One Year Later:
The Landscape of America’s Life-Protecting Laws After Dobbs

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On June 24, 2022, the U.S. Supreme Court’s decision in Dobbs v. Jackson Women’s Health Org. ended nearly fifty years of a judicially-enforced federal “right to abortion” and re-affirmed the People’s authority to legislate the authority through their State and federal elected representatives:

The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. Roe and Casey arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives."

The majority reiterated that rational basis review is the appropriate litigation standard for abortion lawsuits. “[T]he States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot ‘substitute their social and economic beliefs for the judgment of legislative bodies,’” the Court concluded.

In the year since Dobbs, the landscape of life-protecting laws in the United States has radically changed. Broadly speaking, most pro-abortion states have become more stridently pro-abortion, eliminating even the bare protections that had been in place for decades, and shoring up or extending public funding for elective abortion. A disappointing string of pro-life losses in state citizen-initiated ballot campaigns, assessed below in “A Year at the Ballot Box,” has given way to strong but quiet gains in state houses and a remarkable shift in litigation focus from the federal courts to the state court systems, with the exception of the issue of the FDA’s approval of chemical abortion. The dramatic changes in the landscape for protecting life in state policy are examined state by state in “A Year in the State Houses.” The legal landscape of abortion litigation has also drastically changed post-Dobbs. In the federal courts, abortionists voluntarily dismissed federal court litigation due to mootness, and now are arguing chemical abortion and administrative law questions. In the state courts, litigants

1 Dobbs, slip op. at 5-6.
3 Id. at 78-79.
4 Id. at 77 (citation omitted).
are battling over the enforceability of pro-life laws that institute early gestational limits or abolish elective induced abortions entirely. There are novel questions of whether state constitutions or religious protections extend to abortion. Below, in “A Year in the Courts,” AUL analyzes the dramatic changes in the federal courts, emerging threats to life in the state courts, and the impact of the lifting of many pre-<em>Roe</em> injunctions against state abortion laws.

**A Year at the Ballot Box**

It would be inadvisable to draw any conclusions from the 2022 ballot initiatives relating to abortion, since the six resolutions that were on the ballot were markedly different and varied in many ways. For example, Vermont voters created a state constitutional right to “reproductive freedom” writ broadly, but the Vermont measure contain language so ambiguous that it could mean almost anything. Michigan voters also enacted a state right to reproductive freedom, including abortion. The Michigan ballot initiative took a different approach; it protected a variety of activity, including “contraception” and abortion, so that it was difficult to discern what the average voter was truly voting for. California voters reaffirmed statutory and court-construed constitutional protections for abortion and elective abortion funding. Kansas voters turned down a ballot measure that would have provided that the state constitution could not be interpreted to establish a state constitutional right to abortion, and Kentucky voters rejected a similar amendment. Perhaps the most disappointing result was in Montana, where voters turned down a Born Alive Infant Protection Act measure.

With the possible exception of the result in Michigan, the 2022 ballot initiatives did not change the landscape for abortion law in the United States significantly. By and large, pro-abortion states strengthened anti-life laws and pro-life states strengthened pro-life protections. The key change wrought by <em>Dobbs</em> should not be missed, however: in states that passed more incrementally lenient abortion laws, those came in the wake of years of a falling abortion rate, even in those abortion promoting states. On the other hand, the sea change that <em>Dobbs</em> enabled in abortion jurisprudence has now permitted over 20 states to protect virtually all life from conception or from the detection of the baby’s heartbeat. Although ballot measures in the 2023 elections, including in places such as Missouri, Ohio, South Dakota, and Maryland, may vary the story to some degree, these ballot initiative results thus far, though challenging, only told a small part of the story.

**A Year in the State Houses**

With the fall of <em>Roe</em>, state legislatures have become battlegrounds as some legislators fight to abolish abortion, while others seek to lessen protections for preborn life. As of June 2023, 23 states have passed or are enforcing an abortion limit at 12 weeks gestation or earlier, including Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, and
Wyoming, in addition to Florida (6 weeks), Georgia (6 weeks, pending before the Georgia Supreme Court), Iowa (6 weeks), Ohio (6 weeks), South Carolina (6 weeks, subject to injunction), Nebraska (12 weeks), and North Carolina (12 weeks).

The map below depicts each state’s strongest gestational limit on abortion, although some of these state laws are currently blocked due to ongoing litigation. Since last year at this time, 
*Dobbs* has changed this map considerably, reflecting an increasing number of states that protect women and preborn human lives through legislation and in the courts.

Below, we provide an overview of where each state stands in the fight for life one year after *Dobbs*. The states are arranged from most protective of preborn life (from conception) to least protective of preborn life (no protection throughout pregnancy). Each state’s strongest law against abortion that is currently in effect is noted, as well as current litigation that could affect a state’s abortion limits. In these cases, litigants may be seeking to change the limitations on abortion or attempting to impose a state constitutional right to abortion. Lastly, the fact sheet includes a section entitled “Additional Provisions,” which lists varying laws that range from less protective of preborn life to currently inactive. Post-*Dobbs*, many states have enacted pro-life legislation limiting abortion; however, some state courts have blocked these laws from taking effect through injunctions. As litigation proceeds, these laws may once again take effect if a court lifts the injunction. For the most up to date information

**States Whose Laws Protect Life from Conception:**

**A) States where laws protecting life from conception are in effect:**

1. **Alabama**
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion banned with exceptions when “necessary in order to prevent a serious health risk to the unborn child’s mother” (Ala. Code §§ 26-23H-4).
   - **Current Litigation:** N/A
   - **Additional Provisions:**
     - The state constitution affirms public policy is to protect unborn life (Ala. Const. art. I, § 36.06).

2. **Arkansas**
   - **State’s Strongest Limit Currently in Effect:**
     - Ark. Code § 5-61-304(a)) bans abortion “except to save the life of a pregnant woman in a medical emergency” (Ark. Code § 5-61-304(a)).
   - **Current Litigation:** N/A
   - **Additional Provisions:**
     - The state constitution affirms public policy is to protect unborn life (Ark. Const. amend. 68, § 2).

3. **Idaho**
   - **State’s Strongest Limit Currently in Effect:**
     - Criminalizes physicians who perform abortions with an exception if the physician, in good faith medical judgement,
determines it is necessary to save the mother's life (Idaho Code § 18-622; amendments go into effect 7/1/2023).

**Current Litigation:**


- **Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. State of Idaho** (Idaho Nos. 49615-2022, 49817-2022, and 49899-2022) – Consolidated abortion case challenging the conditional law and gestational limits (heartbeat), which also seeks to devise a state constitutional abortion “right.” Idaho Supreme Court held there is no state constitutional right to abortion and upheld the State’s abortion laws Jan. 5, 2023.

**Additional Provisions:**

- Conditional heartbeat law (Idaho Code §§ 18-8801 to -8808).

4. Kentucky

**State’s Strongest Limit Currently in Effect:**

- Ky. Rev. Stat. § 311.772 bans abortion except “to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.”

**Current Litigation:**


- *EMW Women’s Surgical Center, P.S.C. v. Cameron* (Ky. No. 2022-SC-0329) – Abortion conditional law and gestational limits (6-week) case, which also seeks to devise a state constitutional abortion “right.” Preliminary injunction issued, finding that abortion is protected under state constitutional provisions for privacy, equal protection, and religious freedom. Court of appeals granted emergency relief, thus dissolving the preliminary injunction. Kentucky Supreme Court affirmed and remanded, holding abortionists lacked third-party standing Feb. 16, 2023.

- **Additional Provisions:**

5. Louisiana

- **State’s Strongest Limit Currently in Effect:**
  - La. Stat. tit. 40 § 1061 bans abortion except “to prevent the death or substantial risk of death due to a physical condition, or to
prevent the serious permanent impairment of a life-sustaining organ of a pregnant woman.”

▪ **Current Litigation:**

▪ **Additional Provisions:**
  - Heartbeat law (La. Stat. § 40:1061.1.5).

6. **Mississippi**

▪ **State’s Strongest Limit Currently in Effect:**
  - Miss. Code § 41-41-45(2) bans abortions with exceptions for the life of the mother, or in cases of rape or incest that are reported to law enforcement.

▪ **Current Litigation:**

▪ **Additional Provisions:**
  - Pre-*Roe* statute (Miss. Code Ann. § 97-3-3).
  - Heartbeat law (Miss. Code Ann. § 41-41-34.1; temporarily enjoined).

7. **Missouri**

▪ **State’s Strongest Limit Currently in Effect:**
  - Mo. Rev. Stat. § 188.017(2) bans abortion with an exception for the life of the mother.

▪ **Current Litigation:**

▪ **Additional Provisions:**
  - Missouri law recognizes that human life begins at conception and unborn children have protectable interests in life, health, and well-being. (Mo. Rev. Stat. § 188.026.2 (1-2)).
  - Abortion prohibited at eight weeks gestational age, except in cases of medical emergency (Mo. Rev. Stat. § 188.056; temporarily enjoined).

