

GIVING CREDIT WHEN YOU ARE DUE: TAX CREDITS FOR BIRTH MOTHERS POST-*DOBBS*

INTRODUCTION

Pregnancy is extremely dangerous for women. Maternal mortality rates are tragically high in the United States, and women of color have the greatest risk of death or other complications during and after pregnancy. Although some legislation aims to provide assistance to women with children—such as the Child Tax Credit and the Earned Income Tax Credit—women who choose to give the child up for adoption—commonly referred to as “birth mothers”¹—are unable to benefit from such assistance. Pregnancy can be even more perilous for birth mothers who do not receive any financial assistance during their pregnancy because they are still at risk of death or other pregnancy-related complications but have minimal,² if any, support.

Prior to *Dobbs v. Jackson Women’s Health Organization*,³ many women could obtain abortions if they did not wish to bring their pregnancy to term or believed they did not have the financial means to raise a child. However, following the decision, many states have begun limiting women’s access to abortion but have yet to implement any substantial programs that would support birth mothers. This Note will argue that if states are to limit access to abortion, there should be some form of financial assistance in place to support women who go through with their pregnancy but choose to give the child up for adoption—because birth mothers are subject to the same pregnancy-related dangers but are ineligible to receive the assistance currently in place that aims to support women with children.

1. I will be using the term “birth mother” to describe the birth giver, or the individual that gives birth to the child at issue. While I understand that a person who gives birth does not necessarily have to be a woman, to avoid confusion, I will be using this gendered term.

2. Examples of such “minimal” assistance include the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and Temporary Assistance for Needy Families (TANF). See generally Food and Nutrition Serv., *Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)*, U.S. DEP’T AGRIC. (Dec. 13, 2024), <https://www.fns.usda.gov/wic> [<https://perma.cc/KRY4-2N4V>] (“[WIC] provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age 5 who are found to be at nutritional risk.”); Off. of Fam. Assistance, *Help for Families*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/ofa/map/about/help-families> [<https://perma.cc/8SSN-3FKF>] (“[S]tates, territories, and tribes use their [(federally provided)] TANF grants to fund monthly cash assistance payments to low-income families with children, as well as a wide range of services that are designed to address one or more of the program’s four broad purposes.”). While these assistance programs can benefit the health of women and children, they do not help cover the other costs of pregnancy, making them insufficient forms of assistance for the purposes of this Note.

3. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

Part I will provide a background of the abortion-adoption issue, identifying the effects of the *Dobbs* decision on women’s access to abortion. Part II discusses the high costs of pregnancy—physical, psychological, and financial—rejecting pro-life advocates’ argument that adoption is an “equal” alternative to abortion. Part III analyzes the current “payment” options for prospective birth mothers, highlighting how such support is inadequate, especially for low-income women and women of color. Part IV discusses the current and proposed tax expenditures—focusing primarily on tax credits—that aim to provide support to women with children, but reveals how birth mothers are ineligible for all the tax credits and are eligible for only one state-level tax expenditure. Part V identifies a possible solution—the “Birth Mother Tax Credit”—that would allow women to receive financial assistance even if they surrender the child for adoption. Finally, Part VI anticipates and addresses a series of objections to the Birth Mother Tax Credit.

I. BACKGROUND

In the wake of *Dobbs v. Jackson Women’s Health Organization*’s holding that “the Constitution does not confer a right to abortion,”⁴ numerous states have begun enacting laws that severely limit or entirely restrict a woman’s right to obtain an abortion. As of November 6, 2024, fourteen states have banned abortion in almost all circumstances,⁵ and an additional eight states have placed gestational limits on abortions, with such limits ranging from eighteen weeks in Utah to six weeks in Florida, Georgia, Iowa, and South Carolina.⁶

Notwithstanding the limits and outright bans on abortion, many pro-life politicians promised that once the *Roe v. Wade*⁷ decision was overturned, measures would be put in place to ensure that women and children were

4. *Id.* at 292 (“We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”).

5. The fourteen states that have essentially completely banned abortions are Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. See Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, N.Y. TIMES (Nov. 6, 2024, 3:52 PM), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> [https://perma.cc/S6UZ-U48N]. Importantly, however, “[o]n Nov[ember] 5, [2024,] voters in seven states passed abortion rights measures that will enshrine these rights in their state constitutions. These measures will lift bans in Arizona and Missouri.” *Id.* For a state-specific chart of the abortion ban exceptions based on gestational duration, see *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER (July 29, 2024), <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans> [https://perma.cc/7Q9C-5B92].

6. The varying gestational limits by state are as follows: Florida, Georgia, Iowa, and South Carolina at six weeks, Nebraska and North Carolina at twelve weeks, Arizona at fifteen weeks, and Utah at eighteen weeks. See McCann & Schoenfeld Walker, *supra* note 5.

7. *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs*, 597 U.S. 215.

supported.⁸ Yet, more than two years after *Dobbs*, such promises have not been fulfilled.⁹

Numerous pro-life advocates in favor of abortion bans argue that when women are forced¹⁰ to carry an unwanted pregnancy to term because their

8. See Jeff Stein, *With Roe at Risk, GOP Faces Pressure to Support Families after a Birth*, WASH. POST (May 3, 2022, 5:39 PM), <https://www.washingtonpost.com/us-policy/2022/05/03/gop-families-roe-wade/> [<https://perma.cc/4LKD-TYCR>] (discussing Senator Ted Cruz’s announcement that Republicans will “enact policies that make it easier for families to raise kids” and Senator Todd C. Young’s statement that Republicans “as a party and as a country need to be supportive of women who have unplanned pregnancies—through adoptive services, through health-care services and other means”); Senator Tom Cotton, Address at the National Right to Life Convention (June 26, 2021), <https://www.cotton.senate.gov/news/speeches/cotton-defends-the-right-to-life> [<https://perma.cc/259Q-N6UV>] (“All across this land, pro-life Americans live out our beliefs every day through prayer, through service, support for the vulnerable, [and] through tireless activism . . .” (emphasis added)); Kelly Baden, Opinion, *Anti-Abortion Politicians Never Intended to Support Women and Children*, THE HILL (June 8, 2023, 9:30 AM), <https://thehill.com/opinion/healthcare/4038665-anti-abortion-politicians-never-intended-to-support-women-and-children/> [<https://perma.cc/28YN-F4DD>] (discussing Senator Bill Cassidy’s statement that taking a pro-life stance “means being pro-mothers, pro-babies, and pro-healthy futures”); see also Jackie Calmes, Opinion, *Column: Republican ‘Pro-Life’ Advocacy Ends with a Child’s Birth*, L.A. TIMES (May 13, 2022, 3:15 AM), <https://www.latimes.com/opinion/story/2022-05-13/republicans-pro-life-mothers-children-abortion-birth-pregnancy-roe> [<https://perma.cc/XS4L-BJYB>] (noting that Mississippi Governor Tate Reeves called on Republicans to “show that being pro-life is not just about being anti-abortion,” and claimed that Mississippi would “do everything we can to make it easier on those moms who may be in unwanted pregnancies,” and to ensure “that those babies, once born, have a productive life,” using adoptions and the foster care system if needed); Zach Despart & James Barragán, *Texas Republicans Say if Roe Falls, They’ll Focus on Adoptions and Preventing Women from Seeking Abortions Elsewhere*, TEX. TRIB. (May 9, 2022, 5:00 AM), <https://www.texastribune.org/2022/05/09/texas-republicans-roe-wade-abortion-adoptions/> [<https://perma.cc/VGB7-9WX8>] (detailing that Texas House Speaker Dade Phelan believed the Texas Legislature would “rise to the occasion and redouble our commitment to maternal health care in our state” and that Steve Toth of the Texas House of Representatives said that, at this moment, “more than ever, the pro-life community and legislators need to step up and make sure we help out women in a crisis pregnancy [which] means prenatal care, helping them stay in school. It means making sure that we help women once the baby is born, it means adoption services”).

9. See Baden, *supra* note 8 (“Having spent decades working to overturn *Roe v. Wade*, have anti-abortion politicians delivered on their promises to support families one year after their judicial triumph? Spoiler alert: The answer is no.”); see also Tess Vrbin, *Arkansas Legislature Saw Wide Range of Maternal and Reproductive Health Legislation in 2023*, ARK. ADVOC. (Apr. 17, 2023, 6:00 AM), <https://arkansasadvocate.com/2023/04/17/arkansas-legislature-saw-wide-range-of-maternal-and-reproductive-health-legislation-in-2023/> [<https://perma.cc/FFR6-75VT>] (“Improving outcomes for pregnant Arkansans and their babies was within the state’s ability but not important enough to most lawmakers this legislative session, said Laura Kellams, Northwest Arkansas director of Arkansas Advocates for Children and Families.”); Audrey Dutton, *Idaho Banned Abortion. Then It Turned Down Supports for Pregnancies and Births.*, PROPUBLICA (Oct. 3, 2023, 6:00 AM), <https://www.propublica.org/article/idaho-banned-abortion-support-pregnancies-families> [<https://perma.cc/JZ6Q-EM9B>] (“Since the Supreme Court overturned *Roe v. Wade* . . . [Idaho’s] Legislature has disbanded a maternal mortality committee, failed to expand postpartum Medicaid coverage and turned down federal grants for child care.”).

10. It is worth noting that even if a state has restricted access to abortion, women are still able to travel to abortion-friendly states. In fact, the number of women traveling out of state for abortions has increased dramatically since the *Dobbs* decision. See Kimya Forouzan, Amy Friedrich-Karnik & Isaac Maddow-Zimet, *The High Toll of US Abortion Bans: Nearly One in Five Patients Now Traveling Out of State for Abortion Care*, GUTTMACHER (Dec. 7, 2023), <https://www.guttmacher.org/2023/12/high>

state's laws restrict abortion access, adoption would be an equal alternative to abortion.¹¹ Justice Alito's opinion in *Dobbs* elucidated this argument when he stated that "a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home."¹² Continuing on in footnote 46, the opinion states that "[n]early 1 million women were seeking to adopt children in 2002 (i.e., they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent."¹³ Nevertheless, this argument fails to consider or simply disregards the high costs associated with pregnancy—the financial, physical, and emotional costs.¹⁴

-toll-us-abortion-bans-nearly-one-five-patients-now-traveling-out-state-abortion-care [https://perma.cc/ZF6K-REFL] ("[T]he proportion of patients traveling to other states to obtain abortion care has doubled in recent years, reaching nearly one in five in the first half of 2023, compared with one in 10 in 2020."). However, as more states restrict abortion access, women must travel even farther to obtain an abortion, increasing the abortion's overall cost. Those who are not financially able to bear the additional cost are thus forced to carry the pregnancy to term. See DIANA GREENE FOSTER, *THE TURNAWAY STUDY* 71 (2020) ("Second only to the difficulty of paying for an abortion is the difficulty of getting to a provider. . . . [For example,] when Texas enacted House Bill 2 in 2013, . . . 17 of 41 clinics in the state [were closed, which] increase[d] the distance women had to travel, and reduc[ed] the abortion rate by 14%."); see also Selena Simmons-Duffin & Shelly Cheng, *How Many Miles Do You Have to Travel to Get Abortion Care? One Professor Maps It*, NPR (June 21, 2023, 5:01 AM), https://www.npr.org/sections/health-shots/2023/06/21/1183248911/abortion-access-distance-to-care-travel-miles [https://perma.cc/EX5N-Z7A3] ("As of April 2023, . . . 14% of the population is more than 200 miles from the nearest abortion facility, and the average American is 86 miles from a provider. . . . For pregnant patients seeking abortions, [more clinics closing] almost always means either traveling out of state or carrying the pregnancy to term." (emphasis added)).

