictions' gestational limits on abortion—encapsulated in the “one of seven” and “92%” statistics—paints a misleading picture of where U.S. policies lie in the universe of worldwide reproductive health laws.

### B. Erroneous Assumptions Underlying the Tally

Abortion opponents' comparative tally of international abortion laws also rests on the erroneous assumption that nose-counting, an assessment conducted purely by numbers, can substitute for a valid comparative methodology or can evince an “international norm” on abortion. As succinctly explained by Harvard Law Professor Mark Tushnet, a leading scholar in comparative constitutional law, such nose-counting “has been rejected.”<sup>51</sup> One concern is that under this approach, “each jurisdiction, no matter what its size or global importance, counts equally—rather than weighted by population or in some other way.”<sup>52</sup> Further, avers Tushnet, “[n]ose-counting

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mother. TEXAS MEDICAID & HEALTHCARE PARTNERSHIP, TEXAS MEDICAID PROVIDER PROCEDURES MANUAL 30 (2018), [http://www.tmhp.com/Manuals\\_PDF/TMPPM/TMPPM\\_Living\\_Manual\\_Current/2\\_Gyne\\_and\\_Repro\\_Health\\_Srvs.pdf](http://www.tmhp.com/Manuals_PDF/TMPPM/TMPPM_Living_Manual_Current/2_Gyne_and_Repro_Health_Srvs.pdf).

<sup>46</sup> See, e.g., *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016); Alexa Ura et al., *Here Are the Texas Abortion Clinics That Have Closed Since 2013*, TEXAS TRIBUNE (June 28, 2016, 6:00 AM), <https://www.texastribune.org/2016/06/28/texas-abortion-clinics-have-closed-hb2-passed-2013/>.

<sup>47</sup> Daniel Grossman et al., *Change in Abortion Services After Implementation of a Restrictive Law in Texas*, 90 CONTRACEPTION 496, 498–99 & tbl. 1 (2014) (finding a decrease in provision of early-term medical abortions and an increase in the proportion of abortions performed in the second trimester after Texas's restrictive H.B.2 abortion law went into effect).

<sup>48</sup> Cassandra Pollock, *Study: A Quarter of Texas Public Schools No Longer Teach Sex Ed*, TEXAS TRIBUNE (Feb. 14, 2017, 3:00 PM), <https://www.texastribune.org/2017/02/14/texas-public-schools-largely-teach-abstinence-only-sex-education-repor/>.

<sup>49</sup> Amanda J. Stevenson et al., *Effect of Removal of Planned Parenthood from the Texas Women's Health Program*, 374 NEW ENG. J. MED. 853 (2016). For information on restrictions in other states, see GUTTMACHER INSTITUTE, *State Policy Updates: Major Developments in Sexual & Reproductive Health*, <https://www.guttmacher.org/state-policy/explore>.

<sup>50</sup> Elizabeth Nash et al., *Policy Trends in the States, 2017*, GUTTMACHER INSTITUTE (Jan. 2, 2018), <https://www.guttmacher.org/article/2018/01/policy-trends-states-2017>.

<sup>51</sup> Mark Tushnet, *How (and How Not) to Use Comparative Constitutional Law in Basic Constitutional Law Courses*, 49 ST. LOUIS U. L.J. 671, 674 (2005).

<sup>52</sup> *Id.*

also is entirely insensitive to differences in constitutional language, and, more broadly, to differences in constitutional traditions,” as well as “the institutional arrangements by which constitutional doctrine is implemented.”<sup>53</sup>

Violating accepted comparative methodology, the tally treats all countries’ abortion laws as relevant for both comparing United States’ law and practice and also for identifying an international consensus, even though many of the countries listed do not share a legal tradition or other commonalities. Notably, many of the countries that inform the statistic have dramatically different legal traditions concerning gender equality and the role of religion in the law.

For example, many countries restrict abortion entirely on religious grounds, a legal approach that is fundamentally inconsistent with the American constitutional imperative against the entanglement of church and state. One of the countries included in the tally, Somalia, operates under a mix of civil law, Shari’ah, and traditional law (Xeer), and its Provisional Constitution enshrines Islam as the state religion.<sup>54</sup> Based on a conservative interpretation of Shari’ah law, Somalia bans abortion (subject to a “necessity” exception that only explicitly permits abortion to save the woman’s life).<sup>55</sup> Similar religiously-based bans to abortion are followed in Saudi Arabia, Yemen, Afghanistan, El Salvador, and Malaysia, among others.<sup>56</sup> These examples highlight the perils of assuming the existence of a worldwide normative consensus based on a simple tally that obscures countries’ dramatically different, and often antithetical, legal traditions.