8. **North Dakota**

▪ **State’s Strongest Limit Currently in Effect:**
• S.B. 2150, 68th Leg. Sess., Reg. Sess. (N.D. 2023) bans abortion except when necessary to save the mother’s life or prevent a serious health risk to the mother. Abortion allowed for up to 6 weeks of pregnancy in cases of rape, abuse, or incest.

### Current Litigation:


- **Wrigley v. Romanick** (N.D. No. 20220260) – Abortion conditional law case, which also seeks to devise a state constitutional abortion “right.” Trial court granted preliminary injunction. North Dakota Supreme Court denied relief on Mar. 16, 2023, holding the abortionists “demonstrated likely success on the merits that there is a fundamental right to an abortion in the limited instances of lifesaving and health-preserving circumstances, and the statute is not narrowly tailored to satisfy strict scrutiny.”

### Additional Provisions:


### Oklahoma

#### State’s Strongest Limit Currently in Effect:

- Pre-*Roe* statute (Okla. Stat. tit. 21 § 861) bans abortion with an exception for the life of the mother. In **Oklahoma Call for Reproductive Justice v. Drummond** (Okla. No. 120543), the state’s 2022 abortion abolition law and 1910 pre-*Roe* statute were being challenged, and plaintiffs sought to devise a state constitutional abortion “right.” On March, 21, 2023, the Oklahoma Supreme Court determined “the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life.” Thus, the court found the 2022 abortion abolition law to be unconstitutional, but upheld the 1910 pre-*Roe* law.

#### Other Current Litigation:

- **Oklahoma Call for Reproductive Justice v. O’Connor** (Okla. Dist. Ct. No. CV2021-2072) – Abortion “minibus” case regarding heartbeat, licensing, physician-only, chemical abortion provisions, and abortion abolition case. The case is on appeal to the Oklahoma Supreme Court (Okla. No. 119918), except for the gestational limits (Okla. S.B. 612) issue. At plaintiffs’ request, court struck plaintiffs’ motion to supplement petition and for a stay of proceedings along with a supplemental petition and a motion for a temporary injunction barring S.B. 612.

- **Oklahoma Call for Reproductive Justice v. State of Oklahoma** (Okla. No. 120376) – Gestational limits (heartbeat) case involving a Texas S.B. 8-style law (Okla. H.B. 1503) and seeking to devise a state constitutional abortion “right.” Application for original jurisdiction and petition for declaratory and injunctive relief and/or a writ of prohibition filed Apr. 28, 2022. Oral argument held May 5, 2022. Supplemental application filed to add a challenge to Okla. S.B. 4327, a Texas S.B. 8-style law abolishing abortion. Oklahoma Supreme Court denied abortionists’ supplemental emergency motion for an immediate temporary restraining order and/or temporary injunction June 27, 2022. Oklahoma Supreme Court held unconstitutional both acts under Drummond’s right to terminate a pregnancy when necessary to preserve the mother’s life May 31, 2023.


- **Additional Provisions:**
  - Complete ban with exceptions for life or “to prevent substantial or irreversible physical impairment” (Okla. Stat. tit. 59, § 509; temporarily enjoined).
  - Heartbeat law (Okla. Stat. tit. 63, § 1-731.3; temporarily enjoined).
  - Heartbeat law (Okla. Stat. Tit. 63 § 1-745.34; determined to be unconstitutional by Oklahoma Supreme Court).

10. **South Dakota**

- **State’s Strongest Limit Currently in Effect:**
  - Abortion banned unless necessary to “preserve the life of the pregnant female” (S.D. Codified Laws § 22-17-5.1).

- **Current Litigation:** N/A
• **Additional Provisions:** N/A

11. **Tennessee**

• **State’s Strongest Limit Currently in Effect:**
  - Conditional law (Tenn. Code § 39-15-213) bans abortion with exceptions for the life of the mother or to prevent “serious risk of substantial and irreversible impairment of a major bodily function” of the mother.

• **Current Litigation:** N/A

• **Additional Provisions:**
  - Abortion prohibited after detection of fetal heartbeat. (Tenn. Code § 39-15-216(c)(1)).
  - There is no right to abortion in the state constitution (Tenn. Const. art. I, § 36).

12. **Texas**

• **State’s Strongest Limit Currently in Effect:**
  - Tex. Health & Safety Code §§ 170A.001-7 bans abortion with exceptions for “life-threatening physical condition[s] aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function.”

• **Current Litigation:**
  - *Alliance for Hippocratic Medicine v. U.S. Food & Drug Administration* (5th Cir. No. 23-10362) – Pro-life challenge to FDA approval and deregulation of chemical abortion drugs. District court issued Section 705 stay of FDA’s 2000 approval of mifepristone. 5th Circuit stayed the district court’s ruling in part. Supreme Court stayed the district court’s ruling pending resolution of appeals. 5th Circuit held oral argument May 17, 2023.
  - *Carter v. McDonough* (W.D. Tex. No. 6:22-cv-1275) – Pro-life challenge to Veterans Affairs interim final rule that permits abortions at VA clinics, alleging RFRA and Free Exercise claims.
Preliminary injunction motion is briefed. District court granted VA’s motion to stay deadlines pending resolution of the preliminary injunction motion Feb. 10, 2023.


- **Whole Woman’s Health v. Jackson** (W.D. Tex. No. 1:21-cv-616) – Abortion gestational limits case regarding the Texas Heartbeat Act (S.B. 8). 5th Circuit denied motions for injunction pending appeal and to lift stays. SCOTUS denied application for injunctive relief. SCOTUS permitted lawsuit to proceed only against licensing officials. On certified questions, Supreme Court of Texas found the state licensing officials have no direct or indirect enforcement power. State filed letter indicating there is an outstanding issue regarding S.B. 8’s attorney’s fees mechanism. Remanded to district court Apr. 26, 2022. Defendants filed amended motion to dismiss in part for lack of subject-matter jurisdiction May 22, 2022. District court dismissed in part June 24, 2022. No recent major action.


- **Weldon v. The Lilith Fund for Reproductive Equity** (Tex. Ct. App. No. 02-22-00413-CV) – Abortion gestational limits case regarding the Texas Heartbeat Act (S.B. 8). Filed petition,
request for declaratory judgment, application for temporary injunction, and anti-suit injunction Mar. 15, 2022. Weldon’s motion to dismiss was denied by operation law. Appealed to Texas Court of Appeals. Court of Appeals denied motion to set coordinated briefing schedule and consolidate appeals for oral argument with North Texas Equal Access Fund v. Maxwell (Tex. Ct. App. No. 02-22-00347). Case is briefed, and court is deciding it on submission of briefs.

- **Van Stean v. Texas Right to Life** (Tex. Ct. App. No. 03-21-00650-CV) – Abortion gestational limits case regarding the Texas Heartbeat Act (S.B. 8). Declared certain civil procedures unconstitutional and issued declaratory judgment Dec. 9, 2021. Defendants appealed. Texas Right to Life filed suggestion of mootness Sept. 9, 2022, which the parties have briefed. Case is briefed, and court is deciding it on submission of briefs.

- **Zimmerman v. City of Austin** (Tex. No. 21-0262) – Abortion funding case regarding city budget allocations of taxpayer money to abortion-assistance organizations. District court granted Defendants’ plea to the jurisdiction. Court of Appeals affirmed. Texas Supreme Court vacated and remanded the case for further proceedings.


### Additional Provisions:
- Pre-Roe statute (Tex. Rev. Civ. Stat. arts. 4512.1 to .4, .6).

13. West Virginia

### State’s Strongest Limit Currently in Effect:
- W. Va. Code § 16-2R-3(a) bans abortion unless the fetus is nonviable, the pregnancy is ectopic, or if a medical emergency exists. In cases of rape or incest, abortions are permitted up to eight weeks gestation if reported to law enforcement, and up until 14 weeks gestation if victim is a minor and reported to law enforcement or got medical treatment for the rape or incest.

### Current Litigation:

### Additional Provisions:
• Pre-Roe statute (W. Va. Code § 61-2-8; temporarily enjoined).
• There is no right to abortion in the state constitution (W. Va. Const. art. VI, § 57).

14. Wisconsin

- **State’s Strongest Limit Currently in Effect:**
  - Pre-Roe law (Wis. Stat. § 940.04) bans abortion except when necessary to save the mother’s life as determined by two more physicians.

- **Current Litigation:**

- **Additional Provisions:**
  - Wis. Stat. § 253.107(3) prevents abortions after 20 weeks.