11. See American Life League, *Adoption: The Viable Alternative to Abortion*, EWTN, https://www.ewtn.com/catholicism/library/adoption-the-viable-alternative-to-abortion-9572 [https://perma.cc/WX6H-BC9L] ("[Pro-choice advocates] attack adoption so strenuously precisely because it is such an obvious and viable alternative to abortion."); Sarah Hae-In Idzik, "Less Abortion, More Adoption": A Brief Discursive History of Adoption as Solution, 10 *ADOPTION & CULTURE* 284 (2022) (discussing the history of the argument that adoption is a suitable alternative to abortion). But see Lindsey Porter, *Adoption is Not Abortion-Lite*, 29 *J. APPLIED PHIL.* 63, 63 (2012) ("[A]doption is not a genuine alternative to abortion. It does not 'do the same thing', [sic] even setting aside the physicality of pregnancy. . . . [O]n the most successful model of parental obligation—a causal account that formalises [sic] the distinction between parent: progenitor, and parent: carer—birth mothers and fathers remain obliged, life-long, to their birth children even when the child is adopted out.").

12. *Dobbs*, 597 U.S. at 259.

13. *Id.* at 259 n.46 (citation and internal quotation marks omitted).

14. See Dahlia Lithwick, *The Horrifying Implications of Alito's Most Alarming Footnote*, SLATE (May 10, 2022, 4:27 PM), https://slate.com/news-and-politics/2022/05/the-alarming-implications-of-alitos-domestic-supply-of-infants-footnote.html [https://perma.cc/53Y2-Q9TA] ("It's chilling not just because it discounts the extortionate emotional and financial costs of childbirth and the increased medical risks of forced childbirth. It's chilling because it lifts us out of a discussion about privacy and bodily autonomy and into a regime in which babies are a commodity and pregnant people are vessels in which to incubate them.").

II. THE COSTS ASSOCIATED WITH PREGNANCY JUSTIFY PROVIDING SUPPORT TO BIRTH MOTHERS

A. *The Maternal Mortality Rates in the United States are Dangerously High*

Carrying a pregnancy to term can be extraordinarily risky, especially within the United States. First and foremost, the United States has the highest maternal mortality rate among all developed countries,¹⁵ with a rate of 22.3 deaths per 100,000 live births in 2022.¹⁶ Maternal mortality is the death of a woman “while pregnant or within 42 days of the end of pregnancy, . . . from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.”¹⁷

Second, the states with the strictest abortion restrictions¹⁸ have some of the highest maternal mortality rates in the United States.¹⁹ A major contributing factor as to why these states have such high maternal mortality

15. The World Health Organization’s most recently reported average maternal mortality rate for developed countries was 13 per 100,000 live births. See *Maternal Mortality*, WORLD HEALTH ORG. (Apr. 26, 2024), <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality> [<https://perma.cc/NY6P-92FN>]; see also Roosa Tikkanen, Munira Z. Gunja, Molly FitzGerald & Laurie C. Zephyrin, *Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries*, COMMONWEALTH FUND (Nov. 18, 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries> [<https://perma.cc/XK4E-SHMJ>].

16. See Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2022*, NAT’L CTR. FOR HEALTH STATS. (May 2, 2024), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2022/maternal-mortality-rates-2022.htm#Table> [<https://perma.cc/KM3G-ZQ3B>]. Even as the maternal mortality rate in the United States decreases to pre-COVID-19-pandemic levels—indicated by provisional data recently released by the CDC, see *Pregnancy-Related Deaths Fall to Pre-Pandemic Levels, New CDC Data Shows*, CBS NEWS (May 3, 2024, 4:51 PM) (citing *Provisional Maternal Mortality Rates*, NAT’L CTR. FOR HEALTH STATS. (Oct. 16, 2024), <https://www.cdc.gov/nchs/nvss/vsrr/provisional-maternal-deaths-rates.htm> [<https://perma.cc/K7YK-XC8M>]), <https://www.cbsnews.com/news/pregnancy-related-deaths-decline-2023-cdc-data/> [<https://perma.cc/2L3A-ADB2>],—the rate is still higher than the average maternal mortality rate for developed countries.

17. EUGENE DECLERCQ & LAURIE ZEPHYRIN, *MATERNAL MORTALITY IN THE UNITED STATES: A PRIMER* 2 (2020), https://www.commonwealthfund.org/sites/default/files/2020-12/Declercq_maternal_mortality_primer_db.pdf [<https://perma.cc/4P37-PFRU>].

18. See *supra* notes 5–6 and accompanying text.

19. See, e.g., *Maternal Deaths and Mortality Rates: Each State, the District of Columbia, United States, 2018–2021*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 2024), <https://www.cdc.gov/nchs/maternal-mortality/mmr-2018-2021-state-data.pdf> [<https://perma.cc/RTU7-SB8Z>] (finding that, from 2018 to 2021, the United States as a whole had a maternal mortality rate of 23.5, while Arkansas’s, Mississippi’s, and Tennessee’s maternal mortality rates were 43.5, 43.0, and 41.7, respectively); *Maternal Mortality Rate by State 2024*, WORLD POPULATION REV. (2024), <https://worldpopulationreview.com/state-rankings/maternal-mortality-rate-by-state> [<https://perma.cc/2RBN-XE7H>] (finding that Louisiana, Georgia, and Indiana had the highest maternal mortality rates for 2018–2021, while California, Massachusetts, and Nevada had the lowest).

rates is that many of these states provide some of the weakest maternal²⁰ and economic support.²¹ Consequently, the women in abortion-restricted states have minimal support *and* a greater risk of having severe complications or dying as a result of their pregnancy; simply placing the child for adoption—without providing some form of assistance—will not alleviate the risks these women can face during their pregnancies.

Third, women of color are much more likely to die from carrying a pregnancy to term than similarly situated white women.²² Even more, women of color that are better economically-situated than white women are still more likely to die from carrying their pregnancy to term.²³ This is especially problematic as the consequences of abortion restrictions will

20. See Rachel Treisman, *States with the Toughest Abortion Laws Have the Weakest Maternal Supports, Data Shows*, NPR (Aug. 18, 2022, 6:00 AM), <https://www.npr.org/2022/08/18/1111344810/abortion-ban-states-social-safety-net-health-outcomes> [<https://perma.cc/WMK4-V34Q>] (reporting that “[s]tates with abortion bans tend to have . . . higher rates of uninsurance for women, . . . higher rates of child poverty, . . . [and] a higher share of people living in maternity care deserts”). For a state-specific report highlighting a lack of maternal support, see ERIC BAUDRY, NICOLE GUSMAN, VICTORIA STRANG, KRISTEN THOMAS & ELIZABETH VILLARREAL, *WHEN THE STATE FAILS: MATERNAL MORTALITY & RACIAL DISPARITY IN GEORGIA 7* (2017), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/ghjp_2018_when_the_state_fails-_maternal_mortality_racial_disparity_in_georgiarev.pdf [<https://perma.cc/94ST-YQWQ>] (“[F]our interconnected system failures . . . were identified as contributing to maternal health disparities [in Georgia:] 1. Access to and quality of care, 2. Insurance access and pricing, 3. Funding for maternal health in Georgia, and 4. Accountability around data analysis and use, specifically with regards to the state’s maternal mortality review committee.”). For an example of how insurance access and pricing affects maternal health, see Jamie R. Daw, Katy Backes Kozhimannil & Lindsay K. Admon, *High Rates of Perinatal Insurance Churn Persist After the ACA*, HEALTH AFFS. (Sept. 16, 2019), <https://www.healthaffairs.org/content/forefront/high-rates-perinatal-insurance-churn-persist-after-aca> [<https://perma.cc/WC9H-FYHE>] (“Insurance ‘churning’—moving between different insurance plans or between insurance and uninsurance—is associated with disruptions in physician care, increased emergency department use, and worsened health status. . . . [And, states that] did not implement the ACA’s Medicaid expansion for low-income adults . . . had nearly double the preconception uninsurance rate (22.6 percent compared to 10.7 percent) and triple the postpartum uninsurance rate (21.5 percent compared to 7.2 percent) . . .”).

21. See, e.g., Asha Banerjee, *The Economics of Abortion Bans*, ECON. POL’Y INST. (Jan. 18, 2023), <https://www.epi.org/publication/economics-of-abortion-bans/> [<https://perma.cc/R4QL-GA66>] (“States that have banned and restricted abortion have largely also kept minimum wages low, underfunded and complicated their unemployment insurance systems, declined to expand Medicaid, suppressed unionization, and preferred to over-incarcerate.”).

22. See Office of Women’s Health, *Working Together to Reduce Black Maternal Mortality*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 8, 2024), <https://www.cdc.gov/healthequity/features/maternal-mortality/index.html> [<https://perma.cc/6N4P-222U>] (“Black women are three times more likely to die from a pregnancy-related cause than [w]hite women”); see also Hoyert, *supra* note 16 (explaining that in 2021, the maternal mortality rate for every 100,000 live births was 69.9 for Non-Hispanic Black women, but only 26.6 for white women). To view an interactive depiction of the 2023 maternal mortality rates by state, see *Maternal Mortality Rate by State 2024*, *supra* note 19.

23. See Claire Cain Miller, Sarah Kliff & Larry Buchanan, *Childbirth Is Deadlier for Black Families Even When They’re Rich, Expansive Study Finds*, N.Y. TIMES (Feb. 12, 2023), <https://www.nytimes.com/interactive/2023/02/12/upshot/child-maternal-mortality-rich-poor.html> [<https://perma.cc/BS4E-8NYQ>] (“The researchers found that maternal mortality rates were just as high among the highest-income Black women as among low-income white women.”).

likely impact women of color most heavily.²⁴ Thus, carrying a pregnancy to term and surrendering the child for adoption is not an “equal alternative” to abortion for women of color.

Finally, research has shown that the “rates of maternal mortality are greatest among the lowest income mothers.”²⁵ Importantly, “income inequality . . . was significantly associated with [B]lack but not white [maternal mortality].”²⁶ It has also been suggested that “income inequality may contribute to the persisting racial inequity in maternal death.”²⁷

In short, low-income women of color have some of the highest rates of maternal mortality and will be particularly affected by laws restricting access to abortion.²⁸ Therefore, states that have restricted access to abortion

24. See Jeff Diamant, Besheer Mohamed & Rebecca Leppert, *What the Data Says About Abortion in the U.S.*, PEW RSCH. CTR. (Mar. 25, 2024), <https://www.pewresearch.org/short-reads/2023/01/11/what-the-data-says-about-abortion-in-the-u-s-2/> [<https://perma.cc/YC22-78BU>] (noting that while it is difficult to find the exact number of abortions performed each year—primarily because the two leading sources measuring abortion patterns use different methods and publish different figures—the CDC reported that of all women who had abortions in 2021 (and who lived in states that reported racial and ethnic data to the CDC), 30% were white and 42% were African American). However, it should also be noted that abortion statistics post-*Dobbs* are difficult to measure accurately, with many sources directly contradicting each other. Compare Amy Schoenfeld Walker & Allison McCann, *Abortions Rose in Most States This Year, New Data Shows*, N.Y. TIMES (Sept. 7, 2023), <https://www.nytimes.com/interactive/2023/09/07/us/abortion-data-bans-laws.html> [<https://perma.cc/G7DA-AT83>] (“Abortions rose in nearly every state where the procedure remains legal, but the change was most visible in states bordering those with total abortion bans.”), with Margot Sanger-Katz & Claire Cain Miller, *How Many Abortions Did the Post-Roe Bans Prevent?*, N.Y. TIMES (Nov. 22, 2023), <https://www.nytimes.com/2023/11/22/upshot/abortion-births-bans-states.html> [<https://perma.cc/VW6N-6FZ4>] (“The first estimate of births since *Dobbs* found that almost a quarter of women who would have gotten abortions carried their pregnancies to term.”).

