



NDN COLLECTIVE

POSITION PAPER:

**THE EFFECTS OF  
OVERTURNING ROE V. WADE  
THROUGH AN INDIGENOUS LENS**

HOW CONSENT, BODY SOVEREIGNTY, AND SELF-DETERMINATION  
ARE THE REAL CONVERSATION





# INTRODUCTION

On Indigenous lands in the so-called United States, we are witnessing the continued overstepping and violation of human rights with the U.S. Supreme Court's reversal of civil protections we have over our bodies. Indigenous Peoples and our bodies are among the most historically exploited on the planet, and our natural, customary laws have been violated by colonization for hundreds of years. We have traditional and natural systems of governing ourselves that have always been in conflict with the colonial obsession and objective of restricting autonomy and choice for anyone who is not a white, christian, land-holding man. There is no denying these restrictions are rooted in patriarchal control and white supremacy, and are carried out by dominant systems and institutions in ways that perpetuate discrimination and inequality through systematic oppression.

The U.S. Supreme Court's decision to overturn *Roe v. Wade* and the *Planned Parenthood of Southeastern Pa. v. Casey* rulings has effectively reversed choice and consent protections, that people who can get pregnant were guaranteed by the U.S. Constitution. This decision will disproportionately affect Indigenous Peoples, Black relatives, recent immigrant/refugee, alternatively documented and other people of color, LGBTQIA2S+<sup>1</sup> people, people living with disabilities, and people who lack income and wealth. This rollback of constitutional rights places the control of personal, intimate decisions into the hands of the state governments. Thirteen states have "trigger laws" which in most cases, swiftly outlaw abortion. Nearly a dozen more states either have, or are in the process of restricting the right to choose, and only 16 states are taking action to protect abortion rights.

In this paper, NDN Collective states our organizational position on the reversal of *Roe v. Wade* and the *Planned Parenthood of Southeastern Pa. v. Casey*, providing an outline of the disproportionate impact this decision is already having on Indigenous Peoples. We connect the current moment to the historical context of our lived reality under colonial control in the so-called United States, and warn of the far-reaching effects that the loss of bodily autonomy could have on all of us.

The groups that have been historically disenfranchised by these colonial systems are mobilizing to demand protection, inclusion, and most of all, a just and equitable society. That is why, as described in this position paper, we are enraged – yet ready to organize against this action by the U.S. Supreme Court that rolls back hard won legal protections.

<sup>1</sup> The acronym LGBTQIA2S+ is used to name sexual orientation and gender identities and represents Lesbian, Gay, Bi-sexual, Transgender, Queer/Questioning, Intersex, Asexual and Two-Spirit identifying individuals. The '+' denotes the expansion of sexual orientation and gender identities that exist outside of this acronym.

# **DEFEND**

NDN Collective is at the forefront of this reckoning as our organizational pillars<sup>2</sup> insist that our work addresses the true roots of oppression in this country. We believe that no matter what, Indigenous Peoples must be supported in the **defense** against exploitation of all kinds. Taking away the right to abortion care is a tactic used by those who want to control every aspect of our lives, and is an inherently exploitative act that harkens back to days of enslaved people and compulsory boarding schools where our human rights were stripped and violated. Living in a world free of exploitation means that individuals have full control over decisions regarding their own bodies and subsequently have access to appropriate healthcare.

# **DEVELOP**

We believe that regenerative community **development** for Indigenous Peoples – which is essential to building a world where we can all thrive – includes the right to family planning and gender affirming care. Forcing people to give birth against their will is a direct violation of the bodily autonomy that is necessary to ensure freedom and safety for all Indigenous Peoples, and will only continue cycles of intergenerational trauma, loss, and violence. When our communities have the freedom to make our own bodily decisions, we have more resources to strengthen our cultures and economies.

# **DECOLONIZE**

We believe that **decolonization** means breaking down the colonial, white supremacist systems put in place to control our people. Indigenous Peoples are still terrorized by the police and denied resources to meet our basic needs; our children are criminalized in school; our women, girls, and queer relatives are assaulted and stolen; and wildfires and oil spills caused by extractive industries threaten our lives. When we say decolonization, we mean abolishing oppressive systems that exploit and extract from Indigenous Nations and Indigenous lands. We mean tearing down power structures that defile our bodies and spirits.

In order for us to succeed as a collective, a comprehensive social reckoning is needed now.