**B) States where laws protecting life from conception are enjoined:**

1. Arizona

- **State’s Strongest Limit Currently in Effect:**
  - Arizona’s strongest limit in effect prohibits abortions after 15 weeks (Ariz. Rev. Stat. § 36-2322(B)). Arizona law also bans all abortions with an exception for the life of the mother under its pre-Roe statute, Ariz. Rev. Stat. § 13-3603. However, the law is currently unenforceable due to ongoing litigation in *Planned Parenthood Arizona, Inc. v. Mayes* (Ariz. No. CV-23-0005-PR). *Planned Parenthood Arizona, Inc. v. Mayes* is a case challenging the state’s pre-Roe law, Ariz. Rev. Stat. § 13-3603. Originally, the pre-Roe law was enjoined through a permanent injunction. The trial court lifted the permanent injunction on September 22, 2022. The case was appealed to the Court of Appeals, which affirmed the trial court’s decision in part, lifting the injunction, and reversed in part, holding that doctors cannot be prosecuted under the pre-Roe law if they comply with the state’s 15-week abortion limit. This rendered the pre-Roe law unenforceable. The case is now before the Arizona Supreme Court on appeal and is in briefing.
Other Current Litigation:


Additional Provisions:

- N/A

2. Indiana

State’s Strongest Limit Currently in Effect:

- Indiana’s strongest limit in effect prohibits abortions after “the earlier of viability . . . or 20 weeks post-fertilization” (Ind. Code § 16-34-2-1(a)(2)). Indiana law also bans all abortions except to protect the life or physical health of the mother, in cases of rape or incest, or when the child suffers from a lethal fetal anomaly (S.B. 1, 122nd Leg., 1st Spec. Sess. (Ind. 2022)). However, this law is enjoined due to litigation in Planned Parenthood N.W. Haw., Alaska, Ind., Ky. v. Members of the Med. Licensing Bd. of Ind., No. 53C06-2208-PL-001756 (Monroe Cnty. Cir. Ct., Sep. 22, 2022). In the case, abortionists sought to prevent Indiana’s ban on abortion, Senate Bill 1, from being enforced. The Indiana Circuit Court of Monroe County entered a preliminary injunction on September 22, 2022, blocking the law from taking effect.

Other Current Litigation:


• **Planned Parenthood of Indiana & Kentucky v. Commissioner, Indiana State Department of Health** (S.D. Ind. No. 1:17-cv-1636) – Abortion parental notice case. Supreme Court granted, vacated, and remanded the case for further consideration in light of *Dobbs*. 7th Circuit vacated preliminary injunction barring enforcement of parental notice provision and remanded the case for further proceedings. Court approved parties’ briefing schedule regarding remaining issues of life, rape, and incest exceptions, and provision prohibiting aiding an unemancipated minor to obtain an abortion. State and abortionists filed cross-motions for summary judgment, Jan. 18 & Feb. 21, 2023, respectively.


**Additional Provisions:**
- N/A

3. **Utah**

**State’s Strongest Limit Currently in Effect:**
- Utah Code Ann. § 76-7-302.5 is the state’s strongest limit in effect, which prohibits abortions after 18 weeks. Under Utah Code § 76-7a-201, Utah law also bans all abortions unless necessary to avert death or “a serious physical risk of substantial impairment of a major bodily function of the woman.” The law allows abortions up to 18 weeks in cases of rape, incest, or if the pregnant minor is under the age of 14. However, Utah’s abortion ban is currently enjoined due to ongoing litigation in *Planned Parenthood Association of Utah v. State of Utah* (Utah No. 20220696). *Planned Parenthood*
Association of Utah v. State of Utah is a case challenging Utah’s abortion conditional law, Utah Code § 76-7a-201, where abortions seek to devise a state constitutional abortion “right.” On July 11, 2022, the trial court granted a preliminary injunction. The case was appealed and is now before Utah Supreme Court.

- **Other Current Litigation:**
  - N/A
- **Additional Provisions:**
  - N/A

4. Wyoming

- **State’s Strongest Limit Currently in Effect:**
  - Wyoming’s strongest limit in effect prohibits abortion at viability (Wyo. Stat. § 35-6-124). On July 1, 2023, Wyoming’s total ban on chemical abortions will take effect (Wyo. Stat. § 35-6-120; effective July 1, 2023). Wyoming law also bans all abortions with exceptions for cases of rape or incest that are reported to law enforcement, or to save the pregnant woman’s life, but this law is temporarily enjoined due to ongoing litigation (H.B. 152, 67th Leg., Reg. Sess. (WY 2023) to be codified at Wyo. Stat. Ann. § 35-6-102 et seq.; temporarily enjoined). In Johnson v. State of Wyoming (Wyo. Dist. Ct. No. 18853), Wyoming’s abortion abolition law, Life is a Human Right Act (H.B. 152), was challenged. The court entered a temporary restraining order, blocking the enforcement of H.B. 152. On June 22, 2023, the court will have a hearing on a motion for a temporary restraining order against the enforcement of the chemical abortion abolition law.

- **Other Current Litigation:**
  - N/A
- **Additional Provisions:**
  - N/A

**States Protecting Life after 6 Weeks:**

1. Florida

- **State’s Strongest Limit Currently in Effect:**
  - Florida’s strongest limit in effect is Fla. Stat. § 390.0111, which prohibits abortions after 15 weeks. Florida law also prohibits abortion after 6 weeks, with exceptions for cases of rape, incest, or human trafficking (S.B. 300, 2023 Leg., Reg. Sess. (Fl. 2023), to be codified at Fla. Stat. § 390.0111.). This law will become effective 30 days after the Florida Supreme Court rules on Florida’s 15-week gestational limit in Planned Parenthood of Southwest and Central Florida v. State of Florida.

- **Current Litigation:**
- **Planned Parenthood of Southwest and Central Florida v. State of Florida** (Fla. Nos. SC22-1050 (lead), SC22-1127) – Abortion gestational limits (15-week) case implicating the state constitutional abortion “right.” Trial court granted temporary injunction. Court of Appeal reversed. Florida Supreme Court accepted jurisdiction. Case is briefed and awaiting oral argument.

**Additional Provisions:**

- Abortion prohibited after 6 weeks, with exceptions for cases of rape, incest, or human trafficking (S.B. 300, 2023 Leg., Reg. Sess. (Fl. 2023), to be codified at Fla. Stat. § 390.0111.).
  1. This law will become effective 30 days after the Florida Supreme Court rules on Florida’s 15-week gestational limit in Planned Parenthood of Southwest and Central Florida v. State of Florida.
- Abortion legal up to 24 weeks with exceptions for life and major bodily harm (Fla. Stat. § 390.01112).
- The right to abortion is protected by the state constitution (In re T.W., 551 So. 2d 1186 (Fla. 1989)).

**Georgia**

- State’s Strongest Limit Currently in Effect:
  - Abortion prohibited once unborn child is determined to “have a detectable human heartbeat.” Exceptions provided for in medical emergencies, cases of rape and incest, or “medically futile” pregnancies (Ga. Code § 16-12-141(b)).
**Current Litigation:**

**Additional Provisions:** N/A

3. **Iowa**

- **State’s Strongest Limit Currently in Effect:**
  - Iowa Code § 146B.2 prohibits abortions after 20 weeks with exceptions for medical emergencies or if the abortion “is necessary to preserve the life of the unborn child.”

- **Current Litigation:**

- **Additional Provisions:**
  - Abortion prohibited after detection of fetal heartbeat, with exceptions for medical emergencies or if the abortion is “medically necessary” (Iowa Code § 146C.2; permanently enjoined).
  - The Iowa Supreme Court held there is no right to abortion in the state constitution. (*Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710 (Iowa 2022)).

4. **Ohio**

- **State’s Strongest Limit Currently in Effect:**
  - Abortions prohibited when “the probable post-fertilization age of the unborn child is twenty weeks or greater” (Ohio Rev. Code § 2919.201(A)).

- **Current Litigation:**
the pleadings May 27, 2021. Preterm filed cross-motion for judgment on the pleadings and motion to stay June 17, 2021. No recent action.


- **Preterm-Cleveland v. Yost** (Ohio No. A2023-0004) – Abortion gestational limits (heartbeat) case, also seeking to devise a state constitutional abortion “right.” Preliminary injunction issued Oct. 12, 2022. Ohio Supreme Court accepted jurisdiction on the standing issue and whether a preliminary injunction can immediately be appealed, but declined to hear the issue of whether the Ohio Constitution creates a right to abortion. Currently in briefing.

- **State of Ohio ex rel. DeBlase v. Ohio Ballot Board** (Ohio No. 2023-0388) – Abortion ballot initiative case seeking to break the initiative into multiple measures because abortion is unique from other reproductive decisions. Complaint for writ of mandamus filed Mar. 20, 2023. Case is briefed.


- **Additional Provisions:**
  - Ohio Rev. Code § 2919.195(A) (temporarily enjoined) prohibits abortion after detection of fetal heartbeat with exceptions for the life of the mother or to prevent “a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.”

