
COMSTOCKERY'S CRITICAL HISTORY[†]

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Well-founded criticism of the Supreme Court super-majority's selective and motivated use of history in *Dobbs v. Jackson Women's Health Organization* (2022) and other recent decisions might tempt progressives to despair of invoking the past constructively in constitutional interpretation. Drawing on the work of Reva Siegel,¹ as well as scholars such as Peggy Cooper Davis,² Dorothy Roberts,³ Khiara Bridges,⁴ and Michele Goodwin,⁵ I have explored elsewhere the critical roles history can play in law and politics after *Dobbs*,⁶ and how histories of reproductive injustice and feminist resistance provide especially fruitful and untapped resources for constitutional interpretation and political and legal argument.⁷ Siegel and Mary Ziegler's pathbreaking work on the Comstock

[†] An invited response to Reva B. Siegel & Mary Ziegler, *Comstockery: How Government Censorship Gave Birth to the Law of Sexual and Reproductive Freedom, and May Again Threaten It*, 134 YALE L.J. (forthcoming 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4761751.

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¹ See, e.g., Reva B. Siegel, *The Politics of Constitutional Memory*, 20 GEO. J. L. & PUB. POL'Y 19, 21-22 (2022) [hereinafter Siegel, *Politics of Constitutional Memory*]; Reva B. Siegel, *Memory Games: Dobbs's Originalism as Anti-Democratic Living Constitutionalism—and Some Pathways for Resistance*, 101 TEX. L. REV. 1127, 1134 (2023) [hereinafter Siegel, *Memory Games*].

² See, e.g., PEGGY COOPER DAVIS, *NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES* (1997) [hereinafter DAVIS, *NEGLECTED STORIES*].

³ See, e.g., Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1 (2019); Dorothy E. Roberts, *Racism, Abolition, and Historical Resemblance*, 136 HARV. L. REV. 37 (2022).

⁴ Khiara Bridges, *Foreword: Race in the Roberts Court*, 136 HARV. L. REV. 23 (2022).

⁵ See, e.g., Michele Goodwin, *Opportunistic Originalism: Dobbs v. Jackson Women's Health Organization*, 2022 SUP. CT. REV. 111; Michele Goodwin, *Involuntary Reproductive Servitude: Forced Pregnancy, Abortion, and the Thirteenth Amendment*, 2022 U. CHI. L. F. 191 (2022).

⁶ Serena Mayeri, *The Critical Role of History after Dobbs*, 2 J. AM. CONST. HIST. 171 (2024) [hereinafter Mayeri, *Critical Role*].

⁷ Serena Mayeri, *Reproductive Injustice, Feminist Resistance, and the Uses of History in Constitutional Interpretation*, WM. & MARY BILL OF RIGHTS J. (forthcoming 2025),

Act exemplifies both points.⁸ In this brief response, I identify some of the ways that *Comstockery* mobilizes historical resources to support arguments about statutory and constitutional interpretation, and how the article contributes to conversations about history, tradition, and democracy.

Comstockery's contribution to our understanding of what happened is immense and important. By providing a legal history of the Comstock Act's provisions concerning contraception and abortion and resistance to the Act's enforcement, the article corrects and augments what was until now a remarkably sparse historical record. This new account, valuable for its own sake, also has immediate payoffs for statutory interpretation in an era of Comstock revivalism. Siegel and Ziegler argue persuasively that even during peak enforcement of the Comstock Act, the abortion prohibition did not apply in cases where pregnancy threatened women's lives and health.⁹ Today's Comstockers are wrong to treat the statute as a total abortion ban, since "[e]ven at the height of a sexual purity interpretation of Comstock, courts assumed that the statute permitted physicians to communicate directly with their patients or with one another about abortion or contraception for reasons of health." Further, "the law afforded doctors treating patients considerable discretion [in making decisions about abortion] because pregnancy was quite dangerous and the distinction between saving life and protecting health was hard to draw."¹⁰

Comstockery also makes several interventions that spotlight history's critical roles. The article reveals the Comstock Act's myriad incompatibilities with modern constitutional values of liberty, equality, and freedom of expression. Siegel and Ziegler uncover a rich untold history of oppression and resistance that provides both negative and positive precedents for present and future legal and constitutional interpretation. It showcases the value of recovering previously excluded voices. And *Comstockery* exposes throughlines between past and present injustices that belie any democratically legitimate pedigree for modern restrictions on reproductive freedom.