## **A HISTORY ROOTED IN COLONIAL CONTROL - THE DEMAND FOR CONSENT**

The U.S. Supreme Court's decision to overturn *Roe v. Wade* and *Casey* is a reflection of the colonial law Indigenous Peoples have been violated by and have struggled against for centuries.

<sup>2</sup> Defend, Develop, and Decolonize are the three pillars that guide the NDN Collective in its mission to build the collective power of Indigenous Peoples, communities, and Nations to exercise our inherent right to self-determination, while fostering a world that is built on a foundation of justice and equity for all people and the planet.



The unlawful occupation of the U.S. and the taking of Indigenous lands is still detrimental to the relationship Indigenous Peoples have with our land, water, culture, language, ceremony, spiritual ways of life, and sovereign right to govern according to traditional laws. Our communities traditionally uphold women, girls, and Two-Spirit/gender-expansive<sup>3</sup> people at the highest levels of respect. This promotes empowerment to make choices about our own bodies.

SCOTUS' decision further disadvantages people who can get pregnant, but also attempts to push extreme religious beliefs into law-making spaces. The decision does not represent most people and our spiritual beliefs, and repeals the autonomy required for and demanded by people who can become pregnant. We can clearly see that in 2022, privacy, consent and decision making over the bodies of people who can become pregnant has become a political tool for those who would have the U.S. return to the darkest of eras, where the few have control over the many. This decision is a frightening step in that regression. We must finally put an end to practices that benefit no one, yet dictate the lives of millions of people.

According to the Guttmacher Institute (2022), [7 states have banned abortion completely](#) following the reversal of Roe v. Wade, with numerous additional states harboring trigger bans to follow suit within a month. The opinion contains arguments that are hollow justifications for reversing almost 50 years of legal precedent. We call attention to the fact that the history and values of this country have systematically empowered white, cisgender, heterosexual men. On the U.S. Supreme Court, men currently occupy 6 of 10 seats. In Congress – counting both the House of Representatives and the Senate – 73 percent of seats are occupied by men. Moreover, only 0.9 percent of these seats are occupied by American Indians (Congressional Research Service, 2022).

We reject the idea of government intrusion on the bodies of people who can get pregnant, and we must move away from participation in systemic approaches that continuously revert to patriarchal control.

## **A HISTORY ROOTED IN VIOLENCE AGAINST INDIGENOUS WOMEN AND FEMMES - THE DEMAND FOR GENDER JUSTICE**

The epidemic of missing and murdered Indigenous women and relatives (MMIWR+) reveals only some of the egregious acts Indigenous Peoples face, and it must be underscored that this is a direct result of colonial violence that continues to reveal itself today. More than [4 in 5 Indigenous women](#) in our country have experienced violence, and more than 50 percent have experienced sexual violence. (Indian Law Resource Center, n.d.) Current data lacks the rate in which Two-Spirit and other members of the LGBTQIA+ community are disproportionately affected by this epidemic. Moreover, alarming data reveals that we are experiencing high pregnancy-associated mortality rates attributed to intimate partner violence – violence which Indigenous Peoples face at higher rates than any other racial category (Heck et.al., 2021).

<sup>3</sup>The term “Two-Spirit,” arose in 1990 amongst First Nations groups as a means of identifying an umbrella term to capture gender expansive roles within North American Indigenous cultures. Some, but not all Indigenous communities within this region utilize the term, which refers to an individual coveting a male and female spirit or a range of gender roles that aren't limited to the male and female binaries, with many having their own terminology for gender-expansive peoples within their communities.

A [memo released by NDN Collective](#) last year reveals that much of the violence Indigenous Peoples are subjected to is fueled by extractive industries and committed by men brought to areas with high Indigenous populations for temporary work (NDN Collective, 2021). The Minnesota Department of Public Safety said that the men who abuse, kill, and murder our women view us as “usable and disposable” – a view deeply rooted in colonialism and racism that resonates in governmental actions like this decision. The reality is that even if abortion rights are completely stripped away, the wealthy and powerful will still find ways to access safe abortions. Meanwhile, Indigenous Peoples who can get pregnant would be left with no safe options.

This history of egregious violence against Indigenous Peoples includes forced sterilization, following the passage of the Family Planning Services and Population Research Act of 1970. In 1976, following the publication of a study completed by the U.S. General Accounting Office, the government admitted to the forced sterilization of 3,406 Indigenous women in 4 of the 12 Indian Health Service regions between 1973 and 1976 (Staats, 1976). In more recent research, it is estimated that 25% of Indigenous women were sterilized during this period, and evidence suggests this number was even higher than what is documented (Theobald, 2019). Indigenous communities and the countless impacted families are still navigating the trauma of these genocidal attacks by the U.S. government.