5. **South Carolina**

  - **State’s Strongest Limit Currently in Effect:**
    - Abortion prohibited when “the probable post-fertilization age of the woman’s unborn child is twenty or more weeks, except in the case of
fetal anomaly” or to avert the death or “serious risk of substantial and irreversible physical impairment of a major bodily function” of the pregnant woman (S.C. Code Ann. § 44-41-450(A)).

- **Current Litigation:**
  - *Kerr v. Planned Parenthood South Atlantic* (No. 21-1431) – Abortion funding case regarding South Carolina’s exclusion of abortion businesses as “qualified” Medicaid providers. District court issued declaratory judgment and permanent injunction. 4th Circuit affirmed. State filed a petition for a writ of certiorari in the Supreme Court May 6, 2022. Supreme Court denied motion to expedite consideration of the petition. Supreme Court granted petition for a writ of certiorari, vacated the judgment, and remanded the case to the 4th Circuit for further consideration in light of *Health and Hospital Corporation of Marion County, Indiana v. Talevski* (No. 21-806).

- **Additional Provisions:**
  - Abortion prohibited after detection of fetal heartbeat (S.C. Code § 44-41-630(B); temporarily enjoined with ongoing litigation).
  - Heartbeat law (S.C. Code §§ 44-41-610 et seq; found to be unconstitutional by South Carolina Supreme Court).

**States Protecting Life after 12 Weeks:**

1. Nebraska
   - **State’s Strongest Limit Currently in Effect:**
     - L.B. 574, 108th Leg., 1st Reg. Sess. (Neb. 2023) prohibits abortion after 12 weeks, with exceptions for medical emergencies, and for cases of rape or incest.
   - **Current Litigation:**
   - **Additional Provisions:**

2. North Carolina
   - **State’s Strongest Limit Currently in Effect:**
Abortions prohibited after 12 weeks with exceptions for medical emergencies, in cases of rape or incest, or the unborn child has a “life-limiting anomaly” (N.C. Gen. Stat. § 90-21.81A(a); law goes into effect on 7/1/2023).

**Current Litigation:**

**Additional Provisions:**
- Abortion prohibited after 20 weeks. (N.C. Gen. Stat. § 14-45.1(a); repeal effective on 7/1/2023).

**States Protecting Life after 20 Weeks:**

1. Montana
   - **State’s Strongest Limit Currently in Effect:**
     - Mont. Code § 50-20-109(1) allows abortion up until viability.
   - **Current Litigation:**
     - **Weems v. Montana** (Mont. No. DA 22-0207) – Abortion challenge to expand health and safety law to include APRNs as abortion providers. Trial court issued a permanent injunction, permitting APRNs to provide abortions Feb. 25, 2022. State appealed to Montana Supreme Court Apr. 25, 2022. Montana Supreme Court affirmed, holding the
State has not provided “a clear demonstration of a medically acknowledged, bona fide health risk” of APRNs providing abortions May 12, 2023. Briefed and oral argument held Dec. 14, 2022.

- **Additional Provisions:**
  - 20-week limitation (Mont. Code §§ 50-20-601 to -603; temporarily enjoined).
  - Montana Supreme Court contrived a right to abortion under the right to privacy in Article II, § 10 of the State’s constitution. (*Armstrong v. State*, 989 P.2d 364 (Mont. Sup. Ct. 1999)).

### States Protecting Life after 22 Weeks:

1. **Kansas**
   - **State’s Strongest Limit Currently in Effect:**
   - **Current Litigation:**
   - **Additional Provisions:**
     - The right to abortion is protected by the state constitution (*Hodes & Nauser, MDS, P.A. v. Schmidt*, 440 P.3d 461 (Kan. 2019)).
     - Kansas recognizes that human life begins at fertilization and that “unborn children have interests in life, health and well-being that should be protected (Kan. Stat. Ann. § 65-6732(a)).

### States Protecting Life after 24 Weeks:

1. **Massachusetts**
   - **State’s Strongest Limit Currently in Effect:**
Abortion is legal up to 24 weeks with exceptions for life, physical or mental health, or “a lethal fetal anomaly or the fetus is incompatible with sustained life outside the uterus” (Mass. Gen. Laws ch. 112 § 12N).

- **Current Litigation:** N/A
- **Additional Provisions:**
  - Massachusetts Supreme Court held that the due process protections of the state constitution protect abortion (*Moe v. Sec'y of Admin. & Fin.*, 382 Mass. 629, 645-648 (1981)).

2. Nevada

- **State’s Strongest Limit Currently in Effect:**
  - Nev. Rev. Stat. § 442.250(1)(b) prohibits abortion after 24 weeks except to preserve the life and health of the mother.

- **Current Litigation:**
  - *Howell v. Frazier* (Nev. No. 83224) – Raising the issue of the constitutionality of a pre-**Roe** abortion statute that criminalizes self-induced abortion following 24-weeks gestation. A judge granted relief in finding that the woman’s guilty plea was entered in violation of her Sixth and Fourteenth Amendment rights. Nevada Supreme Court accepted the case and permitted the constitutional challenge. Case is briefed and submitted for decision.

- **Additional Provisions:** N/A

3. New Hampshire

- **State’s Strongest Limit Currently in Effect:**
  - Abortion legal up to 24 weeks with exceptions for life “endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function” (N.H. Rev. Stat. § 329:44).

- **Current Litigation:** N/A
- **Additional Provisions:** N/A

4. New York

- **State’s Strongest Limit Currently in Effect:**
  - Abortion is legal up to 24-weeks with exceptions for “absence of fetal viability,” and life or health of the mother (N.Y. Pub. Health Law § 2599-BB(1)).

- **Current Litigation:**
- **Vitagliano v. County of Westchester** (2d Cir. No. 23-30) – Sidewalk counseling case challenging buffer zone law. District court held plaintiff lacked Article III standing and failed as a matter of law. 2nd Circuit oral argument held May 9, 2023.
  - **Additional Provisions:**

5. **Pennsylvania**
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion is legal up to 24 weeks of pregnancy, with exceptions for the life of the mother and the “substantial and irreversible impairment of a major bodily function” of the mother (18 PA. Cons. Stat. § 3211(a)).
   - **Current Litigation:**
   - **Additional Provisions:**
     - Pennsylvania law states that it is the intent of the legislature “to protect the life and health of the child subject to abortion,” and that the legislature “places supreme value upon protecting life” (18 PA. Cons. Stat. § 3202(b)).

**States Allowing Abortion Until Viability:**

1. **California**
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion is legal up to viability with exceptions for the mother’s life and health (Cal. Health & Saf. Code § 123468(b)).
• **Current Litigation:**
  - *Bakersfield Crisis Pregnancy Center v. California Department of Managed Health Care* (Cal. Super. App. No. BCV-22-102617) – Pro-life lawsuit challenging California’s Abortion Accessibility Act for funding abortion but not childbirth, alleging violations of state constitutional rights to privacy and equal protection. Court partially denied (regarding certain plaintiffs) and partially granted (regarding certain plaintiffs, but with leave to amend the complaint) the State’s demurrer and motion to strike the plaintiffs’ first amended complaint May 8, 2023.

• **Additional Provisions:**
  - The right to abortion is protected by the state constitution (Cal. Const. art. I § 1.1; *Comm. to Defend Reprod. Rights v. Myers*, 625 P.2d 779 (Cal. 1981)).
- Statutory protection for the right to abortion up to viability or for the mother’s life and health. (Cal. Health & Safety Code §§ 123462 to 123468).

2. Connecticut
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion legal up to viability with exceptions for the mother’s life and health (Conn. Gen. Stat. § 19a-602(b)).
   - **Current Litigation:**
   - **Additional Provisions:** N/A

3. Delaware
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion is legal up to viability with exceptions for the mother’s life and health, and for fetal anomaly without a “reasonable likelihood of the fetus’s sustained survival outside the uterus without extraordinary medical measures” (Del. Code tit. 24 § 1790(b)).
   - **Current Litigation:** N/A
   - **Additional Provisions:** N/A

4. Hawaii
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion is legal up to viability with exceptions for the mother’s life and health (Haw. Rev. Stat. § 453-16(b)).
   - **Current Litigation:**
   - **Additional Provisions:**
     - Statutory protection for the right to abortion up to viability or for the mother’s life and health (Haw. Rev. Stat. § 453-16(c)).

5. Illinois
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion is legal up to viability with exceptions for life and health (775 Ill. Comp. Stat. 55/1-25(a)).
   - **Current Litigation:**
On Jan. 17, 2023, the district court indicated the case will proceed to trial.


- **Additional Provisions:**
  - Statutory protection for the right to abortion throughout pregnancy (775 Ill. Comp. Stat. 55/1-15).

