
Navigating the SCOTUS Rulings: Recommendations for Business Advancing Social Equity and Justice

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Working Agenda

1. BSR's Center for Business & Social Justice
2. Ongoing Impact on Business from the Fall of *Roe*
 - Landscape Update
 - Calls to Action
3. Key Trends from the Supreme Court Term
 - Case Highlights
 - Calls to Action
4. Questions & Wrap up

01

BSR's Center for Business & Social Justice

Four Pillars

BSR is poised to add power to efforts to advance social justice and equity by mobilizing companies to take a systemic and intersectional approach. BSR envisions taking on the following to reach deep within its membership and broadly across the private sector.

Research & Thought Leadership

- Track on emerging issues and spotlight effective private sector action (and assessments of these efforts) to **catalyze** business action that is **complementary to and supportive** of wider social justice efforts.

Ambitious Business Action

- Provide tools, guidance and frameworks that will guide companies on a path to meaningful **action**.

Awareness Raising

- Serve as a **bridge** between business and issue experts/advocates to deepen businesses understanding on the relevance of social justice issues and connect more directly with civil society, community-based and advocacy organizations.

Collective Action

- Drive business leaders to apply their understanding of social justice issues and relationships with advocates to **champion public policy** - leveraging the resources, reach, and power business has at their unique disposal.

Examples of BSR's Issue-Based Work

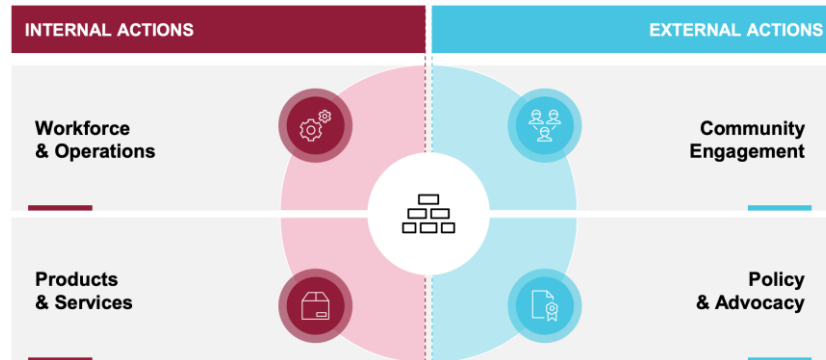
Voting Rights

BSR alongside ACLU and the Leadership Conference on Civil and Human Rights held a business briefing on policy developments at the federal and state level and opportunities for company action.



Gun Violence

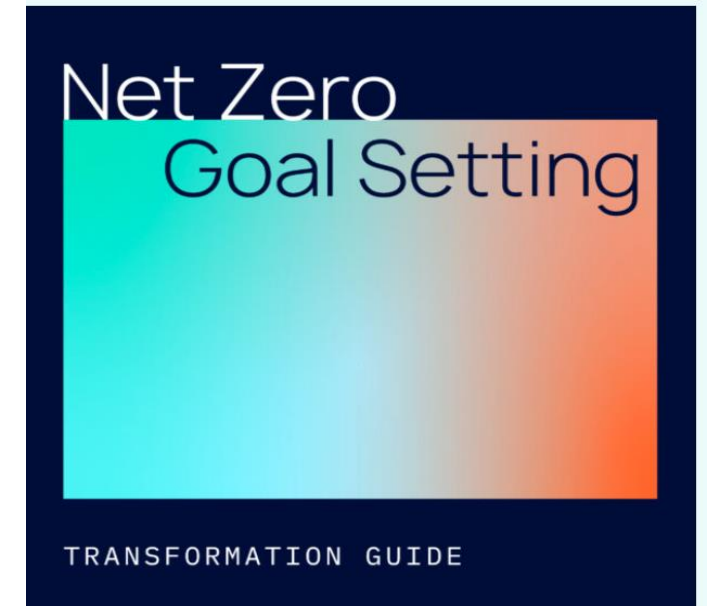
In partnership with Everytown, a business briefing and Toolkit for Corporate Action was developed. These tools and relationships contributed to recent public policy action.



