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BLACK LETTER LAW

Aila Hoss

ABSTRACT

Black Letter Law is a fictional short story about abortion access in Indiana following the *Dobbs* decision. Although fictional, the piece is informed by law, reporting, and lived experiences. It also explores the limitations of the legal system and legal education from a law student's perspective. The author wanted to highlight the experiences of those learning, practicing, and being governed by law in a way that traditional scholarly publications often do not allow for. Citations have been added to demonstrate the real-world foundations of the story.

ABOUT THE AUTHOR

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After numerous attempts, Maya managed to arrange her bag to sit upright on the examination table so she could rest her 2-inch-wide, 4.922-pound textbook angled perfectly as if on a book stand. She was attempting to finish (in reality, start) her reading for her afternoon class. Professor Hollinger had assigned four cases spanning thirty pages of reading.¹ And yet, given how long she had been waiting for the doctor, she should have been further along. She kept rereading the same sentence, marked in an unpleasant neon pink by the previous owner. If only the previous owner had done a better job highlighting the important passages and notating the margins, she might have been able to get away with a solid skim.

She was bent over, both elbows on the table, grasping at a neon highlighter of her own. Hers was blue. While staring mindlessly on page 433,² she listened to the incessant crinkling of the paper gown behind her. She wondered when they stopped using the faded white and green fabric ones.

1. WILLIAM N. ESKRIDGE JR. ET AL., CASES AND MATERIALS ON LEGISLATION AND REGULATION: STATUTES AND THE CREATION OF PUBLIC POLICY 433 (6th ed. 2020).

2. *Id.* at 432–63.

There was a loud knock. A tall man entered, likely her father's age or perhaps a little older. The nurse from earlier walked in behind him. Maya stood up straight.

"Hi there. I'm Dr. Ryan." His white coat said as much. "Just finished looking at your records." He sat down on the swivel stool and spread his legs. A manila folder balanced in his left hand. "Looks like you're six weeks along."

She heard her sister inhale sharply. Maya turned to face her. Lilly's head was tilted back and she was staring at the ceiling. Her right knee bounced up and down, the gown crunching as she did. Maya walked over to stand next to her and placed a hand on her shoulder.

Dr. Ryan's gaze bounced to Maya. "We're going to get a full medical history from you today and conduct a physical. We'll also run a few tests." He paused and looked at Lilly. She was still gazing towards the ceiling, but her eyes were now closed. "Sylvia," he jerked his head towards the nurse rustling papers behind him, "will give you some information regarding the timeline for pre-natal care, lifestyle considerations, vitamins you should be taking, and foods---"³

"And what if she doesn't want to keep it?" Maya jumped in. It was clear to her that Lilly would not. "What are her options?" Dr. Ryan and Sylvia exchanged a glance.

"The law has changed since the Supreme Court issued its opinion over the summer. The state has banned all abortions and prohibits doctors from . . ."⁴ Maya looked down at her textbook as Dr. Ryan continued. Bolded near the top of page 433 were the words "The Role of Precedent and Stare Decisis."⁵

Maya gazed at the lower right corner of her laptop.

Standing behind the lectern, Professor Hollinger pointed sharply into the air as he spoke. "The *Meritor* and *Faragher* cases"⁶

3. *Prenatal care: 1st trimester visits*, MAYO CLINIC, <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/prenatal-care/art-20044882> [<https://perma.cc/72Y2-63JZ>] (last visited Jun. 25, 2023).

4. In August 2022, the Indiana General Assembly passed legislation in a special session prohibiting abortions except for those due to rape, incest, risk to the life of the mother, or fatal fetal anomalies. It went into effect on September 15, 2022. SB 1, Spec. Sess. (In. 2022); Arika Herron, *Indiana adopts near-total abortion ban as governor signs SB 1 into law*, INDIANAPOLIS STAR, Aug. 5, 2022, <https://www.indystar.com/story/news/politics/2022/08/05/indiana-abortion-law-passed-final-vote-to-come/65391000007> [<https://perma.cc/DB4Y-9RNC>].

5. ESKRIDGE, *supra* note 1, at 433.

6. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986); *Faragher v. City of*

offer a more recent application of the super strong stare decisis doctrine . . . ”

Maya exhaled. Too loud. Instant regret.

Professor Hollinger stopped speaking abruptly and turned his attention to Maya. “Ms. Hatami, care to add anything?” Maya felt warm. She shook her head. “No opinions on *Flood v. Kuhn*? ”

She stared down, her body still while her eyes darted around the open pages of her textbook where she managed to jot down some notes about the case off of Quimbee⁸ before class, desperate for something she could use.⁹ “The Court said...” she took a long pause, “that, um, the earlier baseball cases were wrong, but they um, but they didn’t want to overturn them.” She looked up to assess how she did. Hollinger looked satisfied, seeming to indicate her answer wasn’t wrong, at least. Nodding and meandering towards her as she spoke, however, Maya knew he was winding up for a pitch.

“And what did the Court base its decision on?”

She looked up past him to the PowerPoint. “Super strong stare decisis,” she hesitated.

“Which means?” He impatiently rolled his right hand in repeated circular motions.

“Um, well, stare decisis means that a court needs to follow the, um, decisions the court made before, even if the court doesn’t agree with them.”¹⁰

“And super strong stare decisis . . . ?” He looked at her expectantly.

