

THE *DOBBS* DECISION’S ECONOMIC RIPPLE

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The 2022 Dobbs v. Jackson Women’s Health Organization decision disrupted reproductive health policy expansion all over the country, overturning Roe v. Wade (1973) without addressing its important economic implications. The Court’s rationale behind this decision stems from the fact that the Constitution does not explicitly embed the right to an abortion; therefore, it can not be regulated at the federal level. However, returning abortion legislation to the state governments has had significant economic repercussions that impact interstate commerce, specifically through migration and college selection. High school students select universities based on the state’s abortion laws, and residents leave their home states in order to feel more comfortable with their chosen state’s abortion policy. Historically, the use of the Commerce Clause established the foundations of civil rights policy and later became a tool for broadly regulating economic activities. Due to the Court’s narrowing interpretations, it created the Substantial Effects Test and the Aggregate Effects Doctrine. These legal tests serve as the backbone of Commerce Clause jurisprudence and can be used in conjunction with data on university selection and migration to protect federal abortion legislation. This Note will argue that federal abortion legislation is constitutionally supportable under established Commerce Clause doctrine.

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I. Introduction

The *Dobbs v. Jackson Women's Health Organization* (2022) decision dangerously interprets the Fourteenth Amendment, potentially leading to a range of issues related to interstate commerce. This Commerce Clause, an enumerated power in Article I of the Constitution, allows Congress the broad power to regulate interstate commerce and restricts states from impairing interstate commerce.² The clause has historically regulated civil rights issues, and Congress essentially used it as a “backup plan” to regulate almost anything not stated in the Constitution. The Commerce Clause evolved into a powerful tool to increase the jurisdiction of Congress’s power, such as large-scale regulation of substances like marijuana, and could be employed federally to protect abortion. In the case of *Dobbs v. Jackson Women's Health Organization* (2022), the Supreme Court utilized the Fourteenth Amendment to return abortion regulation to the states. However, this abortion regulation increasingly interferes with interstate commerce, such as when citizens move states due to more restrictive policies. This Note will explain the interpretation of the Fourteenth Amendment in the *Dobbs* case. Specifically, how it interferes with interstate commerce and subsequently provides a path to return reproductive health regulation to the federal government under the Commerce Clause. Drawing on data from various studies conducted on the real estate market and college enrollment choices before and after the *Dobbs* decision, this Note analyzes this decision’s impact on interstate commerce. This Note first examines previous interpretations of the Commerce Clause in the second section, beginning with the historical foundations of the implementation of the legal tests utilized today, specifically the Substantial Effects Test and the Aggregate Impact Doctrine. The third section provides background on the *Dobbs* decision’s legal reasoning and explains its flawed interpretation, indicating where it leaves room for overturning with sufficient evidence. The fourth section evaluates how post-*Dobbs* abortion legislation poses an economic burden, through studies on migration and student college selection. Finally, in the fifth section, this Note will use legal tests and economic data to argue that the Commerce Clause provides a viable foundation for establishing federal authority over abortion legislation. Although *Dobbs* eliminated federal constitutional protections for abortion, Congress retains the authority to protect abortion access under the Commerce Clause. By demonstrating that abortion restrictions have a substantial effect on interstate commerce, this Note contends that federal abortion legislation is constitutionally supportable under established Commerce Clause doctrine.

II. History of the Court’s Utilization of the Commerce Clause

A. Civil Rights Historical Tie to the Commerce Clause

² U.S. Const. Amend. X, § 8, cl. 3.

The Court historically interpreted the Commerce Clause to establish the foundations for civil rights policy.³ In the landmark *Heart of Atlanta Motel, Inc. v. United States* (1964), the motel's owners refused to rent rooms to Black travelers, claiming that the Civil Rights Act of 1964 exceeded Congress's power to regulate commerce under the Commerce Clause.⁴ Since the motel "accepts convention trade from outside Georgia and approximately 75% of its registered guests are from out of State,"⁵ the Supreme Court unanimously ruled against the motel, stating that discrimination in public accommodations affects interstate commerce and travel. This decision maintained Congress's power to regulate interstate commerce and declared that this regulation extended to activities that so affect interstate commerce as the regulation of them facilitated an appropriate means to the attainment of a legitimate end.⁶ In this case, the Court considered racial discrimination an appropriate means for regulation.

