New Jersey Women Lawyers Association

Honoring Leaders from the Judicial, Public, Corporate and Private Law Firm Sectors



March 29, 2022



New Jersey Women Lawyers Association (NJWLA) is an independent of approximately 2,000 association members whose mission is to advance and retain women in the legal profession through education and activism, to promote qualified women to the highest levels of law firm, government, academic, community and corporate positions and to endorse qualified female attorneys for appointments to the state and federal judiciary. NJWLA works to foster leadership among its members by promoting professional activities, mentoring, educational programs and networking functions.

NJWLA is a critical voice on all issues of importance to women engaged in the practice of law in the State of New Jersey.



WELCOME REMARKS

Jessica Carroll and Kimberly Doyle Platinum Gala Co-Chairs

WELCOME REMARKS

Dina M. Mastellone Genova Burns LLC NJWLA President

MISTRESS OF CEREMONIES

Honorable Madeline Cox Arleo

United States District Judge for the District of New Jersey

SCHOLARSHIP AWARD WINNERS

Marissa Catalano Rutgers School of Law — Newark

Hayly Mickles
Rutgers School of Law – Camden

Carmen Abrazado Seton Hall University Law School

President's Award

Jemi G. Lucey NJWLA Immediate President Linda Harvey NJWLA Past President

CLOSING REMARKS

Diana C. Manning
Bressler, Amery & Ross, P.C.
NJWLA President-Elect

Honorees

Judicial Sector – Federal

Honorable Tonianne J. Bongiovanni

United States Magistrate Judge for the District of New Jersey

JUDICIAL SECTOR - STATE

Honorable Marianne Espinosa

New Jersey Superior Court, Appellate Division (Retired) Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C.

PRIVATE SECTOR

Loren L. Pierce

Bressler Amery & Ross | Past President, NJWLA

CORPORATE SECTOR/IN HOUSE

Eboneé Lewis

Associate General Counsel - Employment Becton, Dickinson and Company (BD)

Public Sector

Lora Fong

Assistant Attorney General Chief Diversity Officer for the Department of Law and Public Safety



PLATINUM

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- NJWLA Board of Directors 13
- NJWLA President Dina M. Mastellone 15
- NJWLA President-Elect Diana C. Manning 19

WILL Award Recipients

- Honorable Tonianne J. Bongiovanni 21
- 23 Honorable Marianne Espinosa
- 25 Loren L. Pierce
- 27 Eboneé Lewis
- 29 Lora Fong

NJWLA Scholarship

- Marissa Catalano 37
- 43 Hayly Mickles
- Carmen Abrazado 49



STATE OF NEW JERSEY OFFICE OF THE GOVERNOR P.O. BOX 001 TRENTON 08625 (609) 292-6000

PHILIP D. MURPHY GOVERNOR

March 29, 2022

Dear Friends,

It is my honor to welcome everyone gathered in attendance for the 14th Annual Women's Initiative and Leaders in Law Platinum Gala event.

Since its inception in 1981, the New Jersey Women's Lawyers Association has been meeting the needs of skilled female lawyers all over New Jersey by serving as an alternative or supplement to the New Jersey State Bar Association. Each year the WILL Gala celebrates the accomplishments of women leaders in the legal profession. Those being honored this evening have upheld the mission of advancing and retaining women in the legal profession through education and activism.

The New Jersey Women Lawyers Association has continuously endorsed female attorneys for judicial appointments while encouraging young women to practice law in their career paths. They make gender equality an integral part of their mission while providing a voice for all its members concerning major issues of importance to women. The association also mentors' young women who are aspiring lawyers by pairing women who can teach and encourage each other while educating the community on how to ensure fairness to both women and men. Part of their mission is to promote highly qualified women in areas that are often male dominated.

A warm congratulations to this evening's honorees: Honorable Tonianne J. Bongiovanni, U.S. Magistrate Judge for the District of New Jersey; Honorable Marianne Espinosa, New Jersey Superior Court, Appellate Division (Retired), Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins P.C.; Loren L. Pierce, Bressler Amery & Ross P.C.; Eboneé Lewis, Associate General Counsel – Employment, Becton, Dickinson and Company (BD) and Lora Fong, Assistant Attorney General, Chief Diversity Officer for the Department of Law and Public Safety.

Best wishes for a memorable and successful event.

My very best,

CORY A. BOOKER **NEW JERSEY**

SUITE SH-717 HART BUILDIN WASHINGTON, DC 205

United States Senate

March 29, 2022

New Jersey Women Lawyers Association 372 Franklin Avenue Suite 713 Nutley, New Jersey 07110

Dear Friends,

It is a pleasure to extend my warmest wishes as you gather for the 14th annual Women's Initiative and Leaders in the Law Platinum Gala. I am delighted to join the New Jersey Women Lawyers Association community in congratulating tonight's honorees—the Honorable Tonianne J. Bongiovanni, the Honorable Marianne Espinosa, the Honorable Madeline Cox Arleo, Loren L. Pierce, Eboneé Lewis, and Lora Fong —on being recognized for their remarkable leadership and impressive records of service. Your contributions to the New Jersey legal community are worthy of praise and commendation.

For 41 years, the New Jersey Women Lawyers Association has helped lead the Garden State's legal community by supporting female students, lawyers, and countless other legal professionals. Your work to promote and support women in the legal profession is both commendable and critical to the diversity and vitality of the field. The fact that the New Jersey Women Lawyers Association continues to thrive is a testament to the hard work and dedication of its leadership and the passion of its membership.

Congratulations on all that you have accomplished this year. I send my gratitude for your outstanding work and my best wishes for continued success in the years to come.

Sincerely,

Cory A. Booker **United States Senator** MIKIE SHERRILL

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Washington, DC 20515

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March 29, 2022

Dear Friends,

I am honored to welcome you to the New Jersey Women Lawyers Association's (NJWLA) 14th Annual Women's Initiative and Leaders in the Law Platinum Gala!

Since its' establishment in 1981, NJWLA has advocated for and supported female judicial appointees. In the past three years alone, the association has grown to exceed 1,000 members. Your phenomenal efforts have uplifted female judicial candidates throughout New Jersey, while providing support and mentorship opportunities to your members.

I would like to congratulate those being honored this evening: the Honorable Tonianne J. Bongiovanni, the Honorable Marianne Espinosa, Loren L. Pierce, Eboneé Lewis, and Lora Fong. Thank you all for your hard work and dedication to serving our community.

I am grateful for all you do to support New Jersey's 11th District and your critical mission of advancing women in the legal profession. I hope you all enjoy the evening. Stay safe and take care.

Sincerely,

Mikie Sherrill Member of Congress

BILL PASCRELL, JR. 9TH DISTRICT, NEW JERSEY

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Congress of the United States House of Representatives

March 29, 2022

New Jersey Women Lawyers Association c/o Dina Mastellone 372 Franklin Avenue Suite 713 Nutley, New Jersey 07110

Dear Members of the New Jersey Women Lawyers Association,

I am pleased to congratulate the New Jersey Women Lawyers Association on its 14th Annual Women's Initiative and Leaders in Law Platinum Gala. Each year, the NJWLA awards exceptional individuals for their dedication to the advancement of the legal profession and their continued contributions to the challenges of gender equity. It is great to see such respected women being honored, and I congratulate each recipient on their achievements.

For 41 years, the NJWLA has sought to bring women together to share experiences and establish the bonds that last a lifetime. Our honorees tonight embody the principal of service over self, I ask that they remain a strong example for young women to follow. They are an inspiration to many, and I applaud each of them this evening. May the knowledge and expertise they cultivated be passed on to future generations so that women everywhere will be empowered to reach their highest potential. I am rooting for the New Jersey Women Lawyers Association and all that it has done for women here in the Ninth Congressional District. May you continue for many more years to come!

Again, I extend my best wishes to the NJWLA and its honorees and thank you on behalf of New Jersey's 9th Congressional District for your service. As your friend in Congress, if I can ever be of any assistance, please do not hesitate to contact me.

Sincerely,

Bill Pascrell, Jr. Member of Congress

Bill Broull J

CHAIRMAN COMMITTEE ON ENERGY AND COMMERCE

FRANK PALLONE, JR.

Congress of the United States House of Representatives Washington, DC 20515

March 29, 2022

New Jersey Women Lawyers Association 372 Franklin Avenue Suite 713 Nutley, NJ 07110

Dear Friends:

It is with great pleasure that I write to you in celebration of the 14th Annual Women's Initiative and Leaders in the Law Platinum Gala (WILL Gala). I would like to join you in honoring women in the legal field and congratulating the evening's distinguished honorees, the Honorable Tonianne J. Bongiovanni, the Honorable Marianne Espinosa, Loren L. Pierce, Eboneé Lewis and Lora Fong.