A Toolkit for Corporate Action to End Gun Violence

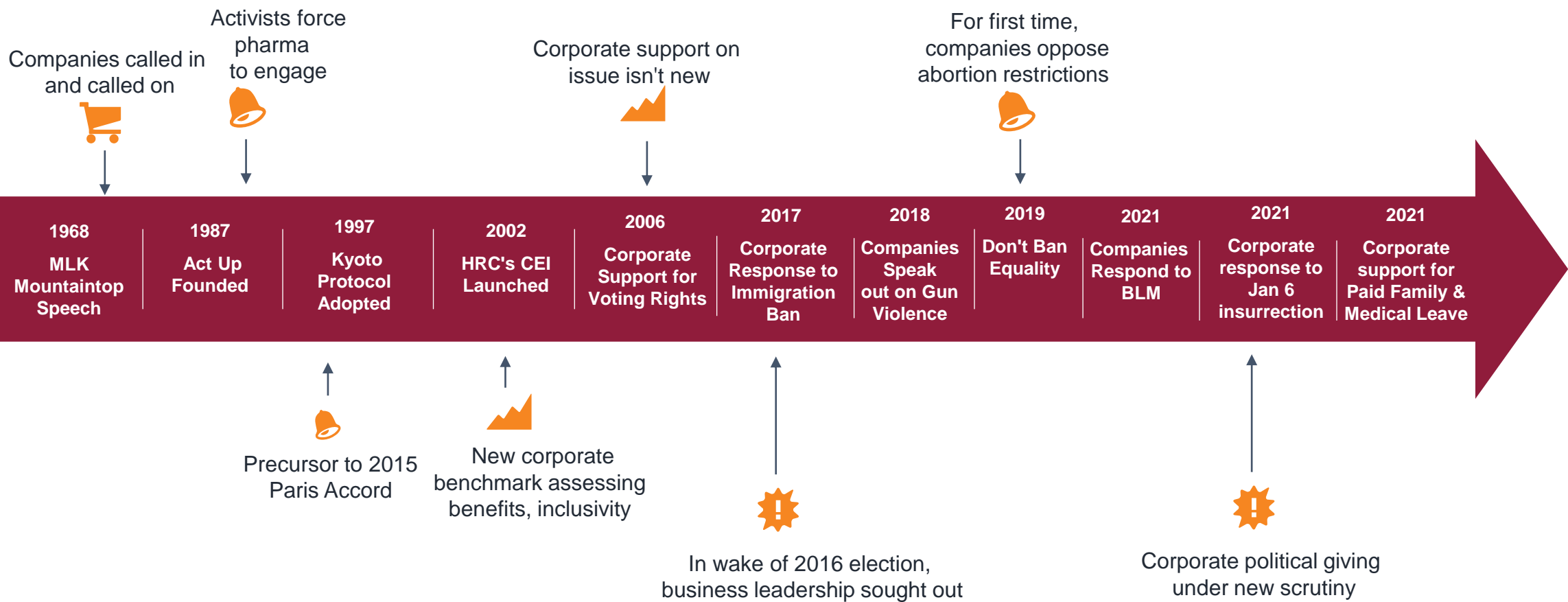
Transform to Net Zero

As a cross-sector collaborative initiative seeking to accelerate business transformation to net zero emissions, Transform to Net Zero is generating the scale of action needed to meet global climate goals.



Business Engagement & Social Movements

Over the past several decades, business is influenced by and influences movements by reforming their policies and practices, initiating workforce and consumer-facing changes within their companies and as an educator and promotor of causes. Below are just a *few* milestone moments on private sector engagement.



02

Ongoing Impact on Business from the Fall of *Roe*

Who we are

We are a global organization of lawyers and human rights advocates who ensure reproductive rights are protected in law as fundamental human rights for the dignity, equality, health, and well-being of every person.