Similarly, the owners of a restaurant located in Birmingham, Alabama, which discriminated against people of color, sued in a United States District Court of the Northern District of Alabama to declare Title II of the Civil Rights Act of 1964 unconstitutional. In this case, *Katzenbach v. McClung* (1964), the owners believed the Act to be unconstitutional because they thought it exceeded the powers expressed in the Commerce Clause.⁷ However, because a substantial portion of the food served in the restaurant traveled between states, the Supreme Court contended that "Congress had ample basis upon which to find that racial discrimination at restaurants...does impose commercial burdens of national magnitude upon interstate commerce."⁸ Ultimately, the Supreme Court held that forbidding racial discrimination by restaurants that offer to serve interstate travelers or serve food that has been significantly moved in interstate commerce is a constitutional and rational exercise of the Commerce Clause.

B. Conditions and Legal Tests

A landmark judgment for interpreting the Commerce Clause and creating legal tests is the case of *Wickard v. Filburn* (1942). The Court accused an Ohio farmer, Roscoe Filburn, of growing more wheat than allowed under the Agricultural Adjustment Act of 1938, which the federal government designed to stabilize wheat prices.⁹ Filburn justified his excess wheat growth because he reserved it for feeding his livestock, and it never entered the public market; thus, it should not be subject to federal regulation.¹⁰ The Supreme Court ruled that even local production, like Filburn's wheat farm, could indirectly affect intrastate commerce by reducing demand in the state market and, therefore, affecting the nation's wheat production.¹¹ This

³ *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 243(1964).

⁴ *Id.*, 243.

⁵ *Id.*, 243.

⁶ *Id.*, 242-243.

⁷ *Katzenbach v. McClung*, 379 U.S. 294, 294 (1964).

⁸ *Id.*, 293-294.

⁹ *Wickard v. Filburn*, 317 U.S. 111, 113-114 (1942).

¹⁰ *Id.*, 119.

¹¹ *Id.*, 119.

interpretation of the Commerce Clause creates a foundational principle that the clause applies to both products transported within a state and products designated for personal use.¹²

The *Wickard* case established the Substantial Effect Test, which has since been used to regulate interstate activities under the Commerce Clause. This test is broken up into two doctrines: the Economic in Nature doctrine and the Aggregate Impact doctrine. To determine the substantial effect of the activity on interstate commerce, one must first distinguish whether the activity is economic in nature or a non-economic activity. If the Court deems the activity to be economic, even if it is small, it may have a substantial cumulative effect on interstate commerce.¹³ Next, the Aggregate Effects Doctrine may be applied in certain situations. If an individual economic activity is considered relatively small and cannot be regulated under the Commerce Clause, it can be regulated if combined with similar activities that have a substantial cumulative impact on interstate commerce. The test's final consideration determines whether the activity places a limit on congressional power: if the activity's connection to commerce is too indirect, regulation using the Commerce Clause may be unconstitutional.¹⁴ The Substantial Effects test is the baseline legal test relied on by the Court for many Commerce Clause conflicts.¹⁵

C. Modern Interpretation of the Commerce Clause

The two main cases referred to most in Commerce Clause jurisprudence are *United States v. Lopez* (1995), which expands on the definition of economic and non-economic activity,¹⁶ and *Gonzalez v. Raich* (2005), which allows Congress to regulate goods designated for personal use.¹⁷ However, *Gibbons v. Ogden* (1824) notably defines what is considered “commerce”, laying the groundwork for future activities to be regulated under the Commerce Clause.¹⁸ The Court defines the meaning of the word “commerce”, explaining they “would limit it to traffic, to buying and selling, or the interchange of commodities... Commerce, undoubtedly, is traffic, but it is something more. It is intercourse.”¹⁹ The *Lopez* case narrows this definition of an economic activity and involves a respondent convicted of violating the Gun-Free School Zones Act of 1990.²⁰ However, the Supreme Court ultimately found the original decision evidenced by the Commerce Clause was an overstep: “...the possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, have such a substantial effect on interstate commerce.”²¹ The Court did not consider the activity referred to in this case an economic activity and could not, therefore, regulate it under the Commerce Clause. Before

¹² *Id.*, 119.