6. Maine

- **State’s Strongest Limit Currently in Effect:**
  - Abortion legal up to viability with exceptions for life and health (Me. Stat. tit. 22 § 1598).
- **Current Litigation:** N/A
- **Additional Provisions:** N/A

7. Maryland

- **State’s Strongest Limit Currently in Effect:**
  - Abortion is legal up to viability with exceptions for the mother’s life and health, and if the fetus has a “genetic defect or serious deformity or abnormality” (Md. Code, Health-Gen. § 20-209(b)).
- **Current Litigation:**
- **Additional Provisions:** N/A

8. Michigan

- **State’s Strongest Limit Currently in Effect:**
- **Current Litigation:**
- **Additional Provisions:**
  - The right to abortion is protected by the state constitution (Mich. Const. Art I § 28(1)).

9. Rhode Island

- **State’s Strongest Limit Currently in Effect:**
  - Abortion is legal up to viability, with exceptions for the mother’s life and health (23 R.I. Gen. Laws § 23-4.13-2(d)).
- **Current Litigation:**

- **Additional Provisions:**
  - Statutory protection for abortion up to viability with exceptions for the mother’s life and health (R.I. Gen. Laws §§ 23-4.13-1 to -2).

10. Virginia

- **State’s Strongest Limit Currently in Effect:**
  - Abortion is allowed up until the third trimester (Va. Code § 18.2-74).

- **Current Litigation:**

- **Additional Provisions:** N/A

11. Washington

- **State’s Strongest Limit Currently in Effect:**
  - Abortion is legal up to viability with exceptions for the mother’s life and health (Wash. Rev. Code § 9.02.110).

- **Current Litigation:**
  - *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler* (W.D. Wash. No. 3:19-cv-5181) – Conscience rights case challenging Wash. S.B. 6219, which requires Washington employers to provide abortion and abortifacient coverage in employee health plans. 9th Circuit reversed in part, holding Cedar Park has standing for the free exercise issue, but affirmed the dismissal of Cedar Park’s equal protection clause.
for lack of standing. District court clarified that the free exercise and religious autonomy claims are the only remaining claims Feb. 22, 2022. Cross-motions for summary judgment filed Mar. 9, 2023, which are briefed.

- **Additional Provisions:**
  - Statutory protection for abortion up to viability with exceptions for the mother's life and health (Wash. Rev. Code §§ 9.02.100 to .110).

### States Allowing Abortion Throughout Pregnancy:

1. **Alaska**
   - **State's Strongest Limit Currently in Effect:**
     - Abortion legal throughout pregnancy (no statutory limitations).
   - **Current Litigation:**
   - **Additional Provisions:**
     - The right to abortion is protected by the state constitution (*Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963 (Alaska 1997)).

2. **Colorado**
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion legal throughout pregnancy (no statutory limitations).
   - **Current Litigation:**
   - **Additional Provisions:**

3. **Minnesota**
   - **State’s Strongest Limit Currently in Effect:**
     - State constitution allows a right to abortion (*Women of State of Minn. By Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995)).
   - **Current Litigation:**
     - *Doe v. State of Minnesota* (Minn. No. A22-1265) – Omnibus abortion case regarding health and safety, reporting, informed consent, fetal

- **Additional Provisions:**
  - Abortion legal throughout pregnancy (*Hodgson v. Lawson*, 542 F.2d 1350 (8th Cir. 1976)).
  - Statutory protections for abortion throughout pregnancy (H.F. 1, 93rd Gen. Assem., Reg. Sess. (Minn. 2023)).

4. New Jersey
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion legal throughout pregnancy (no statutory limitations).
   - **Current Litigation:** N/A
   - **Additional Provisions:**
     - The right to abortion is protected by the state constitution (N.J. Const. Art. I, para. 1; *Right to Choose v. Byrne*, 450 A.2d 925 (N.J. 1982)).

5. New Mexico
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion legal throughout pregnancy (no statutory limitations).
   - **Current Litigation:**
     - *State of New Mexico ex rel. Raul Torrez v. Board of County Commissioners for Lea County* (N.M. No. S-1-SC-39742) – Mandamus action, which seeks to devise a state constitutional abortion “right.” Attorney General filed writ of mandamus with New Mexico Supreme Court Jan. 23, 2023. Case is briefed.
   - **Additional Provisions:** N/A

6. Oregon
   - **State’s Strongest Limit Currently in Effect:**
     - Abortion legal throughout pregnancy (no statutory limitations).
   - **Current Litigation:** N/A
   - **Additional Provisions:**
7. Vermont

- State’s Strongest Limit Currently in Effect:
  - Abortion legal throughout pregnancy (no statutory limitations).
- Current Litigation: N/A
- Additional Provisions:
  - The right to abortion is protected by the state constitution (Vt. Const. ch. I, art. 22)

**A Year in the Courts**

**Federal Court Cases Dismissed Post-Dobbs**

Abortion litigation in the federal courts before *Dobbs* alleged violations of *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey’s* purposed constitutional right to abortion. After *Dobbs* overruled these cases and recognized that the Constitution does not extend to abortion, these cases became moot since there was no longer a case or controversy. Moreover, since *Dobbs* held that courts should review abortion litigation under the rational basis standard, which is favorable to pro-life laws, abortionists did not amend their complaints to continue under a rational basis theory. Accordingly, at least 30 federal court cases have been dismissed following *Dobbs*.

**Injunctions Lifted Post-Dobbs**

Over the past fifty years, courts have blocked pro-life laws under the theory that the laws infringed upon *Roe* and *Casey’s* purported abortion right. Since *Dobbs* overturned these cases, the legal bases for these injunctions are gone. Accordingly, states have asked courts to lift those injunctions. Notably, Texas successfully lifted the injunction against the admitting privileges law that the Supreme Court held unconstitutional in *Whole Woman’s Health v. Hellerstedt*. Likewise, Louisiana lifted the injunction against their admitting privileges law that the Supreme Court held unconstitutional in *June Medical Services, LLC v. Russo*.

**State Constitutional Abortion “Rights” and Litigation Standards**

Thirteen states have undergone litigation seeking to devise a state constitutional right to abortion. These states are Georgia, Idaho, Indiana, Kentucky, Michigan, Mississippi, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Utah, and Wyoming. Michigan’s

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8 410 U.S. 113 (1973).
10 See 136 S. Ct. 2292 (2016).
11 See 140 S. Ct. 2103 (2020).
litigation was dismissed after being mooted by a state constitutional amendment. Mississippi’s litigation was dismissed after the abortion clinic closed.

Four states have reached a decision on the constitutional merits: Idaho, North Dakota, Oklahoma, and South Carolina. In Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. State of Idaho, the Idaho Supreme Court held “a ‘right to abortion’ has no support in Idaho’s deeply rooted traditions or history at the time Article I, sections 1, 17, and 21 were framed and adopted. Thus, we cannot conclude the Idaho Constitution, as written and intended, implicitly guarantees a fundamental right to abortion.”

The North Dakota Supreme Court determined, “[a]fter review of North Dakota’s history and traditions, and the plain language of article I, section 1 of the North Dakota Constitution, it is clear the citizens of North Dakota have a right to enjoy and defend life and a right to pursue and obtain safety, which necessarily includes a pregnant woman has a fundamental right to obtain an abortion to preserve her life or her health” in Wrigley v. Romanick.

In Oklahoma Call for Reproductive Justice v. Drummond, Oklahoma Supreme Court found “the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life.” The court subsequently held unconstitutional two abortion acts modeled after Texas S.B. 8 in Oklahoma Call for Reproductive Justice v. State of Oklahoma, finding the laws violated Drummond’s right to terminate a pregnancy to preserve a mother’s life.

The South Carolina Supreme Court held in Planned Parenthood South Atlantic v. State of South Carolina “that the decision to terminate a pregnancy rests upon the utmost personal and private considerations imaginable, and implicates a woman’s right to privacy. While this right is not absolute, and must be balanced against the State’s interest in protecting unborn life, this Act, which severely limits—and in many instances completely forecloses—abortion, is an unreasonable restriction upon a woman’s right to privacy and is therefore unconstitutional.”

The Kentucky Supreme Court had an opportunity to decide the constitutional question, but instead affirmed and remanded the case on third-party standing grounds in EMW Women’s Surgical Center, P.S.C. v. Cameron.


One week before Dobbs, the Iowa Supreme Court overruled its decision that had manufactured a state constitutional right to abortion in Planned Parenthood of the Heartland,
The Iowa Supreme Court just deadlocked 3-3 over what litigation standard (i.e., undue burden or rational basis) to apply to abortion cases in the identically named Planned Parenthood of the Heartland, Inc. v. Reynolds. By operation of law, the court affirmed, but as it described “[t]his means the undue burden test remains the governing standard, the fetal heartbeat bill remains enjoined, and nothing stated in either our opinion or the opinions that follow is the law. None has precedential value.”