I commend the New Jersey Women Lawyers Association (NJWLA) for its continued efforts to advocate for and recognize women in the legal profession. Your support helps to ensure valuable and equal opportunities for women in the legal, governmental, academic, community and corporate fields. As a fellow attorney, I applaud the NJWLA for its dedication to advancing women in the legal field and fostering growth among young women interested in the study of law.

Once again, please accept my congratulations to each of the honorees and my best wishes for an enjoyable event. I look forward to hearing of your future successes.

Sincerely,

FRANK PALLONE, JR. Member of Congress

Frank Pallowin.

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Gabriela M. Mosquera ASSEMBLYWOMAN, 4TH DISTRICT CHEWS LANDING COMMONS 1379 CHEWS LANDING ROAD LAUREL SPRINGS, NJ 08021 PHONE: (856) 401-3073

Fax: (856) 401-3076 EMAIL: AswMosquera@njleg.org

March 29, 2022

COMMITTEES CHAIR - WOMEN AND CHILDREN APPROPRIATIONS

I would like to congratulate this year's honorees: The Honorable Tonianne J. Bongiovanni, Honorable Marianne Espinosa, Loren L. Pierce, Eboneé Lewis. It is an honor to acknowledge these four honorees who help advance the mission of the N.J.W.L.A..

The N.J.W.L.A. has exponentially grown over past years and has seen tremendous success with their annual WILL Gala. With all of the talent and opportunity in the state of New Jersey, it is critical that we encourage women to pursue careers in the law profession, and empower them to continue to advance within the field.

I am humbled to have been invited, and please accept my regrets for not being able to attend the WILL Gala. However, because of the recent success of this organization, it should serve as a reminder on the importance of the NJWLA, and I would like to encourage you all to continue to stay dedicated to your mission.

Congratulations again to all the honorees and I wish you all the best in 2022!

Very truly yours,

Gabriela M. Mosquera

Assemblywoman, Fourth Legislative District

NEW JERSEY SENATE



NIA H. GILL
SENATOR, 34th DISTRICT
39 SOUTH FULLERTON AVENUE, SUITE 7
MONTCLAIR, NJ 07042
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Committees
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March 7, 2022

To The New Jersey Women Lawyers Association,

The New Jersey Women Lawyers Association has advanced the representation of women in the legal profession for over 40 years. The NJWLA educates, empowers, and endorses highly qualified attorneys throughout our state and has played a critical role in elevating women to positions of great responsibility. Through its mentoring program, the NJLWLA connects women who can teach, inspire, and support each other, forming a strong network of women professionals.

I would like to join in honoring all the distinguished recipients of the Women's Initiative & Leaders in The Law (WILL) Platinum Award. Women like this year's honorees contribute to making our profession stronger, fairer, and exemplify the mission of the NJWLA to connect and celebrate women. I am proud to support this mission and the NJWLA.

Sincerely,

Nia H. Gill Senator

34th Legislative District



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PRESIDENT

Dina M. Mastellone

Genova Burns LLC

Thank you for joining us for the New Jersey Women Lawyers Association's 14th Annual Women's Initiative and Leaders in the Law Platinum Gala. It is hard to believe that it has been two years since the Covid-19 pandemic has changed the world we live in. NJWLA's Gala has become the event of the season – an event where we celebrate women who have achieved success in their careers and who have earned the admiration and respect of this profession. The past two years have reminded us all how privileged we are to be in this profession.



We are thrilled to finally be able to be back for an evening of celebration that so many members of our New Jersey legal community look forward to. Our Honorees will inspire you all. Each one exemplifies confidence, perseverance, and leadership in this profession. Their careers teach us valuable lessons about the importance of speaking up, being fearless and shattering barriers.

During the pandemic, NJWLA did what it has always done best - evolve, support one another, strengthen its commitment to the promotion of women in this profession and offer a virtual community since we could not gather in person. Despite these challenges, NJWLA has grown to more than 3,000 members and has continued to put on dynamic and insightful programs, CLEs and in-person events including:

- Our Fall Kickoff Cocktail Party gave everyone the opportunity to finally get back together in person to meet, mingle, and kick-off another dynamic year of programming. Many thanks to Gomperts Penza & Mcdermott LLC and Gillman Strategic Group for their sponsorship.
- Speed Mentoring, spearheaded by our amazing Women's Leadership Committee and generously sponsored by Sills Cummis & Gross P.C., was modeled after speed dating and was focused on quick-hit information and time-efficient networking to help our members find a mentor, mentee, or ally in all stages of their careers. We were joined by an amazing group of Judges, law clerks, law students, law firm partners, associates, and in-house counsel who participated as mentors or mentees.
- Pathways to Leadership where attendees were treated to an inspirational evening with NJWLA's Past Presidents and New Jersey's most prominent women leaders who provided thoughtful, candid and inspirational insights into their career paths. The program also explored career development, self-promotion, work-life balance and diversity, equity and inclusion initiatives.
- What's in Your "Go Bag"? Practical Tips for Solos and Small Firms on Emergency Funding and Surviving a Crisis, hosted by our Solo & Small Firm Committee and generously sponsored



Littler proudly supports the

New Jersey Women Lawyers Association

in their commitment to advocating equality for women in law and society and congratulates this year's honorees.

Special Congratulations to Littler Alumni and Honoree

Eboneé Lewis

Associate General Counsel - Employment Becton, Dickinson and Company (BD)

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Dina M. Mastellone continued

by SobelCo. Panelists, provided vital information on funding opportunities as well as what a small law firm or solo practitioner should have in her "go bag" in the case of a

- Friendsgiving & Mixology, hosted by our Young Lawyers Committee and generously sponsored by Sobel Tinari, gave our members a lively virtual evening of mixology, trivia, & entertainment to celebrate the holidays.
- It's OK to Not be OK, organized by NJWLA's In House Committee along with the Association of Corporate Counsel New Jersey (ACC-NJ), where participants shared candid stories and tips on navigating the "new normal."
- Tales from the Bench, our Judicial Outreach Committee spotlighted our Honoree, the Hon. Marianne Espinosa (Ret.). Members heard candid insights about Judge Espinosa's legal career and ascension to the bench over cocktails and hors d'oeuvres generously sponsored and hosted by Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.
- NJWLA's Annual Holiday Party was generously sponsored and hosted by our Women's Leadership Co-Chair Megan Monson, Past President Lynda Bennett and Lowenstein Sandler LLP. Our attendees enjoyed getting together in person to toast to 2022 and support this year's charitable partner, Partners, a non-profit public interest law firm that is dedicated to making a difference in the lives of domestic violence and sexual assault victims.
- Why Embracing Self-Care is the Best Way to Avoid Professionalism & Ethics Pitfalls: Putting on our Own Oxygen Masks Before Helping Others offered a free Zoom Ethics CLE and was generously sponsored by KSBranigan Law P.C.
- What Got You Here Won't Get You There How to Land and Succeed in Your Next Role presented by Elise Holtzman of The Lawyers Edge, where we examined the skills, behaviors, attitudes, and beliefs you must shift in order to progress, how to resist the natural pressure to maintain the status quo, and how to overcome inertia and create your path forward.
- NJWLA's Virtual Open House offered an opportunity for members and non-members to learn about the benefits of NJWLA membership, our endorsement and nomination processes, and our incredible programs and events.
- NJWLA's Mentoring Program was re-launched by our Young Lawyers and Women's Leadership Committees to help create long-lasting professional mentoring relationships by pairing women who can teach, encourage, and champion each other while assisting and inspiring the next generation of leaders to navigate this profession by finding rewarding connections.

More exciting programs are to come including Nuts & Bolts of the Judicial Nomination Process, Seasons of Our Career as Women Lawyers Panel hosted by our Best Practices Committee and featuring Paulette Brown, Esq., Tips for Women Lawyers to Develop and Maintain the Client Relationship spearheaded by our Solo/Small Firm and In House Committees, and our annual Fore Ladies Only Golf Outing.

NJWLA has also continued to reexamine the sources of barriers and challenges we face in the legal profession and work to identify solutions. NJWLA has engaged in ongoing courageous RWJBarnabas Health
proudly supports the
New Jersey Women
Lawyers Association
and congratulates
all of this year's honorees.



Let's be healthy together.