In contrast, more relevant comparators—that is, the many countries with which the U.S. shares legal traditions—typically ensure their citizens have access to reproductive health care that includes abortion care. For instance, women in Great Britain may obtain abortions until 24 weeks.<sup>57</sup> This is offered as part of the National Health Service’s broader reproductive health care

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<sup>53</sup> *Id.*

<sup>54</sup> *The World Factbook: Somalia*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>; SOMALIA (PROVISIONAL) CONST., art. 2 (2012), *translation at* [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_233457.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_233457.pdf) (banning laws that are “not compliant with the general principles and objectives of Shari’ah”).

<sup>55</sup> SOMALIA (PROVISIONAL) CONST., art. 15 (2012).

<sup>56</sup> *Abortion Policies: A Global Review*, U.N. POPULATION DIVISION, <http://www.un.org/esa/population/publications/abortion/profiles.htm>; Penal Code, art. 402–06 (Afg.); MALAYSIAN CONST. art. 3, *translation at* [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf); Código Penal [Criminal Code], art. 133–37 (El Sal.).

<sup>57</sup> Abortion Act 1967, 1(1)(a) (Eng.), <https://www.legislation.gov.uk/ukpga/1967/87/contents>. In Great Britain, women may obtain abortions until 24 weeks of pregnancy if continuation of the pregnancy “would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant women or any existing children of her family.” *Id.* The overwhelming majority of these abortions are performed on the basis of a risk to the woman’s mental health. U.K. DEPT. OF HEALTH, ABORTION STATISTICS, ENGLAND AND WALES: 2016 8 (2018),

coverage, which also provides comprehensive contraceptive access.<sup>58</sup> In Canada, with a legal tradition very similar to the U.S., abortion has been decriminalized since 1988.<sup>59</sup> Moreover, abortion care is largely covered under Canada's publicly financed and administered health care system.<sup>60</sup> A comparative law analysis truly intended to illuminate the approach of U.S. law among its peer nations, would give particular weight to the laws and practices of these systems.

### C. The International Trend is in Fact Towards Liberalization

The inaccurate and misleading “one of seven” and “92%” statistics also mask the dynamic nature of law. In fact, abortion laws are not static and, nation by nation, global trends in abortion are moving toward liberalization.

According to the United Nations agency responsible for collecting and analyzing data, since 1996, “legal grounds for abortion have expanded in a growing number of countries in both developing and developed regions,” and “between 1996 and 2013, 56 countries . . . increased the number of legal grounds for abortion,” while only eight reduced the number of legal grounds.<sup>61</sup> This trend toward liberalization is apparent across the globe, among different cultural traditions and on multiple continents—in Australia, Colombia, and Spain, to name a few.<sup>62</sup> The trend has been

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679028/Abortions\\_stats\\_England\\_Wales\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679028/Abortions_stats_England_Wales_2016.pdf). Abortion is legal later in pregnancy including in situations of risk to life or to prevent grave injury to physical or mental health. Abortion Act 1967, 1(1)(b-d) (Eng.).

<sup>58</sup> National Health Service Act 1977, § 5(1)(b) (Eng.),

<https://www.legislation.gov.uk/ukpga/1977/49/contents>.

<sup>59</sup> R v. Morgentaler, [1988] 1 S.C.R. 30 (Can.); VICKI JACKSON, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA 211 (2013).

<sup>60</sup> Canada Health Care Act, R.S.C.z 1985, c C-6 (Can.); HEALTH CANADA, CANADA HEALTH ACT ANNUAL REPORT 2016–17 22 (2018), <https://www.canada.ca/content/dam/hc-sc/documents/services/publications/health-system-services/canada-health-act-annual-report-2016-2017/canada-health-act-annual-report-2016-2017-eng.pdf>. See also LAG OM ABORT [ABORTLAGEN] (Svensk Författningssamling [SFS] 1974:595) (Swed.) (allowing abortion regardless of reason through 18 weeks' gestation, and for special reasons until viability).