**Conditional Laws**

Thirteen states prepared conditional laws in anticipation of the Supreme Court overruling Roe v. Wade. These states are Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming. Of these states, nine have defended their conditional laws in court: Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, Utah, and Wyoming. The Mississippi lawsuit was dismissed after the clinic closed. The Wyoming lawsuit was dismissed after the state enacted an abortion abolition law in 2023 (which was challenged in separate litigation).

Three state supreme courts have considered these conditional laws. In Wrigley v. Romanick, the North Dakota Supreme Court held the plaintiffs “demonstrated likely success on the merits that there is a fundamental right to an abortion in the limited instances of life-saving and health-preserving circumstances, and the statute is not narrowly tailored to satisfy strict scrutiny.” Oklahoma’s conditional law reactivated the 1910 pre-Roe law, which the Oklahoma Supreme Court upheld in Oklahoma Call for Reproductive Justice v. Drummond as consistent with the state constitutional right to abortions necessary to preserve the mother’s life. As mentioned above, the Kentucky Supreme Court affirmed and remanded the conditional law case on third-party standing grounds and did not discuss the merits of the law in EMW Women’s Surgical Center, P.S.C. v. Cameron.

**Pre-Roe Laws**

Six states have defended their pre-Roe laws in court: Arizona, Michigan, Oklahoma, Texas, West Virginia, and Wisconsin. The Michigan litigation was dismissed as moot after the state amended its constitution to create an abortion right. The West Virginia case was dismissed as moot with the enactment of a post-Dobbs abortion abolition law. The plaintiffs in the Texas case voluntarily nonsuited their lawsuit.

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The Oklahoma Supreme Court upheld the 1910 pre-*Roe* law in *Oklahoma Call for Reproductive Justice v. Drummond*, finding it was consistent with the state constitutional right to abortion necessary to preserve a mother’s life.

**Chemical Abortion Litigation**

AUL’s litigation report currently is tracking 23 chemical abortion cases. Litigants filed 12 of these lawsuits following *Dobbs*. The most notable case is *Alliance for Hippocratic Medicine v. U.S. Food & Drug Administration*, which has challenged the FDA’s approval and deregulation of chemical abortion drugs.

Some lawsuits, such as *Bryant v. Stein* and *GenBioPro, Inc. v. Sorsaia*, have alleged the FDA’s regulation of chemical abortion drugs preempt state pro-life laws that regulate or abolish these drugs. Following *Dobbs*, GenBioPro had voluntarily dismissed a separate lawsuit which had alleged a preemption theory, *GenBioPro, Inc. v. Dobbs*. GenBioPro, the generic chemical abortion drug manufacturer, also has sued to keep its drug on the market in *GenBioPro, Inc. v. U.S. Food & Drug Administration*.

A coalition of pro-abortion states has challenged the 2023 REMS in *State of Washington v. Food & Drug Administration*. After filing an amended complaint, litigants in *Chelius v. Becerra* also have sought to remove chemical abortion REMS. A similar challenge to remove the REMS in ongoing in *Whole Woman’s Health Alliance v. U.S. Food & Drug Administration*.

In *Bella Health and Wellness v. Weiser*, a pro-life lawsuit has challenged Colorado’s law that prohibits abortion pill reversals. There is an ongoing FOIA lawsuit that seeks to obtain records regarding chemical abortion drug stability and dissolution test results, and well as manufacturing compliance with chemical drug regulations in *Judicial Watch, Inc. v. U.S. Department of Health and Human Services*.

**Religious Liberty Litigation**

There are at least nine ongoing pro-abortion cases that allege various religious causes of action against pro-life laws. Plaintiffs filed eight of these cases following *Dobbs*. The claims mainly arise under state law, alleging constitutional theories such as free exercise or establishment, as well as state versions of the Religious Freedom Restoration Act (RFRA). As a note, many of the early abortion funding cases alleged religious claims, especially for purported infringement upon the Establishment Clause. *Harris v. McRae*, for example, held the Hyde Amendment didn’t violate the Establishment Clause and the plaintiffs didn’t have standing to raise a Free Exercise Clause claim.\(^\text{14}\) A potential area of research would be to

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\(^{14}\) 448 U.S. 297 (1980).
compare how the courts decided the religious issues in these early abortion funding restrictions cases to the present post-Dobbs religious liberty litigation.

**Pregnancy Resource Center and Sidewalk Counseling Litigation**

Following *Politico*’s leak of the *Dobbs* opinion in May 2022, there were more than 100 attacks on pregnancy resource centers, churches, and other pro-life entities. Following these attacks, there have been a few Freedom of Access to Clinic Entrances (FACE) Act cases filed, such as *United States of America v. Roychowdhury*, which alleges the defendant firebombed a Madison, Wisconsin pregnancy resource center, and three FACE Act lawsuits in Florida, charging members of Jane’s Revenge for allegedly vandalizing pregnancy resource centers. The Department of Justice also keeps a running list of its FACE Act cases, but it doesn’t differentiate between cases involving abortion clinics and pregnancy resource centers.

There are notable legal issues in *United States of America v. Handy*, which is a FACE Act criminal case against pro-life advocates. One defendant filed a motion to dismiss for lack of jurisdiction arguing that the FACE Act is predicated on a violation of a constitutional right, but *Dobbs* recognized there is no constitutional right to abortion. After the filing of this motion to dismiss, the court *sua sponte* asked for briefing on whether any other constitutional provision confers a right to abortion. A separate defendant has moved to dismiss the case, arguing the FACE Act is unconstitutional because it does not recognize the personhood of unborn children.

Besides FACE Act cases, there are a few ongoing sidewalk counseling cases challenging buffer zone laws, such as *40 Days for Life v. County of Westchester* and *Pro-Life Action Ministries v. City of Minneapolis*. After Colorado enacted a law that prohibits abortion pill reversals, a pregnancy resource center also filed a lawsuit to challenge this law in *Bella Health and Wellness v. Weiser*.

**Other Case Theories**

Besides the case theories listed above, such as religious liberty or state constitutional abortion rights, there have been other notable legal theories promulgated in post-Dobbs litigation. Two lawsuits, *The Satanic Temple v. Little* and *The Satanic Temple v. Holcomb*, have alleged pro-life laws violate the Takings, Involuntary Servitude, and Equal Protection Clauses. In *Bakersfield Crisis Pregnancy Center v. California Department of Managed Health*

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Care, a pregnancy resource center has challenged California’s Abortion Accessibility Act for funding abortion but not childbirth, alleging violations of state constitutional rights to privacy and equal protection.

Texas is defending against a pro-abortion challenge to the exceptions of its abortion abolition laws in Zurawski v. State of Texas. West Virginia had been facing a lawsuit against its abortion health and safety laws under a rational basis theory, but the abortionists voluntarily dismissed after the plaintiffs-doctors discontinued providing abortions in Women’s Health Center of West Virginia v. Sheth. In Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. Labrador, abortionists have challenged the Idaho Attorney General’s guidance that Idaho law prohibits Idaho medical professionals from referring for abortion across state lines.

There are lawsuits over recent federal administrative actions. United States of America v. State of Idaho and State of Texas v. Becerra implicate the Emergency Medical Treatment and Labor Act (EMTALA) abortion mandate. There is a pro-life challenge to the Veterans Affairs interim final rule that permits abortions at VA clinics in Carter v. McDonough.

Conclusion

Abortion litigation has changed post-Dobbs. Federal court abortion litigation now revolves around chemical abortion and administrative law issues. States are grappling with the enforceability of pro-life laws that limit elective induced abortion at early gestational ages or abolish it entirely. There are new legal theories alleging state constitutional rights to abortion and religious liberty infringements.

One of the emerging challenges is how courts grapple with abortion “exceptions,” including abortions necessary to preserve the life or health of the mother. The Oklahoma Supreme Court ruled a woman has a fundamental right to obtain an abortion necessary to preserve her life. The North Dakota Supreme Court held there is a fundamental right to abortions necessary for the life or health of a woman. Although the Idaho Supreme Court held there is no fundamental right to abortion, a dissenting justice would have found a right to abortions necessary for a woman’s life or health. Going forward, States must ensure that medical exceptions don’t morph into the all-encompassing Doe v. Bolton health definition, which applies to virtually any situation.17

Overall, the pro-life movement has had great accomplishments in the past year. The Supreme Court overturned Roe and Casey, and abortionists voluntarily dismissed at least 30

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17 See 410 U.S. 179, 192 (1973) (“the medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the wellbeing of the patient”).
federal court abortion lawsuits. Courts have lifted injunctions against pro-life laws, including the admitting privileges laws in Texas and Louisiana. Just before Dobbs, the Iowa Supreme Court ruled there is no state constitutional right to abortion, and the Idaho Supreme Court similarly held there is no such right in its state constitution. Instead of finding a right to an elective induced abortion, the Oklahoma Supreme Court limited its holding to abortions necessary to preserve the mother’s life, and the North Dakota Supreme Court only found a right to abortions for the mother’s life or health. Pro-life doctors and medical organizations have courageously challenged the FDA’s unlawful approval and deregulation of chemical abortion drugs. Federal policy is pro-life, and there is no lawful basis for protecting abortion within federal administrative rules. In this post-Roe world, States have vigorously defended their pro-life laws, and must continue to do so to protect mothers, families, and unborn children from abortion violence.