25. Kate Kennedy-Moulton et al., *Maternal and Infant Health Inequality: New Evidence from Linked Administrative Data* 19 (Nat’l Bureau of Econ. Rsch., Working Paper No. 30693, 2023), <https://www.nber.org/papers/w30693> [<https://perma.cc/42D6-C5LK>]; see also Jodie G. Katon, Daniel A. Enquobahrie, Kate Jacobsen & Laurie C. Zephyrin, *Policies for Reducing Maternal Morbidity and Mortality and Enhancing Equity in Maternal Health*, COMMONWEALTH FUND (Nov. 16, 2021), <https://www.commonwealthfund.org/publications/fund-reports/2021/nov/policies-reducing-maternal-morbidity-mortality-enhancing-equity> [<https://perma.cc/TFK6-CE22>] (“The health of women is further undermined when [social determinants of health] result in financial insecurity, with the related stress often resulting in compromised physical and mental health.”).

26. Dovile Vilda, Maeve Wallace, Lauren Dyer, Emily Harville & Katherine Theall, *Income Inequality and Racial Disparities in Pregnancy-Related Mortality in the US*, 9 SSM-POPULATION HEALTH, 2019, at 5; *id.* at 7 (“[U]nequal income distribution can be particularly harmful to [B]lack women’s health.”).

27. *Id.* at 5; *id.* at 4 (“Increasing income inequality was associated with [a] 14% . . . or 15% increase . . . in [pregnancy-related mortality] among [B]lack women”); see also Kennedy-Moulton et al., *supra* note 25, at 20 (“Black infants and mothers may face disproportionate supply-side barriers within the healthcare . . . as well as demand-side barriers rooted in a long history of racism. In addition, a large and persistent racial wealth gap in the US, policy-induced racial segregation, racial disparities in pollution exposure, and cumulative stress due to racial discrimination are likely other important causes of poor health outcomes among Black Americans.” (citations omitted)).

28. See Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 112 AM. J. PUB. HEALTH 1290, 1294–95 (2022) (“[H]alf [of the women who seek an abortion] live below the [federal poverty line,] three quarters

should provide some form of financial assistance to pregnant women as these states have dangerously high maternal mortality rates and provide meager, if any, maternal support as compared to other states.

B. Arguments Promoting Adoption Fail to Consider the Costs of Pregnancy

Many pro-life advocates contend that adoption is an equal alternative to abortion, but this argument fails to consider the various costs associated with pregnancy. For example, in its list of “the most common reasons” to choose adoption over abortion, *American Adoptions* argues that “[a]doption costs nothing to prospective birth mothers,” and “[p]rospective birth mothers can get financial help during their pregnancy and [the] adoption process.”²⁹ This argument is misleading and flawed for a variety of reasons. First, it fails to mention the physical and psychological costs of carrying a pregnancy to term.³⁰ Second, the argument omits all of the financial costs associated with pregnancy,³¹ which, according to a recent study, “average a total of \$18,865” for individuals without insurance, or “\$2,854 [in out-of-pocket payments] for women enrolled in large group plans.”³² Third, the

struggle to pay for food, housing, and transportation[, and d]enial of abortion services exacerbates this hardship.”). And, if a woman cannot afford the costs associated with obtaining the abortion, she may be forced to carry the pregnancy to term. See FOSTER, *supra* note 10, at 65 (“[M]any women who seek abortion for economic reasons struggle to afford the abortion itself. Needing time to raise money to cover travel and procedure costs was the most common reason for delay[ing receiving an abortion]”); see also *supra* note 10.

29. *24 Reasons for Choosing Adoption over Abortion [How Adoption Changes Lives]*, AM. ADOPTIONS [hereinafter *24 Reasons for Choosing Adoption*], <https://www.americanadoptions.com/pregnant/reasons-for-adoption-instead-of-abortion> [<https://perma.cc/EGM2-5LQK>].

30. See FOSTER, *supra* note 10, at 108 (“Shortly after being denied an abortion, women had more symptoms of anxiety and stress and lower levels of self-esteem and life satisfaction than women who received an abortion.”); *id.* at 115 (“[Also,] women report[ed] poorer bonding with the child born from an unwanted pregnancy than the child born from a subsequent pregnancy, once they chose to carry to term.”); see also discussion *supra* Section II.A (discussing the risks of pregnancy, including the high maternal mortality rate in the United States).

31. Importantly, the most common reason women provide for seeking an abortion is that they are not financially prepared, see M. Antonia Biggs, Heather Gould & Diana Greene Foster, *Understanding Why Women Seek Abortions in the US*, 13 BMC WOMEN’S HEALTH, no. 29, 2013, at 5 (“A financial reason (40%) was the most frequently mentioned theme.”), suggesting such women are unable to cover the costs associated with pregnancy, childbirth, and child rearing. A woman’s pregnancy-related expenses can also increase over the course of her pregnancy, since “one in three women (33.9 percent) experience[] a disruption in health insurance from preconception to postpartum.” Daw, Kozhimannil & Admon, *supra* note 20.

32. Matthew Rae, Cynthia Cox & Hanna Dingel, *Health Costs Associated with Pregnancy, Childbirth, and Postpartum Care*, PETERSON-KFF HEALTH SYS. TRACKER (July 13, 2022), <https://www.healthsystemtracker.org/brief/health-costs-associated-with-pregnancy-childbirth-and-postpartum-care/> [<https://perma.cc/9WKD-26WR>]; see also Amylia Ryan, *The Cost of Giving Birth in the US—and What You Can Expect to Pay*, BABYLIST (Oct. 25, 2024), <https://www.babylist.com/hello-baby/childbirth-without-insurance> [<https://perma.cc/8D83-NMHB>] (detailing the expected costs of various common prenatal appointments, tests, and procedures and stating that, on average, “total . . . maternity care [costs range] between \$2,000 and \$3,500”).

argument completely disregards the possibility that prospective birth mothers may *not* receive financial assistance during pregnancy.³³

Pro-life advocates also claim that “[a]bortion comes with medical risks that the adoption process does not.”³⁴ While *American Adoptions* concedes that “childbirth also comes with its risks,”³⁵ it fails to provide any information explaining the risks of pregnancy and childbirth.³⁶ So, many of the arguments pro-life advocates make regarding adoption as an “equal alternative” to abortion contain misleading information or omit important details, signifying their failure to consider the costs of pregnancy.

III. THE CURRENT “PAYMENT” AVAILABLE FOR ADOPTIONS IS INADEQUATE

A. All States Prohibit Outright Payment for Adoption

All states within the United States prohibit adoptive parents from making outright payments to birth mothers for the adoption in an effort to prevent “baby selling.”³⁷ Despite arguments by some that “baby selling” need not be illegal,³⁸ birth mothers are nonetheless still prohibited from receiving any payment regarding the adoption itself.³⁹

Instead, states rely on adoptive parents to fund the expenses a birth mother incurs during pregnancy, placing strict limitations on what is

33. See *infra* Part III (discussing that since states prohibit outright payments for adoption, birth mothers are forced to rely on the adoptive parents to help cover the costs associated with pregnancy; so, if the birth mother’s child is not matched with adoptive parents prior to childbirth, she is unlikely to receive any financial assistance).

34. *24 Reasons for Choosing Adoption*, *supra* note 29.

35. *Id.*

36. See discussion *supra* Section II.A (discussing the high maternal mortality rate in the United States).

37. See *Adoption*, A.B.A. (Dec. 3, 2020), https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/family_law/adoption/ [<https://perma.cc/9KYZ-S3JS>] (“[A]doptive parents are not allowed to pay the biological mother to give up the child. The law treats this as a black-market adoption—in other words, as the buying and selling of children—and it is a crime in every state.”).

38. See, e.g., Elisabeth M. Landes & Richard A. Posner, *The Economics of the Baby Shortage*, 7 J. LEGAL STUD. 323, 339 (1978) (“[T]he baby shortage and black market [adoptions] are the result of legal restrictions that prevent the market from operating freely in the sale of babies as of other goods. This suggests as a possible reform simply eliminating these restrictions.”).

39. See, e.g., *Do Mothers “Get Paid” for Adoption?*, AM. ADOPTIONS, https://www.americanadoptions.com/pregnant/get_paid_for_adoption [<https://perma.cc/Z8QK-P267>] (explaining that birth mothers “cannot be paid to choose adoption, nor can [birth mothers] sell [their] babies”); see also Lindsay Arielle, *Do Birth Mothers “Get Paid” for Adoption?*, BIRTH MOTHER THOUGHTS, <https://birthmotherthoughts.com/adoption-support-and-resources/do-birth-mothers-get-paid-for-adoption/> [<https://perma.cc/22D6-CZ9Y>] (“Birth mothers do not get paid for choosing adoption. In fact, it is illegal to trade a child for money.”).

considered a “reasonable [pregnancy-related] expense.”⁴⁰ Since financial support for birth mothers comes only from the adoptive parents, if a birth mother is unable to find individuals to adopt her child while she is pregnant, she will not be able to receive financial assistance for her pregnancy.

B. Supply ≠ Demand in Adoptions

While Justice Alito in *Dobbs* made it sound as though all prospective birth mothers would be able to find adoptive parents should they choose to place a child up for adoption,⁴¹ this is not necessarily the case. For a myriad of reasons, not all children are matched with adoptive parents prior to childbirth.

A child’s desirability for adoption largely depends on how close the child is to birth and on the cost of the adoption.⁴² Costs associated with adoption vary depending on the type of adoption—private agency adoptions, independent adoptions, or adoptions from the public child welfare system—and non-public-agency adoptions⁴³ can range from \$25,000 to \$60,000.⁴⁴

40. *Regulation of Private Domestic Adoption Expenses*, CHILD WELFARE INFO. GATEWAY (May 2022), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/expenses/> [<https://perma.cc/9F37-39LX>] (“Approximately 45 States . . . specify in their statutes the type of birth parent expenses a prospective adoptive family is allowed to pay.” The most commonly allowed expenses include “[m]aternity-related medical and hospital costs[, t]emporary living expenses of the mother during pregnancy[, c]ounseling fees[, a]ttorney and legal fees and guardian ad litem fees[, and t]ravel costs, meals, and lodging when necessary for court appearances or accessing services.” Further, “[a]pproximately seven States explicitly prohibit adoptive parents from paying certain types of expenses. . . . such as educational expenses, vehicles, vacations, [and] permanent housing . . .”).

41. *See Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 259 (2022) (“[A] woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.”); *see also id.* at 259 n.46 (“[N]early 1 million women were seeking to adopt children in 2002 (i.e., they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent.” (quoting Jo Jones, *Adoption Experiences of Women and Men and Demand for Children to Adopt by Women 18–44 Years of Age in the United States*, VITAL & HEALTH STAT., Aug. 2008, at 16)).

42. *See Mariagiovanna Baccara, Allan Collard-Wexler, Leonardo Felli & Leeat Yariv, Gender and Racial Biases: Evidence from Child Adoption*, 1–45 (CESifo Working Paper No. 2921, 2010), <https://www.cesifo.org/en/publications/2010/working-paper/gender-and-racial-biases-evidence-child-adoption> [<https://perma.cc/XAZ2-9ZS9>] (finding that (i) a child’s desirability increases over the pregnancy but decreases after birth, and (ii) the higher the adoption cost, the lower the child’s desirability).