For almost 30 years we have worked to ensure governments around the world respect, protect and fulfill each person's ability to make decisions about their reproductive health and lives and have access to the full range of reproductive health services and information. We work at **the UN** and more than 60 countries in **Africa, Asia, Europe, Latin America and the Caribbean**, and the **United States**.

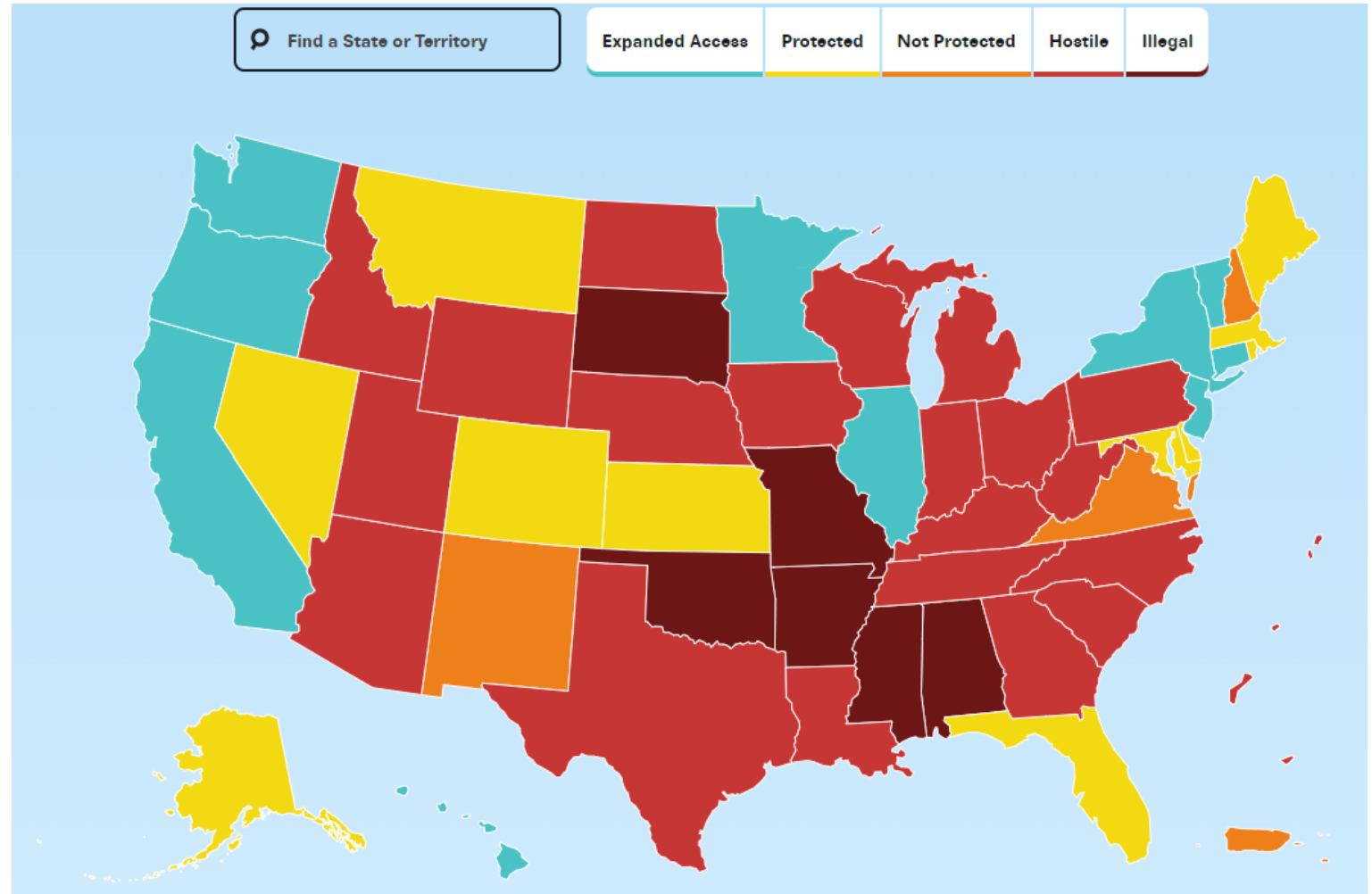
Our Vision

We envision a world where every person participates with dignity as an equal member of society, regardless of gender. Where every woman is free to decide whether or when to have children and whether to get married; where access to quality reproductive health care is guaranteed; and where every woman can make these decisions free from coercion or discrimination.