Siegel and Ziegler show how Comstock's enforcers turned an obscenity law into an instrument of the "sexual purity" movement, an especially retrograde branch of anti-vice advocacy. Comstockers defended the hegemony of white, Protestant, native-born elite men and a vision of fragile womanhood under threat from promoters of sexual and reproductive autonomy. To these crusaders, the availability of contraception and abortion endangered elite women's virtue and

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5087522 [hereinafter Mayeri, *Reproductive Injustice*].

⁸ Reva B. Siegel & Mary Ziegler, *Comstockery: How Government Censorship Gave Birth to the Law of Sexual and Reproductive Freedom, and May Again Threaten It*, 134 YALE L.J. (forthcoming 2025) [hereinafter *Comstockery*].

⁹ *Id.* at 27. See also Reva B. Siegel & Mary Ziegler, *Abortion's New Criminalization—A History-and-Tradition Right to Healthcare Access After Dobbs and the 2023 Term*, VA. L. REV. (forthcoming 2025).

¹⁰ *Comstockery*, *supra* note 8, at 26-27.

the survival of the race. Access to birth control, they warned, would send women into a frenzy of licentious debauchery. Untethered from the disciplinary force of involuntary motherhood, women would cease to fulfill their divinely ordained role as wives and mothers confined to the domestic sphere. If well-off white Protestant women could skirt their sexual and reproductive responsibilities, the fecundity of Catholics, immigrants, and other undesirables portended demographic doom. Nonmarital sex would go unseen and unpunished, and sexual temptation would corrupt impressionable youth.

Comstockery exposes how the law censored not only sexual expression but also political speech—especially by women who challenged sex-based inequality and subordination. Comstock enforcement targeted pioneering women from free love proponent and presidential candidate Victoria Woodhull to abortion provider Madame Restell to birth control advocates Margaret Sanger and the largely unsung Mary Ware Dennett. Comstockers imposed a draconian sexual morality not merely for its own sake, or out of Victorian prudery, but to suppress threats to their own political and economic power. As the authors emphasize, selective and inconsistent but highly intrusive enforcement had the intended effect of chilling sexual expression, dissenting speech, and political activism. The resulting shame and stigma surrounding discussions of sex and reproduction sustained the unpopular law and silenced many potential critics.

The Comstock Act, Siegel and Ziegler make clear, was born and for a century, enforced, under profoundly antidemocratic conditions. Not only were women and most people of color excluded from the polity in 1873, but Comstock's implementation made the law an instrument of self-perpetuating repression: its very purpose and effect was the suffocation of dissent. In short, the Act "is a graveyard of Equal Protection Clause and First Amendment violations."¹¹

Siegel and Ziegler also excavate a fascinating history of resistance to Comstock about which canonical court decisions about contraception and abortion are silent. In the early twentieth century, feminists engaged in public, political struggles that connected women's suffrage to "voluntary motherhood," sexual autonomy, and access to birth control as prerequisites to equal citizenship "as elementary an essential . . . as 'equal pay,'" in Crystal Eastman's words.¹² They advanced claims we usually associate with later movement mobilizations: a right to privacy and to sexual freedom and expression, intertwined with women's right to marital sex without procreative consequence. They fought (unsuccessfully) for congressional repeal and (successfully) for judicial interpretations that narrowed the Comstock Act's reach and, eventually, silently vanquished its remnants.¹³

Court decisions striking down laws that criminalized contraception and abortion mention none of this history, though implicitly they draw on earlier

¹¹ *Id.* at 90.

¹² *Id.* at 42 (quoting Crystal Eastman, *Now We Can Begin*, *LIBERATOR*, Dec. 1920, at 23, 23-24).

¹³ *Id.* Part II.

statutory decisions that responded to feminist mobilizations.¹⁴ Justice Douglas's famous line in *Griswold v. Connecticut*¹⁵ (1965) invokes the prospect of police invading "the sacred precincts of the marital bedroom" as if Comstock laws—on the books for nearly a century—did not entail just that.¹⁶ And nowhere did the Court's decisions in *Griswold*, *Eisenstadt v. Baird*¹⁷ (1972), or *Roe v. Wade*¹⁸ (1973) acknowledge decades of feminist resistance to this very criminalization and its ramifications for women's lives.¹⁹

In other work, Siegel has written powerfully about the prevalence and consequences of such erasures. "Constitutional memory depicts a world in which men speak for women; women lack political voice and have yet to exercise authority to lead." These silences "destroy the vernacular of resistance," obscuring past struggles and inhibiting present and future collective action by making oppressive conditions appear legitimate and consensual.²⁰ As Siegel observes, nowhere do the names of women who were abolitionist or suffragist leaders appear in the U.S. Reports, much less are their ideas quoted or discussed. And "the Nineteenth Amendment plays scarcely any role in constitutional interpretation, *even in the law of sex discrimination*"—"impressive evidence of women's near-perfect exclusion as acknowledged makers of our constitutional law."²¹

These silences and erasures feed damaging narratives about statutory and constitutional law. For example, commentators and courts read the Nineteenth Amendment as a narrow rule about voting rather than the expansive charter of equal citizenship for which feminists fought. They treat the right to privacy as manufactured from whole cloth in *Griswold* and its progeny, and women's right to equal protection as the product of men's beneficence.²²

Comstockery vividly illustrates the benefits of recovering histories lost to constitutional memory. Resurrecting the history of Comstock, as Siegel and Ziegler argue, recasts the constitutional rulings of the 1960s and 1970s as the culmination of decades of activism against repression and for sexual freedom and equal citizenship. These cases had precursors: a series of decisions in the

¹⁴ *Id.* at 63.

¹⁵ 381 U.S. 479 (1965).

¹⁶ Notably, the Court did discuss Comstock and decisions interpreting the Act at oral argument in *Griswold*. See *Comstockery*, *supra* note 8, at 70-71.

¹⁷ 405 U.S. 438 (1972).

¹⁸ 410 U.S. 113 (1973).

¹⁹ *Id.* at 74-75.

²⁰ Siegel, *Politics of Constitutional Memory*, *supra* note 1; Mayeri, *Reproductive Injustice*, *supra* note 7.

²¹ Siegel, *Politics of Constitutional Memory*, *supra* note 1, at 30.

²² Siegel, *Politics of Constitutional Memory*, *supra* note 1; see also JILL HASDAY, WE THE MEN: HOW FORGETTING WOMEN'S STRUGGLES FOR EQUALITY PERPETUATES INEQUALITY (forthcoming, Oxford University Press, Mar. 2025); Mayeri, *Reproductive Injustice*, *supra* note 7.

1930s that “responded to the public’s changing beliefs about democracy.”²³ No longer did Americans accept that “the government could use the threat of criminal law to control the speech and private lives of its members.”²⁴ This “objection gathered force across generations,” and “assumed form as a question of constitutional magnitude.”²⁵ Far from pulling rights to privacy and sexual freedom out of thin air, the Court in fact built upon a legacy forged in the unacknowledged struggles of social movements.²⁶

Comstockery also suggests an explanation for the lacuna in our collective memory: the lingering chill of Comstock combined with women’s historic political exclusion to “marginaliz[e]” and “stigma[tize]” public discussions of sex and reproduction long after enforcement waned. Such erasure is far from unique to the Comstock context, of course. The very nature of marginalization and disenfranchisement is that some historical actors, episodes, and movements will be less visible than others.²⁷ The authors show how statutory and eventually constitutional decisions absorbed the arguments of Americans who lacked official lawmaking authority.²⁸ The silence produced by their disempowerment has consequences for whose voices mattered then—and matter today—to courts and other entities who do have the authority to make law.²⁹

The story of Comstock thus underscores the critical importance of what Siegel calls “democratizing constitutional memory.”³⁰ As Siegel and Ziegler point out, *Comstockery* not only corrects and enriches the historical record. It also advances a very different approach to history and tradition than the Court has taken in cases involving reproductive injustice. Rather than freeze constitutional or statutory meaning in a time when women and people of color largely were excluded from the polity, the authors call on us to honor a tradition of resistance

²³ *Comstockery*, *supra* note 8, at 89.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See, e.g., id.* at 93 (“Looking to the past can guide the application of constitutional principles, teaching us about the kinds of experiences in which particular rights were forged and about the scenes in which principles acquired intelligible meaning.”); *id.* at 94 (“This history can guide constitutional interpretation—not because it provides interpreters facts free of value or a roster of rights frozen in the distant past—but because it is a domain in which we can learn more about the conflicts in which constitutional principles were forged and about the life-stakes of those controversies for those who waged them.”).

²⁷ *See, e.g.,* Saidiya Hartman, *Venus in Two Acts*, 12 SMALL AXE 1 (2008).

²⁸ *Comstockery*, *supra* note 8, Section III.B.

²⁹ *Id.* at 95-97. *See also* Mayeri, *Critical Role*, *supra* note 6 (discussing work by Siegel and others that expands our conception of whose voices are worth hearing and crediting in constitutional interpretation). *Cf.* Karen M. Tani, *Foreword: Curation, Narration, Erasure: Power and Possibility at the U.S. Supreme Court*, 138 HARV. L. REV. 1 (2024).

³⁰ *Comstockery*, *supra* note 8, at 96 (“Recalling these struggles . . . provides evidence of a tradition in which ordinary Americans are not silent, or sidelined, but instead have and express views about the exercise of state authority.”). *See also* Siegel, *Memory Games*, *supra* note 1, at 1193.

and persuasion that unfolds across generations. Their dynamic vision of history and tradition credits social movements' work to change Americans' collective understanding of what democracy requires.

For Siegel and Ziegler, then, the past provides both constitutional inspiration and a cautionary tale. As Peggy Cooper Davis writes, "[l]aws and practices consistent with a challenged state action . . . might be manifestations of a constitutional ideal, but *they might also be manifestations of the mischief against which the Constitution protects us.*"³¹ Much of modern constitutional equality law depends on seeing the past as negative precedent, "a record of past wrongs that the nation strives to remedy and against which the nation defines itself," in Siegel's words.³² A history of discrimination and oppression is what justifies the application of heightened scrutiny to laws that might have "seemed perfectly constitutional to many of the men who participated in the framing and ratification of the Fourteenth Amendment."³³ Comstock clearly belongs in the category of laws that embody features inimical to the spirit of, among other constitutional provisions, the First, Fourteenth, and Nineteenth Amendments.

The untold history of resistance to Comstock, further, can serve as "positive precedent, identifying constitution makers who model constitutional virtues and an understanding of our constitutional commitments we wish subsequent generations to emulate."³⁴ Knowing that opposition to Comstock stalked its implementation from the start gives the lie to the notion that censorship and suppression ever was based in any meaningful democratic consensus. It highlights, too, the "'intergenerational struggle' by women . . . for an end to hierarchical marital, household, economic and political structures" that is so conspicuously absent from federal courts' interpretation of the constitution.³⁵

Like *Dobbs*'s embrace of a narrow history-and-tradition analysis, *Comstockery*'s historical account presents opportunities for opponents to highlight the absurdity of holding twenty-first-century Americans to nineteenth-century laws enacted under undemocratic conditions and tainted by racism, nativism, and misogyny. And *Comstockery* provides yet another example of the right's hypocrisy in selectively relying upon a history-and-tradition analysis that uses the existence of nineteenth-century statutes to justify the imposition of white, male, propertied elites' will today. In other contexts (such as the Second Amendment), Siegel and Ziegler point out, the conservative Justices take a capacious view of whose ideas and attitudes matter to constitutional

³¹ DAVIS, NEGLECTED STORIES, *supra* note 2, at 215.

³² Siegel, *Politics of Constitutional Memory*, *supra* note 1, at 54.

³³ Mayeri, *Critical Role*, *supra* note 6, at 190. Many modern First Amendment doctrines, too, are difficult to justify on a narrow originalist understanding of constitutional meaning. See Alexander Tsesis, *Constitutional Principles, Historical Narratives, and Formalistic Jurisprudence*, U. PA. L. REV. (forthcoming 2025).

³⁴ Siegel, *Politics of Constitutional Memory*, *supra* note 1, at 54.

³⁵ Mayeri, *Reproductive Injustice*, *supra* note 7 (citing Siegel, *Politics of Constitutional Memory*).

interpretation. If the Court turned “to the past for guidance in interpreting the liberty guarantee, [it could] look for views of the whole people as we understand them today” rather than “restrict[ing] its account to the perspectives of those originally considered fit to govern”³⁶

Dorothy Roberts emphasizes “the importance of a historical analysis that ties together forms of white supremacy over time.”³⁷ *Comstockery* answers her call “to understand our present as deeply rooted in past practices that endure in an altered but recognizable form today.”³⁸ Parallels between past and present abound in *Comstockery*, highlighting how ludicrous, dangerous, and illegitimate its present-day revival would be—and anti-abortion laws already are.

The technologies of law enforcement Comstockers helped to pioneer echo in contemporary anti-abortion strategies. The surveillance by friends, family, and neighbors that the authors describe as the hallmark of Comstock enforcement already manifest in Texas’s S.B.8 and other similar measures.³⁹ These laws, which empower any individual—no matter how vindictive or abusive their motivations—to sue an abortion seeker for damages, exacerbate the chilling effects of criminalization. Laws that punish “abortion trafficking” inhibit not only conduct in support of pregnant persons who would travel from restrictive to permissive states, but also speech and the dissemination of information about reproductive health care more generally.⁴⁰

The societal forces behind Comstock, too, ring of familiarity. White Protestant male millionaires, Siegel and Ziegler tell us, largely powered the Comstock Act, its enforcement regime, and its targeted attacks on feminists and others who opposed its aims. Today, white male billionaires underwrite right-wing movements and champion selective prosecutions of political opponents and dissenters. Racism, nativism, and misogyny run rampant again in our political discourse. The “great replacement theory” posits that Jews are conspiring to flood the country with Black and Brown immigrants to overwhelm white Christian America. Prominent politicians openly espouse retrograde views of women’s divinely ordained family roles and embrace Christian nationalist fantasies of theocratic rule. Slogans such as “Your Body, My Choice” express a crude, modern-day vision of male control over women’s bodies and lives.

As in the Comstock era, few or no prosecutions are necessary to chill those who would resist. Siegel and Ziegler write that “inconsistent enforcement [of Comstock] did nothing to undermine the forms of stigma and fear that the statute

³⁶ *Comstockery*, *supra* note 8, at 96.

³⁷ Roberts, *supra* note 3, at 49.

³⁸ Mayeri, *Critical Role*, *supra* note 6, at 203.

³⁹ S.B. 8, 87th Leg., Reg. Sess. (Tex. 2021).

⁴⁰ Tatyana Tandanpolie, “It’s Going to Create Fear”: Idaho’s “Abortion Trafficking” Law Shows that Free Speech is a Target, SALON (Dec. 7, 2024, 5:59 AM), <https://www.salon.com/2024/12/07/its-going-to-create-fear-idahos-abortion-trafficking-law-shows-that-free-speech-is-a-target/> [https://perma.cc/6HF6-5BA4].

created.”⁴¹ But whereas the authors show that the Comstock Act never applied to abortions necessary to preserve women’s lives and health, no such qualifications attach to many of today’s abortion bans. The chill of these bans therefore extends even beyond what Comstock-era laws deterred: physicians and other medical professionals refuse to provide not only abortions that would have been unlawful in the pre-*Roe* era but also a wide range of other care.⁴²

Since *Dobbs*, an avalanche of horrifying stories have emerged about lives, health, and fertility endangered or lost needlessly because of abortion bans’ chilling effects on the treatment of miscarriages, emergencies, and pregnancy complications even in cases where there is no hope of delivering a living child.⁴³ Pregnant people—especially those who are more vulnerable to criminalization—suffer the same consequences when they avoid seeking care.⁴⁴

The chill also means that we likely learn of only a fraction of these tragedies, since reporting them places providers and patients alike at risk of criminal and civil liability. Further, as in the Comstock era, censorship hides the laws’ devastating impact. States where intrepid journalists have managed to uncover how abortion bans cause preventable deaths have disbanded their maternal

⁴¹ *Comstockery*, *supra* note 8, at 39.

⁴² See, e.g., Kelly Baden, Joerg Dreweke, & Candace Gibson, *Clear and Growing Evidence that Dobbs Is Harming Reproductive Health and Freedom*, GUTTMACHER INST. (May 2024), <https://www.guttmacher.org/2024/05/clear-and-growing-evidence-dobbs-harming-reproductive-health-and-freedom> [<https://perma.cc/3Y3G-PG8Z>].

⁴³ See, e.g., Kavitha Surana, *Abortion Bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother’s Death Was Preventable.*, PROPUBLICA, (Sept. 16, 2024, 5:00 AM), <https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death> [<https://perma.cc/C8V5-JTTZ>]; Kavitha Surana, *Afraid to Seek Care Amid Georgia’s Abortion Ban, She Stayed At Home and Died*, PROPUBLICA (Sept. 18, 2024, 6:00 AM), <https://www.propublica.org/article/candi-miller-abortion-ban-death-georgia> [<https://perma.cc/P5KW-V3E5>]; Cassandra Jaramillo & Kavitha Surana, *A Woman Died After Being Told It Would Be a ‘Crime’ to Intervene in Her Miscarriage at a Texas Hospital*, PROPUBLICA (Oct. 30, 2024), <https://www.propublica.org/article/josseli-barnica-death-miscarriage-texas-abortion-ban> [<https://perma.cc/8SPM-8BQK>]; Lizzie Presser & Kavitha Surana, *A Pregnant Teenager Died After Trying to Get Care in Three Visits to Texas Emergency Rooms*, PROPUBLICA (Nov. 1, 2024, 6:00 AM), <https://www.propublica.org/article/nevaeh-crain-death-texas-abortion-ban-emptala> [<https://perma.cc/N4BW-LRGD>]; *The Plaintiffs and Their Stories: Zurawski v. State of Texas*, CTR. FOR REPROD. RIGHTS (Nov. 14, 2023), <https://reproductiverights.org/zurawski-v-texas-plaintiffs-stories-remarks/> [<https://perma.cc/Q2K7-4YAJ>].

