

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 that was 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 side 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 access to abortion within the first trimester under *Roe*’s framework in the early 1990s, establishing an “undue burden” standard in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.⁴

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.

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).

As lower courts struggled to implement the vague *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 since *Dobbs*, bans based on fetal development, and medication abortion bans and restrictions. Part IV describes restrictions on the use of federal and state 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* and *Eisenstadt v. Baird*.⁸ 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.⁹ These interests influenced the development of the trimester framework, based on the fetal developmental stages, for determining whether state regulation is permissible.¹⁰ Under this framework, states gain more regulatory authority as a pregnancy progresses.¹¹

Because the Court's decision in *Dobbs* returns the power to regulate abortion to the states, previous federal cases regarding abortion are no longer good law.¹²

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

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

10. 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 an individual from obtaining an abortion. *Id.* Once the fetus reaches 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.

11. *See id.* at 164–65.

12. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022).

However, federal legislation, such as the Hyde Amendment and the Partial Birth Abortion Ban Act (PBABA), remain in effect.¹³

Before *Dobbs*, the greatest barrier to abortion access was the Hyde Amendment, which limits the use of Medicaid funds to reimburse the cost of abortion care.¹⁴ The Court upheld the constitutionality of the Hyde Amendment in *Harris v. McCrae*.¹⁵

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.¹⁶ The Supreme Court found the PBABA constitutional, with Justice Kennedy writing for the majority, in *Gonzales v. Carhart*.¹⁷ The Court relied on the government's ability to restrict abortions once the fetus reaches viability, as well as the government's interest in the life of the fetus.¹⁸ 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.¹⁹ 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 dilation and extraction (D&X) abortions.²⁰

As of 2023, abortion is no longer a constitutional right.²¹ Since 2022, it has been up to the states to decide whether to protect the right to abortion.²²

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.²³ The *Dobbs* Court upheld a Mississippi law banning abortion after fifteen weeks of pregnancy.²⁴ After the *Dobbs* opinion leaked, certain states announced plans to outlaw abortion by passing trigger laws that would come into effect once *Dobbs* was made official.²⁵ Other states, however, enacted laws protecting access

13. *See id.* at 2280–81.

14. 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).

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

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

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

18. *Id.* at 145–46 (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846 (1992)).

19. *Id.*

20. 18 U.S.C. § 1531(a).

21. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022).

22. *Id.* at 2243.

23. *Id.*

24. *Id.* at 2284.

25. 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>.

to abortion, and others were somewhere in between.²⁶ This section will first discuss the *Dobbs* decision. Next, it will examine abortion laws from various states, 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*.²⁷ In *Dobbs*, the Court considered the constitutionality of Mississippi's Gestational Age Act, which banned abortion except in a medical emergency or cases of severe fetal abnormalities after fifteen weeks.²⁸ 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*.²⁹ Writing for the majority, Justice Alito upheld the Mississippi law. He stated that the Constitution fails to provide a right to abortion and the authority to regulate abortion must be returned to the states.³⁰

The Court reasoned that the Constitution makes no reference to abortion and no such right is implicitly protected by any constitutional provision.³¹ The Court held 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."³² In concluding that abortion is not considered a right under this standard, the Court relied on state laws dating back to the nineteenth century that outlawed abortion.³³ 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.³⁴ Taking all of this together, the Court decided to overrule *Roe* and *Casey*.³⁵

Multiple concurring opinions were filed.³⁶ Justice Thomas wrote a concurring opinion in which he agreed that no constitutional right to abortion exists.³⁷ He emphasized that the Due Process Clause guarantees at most process and does not "forbi[d] the government to infringe certain 'fundamental' liberty interests at all,

26. *See id.*

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

28. *Id.*

29. *Id.* at 2244.

30. *Id.* at 2243.

31. *Id.* at 2242.

32. *Id.*

33. *Id.* at 2252–53.

34. *Id.* at 2243.

35. *Id.* at 2242.

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

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

no matter what process is provided.”³⁸ 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.”³⁹ He also advocated that other substantive due process rights should be reconsidered, opining that decisions like *Griswold v. Connecticut*⁴⁰ are “clearly erroneous” and should be overruled.⁴¹

Justice Kavanaugh also wrote a concurring opinion.⁴² In his concurrence, Justice Kavanaugh criticized the *Roe* Court for taking sides on the issue of abortion when the Court should have stayed neutral.⁴³ By overturning *Roe*, the Court returned to a position of neutrality and gave authority back to the people to address the issue of abortion.⁴⁴ Kavanaugh emphasized that because the Constitution neither outlaws nor legalizes abortion, the Court must remain neutral on the issue.⁴⁵ 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.”⁴⁶ Notably, Kavanaugh emphasized that overruling *Roe* does not threaten or cast doubt on *Griswold v. Connecticut* (constitutional right to privacy),⁴⁷ *Eisenstadt v. Baird* (constitutional right to privacy includes individuals and married couples),⁴⁸ *Loving v. Virginia* (anti-miscegenation statutes violate the Constitution),⁴⁹ or *Obergefell v. Hodges* (bans on same-sex marriage violate the Constitution).⁵⁰

Chief Justice Roberts also wrote a concurring opinion, concurring only with the judgment.⁵¹ 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*.⁵² In his view, the Court was only required to clarify whether abortion prohibitions before viability are always unconstitutional, and should have exercised judicial restraint by refusing to go further than necessary.⁵³ Roberts’ opinion was to “recognize that the viability

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

39. *Id.* at 2301.

40. 381 U.S. 479 (1965).

41. *Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring).

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

43. *Id.* at 2305 (Kavanaugh, J., concurring).

44. *Id.*

45. *Id.*

46. *Id.* at 2307 (Kavanaugh, J., concurring).

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

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

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

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

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

52. *Id.* at 2316–17 (Roberts, J., concurring).

53. *Id.* at 2310–11 (Roberts, J., concurring).

line must be discarded, as the majority rightly does, and leave for another day whether to reject any right to an abortion at all.”⁵⁴

Justices Breyers, Sotomayor, and Kagan filed a joint dissenting opinion.⁵⁵ The dissent emphasized that the *Dobbs* decision allows states to impose morals upon pregnant people, and to coerce pregnant people into giving birth.⁵⁶ 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 to receive abortion care.⁵⁷ 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.⁵⁸

B. LEGISLATIVE PROTECTIONS OF ABORTION

After the *Dobbs* decision, some states moved quickly to codify the right to abortion into their constitutions and laws.⁵⁹ Most of the states that passed laws protecting abortion are led by the Democratic Party, except Ohio and Alaska, which currently have Republican governors but enshrine the right to reproductive choice in their constitutions.⁶⁰

Many other Democrat-led states have enacted laws that shield those seeking abortions in their state from out-of-state laws.⁶¹ Illinois and Massachusetts protect abortion under their state constitutions.⁶² Other states have proposed laws to protect abortion, including New Jersey, whose governor proposed making the state a

54. *Id.* at 2314 (Roberts, J., concurring).

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

56. *Id.* at 2318 (Breyer, J., Sotomayor, J., and Kagan, J., dissenting).

57. *Id.*

58. *Id.* at 2319 (Breyer, J., Sotomayor, J., and Kagan, J., dissenting).

59. *Id.*; CAL. HEALTH & SAFETY CODE § 123452 (West, Westlaw through Ch. 1 of 2024 Reg. Sess.); COLO. REV. STAT. § 25-6-401 (West, Westlaw through legis. effective Feb. 27, 2024 of the 2d Reg. Sess., 74th Gen. Assemb. (2024)); CONN. GEN. STAT. ANN. § 19a-602 (West, Westlaw through the 2023 Reg. Sess. and the 2023 Sept. Spec. Sess.); D.C. CODE ANN. § 7-2086.01 (West, Westlaw through Jan. 5, 2024); DEL. CODE ANN. tit. 10, § 3928 (West, Westlaw through ch. 45 of the 152nd Gen. Assemb. (2023–2024)); N.J. STAT. ANN. § 10:7-1 (West, Westlaw through L.2023, c. 194 & J.R. No. 15); WASH. REV. CODE ANN. § 9.02.100 (West, Westlaw through the 2023 Reg. Sess. of the Wash. Leg.).

60. Allison McCann, Amy Schoenfeld Walker, Ava Sasaki, Taylor Johnston, Larry Buchanan, & Jon Huang, *Tracking Abortion Bans Across the Country*, N.Y. TIMES, <https://perma.cc/9NA3-W3J5>; ALASKA STAT. ANN. §§ 18.16.010 to 18.16.090 (West, Westlaw through ch. 26 of the 2023 First Reg. Sess. of the 33rd Leg.); OHIO CONST. art. I, § 22 (West, Westlaw through File 18 of the 135th Gen. Assemb. (2023–2024) and 2023 Statewide Issues 1 and 2 (Nov. Election)).

61. McCann, Schoenfeld Walker, Sasaki, Johnston, Buchanan, & Huang, *supra* note 60; CAL. HEALTH & SAFETY CODE § 123452 (West, Westlaw through Ch. 1 of 2024 Reg. Sess.); CONN. GEN. STAT. ANN. § 19a-602 (West, Westlaw through the 2023 Reg. Sess. and the 2023 Sept. Spec. Sess.).