<sup>61</sup> U.N. DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS POPULATION DIVISION, ABORTION POLICIES AND REPRODUCTIVE HEALTH AROUND THE WORLD 1 (2014),

<http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>; see also CENTER FOR REPRODUCTIVE RIGHTS, ABORTION WORLDWIDE: 20 YEARS OF REFORM (2014),

[https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years\\_Reform\\_Report.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years_Reform_Report.pdf) (describing how, since 1994, more than 30 countries expanded the grounds under which women can access abortion services legally); Louise Finer & Johanna Fine, *Abortion Law Around the World: Progress and Pushback*, 103 AM. J. PUB. HEALTH 585 (2013).

<sup>62</sup> See, e.g., *Crimes (Abolition of Offence of Abortion) Act 2002* (ACT) (Austl.) (removing abortion from the criminal code in the Australian Capital Territory); Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2006, Sentencia C-355/06 (Colom.) (finding, by Colombia's Constitutional Court, that the country's absolute prohibition on abortion is unconstitutional); Ley Orgánica 2/2010 de Salud Sexual y

particularly pronounced in Europe, where the vast majority of countries now permit abortion without regard to reason during the first trimester, and under a broad range of circumstances thereafter.<sup>63</sup>

The recent repeal of the Eighth Amendment in Ireland is consistent with this global trend. On May 25, 2018, the citizens of the Republic of Ireland voted overwhelmingly to repeal the constitutional provision limiting abortion to circumstances when the life of the woman is at risk.<sup>64</sup> This repeal initiates the process for the Irish Parliament (Dáil) to create policies permitting and regulating abortion.<sup>65</sup>

### III. International Human Rights Law Recognizes and Protects Access to Safe and Legal Abortion

In addition to liberalization of national laws on abortion, international human rights law, too, increasingly recognizes and protects access to safe and legal abortion as central to women's autonomy and reproductive health. This trend in international human rights law, derived from international declarations, resolutions, and treaties, as well as decisions, findings, and recommendations of U.N. human rights treaty monitoring bodies and U.N. mandated experts, belies the argument that the U.S. is "out of step" with international norms. In fact, an international human rights analysis—completely ignored by abortion opponents' global tally of abortion laws—paints a very different picture of the international norms pertaining to abortion access.

International human rights law has increasingly identified access to safe and legal abortion as essential to protect women's human rights and achieve gender equality.<sup>66</sup> Drawing upon earlier

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Reproductiva y de la Interrupción Voluntaria del Embarazo (B.O.E. 2010, 3514) (Spain) (amending Spain's prior abortion ban to a law permitting abortion within the first 14 weeks of gestation regardless of reason, and later in the case of fetal anomaly or risk to the mother's health or life).

<sup>63</sup> See generally Mark Levels et al., *A Review of Abortion Laws in Western-European Countries. A Cross-National Comparison of Legal Developments Between 1960 and 2010*, 118 HEALTH POLICY 95 (2014).

<sup>64</sup> *Irish Abortion Referendum: Ireland Overturns Abortion Ban*, BBC (May 26, 2018), <https://www.bbc.com/news/world-europe-44256152>.

<sup>65</sup> *Id.*

<sup>66</sup> See Rachel Rebouché, *Abortion Rights as Human Rights*, 25 SOC. & LEGAL STUD. 765, 766 (2016) ("Various international human rights bodies have supported the legalization of abortion as essential to the protection of women's rights to equality, nondiscrimination, health, autonomy, and freedom from violence."). See also International Conference on Population and Development, Cairo, Egypt, Sept. 5–13, 1994, *Report of the International Conference on Population and Development*, ¶¶ 7.5–7.6, 8.25, U.N. Doc. A/CONF.171/13 (Oct. 18, 1994) [hereinafter *Cairo Report*] (recognizing importance of assuring access to safe abortion care); Committee on the Elimination of All Forms of Discrimination against Women, Communication No. 22/2009, ¶ 9(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011) (urging that abortion must be legal and accessible where pregnancy poses a risk to the women's physical and mental health and in cases of rape).

U.N. consensus documents connecting international human rights to reproductive freedom,<sup>67</sup> in 2018, the U.N. Human Rights Council reaffirmed the global consensus that ensuring reproductive health and safety, including access to abortion, is of the utmost importance under international law. Specifically, the Council reaffirmed that “the full enjoyment of all human rights by women includes their right to have control over and to decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health.”<sup>68</sup> It urged states to

promote and protect sexual and reproductive health and reproductive rights . . . and to respect, protect and fulfil the right of every woman to have full control over and decide freely and responsibly on all matters relating to their sexuality and sexual and reproductive health, free from discrimination, coercion and violence, including through the removal of legal barriers and the development and enforcement of policies, good practices and legal frameworks that respect bodily autonomy and guarantee universal access to sexual and reproductive health, services, evidence-based information and education, including for . . . safe abortion in accordance with international human rights law and where not against national law . . .<sup>69</sup>

The international consensus around the norm of abortion access and recognition of abortion as an aspect of women’s autonomy is also evident from statements and recommendations by the U.N. human rights treaty bodies.<sup>70</sup> Most recently, the U.N. Committee on Economic, Cultural and Social Rights (“CECSR”) explained:

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<sup>67</sup> In 1995, the international community, in adopting the Platform for Action of the Fourth World Conference on Women (the “Beijing Platform”), defined “reproductive health” as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.” The Beijing Platform stated that,

[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. *It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence*, as expressed in human rights documents.

Fourth World Conference on Women, *Report of the Fourth World Conference on Women, Beijing, 4-15 Sept. 1995*, ¶ 95, U.N. Doc. A/CONF.177/20, annex II (Oct. 17, 1995) (emphasis added).

<sup>68</sup> Human Rights Council Res. on the Elimination of All Forms of Discrimination against Women and Girls, U.N. Doc. A/HRC/38/L.1/Rev.1, at 3 (July 3, 2018).

<sup>69</sup> *Id.* at ¶ 7.

<sup>70</sup> See G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. A/34/180, art. 12 (Dec. 18, 1979) (signed by the U.S. on July 11, 1980) (requiring that women



The right to sexual and reproductive health is . . . indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the rights to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality. For example, lack of emergency obstetric care services or denial of abortion often leads to maternal mortality and morbidity, which in turn constitutes a violation of the right to life or security, and in certain circumstances can amount to torture or cruel, inhuman or degrading treatment.<sup>71</sup>

Drawing on this analysis of international human rights law as it relates to sexual and reproductive health, the Committee has called upon countries to “*liberalize* restrictive abortion laws.”<sup>72</sup>

Indeed, U.N. bodies charged with interpreting and monitoring implementation of human rights treaties have emphasized that access to abortion is often necessary to preserve not just the life or physical health of women but also their mental health, and that abortion laws that stand in the way of such protection may violate international human rights obligations. For example, in 2016, the U.N. Human Rights Committee found that Ireland’s strict abortion ban violated, among other provisions, the International Covenant on Civil and Political Right’s prohibition against cruel, inhuman, or degrading treatment.<sup>73</sup>

International human rights norms also require that, where abortion is legal, the state must ensure that it is genuinely available and accessible *in practice*. In *L.M.R. v. Argentina*, the U.N. Human Rights Committee determined that the ICCPR was violated when a woman was denied access to a legal abortion—and was forced to arrange a clandestine abortion—due to the refusal of hospital staff to perform the procedure.<sup>74</sup> Treaty bodies have condemned procedural barriers to abortion services, including mandatory waiting periods, biased counseling, and requirements that a third

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receive the “appropriate services in conne[ct]ion with pregnancy” and calling on states to modify or abolish laws that constitute “discrimination against women”).

<sup>71</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (under article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 10, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter General Comment No. 22].

<sup>72</sup> *Id.* at ¶ 28 (emphasis added).

<sup>73</sup> Human Rights Committee, Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2324/2013, ¶¶ 7.5–7.8, U.N. Doc. CCPR/C/116/D/2324 (Nov. 17, 2016).