Forced sterilization in the 1970s and current coordinated governmental attempts to remove abortion access are two sides of the same coin. Both tactics attempt to exert control over the bodies of individuals as part of a larger effort to keep Indigenous Peoples and other groups on the margins of society.

## **EQUALITY FOR ALL PEOPLE WHO CAN GET PREGNANT**

The experience of Indigenous LGBTQIA2S+ people in the U.S. sheds further light on the urgent need to fight for and protect bodily autonomy.

The unique, overshadowed, and intersecting experience of LGBTQIA2S+ people spans past to present. Gender diverse people have existed within Indigenous communities since time immemorial, and were respected and often highly honored members of Tribal Nations. Now, Indigenous LGBTQIA2S+ people are not only having to navigate both state and federal policy waging war against bodily autonomy, but simultaneously contending with visibility and protections afforded to them by Tribal governments, communities, and culture.

LGBTQIA2S+ people have always been heavily policed by the state – from police raids of queer gathering spaces where people were brutalized and arrested en masse for ‘cross dressing’; to the official 17-year long military Defense Directive 1304.26, a policy known as “Don’t Ask, Don’t Tell”; to present day attacks on gender affirming health care; anti-trans bathroom laws; and a glaring lack of anti-discrimination laws for both workers and business patrons; to the attempted violent shutdown by white supremacists from across the country of the 2022 Pride Parade in Northern Idaho. And many intersex people – who are as common as twins or those with red hair – experience medical abuse from the day they are born, subjected to medically unnecessary genital surgeries in an attempt by providers to uphold the false idea of a gender binary.

The continued attempts to police LGBTQIA2S+ people is inextricably linked to the attempt to overturn abortion rights – both are rooted in a colonial framework of control.

The legal framework of *Roe* laid the groundwork for landmark LGBTQIA2S+ rights, because the case stated there are certain personal decisions the state cannot interfere with. *Roe* was cited in *Lawrence v. Texas*, the case that struck down anti-sodomy laws in Texas, and in turn the U.S. Supreme Court cited *Lawrence* in their decision to legalize marriage equality. Both cases were cited in Supreme Court Justice Clarence Thomas's opinion following the overturning of *Roe*, which called for a reconsideration of the Court's substantive due process precedence in said decisions, invariably threatening the protections afforded to the LGBTQIA2S+ community.

Historically, Indigenous communities have embraced our LGBTQIA2S+ community members as well as their bodily decisions. Although Tribes are sovereign nations, various Tribal constitutions and/or codes have mirrored the language of the state or looked to state law and jurisdiction to directly guide or define what is dictated in Tribal law. The ban on same-sex marriage was one such decision that often remained intact within Tribal law due to this practice of deferring to state law. The decision to restrict and strip away abortion access, dismiss bodily autonomy, and encroach on right to privacy on a state level is already proving dismal to Indigenous LGBTQIA2S+ members across the nation, and will further be exacerbated if Tribal governments are to follow suit, as many have historically in this area of law.

One way Tribes can both demonstrate their legal sovereignty and protect people who can get pregnant is to uphold laws protecting reproductive healthcare access, which often includes gender-affirming care, rather than retracting their laws simply because states do so. This active exertion of Tribal power and autonomy can extend far beyond reproductive healthcare access, with our governments choosing to pass other laws designed to protect our most vulnerable members, including LGBTQIA2S+ people.

The stripping and/or restriction of abortion access directly affects the LGBTQIA2S+ community in a myriad of ways. Many members of this community already feel uncomfortable or even unsafe seeking medical care due to stigma, discrimination, and inadequate or harmful treatment by providers. Queer people are also more likely to be uninsured, and face a greater risk of poverty than their heterosexual, cisgender counterparts, which makes seeking abortion care difficult.

All of these factors in the context of an anti-abortion climate will force many LGBTQIA2S+ people to turn to unsafe methods of ending pregnancies.

NDN Collective demands that the LGBTQIA2S+ community's rights are reinforced by protecting the right to choose, and that the U.S. lawmakers and Tribal Nations take action now to expand laws that will protect and support all body autonomy and rights to privacy.