⁴⁴ On the criminalization of pregnancy before and after *Dobbs*, see Purvaja S. Kavattur et al., *The Rise of Pregnancy Criminalization: A Pregnancy Justice Report*, PREGNANCY JUST. (Sept. 2023), <https://www.pregnancyjusticeus.org/rise-of-pregnancy-criminalization-report/> [<https://perma.cc/E8H3-N8BM>]; and Wendy A. Bach & Madalyn K. Wasilczuk, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs*, U. TENN. C. L. (Sept. 2024), https://ir.law.utk.edu/utklaw_facpubs/1042/.

mortality review boards or stacked them with anti-abortion members.⁴⁵ Misinformation and disinformation, some of it instigated by anti-abortion advocates, obscure the impact of bans and shift blame to doctors and to reproductive rights advocates themselves.⁴⁶ Lawyers, activists, and social media influencers spread lies about the supposed dangers of abortion medications and procedures and even of contraceptives.⁴⁷

The disproportionate impact of today's abortion bans, too, are familiar. Comstock enforcement designedly affected both affluent white elites and marginalized Americans, but differently. Today race, poverty, immigration status, and other markers of disadvantage concentrate the harms of abortion bans on already vulnerable individuals and communities even as they also touch women of greater privilege.

Most of all, Comstock revival recapitulates the anti-democratic underpinnings of the original statute and its enduring legacy for American law and life: today's Comstockers "invoke the authority of a past they are inventing" to breath new life into an "abortion ban they cannot persuade the nation to enact."⁴⁸

In November 2024, after a campaign of lies and disinformation—about his intentions to eviscerate reproductive freedom and much else—Donald Trump won reelection to the U.S. presidency. Though candidate Trump disavowed Project 2025 and the nationwide abortion ban modern Comstockers favor, the president-elect moved quickly to install the architects of both in positions of power within his administration.⁴⁹ A significant number of voters who cast their

⁴⁵ Amy Yurkanin, *Georgia Dismissed All Members of Maternal Mortality Committee After ProPublica Obtained Internal Details of Two Deaths*, PROPUBLICA (Nov. 21, 2024), <https://www.propublica.org/article/georgia-dismisses-maternal-mortality-committee-amberthurman-candi-miller> [<https://perma.cc/RE6R-57H4>]; Caroline Kitchener, *Texas Committee Won't Examine Maternal Deaths in First Years After Abortion Ban*, WASH. POST. (Nov. 26, 2024), <https://www.washingtonpost.com/investigations/2024/11/26/texas-committee-wont-examine-maternal-deaths-first-years-after-abortion-ban/>.

⁴⁶ See, e.g., Irin Carmon, *The Deaths and Agonies of Trump's Abortion Bans*, N. Y. MAG. (Nov. 4, 2024), <https://nymag.com/intelligencer/article/trump-abortion-bans-deaths-agonies.html> [<https://perma.cc/TC36-VAMS>].

⁴⁷ See, e.g., Mabel Felix, Laurie Sobel, & Alina Salgan, *The Right to Contraception: State and Federal Actions, Misinformation, and the Courts*, KAISER FAM. FOUND. (May 23, 2024), <https://www.kff.org/womens-health-policy/issue-brief/the-right-to-contraception-state-and-federal-actions-misinformation-and-the-courts/> [<https://perma.cc/FH63-AS8L>]. As Scott Cummings argues, lawyering strategies that propagate falsehoods are part of "a broader far-right distortion of the principle of zealous advocacy into a style of lawfare defined by the use of deeply misleading, often outright false, 'factual' claims and legal interpretations in service of radical legal arguments designed to undermine long-settled democratic principles and institutions." Scott L. Cummings, *The Democratic Threat of Far-Right Lawyering*, 104 B.U. L. REV. ONLINE 249, 250 (2024).

⁴⁸ *Comstockery*, *supra* note 8, at 4, 14.

⁴⁹ Bill Barrow, *After Trump's Project 2025 Denials, He Is Tapping Its Authors and Influencers for Key Roles*, ASSOCIATED PRESS (Nov. 23, 2024),

ballot for Trump also supported measures to safeguard abortion rights at the state level. But if *Comstockery* tells us anything, it is that those who believe that reproductive rights and sexual freedom can be secured in the absence of a broader recommitment to defend democratic values are tragically mistaken.