Case Appendix

Federal Court Cases Dismissed Post-Dobbs


- **Little Rock Family Planning Services v. Jegley** (E.D. Ark. 4:21-cv-453) – Abortion gestational limits case limiting the practice throughout pregnancy with narrow exceptions. Preliminary injunction issued July 20, 2021. Appealed to 8th Circuit and held in abeyance pending Dobbs. State filed emergency motion for stay of the injunction and for summary reversal July 24, 2022. 8th Circuit denied State’s motion for a stay of injunction on the ground that the State should seek a stay from the district court in the first instance but requested abortionists to respond to State’s


- **Rutledge v. Little Rock Family Planning Services** (E.D. Ark. No. 4:15-cv-784) – Abortion gestational limits (18-week), health and safety (physician-only rule), and prenatal nondiscrimination (Down syndrome) case. The 8th Circuit affirmed the preliminary injunction. State filed cert. petition on Down syndrome issue only. Supreme Court granted, vacated, and remanded for further consideration in light of *Dobbs*. Abortionists filed a notice of voluntary dismissal in district court. Trial court granted motion to dismiss without prejudice Aug. 2, 2022.

- **Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky, Inc. v. Marion County Prosecutor** (S.D. Ind. No. 1:18-cv-1219) – Abortion reporting case. Per parties’ joint stipulation, the district court dismissed the case without prejudice and denied plaintiff’s pending motion for a preliminary injunction as moot Aug. 29, 2022.

- **EMW Women’s Surgical Center, P.S.C. v. Friedlander** (W.D. Ky. No. 3:18-cv-224) – Abortion gestational limits (dismemberment) case. Sixth Circuit affirmed permanent injunction. SCOTUS granted cert. and held the Sixth Circuit erred in denying the Kentucky Attorney General’s motion to intervene on the commonwealth’s behalf in litigation. 6th Circuit granted the Attorney’s General’s petition for panel rehearing and vacated and remanded the case to district court to reconsider the permanent injunction in light of *Dobbs* July 21, 2022. District court granted parties’ joint motion to vacate the permanent injunction and dismiss the case with prejudice Aug. 17, 2022.


- **Reproductive Health Services of Planned Parenthood of the St. Louis Region, Inc. v. Parson** (8th Cir. Nos. 19-2882, 19-3134) – Gestational limits (8-week, 14-week, 18-week, 20-week) and prenatal nondiscrimination (Down syndrome, sex, race) case. District court partially granted [gestational limits] and partially denied [prenatal nondiscrimination provisions] preliminary injunction for Reproductive Health Services. District court granted motion for reconsideration and modified preliminary injunction to include Down syndrome provision. 8th Cir. en banc oral
argument held Sept. 21, 2021. 8th Circuit vacated preliminary injunction and remanded for further proceedings July 8, 2022. District court granted abortionists’ request to dismiss the case without prejudice July 13, 2022.


- **United States of America v. Texas** (5th Cir. No. 21-50949) – Abortion gestational limits case regarding the Texas Heartbeat Act (S.B. 8). Preliminary injunction was dissolved upon the DOJ’s District court granted preliminary injunction. 5th Circuit granted Texas’s motion to stay preliminary injunction pending appeal. SCOTUS dismissed writ of cert. as improvidently granted. 5th Circuit ordered the State’s motion for voluntary remand or abeyance is to be carried with the case Jan. 21, 2022. Stipulation of dismissal and DOJ’s notice of voluntary dismissal against remaining Defendants filed Aug. 26, 2022. District court closed the case Aug. 29, 2022.


**Chapman v. Doe** (E.D. Mo. No. 2:19-cv-25) – Abortion parental involvement case, which alleged a minor’s constitutional right to obtain an abortion. The Supreme Court granted, vacated, and remanded the case Mar. 20, 2023. As directed by the Eighth Circuit, the district court dismissed the case as moot May 4, 2023.

**Injunctions Lifted Post-Dobbs**

- **June Medical Services v. Phillips** (M.D. La. No. 3:14-cv-525) – Abortion health and safety (admitting privileges) case. District Court granted the State’s renewed emergency rule 60(b) motion to vacate the permanent injunction Nov. 14, 2022.

**State Constitutional Abortion “Rights” and Litigation Standards**

- **Planned Parenthood of Southwest and Central Florida v. State of Florida** (Fla. Nos. SC22-1050 (lead), SC22-1127) – Abortion gestational limits (15-week) case implicating the state constitutional abortion “right.” Trial court granted temporary
injunction. Court of Appeal reversed. Florida Supreme Court accepted jurisdiction. Case is briefed and awaiting oral argument.

- **SisterSong Women of Color Reproductive Justice Collective v. State of Georgia** (Ga. No. S23M0358) – Abortion gestational limits (heartbeat) case, which also seeks to devise a state constitutional abortion “right.” Trial court issued permanent injunction Nov. 15, 2022, finding the LIFE Act was void *ab initio*. Georgia Supreme Court granted State’s emergency petition for supersedeas of the permanent injunction Nov. 23, 2022. Oral argument held Mar. 28, 2023.

- **Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. State of Idaho** (Idaho Nos. 49615-2022, 49817-2022, and 49899-2022) – Consolidated abortion case challenging the conditional law and gestational limits (heartbeat), which also seeks to devise a state constitutional abortion “right.” Idaho Supreme Court held there is no state constitutional right to abortion and upheld the state’s abortion laws Jan. 5, 2023.


- **EMW Women’s Surgical Center, P.S.C. v. Cameron** (Ky. No. 2022-SC-0329) – Abortion conditional law and gestational limits (6-week) case, which also seeks to devise a state constitutional abortion “right.” Preliminary injunction issued, finding that abortion is protected under state constitutional provisions for privacy, equal protection, and religious freedom. Court of appeals granted emergency relief, thus dissolving the preliminary injunction. Kentucky Supreme Court affirmed and remanded, holding abortionists lacked third-party standing Feb. 16, 2023.


- **In re Jarzynka** (Mich. No. 164753) – Complaint for an order of superintending control over *Planned Parenthood of Mich. v. Att’y Gen. of the State of Mich.* after a judge who supports Planned Parenthood issued a preliminary injunction against Michigan’s pre-*Roe* law and the attorney general openly applauded the order. State supreme court denied the application for leave to appeal May 10, 2023, with a
concurrence agreeing the case is moot, but highlighting justiciability concerns with the Court of Claims’ decision.


- **State of New Mexico ex rel. Raul Torrez v. Board of County Commissioners for Lea County** (N.M. No. S-1-SC-39742) – Mandamus action, which seeks to devise a state constitutional abortion “right.” Attorney General filed writ of mandamus with New Mexico Supreme Court Jan. 23, 2023. Case is briefed.

- **Wrigley v. Romanick** (N.D. No. 20220260) – Abortion conditional law case, which also seeks to devise a state constitutional abortion “right.” Trial court granted preliminary injunction. North Dakota Supreme Court denied relief on Mar. 16, 2023, holding the abortionists “demonstrated likely success on the merits that there is a fundamental right to an abortion in the limited instances of life-saving and health-preserving circumstances, and the statute is not narrowly tailored to satisfy strict scrutiny.”

- **Preterm-Cleveland v. Yost** (Ohio No. A2023-0004) – Abortion gestational limits (heartbeat) case, also seeking to devise a state constitutional abortion “right.” Preliminary injunction issued Oct. 12, 2022. Ohio Supreme Court accepted jurisdiction on the standing issue and whether a preliminary injunction can
immediately be appealed, but declined to hear the issue of whether the Ohio Constitution creates a right to abortion. Currently in briefing.

- **Oklahoma Call for Reproductive Justice v. Drummond** (Okla. No. 120543) – Abortion gestational limits case challenging 2022 abortion abolition law and 1910 pre-Roe law, also seeking to devise a state constitutional abortion “right.” Application for original jurisdiction and petition for declaratory and injunctive relief and/or a writ of prohibition filed July 1, 2022. On Mar. 21, 2023, the Oklahoma Supreme Court determined “the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life,” holding unconstitutional the 2022 law, but upholding the 1910 pre-Roe law.

- **Oklahoma Call for Reproductive Justice v. State of Oklahoma** (Okla. No. 120376) – Gestational limits (heartbeat) case involving a Texas S.B. 8-style law (Okla. H.B. 1503) and seeking to devise a state constitutional abortion “right.” Application for original jurisdiction and petition for declaratory and injunctive relief and/or a writ of prohibition filed Apr. 28, 2022. Oral argument held May 5, 2022. Supplemental application filed to add a challenge to Okla. S.B. 4327, a Texas S.B. 8-style law abolishing abortion. Oklahoma Supreme Court denied abortionists’ supplemental emergency motion for an immediate temporary restraining order and/or temporary injunction June 27, 2022. Oklahoma Supreme Court held unconstitutional both acts under Drummond’s right to terminate a pregnancy when necessary to preserve the mother’s life May 31, 2023.