¹³ *Id.*, 125.

¹⁴ *Id.*, 133.

¹⁵ *Id.*, 133.

¹⁶ *United States v. Lopez*, 514 U.S. 549, 549 (1995).

¹⁷ *Gonzales v. Raich*, 545 U.S. 1, 8 (2005).

¹⁸ *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 1 (1824).

¹⁹ *Id.*, 189.

²⁰ *United States v. Lopez* (1995), 549.

²¹ *Id.*, 549.

Lopez, the government had broadly used the Commerce Clause to justify Legislative acts, but this case delineated that certain affairs remain under state sovereignty, such as school safety. By narrowing the definition of economic activity, the Court limited Congress's reach to only those activities that have a substantial effect on interstate commerce.

Gonzalez v. Raich (2005) involves an individual who sought to avail his sickness with medical marijuana. Although legal in California, the Court held that the regulation of his marijuana was within Congress's commerce power because the production of marijuana, even meant for only personal use, had a substantial effect on supply and demand in the national market.²² This conclusion affirms the definition of the Commerce Clause established in *Lopez*. In clarifying economic activities and what determines personal use, this Supreme Court case law firmly establishes Congress's power to regulate local activities that are part of an economic class of activities that have a substantial effect on interstate commerce.²³

III. The Prosecution's Case: *Dobbs v. Jackson Women's Health Organization*

In June of 2022, the Supreme Court eliminated federal protection of reproductive rights with the *Dobbs v. Jackson Women's Health Organization* decision after they had been safeguarded under the Constitution for almost 50 years. *Dobbs* overturned *Roe v. Wade* (1973), which held that the Constitution protects a woman's right to choose to have an abortion, is grounded in the right to privacy under the Due Process Clause of the Fourteenth Amendment.²⁴ The Due Process Clause declares no state shall deprive any person of life, liberty, or property, without due process of law.²⁵ While the right to privacy is never explicitly stated in the Constitution, it has been interpreted as implicit in several amendments that feature this clause, including the First, Fourth, Fifth, Ninth, and especially the Fourteenth.²⁶ *Griswold vs. Connecticut* (1965) famously established this right to privacy under the Fourteenth Amendment, declaring "that the concept of liberty protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights... the concept of liberty is not so restricted and that it embraces the right of marital privacy though that right is not mentioned explicitly in the Constitution..."²⁷ In *Dobbs*, the Court directly attacks this right to privacy used in *Roe* to legalize abortion: "*Roe [v. Wade]* was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned... And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions—the First, Fourth, Fifth, Ninth, and Fourteenth Amendments."²⁸ The Court reasons that *Roe* was wrongfully decided because the Constitution does not explicitly mention abortion and should, therefore, not be protected.

²² *Gonzales v. Raich* (2005), 8.

²³ *Id.*, 8.

²⁴ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 215 (2022).

²⁵ U.S. Constitution, amend. XIV, § 1.

²⁶ *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965).

²⁷ *Id.*, 486.

²⁸ *Id.*, 235.

Further, the *Dobbs* majority argued that because the right to abortion is neither explicitly stated in the Constitution nor "deeply rooted in the Nation's history and traditions,"²⁹ it should not be protected under the Due Process Clause of the 14th Amendment. They proceed to address the second case precedent the Court believes was wrongfully set by *Planned Parenthood v. Casey* (1992), criticizing its use of the Fourteenth Amendment as follows:

"The second category [of rights stated the Fourteenth Amendment]— which is the one in question here—comprises a select list of fundamental rights that are not mentioned anywhere in the Constitution...we must ask what the Fourteenth Amendment means by the term 'liberty.' When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect the right to an abortion."³⁰

The Court ultimately concluded that because abortion is not constitutionally guaranteed, the authority to regulate it should rest with individual states, rejecting the doctrine of stare decisis in favor of returning the issue to state legislatures.