Community Medical Center
Cooperman Barnabas Medical Center
Jersey City Medical Center
Monmouth Medical Center and
The Unterberg Children's Hospital
Monmouth Medical Center Southern Campus
Newark Beth Israel Medical Center and
Children's Hospital of New Jersey

Clara Maass Medical Center

The Bristol-Myers Squibb Children's Hospital Robert Wood Johnson University Hospital Hamilton Robert Wood Johnson University Hospital Rahway Robert Wood Johnson University Hospital Somerset Trinitas Regional Medical Center RWJBarnabas Health Behavioral Health Center

Robert Wood Johnson University Hospital and

Children's Specialized Hospital
Rutgers Cancer Institute of New Jersey

Dina M. Mastellone continued

conversations centered on allyship and efforts to eliminate bias and racism in the legal profession. Guided by the inspiring leadership of our Co-Chief Diversity Officers, NJWLA recently held a DEI Training Session for our Board and we are working diligently on updating our Mission Statement and instituting a DEI Action Plan and Checklist to recommit ourselves to breaking down barriers to advance diversity, equality and inclusion efforts in our profession.

Motivated by the NJWLA's core mission – to advance and retain women in the law –there is more work to do. That is why events like this evening are so important. NJWLA continues to "pay it forward" through its Grants and Scholarship Programs. By awarding Grants, NJWLA supports community partners whose critical work puts our mission in action. In addition, funds raised from tonight's Gala award the best and brightest law students with scholarships so they can continue our work and commitment to building a better future for women lawyers in the State of New Jersey.

It is the pinnacle of my legal career to serve as President of this amazing organization. The success of NJWLA is not possible without the remarkable effort, dedication, and ingenuity of our Board, our Past Presidents, and in particular President-Elect Diana Manning, my trusted sounding board, cheerleader and friend. I know that this organization will continue to thrive under her leadership. All of these women exemplify the core mission of NJWLA and I am in continued awe of the power we have when we support and inspire each other.

On behalf of NJWLA, I extend our congratulations to our distinguished Honorees, Grant recipients, and Scholarship winners and heartfelt gratitude to our Mistress of Ceremonies, the Honorable Madeline Cox Arleo, U.S.D.J., our amazing Gala and Gala Video Chairs and the incomparable Executive Director Colleen Skinner, for their efforts in making tonight an extraordinary event. Finally, thank you to our generous sponsors without whose devotion to this organization could not have made this Gala possible.



PRESIDENT ELECT Diana C. Manning Bressler, Amery & Ross, P.C.

and wish her much success



Cheering New Jersey's Women in the Law!

Faegre Drinker cheers all of tonight's honorees — as well as all NJWLA members — who bring the needed perspectives of women to the practice of law in New Jersey.

At Faegre Drinker, more than half of our elected governing board, and more than half of our operational leadership team, are women. Through our commitment to promoting and retaining women attorneys, we are equipped to better understand the needs and objectives of our clients and communities.

And by promoting the perspectives of professionals spanning all dimensions of diversity, we continue to create an inclusive workplace that addresses underrepresentation in the legal profession and fosters an environment of creativity, innovation and respect.

We salute all participating in tonight's Gala, especially the current and future women leaders among you!





Judicial Sector – Federal

Honorable Tonianne J. Bongiovanni

United States Magistrate Judge for the District of New Jersey

he Honorable Tonianne J. Bongiovanni has presided in Trenton, New Jersey, as a United States Magistrate Judge since being sworn into the Court on April 14, 2003. Before becoming a Federal Magistrate Judge, Judge Bongiovanni worked in the Office of the Federal Public Defender in Newark. Judge Bongiovanni rose through the ranks of the Federal Public Defender's Office, initially being hired as an Investigator while attending Seton Hall University, School of Law as an evening student. Upon attaining her Juris Doctorate from Seton Hall University, School of Law, Judge Bongiovanni became an Assistant



Federal Public Defender, and ultimately achieved the position of First Assistant Federal Public Defender in 1997.

Judge Bongiovanni has been an Adjunct Professor at Seton Hall University, School of Law since 1998 [Courses include: Appellate Advocacy; Persuasion and Advocacy; and The Trial of a Civil Matter]. She was recognized as "Adjunct Professor of the Year" in 2003 and again in 2013. In October 2000, Judge Bongiovanni was awarded "Alumnus of the Year" by the Peter W. Rodino Ir. Law Society. On March 4, 2008, she received the Chief Justice Richard J. Hughes award from the law school's Public Interest organization.

She has also received the Honorable Lawrence A. Whipple Memorial Award for Excellence and Devotion to the Law presented by the Association of Criminal Defense Lawyers; the Woman of Achievement Award from the Woman Lawyers of Monmouth County; and the National Service to Youth Award from the Boys and Girls Club of America. Judge Bongiovanni is a Merit Badge Counselor for the Boy Scouts of America in the areas of Citizenship in the World; Citizenship of the Nation; Citizenship in the Community; and Cooking.

Judge Bongiovanni has been affiliated with the John C. Lifland American Inn of Court (Intellectual Property) since 2003. She has been a member of the District of New Jersey's Patent Rules Committee since its inception in June 2008. Additionally, Judge Bongiovanni has also been the lead judicial officer on the Trenton Vicinage's Reentry Court Program, which was instituted in October 2017 and is designed to assist returning citizens with successfully reentering and reintegrating into society following their incarceration.

Further, Judge Bongiovanni has regularly been a panelist at various conferences including: Consumer Finance Class Actions & Litigation; ERISA Litigation; and the Hatch Waxman Series sponsored by the American Conference Institute; Mercer County Bar Assoc. Ethics Seminar.

Lastly, Judge Bongiovanni shares an excerpt from her Kindergarten Report Card [date intentionally omitted], which suggests she was destined for a judgeship:

Tonianne is a born leader but she sometimes has a little difficulty in working & playing with others because of a reluctance to relinquish the spotlight (at times) to other children. She is much more mature than most kindergarten age children which probably makes it hard for her not to direct & dominate her classmates at play.



Attorneys Certified by the Supreme Court of New Jersey in Civil Trial Practice and Criminal Trial Practice

Congratulations to The Honorable Marianne Espinosa New Jersey Superior Court, Appellate Division (Retired) and All of Tonight's Honorees

Handling personal injury, medical malpractice, nursing home abuse, criminal defense, employment law, workers' compensation, childhood sexual abuse, and other litigation specialties.

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We are proud to support the

New Jersey Women Lawyers Association

Congratulations to this year's WILL Platinum Gala honorees



950 attorneys nationwide

ATLANTIC CITY I MORRISTOWN I PRINCETON

Heather R. Boshak 973.994.7508 | hboshak@foxrothschild.com





JUDICIAL SECTOR — STATE

Honorable Marianne Espinosa

Superior Court of New Jersey, Appellate Division (Retired) Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C.

he Hon. Marianne Espinosa (ret.) became Of Counsel to Javerbaum Wurgaft after nineteen years as a judge in the Superior Court of New Jersey, serving on the Appellate Division from 2009-17, and as a trial judge in the Civil, Criminal and Family Divisions. Her practice is concentrated on resolving disputes through mediation and arbitration as alternatives to both a trial and an appeal. A panelist on the American Arbitration Association's rosters of arbitrators and mediators, she has served as a mediator for the United States



District Court, the Chancery Courts of Union County and Morris County and as a special master.

While serving on the Appellate Division, Judge Espinosa authored over eighty published opinions. The broad spectrum of issues addressed during her tenure on the bench include: employment discrimination, whistleblower and civil rights claims; employment issues related to statutory and contractual rights; consumer fraud; medical and legal malpractice; insurance coverage; land use; and business disputes.

Judge Espinosa was a partner at Tompkins, McGuire, Wachenfeld & Barry, LLP, from 1994 to 2005. As an Assistant United States Attorney for the District of New Jersey (1978-86), she supervised criminal investigations and tried cases to conclusion, including as a member of the Organized Crime and Drug Enforcement Task Force, and was awarded a Special Commendation from the Department of Justice. She was an Assistant Counsel in the Bond and Commercial Loan Department of Prudential Insurance Company (1977-78). As a Deputy Attorney General, she represented the State of New Jersey in criminal appeals and prepared a position paper for the Attorney General on the death penalty. She began her legal career as a Law Clerk to Hon. Richard J. Hughes, Chief Justice, Supreme Court of New Jersey (1974-75) and is admitted to practice in New Jersey.

Judge Espinosa graduated from New York University in 1971. She received her law degree from Rutgers University School of Law, Newark, in 1974, where she was on the Rutgers Law Review, the Moot Court Board and the Student Bar Association.

Speaking engagements include serving on the faculty of the New Jersey Judicial College on Updates in Civil Law (2014-16), as a panelist on the New Jersey Institute for Continuing Legal Education's program on Appellate Practice (2015) and as panelist, "#MeToo: Where Are We Now?" New Jersey State Bar Association, Mid-Year Meeting (2018).