62. McCann, Schoenfeld Walker, Sasaki, Johnston, Buchanan, & Huang, *supra* note 60; 775 ILL. COMP. STAT. ANN. 55/1-15 (West, Westlaw through P.A. 103-583 of the 2023 Reg. Sess.); MASS. GEN. LAWS ch. 112, § 12L (West, Westlaw through the 2023 1st 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 v. Schmidt*, 309 Kan. 610, 680 (Kan. 2019).

“sanctuary” for abortion access.⁶³ Some states have had voters decide whether to protect abortion under state law. In August 2022, voters in Kansas rejected a ballot measure that would have amended the state constitution to state that it contains no right to an abortion.⁶⁴ Other states had abortion on the ballot in November 2022.⁶⁵ The District of Columbia (D.C. or District) has local laws that protect abortion throughout pregnancy with no gestational limit.⁶⁶ D.C. also has plans to bolster protections.⁶⁷ However, because D.C. is not a state, Congress ultimately oversees the District’s laws, so it is unclear if the planned protections will pass.⁶⁸

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,⁶⁹ in part because of state prohibitions of the practice. Post-*Dobbs*, some states enacted bans that are based on fetal development.⁷⁰ Gestational limits on abortion present challenges because most individuals cannot undergo certain screening tests to determine if there are developmental issues with the fetus until fifteen to twenty weeks of pregnancy.⁷¹

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.⁷² 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.⁷³ 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 of a risk of infection.⁷⁴

63. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60; N.J. STAT. ANN. § 10:7-1 (West, Westlaw through L.2023, c. 194 and J.R. No. 15).

64. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60; *see also* Dylan Lessen, Laura Ziegler, & Blaise Mesa, *Voters in Kansas Decide to Keep Abortion Legal in the State, Rejecting an Amendment*, NPR (Aug. 3, 2022, 2:18AM), <https://perma.cc/B4JP-3FL9>.

65. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

66. *Id.*; D.C. CODE ANN. § 7-2086.01 (West, Westlaw through Jan. 5, 2024).

67. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

68. *Id.*

69. *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.*

70. *See* McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

71. *Diagnosis of Birth Defects*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://perma.cc/LTU5-MUKM>.

72. 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).

73. *Id.* at 721.

74. *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.⁷⁵ 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.⁷⁶ This rationale was based on *Roe* and *Casey*, which are now overturned.⁷⁷ With no current “undue burden” requirement, federal legislators may attempt to further restrict abortion and other legal procedures.⁷⁸

As of December 2023, multiple states have enacted laws to ban abortion on the basis of fetal development, also called a gestational limit.⁷⁹ These states are: Arizona (fifteen weeks),⁸⁰ Florida (fifteen weeks),⁸¹ Georgia (six weeks),⁸² Nebraska (twelve weeks),⁸³ North Carolina (twelve weeks),⁸⁴ South Carolina (six weeks),⁸⁵ and Utah (eighteen weeks).⁸⁶ Abortion advocates have sued to block bans in all of these states.⁸⁷ Gestational limit bans have also been blocked, at least temporarily, in three states (Iowa, Montana, and Wyoming).⁸⁸ Finally, multiple states that have bans based on fetal development are considering new laws to ban abortion entirely.⁸⁹

D. MEDICATION ABORTION BANS AND RESTRICTIONS

Medication, or non-surgical abortions, are frequently used during the early stages of pregnancy.⁹⁰ In the U.S., mifepristone (RU-486, also known as Mifeprex) is used in combination with misoprostol to terminate a pregnancy in

75. See *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

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

77. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2022).

78. See *id.*

79. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

80. ARIZ. REV. STAT. § 36-2322 (West, Westlaw through the 2d Reg. Sess. of the 56th Leg. (2024)).

81. FLA. STAT. ANN. § 390.0111 (West, Westlaw through the 2023 Spec. B & C Sess. & the 2023 1st Reg. Sess.).

82. GA. CODE ANN. § 16-12-141 (West, Westlaw through the 2023 Reg. Sess. of the Ga. Gen. Assemb.).

83. NEB. REV. STAT. § 71-6915 (West, Westlaw through legis. effective Feb. 14, 2024, of the 2d Reg. Sess. of the 108th Leg. (2024)).

84. N.C. GEN. STAT. ANN. § 90-21.81A(a) (West, Westlaw through the 2023 Reg. Sess. of the Gen. Assemb.).

85. S.C. CODE ANN. § 44-41-630(B) (West, Westlaw through 2024 Act No. 120, subject to final approval by the Legis. Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.).

86. UTAH CODE ANN. § 76-7-302.5 (West, Westlaw through the 2023 Gen. Sess.); see McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

87. McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

88. *Id.*

89. See *id.*

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

the first seventy days of gestation.⁹¹ 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.⁹² The administration of mifepristone and misoprostol combined is considered to be 95% to 98% effective in terminating an early pregnancy.⁹³

The FDA initially approved mifepristone in 2000.⁹⁴ 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.⁹⁵ An FPL is not a legal requirement.⁹⁶ 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).⁹⁷

In the U.S., some studies report that at least 96% of all medication abortions involve a regimen that varies from the FPL.⁹⁸ 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.⁹⁹ Such changes to the FPL make medication abortions less burdensome for abortion-seekers by decreasing the cost of and barriers to the procedure.¹⁰⁰

The FDA still imposes several burdens on people seeking medication abortions pursuant to the 2011 Elements to Assure Safe Use (ETASU).¹⁰¹ The ETASU mandates that mifepristone may only be prescribed by approved healthcare providers; dispensed in hospitals, clinics, or medical offices; and that patients must

91. *Mifeprex (mifepristone) Information*, U.S. FOOD & DRUG ADMIN., <https://perma.cc/GF4V-LV26>.

92. *Id.*

93. See Rebecca Allen & Barbara M. O'Brien, *Uses of Misoprostol in Obstetrics and Gynecology*, 2 REVS. IN OBSTETRICS & GYNECOLOGY 159, 161 (2009), <https://perma.cc/A8XR-759S>.

94. See *Highlights of Prescribing Information: Mifeprex*, U.S. FOOD & DRUG ADMIN., <https://perma.cc/CLU5-P6J2>.

95. See Allen & O'Brien, *supra* note 93.

96. 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.").

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

98. *Id.* at 4.

99. *Mifeprex (mifepristone) Information*, *supra* note 91; see also Sabrina Tavernise, *New FDA Guidelines Ease Access to Abortion Pill*, N.Y. TIMES (Mar. 30, 2016), <https://perma.cc/CXM3-WUQ5>.

100. 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>.

101. 21 U.S.C. § 355-1(f)(3) (2022).

sign Patient Agreement Forms affirming safe conditions will be met.¹⁰² In July 2020, a Maryland federal judge granted an injunction suspending the FDA's rule requiring that mifepristone be dispensed in person at "certain health care settings" by a healthcare provider who has pre-registered with the drug's manufacturer.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵ As such, the FDA can continue to enforce its requirement that people visit hospitals, clinics, or medical offices to obtain mifepristone.¹⁰⁶

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.¹⁰⁷ 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.¹⁰⁸

IV. PUBLIC FUNDING AND ABORTION

Measures enacted to prevent public funding for abortion procedures are a major roadblock in abortion access.¹⁰⁹ Passed in 1976, the Hyde Amendment bars the use of federal funds to pay for an abortion, except in narrow circumstances.¹¹⁰ 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.¹¹¹ The life endangerment exception only applies where the endangerment arises from a "physical disorder, physical injury, or physical

102. *Id.*

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

104. *See id.* at 216.

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

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

107. *See* *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2317 (2022) (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>.

108. *See* Marimow, McGinley, & Kitchener, *supra* note 107.

109. *See* *Hyde Amendment*, PLANNED PARENTHOOD ACTION FUND, <https://perma.cc/2HCD-7RYG>.

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

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

illness, including a life-endangering physical condition caused by or arising from the pregnancy itself.”¹¹²

The Hyde Amendment principally affects those who depend on Medicaid, creating additional obstacles for low-income individuals seeking to access their health care options.¹¹³ In 2023, 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).¹¹⁴

A. FEDERAL BANS ON PUBLIC FUNDING FOR ABORTION

2023 marked the forty-seventh anniversary of the Hyde Amendment.¹¹⁵ Though the Amendment remains controversial, the Supreme Court upheld its constitutionality in the 1980 case *Harris v. McRae*.¹¹⁶ 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.”¹¹⁷ 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.”¹¹⁸ Nor did the restrictions violate the Equal Protection Clause.¹¹⁹ 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.¹²⁰ Finally, the Court rejected the argument that the funding restrictions informed by tenets of Catholicism constituted an establishment of religion.¹²¹ Although ultimately held constitutional, the Hyde Amendment remains contentious because it disproportionately burdens poor people and people of color,¹²² acting effectively as an abortion ban for many low-income individuals.¹²³

Today, congressional funding for Planned Parenthood is consistently the point of public and political debate.¹²⁴ Since 2011, Congress has pushed efforts to strip

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

113. See *Whose Choice? How the Hyde Amendment Harms Poor Women*, CTR. FOR REPROD. RTS. (Sept. 13, 2010), <https://perma.cc/AJ4J-ZQBR> [hereinafter *Whose Choice?*].