“That the court really needs to follow its precedent.” Her voice was flat. Her neighbor, Damion, slid his hand along the desk and pointed to a passage in her textbook. It was highlighted in pink. “The Court said that ‘[i]f there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.’”¹¹ She paused, looking up at Hollinger. She knew her reading was making him impatient and, in all likelihood, her classmates as well. ““If we were to act otherwise,” she plowed on, not knowing what else to do,

Boca Raton, 524 U.S. 775 (1998). These cases considered employer liability for sexual harassment under the Civil Rights Act.

7. *Flood v. Kuhn*, 407 U.S. 258 (1972).

8. Quimbee is an online resource that provides case briefs, case overview videos, practice questions and other resources. QUIMBEE, <https://www.quimbee.com> [https://perma.cc/MGU6-7BZK] (last visited February 27, 2024).

9. *Flood v. Kuhn*, QUIMBEE, <https://www.quimbee.com/cases/flood-v-kuhn> [https://perma.cc/CNM4-Z5BX] (last visited Jun. 25, 2023).

10. *Stare Decisis Definition*, BLACK’S LAW DICTIONARY (11th ed. 2019).

11. *Flood*, 407 U.S. at 284; ESKRIDGE, *supra* note 1, at 440.

“we would be withdrawing from the conclusion as to congressional intent made in *Toolson* and from the concerns as to retrospectivity therein expressed. Under these circumstances, there is merit in consistency even though some might claim that beneath that consistency is a layer of inconsistency.”¹² Clear as mud, she thought.

“Thank you, Mr. Berman,” Hollinger said to Damion. “As Ms. Hatami reminds us, the Court determines that it is obligated to follow precedent that it doesn’t agree with. It says that ‘[i]f stare decisis be one aspect of law, as it is, to disregard it in identical situations is mere caprice.’¹³ What does caprice mean here, Ms. Hatami?”

Maya stared at Hollinger incredulously. “I don’t know.” Her voice was much louder now. “Does it mean bad?”

“Unaccountable.” Hollinger said, clearly irritated as well. “But we still need to know what the difference is between stare decisis and super strong stare decisis.”

“Are you asking me? Because I don’t know.”

Hollinger pursed his lips and looked away from her. “Super strong stare decisis is to be applied in cases involving the interpretation of statutes. The court tells us it is inappropriate to not follow precedent in instances involving legislative action. Congress, not the courts, can change the law in response to judicial interpretations when it believes a court has misconstrued its intent. If Congress has not legislated to correct a judicial decision, neither should a court.”¹⁴

He walked back to the lectern, indicating that Maya was finally off the hook. She should have been relieved.

“Courts don’t follow precedent all the time.” She nearly shouted to Hollinger’s back.

Hollinger turned around. “Ms. Hatami?”

“Courts don’t follow precedent all the time,” she repeated.

“Yes. In general, the Supreme Court overrules a precedent case involving statutory interpretation about once a term.”¹⁵ He made it to the lectern and faced the entire class again.

“Not just in terms of statutory interpretation,” Maya pressed on. “Just in general. Case law gets overruled all the time. We

12. *Id.* In *Toolson v. New York Yankees, Inc.*, the Court held that federal antitrust laws do not apply to Major League Baseball, affirming a decision it had made thirty years earlier. *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 557 (1953). The Court found that Congress had three decades following the earlier decision to expressly include professional sports into antitrust legislation and did not do so, indicating Congress did not intend to include baseball within the purview of that legislation. *Id.*

13. *Flood*, 407 U.S. at 277.

14. LINDA D. JELLUM, *MASTERING LEGISLATION, REGULATION, AND STATUTORY INTERPRETATION* 294–98 (3d ed. 2020).

15. *Id.* at 298.

haven't talked about the *Dobbs* decision¹⁶ at all and I don't know much about Tribes but there was a criminal jurisdiction case this summer . . ."¹⁷

Hollinger waved both his hands and shook his head. "This isn't Constitutional Law, Ms. Hatami, nor Health Law nor Federal Indian Law. We are in Legislation and Statutory Interpretation."

"What's the point of learning all of these cases when courts can literally do whatever they want whenever they want?" Maya felt drunk from the adrenaline. Reckless. Unfixed. She was staring at Hollinger but could feel Damion's eyes on her and knew that his were likely joined by those of fifty other pairs.

Maya sat on the floor in Lilly's bedroom with her laptop perched on her knees. Lilly was in bed. Maya couldn't see her face but knew she wasn't sleeping. She lifted the phone off the side of her face to check and see how long she'd been on hold. Nearly forty-seven minutes.

"Lilly," she whispered. No response. "Lilly, I need to know what days you can get off work to get this scheduled." The covers rustled but Lilly did not respond. "Lilly!"

"Thank you for holding. How may I help you?"

"Hi, um, I need to schedule an abortion. Um. It's for my sister."

"Your sister?"

"Yes, she's right here if you need to talk to her." Maya glanced up at the bed wondering if Lilly would actually speak if prompted. "She's about six weeks pregnant."

"Is your sister currently a patient with us?"

"Um, no. We, uh, we live out of state and uh . . ."

"I'm sorry. We aren't accepting new patients right now."

"What do you mean?"

"We aren't able to schedule new patients at this time."

"I don't understand. The Supreme Court case doesn't matter. Illinois has its own laws and . . ."

"We don't have any availability right now. We're swamped. No openings for new patients."

"None?"