Our goal is that by 2030, half the world's population will be living under stronger legal protections for reproductive rights

Post-Roe Landscape

- In 29 states abortion is considered not protected, or hostile or illegal
- 16 states have either constitutions (11) or statutory (5) protections for abortion rights or access
- 5 states have shield laws (CA, CT, DE, NJ, NY)
- Litigation is underway in over 14 hostile states to help keep some level of access in place



Battling Restrictions

National abortion ban

Civil and criminal liabilities for medical providers and helpers

State legislation restricting corporate action and speech

State restrictions on interstate travel for health care

State restrictions on access to information and threats to privacy

Abortion Care is Essential

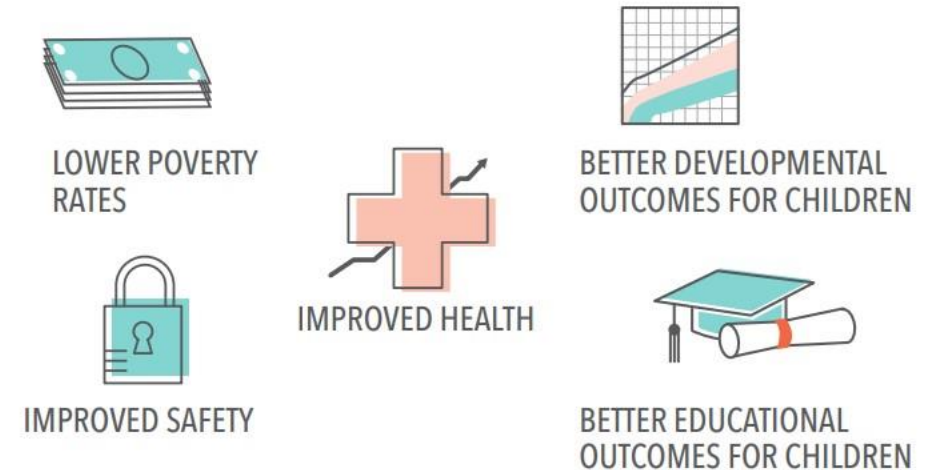
OUTCOMES

MORE CONSIDERATIONS

Women denied abortion care are at increased risk of experiencing...



On the other hand, supportive policies can lead to...



More Restrictive

=

Fewer Policies Supporting

ABORTION POLICIES

WOMEN'S & FAMILIES' HEALTH

- Barriers to health care access, contraception, and respectful trustworthy medical care, and economic inequities exacerbated.
- Continued coercion and the denial of reproductive autonomy for Black women, women of color, poor women, and people with disabilities.
- Pregnant people who seek terminate a pregnancy may be forced to carry a pregnancy to term in states with maternal health deserts and without the full spectrum of quality care.
- Birthing people who want to carry pregnancies and who miscarry or face unexpected complications may not be able to the full spectrum of care because of unclear laws or criminalized for behavior or pregnancy outcomes.

Personhood Laws undermine:

- IVF patients' ability to make decisions about their care
- goals and practice of IVF
- duty fertility doctors to provide effective, patient-centered IVF care.
- liberty protections as the right to form families on one's own terms
- criminalization of fertility doctors and patients for any act that potentially jeopardizes the safety of embryos

Impact on Assisted Reproduction

Pushing for Protections

Federal Legislation

Women's Health Protection Act, Ensuring Access to Abortion Act, Right to Contraception Act

Executive Order to Protect Access to Abortion

Safeguard access to care, protect consumer privacy, protect leave and access for federal workers and service members, Interagency Task Force

Administrative Action to Protect Access

HHS EMTALA Guidance to protect clinical judgment and stabilizing care. DOJ Taskforce to monitor and evaluate all state and local legislation and enforcement action.