Judge Espinosa has also served on many New Jersey Supreme Court Committees, including the Civil Practice Committee (2002-06), Model Criminal Jury Charges (1989-96, 2011-12), Bench-Bar-Media Committee (2007-12), Committee on Women in the Courts (2010-12).

Judge Espinosa's service to the New Jersey State Bar Association includes appointments to the Appellate Practice, Election Law; Presidential Task Force and Lawyers Helping Lawyers Committees.



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Loren L. Pierce is a principal in the Business and Commercial Litigation practice group.

Representing businesses from Fortune 500 companies to startup ventures over the last 35 years, Loren's experience is wideranging and specialized. Her practice is focused on commercial, insurance coverage, and employment litigation. She also has experience litigating environmental, class actions, construction, and fraud matters. As lead attorney on multi-million dollar litigations, she has handled cases in federal and state courts,



trying cases to conclusion and arguing before the appellate courts. She counsels corporate and non-profit clients on commercial matters, and has prepared corporate-wide policies relating to compliance, employment, and electronic discovery issues. She has handled litigation involving disputed international matters.

Before joining Bressler, Loren served as a Practice Group Manager for the Litigation & Insurance Services practice group at an AmLaw 200 New Jersey law firm, where she co-founded the firm's Women's Initiative.

Loren is a current member of the Board of the New Jersey Women Lawyers Association, and previously held positions including President, President-Elect, Vice President and Chief Financial Officer. She is a Trustee of the New Jersey State Bar Foundation and was a member of the Amicus Committee of the New Jersey State Bar Association. She is also a member of the National Association of Women Lawyers and serves on the Annual Meeting Planning Committee. Loren is a Fellow of the American Bar Foundation and Litigation Counsel of America. She is a member of the American, New Jersey, District of Columbia Bar Associations, and the Association of the Federal Bar of the State of New Jersey.

Loren was appointed to District XIII Fee Arbitration Committee by the New Jersey Supreme Court. Loren has lectured at numerous seminars on various litigation and insurance topics for the New Jersey State Bar Association, New Jersey Institute for Continuing Legal Education, and other groups. Loren is also a student mentor with NJLEEP.

Congratulations Eboneé Lewis

BD joins NJWLA in congratulating Eboneé Lewis for receiving this honor and thank her for her contributions and commitment to the advancement of women in the legal profession.





CORPORATE SECTOR/IN HOUSE

Eboneé Lewis

Associate General Counsel - Employment Becton, Dickinson and Company (BD)

boneé Lewis joined BD in August 2014 and has advanced through progressively more responsible positions. As Associate General Counsel Employment, she provides full service employment law advice and support to all levels of HR professionals and business leaders and managers within the Interventional Segment. In addition, she offers guidance to R&D, Medical/



Clinical, Marketing and Global Health. She also supports Greater Asia. Eboneé also provides guidance to management on acquisition and related integration issues, as well as on company-wide human resource initiatives and best-in-class programs.

She has led African Americans at BD (AABD) since April 2020. AABD gives BD's African American employees a safe space to share their experiences, both personally and professionally. She also serves as the Co-Lead of BD's Law Group Diversity Internship program.

Prior to joining BD, Eboneé served as outside employment counsel to BD while a Shareholder in the Newark office of Littler Mendelson, P.C. While at Littler, Eboneé was selected to be a member of the 2013 class of Fellows for the Leadership Counsel on Legal Diversity program, which identifies, trains, and advances the next generation of leaders in the legal profession.

Eboneé holds a J.D. from Georgetown University Law Center and a Bachelor's Degree in Political Science with Honors from Syracuse University. Eboneé also clerked for the Honorable Arthur N. D'Italia, New Jersey Superior Court. In law school, she was the managing editor of Georgetown Journal of Gender and the Law. She is admitted to practice in New Jersey and New York, U.S. District Court for the District of New Jersey, U.S. District Court for the Eastern and Southern Districts of New York, and the U.S. Court of Appeals for the Third Circuit. She is a member of the New Jersey State Bar Association and New Jersey Women Lawyers Association.

Eboneé was included in the ROI Influencers: People Of Color List 2021 and was featured in American Healthcare Leader article entitled, Eboneé Lewis Makes Real Change the Rule, in March 2021.



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Public Sector

Lora Fong

Assistant Attorney General | Chief Diversity Officer for the Department of Law and Public Safety

Lora Fong is an Assistant Attorney General and serves as the Chief Diversity, Equity, & Inclusion Officer for the Department of Law and Public Safety. Lora is responsible for developing and implementing the agency's strategic diversity and inclusion initiatives. Before joining the department in 2016, Lora practiced law both in private practice law firms and as in-house counsel in multi-national corporations. She also has served as the general counsel of an entrepreneurial multi-



media company and as a consultant to members of the Fortune 500 on diversity, equity, and inclusion.

Lora has been recognized as a Distinguished Leader of the Bar by the New Jersey Law Journal, was awarded the Mel Narol Excellence in Diversity Award by the New Jersey Bar Association, and received the Professional Achievement Award from the Asian Pacific American Lawyers Association of New Jersey. Additionally, she was the inaugural recipient of the Distinguished Alumni Award conferred by the Rutgers Law School Minority Student Program. Her pro bono and community activities include service as a member of the NJ State Advisory Committee to the U.S. Commission on Civil Rights, counsel to the Organization of Chinese Americans-NJ Chapter, and counsel to the Women's Political Caucus of New Jersey. Additionally, she has served as a Trustee of the New Jersey State Bar Association and co-chaired its Diversity Committee. She is a past President of the Asian Pacific American Lawyers Association of New Jersey and member of its Advisory Board. Currently, she serves as the Co-Director of the New Jersey Women Lawyers Association's Diversity Committee. Lora has also been a member of the Rutgers Board of Governors as well as the Rutgers Board of Trustees.

Lora earned a B.A. in Political Science and a Certificate in Women's Studies from Douglass College at Rutgers University, and a J.D. from Rutgers University School of Law in Newark. She is admitted to the bar in New Jersey, New York and various federal courts.



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United States Magistrate Judge for the District of New Jersey

Honorable Marianne Espinosa

New Jersey Superior Court, Appellate Division (Retired) Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C.

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Lora Fond

Assistant Attorney General
Chief Diversity Officer for the Department of Law and Public Safety

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n 2009, as part of its mission to give back to the legal community, the NJWLA established a scholarship program to benefit women who are pursuing a law degree at Rutgers University School of Law - Newark or Camden and Seton Hall University School of Law. The response we received from women law students was overwhelming and empowering. In 2013, the scholarship amount was increased from \$3,000 per scholarship to \$5,000. In 2022, the NJWLA is once again pleased to award scholarships to three aspiring women attorneys who distinguished themselves from a diverse pool of qualified applicants.

Each scholarship recipient was asked to prepare an essay addressing one of the following topics:

TOPIC 1. STARE DECISIS AND THE RIGHT TO ABORTION

On December 1, 2021, the Supreme Court of the United States heard arguments in Dobbs v. Jackson Women's Health Organization, (Docket No 19-1392) pursuant to a Writ of Certiorari granted to the petition of the State Health Officer of the State of Mississippi.^[1] Mississippi sought Certiorari in an effort to reverse the decisions of both the Mississippi Federal District Court and the Federal District Court of Appeals for the Fifth Circuit, each of which unanimously held that Mississippi's Gestational Age Act, which bans elective abortion in Mississippi as of 15 weeks of pregnancy, violates the constitutional right to abortion established in 1973 in Roe v. Wade^[2] and specifically reaffirmed in 1992's Planned Parenthood of Southeastern Pennsylvania v Casey^[3].

Roe established and Casey reaffirmed a woman's right to elective abortion prior to "gestational viability" of the fetus. The Mississippi statute at issue seeks to significantly alter the time period established by Roe and Casey to a 15-week period, thereby prohibiting the right to elective abortion more than 2 months before the viability standard decided in Roe.

The sole Question Presented before the Court is: "Whether all pre-viability prohibitions on elective abortion are unconstitutional."[4]

The State of Mississippi, as Petitioner, answers the Question Presented in the negative and asserts that a State may prohibit pre-viability abortion because nothing in the Constitution specifically addresses a woman's the right to abortion. Mississippi argues that Roe and Casey represent "egregious error" and should be overturned, asserting: "The stare decisis case for overturning Roe and Casey is overwhelming."[5]

Respondents reiterate the settled law enunciated in Roe and Casey based in liberty, the right to bodily integrity and the right to make decisions related to family, marriage, and childbearing. They point to the absence of any evidence, data, or change in circumstance that were not previously addressed in Roe and Casey: "First, stare decisis presents an especially high bar here." In Casey, this Court carefully examined and rejected every possible reason for overruling Roe, holding that a woman's right to end a pregnancy before viability was a rule of law and a component of liberty it would not renounce." [6]

Several questions posed by members of the Court suggested that the lack of specific reference to abortion in the Constitution may allow the Court to adopt a "neutral" position on abortion



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LORA FONG

Assistant Attorney General Chief Diversity Officer for the Department of Law and Public Safety **Public Sector**

Special thanks to the Mistress of Ceremonies:

HONORABLE MADELINE COX ARLEO

United States District Court Judge for the District of New Jersey



and leave regulation and prohibition of abortion to the states. Other members of the Court cited the peril to the ongoing existence of the Court's authority should it be perceived as bowing to political disagreement with the precedent established in Roe and Casey.