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

17. *Oklahoma v. Castro-Huerta*, 597 U.S. 215 (2022), https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf [perma.cc/4E3W-H49N]. The *Castro-Huerta* decision came down on June 29, 2022, days after the *Dobbs* decision, which came down on June 24, 2022. It was a particularly emotional blow to the author, who is a scholar of federal Indian health law, to have two decisions that depart so abruptly from established law issued within a week.

“None soon enough for what your sister needs.” She paused. “You might try some facilities in Michigan. I’ll give you a list of . . .”¹⁸

Footsteps sounded up the stairs. Their father. Lilly sat up off the bed and stared at Maya, panicked. Maya abruptly hung up the phone.

Maya squirmed in her too tight, heavily-pilled navy pantsuit. She’d gotten away without a suit until this semester. This week, actually. She purchased the only acceptable option at the Goodwill closest to her house.

She sat alongside a row of her four clinic classmates behind the bar where her professor, Carrie Stillman, a legal aid attorney, a 3L, Sophia, and a clinic client sat at the counsel’s table. Landlords on the left. Tenants on the right.

Today was the first day the clinic would observe eviction court. Until now, she and her classmates worked to familiarize themselves with the landlord tenant code. They also had a client interview, but that conversation was handled exclusively by Sophia. Even so, Maya knew the facts intimately. Their client, a mom of three kids under ten, received an eviction notice from her landlord. The mom had stopped paying rent, yes, but only after months of back-and-forth trying to get her landlord to repair a leak that had caused mold in one of the two bedrooms, which is now spreading. Maya wanted to ask the mom why she continued to live there under those conditions during the client interview. The mom answered the question before being asked: “I’d leave but we have nowhere to go. This is the only place we can afford to live where I can make it to work and the kids’ schools.”

Professor Stillman, a legal aid attorney, thought the mom had a good case for a breach of the warranty of habitability given the

18. See, e.g., Rachael Krause, *Illinois abortion providers see surge in demand from out-of-state patients*, WTHR (Aug. 22, 2022), <https://www.wthr.com/article/news/special-reports/indiana-abortion/illinois-abortion-providers-see-surge-in-demand-from-out-of-state-indiana-patients/531-12778013-f016-4551-826a-1de7c6711236> [<https://perma.cc/4V2T-G5A5>]; Marybel González, *Illinois abortion clinics have been flooded with patients since Roe overturning; new Indiana law could mean even more*, CBS CHI. (Aug. 5, 2022), <https://www.cbsnews.com/chicago/news/illinois-abortion-clinics-flooded-patients-ro-e-overturning-new-indiana-law> [<https://perma.cc/XQA2-5WNY>]; Heather Cherone, *As Indiana’s Abortion Ban Takes Effect, Already Overwhelmed Illinois Clinics, Groups Brace for Onslaught*, WTTW (Sept. 15, 2022), <https://news.wttw.com/2022/09/15/indiana-s-abortion-ban-takes-effect-already-overwhelmed-illinois-clinics-groups-brace> [<https://perma.cc/GV9D-M836>].

length, severity, and location of the mold,¹⁹ all of which are facts that supported the withholding of rent. She also said, however, that eviction court was not friendly to tenants. The judge, Maya thought as she watched the hearing, was definitely not friendly.

The judge was a tiny woman with wispy blond, almost white, hair, who barked as she spoke to Sophia. “Did your client notify the landlord? Give him enough time to rectify?”²⁰

Sophia began, “Yes, your honor, our client—”

“And what evidence do you have that this mold was making the apartment uninhabitable? Did anyone in the family actually get sick from the mold?”

Sophia didn’t hesitate. “Your honor, actual health harm is not required for there to be a breach of the warranty of habitability under Indiana law. The case law makes clear—”²¹

“I do not have time for case law. It’s after four and I still have another case on the docket to get through.”²² Ms. Stillman, get your client and your students out of the courtroom while I speak with the landlord.”²³

19. “A landlord shall do the following: (1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition. (2) Comply with all health and housing codes applicable to the rental premises.” IND. CODE § 32–31–8–5.

20. “A tenant may not bring an action . . . unless the following conditions are met: (1) The tenant gives the landlord notice of the landlord’s noncompliance with a provision of this chapter. (2) The landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant’s notice. The tenant may not prevent the landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant’s notice. (3) The landlord fails or refuses to repair or remedy the condition described in the tenant’s notice.” IND. CODE § 32–31–8–6(b).

21. See, e.g., *Welch v. 1106 Traub Tr.*, 204 N.E.3d 243 (Ind. Ct. App. 2023); *Smith v. Hous. Auth. of S. Bend*, 867 F. Supp. 2d 1004 (N.D. Ind. 2012). When considering breach of habitability claims, these courts did not assess actual health harm.

22. This is a paraphrased statement from a federal magistrate judge from a hearing in 2021. Interview by Aila Hoss with Michael S. Brewer, former United States Assistant Federal Defender, Northern and Eastern Districts of Oklahoma (Jun. 25, 2024).

23. *Decatur judge faces disciplinary case*, THE REPUBLIC (Dec. 17, 2022), <https://www.therepublic.com/2022/12/17/decat-judge-faces-disciplinary-case> [<https://perma.cc/7DDL-Z3KQ>] (describing the practices of a Decatur County, Indiana judge that regularly engaged in ex parte communications in child in need of services cases); *Disciplinary Counsel v. Carr*, Slip Op. No. 2022-Ohio-3633, <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-3633.pdf> [<https://perma.cc/D97A-SELZ>] (where a judge began a criminal proceeding without the prosecutor); New Mexico Judicial Standards Commission, Annual Report Fiscal Year 2004,

Professor Stillman stood up. Her back was facing Maya, but Maya could picture the look of surprise on her face as she spoke. “Your honor, both parties are required to be present before the court during an adjudicative hearing.”²⁴

“I’m perfectly familiar with the law, professor.” The judge said. “The bailiff will call you back in when I’m ready.”