43. Public agency adoptions are not included in this Note because such adoptions are primarily “foster-to-adopt” adoptions, which generally occur later in the child’s life and after the birth mother has already given birth. *See About Adoption from Foster Care*, ADOPTUSKIDS, <https://www.adoptuskids.org/adoption-and-foster-care/overview/adoption-from-foster-care> [<https://perma.cc/Y78E-5YH4>] (“Though it is possible to adopt a baby from foster care, the children who are available for adoption generally range from toddler to 21. The median age is eight years old.”).

44. *See Planning for Adoption: Knowing the Costs and Resources*, CHILD WELFARE INFO. GATEWAY (June 2022), https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/s_costs.pdf [<https://perma.cc/LEG5-PH5P>] (stating that adoptions from a private agency can range from \$30,000 to \$60,000 and independent, attorney-assisted adoptions can range from \$25,000 to \$45,000).

This cost typically covers the birth mother's medical expenses, legal and court fees for both the birth and adoptive parents, the home study, and more.⁴⁵ However, recent studies have shown that agencies have adjusted the cost based on the child's race, with children of color having lower adoption fees than white children.⁴⁶ Agencies attempt to justify such race-based pricing on the basis that "white infants are . . . in the shortest supply relative to the pool of prospective adoptive parents. . . ."⁴⁷

Studies have further suggested that prospective adoptive parents "exhibit a preference in favor of girls and against African American children," explaining that "51.2 percent [of the children that received no applications were] African American."⁴⁸ A federal adoption statute has even defined children of color as "children with special needs."⁴⁹ Finally, of all children adopted in 2016, the Children's Bureau reported that 48.6% were non-Hispanic white, while only 17.5% were African American.⁵⁰ These data therefore indicate that it is more difficult for children of color to be placed with adoptive parents—making Justice Alito's statement in *Dobbs* misleading, especially for birth mothers of color. Moreover, since data suggest women of color were more likely to receive abortions pre-*Dobbs*,⁵¹ women of color will be more greatly affected by abortion restrictions because these women will have greater difficulty in finding adoptive homes for their children, therefore forcing these women to carry their pregnancy to

45. See *id.*

46. See NPR Staff, *Six Words: 'Black Babies Cost Less to Adopt,'* NPR (June 27, 2013, 2:55 AM), <https://www.npr.org/2013/06/27/195967886/six-words-black-babies-cost-less-to-adopt> [<https://perma.cc/J26L-DQRN>] ("Non-white children, and [B]lack children, in particular, are harder to place in adoptive homes. . . . So the cost is adjusted" One suggested reason for the cost discrepancies is "supply and demand."); see also Barbara Fedders, *Race and Market Values in Domestic Infant Adoption*, 88 N.C. L. REV. 1687, 1696 (2010) ("Agencies with race-based programs sometimes structure fees in a way that seems responsive to supply and demand dynamics, charging one fee to adoptive parents for the placement of a [B]lack baby and a higher fee for the placement of a white baby."); Kimberly Jade Norwood, *"If You Is White, You's Alright. . . .": Stories About Colorism in America*, 14 WASH. U. GLOB. STUD. L. REV. 585, 595–96 ("There is also a price hierarchy based on demand, with white children commanding top dollar, biracial children half as much, and [B]lack children being the cheapest.").

47. Fedders, *supra* note 46, at 1695–96.

48. Mariagiovanna Baccara, Allan Collard-Wexler, Leonardo Felli & Leeat Yariv, *Child-Adoption Matching: Preferences for Gender and Race*, 6 AM. ECON. J.: APPLIED ECON. 133, 134–35 (2014); see also Landes & Posner, *supra* note 38, at 324–25 ("[T]here is a shortage of white babies for adoption . . . [and] there is a glut of [B]lack babies, and of children who are no longer babies (particularly if they are physically or mentally handicapped), for adoption.").

49. See 42 U.S.C. § 673(c)(1)(B) (defining "children with special needs" based on specific factors or conditions, "such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps . . . because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance").

50. See Adoption and Foster Care Analysis and Reporting System, *Race/Ethnicity Distribution of Children Adopted During FY 2016*, CHILD.'S BUREAU (Apr. 30, 2018), <https://www.acf.hhs.gov/sites/default/files/documents/cb/race2016.pdf> [<https://perma.cc/YW4E-B7GG>].

51. See *supra* note 24 and accompanying text.

term with no assistance and then either keep the child or surrender the child to the state.

IV. THE CURRENT AND PROPOSED TAX CREDITS ARE UNAVAILABLE TO PROSPECTIVE BIRTH MOTHERS

Even though some birth mothers are unable to receive financial support from adoptive parents prior to placing the child up for adoption, there are some tax credits that aim to provide support to families with children. However, none of the tax credits currently in place at either the federal or state level are available to birth mothers. Two states—Georgia and Utah—have enacted tax *exemptions*—rather than tax *credits*—and while birth mothers are eligible for Georgia’s exemption (but are wholly ineligible for Utah’s), neither exemption adequately covers the costs of pregnancy. This Part will first provide a general background on tax credits and will then analyze the relevant current and proposed tax credits at both the federal and state level, revealing why none of the credits are available to birth mothers.

A. Background on Tax Credits

1. Tax Credits Compared to Other Tax Expenditures

Since the early twentieth century, Congress has used various forms of tax expenditures⁵² to provide special preferences for certain groups of taxpayers or certain types of activities by reducing the amount of tax a family owes for that year.⁵³ Whenever Congress decides to implement a tax expenditure, one of the biggest debates is whether the expenditure should be in the form of a tax credit or a tax deduction. A tax *credit* “provides a dollar-for-dollar reduction in income tax liability,” while a tax *deduction* “lowers the amount of income subject to tax.”⁵⁴

While it may appear that tax credits and tax deductions are similar as they both reduce one’s overall tax liability, tax credits benefit individuals in

52. Tax expenditures are defined as “those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.” 2 U.S.C. § 622(3) (first defined in Congressional Budget and Impoundment Act of 1974, Pub. L. No. 93-344, § 3(a)(3), 88 Stat. 297).

53. See Alan Berube, *Individual Income Tax Credits as Social Policy in Rural America*, 13 GEO. J. ON POVERTY L. & POL’Y 151, 151 (2006).

54. *Id.* at 155. Similar to a tax deduction is a tax *exemption*, which is a portion of income that is “not included as part of a filer’s taxable income.” *Policy Basics: Tax Exemptions, Deductions, and Credits*, CTR. ON BUDGET & POL’Y PRIORITIES (Nov. 24, 2020), <https://www.cbpp.org/research/policy-basics-tax-exemptions-deductions-and-credits> [<https://perma.cc/YEQ2-PDAD>] (“[Both e]xemptions and deductions indirectly reduce the amount of taxes a filer owes by reducing his or her ‘taxable income,’ which is the amount of income on which a filer pays taxes.”).

lower-income tax brackets to a greater extent than tax deductions, largely because “a deduction is of no benefit to a taxpayer who would have had no tax liability even without the deduction.”⁵⁵ This is due in part because “[u]nlike deductions, credits do not increase the rate of subsidy as income rises.”⁵⁶ Thus, tax credits have been seen to eliminate the “‘upside-down subsidy’ effect whereby the pattern of benefits generated by a deduction skews to taxpayers in the highest brackets.”⁵⁷

2. Refundable and Non-Refundable Tax Credits

Tax credits can be either refundable or non-refundable. A *refundable* tax credit is “paid in full even if it exceeds the filer’s income tax liability,” while a *non-refundable* tax credit “can only be used to reduce income tax liability, not to receive a net payment from the government.”⁵⁸ The rationale for non-refundable tax credits—and against refundable tax credits—stems from the “notion that families who do not ‘pay into’ the federal income tax system should not receive further benefits delivered through the income tax code.”⁵⁹ Further, some policymakers argue that “the purpose of the income tax is to raise revenue and that all Americans should pay at least some income tax as a duty of citizenship.”⁶⁰

However, non-refundable tax credits generally only benefit moderate- to high-income families as the roughly “40 percent of tax filing units who have no income tax liability” receive no benefit from a non-refundable tax

55. Lawrence Zelenak, *Giving Credits Where Credits Are (Arguably) Due: A Half Century’s Evolution in the Design of Personal Tax Expenditures*, 24 FLA. TAX REV. 51, 136 (2020). For a discussion of why tax exemptions are similarly of little to no use to low-income taxpayers, see *What Are Personal Exemptions?*, TAX POL’Y CTR. (Jan. 2024), <https://www.taxpolicycenter.org/briefing-book/what-are-personal-exemptions> [<https://perma.cc/9RYU-YSEQ>] (“As with other deductions and exemptions, however, the tax benefit from personal exemptions depends upon a taxpayer’s marginal tax rate. . . . [E]xemptions are worth more to high-income taxpayers than to low-income taxpayers.”).

56. Berube, *supra* note 53, at 155 (further explaining that the “benefits of deductions largely bypass low- and moderate-income households”).

57. Brian H. Jenn, *The Case for Tax Credits*, 61 TAX LAW. 549, 553 (2008). For a further debate as to why Congress started using tax credits, see Berube, *supra* note 53, at 154 (suggesting that the reasons for utilizing tax credits could be a result of “federal budget rules . . . that curtailed the growth of spending programs encouraged Congress to use tax expenditures to achieve similar policy goals” or instead that “tax credits increasingly acted as a compromise position between Democrats who sought to boost social expenditures and Republicans who sought to reduce tax burdens”).

58. Berube, *supra* note 53, at 155.

59. *Id.* at 167.

60. Lily L. Batchelder, Fred T. Goldberg, Jr. & Peter R. Orszag, *Efficiency and Tax Incentives: The Case for Refundable Tax Credits*, 59 STAN. L. REV. 23, 25 (2006) (explaining that policymakers opposing refundable tax credits often argue that such credits “are turning our income tax code into a welfare system”).

credit.⁶¹ Policymakers in favor of refundable tax credits argue that “the income tax should seek to reduce disparities of income, wealth, and opportunity and that refundable tax credits are a fundamental element of any fair tax system.”⁶² Therefore, utilizing refundable over non-refundable tax credits could greatly improve the lives of low-income families.⁶³

3. *Why Tax Credits?*

Using tax credits as opposed to tax deductions offers numerous benefits to the economy as well as the individual. Generally, a tax credit’s amount is determined as a percentage of a specific item of income, and “[t]he percentage to be used for a given tax credit [depends] on how strong an incentive is deemed desirable in terms of public policy.”⁶⁴ Tax credits such as the Earned Income Tax Credit and the Child Tax Credit “promote basic social policy goals—encouraging work, helping parents care for children, and promoting higher education—”⁶⁵and offset inflation costs for working-class families, reflected by a “drop in child poverty rates, less food insecurity, and more financial stability.”⁶⁶ Further, “[t]o the extent that refundable tax credits replace less efficient transfer programs or make it easier for family members to enter the work force, [refundable tax credits] could have a positive impact on the aggregate labor supply.”⁶⁷ Additionally, the “places in which these families live benefit indirectly from these credits, as they provide local residents with more income[,] stimulate greater local economic activity[,] and enhance social well-being.”⁶⁸

61. Berube, *supra* note 53, at 155; see also Jonathan Barry Forman, *Using Refundable Tax Credits to Help Low-Income Families*, 35 LOY. L. REV. 117, 131 (1989) (“The principal reason why the current child and dependent care credit is of little use to low-income families is that the credit is not refundable.”).