114. *Hyde Amendment*, PLANNED PARENTHOOD ACTION FUND, *supra* note 109.

115. See *id.*

116. *Harris v. McRae*, 448 U.S. 297, 326 (1980).

117. *Id.* at 298.

118. *Id.*

119. See *id.* at 324–26.

120. See *id.* at 324–25.

121. See *id.* at 319–20.

122. 123 Cong. Rec. 19, 703 (1977); see also *Whose Choice?*, *supra* note 113, at 12.

123. 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>.

124. See *Hyde Amendment*, PLANNED PARENTHOOD ACTION FUND, *supra* note 109.

Planned Parenthood of the federal funding it receives through Title X.¹²⁵ The Title X Family Planning Program was created in 1976 to provide family planning to primarily low-income individuals.¹²⁶ 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.¹²⁷ 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.¹²⁸ In February 2011, the House passed an amendment that withdrew federal funds from Planned Parenthood.¹²⁹ However, the amendment failed to pass in the Senate.¹³⁰ Republicans have continually tried to pull federal funding from Planned Parenthood since 2011.¹³¹

The federal funding Planned Parenthood receives primarily covers preventative healthcare, including contraception, cancer screening, and the diagnosis and treatment of sexually transmitted infections (STIs).¹³² According to its 2019–2020 Annual Report, only 3% of the medical services performed at Planned Parenthood affiliates were abortion services, while STI testing and treatment accounted for 52%.¹³³ Nonetheless, anti-abortion politicians and activists hope to permanently close Planned Parenthood's doors, using rescission of Title X funding as a mechanism.¹³⁴ Planned Parenthood supporters claim that an amendment prohibiting Planned Parenthood in particular from receiving Title X funds would be an unconstitutional "bill of attainder."¹³⁵

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

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

126. See Protecting Women's Health at Home and Abroad, 86 Fed. Reg. 33077 (Jan. 28, 2021); 42 U.S.C. §§ 300.

127. 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>.

128. See Nather & Nocera, *supra* note 125.

129. 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>.

130. See *id.*

131. E.g., Defund Planned Parenthood Act of 2023, H.R. 128, 118th Cong. (2023); 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. (2015); Defund Planned Parenthood Act of 2015, H.R. 3134, 114th Cong. (2015).

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

133. 2019–2020 Annual Report, PLANNED PARENTHOOD (2020), <https://perma.cc/D8JE-NDRG>.

134. Nather & Nocera, *supra* note 125.

135. See *id.*

Republican Party's platform.¹³⁶ While conservatism is typically associated with a pro-life stance, the election of President Donald Trump in 2016 solidified Planned Parenthood as a target for conservative rhetoric.¹³⁷ The Trump Administration and congressional Republicans continuously pushed to block federal funding for Planned Parenthood and abortions, both domestically and internationally.¹³⁸

When President Joe Biden ran for office in 2020, part of his platform was protecting abortion rights.¹³⁹ However, he was unsuccessful in codifying the right to abortion in federal law prior to the Supreme Court's decision in *Dobbs*.¹⁴⁰ President Biden disagreed with the *Dobbs* decision and emphasized that "women's health and lives are on the line."¹⁴¹ 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.¹⁴²

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.¹⁴³ 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.¹⁴⁴ The executive order instructs hospitals and doctors nationwide to provide emergency abortion care.¹⁴⁵ However, Texas has already sued to block this order, claiming that it unlawfully attempts to preempt state law.¹⁴⁶ Other states with strict anti-abortion laws are expected to either join Texas or file their own lawsuits.¹⁴⁷

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.¹⁴⁸ Idaho's law allows any doctor to be prosecuted for performing an abortion, regardless of the circumstances or the doctor's location.¹⁴⁹

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

137. *Id.*

138. *Id.*

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

140. 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), <https://perma.cc/XGM7-7QAZ>.

141. *See id.*

142. *Id.*

143. *Id.*

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

145. Exec. Order No. 14,079, 3 C.F.R. § 87.154 (2022).

146. 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>.

147. *See id.*

148. *Id.*

149. *Id.*

B. STATE BANS ON PUBLIC FUNDING FOR ABORTION

Many states that protect abortion have laws prohibiting the use of state funds for abortion.¹⁵⁰ States that prohibit or significantly restrict the use of state funds for abortions include Colorado, Kansas, Nebraska, Nevada, Pennsylvania, Rhode Island, and Virginia.¹⁵¹ In D.C., Congress prohibits the use of taxpayer funds to cover the costs of most abortions.¹⁵²

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.”¹⁵³ 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.”¹⁵⁴ Even before *Dobbs* overturned *Roe* and *Casey*, some jurisdictions decided to attribute personhood to fetuses in criminal, tort, and state constitutional laws.¹⁵⁵

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.¹⁵⁶ 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

150. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

151. See *id.*; COLO. REV. STAT. ANN. § 25.5-3-106 (West, Westlaw through legis. effective Feb. 27, 2024 of the 2d Reg. Sess., 74th Gen. Assemb. (2024)); KAN. STAT. ANN. § 65-6733 (West, Westlaw through laws enacted during the 2024 Reg. Sess. of the Kan. Leg.); 471 NEB. ADMIN. CODE § 10-006.08 (Lexis Advance through Sept. 19, 2023); 18 PA. CONS. STAT. § 3215(c) (West, Westlaw through 2023 Reg. Sess. Act 8); R.I. CONST. art. I, § 2 (West, Westlaw through Ch. 398 of the 2023 Reg. Sess. of the R.I. Leg.); VA. CODE ANN. §§ 32.1-92.1 to -92.2 (West, Westlaw through 2023 Reg. Sess. & 2023 Spec. Sess. I). New Hampshire also passed a bill limiting state funding for abortion, and it was signed by the Governor on June 25, 2021. H.B. 2, 2021 Leg., Reg. Sess. (N.H. 2021).

152. See McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60; Consol. Appropriations Act of 2010, Pub. L. 111-117, § 814, 123 Stat. 3034, 3224.

153. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2257 (2022).

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

155. See, e.g., 18 U.S.C. § 1841; *Bonbrest 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. Home*, 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.”).

156. 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.”).

perpetrated against the pregnant person.¹⁵⁷ When the UVVA was signed into law in April 2004, twenty-nine states already had passed homicide laws that recognized unborn fetuses as victims.¹⁵⁸ Of those twenty-nine states, sixteen recognized unborn children as victims regardless of the stage of prenatal development.¹⁵⁹ The other thirteen states afforded coverage to unborn fetuses during some stages of prenatal development.¹⁶⁰ As of 2023, thirty-eight states have laws allowing for homicide charges to be brought “for causing the loss of a pregnancy.”¹⁶¹ Of those states, twenty-nine recognize unborn fetuses as victims regardless of the stage of prenatal development.¹⁶²

By declaring an unborn fetus a legal person, the UVVA departed from *Roe*’s recognition of a fetus as “the potentiality of life.”¹⁶³ 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.”¹⁶⁴ Until *Dobbs*, the “fundamental premise of constitutional law” governing abortion was that fetuses are not entitled to the legal protections afforded persons.¹⁶⁵ 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 postnatal applications.¹⁶⁶ It follows from *Roe* that, under the Constitution, a fetus is not entitled to a “right to life.”¹⁶⁷ Likewise, the termination of a pregnancy has never been treated as a termination of life entitled to Fourteenth Amendment protection.¹⁶⁸

157. *See id.*

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

159. 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.”).

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

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

162. *Id.* at 4.

163. *Roe v. Wade*, 410 U.S. 113, 162 (1973).

164. 18 U.S.C. § 1841(d).

165. *Compare* Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 913–14 (1992) (Stevens, J. concurring in part and dissenting in part) with *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 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.’”).

166. *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.”).

167. *See Roe*, 410 U.S. at 157–58.

168. *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

This precedent, as such, led the UVVA to be considered controversial because it classifies the fetus or embryo as a legal person deserving of criminal law protections.¹⁶⁹

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.¹⁷⁰ 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.¹⁷¹ 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.¹⁷² 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.”¹⁷³ The Supreme Court has not ruled 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.”¹⁷⁴ The Air Force Court of Criminal Appeals rejected all four constitutional challenges to the UVVA.¹⁷⁵ The court addressed each in turn.

Regarding the defendant’s first challenge, the court explained 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.”¹⁷⁶ The debate as to when human life begins does not render the UVVA unconstitutionally vague

Casey termed *Roe*’s central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line.”).

169. 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), <https://perma.cc/Z34N-A9YK>.

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

171. See Richard Dworkin, *Unenumerated Rights: Whether and How Roe Should Be Overruled*, 59 U. CHI. L. REV. 381, 399–402 (1992), <https://perma.cc/FN4A-423G>.

172. See *id.* at 398–99.

173. *Id.* at 400–01.

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

175. See *id.* at 589, 591–92.

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

because Congress sufficiently established the statute's prohibitions by requiring prosecutors to prove that (1) an embryo existed, and (2) the act against the parent "could or did end the embryo's existence."¹⁷⁷

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.¹⁷⁸ 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.¹⁷⁹ The court stated that the basis of this distinction is the constitutionally protected right to privacy in the decision to obtain an abortion.¹⁸⁰

The court also noted the defendant lacked standing to raise Eighth Amendment issues.¹⁸¹ Finally, with regard to the defendant's Establishment Clause argument, the court found no constitutional violation because the statute did not "advance[] traditional Christian views regarding life" by implicitly establishing that life begins at conception.¹⁸² The court particularly relied upon the Supreme Court's holding in *Harris v. McRae*¹⁸³ that by itself, the existence of parallels between religious values and a statute is insufficient to render a statute unconstitutional under the Establishment Clause.¹⁸⁴

Unsuccessful challenges to state feticide statutes have advanced the arguments from *Boie*.¹⁸⁵ New challenges with novel arguments are met with new justifications for the statute's validity.¹⁸⁶ For example, the defendant in *State v. Merrill*¹⁸⁷ argued that a Minnesota feticide statute violated his equal protection rights by equating a non-viable fetus with a person.¹⁸⁸ The defendant contended 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.¹⁸⁹ 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

177. *Id.*

178. *Id.* at 590.

179. *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)).

180. *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.").

181. *Id.* at 592.

182. *See id.* at 592–93.

183. *Harris v. McRae*, 448 U.S. 297, 319 (1980).

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

185. *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); *State v. Merrill*, 450 N.W.2d 318, 322–24 (Minn. 1990).

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

187. *Id.* at 318.

188. *Id.* at 321.

189. *Id.*

Clause.¹⁹⁰ 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.¹⁹¹ Additionally, in *People v. Ford*,¹⁹² 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.¹⁹³ 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.¹⁹⁴ 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.¹⁹⁵ The plan included the proposition that an unborn child can qualify as a beneficiary to college tuition savings funds.¹⁹⁶ The proposition defined an unborn child as a child in utero during any stage of development.¹⁹⁷ Many activists saw this language as an attempt to bestow rights on fetuses and curtail full reproductive rights of those who can get pregnant.¹⁹⁸ Pro-life supporters argued that the bill simply allowed families to start accruing benefits earlier in a child's life.¹⁹⁹ However, under the previous tax plan, one could open the account at any time and designate beneficiaries later.²⁰⁰ Ultimately, the rationale behind the bill was irrelevant, as the Senate repealed the language prior to passing the final draft.²⁰¹ This plan exemplifies one of the myriad ways that feticide laws could be implemented in the American system.

While judicial decisions upholding feticide statutes emphasize that the statutes do not affect individuals' right to choose to terminate their pregnancies,²⁰² cases from the past eight years have demonstrated otherwise. In 2015, after Purvi Patel suffered a miscarriage and disposed of her stillborn baby, she was convicted of

190. *Id.*

191. *See id.* at 321–22.

192. *People v. Ford*, 581 N.E.2d 1189, 1200 (Ill. App. Ct. 1991).

193. *Id.*

194. *Id.*

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

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

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

202. *See, e.g.,* *United States v. Boie*, 70 M.J. 585, 591 (A.F. Ct. Crim. App. 2011) (contrasting a right to abortion and a feticide statute); *State v. Merrill*, 450 N.W.2d 318, 321–22 (Minn. 1990) (establishing that feticide statute does not affect pregnant parent's right to choose).

feticide and neglect and sentenced to a prison term of twenty years.²⁰³ During the trial, the prosecution presented an expert witness who testified that the fetus had probably reached viability, a conclusion that relied on a viability testing methodology that some argue was “disproven over 100 years ago.”²⁰⁴ In contrast, the defense’s expert witness, using a method of testing viability that did not receive complaints, concluded that the fetus was likely not viable and between twenty-three and twenty-four weeks of gestation.²⁰⁵ In 2016, the Indiana Court of Appeals overturned Patel’s feticide conviction, and she was released from prison.²⁰⁶

Other cases also suggest that feticide laws may be used to restrict individuals’ access to abortion.²⁰⁷ 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.²⁰⁸ 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.²⁰⁹ While the charges were ultimately dropped after Shuai agreed to plead guilty to criminal recklessness,²¹⁰ the Indiana Court of Appeals’ decision suggests that feticide laws can be used to impose further restrictions on abortion.²¹¹

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.²¹² Jones was fighting with Ebony Jemison, and Jemison fired a warning shot that accidentally hit Jones in the stomach.²¹³ Ultimately, the district attorney dismissed the case against Jones.²¹⁴ Jemison was also charged with manslaughter, but a grand jury dismissed the charges.²¹⁵ Though there were no convictions, the case marked the first time in Alabama’s history that there was an attempt to

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

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

205. *See id.*

206. *Purvi Patel Is Released After Feticide Conviction Overturned*, INDYSTAR (Sept. 1, 2016), <https://perma.cc/F6XV-AAAA>.

207. *See Sandstad, supra* note 169 (explaining that the UVVA could be used to further restrict individuals’ access to abortion).

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

209. *See id.* at 628–29, 631.

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

211. *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.”).

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

213. *Id.*

214. 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), <https://perma.cc/26ZE-GCPN>.

215. 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.²¹⁶

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.²¹⁷ However, states differ as to whether a wrongful death claim based upon the destruction of a fetus requires that the fetus has reached viability.²¹⁸

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.²¹⁹ 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.²²⁰ 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.²²¹

Similarly, in *Mack v. Carmack*,²²² the Supreme Court of Alabama rejected a viability requirement for wrongful death claims of fetuses under the state's Wrongful Death of a Minor Act.²²³ This resulted when Mack, who was twelve weeks pregnant, brought a wrongful death claim after suffering a miscarriage due to a car accident.²²⁴ The court explained that a viability requirement would draw an arbitrary distinction that yields "incongruous" results, countervailing the Act's purpose.²²⁵ In *LePage v. Center for Reproductive Medicine*, the court extended the Act's coverage to pre-viability embryos—even those stored outside of a biological uterus—after a couple sued for the wrongful death of their embryos, which were dropped while in cryogenic storage for in vitro fertilization ("IVF")

216. 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>.

217. 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.").

218. 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), *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591, at *4 (Ala. Feb. 16, 2024) (en banc) (holding that state wrongful death statute applies to any unborn child, including frozen embryos located outside the uterus) and *Pino v. United States*, 183 P.3d 1001, 1006 (Okla. 2008) (rejecting argument that Oklahoma's wrongful death statute requires viability).

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

220. See *id.*

221. *Id.*

222. *Mack v. Carmack*, 79 So.3d 597, 611 (Ala. 2011).

223. ALA. CODE § 6-5-391 (West, Westlaw through Act 2024-12 of the 2024 Reg. Sess.).

224. *Mack*, 79 So.3d 597, at 598.

225. *Id.* at 611.

treatment.²²⁶ In reaching this outcome, the court cited Alabama's pro-life public policy, which is reflected in the state's constitution.²²⁷ The *LePage* decision sparked immediate concern for the availability of certain fertility treatments and caused multiple major IVF clinics to close.²²⁸ In response, the state passed legislation shielding IVF providers from liability for the wrongful death of embryos; since this development, some IVF facilities have reopened.²²⁹

In contrast, in *Kandel v. White*, the Court of Appeals of Maryland reaffirmed the viability requirement's application to wrongful death claims.²³⁰ 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.²³¹ The court also noted that the third party might not even know of the person's pregnancy.²³²

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.²³³ Such actions could be taken against abortion providers, those whose conduct "aids or abets the performance or inducement of an abortion," and those who intend to provide, aid, or abet abortions.²³⁴ 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.²³⁵ After the law took effect, this system of enforcement by private civil action and reward became known as the "bounty" system.²³⁶ As the Texas law withstood legal challenges,²³⁷ it emboldened and inspired states to introduce their own similar anti-abortion

226. *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591, at *1–2 (Ala. Feb. 16, 2024) (en banc).

227. *Id.* at *6; see Sanctity of Unborn Life, ALA. CONST. art. I, § 36.06(b).

228. Emily Cochran, *Alabama Passes Law to Protect I.V.F. Treatments*, N.Y. TIMES (Mar. 6, 2024), <https://perma.cc/69EP-389Y>.

229. *Id.*

230. 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)).

231. See *id.* at 1268.

232. *Id.* (citing *Toth v. Goree*, 237 N.W.2d 297, 301 (Mich. Ct. App. 1975)).

233. 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 2023 Reg. & Called Sess. of the 88th Leg.).

234. TEX. HEALTH & SAFETY CODE ANN. § 171.208(a) (West, Westlaw through the 2023 Reg. & 2nd Called Sess. of the 88th Leg.).

235. TEX. HEALTH & SAFETY CODE ANN. § 171.208(b) (West, Westlaw through the 2023 Reg. & 2nd Called Sess. of the 88th Leg.).

236. 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).

237. 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

“bounty” laws, deemed “copycat legislation.”²³⁸ Such laws passed in both Idaho and Oklahoma.²³⁹ Other states’ attempts at “Texas-style” laws, however, were unsuccessful.²⁴⁰

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*.²⁴¹ At least sixteen states incorporate fetal personhood in their state constitutions or state civil or criminal laws.²⁴² Georgia’s personhood law took effect due to the Supreme Court’s holding in *Dobbs* and it remains in effect while being challenged in state court.²⁴³

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.²⁴⁴ However, most Mississippi voters voted against the amendment.²⁴⁵ Despite the amendment’s defeat, political commentators accurately predicted that personhood amendments and bills would be “the new parameters of the abortion debate.”²⁴⁶

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).

238. 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>.

239. 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).

240. Elizabeth Nash, Lauren Cross, & Joerg Dreweke, *2022 State Legislative Sessions: Abortion Bans and Restrictions on Medication Abortion Dominate*, GUTTMACHER INST. (May 26, 2022), <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).

241. 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 LAW (Jan. 9, 2023, 4:00 AM), <https://perma.cc/53B3-9APG>.

242. Purvaja S. Kavattur, Somjen Frazer, Abby El-Shafei, Kayt Tiskus, Laura Laderman, Lindsey Hull, Fikayo Walter-Johnson, Dana Sussman, & Lynn M. Paltrow, *The Rise of Pregnancy Criminalization: A Pregnancy Justice Report*, PREGNANCY JUSTICE 13 (Sept. 2023), <https://perma.cc/77L6-JDH9>.

243. See Rachel Garbus, *Georgia’s ‘Fetal Personhood’ Statute is Uncharted Territory*, ATLANTA (Aug. 23, 2022), <https://perma.cc/LM89-LXZB>.

244. 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>.

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

246. See Jacques Berlinerblau, *Why the Mississippi Personhood Amendment Self-Imploded*, WASH. POST (Nov. 9, 2011, 9:46 AM), <https://perma.cc/Y8BS-8KDZ>.

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 V-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,²⁴⁷ 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.²⁴⁸ 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.²⁴⁹ 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 2014.²⁵⁰ After *Dobbs*, North Dakota's trigger law was put on hold by a state judge,²⁵¹ but in January 2023, the State Senate passed a new abortion bill maintaining the same fetal personhood language.²⁵² In 2013, Kansas enacted a bill that declared, "[t]he life of each human being begins at fertilization."²⁵³ In 2019, the Kansas Supreme Court held that the state constitution's Bill of Rights protects abortion rights.²⁵⁴ Anticipating this ruling, lawmakers unsuccessfully attempted to pass an amendment to the state constitution guaranteeing fetal personhood.²⁵⁵ 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.²⁵⁶ Finally, in 2018, South Carolina attempted, and failed, to pass the

247. Anita Kumar, 'Personhood' Bill Killed for this Year by Virginia Senate, WASH. POST (Feb. 23, 2012), <https://perma.cc/9LAZ-MLAM>.

248. 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>.

249. 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>.

250. 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, 12:19 AM), <https://perma.cc/3YPL-B5P6>.

251. Dave Kolpack, *Judge Puts Hold on North Dakota Trigger Law Banning Abortion*, AP NEWS (July 27, 2022, 6:59 PM), <https://perma.cc/8RKJ-J9PD>.

252. 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.”).

253. KAN. STAT. ANN. § 65-6732 (West, Westlaw through the 2024 Reg. Sess. of the Kan. Leg.).

254. 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.”).

255. H.R. Con. Res. 5004, 2019–2020 Leg. Sess. (Kan. 2019), <https://perma.cc/M4N4-T4TT>.

256. Poppy Noor, *Kansas Votes to Protect Abortion Rights in State Constitution*, THE GUARDIAN (Aug. 2, 2022, 10:49 PM), <https://perma.cc/VB6A-88GJ>.

Personhood Act, which was designed to directly challenge *Roe* by stating that life begins at fertilization.²⁵⁷ In January 2023, the South Carolina Supreme Court ruled that the state constitution's right to privacy includes a right to abortion,²⁵⁸ and in April 2023, the South Carolina legislature failed to pass the Human Life Protection Act which stated that "every human being begins at conception."²⁵⁹

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 2008.²⁶⁰ 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 Colorado Criminal Code and the Colorado Wrongful Death Act."²⁶¹ 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 th[e] state."²⁶²

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.²⁶³ President Biden has promised to take steps to protect abortion on the federal level.²⁶⁴ In August 2022, Biden 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.²⁶⁵

257. 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 Ban Almost All Abortions in South Carolina*, GREENVILLE NEWS (May 2, 2018, 11:51 AM), <https://perma.cc/QQ4J-DXJN>.

258. 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>.

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

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

261. 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 NEWSHOUR (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>.

262. COLO. REV. STAT. ANN. § 25-6-403 (West, Westlaw through legis. effective Feb. 27, 2024 of the 2d Reg. Sess., 74th Gen. Assemb. (2024)).

263. Exec. Order No. 14,079, 87 Fed. Reg. 49505 (Aug. 3, 2022).

264. *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>.

265. See Exec. Order No. 14,079, *supra* note 263.

The executive order instructs hospitals and doctors nationwide to provide emergency abortion care.²⁶⁶ In a subsequent June 2023 executive order, the White House emphasized the health implications of the *Dobbs* decision and directed the administration to further support affordable access to high-quality contraception and family planning services.²⁶⁷

266. *Id.*

267. Exec. Order No. 14,101, 84 Fed. Reg. 41,815 (June 23, 2023).

Appendix²⁶⁸

Once the Supreme Court threatened to overturn *Roe v. Wade*, many states enacted trigger laws to either ban or restrict access to abortion.²⁶⁹ Thirteen states enacted trigger laws which outlawed abortion in most cases.²⁷⁰ Some laws took effect immediately, while others took effect on August 25, 2022.²⁷¹ Many of the states which have passed laws outlawing or restricting abortions are Republican-led.²⁷² In contrast, many Democrat-led states have acted to protect abortion rights by passing protective laws or amending their state constitutions.²⁷³

The below Appendix is a full chart of states and their abortion laws as of March 2024.

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 2023 1st Spec., Reg., and 2nd Spec. Sess.).
Alaska	Rep./Split/ 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 2023 legislation).

268. 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 60. 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>.

269. See Sneed, *supra* note 25.

270. *Id.*

271. See Juliana Kim, *3 More States Are Poised To Enact Abortion Trigger Bans this Week*, NPR (Aug. 22, 2022, 2:51 PM), <https://perma.cc/8LKU-3FBD>; McCann, Schoenfeld Walker, Sasani, Johnston, Buchanan, & Huang, *supra* note 60.

272. *Id.*

273. See Kimberlee Kruesi & Geoff Mulvihill, *States’ Divisions on Abortion Widen After Roe Overturned*, AP NEWS (Mar. 26, 2023, 9:33 AM), <https://perma.cc/U88T-UWFU>.

Arizona	Dem./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. In 2023, the governor joined the Reproductive Freedom Alliance. ²⁷⁴	ARIZ. REV. STAT. § 36-2322 (West, Westlaw through the 2d Reg. Sess. of the 56th Leg. (2024)).
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 all leg. of the 2023 Reg. Sess. and the 2023 1st Extra. Sess.).
California	Dem./Dem./ Dem.	Legal	Viability	State law protects abortion, and in 2022, the governor signed legislation and an executive order 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. ²⁷⁵	CAL. HEALTH & SAFETY CODE § 123466 (West, Westlaw through Ch. 1 of 2024 Reg. Sess.).

274. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, CA.GOV (Feb. 21, 2023), <https://perma.cc/7UPD-ES6Q>.
275. *Id.*

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. ²⁷⁶	COLO. REV. STAT. § 25-6-403 (West, Westlaw through legis. effective Feb. 27, 2024 of the 2d Reg. Sess., 74th Gen. Assemb. (2024)).
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. ²⁷⁷	CONN. GEN. STAT. § 19a-602 (LexisNexis, Lexis Advance through 2023 Reg. Sess. Act).
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. ²⁷⁸	DEL. CODE ANN. tit. 24 § 1790 (West, Westlaw through ch. 247 of the 152d Gen. Assemb. (2023–2024)).

276. *Id.*

277. *Id.*

278. *Id.*

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 (West, Westlaw through the 2023 Spec. B & C Sess. & the 2023 1st Reg. 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 2023 Reg. Sess. of the Gen. Assemb.).
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. ²⁷⁹	HAW. REV. STAT. ANN. § 453-16 (LexisNexis, Lexis Advance through 2023 Leg. Sess. Subject to changes by Revisor pursuant to HRS 23G-15).

279. *Id.*

Idaho	Rep./Rep./ Rep.	Banned	N/A	Nearly all abortions are banned and private citizens can sue abortion providers. In January 2023, the Idaho Supreme Court ruled there is no constitutional right to abortion. Appeal of a decision shielding doctors from punishment for performing an abortion to protect a patient’s health is currently pending in the Ninth Circuit. ²⁸⁰	IDAHO CODE §§ 18-605, 18-608, 18-8807 (West, Westlaw through Ch. 1 of the 2d Reg. Sess. of the 67th Idaho Leg., Jan. 8, 2024).
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. ²⁸¹	775 ILL. COMP. STAT. ANN. 55/1-5 (LexisNexis, Lexis Advance through P.A. 103-188, of the 2023 Reg. Sess. of the 103rd Gen. Assemb.).
Indiana	Rep./Rep./ Rep.	Banned	20 weeks in cases of a “lethal fetal anomaly”; 10 weeks in cases of rape or incest	A near total ban went into effect in August 2023 after the Indiana Supreme Court upheld the law.	IND. CODE ANN. § 16-34-2-1 (Burns, Lexis Advance through all legislation (P.L.252-2023) of the 1st Reg. Sess. of the 123rd Gen. Assemb.).

280. Kelcie Moseley-Morris, *In Quick Reversal, Ninth Circuit Will Reconsider Idaho Abortion Case*, IDAHO CAP. SUN (Oct. 10, 2023, 2:42 PM), <https://perma.cc/D9BW-6WE2>; Planned Parenthood Great Nw. v. Idaho, 522 P.3d 1132 (Idaho 2023); United States v. Idaho, 82 F.4th 1296 (9th Cir. 2023).

281. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

Iowa	Rep./Rep./Rep.	Legal for now	22 weeks	In June 2022, the state supreme court overruled a 2018 decision that said the right to an abortion was protected under the state constitution. ²⁸² In July 2023, an Iowa federal court temporarily enjoined a 6-week ban which was signed by the governor in June 2023 after the Iowa Supreme Court blocked the governor’s challenge to the permanent injunction of a prior 6-week ban. ²⁸³	IOWA CODE §§ 146A.1, 146B.2, 146C.2 (West, Westlaw through legis. effective Jul. 14, 2023 from the 2023 Reg. Sess., and the 2023 1st Extraordinary Sess.).
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. ²⁸⁴	KAN. STAT. ANN. § 65-6703 (West, Westlaw through the 2024 Reg. Sess. of the Kan. Leg.).

282. Planned Parenthood of the Heartland v. Reynolds, 975 N.W.2d 710 (Iowa 2022).
283. Hannah Fingerhut, *Block on Iowa’s Strict Abortion Law Can Be Appealed, State Supreme Court Says*, AP NEWS (July 25, 2021) <https://perma.cc/4FZ6-TMVC>.
284. 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 (West, Westlaw through 1. effective Feb. 29, 2024 and the Nov. 7, 2023 election).
Louisiana	Dem./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest.	LA. REV. STAT. ANN. § 40:1061.10 (West, Westlaw through the 2024 1st Extraordinary 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. ²⁸⁵	ME. REV. STAT. ANN. tit. 22, § 1598 (LexisNexis, Lexis Advance through the 2023 1st Reg. Sess and the 1st Spec. Sess. of the 131st Me. Leg.).
Maryland	Dem./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. ²⁸⁶	MD. CODE ANN., HEALTH-GEN. § 20-209 (LexisNexis, Lexis Advance through the 2023 Reg. Sess. of the Gen. Assemb.).

285. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

286. *Id.*

Massachusetts	Dem./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. ²⁸⁷	MASS. ANN. LAWS ch. 112, § 12L (LexisNexis, Lexis Advance through Ch. 42 of the 2023 Legis. Sess. of the 193rd Gen. Ct.).
Michigan	Dem./Dem./Dem.	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. ²⁸⁸	MICH. COMP. LAWS SERV. § 333.17015 (LexisNexis, Lexis Advance through Act 149 of the 2023 Reg. Legis. Sess. and E.R.O. 2023-1).

287. *Id.*
288. *Id.*

Minnesota	Dem./Dem./ 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. ²⁸⁹	MINN. STAT. ANN. § 145.409 (West, Westlaw through legis. effective through Mar. 15, 2024, from the 2024 Reg. Sess.).
Mississippi	Rep./Rep./ Rep.	Banned	N/A	Abortion is banned with exceptions for rape, but not incest.	MISS. CODE ANN. § 97-3-3 (West, Westlaw through the 2024 1st Extraordinary Sess.).
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 102nd Gen. Assemb., 2023 1st Reg. Sess. with changes received through July 9, 2023).

289. *Id.*

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&E is also temporarily enjoined. ²⁹⁰ The state’s high court ruled that its constitution protects the right to an abortion through rights to privacy and procreative autonomy. ²⁹¹	MONT. CODE ANN. § 50-20-109 (West, Westlaw through ch. effective Mar. 1, 2024 of the 2023 Sess.); §§ 50-20-401, -603, -707, -708 (West, Westlaw through ch. effective Mar. 1, 2024 of the 2023 Sess.).
Nebraska	Rep./Rep.	Legal but restricted	12 weeks	A 12 week abortion ban was signed into law on May 22, 2023. ²⁹²	NEB. REV. STAT. §§ 38-179, 38-192, 38-193, 38-196, 38-201 (West, Westlaw through legis. effective Feb. 14, 2024, of the 2d Reg. Sess. of the 108th Leg. (2024)); §§ 71-6912 to 71-6917 (West, Westlaw through legis. effective Feb. 14, 2024, of the 2d Reg. Sess. of the 108th Leg. (2024)).

290. *Montana Court Blocks New Abortion Ban*, PLANNED PARENTHOOD (May 18, 2023), <https://perma.cc/SW6L-TEK7>.

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

292. *Governor Pillen Signs LB574 Into Law, Abortion Ban Takes Effect Immediately*, OFFICE OF THE GOV. (May 22, 2023), <https://perma.cc/7WG5-LXZ7>.

Nevada	Rep./Dem./ Dem.	Legal but restricted	24 weeks postferti- lization	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. ²⁹³ In May 2023, the Nevada Governor signed legislation that essentially codified this executive order to protect the rights of those seeking and providing abortions in Nevada. ²⁹⁴	NEV. REV. STAT. ANN. § 442.250 (LexisNexis, Lexis Advance through the end of legis. from the 82nd Reg. Sess (2023), 34th and 35th Spec. Sess. (2023), subject to revision by the Legis. Counsel Bureau); § 449.531 (LexisNexis, Lexis Advance through the end of legis. from the 82nd Reg. Sess (2023), 34th and 35th Spec. Sess. (2023), subject to revision by the Legis. Counsel Bureau).
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. §§ 132:38, 329:44, 329:34 (LexisNexis, Lexis Advance through Ch. 243 of the 2023 Reg. Sess.); N.H. CODE ADMIN. R. ANN. HE-W 538.05 (g) (LexisNexis, Lexis Advance through Sept. 1, 2023).

293. Tabitha Mueller, *Sisolak Signs Order Protecting Those Seeking Access to Abortion*, NEV. INDEP. (June 28, 2022, 6:02 PM), <https://perma.cc/E6KL-WYZL>.

294. Adam Edelman, *Nevada Governor Signs New Abortion Protections into Law*, NBC NEWS (May 31, 2023), <https://perma.cc/H224-JLYB>.

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. ²⁹⁵ In 2023, the governor joined the Reproductive Freedom Alliance. ²⁹⁶	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. 107 & J.R. 11); 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. 107 & J.R. 11).
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295. *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).

296. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

New Mexico	Dem./Dem./Dem.	Legal	N/A	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. ²⁹⁷	2021 N.M. Laws 2, S.B. 10, 55th Leg., 1st 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).
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297. *Id.*

New York	Dem./Dem./ Dem.	Legal	Viability with excep- tions for the preg- nant person’s life, physical health, and men- tal health	State law protects abortion as a funda- mental right. Interference with clinics is prohibited and providers, patients, employees, volunteers, and im- mediate family members of those working in reproduc- tive care may main- tain address confidentiality. Abortion care is pub- licly funded and must be covered by private insurance. State law prohibits state officials from cooperating with out-of-state punitive actions against pro- viders of legal abor- tion 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 provid- ing legal abortions in New York to counter sue for unlawful in- terference 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 munici- pal funds to abor- tion out of all U.S.	N.Y. PUB. HEALTH LAW §§ 2599-aa to -bb (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. PENAL LAW § 240.70 (1)(a)–(b), (d) (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. EXEC. LAW § 108 (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. INS. LAW §§ 3216, 3217- c, 3221, 4303 (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. COMP. CODES R. & REGS. tit. 11, § 52.16(o) (West, Westlaw through amend. incl. in N.Y. State Reg., Vol. XLVI, Iss. 10, dated Mar. 6, 2024); N.Y. CRIM. PROC. LAW § 570.17 (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. EXEC. LAW § 837-w; N.Y. C.P.L.R. § 3102, 3119 (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. PUB. HEALTH LAW § 230 (West, Westlaw through L.2024, ch. 1–49, 61–93); N.Y. CIV. RIGHTS LAW § 70-b (Consol., Lexis Advance through 2023 released Ch. 1-521).
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				cities. ²⁹⁸ In 2023, the governor joined the Reproductive Freedom Alliance. ²⁹⁹ New York passed abortion protections, including legislation to ensure that SUNY and CUNY schools offer abortion medication in May of 2023. ³⁰⁰	
North Carolina	Dem./Rep./ Rep.	Legal but restricted	12 weeks	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	2023 N.C. Sess. Laws 2023-14, S.B. 20, 2023 Gen. Assemb., 1st Sess. (N.C. 2023) (repealing N.C. GEN. STAT. § 14-45.1 (West 2023)); N.C. GEN. STAT. §§ 90-21.81, 90-21.81A to .81C, 90-21.82 (West, Westlaw through the 2023 Reg. Sess. of the Gen. Assemb.); N.C. GEN. STAT. § 14-277.4 (West, Westlaw through the 2023 Reg. Sess. of the Gen. Assemb.); N.C. Exec. Order No. 263 (July 6, 2022).

298. 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>.

299. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

300. Press Release, New York State Governor, Governor Hochul Signs Legislative Package to Expand Health Care for New Yorkers (May 2, 2023), <https://perma.cc/K5LW-MHQA>.

				<p>Freedom Alliance.³⁰¹ North Carolina’s Republican-super-majority legislature overrode the governor’s veto of a bill banning most abortions after 12 weeks of pregnancy.³⁰² However, in September 2023, a federal judge blocked certain provisions of the bill, in order to allow abortion providers to continue providing medication abortion to patients in the “very early stages of their pregnancy.”³⁰³ The ban also ensures exceptions in cases of rape, incest, or a “life-limiting anomaly” in the fetus.³⁰⁴ However, it includes other restrictions like requiring an in-person visit with a doctor before an abortion.³⁰⁵</p>	
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301. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

302. Rosa Horowitch & Zoë Richards, *North Carolina Republicans Override Democratic Governor’s Veto of 12-Week Abortion Ban*, NBC NEWS (May 16, 2023), <https://perma.cc/H9GA-XYZC>.

303. *Federal Court Blocks Certain Restrictions in North Carolina’s Sweeping Abortion Ban*, ACLU (Sept. 30, 2023), <https://perma.cc/TJ5F-R3YU>.

304. *Id.*

305. Horowitch & Richards, *supra* note 302.

North Dakota	Rep./Rep./ Rep.	Banned	Exception for rape and incest but only until six weeks gestation	State law does not protect abortion and asserts the state’s preference for child-birth. A North Dakota Supreme Court decision regarding the temporary injunction of the state’s trigger ban, prohibiting all abortions without exception, is pending. ³⁰⁶ 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. The governor signed legislation in April of 2023 which effectively banned abortion in the state. ³⁰⁷ The law is supposed to allow for abortions in cases of rape or incest but only up to six weeks. ³⁰⁸ An earlier ban, which would have required doctors to give an affirmative defense if they needed to provide a life-saving abortion, was blocked. ³⁰⁹	N.D. CENT. CODE §§ 14-02.1-02.1; -02(1), (9), (10); -02.2; -03; -03.1; -03.4; -04 (West, Westlaw through the 2023 Reg. Sess. and Spec. Sess. & 2023 N.D. Laws ch. 122 (S.B. 2150)); N.D. CENT. CODE § 14.02.6-02 (West, Westlaw through the 2023 Reg. Sess. and Spec. Sess.).
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306. Wrigley v. Romanick, 2023 ND 50 (N.D. 2023).

307. Trisha Ahmed, *North Dakota Signs Law Banning Nearly All Abortions*, AP NEWS (April 25, 2023), <https://perma.cc/QR3J-D3KR>.

308. *Id.*

309. Ava Sasani, *North Dakota Governor Signs Near-Total Abortion Ban*, N.Y. TIMES (April 24, 2023), <https://perma.cc/P2HR-ECE6>.

				Republicans have been framing this new bill as a “clari-fying” legislation, rather than what it is: just a new ban. ³¹⁰	
Ohio	Rep./Rep./Rep.	Legal	22 weeks postferti-lization	A trigger ban prohib-iting abortion at 6 weeks LMP is tem-porarily enjoined. ³¹¹ D&X procedures are prohibited and D&E and telemedicine procedures are enjoined. ³¹² Twenty-four hour waiting periods and counsel-ing are mandated. State exchange in-surance plans are prohibited from cov-ering abortions. In November 2023, the Ohio Constitution was amended to enshrine the right to individuals’ repro-ductive decision making. ³¹³	OHIO CONST. art. I, § 22; OHIO REV. CODE ANN. § 2919.15 (West, Westlaw through File 18 of the 135th Gen. Assemb. (2023–2024) and 2023 Statewide Issues 1 & 2 (Nov. Election) § 2317.56; §3901.87.

310. Jack Dura, *Gov. Doug Burgum Signs Off on Revisions to North Dakota Abortion Laws*, INFORUM (April 24, 2023), <https://perma.cc/W3GV-93F9>.

311. *Preterm-Cleveland v. Yost*, No. C-220504, 2022 WL 17744345 (Oh. Ct. App. Dec. 16, 2022) (maintaining the temporary injunction of the Heartbeat Act, codified at OHIO REV. CODE ANN. § 2919.19).

312. *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).

313. OHIO CONST. art. I, § 22 (West, Westlaw through File 13 of the 135th Gen. Assemb. (2023–2024) and 2023 Statewide Issues 1 and 2 (Nov. Election)).

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 (West, Westlaw through legis. of the 2d Reg. Sess. of the 59th Leg. (2024)); tit. 63, § 1-745.31 (West, Westlaw through legis. of the 2d Reg. Sess. of the 59th Leg. (2024)); (West, Westlaw through legis. of the 2d Reg. Sess. of the 59th Leg. (2024)); tit. 59, §§ 509(20), 637(14); tit. 63, § 1-738.2(B); S.B. 834, 59th Leg., Reg. Sess. (Okla. 2023).
Oregon	Dem./Dem./Dem.	Legal	N/A	State law protects abortion throughout pregnancy. Abortion care is publicly funded and 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. ³¹⁴ In 2023, the governor joined the Reproductive Freedom Alliance. ³¹⁵	OR. REV. STAT. § 659.880 (LexisNexis, Lexis Advance through the 2023 Reg. Sess. of the 82nd Or. Legis. Assemb., with Acts effective through Sept. 24, 2023); OR. ADMIN. R. 410-130-0562 (Lexis Advance through changes published in the Sept. 26, 2023 Or. Bull.); OR. REV. STAT. § 743A.067(2)(g); OR. REV. STAT. § 164.365(1)(a)(F).

314. 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>.

315. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

Pennsylvania	Dem./Rep./ Dem.	Legal for now	24 weeks LMP	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. Twenty-four 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. ³¹⁶	18 PA. CONS. STAT. § 3211(a) (LexisNexis, Lexis Advance through 2023 Reg. Sess. Act 12); § 3202(c); 28 PA. CODE § 29.37(b) (LexisNexis, Lexis Advance through the Oct. 2023 supplement changes effective through 53 PaB 4352, July 29, 2023); 18 PA. CONS. STAT. §§ 3205(a); P.A. Exec. Order No. 2022-01 (July 12, 2022).
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316. *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. It also prohibited directing agencies and licensing boards to protect members from out-of-state sanctions. In 2023, the governor joined the Reproductive Freedom Alliance. ³¹⁷	23 R.I. GEN. LAWS § 23-4.13-2(d) (LexisNexis, Lexis Advance through Ch. 398 of the 2023 Sess.); 210 R.I. CODE R. § 30-05-2.27(a) (2) (Lexis Advance through Sept. 19, 2023 (Register Issue No. 374, Oct. 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).
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317. *Id.*

South Carolina	Rep./Rep./ Rep.	Legal but restricted	Fetal heartbeat detected (typically six weeks of pregnancy)	In January 2023, the South Carolina Supreme Court ruled the 6-week ban (enforced post- <i>Dobbs</i>) was unconstitutional because it violated a fundamental right to privacy. ³¹⁸ In May 2023, Governor McMaster “signed a fetal heartbeat bill, which allows abortion through the first six weeks of pregnancy.” ³¹⁹ After a fetal heartbeat is detected, abortion is allowed “only in cases of rape or incest during the first 12 weeks of pregnancy, medical emergencies, and in cases of fetal anomaly.” ³²⁰ In August 2023, the South Carolina Supreme Court upheld the law. ³²¹	S.C. CODE ANN. § 44-41-630(B) (West, Westlaw through 2024 Act No. 120, subject to final approval by the Legis. Council, tech. revisions by the Code Comm’r, and publication in the Official Code of Laws).
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318. *Planned Parenthood S. Atl. v. South Carolina*, 882 S.E.2d 770 (S.C. Jan. 5, 2023) (finding The Fetal Heartbeat and Protection from Abortion Act, S.C. CODE ANN. § 44-41-680, unconstitutional).

319. *South Carolina Abortion Laws*, FINDLAW (Aug. 24, 2023), <https://perma.cc/3LSR-S53X>.

320. *Id.*

321. *Id.*

South Dakota	Rep./Rep./ Rep.	Banned	N/A	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 week-ends and annual hol-idays do not count towards those hours. Counseling is also mandated. In January 2023, the governor and attor-ney general threat-ened to bring felony charges against phar-macies dispensing abortion pills. ³²² A bill to shield people who undergo unlaw-ful abortions from criminal charges was passed by the South Dakota House of Representatives on February 21, 2023. ³²³	S.D. CODIFIED LAWS § 22-17-5.1 (West, Westlaw through the 2024 Reg. Sess. effective Feb. 15, 2024 & Sup. Ct. R. 24-03); §§ 34-23A-10.1, 34-23A-56.
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322. *South Dakota Gov. Noem Threatens Charges for Abortion Pills*, AP NEWS (Jan. 24, 2023, 5:03 PM), <https://perma.cc/M3KZ-LLQF>.

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

Tennessee	Rep./Rep./ Rep.	Banned	N/A	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.” Doctors must use “reasonable medical judgment” when deciding whether an abortion is needed to save a life; the previous standard was only a “good faith” medical judgment. 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. Since the State’s ban was implemented, fewer than 10 abortions per month were performed in the State. ³²⁴ Tennessee voters are overwhelmingly against the abortion ban. ³²⁵	TENN. CODE ANN. § 39-15-213 (West, Westlaw through Ch. 489–509 from the 2024 Reg. Sess. of the 113th Tenn. Gen. Assemb.); §§ 39-15-202, 9-4-5116, 56-26-134; TENN. CONST. art. I, § 36.
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324. Elizabeth Fite, *Abortions Drop in Tennessee Amid Ban*, CHATTANOOGA TIMES FREE PRESS (Apr. 29, 2023), <https://perma.cc/LZS8-3NCA>.

325. See Erin McCullough, *Vanderbilt Poll: Tennessee Abortion Law Out of Step with Public Opinion*, WKRN.COM (May 3, 2023), <https://perma.cc/P8NQ-J865>

Texas	Rep./Rep./ Rep.	Banned	N/A	Abortion is banned with no exceptions for rape or incest. Texas has a health exception to their abortion ban, but it is limited to situations where there is “a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that [...] poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced”. ³²⁶ The requirement that the situation be aggravated by pregnancy essentially eliminates abortion access for many individuals suffering from life threatening conditions that are not caused by pregnancy. ³²⁷ Private insurance coverage for elective abortions is only available if the coverage is paid for separately. Texas law includes fetal personhood.	TEX. HEALTH & SAFETY CODE ANN. §§ 170A.001 to .007, 171.011, 171.012 (West, Westlaw through the 2023 Reg., 2nd and 3rd Sess. of the 88th Leg., and the Nov. 7, 2023 gen. election); 1 TEX. ADMIN. CODE § 354.1167 (West, Westlaw through 48 Tex. Reg. No. 5582, dated Dec. 8, 2023, as effective on or before Dec. 15, 2023); TEX. INS. CODE ANN. § 1218.003 to .004 (West, Westlaw through the 2023 Reg., 2nd and 3rd Sess. of the 88th Leg., and the Nov. 7, 2023 gen. election); TEX. CIV. PRAC. & REM. CODE ANN. § 71.001(4) (West, Westlaw through the 2023 Reg., 2nd and 3rd Sess. of the 88th Leg., and the Nov. 7, 2023 gen. election).
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326. Mabel Felix, Laurie Sobel, & Alina Salganicoff, *A Review of Exceptions in State Abortions Bans: Implications for the Provision of Abortion Services*, KFF (May 18, 2023), <https://perma.cc/8VYW-3KST>.
327. *Id.*

				Lawsuits have been filed challenging the validity of wrongful death actions and application of state bounty hunter law in the context of abortions. ³²⁸	
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. ³²⁹ 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." ³³⁰ Utah passed a law requiring abortions to be performed in a hospital. ³³¹ A judge has issued a temporary injunction. ³³²	UTAH CODE ANN. §§ 76-7-302 (LexisNexis, Lexis Advance through the 2023 2nd Spec. Sess. of the 65th 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).

328. Mary Tuma, *The First 'Wrongful Death' Case for Helping a Friend Get an Abortion*, THE INTERCEPT (Apr. 26, 2023), <https://perma.cc/MS8D-V38X>; Eleanor Klibanoff, *Women Accused of Facilitating Abortion in Galveston Wrongful-Death Lawsuit File Countersuit*, THE TEXAS TRIBUNE (May 2, 2023), <https://perma.cc/9LS6-9894>.

329. 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).

330. UTAH CODE ANN. §§ 76-7-305, 76-7-305.5, 76-7-310.5, 76-7-326, 76-7-301.1 (LexisNexis, Lexis Advance through the 2023 2nd Spec. Sess. of the 65th Leg.).

331. David W. Chen, *Judge Allows Abortion Clinics to Remain Open in Utah for Now*, N.Y. TIMES (May 2, 2023), <https://perma.cc/3RHD-CPYP>.

332. *Id.*

				Utah has enacted a law 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, 2024. ³³³ This law is currently under injunction pending final resolution of the case.	
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. ³³⁴ Abortion is also recognized as a fundamental right in statutory law. ³³⁵ 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. ³³⁶ The bill passed the Vermont Senate on April 19, 2023 and was signed into law by the Governor on May 10, 2023. ³³⁷	Vt. CONST. art. XXII.

333. Abortion Changes, 2023 Utah Laws Ch. 301, H.B. 467, 65th Leg., 2023 Gen. Sess. (Utah 2023).

334. *Vermont Proposal 5, Right to Personal Reproductive Autonomy Amendment (2022)*, BALLOTPEdia, <https://perma.cc/E9L8-VPDB>.

335. VT. STAT. ANN. tit. 18, § 9493 (West, Westlaw current through Chapters 81 (end) and M-16 (end) of the Reg. Sess. of the 2022–2023 Vt. Gen. Assemb. (2023)).

336. H.89 (Act 14), Vt. Gen. Assemb. (Vt. 2023), <https://perma.cc/57T9-JVYA>.

337. *Id.*

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. 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.³³⁸</p>	VA. CODE. ANN. §§ 18.2-72 to 18.2-73 (LexisNexis, Lexis Advance through the 2023 Spec. Sess.); § 18.2-76; § 18.2-74 to 18.2-74.1; §§ 18.2-71.1, 32.1-92.1 to 32.1-92.2, 38.2-3451.
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338. S.B. 852, 2023 Reg. Sess. (Va. 2023).

Washington	Dem./Dem./ Dem.	Legal	Viability	State law protects abortion as a fundamental right. Interference with clinics is prohibited. Abortion is publicly funded and private insurance must cover abortions if they cover maternity care. In June 2022, the Governor directed the Washington State Patrol not to cooperate with out-of-state abortion-related investigations, and to report all requests for cooperation to the Governor. ³³⁹ In 2023, the Governor joined the Reproductive Freedom Alliance. ³⁴⁰	WASH. REV. CODE ANN. § 9.02.100 (LexisNexis, Lexis Advance through 2023 Reg. Sess. and 1st Spec. Sess.).
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339. WASH. REV. CODE ANN. § 9A.50.020 (LexisNexis, Lexis Advance through 2023 Reg. Sess. and 1st Spec. Sess. of the Wash. Leg.); WASH. REV. CODE ANN. § 48.43.073 (LexisNexis, Lexis Advance through the 2023 Reg. Sess. and 1st Spec. 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).

340. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

Washington, D.C.	Dem. ³⁴¹ / Dem. ³⁴²	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. ³⁴³ 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 Congress has previously tried to restrict abortion in D.C. ³⁴⁴	D.C. CODE ANN. § 7–2086.01 (West, Westlaw through Jan. 5, 2024).
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341. Governor.
342. City Council.
343. 69 D.C. Reg. 14641 (Dec. 2, 2022).
344. 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 2022.³⁴⁵ In 2018, voters approved an amendment to the West Virginia Constitution that clarified that the state constitution does not provide a right to abortion. Twenty-four hour waiting periods and counseling are mandated. On January</p>	<p>W. VA. CODE ANN. §16-2R-3 (West, Westlaw through the 2024 Reg. Sess. approved through Feb. 15, 2023); § 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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345. *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).

				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. ³⁴⁶	
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. ³⁴⁷ In 2023, the governor joined the Reproductive Freedom Alliance. ³⁴⁸	WIS. STAT. § 940.04 (West, Westlaw through 2023 Act 91, published Feb. 1, 2024); §§ 20.927, 253.10, 632.8985.

346. Complaint at 5–6, *GenBioPro v. Sorsaia*, No. 2:23-cv-00058 (S.D. W. Va. filed Jan. 25, 2023).
347. Complaint, *Kaul v. Kapenga*, No. 2022-CV-001594 (Wis. Cir. Ct. filed June 28, 2022).
348. *Twenty-One States Announce Historic Governor-Led Reproductive Freedom Alliance*, *supra* note 274.

Wyoming	Rep./Rep./ Rep.	Ban blocked	Viability	State law prohibits abortion after viability “except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health.” 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. ³⁴⁹ 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. ³⁵⁰	WYO. STAT. ANN. § 35-6-102 (West, Westlaw through amends. received through Mar. 5, 2024 of the 2024 Budget Sess. of the Wyo. Leg.).
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349. *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)).

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