## **INADEQUATE AND UNEQUAL ACCESS TO HEALTH-CARE - RIGHT TO THRIVE**

Access to adequate healthcare is a privilege not all people in the U.S. enjoy. The COVID-19 pandemic exposed the chronically underfunded Indian Health Service systems and the disproportionately high death toll of Indigenous Peoples as a direct result of the novel coronavirus, painting a clear picture of the devastating effects of unequal access to adequate healthcare.

According to a February 2021 study about American Indian and Alaska Native (AI/AN) reproductive mortality rates, “Health care characteristics such as quality, access, and location also may influence maternal outcomes and maternal mortality” (Heck, et. al., 2021, p. 220). Additionally, the report states that in both urban and rural settings, AI/AN pregnant people are limited in access to health insurance, transportation — and even if they are able to receive prenatal care, experience high rates of discrimination by providers. To further illustrate the disparity, the scoping review shows that, “14.4% of all urban AI/AN women received inadequate prenatal care (PNC), but rates ranged from 4.4% to 29.8% based on location. Even larger disparities appeared in rural settings, with 33.9% of AI/AN women receiving inadequate PNC compared to 13.5% of white women.” (Heck, et.al., 2021, p.225)

We cannot pre-suppose that all people who can get pregnant live in places with access to care, including abortion care, or that everyone has access to affordable health insurance coverage. In addition, the idea of forcing a pregnant person to have a child and coerce them into adoption as a solution is both immoral and dangerously reductive. On any given day, there are [nearly 424,000 children](#) in foster care in the U.S.(Congressional Coalition on Adoption Institute, n.d.) – and every year, tens of thousands of children [age out of the foster care system](#), left with no family, support systems, or material resources to their names (Mellon, 2018).

## **A HISTORY ROOTED IN DISENFRANCHISING MANY TO BENEFIT FEW- THE DEMAND FOR REPRESENTATION**

Indigenous Peoples were not considered American citizens until 1924 – which means that until then, we were not afforded human rights protections on land we have occupied for tens of thousands of years. We are still fighting to equitably exercise our right to vote and we still face obstacles and barriers, all of which further suppress our opportunity to voice our stances on key issues such as body sovereignty.

The movement for body liberation requires that political representatives are ready to advocate for privacy, consent, and body sovereignty for everyone. If legislatures adequately represented our society, we could better rely on our elected representatives to give voice to the concerns of their constituency, such as people that need to make personal reproductive decisions.

But electing representation requires equal access to the polls – a fight that Indigenous Peoples, Black people, women, people of color, and LGBTQ2S+ communities have faced since the inception of the American political system.

The [Obstacles at Every Turn](#) report reveals that Indigenous Peoples continue to experience barriers that discourage political participation including, “(1) geographical isolation; (2) physical and natural barriers; (3) poorly maintained or non-existent roads; (4) distance and limited hours of government offices; (5) technological barriers and the digital divide; (6) low levels of educational attainment; (7) depressed socio-economic conditions; (8) homelessness and housing insecurity; (9) non-traditional mailing addresses such as post office boxes; (10) lack of funding for elections; (11) and discrimination against Native Americans” (Tucker et al., 2020, p. 2).

Additionally, according to [GLAAD](#), “LGBTQ Americans are not fully protected from discrimination in 29 states,” with more than [300 anti-LGBTQIA2S+ bills](#) restricting access to basic needs, including healthcare, being introduced in 2022 alone (Human Rights Campaign, 2022). This includes at least 24 states restricting people from updating their IDs to reflect their gender identity, which makes it difficult for LGBTQIA2S+ people to cast their ballots without the risk of harassment or being turned away.

Many people who can get pregnant are already heavily disenfranchised – we must create pathways for equal access to reproductive rights, just as we must create equal access at the polls.

## **CRITICAL JUNCTURE- THE DEMAND FOR TRUE EQUITY**

The decision to overturn *Roe v. Wade* and *Casey* upholds the patriarchal, harmful structures that continue to perpetuate inequality today and exacerbates an already faltering system. Those who will pay the ultimate price for these decisions are the same ones who are already forsaken by this system; those who do not have the resources or mobility to access the critical care that they need.

NDN Collective is founded on principles that ensure that Indigenous Peoples and those with power do not miss the truth and allow our rights to be stripped. We are more than just constituents – we ourselves are critical actors for real change. Given that there’s strength in a pluralism of tactics, we must also take this juncture to uplift, empower, utilize, resource and connect with the established community initiatives from underserved and systematically oppressed communities who are offering critical services and visionary support in the face of a dearth of institutional support and deterioration of protections.