Since the Dobbs Petition for Certiorari was filed in June of 2020, Mississippi, Texas and several other states have introduced or passed legislation further reducing the time within which a pregnant women might obtain a legal abortion, and thereby prohibiting elective abortion well short of the standard set in Roe and Casey.

In your essay,

- a.) address the applicability of the doctrine of stare decisis presented by Dobbs, specifically arguing whether you believe the facts presented will require the Supreme Court to affirm Roe and Casey or whether Dobbs presents the Court with an opportunity to overrule established and reaffirmed precedent without violating the doctrine of stare decisis; and
- b.) discuss what you believe will be the effect on the rule of law should the Supreme Court either uphold Mississippi's prohibition on abortion as of 15 weeks, or avoid a decision on the issue by deeming the issue a matter for the states.

~ or ~

TOPIC 2. THE INDIVIDUAL RIGHT OF BODILY INTEGRITY AND VACCINE / MASK MANDATES

In Dobbs v Jackson (USSC Docket 19-1392, argued December 1, 2021)[7] pro-choice parties and multiple amici reiterated that a woman's right to bodily integrity is among the panoply of individual rights protected by the 14th Amendment which guarantee a woman the ability to determine whether to carry a pregnancy to term.

In opposition, the State of Mississippi asserted the interests of the state in protecting the life of the unborn by seeking to drastically circumscribe the time frame for legal abortion set by Roe v. Wade^[8] in 1973 and affirmed in 1992 by Planned Parenthood of Southeastern Pennsylvania v Casey^[9], arguing in part the state's interest in the unborn overrode the individual right to bodily integrity of the woman.

Pro-choice advocates argued that Mississippi's drastic limitation in the time within which a woman can obtain a safe and legal abortion was in fact a prohibition of abortion and not a regulation grounded in the reasonable interests of the state.

Since the onset of COVID-19 global pandemic many states and individuals have challenged vaccine and mask mandates as state and federal regulations designed to limit or prevent the spread of unprecedented illness and death. These challenges have been based upon the assertion of the individual's right to bodily integrity in their refusal to abide by vaccination or mask



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Hon. Tonianne J. Bongiovanni Hon. Marianne Espinosa Loren L. Pierce Eboneé Lewis Lora Fong mandates, where 49.5 million people have been infected and 800,000+ people have died as the result of the COVID-19 pandemic.

The earliest Supreme Court decision on vaccination mandates is found in Jacobson v Massachusetts in 1905[10], which upheld a Massachusetts smallpox vaccine mandate as a reasonable regulation designed to protect public safety. Justice Harlan wrote that individual liberty does not permit people to disregard the harm they may cause to others. On December 8, 2021, the United States Senate passed a bill to overturn the Biden Administration's vaccine and mask mandate by a vote of 52-48.[11]

In your essay, discuss the consistency and inconsistency between the positions taken with regard to individual right to bodily integrity in the context of the decades long abortion debate and the very recent litigation against vaccine/ mask mandates. You are not limited to the citations referenced below in support of your position.

- [1] All referenced documents filed by the parties and amici in Dobbs as well as the Transcript of the December 1, 2021, Argument before the Court, may be accessed at https://www.supremecourt.gov, Docket No. 19-1392.
- [2] 410 U.S.113 (1973)
- [3] 505 U.S. 833 (1992)
- [4]Briefs of Petitioner and Respondents, Question Presented, P. i.
- [5] Petition for Writ of Certiorari, Introduction, P.1
- [6] Transcript, Argument before the United States Supreme Court, Dobbs v Jackson, No. 19-1392, December 1, 2021, T47,48.
- [7] Dobbs v. Jackson Women's Health, USSC Docket No. 19-1392, including the Transcript of the December 1, 2021 Argument before the Court, may be accessed at https://www.supremecourt.gov,
- [8] 410 U.S.113 (1973)
- [9] 505 U.S. 833 (1992)
- [10] 197 U.S. 11 (1905)
- [11] Reuters, Washington DC, December 9, 2021



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Marissa Catalano

Rutgers School of Law – Newark

tatutorily-created state abortion bans have become an unfortunate trend in the United States, however, their constitutionality is highly-contested and hotly-debated among politicians, medical professionals, and the general public. Several states have successfully (and some unsuccessfully) limited a woman's right to terminate her pregnancy beyond a certain point, with some bans taking effect as little as 6 weeks into pregnancy. These questionable laws have been the subject of major litigation, including a Mississippi case pending before the United States Supreme Court, Dobbs v. Jackson Women's Health Organization, 141 S.Ct. 2619 (Mem), 209 L.Ed.2d 748.

The litigation in *Dobbs* was sparked by Mississippi's Gestational Age Act, which banned elective abortion in Mississippi after 15 weeks of pregnancy. MS Code § 41-41-191 (2018). The Gesta-



tional Age Act ("Act") was passed into law in 2018. However, since its enactment, the ban has not gone into effect due to legal challenges. Both the District Court and the Fifth Circuit Court of Appeals have held that the Act violates a woman's constitutional right to obtain an abortion up until fetal viability, as established in Roe v. Wade, 410 U.S. 113 (1973), and affirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

In Dobbs, the Court is currently grappling with the question of "[w]hether all pre-viability prohibitions on elective abortion are unconstitutional." Transcript, Argument before the United States Supreme Court, Dobbs v. Jackson Women's Health Organization, No. 19-1392, December 1, 2021, T37. Petitioners (collectively, "Mississippi")1 assert that not all pre-viability prohibitions on elective abortion are unconstitutional. *Id.* at T37, T38. Mississippi argues that a state may implement a pre-viability abortion restriction because nothing in the Constitution specifically addresses a woman's right to obtain an abortion. Id. at T4. Mississippi further contends that the stare decisis established in Roe and Casey represents "egregious error" and should be overturned. Dobbs v. Jackson Women's Health Organization, Petition for Writ of Certiorari, Introduction, P.1. Mississippi also contends that overwhelming stare decisis exists in opposition to Roe and Casey. Transcript, Dobbs at T12, T13.

Respondents argue that the stare decisis from Roe and Casey are based in liberty, the right to bodily integrity, and the right to make decisions related to family, marriage, and childbearing. Id. at T49. Respondents emphasize the strength of stare decisis and contend that the Court has already examined and rejected every possible reason for overturning Roe. Id. at T78. Specifically, the Court described the right to an abortion as "a component of liberty it would not renounce." Id. at T47, T48.

a. Applicability of Stare Decisis

In order to uphold the integrity of stare decisis, which has been a key principle in the United States' justice system since the early 1800s, it is necessary that the ruling in Dobbs reaffirm Roe

¹ The petitioners are named individuals in their capacities as the State Health Officer of the Mississippi Department of Health and the Executive Director of the Mississippi State Board of Medical Licensure.



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Marissa Catalano continued

and Casey. These decisions established that a woman's right to choose to end her pregnancy is protected by the Constitution, and states can limit that right only after the second trimester, or 28 weeks of pregnancy. Roe, 410 U.S. at 160; Casey, 505 U.S. at 859. Further, these precedents have been widely supported - lower courts across various states, such as New Jersey, Alabama, and Ohio, have struck down abortion bans for violating the Constitution. Abortion Bans: In the States, American Civil Liberties Union, https://www.aclu.org/other/abortion-bans-states#2 (last visited Jan. 25, 2022). Thus, Mississippi's claim that the stare decisis set forth in Roe and Casey represent "egregious error" is unfounded and highly contradicted. Transcript, Dobbs at T48.

During oral argument, Mississippi asserted that Roe and Casey should be overturned because they present erroneous stare decisis. Id. at T12. It attempted to undermine these precedents by asserting that the viability lines drawn "discount and disregard state interests." Id. at T17, T18. However, the state fails to prove that these "interests" are anything more than the state's own "interests" in restricting a woman's freedom - especially in cases of poor, minority women who are at greater risk of medical complications from pregnancies. Induced Abortion in the United States, Guttmacher Institute, https://www.guttmacher.org/fact-sheet/induced-abortion (Sept. 2019). The state's interest is nothing more than a desire to exercise control over a vulnerable population and is not based on any real, protectable interest. Thus, overruling Roe and Casey would be the true "egregious error."