<sup>74</sup> Human Rights Committee, Communication No. 1608/2007, ¶¶ 9.2–9.4, U.N. Doc. CCPR/C/101/D/1608/2007 (2011). Similarly, the European Court of Human Rights has condemned Poland for erecting “significant barriers” to reproductive health services “in practice.” *P. and S. v. Poland*, No. 57375/08, Eur. Ct. H.R. (2012).

party, such as a male guardian or a parent, authorize the abortion.<sup>75</sup> These same treaty bodies have encouraged states to provide financial support for abortion services.<sup>76</sup> The legal principles that these treaty-monitoring bodies have articulated were echoed by the U.N. Special Rapporteur on the right to health, who noted that laws criminalizing and restricting access to abortion result in increased rates of maternal mortality and morbidity, while “infring[ing upon] women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health.”<sup>77</sup>

These determinations stem from international recognition that where abortion is legal, it is important to assure access to safe abortion care to safeguard women’s health and lives.<sup>78</sup> The 1994 Cairo Conference committed the global community to preventing unsafe abortions.<sup>79</sup> Similarly, the African Commission on Human and Peoples’ Rights has recognized that violations to the rights to privacy, confidentiality, freedom from discrimination, and freedom from cruel, inhuman, or degrading treatment can result where the accessibility of safe abortion and post-abortion care is inadequate.<sup>80</sup>

Contrary to the misleading global tally cited to by abortion opponents, these international treaties, agreements, and decisions clearly outline that states must liberalize restrictive abortion laws and guarantee access to safe abortion care in practice.

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<sup>75</sup> Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations on Kuwait, ¶ 43(b), U.N. Doc. CEDAW/C/KWT/CO/3-2 (Nov. 8, 2011); Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations on Hungary, ¶¶ 30–31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (Mar. 26, 2013); General Comment No. 22, ¶ 41.

<sup>76</sup> Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations on Austria, ¶¶ 38–39, U.N. Doc. CEDAW/C/AUT/CO/7-8 (Mar. 1, 2013). States are further encouraged by international treaty bodies to guarantee that skilled healthcare providers are available to offer safe abortion procedures. Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations on Slovakia, ¶¶ 30–31, U.N. Doc. CEDAW/C/SVK/CO/5-6 (Nov. 25, 2015); General Comment No. 22, ¶¶ 13, 21, 28.

<sup>77</sup> Anand Grover (Special Rapporteur of the Human Rights Council), *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 21, U.N. Doc. A/66/254 (2011).

<sup>78</sup> See, e.g., *Cairo Report*, ¶¶ 7.5–7.6, 8.25. See also National Academies of Sciences, Engineering and Medicine, *The Safety and Quality of Abortion Care in the United States* 10 (March 2018) (concluding that “legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective”), available at <http://nationalacademies.org/hmd/Reports/2018/the-safety-and-quality-of-abortion-care-in-the-united-states.aspx>.

<sup>79</sup> The Cairo Report, adopted by 184 U.N. Member States including the U.S., stressed that “where abortion is not against the law, such abortion should be safe.” *Id.* at ¶ 8.25.

<sup>80</sup> See generally AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, GENERAL COMMENT NO. 2 ON ARTICLE 14.1 (A), (B), (C) AND (F) AND ARTICLE 14.2 (A) AND (C) OF THE MAPUTO PROTOCOL (2014), [http://www.achpr.org/files/instruments/general-comments-rights-women/achpr\\_instr\\_general\\_comment2\\_rights\\_of\\_women\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/general-comments-rights-women/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf).

## Conclusion

There is no doubt that foreign and international law and global practices can be a relevant touchstone for domestic policy-making and adjudication. A majority of the U.S. Supreme Court has recognized the relevance of these sources on multiple occasions.<sup>81</sup> Federal, state, and local governments can learn from comparative and international models and trends as they craft domestic policies in a wide range of areas, and judges and policymakers recognize that their work can benefit from engaging in a global dialogue with others facing similar questions or challenges.

But international comparisons are not as simple as checking a box. In an environment where false statements are increasingly pawned off as truth, abortion opponents in the United States are seeking to use misleading comparative data to undermine women's fundamental rights and erode the robust constitutional framework that protects abortion access in the United States. As many states ramp up their efforts to enact restrictive abortion laws and as the U.S. Senate considers the pending nomination to the U.S. Supreme Court, accurate information and nuanced analysis could not be more critical.

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<sup>81</sup> See, e.g., *Roper v. Simmons*, 543 U.S. 551, 575-79 (2005); *Graham v. Florida*, 560 U.S. 48, 80-81 (2010).

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