We were shuffled out and then back in to find out our client had been evicted. When controlling for other factors, Maya remembered Professor Stillman lecturing during one of their early classes, single mothers were more likely to be evicted than any other group.²⁵

Maya had a meme-worthy number of tabs open on her laptop. One was a viral tweet²⁶ from a woman who offered to pay expenses for anyone who needed to come to Washington state for an abortion.²⁷ It had thousands of likes, retweets, and, most importantly, comments. Many comments came from other Twitter users offering financial support as well as from others asking for help. *Sent you a DM*. A few comments also warned that out-of-state individuals could still be liable under their own state laws.²⁸ Maya thought the abortion prohibitions targeted doctors, not patients. Was she wrong?

<https://www.nmjsc.org/wp-content/uploads/2016/06/Fiscal-Year-2004.pdf> [<https://perma.cc/6YK4-29JE>] (where a judge engaged in ex parte communication with a plaintiff in a landlord-tenant action).

24. “A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter.” IND. CODE JUD. COND. 2.9.

25. Bryce Covert, *Why Landlords Target Mothers for Eviction*, THE NEW REPUBLIC (Mar. 16, 2021), <https://newrepublic.com/article/161578/landlords-target-mothers-eviction-crisis-covid> [<https://perma.cc/24AC-L5WR>]. For a robust discussion on housing insecurity for families with children, see MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 97–98, 227–31, 299, 332 (2016).

26. X was previously called Twitter until July 2023. Irina Ivanova, *Twitter is now X. Here’s what that means.*, CBS NEWS (Jul. 31, 2023), <https://www.cbsnews.com/news/twitter-rebrand-x-name-change-elon-musk-what-it-means/> [<https://perma.cc/FT46-T82Y>].

27. Christina Maxouris, *Some Americans are offering to help others travel out of state for an abortion. But in a post-Roe era, experts urge caution*, CNN (Jul. 3, 2022),

<https://www.cnn.com/2022/07/03/us/abortion-help-travel-out-of-state-online-offers/index.html> [<https://perma.cc/H9EX-WM74>]; Mia Sato, *On a post-Roe v. Wade internet, unvetted abortion support is going viral*, THE VERGE (Jul. 1, 2022), <https://www.theverge.com/2022/7/1/23190278/roe-v-wade-abortion-bans-lodging-support-funds-transportation-digital-security> [<https://perma.cc/X9BA-WZ97>].

28. Caroline Kitchener & Devlin Barrett, *Antiabortion lawmakers want*

Several nonprofits offered support for patients needing abortion services post-*Dobbs*,²⁹ but Maya couldn't tell what kind of support each nonprofit offered or who was eligible for that support. But, at least, she had got the hang of figuring out which organizations worked to convince people not to get abortions, masquerading as providers of abortion support.³⁰ She sighed. She was glad Lilly hadn't been around for that phone call yesterday, but RIP to her ads. They were now exclusively about pregnancy, parenting, and motherhood.³¹

Maya submitted contact forms and sent emails to a handful of organizations. She jotted down the phone numbers to follow-up tomorrow. She rubbed her temples and checked her phone. No response from Lilly. Over the last few days, exasperation had taken over Maya's patience. *It's not like I can get the abortion for her*, she thought.

She clicked on another computer tab at random. Too many open to know which was what. This one happened to be about getting abortion medication online by mail.³² No medical appointments were necessary; Maya only needed to provide a name, an address, and a credit card. She click-click-clicked through the open computer tabs until she found the Food and Drug Administration (FDA) page she was looking for. "*FDA Does Not Recommend*

to block patients from crossing state lines, WASHINGTON POST, (Jun. 29, 2022), <https://www.washingtonpost.com/politics/2022/06/29/abortion-state-lines> [<https://perma.cc/4QGY-NCZ9>].

29. See, e.g., NAT'L NETWORK OF ABORTION FUNDS, <https://abortionfunds.org> [<https://perma.cc/8PTE-DS75>] (last visited Jun. 25, 2023); WOMEN'S REPROD. RTS. ASSISTANCE PROJECT, <https://wrrap.org> [<https://perma.cc/6895-PT8G>] (last visited Jun. 25, 2023); THE BRIGID ALLIANCE, <https://brigidalliance.org> [<https://perma.cc/WS89-DPDT>] (last visited Jun. 25, 2023).

30. Jennifer Lincoln, *How to Spot Anti-Abortion 'Crisis Pregnancy' Centers*, MEDPAGE TODAY (May 2, 2023), <https://www.medpagetoday.com/opinion/second-opinions/104305> [<https://perma.cc/V8JY-Q5QH>].