62. Batchelder et al., *supra* note 60, at 25.

63. See Forman, *supra* note 61, at 126 (“Increasing the amount of transfers to low-income families through refundable tax credits could dramatically improve the relative situations of those families.”).

64. Murray L. Weidenbaum, *The Advantages of Credits on the Personal Income Tax*, 42 GEO. WASH. L. REV. 516, 523 (1974).

65. Berube, *supra* note 53, at 155.

66. Kelli Smith, *Expanded Child Tax Credit and Earned Income Tax Credit Boost Local Economies*, ECON. SEC. PROJECT (Nov. 3, 2022), <https://economicsecurityproject.org/resource/how-expanded-tax-credits-boost-local-economies/> [<https://perma.cc/3L56-WKY3>] (finding that the Child Tax Credit “caused no drop in employment . . . made it easier for more low-income parents to work and gain job skills[, and] . . . put[] more money into local economies,” thus “creat[ing] jobs and encourag[ing] entrepreneurship”).

67. Forman, *supra* note 61, at 127–28.

68. Berube, *supra* note 53, at 159.

B. Current Federal Tax Credits

The three primary federal tax credits currently in place for families with children are the Adoption Tax Credit, the Child Tax Credit, and the Earned Income Tax Credit—none of which are available to prospective birth mothers.

The Adoption Tax Credit⁶⁹ was put into effect under the American Taxpayer Relief Act of 2012⁷⁰ and allows taxpayers to receive a nonrefundable credit for “the amount of the qualified adoption expenses paid or incurred by the taxpayer,”⁷¹ up to \$15,950 per child.⁷² However, only individuals with “qualified adoption expenses” from adopting a child are eligible for this credit⁷³—this does not include birth mothers who put a child up for adoption.

The Child Tax Credit⁷⁴ (CTC) was put into effect under the Taxpayer Relief Act of 1997⁷⁵ “to help ease the financial burden families incur when they have children,”⁷⁶ and allows a taxpayer to receive a credit for each “qualifying child” in “an amount equal to \$1,000.”⁷⁷ The amount of the CTC

69. I.R.C. § 23.

70. See American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 104, 126 Stat. 2313 (2013) (codified as amended in scattered sections of 26 U.S.C. and 45 U.S.C.).

71. I.R.C. § 23(a).

72. See *Topic No. 607, Adoption Credit and Adoption Assistance Programs*, IRS (Dec. 13, 2024) [hereinafter *Topic No. 607*], <https://www.irs.gov/taxtopics/tc607> [<https://perma.cc/P9ZL-LESC>]. With regard to claiming the adoption tax credit, for domestic adoptions, the IRS explains:

Qualified adoption expenses paid before the year the adoption becomes final are allowable as a credit for the tax year following the year of payment (even if the adoption is never finalized and even if an eligible child was never identified). . . . Once an adoption becomes final, and subject to the dollar limitation, qualified adoption expenses paid during or after the year of finality are allowable as a credit for the year of payment

Id. (emphasis omitted).

73. I.R.C. § 23(d)(1)(A) (“The term ‘qualified adoption expenses’ means . . . other expenses . . . which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child *by the taxpayer* . . .” (emphasis added)); see *Topic No. 607, supra* note 72 (explaining that qualified adoption expenses include “[r]easonable and necessary adoption fees, [c]ourt costs and attorney fees, [t]raveling expenses (including amounts spent for meals and lodging while away from home), and [o]ther expenses that are directly related to and for the principal purpose of the legal adoption of an eligible child”).

74. See I.R.C. § 24.

75. See Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 101, 111 Stat. 788 (codified as amended in scattered sections of 26 U.S.C.).

76. MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., R45124, THE CHILD TAX CREDIT: LEGISLATIVE HISTORY 1 (2018); see also *The Child Tax Credit*, WHITE HOUSE, <https://www.whitehouse.gov/child-tax-credit/> [<https://perma.cc/CK49-68PD>] (“The Child Tax Credit is [a tax benefit that aims] to provide tens of millions of families with some support and breathing room while raising children.”).

77. I.R.C. § 24(a).

has been expanded multiple times since 1997,⁷⁸ and is currently worth up to \$2,000 per qualifying child.⁷⁹ For an individual to be eligible to claim the CTC, the individual's "[c]hild[] must have a Social Security number."⁸⁰ Women who put children up for adoption usually do not have access to the child's Social Security number prior to finalizing the adoption,⁸¹ and are consequently unable to receive the CTC if they surrender their child for adoption.⁸²

78. See *Policy Basics: The Child Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 7, 2022), <https://www.cbpp.org/research/federal-tax/the-child-tax-credit> [<https://perma.cc/RXP5-SX3D>] (explaining that the Child Tax Credit has been increased multiple times since 2001, including the 2021 expansion under the American Rescue Plan Act that "increased the maximum credit amount to \$3,600 for children under 6 and \$3,000 for children aged 6–17," but "[u]nder current law the credit is worth up to \$2,000 per eligible child").

79. The \$2,000 Child Tax Credit amount is temporary and is set to expire on December 31, 2025. See *Child Tax Credit Overview*, NAT'L CONF. STATE LEGISLATURES (Nov. 22, 2024), <https://www.ncsl.org/human-services/child-tax-credit-overview> [<https://perma.cc/626K-QWTA>] ("The Tax Cuts and Jobs Act of 2017 doubled the tax credit to \$2,000 and made limits to the refundable amount of up to \$1,400 per child. It also introduced phase out thresholds and rates for higher-income taxpayers. The act is temporary and will expire on Dec. 31, 2025."). On August 1, 2024, the Senate rejected the Tax Relief for American Families and Workers Act of 2024, *H.R. 7024 – Tax Relief for American Families and Workers Act of 2024*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/house-bill/7024> [<https://perma.cc/NRP9-9YT6>]. As Senate Majority Leader Chuck Schumer (D-NY) explained, the bill aimed to "expand[] the child tax credit, lift[] half a million kids out of poverty and expand[] benefits to 16 million children." Andrew Duehren, *Senate Rejects Bipartisan Tax Deal*, N.Y. TIMES (Aug. 1, 2024), <https://www.nytimes.com/2024/08/01/us/politics/senate-tax-bill.html> [<https://perma.cc/TCM7-LLMX>]. Specifically, the bill would have kept the CTC amount at \$2,000 per child while increasing the maximum refundable amount per child "to \$1,800 in 2023, \$1,900 in 2024 and \$2,000 in 2025." Aimee Picchi, *House Approves Expansion for the Child Tax Credit. Here's Who Could Benefit.*, CBS NEWS (Feb. 3, 2024, 2:57 PM), <https://www.cbsnews.com/news/child-tax-credit-2024-who-qualifies/> [<https://perma.cc/363K-NA7N>].

80. *Child Tax Credit Overview*, *supra* note 79; see also I.R.C. § 24(h)(7) ("No credit shall be allowed . . . to a taxpayer with respect to any qualifying child unless the taxpayer includes the social security number of such child on the return of tax for the taxable year.").

81. Because this Note focuses on non-public-agency adoptions, where "[t]he majority [(62%)] of children . . . [are] placed with their adoptive family as newborns or when they [are] younger than one month old," Sharon Vandivere, Karin Malm & Laura Radel, *Adoption USA. A Chartbook Based on the 2007 National Survey of Adoptive Parents*, OFF. ASSISTANT SEC'Y FOR PLAN. & EVALUATION (Oct. 31, 2009), <https://aspe.hhs.gov/reports/adoption-usa-chartbook-based-2007-national-survey-adoptive-parents-0> [<https://perma.cc/6J25-RYW7>], it is assumed that birth mothers will be surrendering the child at birth. By surrendering the child at birth, the birth mother will never receive the child's Social Security number. See *Form SSA-2853-OP4: Message From Social Security: Information About When You Will Receive Your Baby's Social Security Card*, SOC. SEC. ADMIN., <https://www.ssa.gov/forms/ssa-2853-op4.pdf> [<https://perma.cc/3DYP-75WD>] ("It takes your State about 9 weeks to notify the Social Security Administration (SSA) about your baby's birth. . . . The card will be mailed to you about one week after SSA is notified by the State of your baby's birth."); see also *How Long Does It Take to Get My Child's Social Security Number?*, SOC. SEC. ADMIN. (Oct. 9, 2024), <https://faq.ssa.gov/en-us/Topic/article/KA-01969> [<https://perma.cc/XZV9-D3SZ>] ("Each state or jurisdiction has different processing times, between 1 and 6 weeks. . . . The average processing time is 2 weeks.").

82. See *Can I Get the Child Tax Credit if I Give My Baby Up for Adoption?*, OPEN ARMS ADOPTION NETWORK (Mar. 6, 2022), <https://openarmsadoption.net/blog/can-i-get-the-child-tax-credit-if-i-give-my-baby-up-for-adoption/> [<https://perma.cc/QX4A-DMJG>] ("You do not still get to claim your baby as a dependent on your taxes if you have decided that adoption is the best option for you. The

The Earned Income Tax Credit⁸³ (EITC) is a tax credit “for working people with low and moderate incomes [that] boosts the incomes of workers paid low wages while offsetting federal and income taxes.”⁸⁴ Originally enacted as part of the Tax Reduction Act of 1975⁸⁵ as a “credit [] equal to 10% of the first \$4,000 in earnings,”⁸⁶ the EITC now determines eligibility based on “various factors including family size, filing status[,] and income,”⁸⁷ with the average EITC for the 2020 tax year being “\$3,099 for a family with children.”⁸⁸ Working adults without children can still be eligible for the EITC, but their tax credit amount drastically decreases, with “the average EITC for a filer without children [for the 2020 tax year being] just \$295.”⁸⁹ So, even though a birth mother may be eligible for the EITC based on her income level, her credit amount will not increase as a result of giving birth—because surrendering the child for adoption will not increase her family size—and if she does not have any other children, the EITC amount will not even begin to cover her pregnancy-related costs.

C. Current State Tax Credits

Many of the states with the strongest abortion restrictions have neither a state-level Child Tax Credit nor a state-level Earned Income Tax Credit. Of the fourteen states that have essentially banned abortions,⁹⁰ only Idaho⁹¹ and

child tax credit prepayment program . . . will not be available to you unless requirements are changed . . .”). The adoptive parents will receive the child’s Social Security number after the adoption is finalized and will therefore be eligible to receive the Child Tax Credit; however, as noted previously, birth mothers have numerous pregnancy-related costs and are unable to receive any of the aforementioned tax credits. *See supra* notes 29–33 and accompanying text.

83. *See* I.R.C. § 32 (originally enacted as I.R.C. § 43).

84. *Policy Basics: The Earned Income Tax Credit*, CTR. ON BUDGET & POL’Y PRIORITIES (Apr. 28, 2023), <https://www.cbpp.org/research/policy-basics-the-earned-income-tax-credit> [<https://perma.cc/4JKT-2XVV>].

85. *See* Tax Reduction Act of 1975, Pub. L. No. 94-12, § 204, 89 Stat. 26 (codified as amended in scattered sections of 26 U.S.C.).

86. CONG. RSCH. SERV., R44825, THE EARNED INCOME TAX CREDIT (EITC): A BRIEF LEGISLATIVE HISTORY 3 (2018).

87. *Earned Income Tax Credit (EITC)*, BENEFITS.GOV, <https://www.benefits.gov/benefit/939> [<https://perma.cc/C4LD-MHUD>].

88. *Policy Basics: The Earned Income Tax Credit*, *supra* note 84.