The murder of George Floyd in 2020 sparked a worldwide call for a racial reckoning. The COVID-19 pandemic revealed the need for us to demand equity in health and safety for our communities. And the wrath of a blatant white supremacist leading the U.S. for four years taught us that the leader of this country must uphold Tribal sovereignty and represent our true democratic values and principles.



No matter how we think about it, our lives are changed forever and we must respond with an end to colonial systems of oppression. Our society is demanding that we evolve to truly embody an equal interpretation of liberation. Our behavior and the decisions we make today will reinforce how we build an inclusive society in this lifetime, and beyond.

Reinstating *Roe v. Wade* and *Casey* will only take Indigenous people back to where we were weeks before the SCOTUS rulings. It is paramount that we center Indigenous lifeways and knowledge as the real solution, ensuring those who are able to get pregnant be protected to do what they want with their body. The U.S. government seeks to limit our original laws and practices while also limiting access to health care, including reproductive health care resources, as guaranteed by our treaties. We will not only continue to stand on original law, but will tirelessly challenge foreign, illegitimate attempts to enact laws on our bodies within our homelands to ensure protection of our birth givers, the land and life for the next seven generations to come.

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## References

- Blazina, C., & DeSilver, D. (2021, January 22). A record number of women are serving in the 117th Congress. Pew Research Center. Retrieved from <https://www.pewresearch.org/fact-tank/2021/01/15/a-record-number-of-women-are-serving-in-the-117th-congress/>
- Congressional Coalition on Adoption Institute. (n.d.). U.S. Adoption & Foster Care Statistics. CCAI | Fact sheets. Retrieved July 14, 2022, from <https://www.ccainstitute.org/resources/fact-sheets>
- Congressional Research Service. (2022, July 13). Membership of the 117 Congress: A profile. CRS Reports. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R46705>
- GLAAD. (2022, January 10). Voting rights are an LGBTQ issue. Voting Rights Are an LGBTQ Issue | GLAAD. Retrieved July 2022, from <https://www.glaad.org/blog/voting-rights-are-lgbtq-issue>
- Guttmacher Institute. (2022, July). Interactive map: US abortion policies and access after Roe. Guttmacher Institute. Retrieved from <https://states.guttmacher.org/policies/utah/abortion-policies>
- Heck, J. L., Jones, E. J., Bohn, D., McCage, S., Parker, J. G., Parker, M., Pierce, S. L., & Campbell, J. (2021, February 2). Maternal mortality among American Indian/Alaska native women: A scoping review. *Journal of Women's Health, 30*(2), 220–229. <https://doi.org/10.1089/jwh.2020.8890>
- Human Rights Campaign. (2022). The state legislative attack on LGBTQ+ people. Human Rights Campaign. Retrieved from <https://www.hrc.org/campaigns/the-state-legislative-attack-on-lgbtq-people#state-legislative-tracker-map>
- Indian Law Resource Center. (n.d.). Ending violence against Native women. Indian Law Resource Center. Retrieved from <https://indianlaw.org/issue/ending-violence-against-native-women>
- Mellon, J. (2018, June 13). The danger of foster children aging out of the system. Adoption.com. Retrieved July 2022, from <https://adoption.com/the-danger-of-foster-children-aging-out-of-the-system/>
- NDN Collective. (2021, August 1). Memo: The climate and missing and murdered indigenous women and relatives crises: Intersections, root causes, and immediate steps towards ending both. NDN Collective Climate Justice and Racial Equity. Retrieved from <https://ndncollective.org/memo-the-climate-and-missing-and-murdered-indigenous-women-and-relatives-crises/>
- Staats, E. B. (1976, November 4). Elmer B. Staats, Comptroller General of the United States to The Honorable James G. Abourczk United States Senate, November 4, 1976 [Letter]. U.S. Government Accountability Office. Retrieved from <https://www.gao.gov/assets/hrd-77-3.pdf>.
- Theobald, B. (2019, December 5). The Native American women who fought Mass Sterilization. Time. Retrieved from <https://time.com/5737080/native-american-sterilization-history/>
- Tucker, J. T., De León, J., & McCool, D. (2020, June 4). Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters. The Native American Rights Fund. Retrieved from [https://vote.narf.org/wp-content/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf).