

ARTICLES

ABORTION

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I. INTRODUCTION

The landmark decision of *Roe v. Wade*, establishing the right to abortion in the United States,¹ prompted an escalation of the abortion rights dialogue of the 1960s, propelled on one side by the women’s movement and concerns about the health implications of illegal abortions and population growth, and on the other by pressure from the Catholic Church and political parties.² Since 1973, anti-abortion activism has created a complex legal landscape surrounding the constitutional right to abortion.³ The Supreme Court retreated from the broad protection of abortion within the first trimester under *Roe’s* framework in the early 1990s,

1. See *Roe v. Wade*, 410 U.S. 113, 129 (1973), overruled by *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

2. See Stephanie Schorow, *Setting the Stage for Roe v. Wade*, HARV. GAZETTE (Nov. 5, 2010), <https://perma.cc/T9GG-W27R>.

3. See generally *Roe*, 410 U.S. 113.

establishing an “undue burden” standard in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.⁴

As lower courts struggled to implement the *Casey* standard, anti-abortion activists flooded state and federal legislatures with laws to test the constitutional limits of abortion regulation. *Dobbs v. Jackson Women’s Health Organization* overturned both *Roe* and *Casey* in 2022.⁵ This decision, which was leaked in May 2022 and published in June 2022 with minor changes, ended the federal constitutional guarantee of abortion rights and returned the full power to regulate abortion care to the states.⁶

This Article examines developments within the past eight years in abortion law, particularly the Supreme Court’s reasoning in *Dobbs*. Part II describes the current landscape of constitutional abortion rights, including federal abortion legislation that remains post-*Dobbs*. Part III discusses state trigger bans and state protections that have come into effect after *Dobbs*, bans based on fetal development, and medication abortion bans and restrictions. Part IV describes restrictions on the use of federal and state public funding for abortion procedures. Finally, Part V discusses fetal personhood.

II. FEDERAL ABORTION LAWS

In *Roe*, the Supreme Court held that the right to personal privacy, guaranteed by the Constitution, included the right to choose to terminate a pregnancy via abortion.⁷ *Roe* grounded the right to abortion in the right to privacy found in the penumbras of the Bill of Rights recognized in *Griswold v. Connecticut*⁸ and *Eisenstadt v. Baird*.⁹ However, the Court also recognized that the right to abortion is not an absolute right and that certain compelling state interests—primarily protecting a pregnant person’s health and the potential life of the fetus—justify the regulation of abortion.¹⁰ These interests influenced the development of the trimester framework, based on the developmental stage of the fetus, for determining whether state regulation was permissible.¹¹ Under this framework, states gain more regulatory authority as a pregnancy progresses.¹²

4. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 837 (1992), overruled by *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

5. *Dobbs*, 142 S. Ct. at 2242.

6. *Id.* at 2243.

7. *Roe*, 410 U.S. at 153.

8. *Griswold v. Connecticut*, 381 U.S. 479, 484–85 (1965); *Roe*, 410 U.S. at 129.

9. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Roe*, 410 U.S. at 129.

10. *Roe*, 410 U.S. at 154.

11. The *Roe* Court held that during the first trimester, the state could not interfere with a pregnant person’s right to choose to terminate a pregnancy. *Id.* at 164. During the second trimester, state regulations “reasonably related to maternal health” were permissible, but the state still could not prohibit a individual from obtaining an abortion. *Id.* Once the fetus reached viability at the end of the second trimester, the state’s interest in the potential human life permitted outlawing abortions except when the abortion was necessary to preserve the life or health of the pregnant individual. *Id.* at 164–65.

12. *See id.* at 164–65.

With the Court's decision in *Dobbs* returning the power to regulate abortion to the states, previous federal cases regarding abortion are no longer good law.¹³ However, federal legislation, such as the Hyde Amendment and the Partial Birth Abortion Ban Act (PBABA), will remain in effect.¹⁴

The Hyde Amendment, which, before *Dobbs* was the greatest barrier to abortion access, limits the use of Medicaid funds to reimburse the cost of abortion care.¹⁵ The Court upheld the Hyde Amendment as constitutional in *Harris v. McCrae*.¹⁶

In 2003, Congress passed the PBABA, which prohibits the intentional performance of partial-birth abortions that are not necessary to save the life of the pregnant person.¹⁷ The Supreme Court found the PBABA constitutional, with Justice Kennedy writing for the majority, in *Gonzales v. Carhart*.¹⁸ The Court relied on the government's ability to restrict abortions once the fetus obtains viability, as well as the government's interest in the life of the fetus.¹⁹ The government's "legitimate and substantial interest in preserving and promoting fetal life" was elucidated in *Casey*: the government had an interest in distinguishing between the potential undue burden on a pregnant person's ability to have an abortion and the State's interest in expressing profound respect for the life of the unborn.²⁰ The Court's primary focus in upholding the PBABA was on the state's interest in protecting the potential life of the fetus. Today, the PBABA is valid law and prohibits its dilation and extraction (D&X) abortions.²¹

As of 2022, abortion is no longer a constitutional right.²² It is now up to the states to decide whether to protect the right to abortion.²³

III. OVERTURNING *ROE V. WADE*

When the Supreme Court overturned *Roe*, it did not outlaw abortion; instead, the *Dobbs* decision allows states to determine the legality of abortion procedures.²⁴ The *Dobbs* Court upheld a Mississippi law banning abortion after fifteen weeks of pregnancy.²⁵ After the *Dobbs* opinion leaked, certain states announced plans to outlaw abortion by passing trigger laws, which would come into effect

13. *Dobbs*, 142 S. Ct. at 2243.

14. *See id.* at 2280–81.

15. Hyde Amendment, Pub. L. No. 94–439, § 209, 90 Stat. 1418, 1434 (1976); *see also* Further Consol. Appropriations Act of 2020, Pub. L. No. 116–94, 133 Stat. 2534, 2579 (2019).

16. *Harris v. McCrae*, 448 U.S. 297, 326 (1980).

17. *See* Act of Nov. 5, 2003, Pub. L. No. 108–105, 117 Stat. 1206 (codified at 18 U.S.C.A. § 1531(a)).

18. *Gonzales v. Carhart*, 550 U.S. 124, 147 (2007).

19. *Id.* at 145–46 (quoting *Casey*, 505 U.S. at 846).

20. *Id.*

21. 18 U.S.C. § 1531(a).

22. *Dobbs*, 142 S. Ct. at 2242.

23. *Id.* at 2243.

24. *Id.*

25. *Id.* at 2284.

once *Dobbs* was made official.²⁶ Other states, however, enacted laws protecting access to abortion, and others were somewhere in between.²⁷ This section will first discuss the *Dobbs* decision. Next, it will examine states' abortion laws, including states that enacted bans and states that enacted protections post-*Dobbs*, and the consequences of such laws.

A. THE *DOBBS V. JACKSON* DECISION

In June 2022, the majority-conservative Supreme Court decided *Dobbs*, overturning *Roe* and *Casey*.²⁸ In *Dobbs*, the Court considered the constitutionality of Mississippi's Gestational Age Act, which banned abortion except in a medical emergency or severe fatal abnormality after fifteen weeks.²⁹ Jackson Women's Health Organization, an abortion clinic, and one of its doctors, challenged the Mississippi law, alleging that it violated precedents establishing a constitutional right to abortion, rooted in *Roe* and *Casey*.³⁰ Writing for the majority, Justice Alito upheld the Mississippi law. He stated that the Constitution fails to provide a right to abortion and authority to regulate abortion must be returned to the states.³¹

The Court reasoned that the Constitution makes no reference to abortion and no such right is implicitly protected by any constitutional provision.³² The Court decided that, while the Due Process Clause of the Fourteenth Amendment guarantees some rights not mentioned in the Constitution, such rights are protected only if they are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty."³³ In concluding that abortion is not considered a right under this standard, the Court relied on state laws dating back to the 19th century that outlawed abortion.³⁴ Additionally, the Court noted that the doctrine of *stare decisis* does not require absolute adherence to precedent, but instead requires an assessment of the strength of the grounds on which a prior case was based.³⁵ Taking all of this together, the Court decided to overrule *Roe* and *Casey*.³⁶

Multiple concurring opinions were filed.³⁷ First, Justice Thomas wrote a concurring opinion in which he agreed that no constitutional right to abortion

26. Tierney Sneed, *Some States Move Quickly to Ban Abortion After Supreme Court Ruling*, CNN (June 25, 2022, 8:38 PM), <https://perma.cc/63JG-7UY7>.

27. *See id.*

28. *Dobbs*, 142 S. Ct. at 2242.

29. *Id.*

30. *Id.* at 2244.

31. *Id.* at 2243.

32. *Id.* at 2242.

33. *Id.*

34. *Id.* at 2252–53.

35. *Id.* at 2243.

36. *Id.* at 2242.

37. *See Dobbs*, 142 S. Ct. at 2300 (Thomas, J., concurring); *id.* at 2304 (Kavanaugh, J., concurring); *id.* at 2310 (Roberts, J., concurring).

exists.³⁸ He emphasized that the Due Process Clause guarantees at most process and does not “forbid the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided.”³⁹ Justice Thomas argued that this case was straightforward: “because the Due Process Clause does not secure any substantive rights, it does not secure a right to abortion.”⁴⁰

Justice Kavanaugh also wrote a concurring opinion.⁴¹ In his concurrence, Justice Kavanaugh criticized the *Roe* Court for taking sides on the issue of abortion when the Court should have stayed neutral.⁴² By overturning *Roe*, the Court returned to a position of neutrality and gave authority back to the people to address the issue of abortion.⁴³ Kavanaugh emphasized that because the Constitution neither outlaws nor legalizes abortion, the Court must remain neutral on the issue.⁴⁴ Additionally, Kavanaugh analyzed the doctrine of *stare decisis* and instances where precedent may be overruled, finding this case to be one such instance because, in his opinion, *Roe* was egregiously wrong and caused “significant negative jurisprudential and real-world consequences.”⁴⁵ Notably, Kavanaugh emphasized that overruling *Roe* does not threaten or cast doubt on *Griswold v. Connecticut* (constitutional right to privacy),⁴⁶ *Eisenstadt v. Baird* (constitutional right to privacy includes individuals and married couples),⁴⁷ *Loving v. Virginia* (anti-miscegenation statutes violate the Constitution),⁴⁸ or *Obergefell v. Hodges* (bans on same-sex marriage violate the Constitution).⁴⁹

Chief Justice Roberts also wrote a concurring opinion, concurring only with the judgment.⁵⁰ While Roberts agreed that the Court should rule in favor of Mississippi and dispose of *Roe*’s “viability” standard, he disagreed that doing so required the Court to entirely overrule *Roe* and *Casey*.⁵¹ In his view, the Court was only required to clarify whether abortion prohibitions before viability are always unconstitutional, and should have exercised judicial restraint and refused to go further than necessary.⁵² Roberts’ opinion was to “recognize that the viability line must be discarded, as the majority rightly does, and leave for another day whether to reject any right to an abortion at all.”⁵³

38. *See id.* at 2300 (Thomas, J., concurring).

39. *Id.* at 2300–2301 (quoting *Reno v. Flores* 507 U.S. 292, 302 (1993)).

40. *Id.* at 2301.

41. *See id.* at 2304 (Kavanaugh, J., concurring).

42. *Id.* at 2305.

43. *Id.*

44. *Id.*

45. *Id.* at 2307.

46. *See Griswold v. Connecticut*, 381 U.S. 479 (1965).

47. *See Eisenstadt v. Baird*, 405 U.S. 438 (1972).

48. *See Loving v. Virginia*, 388 U.S. 1 (1967).

49. *See Dobbs*, 142 S. Ct. at 2307 (Kavanaugh, J., concurring); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

50. *Dobbs*, 142 S. Ct. at 2310 (Roberts, J., concurring).

51. *Id.* at 2316–17.

52. *Id.* at 2310–2311.

53. *Id.* at 2314.

Justices Breyers, Sotomayor, and Kagan filed a joint dissenting opinion.⁵⁴ The dissent emphasized that the *Dobbs* decision allows states to impose morals upon pregnant people, and to coerce pregnant people into giving birth.⁵⁵ Additionally, the dissent discusses the disparate impact this decision will have on poor people who may not have the means to travel across state lines.⁵⁶ The dissent also questions the majority's statement that the *Dobbs* decision does not cast doubt on precedents that do not concern abortion, and warns that marital and other rights may now be in jeopardy.⁵⁷

B. LEGISLATIVE PROTECTIONS OF ABORTION

After the *Dobbs* decision, some states moved quickly to codify the right to abortion into their constitutions and laws.⁵⁸ Most of the states that passed laws protecting abortion are led by the Democrat Party, except Alaska, which has a Republican governor and senate, but enshrines the right to “reproductive choice” in its constitution.⁵⁹

Many other Democrat-led states have enacted laws that shield those seeking abortions in their state from out-of-state laws.⁶⁰ Alaska, Illinois, and Massachusetts protect abortion under their state constitutions.⁶¹ Other states have proposed laws to protect abortion, including New Jersey, whose governor proposed making the state a “sanctuary” for abortion access.⁶² Some states have had voters decide whether to

54. *Id.* at 2317 (Breyer, J., Sotomayor, J., and Kagan, J., dissenting).

55. *Id.* at 2318.

56. *Id.*

57. *Id.* at 2319.

58. *Id.*; CAL. HEALTH & SAFETY CODE § 123452 (West, Westlaw through Ch. 997 of 2022 Reg. Sess.); COLO. REV. STAT. § 25-6-401 (Lexis Advance through all leg. from the 2022 Reg. Sess. & the results of the Nov. 2022 Gen. Election); CONN. GEN. STAT. ANN. § 19a-602 (West, Westlaw through Gen. Statutes of Conn., Revision of 1958, Revised to Jan. 1, 2023); D.C. CODE ANN. § 2-1401.06 (West, Westlaw through Dec. 28, 2022); DEL. CODE ANN. tit. 10, § 3928 (West, Westlaw through Ch. 5 of the 152nd Gen. Assemb. (2023-2024)); N.J. STAT. ANN. § 10:7-1 (West, Westlaw through L.2023, c. 9 & J.R. No. 1); WASH. REV. CODE ANN. § 9.02.100 (West, Westlaw through the 2022 Reg. Sess. of the Wash. Leg.).

59. Allison McCann, Amy Schoenfeld Walker, Ava Sasani, Taylor Johnston, Larry Buchanan, & Jon Huang, *Tracking the States Where Abortion is Now Banned*, N.Y. TIMES, <https://perma.cc/43SH-6BF7> (last updated Apr. 25, 2023); ALASKA STAT. ANN. §§ 18.16.010-18.16.090 (West, Westlaw through the 2022 2nd Reg. Sess. of the 32nd Leg.).

60. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59; CAL. HEALTH & SAFETY CODE § 123452 (West, Westlaw through Ch. 997 of 2022 Reg. Sess.); CONN. GEN. STAT. ANN. § 19a-602 (West, Westlaw through Gen. Statutes of Conn., Revision of 1958, Revised to Jan. 1, 2023); ILL. COMP. STAT. ANN. § 2 (2022).

61. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59; ALASKA STAT. ANN. §§ 18.16.010-18.16.090 (West, Westlaw through the 2022 2nd Reg. Sess. of the 32nd Leg. 2010); 775 ILL. COMP. STAT. ANN. 55/1-15 (West, Westlaw through P.A. 102-1142 of the 2022 Reg. Sess.); MASS. GEN. LAWS ch. 112, § 12L (West, Westlaw through the 2022 2nd Ann. Sess.). Kansas does not statutorily protect the right to abortion, but the Kansas Supreme Court held in 2019 that the state constitution protects a person's right to bodily autonomy and reproductive choice. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 680 (2019).

62. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59; N.J. STAT. ANN. § 10:7-1 (West, Westlaw through L.2023, c. 9 and J.R. No. 1).

protect abortion under state law. In August 2022, voters in Kansas rejected a ballot measure that would have amended the state constitution to say that it contains no right to an abortion.⁶³ Other states had abortion on the ballot in November 2022.⁶⁴ The District of Columbia (D.C.) has local laws that protect abortion throughout pregnancy with no gestational limit.⁶⁵ The city also has plans to bolster protections.⁶⁶ However, because D.C. is not a state, Congress ultimately oversees the city's laws, so it is unclear if the planned protections will pass.⁶⁷

See Appendix A for a full chart of states and their current abortion laws.

C. BANS BASED ON FETAL DEVELOPMENT

Late-term abortions are rare,⁶⁸ in part because of state prohibitions of the practice. Post-*Dobbs*, some states enacted bans that are based on fetal development.⁶⁹ Gestational limits on abortion present challenges because most cannot undergo certain screening tests to determine if there are developmental issues until fifteen to twenty weeks of pregnancy.⁷⁰

In 2003, following the Supreme Court's decision in *Stenberg v. Carhart*, Congress enacted the PBABA in order to regulate the D&X method of abortion.⁷¹ The D&X method of abortion is performed approximately four months (sixteen weeks) into the gestation period, and is one of very few methods for later-term abortions.⁷² Evidence suggests that the D&X procedure is safer than other methods of abortion—there is less of a risk of hemorrhage, less total bleeding, and less risk of infection.⁷³

63. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59; see also Dylan Lessen, Laura Ziegler & Blaise Mesa, *Voters in Kansas decide to keep abortion legal in the state, rejecting an amendment*, NPR (Aug. 2, 2022, 10:39 PM), <https://perma.cc/B4JP-3FL9>.

64. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

65. *Id.*; D.C. CODE ANN. § 2-1401.06 (West, Westlaw through Dec. 28, 2022).

66. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

67. *Id.*

68. See Katherine Kortsmitt, Michele G. Mandel, Jennifer A. Reeves, Elizabeth Clark, H. Pamela Pagano, Antoinette Nguyen, Emily E. Petersen, & Maura K. Whiteman, *Abortion Surveillance – United States, 2019: Morbidity and Mortality Weekly Report Surveillance Summary*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 26, 2021), <https://perma.cc/ZJS9-FNKA>. In 2019, 92.7% of abortions were performed in the first trimester. *Id.* at 6. 6.2% of abortions were performed at fourteen to twenty weeks. *Id.* Thus, under 1% of abortions were “later-term” abortions occurring after twenty-one weeks. *Id.*

69. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

70. *Diagnosis of Birth Defects*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://perma.cc/LTU5-MUKM> (last visited Nov. 6, 2022).

71. Katherine L. MacPherson, *Devising an Appropriate Standard of Review: An Analysis of Congress's Findings of “Fact” Within the Partial-Birth Abortion Ban Act of 2003*, 2005 MICH. ST. L. REV. 713, 722 (2005).

72. *Id.* at 721.

73. *Id.* at 722.

Under *Roe* and *Casey*, a health exception was necessary in certain laws banning abortion so as to avoid placing an “undue burden” on abortion-seekers.⁷⁴ Despite this requirement, Congress passed the PBABA and decided that a health exception for banning D&X procedures was not required, reasoning that such a procedure was not necessary for the mother’s health, the procedure posed serious risks to the mother’s health, and the procedure was not considered an accepted medical practice.⁷⁵ This rationale was based on *Roe* and *Casey*, which are now overturned.⁷⁶ With no current “undue burden” requirement, federal legislators may attempt to further restrict abortion and other legal procedures.⁷⁷

As of August 2022, multiple states enacted laws to ban abortion on the basis of fetal development, also called a gestational limit.⁷⁸ These states are: Florida (fifteen weeks),⁷⁹ Arizona (fifteen weeks),⁸⁰ Utah (eighteen weeks),⁸¹ North Carolina (twenty weeks),⁸² and Georgia (six weeks).⁸³ Abortion advocates have sued to block bans in all of these states.⁸⁴ Multiple states have bans based on fetal development, but are considering new laws to ban abortion entirely.⁸⁵

D. MEDICATION ABORTION BANS AND RESTRICTIONS

Medication, or non-surgical abortions, are frequently used during the early stages of pregnancy.⁸⁶ In the U.S., mifepristone (RU-486, also known as Mifeprex) is used in combination with misoprostol to terminate a pregnancy in the first seventy days of gestation.⁸⁷ The Food and Drug Administration (FDA) considers the use of mifepristone and misoprostol to be a safe, effective, and non-invasive alternative to surgical abortion during the first trimester.⁸⁸ The administration of mifepristone and

74. See *Roe*, 410 U.S. 113; *Casey*, 505 U.S. 833.

75. H.R. REP. NO. 108-58, at 14–15 (2003).

76. See *Dobbs*, 142 S. Ct. at 2242.

77. See *id.*

78. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

79. See *id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*; ARIZ. REV. STAT. § 36-2322 (West, Westlaw through the 2nd Reg. Sess. of the 55th Leg. (2022)); FLA. STAT. ANN. § 390.0111 (West, Westlaw through the 2022 2nd Reg. Sess. & Spec. A, C & D Sess. of the 27th Leg.); GA. CODE ANN. § 16-12-141 (West, Westlaw through legislation passed at the 2022 Reg. Sess. of the Ga. Gen. Assemb.); N.C. GEN. STAT. ANN. § 14-45.1 (West, Westlaw through S. L. 2022-75 of the 2022 Reg. Sess. of the Gen. Assemb.); UTAH CODE ANN. § 76-7-302.5 (West, Westlaw through the 2022 3rd Spec. Sess.).

84. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

85. See *id.*

86. *Abortion Pill Used in 1 in 4 U.S. Terminations*, NBC NEWS (July 8, 2009, 4:59 PM), <https://perma.cc/6TD8-UPCC>.

87. *Mifeprex (mifepristone) Information*, U.S. FOOD & DRUG ADMIN., <https://perma.cc/GF4V-LV26> (last updated Dec. 16, 2021).

88. *Id.*

misoprostol combined is considered to be 95% to 98% effective in terminating an early pregnancy.⁸⁹

The FDA initially approved mifepristone in 2000.⁹⁰ The Final Printed Label (FPL) directed the patient to take six hundred milligrams of mifepristone before reaching seven weeks after a person's last menstrual period (LMP), return two days later to take a dose of misoprostol, and then return two weeks later to verify that the procedure was successful.⁹¹ An FPL is not a legal requirement.⁹² Medical professionals developed new protocols that improved the implementation of the medication in a variety of ways: (1) physicians can prescribe one-third the dosage; (2) patients can self-administer misoprostol at home; and (3) the drug is effective for two additional weeks of pregnancy (up to sixty-three days).⁹³

In the U.S., some studies report that at least 96% of all medication abortions involve a regimen that varies from the FPL.⁹⁴ In March 2016, the FDA updated the FPL with relaxed guidelines that closely resemble the physician-created protocols: the FPL outlines that mifepristone and misoprostol should be administered in a single doctor's visit rather than across two visits, that the dose of mifepristone should be two hundred rather than six hundred milligrams, and that the pill can be administered up to ten weeks into pregnancy.⁹⁵ Such changes to the FPL make medication abortions less burdensome for abortion-seekers by decreasing the cost of and barriers to the procedure.⁹⁶

Still, the FDA imposes several burdens on people seeking medication abortions pursuant to the 2011 Elements to Assure Safe Use (ETASU).⁹⁷ The ETASU mandates that mifepristone be prescribed only by approved healthcare providers, dispensed only in hospitals, clinics, or medical offices, and the patient must sign a Patient Agreement Form affirming safe conditions will be met.⁹⁸ In July 2020, a Maryland federal judge granted an injunction suspending the FDA's rule

89. See Rebecca Allen & Barbara M. O'Brien, *Uses of Misoprostol in Obstetrics and Gynecology*, 2 REVS. IN OBSTETRICS & GYNECOLOGY 159, 161 (2009).

90. See *Highlights of Prescribing Information: Mifeprex*, U.S. FOOD & DRUG ADMIN., <https://perma.cc/CLU5-P6J2> (last updated Mar. 2016).

91. See Allen & O'Brien, *supra* note 89.

92. Brief in Opposition at 4, *Cline v. Okla. Coal. for Reprod. Just.*, 571 U.S. 985 (2013) (No. 12-1094), 2013 WL 2352228 ("Such 'off-label' use of a drug is perfectly legal, and indeed common."); *Understanding Unapproved Use of Approved Drugs "Off Label,"* U.S. FOOD & DRUG ADMIN. (Feb. 5, 2018), <https://perma.cc/GN3U-LTTB> ("From the FDA perspective, once the FDA approves a drug, healthcare providers generally may prescribe the drug for an unapproved use when they judge that it is medically appropriate for their patient.")

93. Brief in Opposition at 3–4, *Cline*, 571 U.S. 985 (No. 12-1094).

94. *Id.* at 4.

95. *Highlights of Prescribing Information: Mifeprex*, *supra* note 90; see also Sabrina Tavernise, *New FDA Guidelines Ease Access to Abortion Pill*, N.Y. TIMES (Mar. 30, 2016), <https://perma.cc/CXM3-WUQ5>.

96. See Rachel Jones & Heather Boonstra, *The Public Health Implications of the FDA's Update to the Medication Abortion Label*, HEALTH AFFS. BLOG (June 30, 2016), <https://perma.cc/R8EF-S2NE>.

97. 21 U.S.C. § 355-1(f)(3).

98. *Id.*

requiring that mifepristone be dispensed in person at “certain health care settings” by a healthcare provider who has preregistered with the drug’s manufacturer.⁹⁹ The court agreed with the American College of Obstetricians and Gynecologists and other physician groups that brought the suit who argued that, during the COVID-19 pandemic, the FDA’s “In-Person Requirements” for obtaining mifepristone imposed a “substantial obstacle” to patients seeking medication abortion care.¹⁰⁰ In January 2020, the Supreme Court stayed the district court’s order granting the injunction, pending disposition of the appeal in the U.S. Court of Appeals for the Fourth Circuit.¹⁰¹ As such, the FDA can continue to enforce its requirement that people visit hospitals, clinics, or medical offices to obtain mifepristone.¹⁰²

The *Dobbs* decision raised the question of whether states may ban mail-order medication used to terminate pregnancies or prohibit their residents from traveling to another state to obtain such medication.¹⁰³ President Biden pledged to ensure access to abortion medication and prohibit states from preventing their residents from traveling out-of-state for care, but states are likely to challenge the president’s executive order protecting access.¹⁰⁴

IV. PUBLIC FUNDING AND ABORTION

Measures enacted to prevent public funding for abortion procedures are a major roadblock in abortion access.¹⁰⁵ Passed in 1976, the Hyde Amendment bars the use of federal funds to pay for an abortion, except in narrow circumstances.¹⁰⁶ Currently, the Hyde Amendment permits the contribution of federal funds to the cost of abortions for those enrolled in Medicaid only in cases of rape, incest, and life endangerment.¹⁰⁷ The life endangerment exception only applies where the endangerment arises from a “physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself.”¹⁰⁸

99. See *Am. Coll. of Obstetricians & Gynecologists v. U.S. Food & Drug Admin.*, 472 F. Supp. 3d 183, 191 (D. Md. 2020).

100. See *id.* at 216.

101. See *Food & Drug Admin. v. Am. Coll. of Obstetricians & Gynecologists*, 141 S. Ct. 578, 578 (Jan. 12, 2021) (Mem).

102. Jeff Overley, *Justices Let FDA Require Abortion Pill Visits Amid Pandemic*, LAW360 (Jan. 12, 2021, 10:23 PM), <https://perma.cc/Y5QW-RMNU>.

103. See *Dobbs*, 142 S. Ct. at 2317 (Breyer, J., Sotomayor, J., & Kagan, J., dissenting); Ann E. Marimow, Laurie McGinley, & Caroline Kitchener, *Major Legal Fights Loom Over Abortion Pills, Travel Out of State*, WASH. POST (July 31, 2021), <https://perma.cc/RZJ6-N5B8>.

104. See Marimow, McGinley, & Kitchener, *supra* note 103.

105. See *Hyde Amendment*, PLANNED PARENTHOOD ACTION FUND, <https://perma.cc/2HCD-7RYG> (last visited Nov. 6, 2022).

106. See *Hyde Amendment*, Pub. L. No. 94-439, 90 Stat. 1418 (1976).

107. See *Hyde Amendment*, Pub. L. No. 94-439, § 302(b), 90 Stat. 1418 (2013).

108. *Id.* This specification ensures that mental health risks to a woman’s life may not be used to justify federal funding for abortion.

The Hyde Amendment principally affects those who depend on Medicaid, creating additional obstacles for low-income individuals seeking to access their health care options.¹⁰⁹ Today, 15.6 million women (ages nineteen to sixty-four) have Medicaid coverage; additionally, Medicaid provides coverage to one in five women of reproductive age (fifteen to forty-four).¹¹⁰

A. FEDERAL BANS ON PUBLIC FUNDING FOR ABORTION

2022 marked the forty-sixth anniversary of the Hyde Amendment.¹¹¹ Though the Amendment remains controversial, the Supreme Court upheld its constitutionality in the 1980 case *Harris v. McRae*.¹¹² The Court found that the funding restriction did not violate the Due Process or Equal Protection Clauses because “a woman’s freedom of choice [does not carry] with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices.”¹¹³ Specifically, the Court held that the Hyde Amendment’s funding restrictions did not infringe upon the “liberty” protected by the Due Process Clause because forbidding public funding of abortion does not restrict “the freedom of a woman to decide whether to terminate a pregnancy.”¹¹⁴ Nor did the restrictions violate the Equal Protection Clause.¹¹⁵ The Court applied a rational basis standard—poverty is not a suspect class—to find that limiting public funding of abortion is rationally related to the legitimate government interest of “protecting potential life” by encouraging childbirth.¹¹⁶ Finally, the Court rejected the argument that the funding restrictions informed by tenets of Catholicism constituted an establishment of religion.¹¹⁷ Although ultimately held constitutional, the Hyde Amendment remains contentious because it disproportionately burdens poor people and people of color,¹¹⁸ acting effectively as an abortion ban for many low-income individuals.¹¹⁹

Today, congressional funding for Planned Parenthood is consistently the point of public and political debate.¹²⁰ Since 2011, Congress has pushed efforts to strip Planned Parenthood of the federal funding it receives through Title X.¹²¹ The Title X Family Planning Program was created in 1976 to provide family planning

109. See *Whose Choice? How the Hyde Amendment Harms Poor Women*, CTR. FOR REPROD. RTS., <https://perma.cc/AJ4J-ZQBR> (last visited Nov. 6, 2022) [hereinafter *Whose Choice?*].

110. PLANNED PARENTHOOD ACTION FUND, *Hyde Amendment*, *supra* note 105.

111. See *id.*

112. 448 U.S. 297, 326 (1980).

113. *Id.* at 298.

114. *Id.*

115. See *id.* at 324–26.

116. See *id.* at 324–25.

117. See *id.* at 319–20.

118. 123 Cong. Rec. 19, 703 (1977); see also *Whose Choice?*, *supra* note 109, at 12.

119. See Alina Salganicoff, Laurie Sobel, & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, KAISER FAM. FOUND. (Sept. 10, 2020), <https://perma.cc/K6SM-JLS5>.

120. See PLANNED PARENTHOOD ACTION FUND, *Hyde Amendment*, *supra* note 105.

121. See David Nather & Katie Nocera, *House Defunds Planned Parenthood*, POLITICO (Feb. 18, 2011, 2:35 PM), <https://perma.cc/NV2R-KL39>.

to primarily low-income individuals.¹²² The program is administered through the Office of Population Affairs at the U.S. Department of Health and Human Services, and approximately 90% of the appropriated federal funds are used for family planning services.¹²³ Although Planned Parenthood receives funds through the Title X Family Planning Program, the Hyde Amendment prohibits Planned Parenthood from using these funds for abortions or abortion-related services.¹²⁴ In February 2011, the House passed an amendment that withdrew federal funds from Planned Parenthood.¹²⁵ However, the amendment failed to pass in the Senate.¹²⁶ Republicans have continually tried to pull federal funding from Planned Parenthood since 2011.¹²⁷

The federal funding Planned Parenthood receives primarily covers preventative healthcare, including contraception, cancer screening, and the diagnosis and treatment of sexually transmitted infections (STIs).¹²⁸ According to its latest annual report, only 3% of the medical services performed at Planned Parenthood affiliates were abortion services, while STI testing and treatment accounted for 52%.¹²⁹ Nonetheless, anti-abortion politicians and activists hope to permanently close Planned Parenthood's doors, using rescission of Title X funding as a mechanism.¹³⁰ Planned Parenthood supporters claim that an amendment prohibiting Planned Parenthood in particular from receiving Title X funds would be an unconstitutional "bill of attainder."¹³¹

Planned Parenthood's funding, and its connection to Title X, has become a vital focus of an increasingly polarized electoral system. Retracting federal funding from Planned Parenthood has gradually become synonymous with the Republican Party's platform.¹³² While conservatism is typically associated with a pro-life stance, the election of President Donald Trump in 2016 solidified

122. See 42 U.S.C. §§ 300–300a-8.

123. See Angela Napili, *Family Planning Program Under Title X of the Public Health Service Act*, CONG. RSCH. SERV. (Oct. 15, 2018), <https://perma.cc/S29W-UARR>; see also *About Title X Service Grants*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://perma.cc/4UPL-4682> (last visited Jan. 22, 2023).

124. See Nather & Nocera, *supra* note 121.

125. See Felicia Sonmez, *Senate Passes 2011 Funding Bill, Rejects Measures to Defund Planned Parenthood and Health Care*, WASH. POST (Apr. 14, 2011), <https://perma.cc/AQ9S-VKZW>.

126. See *id.*

127. *E.g.*, A Bill to Prohibit Federal Funding of Planned Parenthood Federation of America, S. 158, 116th Cong. (2019); Defund Planned Parenthood Act of 2019, H.R. 369, 116th Cong. (2019); Defund Planned Parenthood Act of 2017, H.R. 354, 115th Cong. (2017); A Bill to Prohibit Federal Funding of Planned Parenthood Federation of America, S. 1881, 114th Cong. (2017); Defund Planned Parenthood Act of 2015, H.R. 3134, 114th Cong. (2015).

128. Miriam Berg, *How Federal Funding Works at Planned Parenthood*, PLANNED PARENTHOOD ACTION FUND (Jan. 5, 2017, 9:00 PM), <https://perma.cc/U442-KFWC>.

129. 2019-2020 Annual Report, PLANNED PARENTHOOD (2020), <https://perma.cc/D8JE-NDRG>.

130. Nather & Nocera, *supra* note 121.

131. See *id.*

132. See *Republican Views on Planned Parenthood*, REPUBLICAN VIEWS (Apr. 28, 2017), <https://perma.cc/D375-Q5FM>.

Planned Parenthood as a target for conservative rhetoric.¹³³ The Trump Administration and congressional Republicans continuously pushed to block federal funding for Planned Parenthood and abortions, both domestically and internationally.¹³⁴

When President Joe Biden ran for office in 2020, part of his platform was protecting abortion rights.¹³⁵ However, he was unsuccessful in codifying the right to abortion in federal law prior to the Supreme Court's decision in *Dobbs*.¹³⁶ President Biden disagreed with the *Dobbs* decision and emphasized that "women's health and lives are on the line."¹³⁷ The Biden Administration believes that abortion is a fundamental right of pregnant people, and the administration is pushing to enact laws to protect the right to choose.¹³⁸

In July 2022, a bill guaranteeing pregnant people the right to travel across state lines to seek abortions failed in the Senate after Republicans blocked the bill.¹³⁹ In August 2022, Biden signed an executive order that helps pregnant people travel out of state to receive abortions, ensures health care providers comply with federal law to prevent delays in receiving care, and advances research and data collection.¹⁴⁰ The executive order instructs hospitals and doctors nationwide to provide emergency abortion care.¹⁴¹ However, Texas already sued to block this order, claiming that it unlawfully attempts to preempt state law.¹⁴² Other states with strict anti-abortion laws are expected to either join Texas or file their own lawsuits.¹⁴³

The Department of Justice initiated its own lawsuit in Idaho claiming that Idaho's anti-abortion law is unlawful because federal law preempts state law.¹⁴⁴ Idaho's law allows any doctor to be prosecuted for performing an abortion, regardless of the circumstances or the doctor's location.¹⁴⁵

B. STATE BANS ON PUBLIC FUNDING FOR ABORTION

Many states that protect abortion have laws prohibiting the use of state funds for abortion.¹⁴⁶ States that prohibit or significantly restrict the use of state funds for abortions include Colorado, Kansas, Nebraska, Nevada, Pennsylvania, Rhode

133. *Id.*

134. *Id.*

135. Tommy Beer, *Biden Vows to Protect Abortion Rights, Provoking Harsh Response From Trump*, FORBES (Oct. 6, 2020, 12:10 PM), <https://perma.cc/K7TN-9DL9>.

136. Donald Judd & Kate Sullivan, *Biden Signs New Executive Order on Abortion Rights: 'Women's Health and Lives are on the Line'*, CNN (Aug. 3, 2022, 5:31 PM), <https://perma.cc/XGM7-7QAZ>.

137. *See id.*

138. *Id.*

139. *Id.*

140. *Id.*; Exec. Order No. 14,079, 3 C.F.R. § 87.154 (2022).

141. *See* Judd & Sullivan, *supra* note 136.

142. Allie Reed, *High-Stakes Abortion Lawsuits Force Clash on Emergency Care Law*, BLOOMBERG LAW (Aug. 4, 2022, 4:04 PM), <https://perma.cc/MG52-HCRA>.

143. *See id.*

144. *Id.*

145. *Id.*

146. *See* McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

Island, and Virginia.¹⁴⁷ In D.C., Congress prohibits the use of taxpayer funds to cover the costs of most abortions.¹⁴⁸

V. FETAL PERSONHOOD

The *Dobbs* Court did not decide when life begins, but it did hold that states have the right to decide whether an unborn fetus constitutes a “person.”¹⁴⁹ Justice Alito, writing for the majority, explained that voters in various states may evaluate the interests of the pregnant person and the fetus differently, with some believing an abortion “destroys an unborn human being.”¹⁵⁰ Even before *Dobbs* overturned *Roe* and *Casey*, some jurisdictions decided to attribute personhood to fetuses in criminal, tort, and state constitutional laws.¹⁵¹

A. FEDERAL AND STATE FETICIDE LAWS

In 2004, Congress amended federal criminal law, making it a crime to kill or injure a fetus during the commission of a federal crime against a pregnant person.¹⁵² The law, commonly referred to as Laci and Conner’s Law, or The Unborn Victims of Violence Act (UVVA), creates a penalty separate from the crime perpetrated against the pregnant person.¹⁵³ When the UVVA was signed into law in April 2004, twenty-nine states already had passed homicide laws that recognized unborn fetuses as victims.¹⁵⁴ Of those twenty-nine states, sixteen recognized

147. *See id.*; COLO. REV. STAT. § 25.5-3-106 (Lexis Advance through all legislation from the 2022 Reg. Sess. & the results of the Nov. 2022 Gen. Election); KAN. STAT. ANN. § 65-6733 (West, Westlaw through laws enacted during the 2022 Reg. Sess. of the Kan. Leg. effective on July 1, 2022); 471 NEB. ADMIN. CODE § 10-006.08 (effective June 6, 2022), <https://perma.cc/2QXA-3252>; 18 PA. CONS. STAT. § 3215(c) (West, Westlaw through 2022 Reg. Sess. Act 166); R.I. CONST. art. I, § 2 (West, Westlaw through Ch. 442 of the 2022 Reg. Sess. of the R.I. Leg.); VA. CODE ANN. §§ 32.1-92.1–92.2 (West, Westlaw through 2022 Reg. Sess. & Spec. Sess. I). New Hampshire also passed a bill limiting state funding for abortion, it was signed by the Governor on June 25, 2021. H.B. 2, 2021 Leg., Reg. Sess. (N.H. 2021).

148. *See* McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59; Consol. Appropriations Act of 2010, Pub. L. 111–117, § 814, 123 Stat. 3034, 3224.

149. *See Dobbs*, 142 S. Ct. at 2257.

150. *See id.* (quoting MISS. CODE ANN. §41-41-191(4)(b) (2022)).

151. *See, e.g.*, 18 U.S.C. § 1841; *Bonrest v. Kotz*, 65 F. Supp. 138, 140–43 (D.D.C. 1946) (holding that a professional malpractice suit initiated on behalf of a viable fetus by his father was proper and the fetus constituted a person having standing in court); *People v. Davis*, 872 P.2d 591, 599 (Cal. 1994) (allowing for feticide without imposing a viability requirement); *Commonwealth v. Cass*, 467 N.E.2d 1324, 1326 (Mass. 1984) (holding that a fetus was considered a “person” with regard to a vehicular homicide statute); *Hughes v. State*, 868 P.2d 730, 736 (Okla. Crim. App. 1994) (abolishing the born alive rule and prospectively holding that defendants causing deadly injuries to fetuses may be convicted for homicide); *State v. Horne*, 319 S.E.2d 703, 704 (S.C. 1984) (“[W]e hold an action for homicide may be maintained in the future when the state can prove beyond a reasonable doubt the fetus involved was viable.”).

152. 18 U.S.C. § 1841(a)(1) (“Whoever . . . causes the death of, or bodily injury (as defined in Section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.”).

153. *See id.*

154. 150 CONG. REC. 2405 (2004) (statement of Rep. Mike Pence) (“Twenty-nine States in the Union, . . . nearly 60% of the United States of America in their various State laws . . . recognize fetal

unborn children as victims regardless of the stage of prenatal development.¹⁵⁵ The other thirteen states afforded coverage to unborn fetuses during some stages of prenatal development.¹⁵⁶ Today, thirty-eight states have laws allowing for homicide charges to be brought “for causing the loss of a pregnancy.”¹⁵⁷ Of those states, twenty-nine recognize unborn fetuses as victims regardless of the stage of prenatal development.¹⁵⁸

By declaring an unborn fetus a legal person, the UVVA departed from *Roe*’s recognition of a fetus as “at most . . . only the potentiality of life.”¹⁵⁹ The UVVA defines an unborn child as a child in utero, or a “member of the species homo sapiens, at any stage of development, who is carried in the womb.”¹⁶⁰ Until *Dobbs*, the “fundamental premise of constitutional law” governing abortion was that fetuses are not entitled to the legal protections afforded persons.¹⁶¹ Notably, the Court in *Roe* rejected the State’s argument that a fetus was a person under the meaning of the Fourteenth Amendment because the term “person” had only post-natal applications.¹⁶² It follows from *Roe* that under the Constitution a fetus is not entitled to a “right to life.”¹⁶³ Likewise, the termination of a pregnancy has never been treated as a termination of life entitled to Fourteenth Amendment protection.¹⁶⁴ This precedent, as such, led the UVVA to be considered controversial

homicide for all or part of prenatal development.”); 150 CONG. REC. 5218, 5220 (2004) (statements of Sen. George Voinovich and Sen. Gordon H. Smith).

155. 150 CONG. REC. 5189 (2004) (statement of Sen. Orrin Hatch); see H.R. REP. NO. 108-420, pt. 1, at 3 & n.1 (2004); Crimes and Offenses—Homicide—Fetal Homicide Established, Ch. 1, 2004 Ky. Acts 1 (codified at KY. REV. STAT. ANN. § 507A (West, Westlaw through Jan. 6, 2023 & Nov. 8, 2022 election)) (“‘Unborn child’ means a member of the species homo sapiens in utero from conception onward, without regard to age, health, or condition of dependency.”).

156. See H.R. REP. NO. 108-420, pt. 1, at 3 & n.1.

157. *Who Do Fetal Homicide Laws Protect?*, NAT’L ADVOCS. FOR PREGNANT WOMEN 2 (Aug. 17, 2022), <https://perma.cc/42M6-M9MW>.

158. *Id.* at 4.

159. *Roe*, 410 U.S. at 162.

160. 18 U.S.C. § 1841(d).

161. Compare *Casey*, 505 U.S. at 913–14 (1992) (Stevens, J. concurring in part and dissenting in part) with *Dobbs*, 142 S. Ct. at 2261 (2022) (“According to the dissent, the Constitution requires the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed. Nothing in the Constitution . . . authorizes the Court to adopt that ‘theory of life.’”).

162. See *Roe*, 410 U.S. at 157–58. But see *Webster v. Repro. Health Servs.*, 492 U.S. 490, 504–06 (1989) (upholding a Missouri statute whose preamble declared life begins at conception); *Dobbs*, 142 S. Ct. at 2261 (rejecting the dissent’s “imposition” of a “particular theory about when the rights of personhood begin.”).

163. See *Roe*, 410 U.S. at 157–58.

164. *Casey*, 505 U.S. at 913–14 (Stevens, J., concurring in part and dissenting in part) (citing *Roe*, 410 U.S. at 158) (“From this holding, there was no dissent, indeed, no Member of the Court has ever questioned this fundamental proposition.”). But see *Dobbs*, 142 S. Ct. at 2270 (“The viability line, which *Casey* termed *Roe*’s central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line.”).

because it classifies the fetus or embryo as a legal person deserving of criminal law protections.¹⁶⁵

If the UVVA language recognizes a fetus as a person regardless of the stage of viability, then fetuses could enjoy a right to life under the Fourteenth Amendment—a proposition the Supreme Court previously rejected.¹⁶⁶ Some believe that permitting the termination of a pregnancy by legalized abortion but outlawing infanticide and murder would deny equal protection of the law to fetuses.¹⁶⁷ If the law recognizes a fetus as a constitutional person, states could be required to outlaw abortion in some circumstances because it would be akin to murder.¹⁶⁸ When constitutional rights are in conflict or competition, “any power to increase the constitutional population by unilateral decision would be, in effect, a power to decrease rights the Constitution grants to others.”¹⁶⁹ The Supreme Court has not decided on the constitutionality of the UVVA, leaving the conflict between the UVVA’s language and the *Roe* decision unresolved.

One case unsuccessfully attempted to challenge the constitutionality of the UVVA. In *United States v. Boie*, the defendant, who was convicted of the attempted killing of an unborn child and assault on the fetus’s mother, asserted that, among other things: (1) “the use of the phrase ‘causing the death of an unborn child’ in Article 119a is unconstitutionally vague; (2) . . . Article 119a violates the Equal Protection Clause of the United States Constitution because it adopts a gender-based classification; (3) . . . Article 119a violates the Eighth Amendment right against cruel and unusual punishment; [and] (4) . . . Article 119a is unconstitutional because it adopts a ‘theory of life’ that violates the Establishment Clause.”¹⁷⁰ The Air Force Court of Criminal Appeals rejected the constitutional challenges to the UVVA.¹⁷¹ The court addressed each in turn.

Regarding the defendant’s first challenge, the court noted that a criminal statute is only unconstitutionally vague when the statute lacks sufficient definiteness such that ordinary people cannot understand “what conduct is prohibited” and encourages “arbitrary and discriminatory enforcement.”¹⁷² The debate as to when human life begins does not render the UVVA unconstitutionally vague because Congress sufficiently established the statute’s prohibitions by requiring prosecutors

165. See Nora Christie Sandstad, *Pregnant Women and the Fourteenth Amendment: A Feminist Examination of the Trend to Eliminate Women’s Rights During Pregnancy*, 26(1) L. & INEQ. 171, 172 (2008).

166. See *id.* at 184–86; cf. *Dobbs*, 142 S. Ct. at 2277 (returning the debate about the “status of the fetus” to legislative bodies).

167. See Richard Dworkin, *Unenumerated Rights: Whether and How Roe Should Be Overruled*, 59 U. CHI. L. REV. 381, 399–402 (1992).

168. See *id.* at 398–99.

169. *Id.* at 400–01.

170. *United States v. Boie*, 70 M.J. 585, 586–87 (A.F. Ct. Crim. App. 2011).

171. See *id.* at 589, 591–92.

172. *Id.* at 588 (quoting *Gonzales v. Carhart*, 550 U.S. 124, 148 (2007)) (internal quotation marks omitted).

to prove that (1) an embryo existed, and (2) the act against the parent “could or did end the embryo’s existence.”¹⁷³

In response to the defendant’s Equal Protection argument, the court first acknowledged that the statute draws gender-based distinctions by exempting mothers from prosecution for harming their unborn child, while denying this exemption to fathers.¹⁷⁴ Nevertheless, the court rejected the argument by distinguishing between a defendant who assaults a pregnant person and causes the death of the embryo or fetus without consent, and an individual who consents to the termination of their pregnancy.¹⁷⁵ The court stated that the basis of this distinction is the constitutionally protected right to privacy in the decision to obtain an abortion.¹⁷⁶

The court noted that the defendant lacked standing to raise Eighth Amendment issues.¹⁷⁷ With regard to the defendant’s Establishment Clause argument, the court held that the statute did not violate the Establishment Clause because the statute did not “advance[] traditional Christian views regarding life” by implicitly establishing that life begins at conception.¹⁷⁸ The court particularly relied upon the Supreme Court’s holding in *Harris v. McRae*¹⁷⁹ that by itself, the existence of parallels between religious values and a statute is insufficient to render a statute unconstitutional under the Establishment Clause.¹⁸⁰

Unsuccessful challenges to state feticide statutes have advanced the arguments from *Boie*.¹⁸¹ New challenges with novel arguments are met with new justifications for the statute’s validity.¹⁸² For example, the defendant in *State v. Merrill*¹⁸³ argued that a Minnesota feticide statute violated his equal protection rights by equating a non-viable fetus with a person.¹⁸⁴ The defendant argued that the statute’s failure to incorporate a viability requirement violated the *Roe* Court’s determination that a non-viable fetus is not a person.¹⁸⁵ In rejecting the defendant’s argument, the court explained that a statute must produce dissimilar treatment of similarly situated individuals in order to violate the Equal Protection Clause.¹⁸⁶

173. *Id.*

174. *Id.* at 590.

175. *Id.* at 591 (citing *People v. Ford*, 581 N.E.2d 1189, 1202 (Ill. App. Ct. 1991); *State v. Merrill*, 450 N.W.2d 318, 321–22 (Minn. 1990)).

176. *Boie*, 70 M.J. at 591 (“*Roe v. Wade* protects the woman’s right of choice; it does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus.”).

177. *Id.* at 592.

178. *See id.* at 592–93.

179. 448 U.S. 297, 319 (1980).

180. *Boie*, 70 M.J. at 592.

181. *See, e.g.*, *Webster v. Repro. Health Servs.*, 492 U.S. 490, 522 (1989); *Smith v. Newsome*, 815 F.2d 1386, 1388 (11th Cir. 1987); *People v. Ford*, 581 N.E.2d 1189, 1202 (Ill. App. Ct. 1991); *State v. Black*, 526 N.W.2d 132, 134 (Wis. 1994); *Merrill*, 450 N.W.2d at 322–24.

182. *See generally Merrill*, 450 N.W.2d at 321–23.

183. *Id.* at 318.

184. *Id.* at 321.

185. *Id.*

186. *Id.*

The *Merrill* court reasoned that such dissimilar treatment was absent from this case because the defendant, as a third-party assailant who destroyed a fetus, was not similarly situated to a pregnant individual who elects to have their pregnancy terminated under their constitutionally protected right to privacy.¹⁸⁷ Additionally, in *People v. Ford*,¹⁸⁸ the court rejected another Equal Protection Clause challenge, explaining that only a rational basis was needed to uphold the fetal homicide statute because the statute did not affect a fundamental right or discriminate against a suspect class.¹⁸⁹ The court found that the goal of protecting the potential of human life was a valid legislative purpose to which the statute was rationally related.¹⁹⁰ While defendants continue to provide additional arguments, state feticide statutes have yet to be altered.

Another novel argument stems from the 2017 GOP tax overhaul plan.¹⁹¹ The plan included the proposition that an unborn child can qualify as a beneficiary to college tuition savings funds.¹⁹² The proposition defined an unborn child as a child in utero during any stage of development.¹⁹³ Many activists saw this language as an attempt to bestow rights on fetuses and curtail full reproductive rights of those who can get pregnant.¹⁹⁴ Pro-life supporters argued that the bill simply allowed families to start accruing benefits earlier in a child's life.¹⁹⁵ However, under the previous tax plan, one could open the account at any time and designate beneficiaries later.¹⁹⁶ Ultimately, the rationale behind the bill was irrelevant, as the Senate repealed the language prior to passing the final draft.¹⁹⁷ The plan exemplifies one of the many novel ways that feticide laws could be implemented in the American system.

While cases upholding feticide statutes emphasize that the statutes do not affect individuals' right to choose to terminate their pregnancies,¹⁹⁸ cases from the past eight years have demonstrated the contrary. In 2015, after Purvi Patel suffered a miscarriage and disposed of her stillborn baby, she was convicted of feticide and neglect and sentenced to a prison term of twenty years.¹⁹⁹ During the trial, the prosecution presented an expert witness who testified that the fetus had

187. *See id.* at 321–22.

188. 581 N.E.2d 1189 (Ill. App. Ct. 1991).

189. *Id.* at 1200.

190. *Id.*

191. *See* Alex Kasprak, *Does the GOP Tax Bill Introduce Anti-Abortion "Fetal Personhood" Legislation?*, SNOPEs (Nov. 16, 2017), <https://perma.cc/4G66-CLDE>.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *See id.*

198. *See, e.g., Boie*, 70 M.J. at 591 (contrasting a right to abortion and a feticide statute); *Merrill*, 450 N.W.2d at 321–22 (establishing that feticide statute does not affect pregnant parent's right to choose).

199. Emily Bazelon, *Purvi Patel Could Be Just The Beginning*, N.Y. TIMES (Apr. 1, 2015), <https://perma.cc/BR2S-U5LP>.

probably reached viability, a conclusion that relied on a method of testing viability that some argue was “disproven over 100 years ago.”²⁰⁰ In contrast, the defense’s expert witness used a method of testing viability that did not receive complaints and concluded that the fetus was likely not viable and between twenty-three and twenty-four weeks old.²⁰¹ In 2016, the Indiana Court of Appeals overturned Patel’s feticide conviction, and she was released from prison.²⁰²

Other cases also suggest that feticide laws may be used to restrict individuals’ access to abortion.²⁰³ In the 2012 case, *Bei Bei Shuai v. State*, Shuai was charged with murder under Indiana’s feticide statute after a suicide attempt resulted in the termination of her pregnancy.²⁰⁴ The Court of Appeals of Indiana rejected Shuai’s argument that the feticide statute cannot be applied against a pregnant person because the statute did not contain such a limitation, and the common law immunities for pregnant people harming their own fetuses did not apply due to the General Assembly’s decision not to include these exceptions.²⁰⁵ While the charges were ultimately dropped after Shuai agreed to plead guilty to criminal recklessness,²⁰⁶ the Indiana Court of Appeals’ decision suggests that feticide laws can be used to impose further restrictions on abortion.²⁰⁷

In Alabama, in 2019, Marshae Jones was indicted on manslaughter charges after she, then five months pregnant, was shot in the stomach, causing the death of her fetus.²⁰⁸ Jones was fighting with Ebony Jemison, and Jemison fired a warning shot that accidentally hit Jones in the stomach.²⁰⁹ Ultimately, the district attorney dismissed the case against Jones.²¹⁰ Jemison was also charged with manslaughter, but a grand jury dismissed the charges.²¹¹ Though there were no convictions, the case marked the first time in Alabama’s history that there was an attempt to

200. *Id.* (quoting Gregory J. Davis).

201. *See id.*

202. *Purvi Patel is released after feticide conviction overturned*, INDYSTAR (Sept. 1, 2016), <https://perma.cc/F6XV-AAAU>.

203. *See Sandstad, supra* note 165 (explaining that the UVVA could be used to further restrict individuals’ access to abortion).

204. *Shuai v. State*, 966 N.E.2d 619, 622–23 (Ind. Ct. App. 2012).

205. *See id.* at 628–29, 631.

206. Diana Penner, *Woman Freed After Plea Agreement in Baby’s Death*, USA TODAY (Aug. 2, 2013, 9:32 PM), <https://perma.cc/GQ9H-X4Z6>.

207. *See Shuai*, 966 N.E.2d at 622, 631–32 (stating that one issue is “[w]hether the trial court erred when it denied Shuai’s motion to dismiss.”).

208. Vanessa Romo, *Woman Indicted For Manslaughter After Death Of Her Fetus, May Avoid Prosecution*, NPR (June 28, 2019, 4:49 PM), <https://perma.cc/B9KL-Z7A3>.

209. *Id.*

210. Darran Simon & Susan Scutti, *DA Drops All Charges Against a Pregnant Woman Indicted in Her Baby’s Death After Shooting in Alabama*, CNN (July 3, 2019, 4:16 PM), <https://perma.cc/26ZE-GCPN>.

211. Carol Robinson, *Alabama woman loses unborn child after being shot, gets arrested; shooter goes free*, ADVANCE LOCAL (June 27, 2019, 10:56 PM), <https://perma.cc/P6YP-32ZZ>.

prosecute a pregnant person for manslaughter relating to the death of their unborn child.²¹²

B. FETAL PERSONHOOD, TORT LAW, AND CIVIL CAUSES OF ACTION

Some states recognize fetal personhood by allowing for compensation for wrongful death claims based upon the destruction of an unborn fetus.²¹³ However, states differ as to whether a wrongful death claim based upon the destruction of a fetus requires that the fetus has reached viability.²¹⁴

In *Wiersma v. Maple Leaf Farms*, the Supreme Court of South Dakota held that a wrongful death claim based upon the unconsented termination of a pregnancy did not require that the fetus reach viability at the time of the termination.²¹⁵ The court said that a viability requirement would create an arbitrary standard for wrongful death claims, because the viability requirement was solely established to protect an individual's right to terminate their pregnancy.²¹⁶ The court explained that when the termination of a pregnancy resulted from a third party's unconsented tortious act, such a requirement was not triggered.²¹⁷

In contrast, in *Kandel v. White*, the Court of Appeals of Maryland reaffirmed the viability requirement's application to wrongful death claims.²¹⁸ The *Kandel* court explained that allowing for wrongful death suits based upon the destruction of a non-viable fetus would create a logical contradiction between the pregnant person's right to voluntarily terminate their pregnancy and a third party's liability for an unintentional act.²¹⁹ The court also noted that the third party might not even know of the person's pregnancy.²²⁰

On May 19, 2021, Texas governor Greg Abbott signed the Texas Heartbeat Act (S.B. 8) into law, permitting the state's abortion ban to be enforced through private civil action.²²¹ Such actions could be taken against abortion providers,

212. See Susan Scutti & Hollie Silverman, *Motion filed to dismiss charges against pregnant woman, a shooting victim indicted for death of her unborn child*, CNN (July 1, 2019, 2:54 PM), <https://perma.cc/9Y59-V5T7>.

213. See, e.g., *Summerfield v. Maricopa Cnty.*, 698 P.2d 712, 721 (Ariz. 1985). *But see* *Crosby v. Glasscock Trucking Co.*, 532 S.E.2d 856, 857 (S.C. 2000) (“[N]onviable stillborn fetus may not maintain a wrongful death action.”).

214. Compare *Summerfield*, 698 P.2d at 724 (allowing for recovery on wrongful death claims based upon the death of a viable fetus), with *Wiersma v. Maple Leaf Farms*, 543 N.W.2d 787, 792 (S.D. 1996) (holding that wrongful death claims did not require viability of the fetus) and *Pino v. United States*, 183 P.3d 1001, 1006 (Okla. 2008) (rejecting argument that Oklahoma's wrongful death statute requires viability).

215. *Wiersma*, 543 N.W.2d at 792.

216. See *id.*

217. *Id.*

218. See *Kandel v. White*, 663 A.2d 1264, 1267–68 (Md. 1995) (citing *Grp. Health Ass'n v. Blumenthal*, 453 A.2d 1198 (Md. 1983)).

219. See *id.* at 1268.

220. *Id.* (citing *Toth v. Goree*, 237 N.W.2d 296, 237 (Mich. Ct. App. 1975)).

221. Mary Tuma, *Texas governor signs extreme six-week abortion ban into law*, THE GUARDIAN (May 19, 2021, 11:42 AM), <https://perma.cc/5GRB-BX48>; see TEX. HEALTH & SAFETY CODE ANN. § 171.208 (West, Westlaw through the 2021 Reg. & Called Sess. of the 87th Leg.).

those who “aid or abet the performance or inducement of an abortion,” and those who intend to provide, aid, or abet abortions.²²² Under the law, claimants who prevail are entitled to injunctive relief, damages “not less than \$10,000 for each abortion,” costs, and attorney’s fees.²²³ After the law took effect, this system of enforcement by private civil action and reward became known as the “bounty” system.²²⁴ As the Texas law withstood legal challenges,²²⁵ it emboldened and inspired states to introduce their own similar anti-abortion “bounty” laws, deemed “copycat legislation.”²²⁶ Such laws passed in both Idaho and Oklahoma.²²⁷ Other states’ attempts at “Texas-style” laws, however, were unsuccessful.²²⁸

C. FETAL PERSONHOOD UNDER STATE LAW: CONSTITUTIONAL AMENDMENTS AND LEGISLATION

Proposals for personhood amendments to state constitutions and personhood statutes have received increased attention since the overturning of *Roe*.²²⁹ Five states currently have personhood laws.²³⁰ Georgia’s personhood law took effect

222. TEX. HEALTH & SAFETY CODE ANN. § 171.208(a) (West, Westlaw through the 2021 Reg. & Called Sess. of the 87th Leg.).

223. *Id.*

224. See Andrew Chung & Gabriella Borter, *Texas’s near-total abortion ban takes effect after Supreme Court inaction*, REUTERS (Sept. 1, 2021, 5:32 PM), <https://perma.cc/3JSJ-S37R> (quoting Amy Hagstrom Miller).

225. See, e.g., *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 535 (2021) (“In some sense [“statutes allowing for private rights of action, tort law, federal antitrust law, and even the Civil Rights Act of 1964”] ‘delegate’ the enforcement of public policy to private parties and reward those who bring suits with ‘bount[ies]’ like exemplary or statutory damages and attorney’s fees.”); *United States v. Texas*, 142 S. Ct. 522 (2021) (dismissing writ of certiorari for S.B. 8 lawsuit brought by the Department of Justice against the State of Texas); H.R. 6300, 117th Cong. (2021) (attempting to impose a 100% tax on taxpayers receiving bounty payments from laws like S.B. 8 but failing to progress in Congress).

226. See *Twelve States and Counting Poised to Copy Texas’ Abortion Ban*, NARAL PRO-CHOICE AM. (Oct. 20, 2021, 3:40 PM), <https://perma.cc/NPD2-6MAH>.

227. An act of Apr. 22, 2022, Ch. 152, 2022 Idaho Sess. Laws 1; An act of May 03, 2022, Ch. 190, 2022 Okla. Sess. Law Serv. 1 (S.B. 1503) (West).

228. Elizabeth Nash, Lauren Cross, & Joerg Dreweke, *2022 State Legislative Sessions: Abortion Bans and Restrictions on Medication Abortion Dominate*, GUTTMACHER INST. (Sept. 12, 2022, 10:19 AM), <https://perma.cc/K4NL-FTF9> (recording “‘Texas-style’ bans [relying] on a bounty-hunter enforcement mechanism” were introduced in thirteen states but only passed in Oklahoma and Idaho); see, e.g., H.B. 167, Reg. Sess. (Fla. 2022); S.B. 778, Reg. Sess. (Mo. 2022).

229. See Becky Sullivan, *With Roe overturned, state constitutions are now at the center of the abortion fight*, NPR (June 29, 2022, 5:00 AM), <https://perma.cc/WXE8-GYQX>; Madeleine Carlisle, *Fetal Personhood Laws Are a New Frontier in the Battle Over Reproductive Rights*, TIME (June 28, 2022, 4:40 PM), <https://perma.cc/3QD8-9X4Y>; cf. David Schultz, *Fetal Personhood Promises to Be Next Major Fight in Abortion War*, BLOOMBERG L. (Jan. 9, 2023, 4:00 AM), <https://perma.cc/53B3-9APG>.

230. See Jeff Amy, *EXPLAINER: What’s the role of personhood in abortion debate?*, AP NEWS (July 30, 2022, 5:43 PM), <https://perma.cc/U3CE-BXHZ> (“Alabama, Arizona, Georgia, Kansas, and Missouri all have personhood laws. Georgia’s law is maybe the most far-reaching, granting specific rights including tax breaks and child support to unborn children.”).

due to the Supreme Court's holding in *Dobbs* and it remains in effect while being challenged in state court.²³¹

During the *Roe* era, unsuccessful attempts to establish personhood were made across the country. A proposed personhood amendment in Mississippi garnered national attention in 2011 because the state was considered more receptive to anti-abortion measures and both the Democratic and Republican candidates for governor stated that they supported the bill.²³² However, most Mississippi voters voted against the amendment.²³³ Despite the amendment's defeat, political commentators accurately predicted that personhood amendments and bills would be "the new parameters of the abortion debate."²³⁴

Some of the states that were once unsuccessful in passing personhood laws are trying again since *Roe* was overturned. The statutes, if successful, would define legal personhood as the moment of conception, and thus, like the UVVA, discussed in Part IV-A, would create a constitutional tug of war between the protections of the fetus's right to life and the person's right to an abortion.

A decade after a Virginia state personhood bill was voted down by the State Senate,²³⁵ in January 2023, a legislator in the Virginia House of Delegates pre-filed a bill that says "a pregnant woman shall be considered two people for the purposes of determining occupancy in HOV and HOT lanes."²³⁶ A similar bill was brought forth in Utah in January 2023; however it was voted down by the Senate Transportation, Public Utilities, Energy and Technology Committee.²³⁷ In March 2013, North Dakota attempted to become the first state to pass by referendum an amendment to the state constitution that would attribute personhood to unborn fetuses; however, its citizens voted against the amendment's adoption in 2014.²³⁸ After *Dobbs*, North Dakota's trigger law was put on hold by a state judge,²³⁹ but in January 2023, the State Senate passed a new abortion bill

231. See Rachel Garbus, *Georgia's 'fetal personhood' statute is uncharted territory*, ATLANTA (Aug. 23, 2022), <https://perma.cc/LM89-LXZB>.

232. See Erik Eckholm, *Push for 'Personhood' Amendment Represents New Tack in Abortion Fight*, N.Y. TIMES (Oct. 25, 2011, 2:31 AM), <https://perma.cc/25RN-WXN4>.

233. See Frank James, *Mississippi Voters Reject Personhood Amendment By Wide Margin*, NPR (Nov. 8, 2011, 11:28 PM), <https://perma.cc/FNK3-DYCC>.

234. See Jacques Berlinerblau, *Why the Mississippi personhood amendment self-imploded*, WASH. POST (Nov. 9, 2011, 9:46 AM), <https://perma.cc/Y8BS-8KDZ>.

235. Anita Kumar, *'Personhood' bill killed for this year by Virginia Senate*, WASH. POST (Feb. 23, 2012), <https://perma.cc/9LAZ-MLAM>.

236. Adam Edelman, *Virginia bill would count a fetus as a car passenger in HOV lanes*, NBC NEWS (Jan. 12, 2023, 7:00 AM), <https://perma.cc/W8W5-T2G2>.

237. Emily Anderson Stern, *Pregnant women can't cruise alone in the fast lane, Utah lawmakers decide*, SALT LAKE TRIB. (Feb. 14, 2023, 4:54 PM), <https://perma.cc/3FHB-D8GY>.

238. See Esmé Deprez, *North Dakota Lawmakers Send 'Personhood' Amendment to Voters*, BLOOMBERG (Mar. 22, 2013, 5:28 PM), <https://perma.cc/4PPG-3KCF>; Tierney Sneed, *State Anti-Abortion Measures Meet Mixed Fates*, U.S. NEWS (Nov. 5, 2014), <https://web.archive.org/web/20230221022642/https://www.usnews.com/news/articles/2014/11/05/colorado-north-dakota-reject-personhood-while-tennessee-approves-anti-abortion-measure>.

239. Dave Kolpack, *Judge puts hold on North Dakota trigger law banning abortion*, AP NEWS (July 27, 2022), <https://perma.cc/8RKJ-J9PD>.

maintaining the same fetal personhood language.²⁴⁰ In 2013, Kansas enacted a bill that declared, “the life of each human being begins as fertilization.”²⁴¹ In 2019, the Kansas Supreme Court held that the state’s Constitution Bill of Rights protected abortion rights.²⁴² Anticipating this ruling, lawmakers unsuccessfully attempted to pass an amendment to the state constitution guaranteeing fetal personhood.²⁴³ In 2022, post-*Dobbs*, Kansas voters rejected a proposed amendment that would have changed the state constitution to say it does not create the right to abortion.²⁴⁴ Finally, in 2018, South Carolina attempted, and failed, to pass the Personhood Act which was designed to directly challenge *Roe* by stating that life begins at fertilization.²⁴⁵ In January 2023, the South Carolina Supreme Court ruled that the state constitution’s right to privacy includes a right to abortion,²⁴⁶ and on February 16, 2023, the South Carolina House passed the Human Life Protection Act, finding that “every human being begins at conception.”²⁴⁷

Of those states with histories of unsuccessful attempts at codifying or enforcing fetal personhood, some have taken their laws in the opposite direction, explicitly clarifying that fetal personhood does not exist in their state. Colorado has tried numerous times to enshrine fetal personhood in its state constitution, proposing the country’s first fetal personhood amendment in 2008.²⁴⁸ It unsuccessfully attempted to pass similar amendments again in 2010 and 2014, with the 2014 amendment, Definition of Person Initiative, distinguished by the fact it included “unborn human beings” in the definition of “‘person’ and ‘child’ in the

240. S.B. 2150, 68th Leg. Assemb., Reg. Sess. (N.D. 2023) (“‘Human being’ means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.”).

241. KAN. STAT. ANN. § 65-6732 (West, Westlaw through laws enacted during the 2022 Reg. Sess. of the Kan. Leg. effective on July 1, 2022).

242. See *Hodes & Nauser v. Schmidt*, 440 P.3d 461, 502 (Kan. 2019) (holding that “section 1 of the Kansas Constitution Bill of Rights protects all Kansans’ natural right of personal autonomy . . . This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy.”).

243. *HCR 5004: Proposition to amend section 1 of the Kansas bill of rights regarding equal rights for all human life*, KAN. 2019-2020 LEGIS. SESSIONS, <https://perma.cc/M4N4-T4TT> (last visited Feb. 24, 2023).

244. Poppy Noor, *Kansas votes to protect abortion rights in state constitution*, THE GUARDIAN (Aug. 2, 2022, 10:49 PM), <https://perma.cc/VB6A-88GJ>.

245. Grace Guarnieri, *South Carolina ‘Personhood Act’ that Could Ban Abortions Aims to Overturn Roe v. Wade*, NEWSWEEK (Feb. 21, 2018, 3:02 PM), <https://perma.cc/D2AA-7CQZ>; Tim Smith, *Senate defeats proposal to banned almost all abortions in South Carolina*, GREENVILLE NEWS (May 2, 2018, 11:51 AM), <https://perma.cc/QQ4J-DXJN>.

246. Kate Zernike, *South Carolina Constitution Includes Abortion Right, State Supreme Court Rules*, N.Y. TIMES (Jan. 5, 2023, 9:00 PM), <https://perma.cc/ZUE3-AMYC>.

247. H. 3774, 125th Sess. (S.C. 2023).

248. See Bente Birkeland, *‘Personhood’ Amendment On Colorado Ballot*, NPR (Oct. 31, 2008, 12:10 AM), <https://perma.cc/XFX3-B53S>.

Colorado criminal code and the Colorado wrongful death act.”²⁴⁹ Finally, on April 4, 2022, the Colorado governor signed the Reproductive Health Equity Act into law, codifying that “a fertilized egg, embryo, or fetus does not have independent or derivative rights under the laws of the state.”²⁵⁰

VI. CONCLUSION

Now that *Dobbs* has overruled *Roe* and *Casey*, the status of abortion rights varies widely from state to state, and the future of abortion access is unclear.²⁵¹ President Biden has promised to take steps to protect abortion on the federal level.²⁵² As of August 2022, Biden has signed an executive order that helps abortion-seekers travel out of state, ensures health care providers comply with federal law to prevent delays in receiving care, and advances research and data collection.²⁵³ The executive order instructs hospitals and doctors nationwide to provide emergency abortion care.²⁵⁴

249. See *Colorado Amendment 67, Definition of Person Initiative*, BALLOTPEDIA (Nov. 4, 2014), <https://perma.cc/P79N-QU9V>; Megan Verlee, *Colorado's 'personhood' Amendment 67 more ambiguous than partisans say*, PBS NEWS HOUR (Oct. 15, 2014, 6:37 PM), <https://perma.cc/93BX-9ELE>; Reid Wilson, *In Colorado, 'Personhood' backers try a new tack*, WASH. POST (Aug. 26, 2014, 6:00 AM), <https://perma.cc/6JAN-QCRN>.

250. H.B. 22-1279, 74th Gen. Assemb., Reg. Sess., 2022 Colo. Sess. Laws 329, 331.

251. Exec. Order No. 14079, 87 Fed. Red. 49505 (Aug. 3, 2022).

252. *Fact Sheet: President Biden Issues Executive Order at the First Meeting of the Task Force on Reproductive Healthcare Access*, WHITE HOUSE (Aug. 3, 2022), <https://perma.cc/HF3R-VMFZ>.

253. See Exec. Order No. 14079, *supra* note 250.

254. *Id.*

APPENDIX²⁵⁵

After the Supreme Court threatened to overturn *Roe v. Wade*, many states enacted trigger laws to either ban or restrict access to abortion.²⁵⁶ Thirteen states enacted trigger laws which outlawed abortion in most cases.²⁵⁷ Many of the states which have passed laws outlawing or restricting abortions are Republican-led.²⁵⁸ In contrast, many Democrat-led states have acted to protect abortion rights by passing protective laws or amending their state constitutions.²⁵⁹

As of August 2022, twenty-six states had trigger laws to restrict or ban abortion with *Roe* overturned.²⁶⁰ Some laws took effect immediately, while others took effect on August 25, 2022.²⁶¹

The below Appendix is a full chart of states and their current abortion laws.

State	Party Control: Governor/ Senate/ House	Status of Abortion	Legal Until:	More Details	Law Cited
Alabama	Rep./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest.	ALA. CODE § 13A-13-7 (LexisNexis, Lexis Advance through Acts 2022, No. 22-442 of the 2022 Sess.).
Alaska	Rep./Rep./ Split	Legal	N/A	The state supreme court recognized a right to “reproductive choice” under its Constitution.	ALASKA STAT. § 18.16.010 (LexisNexis, Lexis Advance through all 2022 legislation & Exec. Ords.).

255. As the Journal was creating this chart, the New York Times published a similar table; up-to-date information can be found there. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59. All information regarding party control was sourced from Ballotpedia, and up-to-date information can be located there. *Gubernatorial and legislative party control of state government*, BALLOTPEDIA, <https://perma.cc/4T8M-4DS4> (last visited Feb. 21, 2023).

256. See Sneed, *supra* note 26.

257. *Id.*

258. *Id.*

259. See Dylan Lessen, Laura Ziegler, & Blaise Mesa, *With Roe overturned, state constitutions are now at the center of the abortion fight*, NPR (June 25, 2022, 5:00 AM), <https://perma.cc/BC2J-UCE5>.

260. See *id.*

261. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 59.

Arizona	Rep./Rep./ Rep.	Gestational limit	15 weeks	Abortion is banned after 15 weeks of pregnancy. A separate ban on all abortions with no exceptions for rape or incest was blocked by an appeals court.	ARIZ. REV. STAT. § 36-2322 (LexisNexis, Lexis Advance through all 2022 legislation, including the 55th Legislature's 2nd Reg. Sess., & the ballot measures approved at the Nov. 2022 Elec.).
Arkansas	Rep./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest.	ARK. CODE ANN. § 5-61-102 (LexisNexis, Lexis Advance through Feb. 21, 2023).
California	Dem./Dem./ Dem.	Legal	Viability	State law protects abortion, and the governor signed a bill to shield patients and providers from laws in other states. In November 2022, voters enshrined abortion protections in the state constitution. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁶²	CAL. HEALTH & SAFETY CODE § 123466 (Deering, Lexis Advance through the 2022 Reg. Sess.).
Colorado	Dem./Dem./ Dem.	Legal but restricted	N/A	State law protects abortion, but a 1984 law prohibits using state funds to cover the cost of most abortions. The governor signed an executive order to shield those seeking or providing abortions in Colorado from laws in other states. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁶³	COLO. REV. STAT. § 25-6-403 (LexisNexis, Lexis Advance through all legislation from the 2022 Reg. Sess. & Nov. 2022 Gen. Elec.).

262. Rachel Roubein & McKenzie Beard, *Twenty governors are forming a new coalition to support abortion rights*, WASH. POST (Feb. 21, 2023, 7:31 AM), <https://perma.cc/L8C7-JE4F>.

263. *Id.*

Connecticut	Dem./Dem./ Dem.	Legal	Viability	State law protects abortion. Abortion providers and patients are shielded from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁶⁴	CONN. GEN. STAT. § 19a-602 (LexisNexis, Lexis Advance through all Acts from the 2022 Reg. Sess. & 2022 Nov. Spec. Sess.).
Delaware	Dem./Dem./ Dem.	Legal but restricted	Viability	State law protects abortion, but state funds cannot be used to cover the cost of the procedure. Abortion providers and patients are shielded from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁶⁵	DEL. CODE ANN. tit. 24 § 1790 (LexisNexis, Lexis Advance through 84 Del. Laws, c. 5).
Florida	Rep./Rep./ Rep.	Gestational limit	15 weeks	Abortion is banned after 15 weeks of pregnancy. Lawsuits have been filed to try to block the ban.	FLA. STAT. ANN. § 390.0111 (LexisNexis, Lexis Advance through the 2022 Reg. & Extra. Sess.).
Georgia	Rep./Rep./ Rep.	Gestational limit	6 weeks	Abortion is banned after 6 weeks of pregnancy. A lower court judge ruled the ban unconstitutional in November 2022, but the State Supreme Court reinstated the ban while an appeal to that ruling proceeds.	GA. CODE ANN. § 16-12-141 (LexisNexis, Lexis Advance through the 2022 Reg. Sess. of the Gen. Assemb.).

264. *Id.*

265. *Id.*

Hawaii	Dem./Dem./ Dem.	Legal	Viability	State law protects abortion and a new law has expanded access to providers. Abortion providers and patients are shielded from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁶⁶	HAW. REV. STAT. ANN. § 453-16 (LexisNexis, Lexis Advance through 2022 Leg. Sess.).
Idaho	Rep./Rep./ Rep.	Banned	N/A	Nearly all abortions are banned and private citizens can sue abortion providers. In January, the Idaho Supreme Court ruled there is no constitutional right to abortion. A federal judge ruled in August that doctors cannot be punished for performing an abortion to protect a patient's health. ²⁶⁷	IDAHO CODE §§ 18-605, 18-608 (LexisNexis, Lexis Advance through the 2022 Reg. Sess.).
Illinois	Dem./Dem./ Dem.	Legal	Viability	The state supreme court has recognized abortion protections under its constitution, and state law protects the procedure. Abortion providers and patients are shielded from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁶⁸	775 ILL. COMP. STAT. ANN. 55/1-5 (LexisNexis, Lexis Advance through P.A. 102-1119, of the 2022 Reg. Sess. of the 102nd Leg.).

266. *Id.*

267. *Planned Parenthood v. Idaho*, 522 P.3d 1132 (Idaho 2023).

268. Roubein & Beard, *supra* note 262.

Indiana	Rep./Rep./ Rep.	Banned blocked	20 weeks	Two judges have blocked the state's ban on nearly all abortions while lawsuits against it have proceeded. The Indiana Supreme Court heard oral arguments in one of the cases in January and has not yet ruled.	IND. CODE ANN. § 16-34-2-1 (Burns, Lexis Advance through the 122nd Ind. Gen. Assemb., 2d Reg. Sess., 2d Reg. Tech. Sess., & 2022 Spec. Sess.; current through P.L.180-2022).
Iowa	Rep./Rep./ Rep.	Legal for now	22 weeks	The state previously enacted a ban on abortion after 6 weeks, which was permanently blocked by a judge, but the governor is seeking its enforcement. In June, the state supreme court overruled a 2018 decision that said the right to an abortion was protected under the state constitution. ²⁶⁹	IOWA CODE §§ 146A.1, 146C.2 (LexisNexis, Lexis Advance through legislation from the 2022 Reg. Sess. of the 89th Gen. Assemb. & HF 68, HF 161, SF 153, SF 181 & SF 192 of the 90th Gen. Assemb.).
Kansas	Dem./Rep./ Rep.	Legal for now	22 weeks	The state ruled that a pregnant person's right to personal autonomy is protected in its constitution. In August, voters rejected a measure that would have amended the state constitution to say it contains no right to abortion. State funds cannot be used to cover the cost of most abortions, and the state has enacted multiple restrictions that limit access to the procedure. ²⁷⁰	KAN. STAT. ANN. § 65-6703 (LexisNexis, Lexis Advance through the 2022 Reg. Sess. of the Kan. Leg. Sess. as of June 29th, 2022).

269. *Planned Parenthood of the Heartland v. Reynolds*, 975 N.W.2d 710 (Iowa 2022).

270. *Hodes & Nauser v. Schmidt*, 309 Kan. 610 (Kan. 2019).

Kentucky	Dem./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest. In November 2022, voters rejected a ballot measure that would have amended the state constitution to say it contains no right to an abortion.	KY. REV. STAT. ANN. § 311.723 (LexisNexis, Lexis Advance through legislation effective Jan. 6, 2023).
Louisiana	Dem./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest.	LA. STAT. ANN. § 40:1061.10 (LexisNexis, Lexis Advance through Act 2 of the 2023 1st Extra. Sess.).
Maine	Dem./Dem./ Dem.	Legal	Viability	State law protects abortion. The governor signed an executive order protecting abortion providers and patients from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁷¹	ME. REV. STAT. ANN. tit. 22, § 1598 (LexisNexis, Lexis Advance through Ch. 3 of the 2023 1st Reg. Sess. of the 131st Me. Leg.).
Maryland	Rep./Dem./ Dem.	Legal	Viability	State law protects abortion, and new laws have increased access to providers and insurance coverage. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁷²	MD. CODE ANN., HEALTH-GEN. § 20-209 (LexisNexis, Lexis Advance through the 2022 Reg. Sess. of the Gen. Assemb.).

271. Roubein & Beard, *supra* note 262.

272. *Id.*

Massachusetts	Rep./Dem./ Dem.	Legal	24 weeks	Massachusetts Supreme Judicial Court recognized the right to abortion under its constitution. Recently enacted laws protect abortion, and the governor signed an executive order protecting abortion providers and patients from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁷³	MASS. ANN. LAWS ch. 112, § 12L (LexisNexis, Lexis Advance through Ch. 448, all legislation of the 2022 Leg. Sess. of the 192nd Gen. Ct.).
Michigan	Dem./Rep./ Rep.	Legal for now	Viability	In November 2022, voters enshrined abortion protections in the state constitution. The governor signed an executive order protecting abortion providers and patients from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁷⁴	MICH. COMP. LAWS SERV. § 333.17015 (LexisNexis, Lexis Advance through Act 3 of the 2023 Reg. Leg. Sess.).
Minnesota	Dem./Rep./ Dem.	Legal	Viability	The State Supreme Court recognized the right to abortion under its constitution, and in 2023 the state enacted a law to enshrine the right to reproductive care. The governor signed an executive order protecting abortion providers and patients from out-of-state laws. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁷⁵	MINN. STAT. § 145.412 (LexisNexis, Lexis Advance through the end of the 2022 Reg. Sess.).

273. *Id.*

274. *Id.*

275. *Id.*

Mississippi	Rep./Rep./ Rep.	Banned	N/A	Abortion is banned with exceptions for rape, but not incest.	MISS. CODE ANN. § 97-3-3 (Lexis Advance through 2022 Reg. & 1st Extra. Sess. Leg.).
Missouri	Rep./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest.	MO. REV. STAT. § 188.030 (LexisNexis, Lexis Advance through 101st Gen. Assemb., 2022 1st Extra. Sess.).
Montana	Rep./Rep./ Rep.	Legal for now	Viability	The state bans abortions at 20 weeks LMP and mandates 24-hour waiting periods and counseling. However, these three laws are temporarily enjoined. A ban of D&X procedures remains. The state's high court ruled that its constitution protects the right to an abortion through rights to privacy and procreative autonomy. ²⁷⁶	MONT. CODE ANN. § 50-20-109 (LexisNexis, Lexis Advance through the 2021 Sess. of the Mont. Leg.); § 50-20-603; § 50-20-707; § 50-20-708; § 50-20-401.
Nebraska	Rep./Rep.	Legal for now	20 weeks postfertilization	A bill to enact a trigger ban failed in April 2022. However, both D&X and D&E procedures remain prohibited and a 24-hour waiting period and counseling are mandated. ²⁷⁷	NEB. REV. STAT. ANN. § 28-3,106 (LexisNexis, Lexis Advance through all Acts of the 2nd Reg. Sess. of the 107th Leg. (2022) & 2022 ballot propositions); §§ 28-101, 28-326 to -328, 38-2021.

276. *Planned Parenthood of Mont. v. State*, 515 P.3d 301 (Mont. 2022); *Armstrong v. State*, 989 P.2d 364, 384 (Mont. 1999).

277. Grant Schulte, *Abortion rights backers block 'trigger' law in Nebraska*, AP NEWS (Apr. 7, 2022, 5:45 PM), <https://perma.cc/KYD3-2SBZ>.

Nevada	Rep./Dem./ Dem.	Legal but restricted	24 weeks postfertilization	Voters ratified abortion rights laws in 1990 via referendum. Interference with entering or exiting clinics is prohibited. In June 2022, the former governor signed an executive order that prohibited state officials from cooperating with out-of-state punitive actions against providers of legal abortion services in Nevada and state licensing boards from disciplining members providing abortion services legal under Nevada law. ²⁷⁸ In February 2023, lawmakers in the state senate introduced a bill to codify this executive order to protect the rights regardless of changes made by the new Republican governor. ²⁷⁹	NEV. REV. STAT. ANN. § 442.250 (LexisNexis, Lexis Advance through all legislation of the 81st Reg. Sess. (2021) & the 33rd Spec. Sess. (2021)); § 449.531.
New Hampshire	Rep./Rep./ Rep.	Legal but restricted	24 weeks LMP	Abortion will most likely stay accessible, though it is not expressly protected by state law, D&X procedures are prohibited, and midwives may not provide abortions. Protestors are not allowed within a 25-foot radius of the entrance or exit of a clinic.	N.H. REV. STAT. ANN. § 329:44 (LexisNexis, Lexis Advance through Ch. 346 of the 2022 Reg. Sess.); § 329:34; N.H. CODE ADMIN. R. ANN. HE-W 538.05(g) (LexisNexis, Lexis Advance through Feb. 2, 2023); N.H. REV. STAT. ANN. § 132:38.

278. Tabitha Mueller, *Sisolak signs order protecting those seeking access to abortion*, NEV. INDEP. (June 28, 2022, 6:02 PM), <https://perma.cc/JBB8-RLHR>.

279. Camalot Todd, *Democrats line up behind bill to codify Sisolak executive order protecting abortion rights*, NEV. CURRENT (Feb. 10, 2023, 2:53 PM), <https://perma.cc/3WEN-EJS5>; S.B. 131, 82nd Sess. (Nev. 2023).

New Jersey	Dem./Dem./Dem.	Legal	N/A	State law permits abortion throughout pregnancy as a fundamental right and prohibits state cooperation with out-of-state punitive actions and licensing board disciplinary actions for providing legal abortions in New Jersey. Previously, the New Jersey Supreme Court held the state constitution protected abortion rights through an individual right to control one's own body and destiny. The high court has also held that limiting public funds to abortions necessary to save the mother's life and reporting requirements for minors' abortions are unconstitutional, though the laws haven't been officially repealed. ²⁸⁰ In 2023, the governor joined the Reproductive Freedom Alliance. ²⁸¹	Freedom of Reproductive Choice Act, N.J. STAT. §§ 10:7-1 to -2 (LexisNexis, Lexis Advance through N.J. 220th 2nd Ann. Sess., L. 2023, c. 9 & J.R. 1); N.J. STAT. §§ 2A:84A-22.19, 2A:160-14.1, 45:1-21 (LexisNexis, Lexis Advance through N.J. 220th 2nd Ann. Sess., L. 2023, c. 9 & J.R. 1).
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280. *Right to Choose v. Byrne*, 450 A.2d 925, 934 (N.J. 1982); *id.* at 941 (finding § 30:4D-6.1 unconstitutional); *Planned Parenthood of Cent. N.J. v. Farmer*, 762 A.2d 620, 638–39 (N.J. 2000) (finding §§ 9:17A-1.1 to -1.12 unconstitutional).

281. Roubein & Beard, *supra* note 262.

New Mexico	Dem./Dem./Dem.	Legal	N/A	<p>Abortion will most likely stay accessible, though it is not expressly protected by state law. In 2021, criminal penalties for certain abortions were repealed. D&X procedures remain prohibited. Guardian consent is not required for minors' abortions and certified nurse practitioners may provide surgical and medication abortions. The governor signed an executive order in June 2022 prohibiting state officials from cooperating with out-of-state punitive actions against providers of legal abortion services in New Mexico and directing agencies and licensing boards to protect members from out-of-state sanctions. In August 2022, the governor signed an executive order funding the development of a new abortion clinic near the border of Texas. In 2023, the governor joined the Reproductive Freedom Alliance.²⁸²</p>	<p>S.B. 10, 55th Leg., Reg. Sess. (N.M. 2021) (repealing N.M. STAT. ANN. § 30-5-1 to -3 (LexisNexis 2023)); N.M. STAT. ANN. § 30-5A-3 (LexisNexis, Lexis Advance through Ch. 1 of the 2023 Sess. of the 56th Leg.); N. M. Exec. Order N. 2022-107 (June 27, 2022); N. M. Exec. Order N. 2022-123 (Aug. 31, 2022).</p>
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282. *Id.*

New York	Dem./Dem./ Dem.	Legal	Viability with exceptions for the pregnant person's life, physical health, and mental health	State law protects abortion as a fundamental right. Interference with clinics is prohibited and providers, patients, employees, volunteers, and immediate family members of those working in reproductive care may maintain address confidentiality. Abortion care is publicly funded and also must be covered by private insurance. State law prohibits state officials from cooperating with out-of-state punitive actions against providers of legal abortion services in New York and licensing board disciplinary actions for providing abortions legal in New York. It allows for those sued out-of-state for providing legal abortions in New York to counter sue for unlawful interference with a protected right. In 2022, the governor created the Abortion Provider Support Fund and the New York City Council allocated the largest amount of municipal funds to abortion out of all U.S. cities. ²⁸³ In 2023, the governor joined the Reproductive Freedom Alliance. ²⁸⁴	N.Y. PUB. HEALTH LAW §§ 2599-aa to -bb (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. PENAL LAW § 240.70 (1)(a)–(b), (d) (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. EXEC. LAW § 108 (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. INS. LAW §§ 3216, 3217-c, 3221, 4303 (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. COMP. CODES R. & REGS. tit. 11, § 52.16(o) (Lexis Advance through Feb. 17, 2023); N.Y. CRIM. PROC. LAW § 570.17 (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. EXEC. LAW § 837-w; N.Y. C.P.L.R. § 3102, 3119 (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. PUB. HEALTH LAW § 230 (Consol., Lexis Advance through 2023 released Ch. 1); N.Y. CIV. RIGHTS LAW § 70-b (Consol., Lexis Advance through 2023 released Ch. 1).
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283. Press Release, New York State Governor, Governor Hochul Announces Nation-leading \$35 Million Investment to Support Abortion Providers in New York (May 10, 2022), <https://perma.cc/3E2J-7R5B>; Press Release, New York City Council, Speaker Adrienne Adams, First-Ever Women Majority New York City Council Announce Largest Commitment of Municipal Funds by Any City in U.S. to Support Increased Access to Abortion Care (Sept. 13, 2022), <https://perma.cc/56E6-U8D5>.

284. Roubein & Beard, *supra* note 262.

North Carolina	Dem./Rep./ Rep.	Legal for now	20 weeks LMP	<p>Abortion is not protected by state law. Counseling and a 72-hour waiting period are mandated. Medication abortions must be administered in-person. Access to clinics may not be obstructed. The governor is friendly to abortion and in 2022, issued an executive order prohibiting state officials from cooperating with out-of-state punitive actions against providers of legal abortion services in North Carolina. In 2023, the governor joined the Reproductive Freedom Alliance.²⁸⁵</p>	<p>N.C. GEN. STAT. § 14-45.1(a) (LexisNexis, Lexis Advance through Sess. Laws 2022-75 (end) of the 2022 Reg. Sess. of the Gen. Assemb.); § 90-21.82; § 90-21.82(1)(a); § 14-277.4; N.C. Exec. Order, No. 263 (July 6, 2022).</p>
North Dakota	Rep./Rep./ Rep.	Ban blocked	20 weeks postfertilization	<p>State law does not protect abortion and asserts the state's preference for childbirth. A North Dakota Supreme Court decision regarding the temporary injunction of the state's trigger ban, prohibiting all abortions without exception, is pending.²⁸⁶ D&X and D&E procedures are prohibited and a 24-hour waiting period and counseling are mandated. Married women must provide their husband's written consent.</p>	<p>N.D. CENT. CODE § 14-02.1-05.3, 14-02.3-01 (LexisNexis, Lexis Advance through all acts approved by the governor through the end of the 67th Legislative Assemb. Spec. 2021 Sess.); §§ 14-02.1-02(11)(a), 14-02.1-03, 14-02.1-04.2 (2), 14-02.6-02.</p>

285. *Id.*

286. *Wrigley v. Romanick*, No. 20220260 (N.D. argued Nov. 29, 2022).

Ohio	Rep./Rep./ Rep.	Legal for now	20 weeks postfertilization	A trigger ban prohibiting abortion at 6 weeks LMP is temporarily enjoined. ²⁸⁷ D&X procedures are prohibited and D&E and telemedicine procedures are enjoined. ²⁸⁸ 24-hour waiting periods and counseling are mandated. State exchange insurance plans are prohibited from covering abortions.	OHIO REV. CODE ANN. § 2919.15 (Page, Lexis Advance through File 177 (end) of the 134th (2021-2022) Gen. Assemb.); § 2317.56; §3901.87.
Oklahoma	Rep./Rep./ Rep.	Banned	N/A	Two criminal statutes, including one enacted before <i>Roe v. Wade</i> , ban all abortions except to save the pregnant person's life. Two civil statutes ban abortions after 6 weeks and from fertilization. There are mandatory 72-hour waiting periods and counseling. A bill to create exceptions for rape, incest, and "serious risk of substantial and irreversible physical impairment of a major bodily function" is being advanced in the state's senate.	OKLA. STAT. tit. 21, § 861 (LexisNexis, Lexis Advance through the 2022 2nd Reg. Sess. of the 58th Okla. Leg. & the 1st & 2nd Extra. Sess. of the 58th Okla. Leg.); tit. 63, § 1-745.31 (LexisNexis, Lexis Advance through the 2022 2nd Reg. Sess. of the 58th Okla. Leg. & the 1st & 2nd Extra. Sess. of the 58th Okla. Leg.); tit. 59, §§ 509 (20), 637(14); tit. 63, § 1-738.2(B); S.B. 834, 59th Leg., Reg. Sess. (Okla. 2023).

287. *Preterm-Cleveland v. Yost*, 2022-Ohio-4540 (Ohio Ct. App. 2022) (maintaining the temporary injunction of the Heartbeat Act, codified at OHIO REV. CODE ANN. § 2919.19).

288. *Planned Parenthood Sw. Ohio Region v. Yost*, 375 F. Supp. 3d 848 (S.D. Ohio 2019) (temporarily enjoining prosecution of D&E procedures specified by Ohio Rev. Code § 2919.15); *Planned Parenthood Sw. Ohio Region v. Ohio Dep't of Health*, No. A 2100870 (entering C.P. Hamilton plaintiffs' second motion for preliminary injunction on Jan. 31, 2022).

Oregon	Dem./Dem./ Dem.	Legal	N/A	State law protects abortion throughout pregnancy. Abortion care is publicly funded and also must be covered by private insurance. Clinic access may not be obstructed. In 2022, the legislature created the Reproductive Health Equity Fund, approving \$15 million to support those seeking the procedure in Oregon. ²⁸⁹ In 2023, the governor joined the Reproductive Freedom Alliance. ²⁹⁰	OR. REV. STAT. § 659.880 (LexisNexis, Lexis Advance through statutes enacted in the 2022 Reg. Sess. of the 81st Leg. Assemb. as of June 29th, 2022); OR. ADMIN. R. 410-130-0562 (Lexis Advance through changes published in the Jan. 26, 2023 Or. Bull.); OR. REV. STAT. § 743A.067 (2)(g); OR. REV. STAT. § 164.365(1)(a)(F).
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289. Press Release, Office of the House Speaker, Oregon Reproductive Health Equity Fund will counter attacks on abortion access (Mar. 15, 2022), <https://perma.cc/WS9H-EKN7>.