89. *Id.* Notably, for a single individual without children to be eligible for the EITC, their annual income must be below \$17,640, while “working families with children [only have to have] annual incomes below about \$46,600 to \$63,400.” *Id.*

90. *See supra* note 5 and accompanying text.

91. Idaho has a non-refundable Child Tax Credit of \$205 per qualifying child. *See Idaho*, TAX CREDITS FOR WORKERS & FAMS., <https://www.taxcreditsforworkersandfamilies.org/state/idaho> [<https://perma.cc/JRA8-LZC4>].

Oklahoma⁹² have enacted a state-level Child Tax Credit, and only Indiana,⁹³ Louisiana,⁹⁴ Missouri,⁹⁵ and Oklahoma⁹⁶ have enacted a state-level Earned Income Tax Credit.

Nonetheless, a few states have begun enacting or revising legislation regarding financial support for fetuses. For example, Georgia's Living Infants and Fairness Equality (LIFE)⁹⁷ Act allows women to claim a dependent personal exemption of \$4,000 for each "unborn child with a detectable human heartbeat."⁹⁸ Interestingly, this exemption *is* available to birth mothers, since a "Social Security Number is *not* required. The only requirement is an unborn child with a heartbeat who has met six weeks gestation."⁹⁹ However, because this is a tax *exemption* rather than a tax *credit*, the \$4,000 would only reduce the birth mother's tax liability by

92. Oklahoma offers a non-refundable Child Tax Credit of 5% of the federal Child Tax Credit for families who qualify for the federal CTC. *See Oklahoma*, TAX CREDITS FOR WORKERS & FAMS., <https://www.taxcreditsforworkersandfamilies.org/state/oklahoma/> [<https://perma.cc/N2RN-9EN4>].

93. Indiana offers a refundable Earned Income Tax Credit of 10% of the federal credit to taxpayers who have filed for the federal EITC and meet Indiana-specific income thresholds. *See Indiana*, TAX CREDITS FOR WORKERS & FAMS., <https://www.taxcreditsforworkersandfamilies.org/state/indiana/> [<https://perma.cc/NTS7-WPT8>].

94. Louisiana offers a refundable Earned Income Tax Credit of 5% of the federal credit to taxpayers who qualify for the federal EITC. *See Louisiana*, TAX CREDITS FOR WORKERS & FAMS., <https://www.taxcreditsforworkersandfamilies.org/state/louisiana/> [<https://perma.cc/72SC-S7GF>].

95. Missouri offers a non-refundable Earned Income Tax Credit of 10%—with the possibility of "rais[ing] to 20% if state revenues increase to \$150 million"—of the federal credit to taxpayers who qualify for the federal EITC. *See Missouri*, TAX CREDITS FOR WORKERS & FAMS., <https://www.taxcreditsforworkersandfamilies.org/state/missouri/> [<https://perma.cc/X8GM-GQML>].

96. Oklahoma offers a refundable Earned Income Tax Credit of 5% of the federal credit to taxpayers who qualify for the federal EITC. *See Oklahoma*, *supra* note 92.

97. *See* H.B. 481, 2019 Gen. Assemb., Reg. Sess. (Ga. 2019).

98. GA. CODE ANN. § 48-7-26(a)–(b) (2024); *see also* Press Release, Dep't of Revenue, Guidance Related to House Bill 481, Living Infants and Fairness Equality (LIFE) Act (Aug. 1, 2022), <https://dor.georgia.gov/press-releases/2022-08-01/guidance-related-house-bill-481-living-infants-and-fairness-equality-life> [<https://perma.cc/97DB-KXVC>] ("The 11th Circuit's ruling [in *SisterSong Women of Color Reprod. Just. Collective v. Kemp*, 40 F.4th 1320 (11th Cir. 2022),] made HB 481's amendment to O.C.G.A. § 48-7-26(a), adding an unborn child with a detectable heartbeat to the definition of dependent, effective as of the date of the court's ruling, which was July 20, 2022."); Ava Sasani, *Georgia Abortion Law Says a Fetus is Tax Deductible*, N.Y. TIMES (Aug. 4, 2022), <https://www.nytimes.com/2022/08/04/us/georgia-abortion-law-fetus-tax-dependent.html> [<https://perma.cc/KB5Q-AS24>].

99. *Life Act Guidance*, DEP'T OF REVENUE (emphasis added), <https://dor.georgia.gov/life-act-guidance> [<https://perma.cc/UX7T-XC3V>] ("Provision of medical documentation is only necessary if audited by the Department. This deduction would not trigger an audit on its own. In accordance with the advice of medical professionals and physicians, the Department recommends that people maintain accurate and appropriate medical records for the health and well-being of themselves and their families."). Although "[t]axpayers do not need to attach documents to their tax returns to claim the tax deduction provided by HB 481," *id.*, this guidance does not reference adoption at all, *see id.*, so it is uncertain whether there are any exclusions for birth mothers or if birth mothers will need to provide any additional documentation to determine eligibility.

approximately \$216,¹⁰⁰ which will not adequately cover the financial costs a birth mother incurs during pregnancy.¹⁰¹

In addition, Utah has recently enacted House Bill 54,¹⁰² which will “allow[] pregnant women to claim a double dependent exemption for children the year they are born.”¹⁰³ The “‘Utah personal exemption’ [is] . . . \$1,750 multiplied by the number of the claimant’s qualifying dependents *plus an additional qualifying dependent in the year of a qualifying dependent’s birth.*”¹⁰⁴ However, a “[q]ualifying dependent” means an individual with respect to whom the claimant is allowed to claim a tax credit under Section 24, Internal Revenue Code, on the claimant’s federal individual income tax return for the taxable year.¹⁰⁵ As mentioned above, the child’s Social Security number is required to claim a federal tax credit.¹⁰⁶ For that reason, birth mothers are ineligible to receive this exemption.¹⁰⁷

Notwithstanding the lack of tax credits applicable to birth mothers specifically, many of these states also provide little to no support for families with children.¹⁰⁸ Of the states that have begun discussing support for pregnant and postpartum women, none have addressed providing any form of tax credit to birth mothers.¹⁰⁹

100. The amount the birth mother’s tax liability will be reduced by with the personal exemption—roughly \$216—was determined by multiplying the \$4,000 personal exemption amount, *see* GA. CODE ANN. § 48-7-26(b) (2024) (effective July 1, 2024) (“Each taxpayer shall be allowed as a deduction in computing his or her Georgia taxable income a personal exemption in the amount of \$4,000.00 for each dependent of such taxpayer.”), by Georgia’s 5.39% flat income tax rate, *see* GA. CODE ANN. § 48-7-20(a)(1) (2024) (explaining that, effective January 1, 2024, the individual income tax rate “shall be 5.39 percent for taxable years beginning on or after January 1, 2024,” subject to an annual reduction of “0.10 percent . . . beginning on January 1, 2025, until the rate reaches 4.99 percent”).

101. *See supra* note 32 and accompanying text.

102. *See* H.B. 54, 2023 Leg., Gen. Sess. (Utah 2023).

103. Bridger Beal-Cvetko, *Utah Governor Signs ‘Historic’ \$400M Tax Cut*, KSL.COM (Mar. 22, 2023, 2:17 PM), <https://www.ksl.com/article/50605955/utah-governor-signs-historic-400m-tax-cut> [<https://perma.cc/VYQ2-AMG7>].

104. UTAH CODE ANN. § 59-10-1018(1)(g) (LexisNexis 2023) (emphasis added).

105. *Id.* § 59-10-1018(1)(c).

106. *See supra* text accompanying notes 81–82.

107. Even if birth mothers were able to receive this personal exemption, it would be inadequate to cover the costs of pregnancy as the \$1,750 personal exemption would decrease the birth mother’s tax liability by only around \$80 (the \$1,750 personal exemption times Utah’s 4.55% income tax rate is roughly \$80). *See Taxes in Utah*, TAX FOUND., <https://taxfoundation.org/location/utah/> [<https://perma.cc/4JAE-MX5M>] (“Utah has a flat 4.55 percent individual income tax rate.”).

108. *See, e.g.*, Amanda Terkel, *States Set to Ban Abortions Offer Little Support for Parents and Children*, HUFFPOST (June 24, 2022), https://www.huffpost.com/entry/states-ban-abortion-little-support-families_n_62966434e4b016c4eef26b81 [<https://perma.cc/9LUN-R3QD>].

109. *See, e.g.*, Elizabeth Tobin-Tyler, *Putting Your Money Where Your Mouth Is: Maternal Health Policy After Dobbs*, 53 SETON HALL L. REV. 1577, 1599 (2023) (“Antiabortion state legislators’ responses to questions about the need, post-*Dobbs*, to enact more ‘pro-family’ policies have rebuffed the idea that government owes a duty to mothers and children.”).

D. Proposed Tax Credits

A few members of Congress have begun proposing legislation that would expand the Child Tax Credit to include “unborn children”; however, each proposed expansion would still be inapplicable to prospective birth mothers.

First, the Providing for Life Act, introduced in the House¹¹⁰ on July 20, 2023, and in the Senate¹¹¹ on January 25, 2023, aims to expand the Child Tax Credit to allow women to begin receiving tax credits while pregnant.¹¹² Even though a “‘qualifying child’ [would] include[] an unborn child of an eligible taxpayer,” the Act would still require the taxpayer to provide the “social security number for such child [to be] issued before the due date for such return of tax,”¹¹³ thus excluding prospective birth mothers.¹¹⁴

Second, the Child Tax Credit for Pregnant Moms Act¹¹⁵ was introduced to the Senate by Senator Steve Daines (R-MT) on June 21, 2023, and was subsequently referred to the Committee on Finance, where it is still pending approval.¹¹⁶ This Act defines a “qualifying child” as including an unborn

110. Representative Ashley Hinson (R-IA) introduced this Act to the House twice, first on September 15, 2022 (H.R. 8851) and then again on July 20, 2023 (H.R. 4789). The July 20, 2023, version of the proposed Act was referred to the Subcommittee on Nutrition, Foreign Agriculture, and Horticulture on August 24, 2023. To see the first iteration of the Act, see *H.R. 8851 – Providing for Life Act*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/8851> [<https://perma.cc/GFL9-4BP7>]; see also Press Release, Congresswoman Ashley Hinson, Hinson Unveils Comprehensive, Pro-Family Agenda (July 24, 2023), <https://hinson.house.gov/media/press-releases/hinson-unveils-comprehensive-pro-family-agenda> [<https://perma.cc/GLT8-UD8W>]. For the current proposal of the Act, see *H.R. 4789 – Providing for Life Act of 2023*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/house-bill/4789> [<https://perma.cc/F4WU-S23V>].

111. Senator Marco Rubio (R-FL) introduced this Act to the Senate, see *S. 74 – Providing for Life Act of 2023*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/senate-bill/74> [<https://perma.cc/WZ9M-2XGW>].

112. See Josh Christenson, *Fetuses Would Qualify for Child Tax Credit Under New GOP Bill*, N.Y. POST (July 24, 2023, 1:57 PM), <https://nypost.com/2023/07/24/fetuses-would-qualify-for-child-tax-credit-under-new-gop-bill/#> [<https://perma.cc/9UZM-XYZ5>].

113. S. 74, 118th Cong. § 3(a) (2023) (amending I.R.C. § 24 by adding subsection (h) “Credit Allowed With Respect to Unborn Children”).

114. If enacted, a birth mother would likely be able to receive this credit if she were to keep the child until she received the child’s Social Security number. However, because this Note focuses on non-public-agency adoptions where the child is most commonly surrendered at birth, the birth mother will never receive the child’s Social Security number. See *supra* note 81 and accompanying text.