The *Dobbs* decision relied on overturning previous case precedent to deem federal abortion protections unconstitutional; therefore, neglecting to explain why abortion should not be federally regulated. Associate Justice Brett Kavanaugh states in his concurring argument, "In sum, the Constitution is neutral on the issue of abortion and allows the people and their elected representatives to address the issue through the democratic process."³¹ Returning abortion regulation to individual states allows for the states to regulate it however they see fit, some even banning it altogether.³² Further, the dissenting opinion by Justices Breyer, Sotomayor, and Kagan suggests potential interstate conflicts: "In any event, interstate restrictions will also soon be in the offing...some States may block women from traveling out of state to obtain abortions...Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States' abortion services."³³ While the dissenting opinion mentions interstate conflicts, the majority opinion in *Dobbs* only challenges the moral reasoning behind previous precedents regarding the right to privacy, allowing an opportunity for *Wickard's* Substantial Effects Test to be used. Given evidence that *Dobbs's* decision to overturn federal abortion protections has an effect on interstate commerce, abortion could be framed as an economic issue to utilize this test.

²⁹ *Id.*, 260.

³⁰ *Id.*, 237-240.

³¹ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 341 (2022), concurring opinion by Justice Kavanaugh.

³² Center for Reproductive Rights, "Louisiana," *After Roe Fell: Abortion Laws by State*, <https://reproductiverights.org/maps/state/louisiana/>.

³³ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 361 (2022), dissenting opinion by Justices Breyer, Sotomayor, and Kagan, JJ.

IV. The Economic Burden

The *Dobbs* decision to return abortion regulation to states significantly impacted the United States economy, as evidenced by individuals' migration between states. Similar to how *Wickard* and *Raich* ruled that their respective commodities can affect national markets, state abortion laws can also do so by shifting capital, labor, and consumers across state lines. State abortion laws alter the relative attractiveness of locations and, therefore, the geographic distribution of human capital.³⁴ A study done by the National Bureau of Economic Research (NBER) uses migration data from the U.S. Postal Service to measure monthly migration, making it possible to analyze any immediate migration effects from the *Dobbs* ruling and how effects evolve: "...a total abortion ban [in the state] reduces a state's population by 4.3 people per 10,000 residents each quarter in the year following its implementation."³⁵ When individuals leave their state of residency, they take their community investment, real estate investment, and taxpayer money elsewhere. This migration could potentially cripple the state's economy, driving up prices of essential goods.³⁶ Migration between states due to abortion laws within those states, therefore, places a direct economic burden on interstate commerce.³⁷ Further, the study notes, "The most recent data, corresponding to the second quarter of 2023, indicate that the 13 states with total abortion bans immediately following the *Dobbs* decision are collectively losing 36,000 residents per quarter due to these bans."³⁸ Total abortion-ban legislation results in residents emigrating to other states, inevitably affecting those states' economies, as they lose investors and taxpayers.

Additionally, various studies and polls have found that high school students select where to attend university based on the state's reproductive health laws, leading to money cycling in and out of states. Gallup, a multinational analytics and advisory company, in combination with the Lumina Foundation, did a study on how public policy affects college enrollment: "Among currently enrolled students, 73% of those aged 18 to 24 and 70% of those aged 25 to 59 say state reproductive health laws are at least somewhat important in their decision to stay enrolled at their current institution."³⁹ Given the importance of reproductive health laws to a student's decision to stay enrolled at their current institution, universities could see a drop in enrollment if located in an abortion-ban state, subsequently losing money from tuition and alumni donations. Evidently, research done by Tulane University professors in December of 2023 dictates that total abortion ban state schools saw a one percentage point decrease in the share of female undergraduate applicants to institutions compared with states in which abortion was legal.⁴⁰ While this study

³⁴ Daniel L. Dench et al., "Are People Fleeing States with Abortion Bans?" NBER Working Paper No. 33328 (January 2025), <https://www.nber.org/papers/w33328>, 2.

³⁵ Dench, 1.

³⁶ Dench, 1.