Leverage the PREP ACT

Declare a public health emergency for abortion so that measure can be taken to protect access nationally.

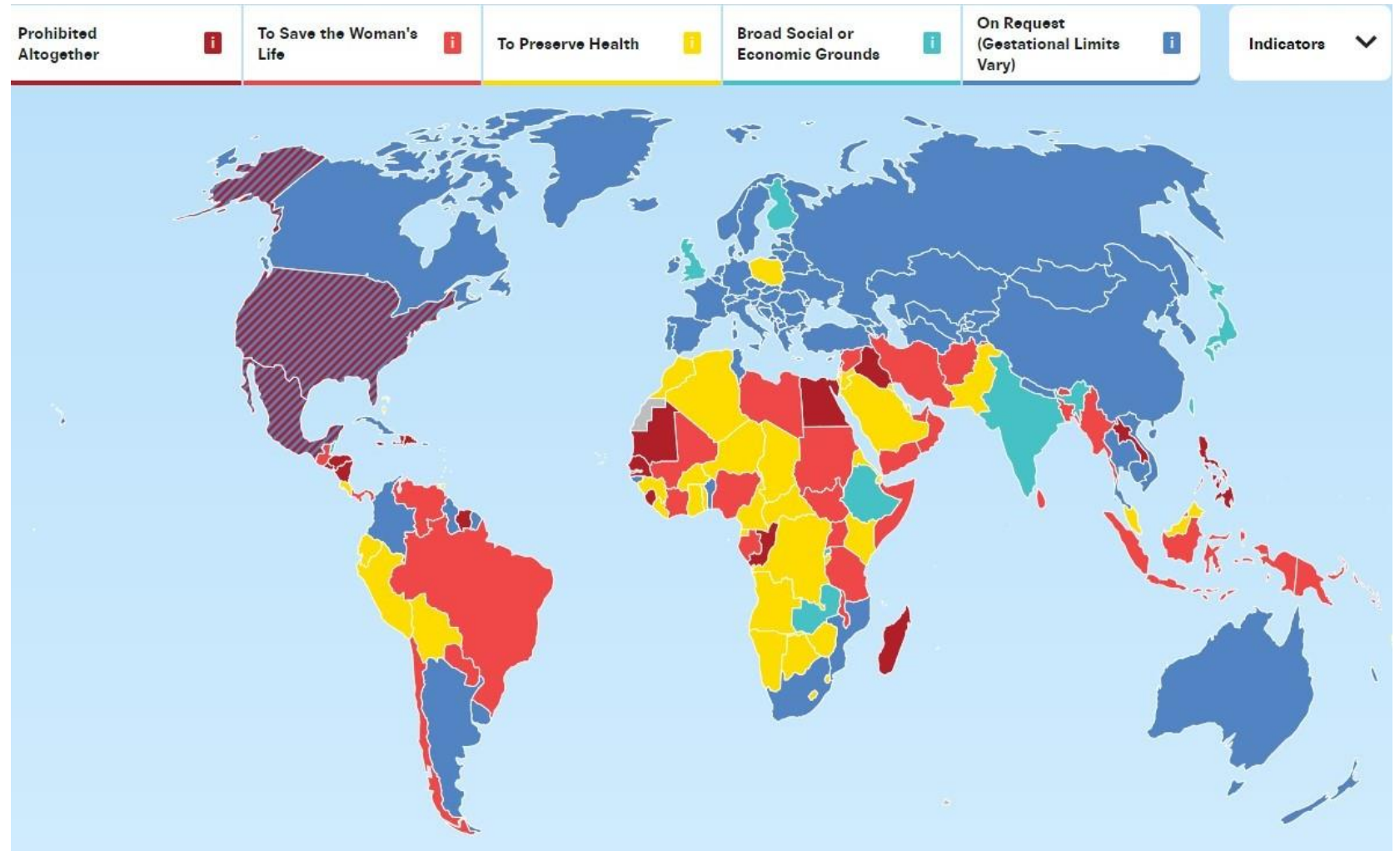
State and local legislation to expand or protect access

Creation of sanctuary cities, passage of shield laws, and other proactive legislation.