115. This Act was originally introduced in 2019 as the Child Tax Credit for Pregnant Moms Act of 2019, S. 1150, 116th Cong. (2019). See Mariannette Miller-Meeks, Opinion, *Child Tax Credit for Pregnant Moms Act Would Put Support Systems in Place for Families*, THE HILL (June 29, 2023, 5:00 PM), <https://thehill.com/opinion/congress-blog/4074607-child-tax-credit-for-pregnant-moms-act-would-put-support-systems-in-place-for-families/> [<https://perma.cc/WAM6-KE5B>]. The Act’s current iteration is the Child Tax Credit for Pregnant Moms Act of 2023, S. 2092, 118th Cong. (2023). See Press Release, Senator Tim Scott, Senate Colleagues Fight to Provide Expectant Moms with Tax Relief (June 22, 2023), <https://www.scott.senate.gov/media-center/press-releases/scott-senate-colleagues-fight-to-provide-expectant-moms-with-tax-relief> [<https://perma.cc/ZU4D-D6KX>].

116. *S. 2092 – Child Tax Credit for Pregnant Moms Act of 2023*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/senate-bill/2092> [<https://perma.cc/6EYW-VTYS>].

child that is later “born alive,” but also includes children that are “miscarried or stillborn.”¹¹⁷ Similar to the Providing for Life Act, this Act requires the taxpayer include “a social security number for such child which is issued before the due date for such return of tax,”¹¹⁸ again excluding prospective birth mothers from receiving the credit.

V. SOLUTION: THE BIRTH MOTHER TAX CREDIT

States that have begun restricting women’s access to abortions should implement the “Birth Mother Tax Credit” (the Credit), a refundable tax credit¹¹⁹ that would enable birth mothers to receive financial assistance for going through with their pregnancy rather than obtaining an abortion.¹²⁰ This tax credit would especially be designed for states that have promoted adoption as an “equal alternative” to abortion.

The decision whether to implement a tax credit and its amount generally depends on the strength of a desired incentive,¹²¹ and there are numerous arguments in favor of implementing the Credit. First and foremost, states that have restricted abortion access have demonstrated strong policy views against abortions,¹²² so implementing the Credit would be desirable since these states presumably favor giving a child up for adoption over aborting a fetus. Second, multiple tax credits have been shown to benefit the local economies,¹²³ and implementing the Credit could similarly benefit states

117. See S. 2092 § 2(a) (“Section 24 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection: ‘(I) Credit Allowed With Respect To Unborn Children’”).

118. *Id.* In the case of miscarried or stillborn children, the taxpayer would be required to include “the identification number from a certificate of miscarriage or stillbirth issued for such child.” *Id.*

119. For the reasons mentioned in Section IV.A, a tax credit is preferable over a tax deduction or exemption because deductions and exemptions generally only benefit higher-income taxpayers. Additionally, making the Credit a *refundable* tax credit would allow birth mothers to be supported financially even if they do not have any tax liability. See discussion *supra* Section IV.A.2.

120. While the Credit could potentially be extended to all women who give birth—as opposed to only birth mothers—women who do not put the child up for adoption are likely eligible for the CTC or the EITC. Accordingly, because the Credit aims to provide support to those who are ineligible for the aforementioned credits, eligibility would be limited only to birth mothers. Logistically, states that implement the Credit could allow birth mothers to claim the Credit on their post-birth tax returns (i.e., the tax year following the year the birth mother gives birth). Instead of requiring the child’s social security number, the state could require proof of adoption and receipts detailing the birth mother’s expenses. Even more, the state could follow the timing rules for the Adoption Tax Credit, see *supra* note 72, but extend the “qualified adoption expenses” definition to include adoption-related expenses *and* pregnancy-related expenses. This may not be the most desirable option—since birth mothers would have to wait until *after* they give birth to receive financial assistance—but it would likely be the easiest way for a state to accurately determine eligibility.

121. See Weidenbaum, *supra* note 64, at 523 (“The percentage [of income] to be used for a given tax credit [depends] on how strong an incentive is deemed desirable in terms of public policy.”).

122. See *supra* note 8 and accompanying text.

123. See Forman, *supra* note 61, at 128 (explaining that tax credits could have a positive impact on the aggregate labor supply); see also Berube, *supra* note 53, at 159 (finding that tax credits can stimulate economic activity).

that enact it. Third, because maternal mortality rates are highest among low-income women,¹²⁴ increased income from the Credit would benefit the birth mothers; importantly, studies have found that increased income from tax credits is associated with improvements in health for both the birth mother and the child.¹²⁵ Thus, “pro-life” states that have restricted access to abortion would greatly benefit from implementing the Credit as it would benefit the birth mother, the fetus, and the state’s economy.¹²⁶

Even though the federal government has not equated abortion with adoption to the same extent as states that have restricted abortion access, the federal government could still choose to either (i) enact the Birth Mother Tax Credit to supplement its current and/or proposed tax credits that have goals of supporting women and children or (ii) expand the Child Tax Credit to include birth mothers. Since the federal government has already taken steps to provide assistance to low-income families with children,¹²⁷ this would be a logical next step as birth mothers have the same pregnancy-related risks and costs as other pregnant women¹²⁸ but are exempt from receiving the current federal tax credits.¹²⁹ As for expanding the Child Tax Credit to include birth mothers, Congress could remove the Social Security Number requirement or provide an alternative means for birth mothers to qualify for the Child Tax Credit, such as allowing birth mothers to prove that they gave birth to a child and later gave the child up for adoption.¹³⁰

124. See *supra* notes 25–28 and accompanying text.

125. See Kate W. Strully, David H. Rehkopf & Ziming Xuan, *Effects of Prenatal Poverty on Infant Health: State Earned Income Tax Credits and Birth Weights*, 75 AM. SOCIO. REV. 534, 556–57 (2010) (finding that state EITCs “increase birth weights, . . . increase maternal employment and earnings[, and] . . . are associated with reductions in maternal smoking during pregnancy”); Hilary Hoynes, Doug Miller & David Simon, *Income, the Earned Income Tax Credit, and Infant Health*, 7 AM. ECON. J.: ECON. POL’Y 172, 172, 198 (2015) (finding that the “EITC reduces the incidence of low birth weight and increases mean birth weight” and that the “EITC expansion led to an increase in prenatal care across all measures”); see also Kelli A. Komro, Sara Markowitz, Melvin D. Livingston & Alexander C. Wagenaar, *Effects of State-Level Earned Income Tax Credit Laws on Birth Outcomes by Race and Ethnicity*, 3 HEALTH EQUITY 61, 61 (2019) (“The EITC at the federal and state level is an effective policy tool to reduce poverty and improve birth outcomes across racial and ethnic subgroups.”); Tobin-Tyler, *supra* note 109, at 1606 (discussing the “growing evidence . . . that no-strings-attached income supports have considerable benefits for maternal and child health by targeting root causes of poor health and family instability”).

126. Implementing the Credit could also be a step toward fulfilling the state’s “promises” that after *Roe v. Wade* was overturned, measures would be put in place to ensure women and children are supported. See *supra* notes 7–9 and accompanying text.

127. See *supra* text accompanying Section IV.B.

128. See *supra* Part II.

129. See *supra* Section IV.B.

130. Alternatively, the federal government could expand the Earned Income Tax Credit to allow birth mothers to claim the child as a dependent either during gestation or for the year following childbirth. However, this would exclude both high-income and non-working birth mothers and would likely be more difficult to ascertain eligibility as compared to the other options. See *supra* notes 83–89 and accompanying text. Because the aim of the Credit is to provide support to birth mothers—low-income birth mothers specifically—this would not be the most ideal option.

VI. POTENTIAL OBJECTIONS TO THE BIRTH MOTHER TAX CREDIT

All the potential arguments against implementing the Birth Mother Tax Credit are unavailing. First and foremost, there is an uneasiness toward giving monetary benefits for pregnancy, so opponents will likely argue that enacting the Credit would encourage “baby selling,” which is outlawed in all states.¹³¹ However, given the exceptionally high maternal mortality rate in the United States,¹³² it is unlikely that women would purposely get pregnant just to receive this Credit, and states could choose to limit the Credit amount to cover only pregnancy-related expenses.¹³³ Additionally, many states¹³⁴—including states that have restricted access to abortion¹³⁵—nonetheless expressly or impliedly permit paid surrogacy, which some scholars have argued is a new form of “baby selling”¹³⁶—if states permit *paid surrogacy*, such states should not have an issue implementing a credit that aims to compensate birth mothers for their pregnancy-related expenses, especially because numerous politicians recognize that pregnant women do incur these expenses.¹³⁷

Another plausible objection to the Credit is that the state cannot afford the costs associated with implementing a fully refundable tax credit. However, the number of birth mothers eligible for the Credit is not high enough to damage the state’s budget—not many women who become

131. See *supra* Section III.A.

132. See *supra* text accompanying notes 15–17.

133. See *supra* text accompanying note 32.

134. A total of forty-two states permit surrogacy, albeit with various limitations. See *Surrogacy Laws by State*, GIVING TREE SURROGACY (2024), <https://www.givingtreesurrogacy.com/resources/surrogacy-laws-by-state> [<https://perma.cc/3HV4-WC36>]. For a statute-specific, state-by-state breakdown of the surrogacy laws in the United States, see *Surrogacy Laws By State*, LEGAL PRO. GRP. (Sept. 2024) [hereinafter *Surrogacy Laws*], <https://connect.asrm.org/lpg/resources/surrogacy-by-state> [<https://perma.cc/N6CV-NHBE>].

135. Of the fourteen states that have banned abortions, *supra* note 5, only Indiana—where surrogacy contracts are void and unenforceable as against public policy—and Louisiana—where surrogacy is legalized, but non-compliance with statutory provisions could potentially lead to criminal and civil penalties—are considered non-surrogacy friendly states. See *Surrogacy Laws*, *supra* note 134.

136. See, e.g., David M. Smolin, *Surrogacy as the Sale of Children: Applying Lessons Learned from Adoption to the Regulation of the Surrogacy Industry’s Global Marketing of Children*, 43 PEPP. L. REV. 265, 269 (2016) (“[M]ost surrogacy arrangements as currently practiced do constitute the ‘sale of children’ under international law and hence should not be legally legitimated.”); Martha A. Field, *Compensated Surrogacy*, 89 WASH. L. REV. 1155, 1170 (2014) (highlighting that a popular policy argument against allowing surrogacy is that it “seems uncomfortably close to human trafficking and baby selling”).

137. For example, in attempting to justify enacting the Child Tax Credit for Pregnant Moms Act, politicians have stated that the “work, care, and costs associated with motherhood begin long before a child is born.” Press Release, Congressman Doug Lamborn, Congressman Lamborn Introduces Child Tax Credit for Pregnant Moms Act (Jan. 28, 2022), <https://lamborn.house.gov/media/press-releases/congressman-lamborn-supports-pregnant-mothers-promotes-choosing-life-through> [<https://perma.cc/3SQD-H86U>]; see also *id.* (discussing Senator Steve Daines’s statement that the tax relief aims to help cover the costs associated with having a child, which range “[f]rom prenatal care to stocking up on baby supplies” (emphasis added)).

pregnant actually surrender the children for adoption.¹³⁸ Some studies have shown that women who are unable to obtain an abortion due to state restrictions are unlikely to consider adoption, instead choosing to keep the child.¹³⁹

Tennessee—a state that has restricted abortion access¹⁴⁰—is a good case in point. In 2020, Tennessee reported 3,306 domestic adoptions, 64.0% (approximately 2,115 adoptions) of which were private adoptions.¹⁴¹ If Tennessee were to enact the Credit and equalize its amount to the Child Tax Credit (currently \$2,000 per qualifying child),¹⁴² this would cost the state roughly \$4,230,000.¹⁴³ While this may appear to be a substantial number, Tennessee is one of at least sixteen states that have set aside funding for

138. Within this argument lies another possible objection—not many women give children up for adoption, so the Credit is unnecessary. But there is still a significant number of children surrendered for adoption each year, *see* EUN KOH, RYAN HANLON, LAURA DAUGHTERY & ABIGAIL LINDNER, ADOPTION BY THE NUMBERS 5 (2022), <https://adoptioncouncil.org/wp-content/uploads/2022/12/Adoption-by-the-Numbers-National-Council-For-Adoption-Dec-2022.pdf> [<https://perma.cc/L8B2-7RQS>] (finding that in the United States, approximately 115,353 children were adopted in 2019 and 95,306 children were adopted in 2020). The United States’ annual adoption rate is greater than zero; ergo, implementing the Credit would provide support to the women who do choose adoption.

139. *See* Liza Fuentes, Megan L. Kavanaugh, Lori F. Frohwirth, Jenna Jerman & Nakeisha Blades, “Adoption Is Just Not for Me”: How Abortion Patients in Michigan and New Mexico Factor Adoption into Their Pregnancy Outcome Decisions, 5 *CONTRACEPTION*: X, 2023, at 3 (explaining how participants felt adoption was not an appropriate option “[because] continuing the pregnancy and giving birth [was] inseparable from the decision to parent[,] . . . choosing adoption would represent an irresponsible abnegation of parental duty[,] . . . [and] adoption could put their child’s safety and well-being at risk”); *see also* Gretchen Sisson, Lauren Ralph, Heather Gould & Diana Greene Foster, *Adoption Decision Making Among Women Seeking Abortion*, 27 *WOMEN’S HEALTH ISSUES* 136, 141–42 (2017) (“[A]mong women who are highly motivated to avoid parenthood . . . , adoption was most frequently understood as the least preferred option. This was true even when abortion was no longer an available choice [as] the vast majority of women (91%) denied abortion care chose to parent, rather than to place their child for adoption. . . . [Importantly,] most birth mothers only choose adoption when their first plan . . . is no longer legally or logistically possible.”); Gretchen Sisson, “Choosing Life”: Birth Mothers on Abortion and Reproductive Choice, 25 *WOMEN’S HEALTH ISSUES* 349, 349 (2015) (“[T]he anti-abortion framing of adoption as a preferable alternative to abortion is inconsistent with birth mothers’ pregnancy decision-making experiences and their feelings about adoption.”); *id.* at 353 (explaining that this inconsistency is due in part because adoption only “emerged as a solution when women felt they had no other options[, and no participants] reported ever deciding between abortion and adoption; each was only ever framed as an alternative to parenting”).

140. *See supra* note 5.

141. *See* KOH ET AL., *supra* note 138. It is important to note that this number is an estimate for the total number of adoptions in Tennessee because “[s]ince 1975, the federal government has stopped requiring states to track the number of private domestic adoptions within their jurisdictions.” Stephanie Horan, *Adoption Trends in America: Uncovering Its Prevalence and Cost—2019 Edition*, SMART ASSET (Dec. 20, 2019), <https://smartasset.com/checking-account/adoption-trends-in-america-uncovering-its-prevalence-and-cost-2019> [<https://perma.cc/BBR4-CJ38>].

142. *See supra* note 79 and accompanying text.

143. This number was calculated by multiplying the suggested credit amount (\$2,000) with Tennessee’s annual number of private adoptions (2,115). The statistic for private adoptions was used because this Note focuses only on non-public agency adoptions, *see supra* note 43 and accompanying text.

crisis pregnancy centers in the years following *Dobbs*.¹⁴⁴ Specifically, Tennessee redirected \$3 million in state funds from a proposed maternal health pilot program “aimed at addressing a pressing need to improve health outcomes for expectant mothers” to crisis pregnancy centers.¹⁴⁵ An additional \$6.5 million was granted to crisis pregnancy centers under the recently-created Tennessee Strong Families Grant Program (the “Program”).¹⁴⁶ Due to the controversial nature of crisis pregnancy centers,¹⁴⁷ Tennessee—and other states that fund similar programs—could easily redirect some of these funds toward the Credit, especially since Tennessee Governor Bill Lee stated the Program aims to “improve access to maternal healthcare and boost critical resources for mothers, children and families by supporting local nonprofits across the state”¹⁴⁸ Therefore, the cost to implement the Credit would not severely harm a state’s budget, would allow for low-income birth mothers to receive support, and would still further the state’s goals of supporting maternal health.

Opponents could also argue that enacting the Credit would allow for “double dipping” as both the birth mother and the adoptive parents would be able to receive some form of tax credit.¹⁴⁹ However, both birth mothers

144. See Carter Sherman, *States to Award Anti-Abortion Centers Roughly \$250m in Post-Roe Surge*, THE GUARDIAN (Dec. 28, 2023, 12:00 PM), <https://www.theguardian.com/world/2023/dec/28/anti-abortion-pregnancy-crisis-centers-taxpayer-money-roe> [https://perma.cc/A8ZC-R5VY] (“In the months since the US supreme court overturned *Roe v Wade*, at least 16 states have agreed to funnel more than \$250m in taxpayer dollars towards anti-abortion facilities and programs that try to convince people to continue their pregnancies.”).

145. Melissa Brown, *Why Tennessee Lawmakers Redirected \$3M in Maternal Health Funds to Crisis Pregnancy Centers*, THE TENNESSEAN (Apr. 19, 2024, 6:02 AM), <https://www.tennessean.com/story/news/politics/2024/04/19/tennessee-lawmakers-redirect-3-million-maternal-health-funds-to-crisis-pregnancy-centers/73347541007/> [https://perma.cc/MUN8-HMND].

146. See *id.*

147. See, e.g., Casey Tolan, Majlie de Puy Kamp & Isabelle Chapman, *The Crisis Pregnancy Center Next Door: How Taxpayer Money Intended for Poor Families Is Funding a Growing Anti-Abortion Movement*, CNN (Oct. 25, 2022, 7:08 AM), <https://www.cnn.com/2022/10/25/us/crisis-pregnancy-centers-taxpayer-money-invs/index.html> [https://perma.cc/49PA-R2YE] (“Research has found that crisis pregnancy centers commonly disseminate misinformation. A study released last year . . . found that almost two-thirds of crisis pregnancy centers in nine states promoted false or biased information about abortion on their websites. That included false claims that abortions increased the risk of cancer or infertility. More than a third of clinics also advertised that they offered abortion pill reversal—and state-funded clinics were more likely than privately-funded ones to offer the unproven procedure and less likely to offer prenatal care”); Carter Sherman, *Anti-Abortion Centers Raked in \$1.4bn in Year Roe Fell, Including Federal Money*, THE GUARDIAN (Feb. 14, 2024, 7:00 AM), <https://www.theguardian.com/world/2024/feb/14/anti-abortion-centers-funding> [https://perma.cc/ND8F-XC4N] (“These centers thrive in a kind of regulatory dead zone, providing medical services like ultrasounds. But many are not licensed as medical facilities, leaving them unencumbered by the rules or oversight imposed on typical medical providers.”).

148. Press Release, Tennessee Governor Bill Lee, Gov. Lee Launches Tennessee Strong Families Grant Program (Sept. 13, 2023, 2:18 PM), <https://www.tn.gov/governor/news/2023/9/13/gov-lee-launches-tennessee-strong-families-grant-program.html> [https://perma.cc/ZE2U-2F9N].

149. If the Credit is enacted, then the birth mother would be eligible to receive this credit, and the adoptive parents would likely be eligible to receive the Adoption Tax Credit and Child Tax Credit.

and adoptive parents have expenses—birth mothers have pregnancy-related expenses, and adoptive parents have adoption-related expenses—so there would not be any double dipping; both parties would only be compensated for the expenses they individually incur. Additionally, the costs a woman incurs during pregnancy are not simply financial—there are also physical and psychological costs¹⁵⁰—so increasing birth mothers’ income by implementing the Credit could help improve their overall health.¹⁵¹

A final potential objection to the Credit is that this Credit would not directly improve the maternal mortality rate problem, making it an ineffective solution and an unnecessary tax credit. While this could potentially be true, as mentioned previously, “lower levels of wealth and income and higher levels of poverty are associated with greater risks of morbidity and mortality.”¹⁵² So, implementing the Credit would increase birth mothers’ incomes, potentially raising them above the poverty line, which could, in turn, decrease their risk of morbidity and mortality. Additionally, the Credit could help birth mothers cover prenatal and maternity care costs,¹⁵³ which could also decrease morbidity and mortality risks.¹⁵⁴

CONCLUSION

The *Dobbs v. Jackson Women’s Health Organization* decision has resulted in drastic consequences for women who become pregnant. Pregnant women living in states that have restricted access to abortion—and who cannot afford to travel out of state for an abortion¹⁵⁵—are now *forced* to carry the child to term, no matter the financial, physical, and psychological costs that ensue from giving birth to a child. Numerous pro-life advocates

150. See *supra* Part II.

151. See *supra* notes 25–28, 125 and accompanying text.

152. Katon et al., *supra* note 25.

153. See *supra* note 32 and accompanying text.

154. See Kathy Katella, *Maternal Mortality Is on the Rise: 8 Things to Know*, YALE MED. (May 22, 2023), <https://www.yalemedicine.org/news/maternal-mortality-on-the-rise> [<https://perma.cc/SA7H-PDD9>] (“Early and regular prenatal care improves the chances of a healthy pregnancy.”); see also Healthy People 2030, *Reduce Maternal Deaths – MICH-04*, OFF. DISEASE PREVENTION & HEALTH PROMOTION, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/pregnancy-and-childbirth/reduce-maternal-deaths-mich-04> [<https://perma.cc/V49M-6H33>] (“Improving the quality of medical care for women before, during, and after pregnancy can help reduce maternal deaths.”). Even if birth mothers had to wait until after birth to receive the Credit, see *supra* note 120, the Credit could still prevent maternal-related death, since most occur after birth. See Davi Merchan & Parmida Jafari, *New Study Finds Most Maternal-Related Deaths in the US Happen After Birth*, ABC NEWS (June 5, 2024, 4:06 AM), <https://abcnews.go.com/US/new-study-finds-maternal-related-deaths-us-happen/story?id=110831141> [<https://perma.cc/MU4L-FAE8>] (“[N]early two-thirds of maternal-related deaths in the U.S. happen up to a year after a woman has given birth. . . . [The study found that] 12% of deaths took place in the first week postpartum . . . [and 23%] of deaths occurred up to 42 days after birth. Late deaths, which accounted for 30% of all deaths, happened up to one year after birth . . .”).

155. See *supra* note 10 and accompanying text.

have suggested that women who are not ready or do not wish to be a parent can simply give the child up for adoption—essentially equating abortion to adoption; however, the women who place children for adoption are not provided adequate support to offset the risks and costs associated with their essentially compelled pregnancies. Accordingly, this Note recommends that states that have restricted access to abortions should enact the Birth Mother Tax Credit. By doing so, the state will acknowledge that birth mothers endure the same pregnancy-related costs as women who do not put their child up for adoption, and thus should be eligible to receive the same amount of financial assistance. Finally, providing support to birth mothers with the Birth Mother Tax Credit can, in turn, boost the state's economy and improve the health of both the birth mother and the child.

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