290. Roubein & Beard, *supra* note 262.

Pennsylvania	Dem./Rep./ Split	Legal for now	24 weeks LMP	<p>State law does not protect abortion and specifies that the common and statutory law should, in “every relevant civil or criminal proceeding,” be construed as “to extend to the unborn the equal protection of the laws,” encouraging childbirth. 24-hour waiting periods and counseling are mandated. In 2022, the former governor issued an executive order prohibiting state officials from cooperating with out-of-state punitive actions against providers of legal abortion services in Pennsylvania, directing agencies and licensing boards to protect members from out-of-state sanctions, and requiring agencies to educate the public on the state’s reproductive care services. In 2023, the current governor joined the Reproductive Freedom Alliance.²⁹¹</p>	<p>18 PA. CONS. STAT. § 3211(a) (LexisNexis, Lexis Advance through 2022 Reg. Sess. Act 166); § 3202(c); 28 PA. CODE § 29.37(b) (LexisNexis, Lexis Advance through the Feb. 2023 supplement changes effective through 52 PaB 7348, Nov. 26, 2022); 18 PA. CONS. STAT. §§ 3205 (a); P.A. Exec. Order No. 2022-01 (July 12, 2022).</p>
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291. *Id.*

Rhode Island	Dem./Dem./Dem.	Legal but restricted	Viability	State law protects abortion. State funds cannot be used to cover the cost of most abortions. Limitations on private insurance coverage were repealed in 2019. In 2022, the governor signed an executive order prohibiting state officials from cooperating with out-of-state punitive actions against providers of legal abortion services in Rhode Island and directing agencies and licensing boards to protect members from out-of-state sanctions. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁹²	23 R.I. GEN. LAWS § 23-4.13-2(d) (LexisNexis, Lexis Advance through Ch. 442 of the 2022 Sess.); 210 R.I. Code R. § 30-05-2.27(a)(2) (Lexis Advance through Feb. 21, 2023 (Register Issue No. 367, Feb. 2023)); R.I. Gen. Laws § 36-12-2.1(a); 2019 R.I. Pub. Laws 27; R.I. Exec. Order, No. 22-28 (July 5, 2022).
South Carolina	Rep./Rep./Rep.	Legal but restricted	20 weeks postfertilization	In January 2023, the South Carolina Supreme Court ruled the 6-week ban, enforced post- <i>Dobbs</i> , was unconstitutional because it violated a right to privacy. ²⁹³ Still, D&X procedures are prohibited, a 24-hour waiting period and counseling are mandated, and public funding and private insurance coverage are limited.	S.C. CODE ANN. § 44-41-450(A) (LexisNexis, Lexis Advance through 2022 Reg. Sess. Act No. 268); §§ 44-41-85, 44-41-330; §§ 1-1-1035, 38-71-238.

292. *Id.*

293. *Planned Parenthood S. Atl. v. South Carolina*, No. 28127, 2023 S.C. LEXIS 3 (S.C. Jan. 5, 2023) (finding The Fetal Heartbeat and Protection from Abortion Act, S.C. CODE ANN. § 44-41-680, unconstitutional).

South Dakota	Rep./Rep./Rep.	Banned	N/A	<p>Abortion is banned with no exceptions for rape or incest. The only exception is to save the life of the pregnant person. There are mandated 72-hour waiting periods and weekends and annual holidays do not count towards those hours. There is also mandated counseling. In January 2023, the governor and attorney general threatened to bring felony charges against pharmacies dispensing abortion pills.²⁹⁴ A bill to shield people who undergo unlawful abortions from criminal charges was passed by the South Dakota House of Representatives on February 21, 2023.²⁹⁵</p>	<p>S.D. CODIFIED LAWS § 22-17-5.1 (LexisNexis, Lexis Advance through the 2023 Gen. Sess. of the 98th S.D. Leg. Assemb.); §§ 34-23A-10.1, 34-23A-56.</p>
Tennessee	Rep./Rep./Rep.	Banned	N/A	<p>Abortion is banned with no exceptions for rape or incest. The only exception is to save the life of the pregnant person or “to prevent serious risk of substantial and irreversible impairment of a major bodily function.” A 48-hour waiting period and counseling are mandated, and public funding and private insurance coverage are prohibited. In 2014, the Tennessee constitution was amended to explicitly state it does not protect abortion rights.</p>	<p>TENN. CODE ANN. § 39-15-213 (West, Westlaw through the 2022 2nd Reg. Sess. of the 112th Tenn. Gen. Assemb.); §§ 39-15-202, 9-4-5116, 56-26-134; TENN. CONST. art. I, § 36.</p>

294. *South Dakota Gov. Noem threatens charges for abortion pills*, AP NEWS (Jan. 24, 2023, 6:23 PM), <https://perma.cc/M3KZ-LLQF>.

295. H.B. 1220, 98th Sess. (S.D. 2023).

Texas	Rep./Rep./ Rep.	Banned	N/A	<p>Abortion is banned with no exceptions for rape or incest. A 24-hour waiting period and counseling are mandated, and public funding and private insurance coverage are prohibited. Texas law includes fetal personhood. In July 2022, the Austin City Council passed the GRACE Act, preventing city funds from being used to investigate abortion care and asking police to make investigating abortion their lowest priority.²⁹⁶</p>	<p>TEX. HEALTH & SAFETY CODE § 170A.001-7 (LexisNexis, Lexis Advance through the 2021 Reg. Sess. of the 87th Leg., 2021 1st Called Sess., 2021 2nd Called Sess., 2021 3rd Called Sess., & the 2021 & 2022 ballot propositions); §§ 171.011, 171.012; TEX. ADMIN CODE § 354.1167 (West, Westlaw through 48 Tex. Reg. No. 254, dated Jan. 20, 2022, as effective on or before Jan. 27, 2023); TEX. INS. CODE §§ 1218.003, 1218.004 (West, Westlaw through the end of the 2021 Reg. & Called Sess. of the 87th Leg.); TEX. CIV. PRAC. & REM. CODE § 71.001 (4) (LexisNexis, Lexis Advance through the 2021 Reg. Sess. of the 87th Leg., 2021 1st Called Sess., 2021 2nd Called Sess., 2021 3rd Called Sess., & the 2021 & 2022 ballot propositions).</p>
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296. Austin, Tex., Ordinance 20220721-001 (July 21, 2022); Austin, Tex., Resol. 20220721-002 (July 21, 2022); Austin, Tex., Resol. 20220721-003 (July 21, 2022); Austin, Tex., Resol. 20220721-004 (July 21, 2022); GRACE Act FAQ, City of Austin (July 21, 2022), <https://perma.cc/9UQ8-RVPZ>.

Utah	Rep./Rep./ Rep.	Ban blocked	18 weeks LMP	A judge temporarily blocked the state's trigger ban on all abortions except in the case of rape, incest, or to save the life of the pregnant person. ²⁹⁷ A ban on abortion after 18 weeks of pregnancy is in effect. D&X and saline procedures are prohibited and 72-hour waiting periods and counseling are mandated. State law expresses that "unborn children" have an "inherent and inalienable right to life." ²⁹⁸ On February 17, 2023, the Utah House of Representatives passed a bill that would prohibit the state from licensing abortion clinics after May 2, 2023, and require all clinics in the state to stop operating by January 1, 2014. The bill advanced to the Senate on February 21, 2023 where it remains under active consideration. ²⁹⁹	UTAH CODE ANN. §§ 76-7-302.5, 76-7-302 (LexisNexis, Lexis Advance through 2022 3rd Spec. Sess. of the 64th Leg.); §§ 76-7-305, 76-7-305.5, 76-7-310.5, 76-7-326; § 76-7-301.1; H.B. 467, 2023 Gen. Sess. (Utah 2023).
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297. *Planned Parenthood Ass'n of Utah v. Utah*, No. 220903886 (3d Jud. Dist. Salt Lake Jul. 11, 2022) (granting preliminary injunction of UTAH CODE ANN. § 76-7a-201).

298. UTAH CODE ANN. §§ 76-7-305, 76-7-305.5, 76-7-310.5, 76-7-326, 76-7-301.1 (LexisNexis 2022).

299. H.B. 467, 2023 Gen. Sess. (Utah 2023).

Vermont	Rep./Dem./ Dem.	Legal	N/A	In November 2022, voters approved an amendment to the state constitution that protects the right to reproductive freedom. Abortion is also recognized as a fundamental right in statutory law. On February 10, 2023, the Vermont House of Representatives passed a bill seeking to protect abortion providers and patients from out-of-state legal activity. On February 15, 2023, it advanced to the Vermont Senate where it remains under active consideration. ³⁰⁰	VT. CONST. art. XXII.
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300. VT. STAT. ANN. tit. 18, § 9493 (2022); H. 89, 77th Sess. (Vt. 2023).

Virginia	Rep./Dem./ Rep.	Legal for now	Viability	<p>Abortion is not expressly protected by state law; however, in 2020, the state passed the Reproductive Health Protection Act, which removed mandates for 24-hour waiting periods and counseling.</p> <p>Abortions after viability are only permitted to save the life of the pregnant person or prevent substantial and irreparable impairments to their physical or mental health, risks which must be certified by three physicians. D&X procedures are prohibited and public funding is limited, but the prohibition on state exchange insurance coverage of abortion was removed in 2021. A bill prohibiting the issuance of search warrants for menstrual health data passed the Virginia senate on February 7, 2023; however, it was tabled by the House on February 22nd.³⁰¹</p>	<p>VA. CODE ANN. §§ 18.2-72–18.2-73 (LexisNexis, Lexis Advance through Ch. 22 of the 2022 Spec. Sess. I); § 18.2-76; § 18.2-74–18.2-74.1; §§ 18.2-71.1, 32.1-92.1–32.1-92.2, 38.2-3451.</p>
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301. S.B. 852, 2023 Reg. Sess. (Va. 2023).

Washing- on	Dem./Dem./ Dem.	Legal	Viability	State law protects abor- tion as a fundamental right. Interference with clinics is prohibited. Abortion is publicly funded and private insur- ance must cover abor- tions if they cover maternity care. In June 2022, the governor directed the Washington State Patrol not to coop- erate with out-of-state abortion-related investi- gations and report all requests for cooperation to the governor. ³⁰² In 2023, the governor joined the Reproductive Freedom Alliance. ³⁰³	WASH. REV. CODE ANN. §§ 9.02.100 (LexisNexis, Lexis Advance through 2022 Reg. Sess.).
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302. WASH. REV. CODE ANN. § 9A.50.020 (West, Westlaw through the 2022 Reg. Sess. of the Wash. Leg.); WASH. REV. CODE ANN. § 48.43.073 (West, Westlaw through the 2022 Reg. Sess. of the Wash. Leg.); WASH. ADMIN. CODE § 182-532-120(7)(b) (effective Oct. 01, 2019); Dir. of the Gov., No. 22-12 (June 30, 2022).

303. Roubein & Beard, *supra* note 262.

Washington, D.C.	Dem. ³⁰⁴ / Dem. ³⁰⁵	Legal but restricted	N/A	Local law protects abortion throughout pregnancy. On November 21, 2022, the mayor signed the Human Rights Sanctuary Amendment Act. The Act prevents city employees from cooperating with and participating in legal activity related to abortion care that is lawful in D.C. and allows those sued in any jurisdiction for providing legal abortions in D.C. to counter-sue for unlawful interference with a protected right. ³⁰⁶ However, for the Act to be effective as law, it needs congressional approval. Congress' ultimate oversight over the city's laws must be noted, because they previously have tried to restrict abortion in D.C. ³⁰⁷	D.C. CODE § 2-1401.06 (LexisNexis, Lexis Advance through Feb. 14, 2023).
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304. Governor.

305. City Council.

306. 69 D.C. Reg. 14641 (Dec. 2, 2022).

307. District of Columbia Pain-Capable Unborn Child Protection Act, H.R. 3803, 112th Cong. (2012).

West Virginia	Rep./Rep./Rep.	Banned	N/A	<p>Abortions are prohibited throughout all stages of pregnancy except in cases where a licensed medical professional determines the embryo or fetus is nonviable, the pregnancy is ectopic, or a medical emergency exists. Exceptions for rape and incest are limited to 8 weeks LMP for adults who reported the crime to law enforcement at least 48 hours before the abortion and 14 weeks LMP for minors. A pre-<i>Roe</i> criminal law that bans all abortions without exceptions was temporarily enjoined in 2022.³⁰⁸ In 2018, voters approved an amendment to the West Virginia Constitution that clarified the constitution does not provide a right to abortion. 24-hour waiting periods and counseling are mandated. On January 25, 2023, abortion pill manufacturer GenBioPro filed a lawsuit against West Virginia, alleging the state's abortion bans impermissibly restrict patients' access to mifepristone and violate the Supremacy and Commerce Clauses of the U.S. Constitution.³⁰⁹</p>	<p>W. VA. CODE ANN. §16-2R-3 (LexisNexis, Lexis Advance through the 2022 Reg. Sess. & all four Extra. Sess. of 2022); § 16-2R-3(a); §§ 16-2R-3(b)–(c); W. VA. CONST. art. VI, § 57; W. VA. CODE ANN. §§ 16-21-1 to -5.</p>
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308. *Women's Health Ctr. of W. Va. v. Miller*, No. 22-C-556 (W. Va. Cir. Ct. July 20, 2022) (granting plaintiffs' motion for preliminary injunction of W. VA. CODE § 61-2-8).

309. Complaint at 5–6, *GenBioPro v. Sorsaia*, No. 2:23-cv-00058 (S.D. W. Va. filed Jan. 25, 2023).

Wisconsin	Dem./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest, and performing them is a felony. There are mandatory 24-hour waiting periods, counseling, and ultrasounds, as well as limitations on public funding and private insurance coverage of abortions. In 2022, the Attorney General, Department of Safety and Professional Services, and the Medical Examining Boards initiated a lawsuit seeking a declaratory judgment that the pre- <i>Roe</i> ban is unenforceable. ³¹⁰ In 2023, the governor joined the Reproductive Freedom Alliance. ³¹¹	Wis. STAT. §§ 940.04 (LexisNexis, Lexis Advance through the 2021-2022 Leg. Sess.); §§ 20.927, 253.10, 632.8985.
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310. Complaint, *Kaul v. Kapenga*, No. 2022-CV-001594 (Wis. Cir. Ct. filed June 28, 2022).

311. Roubein & Beard, *supra* note 262.

Wyoming	Rep./Rep./ Rep.	Ban blocked	Viability	<p>State law prohibits abortion after viability “except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health.”</p> <p>In July 2022, a preliminary injunction was issued, temporarily blocking the state’s trigger ban, which prohibits all abortions except to save the life of the pregnant person, to prevent “substantial and irreversible physical impairment of a major bodily function,” and in the cases of incest and rape.³¹² On February 8, 2023, the Wyoming House of Representatives passed the Life is a Human Right Act, banning all abortions with the exception of “pre-viability separation procedure[s]” necessary to save the pregnant person’s life. It advanced to the Senate on February 9, 2023 where it remains under active consideration.³¹³</p>	WYO. STAT. ANN. § 35-6-102 (LexisNexis, Lexis Advance through 2022 Budget Sess. Subject to revisions by LSO).
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312. Johnson v. State, No. 18732 (Wyo. Dist. Ct. 2022) (granting motion for preliminary injunction of WYO. STAT. ANN. § 35-16-102(a) as amended by H.B. 92, 66th Sess. (Wyo. 2022)).

313. H.B. 152, 67th Sess. (Wyo. 2023).