Global Impact on Abortion Access

US is now 1 of 4 countries that have restricted access to abortion.

Over the last 25 years over 60 countries have moved towards liberalizing abortion access.



03

Key Trends from the Supreme Court Term

Introduction to Democracy Forward



Our Founding

Democracy Forward was founded in 2016 to address generationally-defining threats to American democracy. We built an innovative legal team that successfully challenged bad actors and their unlawful policies at the Presidential level, shutting down corrupt committees created for special interests, and exposing unfair, unreasonable policies that strip vulnerable communities of crucial protections.

Meeting the Moment

The courts are a frontline of the battleground for democracy, not merely the last resort protectors of it. The majority of the American people believe in the promise and potential of democracy. At this critical moment, we must leverage our collective power to stop the law from being used in regressive ways and to build for a better future. **Democracy Forward provides legal representation and expert counsel to people and communities who make up the very fabric of American democracy.** Our **200+** clients and partners include voters, veterans, teachers, students, workers, the press, doctors, health care professionals, patients, small businesses, conservationists, cities, counties, tribes, civil servants, unions, immigrants, academics and researchers, among many others. **Our work ensures their voices are heard and that harmful and anti-democratic movements do not go unchallenged.**

How We Work

Democracy Forward's model addresses immediate needs while also seeding ground for a future where **our government represents and works for all of us.** When those entrusted by the people to govern abuse their power, we expose their actions, take them to court, and hold them accountable. Our team is agile and deploys innovative, effective strategies across the range of issues.

Enviro Regulation and the Administrative State

West Virginia v. EPA

❖ **Held (6-3)**

- Congress did not grant EPA authority in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the “generation shifting” approach the agency took in the Clean Power Plan

❖ **Attorney General of West Virginia led the lawsuit**

- Has touted “major questions doctrine” as strategy for further cases

❖ **“Major Questions Doctrine”**

- Leaves other questions regarding “non-delegation doctrine” open
- Cites shadow-docket decisions (precedential value)

❖ **Note, there are limitations to the holding**

- Does not foreclose EPA’s ability to regulate power plants’ greenhouse emissions; just cannot mandate that utilities shift to renewables (some have noted)
- Advocates will need to limit holding in further cases against attempts to expand it

❖ **Social Equity/Justice Impact**

- Curbing federal authority over carbon emissions reductions and increasing heat waves will have a cascading effect on the most vulnerable communities

Separation of Church and State

❖ *Kennedy v. Bremerton School District* (6-3)

- **Held:** The free exercise and free speech clauses of the First Amendment protect an individual engaged in personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress speech.
- **Removes decades-old limits on religion in public schools (*Lemon v. Kurtzman*)**
- **Decision based on faulty factual premise** – “brief, quiet, personal religious observance” (does not purport to overrule *Lee v. Weisman*)

❖ *Carson v. Makin* (6-3)

- **Held:** Invalidated Maine tuition program; state cannot bar religious schools from receiving public grants extended to other private schools.
- **Seen as devastating blow to separation of church and state**
- Future Questions:
 - What restrictions can governments put on religious schools (anti-discrimination) that receive public funding?

❖ **Social Equity/Justice Impact**

- While religious beliefs can be used to advance or harm social justice, the erosion of the separation of church and state to make *certain* belief systems preferential is harmful

*****Both cases represent where SCOTUS sided against states/school district*****

Second Amendment - Gun Control

New York State Rifle & Pistol Association v. Buren (6-3)

- ❖ **Held (6-3):** New York's proper-cause requirement for obtaining an unrestricted license to carry a concealed firearm violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms
- ❖ **First major Second Amendment ruling in more than a decade**
- ❖ **Already seeing actions from pro-gun lobbies and interests**
- ❖ **Social Equity/Justice Impact**
 - BIPOC communities are disproportionately harmed by gun violence