31. Poppy Noor, *Google targets low-income US women with ads for anti-abortion pregnancy centers, study shows*, THE GUARDIAN (Feb. 7, 2023), <https://www.theguardian.com/world/2023/feb/07/google-targets-low-income-women-anti-abortion-pregnancy-center-study> [<https://perma.cc/BJ93-J6PR>] (describing a study where low-income pregnant people in Atlanta, Miami, and Phoenix were targeted by anti-abortion pregnancy center ads); Anya E.R. Prince, *I Tried to Keep My Pregnancy Secret*,

THE ATLANTIC (Oct. 10, 2022), <https://www.theatlantic.com/ideas/archive/2022/10/can-you-hide-your-pregnancy-era-big-data/671692> [<https://perma.cc/PLX5-8FYJ>] (describing the number of pregnancy and baby-related ads the author saw despite trying to hide her pregnancy).

32. Allison McCann, *Inside the Online Market for Overseas Abortion Pills*, N.Y. TIMES (Apr. 13, 2023), <https://www.nytimes.com/interactive/2023/04/13/us/abortion-pill-order-online-mifepristone.html> [<https://perma.cc/8TYR-T8P8>].

Buying Mifepristone Online.” It was bolded. “FDA does not recommend purchasing mifepristone outside of the Mifepristone REMS Program—e.g. buying it online or personally transporting it from a foreign country.” She skimmed on. “The FDA does not have regulatory oversight of prescription medicines from outside the legitimate U.S. drug supply chain; therefore, the FDA cannot ensure the safety, effectiveness, or quality of those medications.”³³

Maya slowly made her way through the faculty suite to pick up a stack of hard copy reading from one of the faculty assistants, checking each room number to make sure she was headed in the right direction. It wasn’t helping. She rarely ventured up to the third floor, almost never traversed the double glass doors that separated the faculty offices from the classrooms.

“Ms. Hatami.” After jumping at hearing Hollinger’s voice behind her, she turned around. “Do you have an appointment with a faculty member?”

“No, just picking something up.”

“Why don’t you come in and have a seat for a few minutes,” Hollinger extended his arm towards his open doorway. Maya walked in, thinking she had a good reason not to come to the faculty suite ever again. She put her backpack on the ground and sat in one of the chairs opposite the large black leather one. “How are classes going this semester?” He asked as he sat down.

“It’s good,” she paused, unsure whether the question was meant sincerely or as a banal icebreaker. “Being a 2L and getting to pick my own classes has been great.” She regretted, almost instantly, not stopping at “good.”

“You didn’t enjoy the 1L curriculum?” Hollinger asked, tilting his head inquiringly. One of his hands rested on the arm rest, the other on his desk. He leaned back into his chair and drummed his fingers.

“Well, uh, I mean . . . I definitely *did*.” She was scrapping for words. “It’s just nice to be able to take upper-level classes that are, uh, in the field I want to, uh, practice. I’m enjoying that more than two semesters of civil procedure,” she laughed hollowly.

Hollinger stopped tapping his fingers. He did not return her laugh. “And what is it you want to practice?” He taught both civil

33. *Information about Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/information-about-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation> [https://perma.cc/H3BT-VP8] (last visited Jun. 25, 2023).

procedure semesters in the first-year curriculum. Maya blushed when she remembered. She had Professor Muli for civ pro last year.

"I'm thinking health law. My dad was in the military and was injured. I've seen a lot of the health care system because of that. I can use a law degree to help others navigate it." Maya was flustered. Regrettably, it seemed to make her share more than she'd like.

"Civil procedure is very important to health law," Hollinger said simply. Maya could feel the sweat along her upper lip. She gave a small nod, not saying anything. He started tracing his fingers along the edge of the desk. His fingers made a beat. And then another. And then another.

Finally, he said, "I was thinking I ought to ask you to come in here. After your outburst in class the other day."

Maya didn't speak.

"You're not in trouble per se but I did want to give you some advice," he went on. Again, Maya said nothing. "I'm just as upset about the *Dobbs* decision as you are." At this, Maya tilted her head. Before she could speak, Hollinger continued, "But, you're in the very beginnings of your career. You've got a lot at stake, you know?"

Maya stared at him dumbly. "I'm not sure what you mean."

"You've got to keep your head down. Your classmates now will be your colleagues in practice. You never know who you are sitting next to during lectures. Best not to marginalize your classmates so early into your career. Keep your head down until you've graduated and established yourself. Then you can speak up whenever you want, and people will be more likely to take you seriously." He looked at her earnestly, and Maya was at a loss as to what to say or do. Telling him to "eff off" and running out of his office seemed like it might offend him.

She took a deep breath and decided she, too, could try to be earnest. "I'm a woman of . . ." she started, but could get no further.

"I get it," he said. "I'm a feminist. My wife is a woman. I really get it. I just want you to consider my advice, okay?" He slapped his hand on his desk and leaned in, glancing at his computer which had just pinged from a new email. She was being dismissed.

"Thanks for your prudent advice, Professor Hollinger. I appreciate it." Her voice was hollow. She grabbed her bag and walked out. She wondered, as she made her way through the hallways, whether the people who waited until they were established to speak up ever did.

On her way back through the double glass doors, she realized she had forgotten to pick up the readings. She didn't turn back.

Maya, neon blue highlighter in hand, read the statutory language of Senate Bill 1 carefully. She had also read all of (most of) the *Dobbs* opinion. “We hold that *Roe*³⁴ and *Casey*³⁵ must be overruled.”³⁶ The Fourteenth Amendment guarantees “some rights that are not mentioned in the Constitution, but any such right must be ‘deeply rooted in this Nation’s history and tradition,’” timestamped in the 1800s.³⁷ Abortion, evidently, does not fall within that category.