³⁷ *Heart of Atlanta Motel v. United States* (1964), 271.

³⁸ Dench, 1.

³⁹ Gallup and Lumina Foundation. *The State of Higher Education 2022 Report*. Washington, D.C.: Gallup, 2022. <https://www.luminafoundation.org/resource/the-state-of-higher-education-2022-report/>.

⁴⁰ Brigham Walker, Janna Wisniewski, Jillian Torres, and Rajiv Sharma, "Anticipatory Impacts of the Repeal of *Roe v. Wade* on Female College Applicants," *Economics Letters*, Elsevier, 2023, <https://doi.org/10.1016/j.econlet.2023.111379>.

was done over a year ago, the professors indicate a clear impact of university enrollment on abortion ban states, which they project will impact the demographic composition of colleges and the future labor pool of the affected states. Most students would choose to go to the public university in their home state if given a choice,⁴¹ but the Institute for Women's Policy Research found that 76% of students from the Northeast would choose to attend school in a state where abortion is legal and accessible, and 100% of parents who contribute financially to their children's education say the same.⁴² We can infer from these studies that states with abortion bans force people to leave their public universities to go elsewhere.

When students choose to attend university elsewhere due to abortion bans in their state, the state's economy generates losses that are significant enough to impact interstate commerce, enabling abortion to be federally legislated under the Commerce Clause. Universities contribute significantly to state economies, whether it be the educated and skilled labor they contribute to the local workforce or the financial support the students provide.⁴³ A study done by Lightcast, a global leader in labor market analytics, explains the impact of community colleges on the economy: for every dollar (\$1) invested, students gain \$6.50 in lifetime earnings, society gains \$3.80 in added income and social savings, and taxpayers gain \$6.6 added tax revenue and public sector savings.⁴⁴ Specifically, the report mentions Reid State Technical College, detailing that the university "creates a significant positive impact on the business community and generates a return on investment to its major stakeholder groups—students and society, along with benefits to Alabama taxpayers."⁴⁵ The research done by Tulane University professors applies to Reid State Technical College, a community college located in Alabama, a state with a total abortion ban. This school exemplifies a community college that could stand to lose enrollment based on Alabama's abortion legislation, which equates to a decline in the positive impact community colleges have on the economy.⁴⁶

An example of a private institution that could see a decline in enrollment is Tulane University, which would lead to an impact on their state's economy due to the number of jobs they contribute to the surrounding New Orleans area: "A new study says Tulane, New Orleans' nationally ranked major research university, is also the city's largest private employer and a major economic driver in the region, accounting for approximately \$920 million in annual

⁴¹ Nicholas Hillman, *How Many Students Go Out-of-State for College?* Geography of Opportunity Series, Brief 1 (The Institute for College Access & Success, 2023),

https://ticas.org/wp-content/uploads/2023/11/Hillman-Geography-of-Opportunity-Brief-1_2023.pdf, 2.

⁴² Institute for Women's Policy Research. *Reproductive Health Students and Parents Survey*. April 2023.

<https://iwpr.org/wp-content/uploads/2023/05/IWPR-Morning-Consult-Reproductive-Health-Students-and-Parents-Survey-2.pdf>, 4.

⁴³ Office of the University Economist, "Traditional Economic Impact Analysis of Universities," Arizona State University, https://economist.asu.edu/universities-knowledge/traditional_economic-impact-universities.

⁴⁴ American Association of Community Colleges, *The Economic Value of America's Community Colleges* (Washington, DC: American Association of Community Colleges, 2022),

https://www.aacc.nche.edu/wp-content/uploads/2022/11/AACC_MainReport_1920_Formatted-Finalv2.pdf.

⁴⁵ Reid State Technical College, "Economic Impact," Reid State Technical College, accessed April 10, 2025, <https://www.rstc.edu/economicimpact>.

⁴⁶ Center for Reproductive Rights, "Alabama," *After Roe Fell: Abortion Laws by State*, <https://reproductiverights.org/maps/state/alabama/>.

economic activity and directly and indirectly creating 10,600 jobs throughout Louisiana.”⁴⁷ The projected losses of losing even one percent of Tulane students translate to a significant downturn in annual economic activity and the jobs it provides. Both of these universities show that when students decide not to attend an institution due to the reproductive health laws in their respective states, the state loses. This illustrates that the students’ decisions affect interstate commerce.