Contrary to Mississippi's argument, it is irrelevant that abortion is not specifically mentioned in the Constitution - just because a right is not listed in the Constitution, does not mean that it does not exist or cannot be inferred through interpretation. As mentioned by members of the Court, the lack of specific reference to abortion permits the Court to take a "neutral" position on abortion and utilize this neutrality to judicially review state-created abortion laws. Transcript, Dobbs at T43, T77. This is the essential purpose of stare decisis - to ensure that legislatively-created and judicially-interpreted rights are uniformly applied and protected from infringement. The prior decisions make clear that a woman has a constitutionally-protected right to choose to terminate a pregnancy up until 28 weeks of pregnancy. To prohibit a woman from obtaining an abortion prior to this time period would be a violation of such established rights, and further, a violation of the integral principle of stare decisis. Moreover, Mississippi presented no new evidence or changed circumstances to show that abortions should be banned in all cases of pre-viability. The circumstances surrounding women's reproductive health and rights have not changed since Roe and Casey were decided. Thus, the principle of stare decisis should be upheld.

b. Impact of Supreme Court Ruling

The impact of overturning Roe and Casey would have alarming consequences. The abortion ban would specifically disadvantage women of color, young women who may not know they are pregnant, women with limited incomes, and women living in rural communities. Induced Abortion in the United States, Guttmacher Institute (Sept. 2019). These women already experience notable barriers to accessing safe and legal abortions; overturning Roe and Casey would only exacerbate these disparities. Further, banning access to a legal, safe abortion early in pregnancy may drive some women to obtain illegal, unsafe abortions.

Hypothetically, if every state were to ban abortions at all stages of pregnancy, a woman's only option would be to obtain, or perform herself, an illegal, unsafe abortion, likely in a nonmedical setting and without proper medical training and equipment. It is unlikely that a ban would stop abortions across the nation; rather, it would prompt incredibly dangerous activity that would expand the health crisis that such a ban purports to ameliorate.

If the Court leaves the decision to the states, it is highly likely that several states, especially more conservative states, will tighten their abortion restrictions. For instance, a Texas law

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Mistress of Ceremonies
Honorable Madeline Cox Arleo

United States District Judge for the District of New Jersey

Marissa Catalano continued

was recently upheld that drastically limits a woman's timeframe to receive an abortion to 6 weeks. In re Whole Woman's Health, 142 S. Ct. 701 (2022). The country has yet to see the damaging impact of this decision, but I strongly believe it will highlight the importance of expanding abortion access rather than restricting it. In addition, twelve states currently have "trigger laws" that would automatically ban abortion in the first and second trimesters if Roe were overturned. Lauren Cross & Elizabeth Nash, 26 States are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why, Guttmacher Institute, https://www.gutmacher.org (Oct. 2021). There is also evidence to suggest that 26 states currently have laws or constitutional amendments that would make them certain to attempt to ban abortions as quickly as possible. Id. In addition to irreversible emotional trauma and hardship, these laws could have dire consequences that leave pregnant women without any redress besides obtaining a potentiallyunsafe, illegal abortion, or traveling to another state where abortions are legal. This would be unduly costly in terms of travel and lodging, pre- and post-abortion care, and would lead to difficulties in payment options or insurance coverage (or perhaps no coverage whatsoever). The impact would extend into the workplace, where women may not be eligible for time off needed for travel, pre-abortion care, and post-abortion care. These obstacles would only be greater, and likely insurmountable, for poor and minority women.

This list of consequences is not exhaustive and may be expanded if states choose to further restrict a woman's access to an abortion. It is unknown if states could later tighten their restrictions to prohibit a woman from obtaining an abortion at any stage in pregnancy (perhaps with exceptions, perhaps without). It is heartbreaking to try to conceive the consequences of such a decision, especially on women's health and infant mortality rates. Although states may not be this extreme in their approach, their haste to restrict abortions does not leave much promise as to their integrity regarding women's health and rights. Thus, it is necessary for the Supreme Court to carefully consider the large-scale, irreversible implications when rendering its decision.

It is my hope that the Supreme Court chooses to uphold the principles of stare decisis while simultaneously upholding the values of liberty, bodily integrity, and a woman's right to choose. It is incredibly important that the Court considers the disparate impact that such restrictions would have on poor, minority women and understand the need to provide equitable access to abortion care. Although the future of abortion access is unknown, I am hopeful that efforts to combat restrictive abortion laws will, at a minimum, spread awareness about their inhumane and disparate consequences and positively shape future policies regarding abortion access.

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Hayly Mickles Rutgers School of Law - Camden

Does Women's Liberty Matter?

"Without justification the law is unconstitutional. With justification that meets constitutional standards, the restriction on liberty does not violate the Constitution."1

n its most recent term, the Supreme Court heard oral argument in Dobbs v. Jackson Women's Health Org.,² and issued a pair of unsigned opinions3 in Missouri v. Biden,4 and Nat'l Fed'n of Indep. Bus. V. OSHA.5 Though there were many different arguments made in these cases, a common thread was the concept of bodily autonomy, protected by the right to privacy, and applied to the states via the Fourteenth Amendment. Is it



hypocritical for the Court to talk from one side of its mouth about women's interest in bodily autonomy and privacy being subordinate to the state's interest in "protecting the potential for life[,]" when it says from the other that the right of bodily autonomy is superior to the federal government's interest in public health during "pressure of great dangers" to the "safety of the general public"7 during the COVID-19 pandemic? Is it a trick of logic to use the concept of bodily autonomy for both vaccine mandate and abortion rights analyses when the bodies in question are being invaded for very different reasons and in completely different ways? What value do we assign to the liberty rights of different classes of people, and how does the value of human life play into our Constitutional conceptions of those rights? If one reads these three cases together, it is not a stretch to argue that women are considered less important than workers at companies with more than 100 employees, Medicare & Medicaid recipients, and fetuses.

The Abortion Analysis

Abortion is an invasion of bodily autonomy; even conservative Catholic Associate Justice Amy Coney Barrett admitted as much in Dobbs.8 Roe v. Wade9 held that the woman's liberty interest outweighed the interest of the state, up to a viability line. Planned Parenthood v. Casey fully discussed and disposed of dissenting opinions from Roe, and ultimately shifted our nation's "line" from a trimester to a viability demarcation. But the logic was clear: A woman has a liberty interest in making her own choices about her body and her family planning, and the state's interest is too insignificant until she reaches considerable progression in her gestational period. Implicit

4 Missouri v. Biden, 595 U. S.__ (2022) (per curiam).

¹ Wendy K. Mariner, George J. Annas & Leonard H. Glantz, Jacobson v. Massachusetts: It's Not Your Great- Grandfather's Public Health Law, 95 Am. J. Pub. H. 581, 583 (2005).

² Dobbs v. Jackson Women's Health Org., cert. granted (May 17, 2021) (No. 19-1932).

3 Adam Liptak, Supreme Court Blocks Biden's Virus Mandate for Large Employers, NY TIMES (Jan. 13, 2022), https://www.nytimes. com/2022/01/13/us/politics/supreme-court-biden-vaccine-mandate.html; Brian Farrington, The Supreme Court Upholds Stay of President Biden's OSHA Vaccination Mandate; Overturns Stay of Healthcare Workers Mandate—Where Do Things Stand Now?, COWLES THOMPSON ATTORNEYS (Jan. 14, 2022), https://www.cowlesthompson.com/resources/practice/the-supreme-court-upholds-stay-of-presidentbidens-osha- vaccination-mandate-overturns-stay-of-healthcare-workers-mandate-where-do-things-stand-now/.

⁵ Nat'l Fed'n of Indep. Bus. V. OSHA, 595 U. S. (2022) (per curiam).

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in these precedential decisions is the argument that even though a fetus is neither an American citizen, nor a taxpayer, nor certain to survive long enough to have a certificate of live birth issued, that fetus's interest in its potential life is a compelling state interest, too. More simply, human life has value, and the state can protect it.