- **Planned Parenthood South Atlantic v. State of South Carolina** (S.C. No. 2022-1062) – Abortion gestational limits (heartbeat) case, which also seeks to devise a state constitutional abortion “right.” South Carolina Supreme Court devised a right to abortion under the state constitution’s privacy clause and held unconstitutional South Carolina’s heartbeat law Jan. 5. 2023. South Carolina Supreme Court denied State’s petition for rehearing.


### Conditional Laws


- **Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. State of Idaho** (Idaho Nos. 49615-2022, 49817-2022, and 49899-2022) – Consolidated abortion case challenging the conditional law and gestational limits (heartbeat), which also seeks to devise a state constitutional abortion “right.” Idaho Supreme Court held there is no state constitutional right to abortion and upheld the state’s abortion laws Jan. 5, 2023.

- **EMW Women’s Surgical Center, P.S.C. v. Cameron** (Ky. No. 2022-SC-0329) – Abortion conditional law and gestational limits (6-week) case, which also seeks to devise a state constitutional abortion “right.” Preliminary injunction issued, finding that abortion is protected under state constitutional provisions for privacy, equal protection, and religious freedom. Court of appeals granted emergency relief, thus dissolving the preliminary injunction. Kentucky Supreme Court affirmed and remanded, holding abortionists lacked third-party standing Feb. 16, 2023.


• **Wrigley v. Romanick** (N.D. No. 20220260) – Abortion conditional law case, which also seeks to devise a state constitutional abortion “right.” Trial court granted preliminary injunction. North Dakota Supreme Court denied relief on Mar. 16, 2023, holding the abortionists "demonstrated likely success on the merits that there is a fundamental right to an abortion in the limited instances of life-saving and health-preservation circumstances, and the statute is not narrowly tailored to satisfy strict scrutiny."

• **Oklahoma Call for Reproductive Justice v. Drummond** (Okla. No. 120543) – Abortion gestational limits case challenging 2022 abortion abolition law and 1910 pre-Roe law, also seeking to devise a state constitutional abortion “right.” Application for original jurisdiction and petition for declaratory and injunctive relief and/or a writ of prohibition filed July 1, 2022. On Mar. 21, 2023, the Oklahoma Supreme Court determined “the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life,” holding unconstitutional the 2022 law, but upholding the 1910 pre-Roe law.

• **Planned Parenthood Association of Utah v. State of Utah** (Utah No. 20220696) – Abortion conditional law case, which also seeks to devise a state constitutional abortion “right.” Complaint filed June 25, 2022. Trial court granted preliminary injunction July 11, 2022. Appealed to Utah Supreme Court. Case is briefed. Abortionists filed amended complaint in the trial court (Utah Dist. Ct. No. 220903886), adding a challenge to H.B. 467, which institutes a hospital-only rule by prohibiting the licensing of new abortion clinics or relicensing of current abortion clinics. Trial court issued preliminary injunction May 2, 2023.


*Pre-Roe Laws*


the Governor’s executive message and set an expedited briefing schedule June 23, 2022. Case closed because underlying lawsuit was dismissed Jan. 20, 2023.

- **In re Jarzynka** (Mich. No. 164753) – Complaint for an order of superintending control over *Planned Parenthood of Mich. v. Att’y Gen. of the State of Mich.* after a judge who supports Planned Parenthood issued a preliminary injunction against Michigan’s pre-*Roe* law and the attorney general openly applauded the order. State supreme court denied the application for leave to appeal May 10, 2023, with a concurrence agreeing the case is moot, but highlighting justiciability concerns with the Court of Claims’ decision.


- **Oklahoma Call for Reproductive Justice v. Drummond** (Okla. No. 120543) – Abortion gestational limits case challenging 2022 conditional law and 1910 pre-*Roe* law, also seeking to devise a state constitutional abortion “right.” Application for original jurisdiction and petition for declaratory and injunctive relief and/or a writ of prohibition filed July 1, 2022. On Mar. 21, 2023, the Oklahoma Supreme Court determined “the Oklahoma Constitution creates an inherent right of a pregnant woman to terminate a pregnancy when necessary to preserve her life,” holding unconstitutional the 2022 law, but upholding the 1910 pre-*Roe* law.


**Chemical Abortion Litigation**


- **Bella Health and Wellness v. Weiser** (D. Colo. No. 1:23-cv-939) – Chemical abortion pill reversal case challenging a Colorado law that prohibits abortion pill reversals. Complaint filed Apr. 14, 2023. District court denied motion for a preliminary injunction Apr. 28, 2023, indicating the defendants are not enforcing the law until rulemaking, as provided by the bill, occurs.


- **Trust Women Foundation Inc. v. Bennett** (Kan. Dist. Ct. No. 2019-cv-60) – Chemical abortion (telemedicine) case. Kansas Court of Appeals reversed denial of temporary injunction and held that Trust Women had standing to sue the Board of Healing Arts. Kansas Supreme Court denied state officials’ petition for review of opinion. Trial


- **Oklahoma Call for Reproductive Justice v. O’Connor** (Okla. Dist. Ct. No. CV-2021-2072) – Abortion “minibus” case regarding heartbeat, licensing, physician-only, chemical abortion provisions, and abortion abolition case. The case is on appeal to the Oklahoma Supreme Court (Okla. No. 119918), except for the gestational limits
(Okla. S.B. 612) issue. At plaintiffs’ request, court struck plaintiffs’ motion to supplement petition and for a stay of proceedings along with a supplemental petition and a motion for a temporary injunction barring S.B. 612.


- **Alliance for Hippocratic Medicine v. U.S. Food & Drug Administration** (5th Cir. No. 23-10362) – Pro-life challenge to FDA approval and deregulation of chemical abortion drugs. District court issued Section 705 stay of FDA’s 2000 approval of mifepristone. 5th Circuit stayed the district court’s ruling in part. Supreme Court stayed the district court’s ruling pending resolution of appeals. 5th Circuit held oral argument May 17, 2023.


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**Religious Liberty Litigation**

- **EMW Women's Surgical Center, P.S.C. v. Cameron** (Ky. No. 2022-SC-0329) – Abortion conditional law and gestational limits (6-week) case, which also seeks to devise a state constitutional abortion “right.” Preliminary injunction issued, finding that abortion is protected under state constitutional provisions for privacy, equal protection, and religious freedom. Court of appeals granted emergency relief, thus
dissolving the preliminary injunction. Kentucky Supreme Court affirmed and remanded, holding abortionists lacked third-party standing Feb. 16, 2023.


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**Pregnancy Resource Center and Sidewalk Counseling Litigation**

injunction Apr. 28, 2023, indicating the defendants are not enforcing the law until rulemaking, as provided by the bill, occurs.


- **United States of America v. Handy** (D.D.C. No. 1:22-cr-96) – Freedom of Access to Clinic Entrances (FACE) Act criminal case charging pro-life advocates. Defendant Handy filed motion to dismiss for lack of jurisdiction arguing that the FACE Act is predicated on a violation of a constitutional right, but *Dobbs* recognized there is no constitutional right to abortion Jan. 27, 2023. District court ordered briefing on whether any other constitutional provision confers a right to abortion Feb. 6, 2023. Defendant Idoni filed a motion to dismiss May 2, 2023, including an argument that the FACE Act is unconstitutional because it does not recognize the personhood of unborn children. Trial set for Sept. 6, 2023.


- **Vitagliano v. County of Westchester** (2d Cir. No. 23-30) – Sidewalk counseling case challenging buffer zone law. District court held plaintiff lacked Article III standing and failed as a matter of law. 2nd Circuit oral argument held May 9, 2023.

**Other Case Theories**

- **Bakersfield Crisis Pregnancy Center v. California Department of Managed Health Care** (Cal. Super. App. No. BCV-22-102617) – Pro-life lawsuit challenging California’s Abortion Accessibility Act for funding abortion but not childbirth, alleging violations of state constitutional rights to privacy and equal protection. Court partially denied (regarding certain plaintiffs) and partially granted (regarding certain plaintiffs, but with leave to amend the complaint) the State’s demurrer and motion to strike the plaintiffs’ first amended complaint May 8, 2023.

• **Carter v. McDonough** (W.D. Tex. No. 6:22-cv-1275) – Pro-life challenge to Veterans Affairs interim final rule that permits abortions at VA clinics, alleging RFRA and Free Exercise claims. Preliminary injunction motion is briefed. District court granted VA’s motion to stay deadlines pending resolution of the preliminary injunction motion Feb. 10, 2023.