Like First Amendment cases, Court struck down a state law

Additional Cases

- ❖ **Shadow Docket:** the use of emergency orders and summary decisions by the Supreme Court of the United States without oral argument.
 - Blocks eviction moratorium (CDC) (August 2021)
 - Allows SB-8 to go into effect (September 2021)
 - Blocks Vaccination Standard for Large Employers (OSHA)
- ❖ **Criminal Defense - Fifth Amendment Miranda**
 - *Vega v. Tekoh*: Did not overrule but uses language that suggests it may be a question in the future
 - **Social Equity/Justice Impact:** Implications for the criminal legal system and defendant's rights
- ❖ **Tribal Sovereignty**
 - *Oklahoma v. Castro-Huerta*: The federal government and state have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country
 - **Social Equity/Justice Impact:** Tribal communities disproportionately encounter the criminal justice system

What Does A Strategic Corporate Response Post SCOTUS Term Look Like?

1. Center workers needs given the direct impact of some of these cases
2. Center the communities where you live and work
3. Raise awareness among your stakeholders on the impacts of these decisions for people and communities
4. Think creatively about how you do the above through:
 - **Legal collaboration:** Amicus briefs, public comment process, etc.
 - **Behind the scenes:**
 - Remove support from PACs or candidates that support abortion bans, lax gun regulations, minimal environmental standards, etc.
 - Actively contribute to candidates, particularly at the local and state level, that support democracy and social progress. These contributions can go a long way locally, in a way that they can't federally.
 - Support company-wide civic engagement especially addressing barriers to voting for workers.

Collaboration With and In Support of the Business Community at Democracy Forward

Democracy Forward has worked with the business community and related interests to support social progress and protect democracy in a variety of ways. One effective method of collaboration has been through our amicus and litigation work.

Minimum Wage for Restaurant Workers: In November of 2021, the Department of Labor announced a final rule protecting minimum-wage restaurant workers from wage abuse and ensuring full wages for restaurant workers. However, the rule came under legal challenge. In response, on behalf of the Main Street Alliance, the American Sustainable Business Network, and others, we filed a brief urging the Fifth Circuit Court of Appeals to uphold the rule.

Nasdaq Diversity Rule: In December 2020, Nasdaq sought approval of a rule with the SEC that would require the boards of Nasdaq-listed companies to have on their boards at least one self-identified female and at least one underrepresented minority or LGBTQ+ person, or explain why they don't. Almost immediately, the rule came under legal attack from the right. Along with Lambda Legal, we represented experts in business, management, and economics to support Nasdaq's diversity rule, demonstrating the strong evidence linking board diversity and corporate performance.

California Reinvestment Coalition v. CFPB: Representing business interests in a challenge against the Consumer Financial Protection Bureau for pulling back on data collection to protect women-owned, minority-owned, and small businesses against discriminatory lending.

And on a variety of cases, including those involving COVID workplace safety, the federal minimum wage for contract workers, and protections for workers facing layoffs, **our briefs would have benefited from the voices of businesses.**

04

Questions & Wrap Up

Future Engagement

As the Center gets off the ground, here's what to expect from us.

Advisory Group

Direction, action and voice of the Center will be guided by a small initial advisory group comprised of 2-3 BSR members and 3-4 civil society partners, grounded in the communities and people they serve and represent.

Center Launch

Center to be formally launched publicly in Fall 2022 and foundational elements added on an ongoing basis. Future webinars and in-person small events to be added in key places.

Future Dialogue

This conversation is part of a larger Learning Agenda - recommendations for future topics welcomed. Also casting a wide net to build relationships across civil society partners, advocates and to build bridges with business. A follow up survey will prompt you to share any suggestions.

Business Engagement

We stand ready to deepen engagement with business to move from reacting to real action. Let us know what you think you need.

Thank You

BSR™ is an organization of sustainable business experts that works with its global network of the world's leading companies to build a just and sustainable world. With offices in Asia, Europe, and North America, BSR™ provides insight, advice, and collaborative initiatives to help you see a changing world more clearly, create long-term business value, and scale impact.

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