Inherent in the abortion cases is a weighing of interests. Undergirding those interests is the value we assign to human life. Logically then, when a fetus roughly transitions to an unborn baby, its interest in state protection from harm is more important than the mother's. So how then can a state like Mississippi prevail in a case like Dobbs, where it seeks to claim control before the fetus is a baby? It argued that the line was wrong, and that fetal "girls" need state protection.11 The respondent argued that protecting a woman's choice to terminate pregnancy up until viability protects her liberty interests while logically balancing the other interests at stake, and that state control of a woman's body is a fundamental deprivation of her liberty.¹²

The Vaccine and Masking Mandate Analyses

On the other hand, in Missouri and Nat'l Fed'n, the Court held that mandates for healthcare workers meet the threshold of compelling state interest narrowly tailored, but vaccine and mask mandates for private sector employees do not. In Nat'l Fed'n, the Court seemed to be saying that the vaccine mandate was too oppressive to be mandated outside of congressional legislation; that OSHA cannot regulate American citizens simply because they encounter a health threat in everyday life that spills over into their workplace. Rather, that the Major Questions doctrine dictates that the laws that govern us "must at least be . . . trace[able] . . . to a clear grant of authority from Congress."13 Meanwhile, the Court held in Biden v. Missouri that the statistically more vulnerable citizens who receive Medicaid and Medicare require important protection in the form of vaccinated health care workers at hospitals that receive federal funding.

Consistency or Partisanship?

Though the vaccine cases are correctly decided, Biden v. Missouri and Dobbs are inconsistent. If we contend that the analysis should center on a framework of personal liberty, then the Court, should it rule in Mississippi's favor, is jackknifing into some cramped house-of-cards logic based on sowing seeds of doubt about the viability line and textualism at the cost of all progressive precedent. It is saying: Even though women have a liberty interest in their own bodily autonomy, that interest is irredeemably diminutive compared to the life of the unborn, non-person, non-citizen.

Conversely, in the vaccination cases, the Court came to the right conclusion when considering the liberty/autonomy framework. Forced vaccinations at the federal level, because of an administrative rule, when the workplace danger is merely derivative of everyday life, is not how our separation of powers and Article I of the Constitution work. Even common childhood vaccines in this country—colloquially considered compulsory—are mandated at a state level,14 and only as a prerequisite to public education. It is certainly up for debate whether that is a wise method for compelling basic vaccinations for American citizens. However, if OSHA were allowed to mandate vaccinations, the standard of review for any appeal would be that of

⁶ Transcript of Oral Argument at 34:10–11, Dobbs v. Jackson Women's Health Org., (2021) (No. 19-1932).

⁷ Jacobson v. Massachusetts, 197 U.S. 11, 29 (1905).

⁸ Dobbs, at 57:3, No. 19-1932.

⁹ Roe v. Wade, 410 U.S. 113 (1973).

¹⁰ Transcript of Oral Argument at 5:11, Dobbs v. Jackson Women's Health Org., (2021) (No. 19-1932).

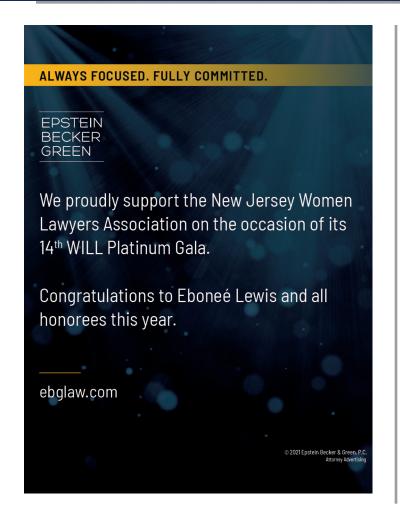
¹¹ See Amicus with Dahlia Lithwick, Inside the Arguments in Dobbs v. Jackson Women's Health, SLATE, at 48:30 (Dec. 2021), https://open.spotify.com/episode/426tS3OUlXEU699iJMDpAX?si=35Wths0tSmKJzWy8A9zkmw (featuring Columbia Law School professor Catherine Franke discussing the proposition that religious viewpoints are being repackaged as agnostic principles).

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an administrative decision. This standard defers to ALJs, unlike a garden variety constitutional rights challenge. That would be unprecedented territory as it pertains to violations of bodily autonomy by an agency that is not directly responsive to the electoral demands of a constituency. In short, because OSHA was the means through which Biden wanted to compel vaccination, the Court needed not even reach an inquiry into bodily liberty.

On the other hand, holding that healthcare workers at hospitals that receive federal funding via Medicare and Medicaid must be vaccinated against COVID-19 is consistent with the case law and the Appropriations Clause. 15 As such, an equal protection analysis is appropriate, and the Court wisely weighed the liberty interests of healthcare workers against public health and the increased risk of death to which Medicare and Medicaid recipients are statistically subject.

Conclusion

So, what is the bottom line? The Court was technically consistent in Dobbs and Missouri, but at the same time, the Court now cares more about religious arguments couched as secular philosophical concerns than it does about the welfare of women as a group (precedent) and as individuals (autonomy/liberty). This means the outcome was pre-determined: Because the Religious Right that dominates the Court now values fetal rights so absolutely, women's liberty interests must fail. If there is to be any protection of women's right to pre-viability abortion in this country, the arguments should center on the value of women as individuals. The value of a living, breathing, American woman should be unassailable.

13 Nat'l Fed'n, 595 U. S.__, at *4 (2022) (Gorsuch, J., concurring)

¹² Transcript of oral argument at 48:14-17, Dobbs (U.S. May 17, 2021) (No. 19-1932).

¹⁴ The caveat to this non-requirement is the Immigration and Nationality Act, 8 U.S.C. § 212(a)(1)(A)(ii), which mandates several compulsory vaccines that immigrants must receive before naturalizing to the United States. 15 U.S. CONST. art. I, § 9, cl. 7.

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Discuss the consistency and inconsistency between the positions taken with regard to individual right to bodily integrity in the context of the decades-long abortion debate and the very recent litigation against vaccine/mask mandates.

Two major issues facing American jurisprudence right now are questions regarding the appropriate extent of governmental regulation of abortion and preventive healthcare mandates engendered by the COVID-19 pandemic. As with many issues in Constitutional Law, these debates turn on the balance of the rights of individuals against either those of specific other individuals or those of other individuals as members of society.



This tension among various individuals and society itself often determines where the balance's fulcrum is established in each issue. The question of abortion balances the rights of the woman against the rights of the embryo or fetus and the interest society has in protecting potential life. The question of COVID-related health mandates balances the rights of unmasked and unvaccinated individuals against the rights of those who wish to avoid the spread of disease and the interest society has in protecting the health of its members. The interest in bodily integrity against governmental interference is precisely the same in both arenas. The varying weight accorded to other factors in each equation causes the disagreements over how these questions should be answered.

The weight of these other factors in each debate stems from the relationship between the individual and society. The only way that any individual can have a legitimate stake in anyone else's behavior is when the other's behavior affects that individual, either in themselves or as a part of the larger society. As members of such a community, individuals can no longer do whatever they want, whenever they want; they owe a responsibility to all other members of the society to act in a way that protects their wellbeing. The need to avoid unfettered liberty for the holistic maintenance of society is an essential part of American legal theory and relates directly to this balancing of the rights of one against the rights of many. In Crowley v. Christensen, the Supreme Court asserted that:

the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will.

137 U.S. 86, 89 (1890). This theory was confirmed in Jacobson v. Massachusetts, when the Supreme Court held the Massachusetts legislature had not exceeded its power by mandating

¹ According to the Social Contract theory, when individuals join together to form a society, each individual must cede some rights to the society as a whole. See generally Jean-Jacques Rousseau, The Social Contract (1762).

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Carmen Abrazado continued

that "the board of health of a city or town, if, in its opinion, it is necessary for the public health or safety, shall require and enforce the vaccination and revaccination [against smallpox] of all the inhabitants thereof." 197 U.S. 11, 12 (1905) (quoting Mass. Revised Laws, c. 75 § 137 (1905)). Both opinions identify the specific need for "public health or safety" as a threshold concern that justifies governmental infringement of individual liberties. Id. The idea in Crowley that "the governing authority" should maintain the "morals of the community," though, pinpoints the more disputed ideas in the debates over abortion and preventive healthcare mandates. What are the "morals of the community," and who defines them?

Richard Posner has described morals as "the set of duties to others . . . that are designed to check our merely self-interested, emotional, or sentimental reactions to serious questions of human conduct." Richard Posner, The Problematics of Moral and Legal Theory, 111 Harv. L. Rev. 1637, 1639 (1998). Though this is a definition framed by a brilliant legal mind, it is does not necessarily reflect the layperson's conception of morality. And, because laypeople are so closely entwined in the selection of legislators, this difference is significant. The way that morality tends to be wielded today seems to be more to impose duties on others with deference to our own "self-interested, emotional, or sentimental reactions." Many have lost the perspective that living in a society is a privilege that confers benefits—for which morality is the price—and they instead view societal protection as a right. But an examination of ethical egoism and its like is well beyond the scope of this essay.² Suffice to say that differing conceptions of morality's societal function contribute to the debates at hand.