V. *Dobbs*’ Economic Repercussions and the Substantial Effects Test

In *Dobbs*, the Supreme Court dismissed unconstitutional arguments, instead relying on precedents it believed were wrongly set in previous cases including *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992). This decision allowed for legal ambiguities, which could be exploited to return abortion regulation to the federal government. As the majority opinion stated, the Constitution is “neutral” on the matter of reproductive rights. Therefore, given evidence indicating that state regulation of abortion policy significantly interfered with interstate commerce, abortion protections ought to be implemented at the federal level. To implement protections, a party must present evidence that passes the Substantial Effects Test.⁴⁸ If the Court deems an activity to be economic, such as migration or college selection due to state abortion laws, Congress can regulate it as interstate commerce and establish a protection. In *Gibbons v. Ogden* (1824), the Court defines commerce as the interchange of commodities; therefore, the flow of capital in and out of states due to college choice and migration undoubtedly reflects economic activity. The Aggregate Effects Doctrine is a portion of the test that is only utilized for small and individual intrastate activities. It dictates that they can be regulated using the test if the small economic activities have a significant combined effect on interstate commerce. *Raich* upheld Congress’s power to regulate even intrastate, non-commercial activity as part of a broader economic regulatory scheme. Therefore, even if abortion is accessed in a single state that doesn’t have restrictive legislation, the cumulative impact of abortion restrictions on cross-state economic behavior enables the Substantial Effects Test. The test then determines the activity’s relatedness to interstate commerce. The real estate market’s fluctuation and the distribution of tuition payments directly impact a state’s economy, influencing its job market and tax revenue.⁴⁹ Given that migration and college selection data indicate that individuals leave abortion-ban states, this fluctuation relates to interstate commerce, passing the third step of the test. Finally, the Substantial Effects Test requires that economic activity has a “substantial effect” on interstate commerce.⁵⁰ The NBER notes at the end of their study that population flows and demographic shifts could affect a wide range of economic factors from tax bases to housing markets to the availability of workers in key industries.⁵¹ Thus, given the evident substantial impact of state

⁴⁷ Mike Strecker, “Tulane Is New Orleans’ Largest Private Employer, Major Economic Driver, Study Says,” *Tulane University News*, April 7, 2010, <https://news.tulane.edu/pr/tulane-new-orleans-largest-private-employer-major-economic-driver-study-says>.

⁴⁸ *Id.*, 119.

⁴⁹ Strecker, “Tulane Is New Orleans’ Largest Private Employer, Major Economic Driver, Study Says,”

⁵⁰ *Wickard v. Filburn* (1942), 125.

⁵¹ Dench, 14.

abortion laws on interstate commerce, it can be argued that abortion regulation falls within the scope of federal authority under the Commerce Clause.

VI. Conclusion

Emigration out-of-state and college selection due to restrictive state abortion laws have a significant impact on interstate commerce, as proven through the Substantial Effects Test. This test allows abortion to be regulated through the Commerce Clause, making it a federally protected right. The Supreme Court's interpretation of the Fourteenth Amendment in the case of *Dobbs* established that there is nothing in the Constitution that expressly articulates the right to an abortion. Not only is returning regulation powers to individual states dangerous for women's reproductive autonomy, but this interpretation carries significant economic repercussions as well. As presented above, the research of various economists regarding migration and college selection found a strong indication that restrictive abortion laws impact interstate commerce. Due to this effect, the Commerce Clause provides a legitimate argument to regulate abortion at the federal level. Furthermore, the data used in this Note only reflects the information available at this point, and one can assume more studies will be done in the future on the effect of abortion laws on state economies, which will undoubtedly strengthen this argument. As the United States moves towards a future that values and prioritizes women's rights, and more evidence linking abortion to interstate commerce becomes available, hopefully this argument can be a tool to litigate abortion protections federally.