Maya took notes. She could handle a cold call from a professor. Draft a memo for a law firm partner if she needed to. She drafted a case brief, feeling lawyerly for the first time.

Perhaps even Hollinger would have been impressed with her.

Her phone buzzed. A text from Lilly. It was a recording, a voicemail.

“Hi, Lilly. This is Sylvia, I’m the nurse with Dr. Ryan’s office. There was a change in Indiana’s law, a temporary one, based on a challenge in Indiana court.³⁸ Please give us a call back as soon as you can. We don’t provide abortions here at the office, but we can work with you to get the care you need at a local clinic. Our number is 317-555-5555.”³⁹

Maya pulled up the browser on her laptop and googled “Indiana abortion law.” Several news headlines popped up. *Indiana judge temporarily blocks near-total abortion ban*.⁴⁰ *A judge blocks the Indiana abortion ban a week after it took effect*.⁴¹ *Judge Temporarily Suspends Indiana Abortion Ban*.⁴² She skimmed the

34. *Roe v. Wade*, 410 U.S. 113 (holding that the Constitution protected the right to an abortion).

35. *Planned Parenthood v. Casey*, 505 U.S. 833 (reaffirming the holding in *Roe* that the Constitution protected the right to an abortion.).

36. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022).

37. *Id.*

38. *Planned Parenthood v. Med. Licensing Bd. of Ind.*, No. 53C06–2208-PL-001756, (Sept. 22, 2022) (order granting preliminary injunction), https://lawyeringproject.org/wp-content/uploads/2022/09/2022-09-22-Order-Granting-Plaintiffs-Motion-for-PI_IN.pdf [<https://perma.cc/Y7BK-F5Z4>].

39. *Indiana abortion clinics see patients amid legal changes*, NBC NEWS (Sept. 25, 2023), <https://www.nbcnews.com/news/us-news/indiana-abortion-clinics-see-patients-legal-changes-rcna49324> [<https://perma.cc/DYP7-4EPZ>].

40. Katie Shephard, *Indiana judge temporarily blocks near-total abortion ban*, WASHINGTON POST (Sept. 22, 2022), <https://www.washingtonpost.com/nation/2022/09/22/indiana-abortion-ban/> [<https://perma.cc/87ZG-G4P5>].

41. *A judge blocks the Indiana abortion ban a week after it took effect*, NPR (Sept. 22, 2022), <https://www.npr.org/2022/09/22/1124478802/indiana-abortion-ban-blocked> [<https://perma.cc/Y46E-YMQA>].

42. Eliza Fawcett, *Judge Temporarily Suspends Indiana Abortion Ban*, N.Y. TIMES (Sept. 22, 2022), <https://www.nytimes.com/2022/09/22/us/>

articles and made her way to the court order and eventually the complaint.⁴³ She stayed on the first page, reading and rereading the names of the plaintiffs and the attorneys representing them.

“SB 1 isn’t the only abortion law in Indiana.” There was a sharpness to the nurse’s voice. She was irritated, which Maya found profoundly unfair given the circumstances. “We’re required under state law to perform an ultrasound and an auscultation of the fetal heart.”⁴⁴ Auscultation. The multisyllabic medical term she didn’t know infuriated Maya.

“But how can you perform procedures that she is not consenting to?” Maya repeated. Slower and louder this time. Her hands were starting to shake. Lilly gently grabbed her hand from behind.

Steadily, Lilly said, “It’s okay, Maya.”

Maya turned to her sister and pulled her hand back. She said, seething, “it is *not* okay.” She turned back to the nurse. “Do you know how much chaos we’ve had to go through to get this appointment? And I’m not just talking about the people who harassed us outside or these damn texts we get as soon as we walk into the clinic.”⁴⁵ She waved her phone towards the nurse. “Just finding

indiana-abortion-ban.html [https://perma.cc/263A-3GQS].

43. Planned Parenthood v. Med. Licensing Bd. of Ind., No. 53C06–2208-PL-001756, (Monroe Cir. Ct. filed Aug. 31, 2022), [https://www.brennancenter.org/sites/default/files/2022-11/Planned%20Parenthood%20Great%20Northwest%20v.%20Members%20of%20the%20Medical%20Licensing%20Board%20of%20Indiana%20\[Complaint\].pdf](https://www.brennancenter.org/sites/default/files/2022-11/Planned%20Parenthood%20Great%20Northwest%20v.%20Members%20of%20the%20Medical%20Licensing%20Board%20of%20Indiana%20[Complaint].pdf) [https://perma.cc/MRV5-QDGJ] (arguing that SB 1 violates Article 1 Section 1 of Indiana’s constitution which includes a privacy right that protect a person right to determine whether they will carry a pregnancy to term and that SB 1 violates Article 1 Section 23 of Indiana’s constitution by discriminating against abortion providers in violation of the equal privileges and immunities clause). A subsequent case, *Hoosier Jews v. Members of the Med. Licensing Bd., Cnty. Prosecutors*, No. 49D01–2209-PL-031056 (Marion Sup. Ct. filed Sept. 8, 2022), https://www.aclu-in.org/sites/default/files/field_documents/complaint_to_file.pdf [https://perma.cc/P2VL-HYMU], challenged SB 1 on the grounds that it violates Indiana’s Religious Freedom Restoration Act. An injunction was granted in this case. *Hoosier Jews v. Members of the Med. Licensing Bd., Cnty. Prosecutors*, No. 49D01–2209-PL-031056 (Marion Sup. Ct. Dec. 2, 2022) (order granting preliminary injunction), https://www.aclu-in.org/sites/default/files/field_documents/order_on_preliminary_injunction_anonymous.pdf [https://perma.cc/29WL-BB3P]. Both injunctions are still in effect.

44. IND. CODE 16–34–2–1.1(b).

45. Joseph Cox, *Data Broker Is Selling Location Data of People Who Visit Abortion Clinics*, VICE (May 3, 2022), <https://www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood> [https://perma.cc/5JB6-Z623].

a doctor that provides abortions and getting an appointment has been a mess. And now we have to be manipulated with this ultrasound bullshit?”

The nurse’s face softened. She said, gently, “I know. I know. But it’s this or we lose our license⁴⁶ and we can’t provide this care at all.”

“We understand,” Lilly said, grabbing Maya’s hand again. Maya didn’t pull it back this time. “I’ll get on the table.”⁴⁷

Maya felt lighter as she walked out of Hollinger’s class, her last before fall break. She’d be able to relax a bit and catch up on all the schoolwork she had neglected while prioritizing Lilly. Her phone buzzed with an alert from Walgreens that her provider approved the refill request for her birth control. She sighed, audibly, in relief. This was a doctor in Tulsa that she’d last seen two years ago. She wasn’t sure the refill request would go through. She mentally added “make doctor’s appointment” to her fall break to-do’s before sitting on a bench in the hallway while she typed away on her phone. Better to include it on her actual to do list. She decided to check-in on Lilly as well. She texted her sister while she still had her phone out. “U feeling ok?”

“All good,” Lilly responded instantly. “No more cramping. Stopped taking Advil,”⁴⁸ came in the second text. A third text, before Maya could send a thumbs up: “Thx for everything. Sry I didn’t say that earlier i’ve been so overwhelmed.” Maya paused before hearting the text. This was the only thank you she would be getting. Lilly would absolutely still be pregnant and would not have been able to get the abortion if it wasn’t for her.

Her resentment turned to shame. Then to grief, to think she would expect a meaningful thank you from every client seeking justice in the healthcare system. Now despair, at the thought of finding justice for her clients at all.

46. *Abortion Clinic Licensing Program*, IND. DEP’T OF HEALTH, <https://www.in.gov/health/cshcr/acute-and-continuing-care/abortion-clinic-licensing-program> [<https://perma.cc/3N8T-SQSU>]; 410 IND. ADMIN. CODE 26–2-1.

47. For a social media post describing a patient’s experience with a mandatory ultrasound, see @Local_Middle8134, r/offmychest, REDDIT (2022), https://www.reddit.com/r/offmychest/comments/y5ygm/im_pregnant_and_im_going_to_get_an_abortion/?utm_source=share&utm_medium=ios_app&utm_name=ioscss&utm_content=1&utm_term=1 [<https://perma.cc/H6JW-UCCW>].

48. *How does the abortion pill work?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/abortion/the-abortion-pill/how-does-the-abortion-pill-work> [<https://perma.cc/QK3K-JXEZ>] (last visited Jun. 17, 2023).

Students emptied out of a classroom nearby. A large first-year class, by the sound of it. She jumped up from the bench and slid her phone in her back pocket. She needed to hurry to her car or it would take her fifteen minutes to get out of the parking lot and make a left turn out of campus. Two 1Ls walked close behind her as she headed down the stairs.

“We only talked about three of the seven cases that were assigned for today. What a waste of time.” One complained loudly.

The other joined in. “If she didn’t spend so much freaking time on policy issues, we would actually be able to get through everything.”

“I know. I’m here to learn property law, like, the black letter law. She needs to start doing her job instead of talking about the implications of every single case.”

Maya stopped abruptly, causing the 1Ls behind her to stop with a jolt. She swung around awkwardly as her backpack hit the handrail and faced them. Her face felt hot when she asked, “You think there is such a thing as black letter law?”

Pro-abortion signs were multiplying in her neighborhood. Maya was on a jog, taking note of the signs and which neighbors—the ones who lived in the new builds or the ones that lived in the older homes like hers—had put them up. One handwritten sign had been placed in a window. “I will not silently go back to 1835.” She wasn’t sure what the significance of that year was since the Fourteenth Amendment had been ratified in 1868. But, she had no doubt it had to do with women’s rights. She made a note to look it up.⁴⁹

As she walked into her house, she heard the rattling of a medicine bottle. She could tell by the sound that it was almost empty.

“Need me to order some prescription refills for you, dad?” She asked as she walked into the kitchen. He was sitting at the kitchen table, head down, slowly and gently placing each pill into its respective compartment. “I can pick them up one day after class.”

49. The sign in this story is based on one the author saw in a window of an apartment on July 11, 2022, in Madison, Wisconsin. A photo of this sign is on file with the author. Wisconsin made abortion a felony in 1849. Wis. ASSEMBLY BILL 116 (1849). See also, Tammy Baldwin, *In the wake of Supreme Court overturning Roe v. Wade, Wisconsin is living in 1849*, USA TODAY (Mar. 12, 2023), <https://www.usatoday.com/story/opinion/2023/03/12/overturn-roe-wade-sentenced-wisconsin-abortion-ban/11429951002> [https://perma.cc/Y9DC-JFFB]. Indiana first banned abortion in 1835. 1835 IND. LAWS 66. See also, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 304 (2022).

“Could you get it before Monday? Only have a few of the bedtime pills left.”

“Sure thing.” She took a swig of water from her bottle. She leaned against the counter. Her father’s back to her. “I can organize your prescriptions for the week,” she paused, unsure whether to say more. “Not worth risking another mix-up.”

“I messed up *one* time,” he said jovially, for which she was relieved. “Did you have a nice run? Keeping tabs on the neighbors?”

Maya tested the waters, given his good mood. “Yeah. Checking out all the new signs folks are putting up.” She couldn’t see his face, so she scrutinized his back instead.

He scoffed but continued with his pill organizing. “Those ladies down the block though, they’ve put up one of those yellow snake flags.⁵⁰ Didn’t really think much of them but that really impressed me.” Those ladies were Jenn and Jess, married with a wiener dog that never barked at Maya when she went by. Their Instagram handle was twogaysandadoxon.

“That’s not a snake, Dad. It’s a uterus.”⁵¹

“A uterus?” Another scoff. He closed the lids on the pill box and reached for a large stack of mail. It looked recently sorted. “Lilly’s got a lot of mail from the insurance company and from a doctor and a lab.” Maya’s chest tightened.⁵² “Haven’t gone through it yet. Was she sick? Why didn’t you tell me?”

Maya walked to the table and leaned over her dad, looking at the mail spread in front of him. “Why don’t you let me go through them with Lilly instead? You know how she can be. I’ll get it squared away.” She grabbed the stack in front of her father. He grabbed her wrist. She tensed.

50. Rob Walker, *The Shifting Symbolism of the Gadsden Flag*, NEW YORKER (Oct. 2, 2016), <https://www.newyorker.com/news/news-desk/the-shifting-symbolism-of-the-gadsden-flag> [https://perma.cc/4JJB-CV86].

51. *Illustrator’s Feminist Take on Gadsen Flag Goes Viral*, IF IT’S HIP, IT’S HERE, <https://www.ifitshipitshere.com/uterus-gadsen-flag> [https://perma.cc/2HJD-6T3M] (last visited Jun. 25, 2023).

52. Explanation of benefits statements and billing statements mailed to shared residencies are a frequent source of disclosure of health information. *Protecting Confidentiality for Individuals Insured as Dependents*; GUTTMACHER INSTITUTE, <https://www.guttmacher.org/state-policy/explore/protecting-confidentiality-individuals-insured-dependents> [https://perma.cc/B4KV-LQQR] (last visited Jun. 26, 2023). For a social media post from a person whose family members found out about her abortion from mail, see, @swtogirl, s/BestofRedditorUpdates, REDDIT (2023), https://www.reddit.com/r/BestofRedditorUpdates/comments/10k9wkf/about_to_turn_18_and_im_pregnant_in_texas_what/?utm_source=share&utm_medium=ios_app&utm_name=iOSSmf [https://perma.cc/D59S-JWZR].

“You’re a good girl, Maya.” He pulled her hand to his lips and kissed it. “Always taking care of your sister and me.” He let go of her hand. “Just think about all the people you will help when you are a lawyer.”

Author’s Note: On June 30, 2023, the Indiana Supreme Court lifted the preliminary injunction in the *Planned Parenthood v. Medical Licensing Board of Indiana* case finding that the abortion prohibition was a valid exercise by the General Assembly except in instances when the abortion is a medical necessity to protect the life of the parent.⁵³ Planned Parenthood filed a petition for rehearing, leaving the injunction in effect⁵⁴ until the court denied the petition.⁵⁵ The preliminary injunction issued in *Hoosier Jews v. Members of the Medical Licensing Board* remains in effect, although a Marion County Court refused to clarify who the injunction applies to.⁵⁶ In November 2023, a group of abortion providers and pregnancy centers filed a complaint in Monroe County Circuit Court challenging Indiana’s abortion law as violative of Indiana’s constitution.⁵⁷

53. Med. Licensing Bd. of Ind. v. Planned Parenthood, 211 N.E.3d 957 (Ind. 2023)

54. Jessica D’Onofrio and Craig Wall, *Indiana near-total abortion ban on hold for now as ACLU files petition to state supreme court*, ABC7 (Aug. 1, 2023), <https://abc7chicago.com/abortion-ban-indiana-in-laws-clinic/13581185> [<https://perma.cc/TWL6-9PPZ>].

55. Alexa Shrake, *IN Supreme Court denied motion for rehearing on Indiana’s near-total abortion ban*, IND. LAWYER (Aug. 21, 2023), <https://www.theindianalawyer.com/articles/in-supreme-court-denies-motion-for-rehearing-on-indianas-near-total-abortion-ban> [<https://perma.cc/AAE3-QEJR>].

56. *Judge declines to clarify who’s covered under RFRA-based injunction of state’s near-total abortion ban*, IND. LAWYER (Aug. 22, 2023), <https://www.theindianalawyer.com/articles/judge-declines-to-clarify-whos-covered-under-rfra-based-injunction-of-states-near-total-abortion-ban> [<https://perma.cc/QR73-ZDAP>].

57. Amended Complaint, *Planned Parenthood et. al v. Members of the Med. Licensing Bd. of Ind.*, No. 53C06-2208-PL-001756 (Monroe Cir. Ct. filed Nov. 9, 2023), https://www.aclu-in.org/sites/default/files/field_documents/2023.11.09_amended_complaint.pdf [<https://perma.cc/E8BN-F9M4>].