Further, the varying viewpoints on how to define that morality add to the conflicts. It is generally accepted that "the community" should define the morals of that community. See Yehezkel Dror, Values and the Law, 17 The Antioch Rev. 440, 440 (1957). But the idea that "the community" can have one comprehensive set of broad-reaching morals is an artifact of a society that overwhelmingly followed a single religious consensus. As society has become more diverse, the set of morals that can be considered "universally held" has necessarily shrunk; the overlap in the Venn diagram diminishes as more circles are added. Thus, tension builds between those who think laws should reflect the broader expanse of morals that may have been appropriate in a circumscribed community and those who recognize that such widespread moral codification no longer reflects the beliefs of modern heterogeneous society. Through the early twenty-first century, the Supreme Court has tended to carefully consider the extent to which morality can be considered a legitimate government interest. See Daniel F. Piar, Morality as a Legitimate Government Interest, 117 Penn. State L. Rev. 139, 139 (2012). With the current Court, though, it seems likely this trend may shift. The extent to which that is true is now beginning to come to light.

The recent cases the Court has heard and decided are indicating how this shift toward individual rights and local governance will constrain the power of the federal government. In Dobbs v. Jackson Women's Health, Scott G. Stewart, the Solicitor General of the State of Mississippi arguing on behalf of the Petitioners, was careful to leave undisturbed the constitutional basis for personal autonomy and privacy that undergird the arguments against mask and vaccine See Transcript of Oral Argument at 6, Dobbs v. Jackson Women's Health, No. 19-1392 (argued Dec. 1, 2021). In the same breath, though, he argued that abortion regulations should be controlled at the local level. Id. This draws on the convictions of the nation for federal protection of bodily integrity but concurrently restricts the argument over abortion to a local issue such that the morals of a smaller (and, presumably, an effectively more homogeneous)

² See generally Ethical Egoism, Seven Pillars Institute (Aug. 26, 2017) https://sevenpillarsinstitute.org/glossary/ethical-ego-

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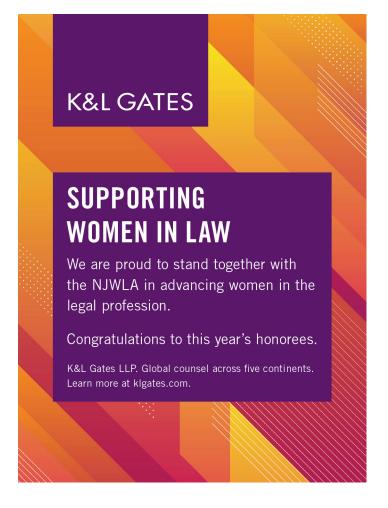
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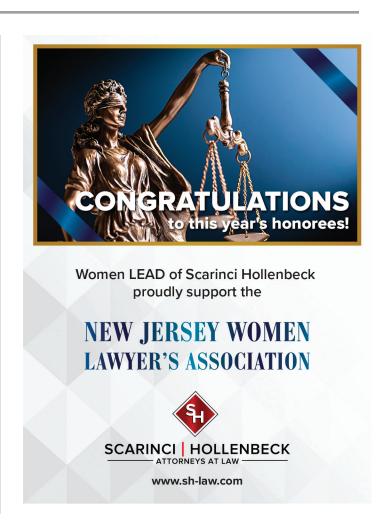


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Carmen Abrazado continued

community can come to bear and impose harsher regulations. This imbalance in governmental reach is evident in recent vaccine mandate cases as well.

In NFIB v. OSHA, the individual's right to bodily integrity simmered beneath the surface when the Court ruled OSHA had exceeded its authority by mandating that those working for employers with more than 100 employees must receive a Covid vaccination. See Nos. 21A244 & 21A247, slip op. at 6 (Jan. 13, 2022). The Court found that "[t]he [Occupational Safety and Health] Act [that created OSHA] empowers the Secretary [of the Department of Labor] to set workplace safety standards, not broad public health measures." Id. (citing 29 U. S. C. \$655(b) and \$655(c)(1)). Mandating a vaccine based on authority over the workplace was deemed untenable in the face of individual autonomy because "[a] vaccination, after all, 'cannot be undone at the end of the workday." Id. at 7 (quoting In re MCP No. 165, 20 F. 4th 264, 274 (2021) (Sutton, C. J., dissenting)). This draws a clear line between an individual's right to bodily integrity and the moral authority of OSHA to interfere with it.

On the other hand, in Biden v. Missouri, the Court held that the Secretary of Health and Human Services did have the authority to mandate vaccines for healthcare workers in facilities receiving Medicare and Medicaid funding, based on the Department's responsibility for protecting those in its charge. See Nos. 21A240 & 21A241, slip op. at 5 & 8 (Jan. 13, 2022). Even in affirming this authority, though, the Court was explicit in limiting the degree to which the COVID-19 emergency could be used to justify the exercise of federal power. Id. at 9 ("The challenges posed by a global pandemic do not allow a federal agency to exercise power that Congress has not conferred upon it. At the same time, such unprecedented circumstances provide no grounds for limiting the exercise of authorities the agency has long been recognized to have.") The juxtaposition in that statement of "unprecedented circumstances" and long-recognized authority is telling; it reflects a devotion to traditional morality and limitations, even in the face of novel challenges. The individual's bodily autonomy is the same in all these debates; it is a constitutionally protected right. The morality imposed on the situation, though, determines how that right balances against the needs of society.



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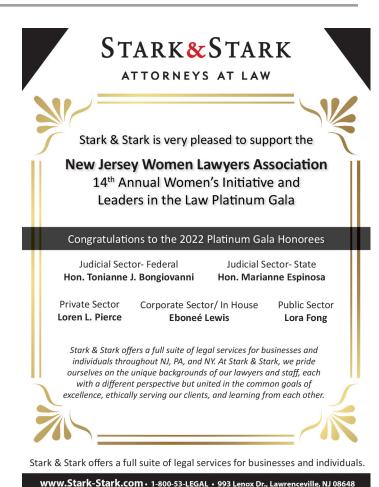






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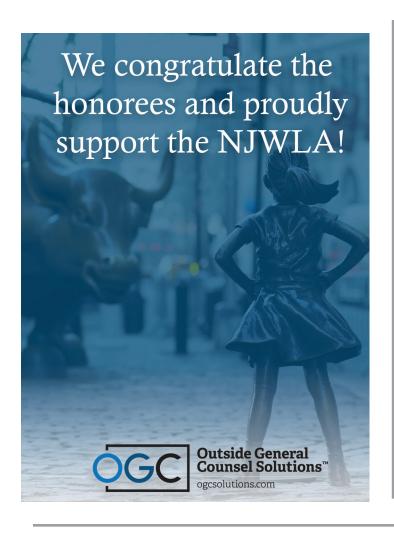
SHEEA SYBBLIS

NJWLA Co-Chief Diversity Officer Leadership Council on Legal Diversity, Fellow Vice Chair of Plenary, General Counsel Institute, NAWL American Healthcare Law Association,

In House Planning Committee Fordham BLSA Trailblazer Honoree

ELYSE WOLF

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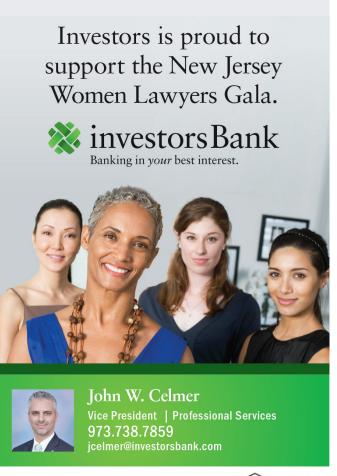
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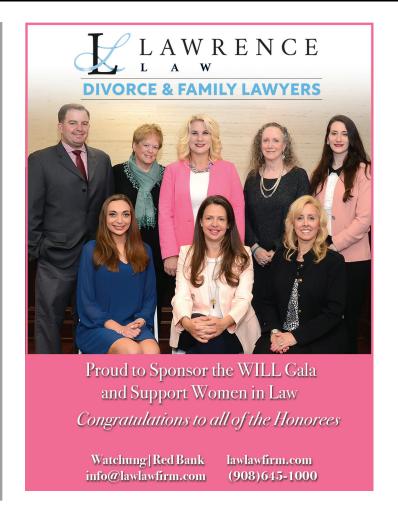












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the New Jersey Women Lawyers Association and congratulates all of the Women's Initiative and Leaders in the Law Award 2022 Honorees

for their exceptional achievements, and their sustained contributions to gender equity challenges unique to women in the legal profession



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would like to especially thank

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For all of their hard work and tireless efforts in making the



