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CHAPTER 13

THE POST-*DOBBS* LITIGATION LANDSCAPE

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I. THE BANS AND WHAT THEY COVER

On June 24, 2022, the U.S. Supreme Court decided *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) and reversed *Roe v. Wade*¹ and its holding that the Fourteenth Amendment protected the right to an abortion. *Dobbs* paved the way for states to prohibit abortion through state constitutional or statutory bans on abortion, some of which predate *Roe*.² While some bans prohibit abortion entirely, others prohibit abortions only after a certain gestational age of the pregnancy. This section analyzes these state laws and criminal penalties and provides an overview of key criminal issues in the post-*Dobbs* abortion litigation landscape.

A. Scope of Bans

The current state-law abortion “ban” regimes prohibit abortions beginning at some point within the first 20 weeks of pregnancy. Different state laws apply different limitations based on the gestational age of the pregnancy (measured from a woman’s last menstrual period) or fertilization, including complete abortion bans (prohibiting any abortion at any gestational age) or bans prohibiting abortions after detection of fetal cardiac activity, typically around six weeks gestational age.

Generally, these bans prohibit “using,” “procuring,” or “prescribing” any instrument, drug, medicine, or any other substance, device, or means with the intent to cause an abortion, or “performing,” “inducing,” “attempting,” “assisting,” or “procuring” such a termination of pregnancy. For example, Texas prohibits a person from “knowingly perform[ing], induc[ing], or attempt[ing] an abortion,” which it defines as “the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant.”³

Bans are generally considered to prohibit performing a surgical abortion on a pregnant person or prescribing or dispensing abortion medication to a pregnant person. As discussed more below (§ II. A.), the scope of “procuring” or “assisting” with an abortion is less

¹ *Roe v. Wade*, 410 U.S. 113 (1973), overruled by *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).

² Trigger laws were enacted after *Roe* and drafted to become effective in the case of a Supreme Court decision overruling *Roe*, while other laws predate *Roe* but were never formally repealed (so-called “zombie laws”).

³ Tex. Health & Safety Code §§ 245.002(1), 170A.002(a).

clear and could be broadly read to include a host of individuals or entities who funded or otherwise assisted in the abortion.

B. Exceptions

Most bans insulate certain behavior from criminal liability by establishing statutory affirmative defenses, meaning the defendant has the burden of proof to establish the defense and therefore avoid criminal liability.

1. Rape and Incest

Some bans permit terminating pregnancy in the event of rape or incest, with the exception sometimes only permitted before certain gestational ages.⁴ Some states further require that the rape or incest be reported to law enforcement or otherwise corroborated in order to qualify for the exception.⁵

2. Fetal Anomalies

Some states permit abortions in the case of fatal fetal anomalies.⁶ On the other hand, some states ban abortions sought because of fetal anomalies.⁷

Legislators have had difficulty properly drafting the scope of this exception as medical research evolves, making it difficult, if not impossible, to draft an exhaustive list of all fatal fetal anomalies. This tension has sparked legal challenges to the scope of this exception. For example, in Indiana, abortion is legal in the case of a “lethal fetal anomaly,”⁸ which is defined to mean “a fetal condition diagnosed before birth that, if the pregnancy results in a live birth, will with reasonable certainty result in the death of the child not more than three (3) months after the child’s birth.”⁹ However, the three-month window was challenged because it did not include other common conditions like Tay-Sachs disease, which would result in death very early in childhood.¹⁰ Ultimately, the law was allowed to stay in effect.¹¹

⁴ For instance, North Carolina, which generally has a 12-week ban, permits abortion through the 20th week “when the woman’s pregnancy is a result of rape or incest.” N.C. Gen. Stat. § 90-21.81B.

⁵ For instance, Mississippi permits an abortion when the pregnancy was caused by rape, “only if a formal charge of rape has been filed with an appropriate law enforcement official.” MS Code § 41-41-45(3). Idaho requires the pregnant person to report the act of rape or incest to law enforcement. Idaho Code § 18-622(2)(b), (3). On the other side, North Dakota permits abortions resulting from rape or incest up to 6 weeks, determined “based on reasonable medical judgment.” NDCC § 12.1-19.1.03.

⁶ See, e.g., AL Code §§ 26-23H-3(1), (3); Cal. Health & Safety Code S 123466; Cal. Health & Safety Code § 123468(b); Ga. Code Ann. § 16-12-141(b); Ind. Code § 16-34-2-1(a)(1)(A)(ii); Md. Code Ann., Health-Gen. § 20-209(b)(2)(ii); Mass. Gen. Laws Ann. ch. 112, § 12N(iii)-(iv); N.H. Rev. Stat. Ann. § 329:44(II)-(III); N.Y. Pub. Health Law § 2599-bb; N.C. Gen. Stat. § 90-21.81B(4); S.C. Code Ann. § 44-41-660; Utah Code Ann. §§ 76-7-302(2)(b)(ii), (4).

⁷ See, e.g., Ariz. Rev. Stat. § 13-3603.02(A)(2); MS Code § 41-41-407(1)-(2).

⁸ Ind. Code § 16-34-2-1(a)(1)(A)(ii).

⁹ Ind. Code. § 16-25-4.5-2.

¹⁰ See Complaint, *Anonymous Plaintiffs v. Individual Members of the Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056 (Marion Cnty. Sept. 8, 2022).

¹¹ The law was preliminarily enjoined, but the Supreme Court of Indiana overturned the preliminary injunction. See *Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 985 (Ind. 2023).

3. Life or Health of the Mother

Many states with abortion bans permit abortions to save the life of, or to maintain the health of, the pregnant person.¹² The exact wording of these exceptions and the severity of the conditions covered varies. As noted above, overly narrow bans are open to challenge.¹³

Some states permit abortions only in the case of a “medical emergency” “necessary to prevent the death of the pregnant woman.”¹⁴ Some states have slightly broader exceptions, also permitting abortion where it is “necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman”¹⁵ or “to prevent a serious health risk to the unborn child’s mother.”¹⁶ The laws generally require providers to determine if such a situation exists based on their “reasonable”¹⁷ medical judgment, putting the onus on healthcare providers to assess legality or risk of prosecution. The scope and clarity of this exception is hotly contested, generating the most litigation related to the scope of the bans.¹⁸

¹² See 775 Ill. Comp. Stat. Ann. 55/1-25(a) (“If the health care professional determines that there is fetal viability, the health care professional may provide abortion care only if, in the professional judgment of the health care professional, the abortion is necessary to protect the life or health of the patient.”); Md. Code Ann., Health-Gen. § 20-209(b)(2)(i) (allowing abortion at any point during pregnancy if “The termination procedure is necessary to protect the life or health of the woman . . .”); Mass. Gen. Laws Ann. ch. 112, § 12N (allowing abortions after 24 weeks if a physician determines that the abortion is “ (ii) necessary to preserve the patient’s physical or mental health . . .”); Mich. Const. Art. I, § 28(1) (forbidding the state from banning abortions in cases where, in the professional judgment of an attending healthcare professional, the physical or mental health or life of the pregnant individual are at risk); Nev. Rev. Stat. Ann. § 442.250(1)(c) (allowing abortion after 24 weeks “only if the physician has reasonable cause to believe that an abortion currently is necessary to preserve the life or health of the pregnant woman”); N.Y. Pub. Health Law § 2599-bb (allowing abortions after viability if “there is an absence of fetal viability, or the abortion is necessary to protect the patient’s life or health”); 18 Pa. Cons. Stat. Ann. § 3204(c) (providing that in determining whether an abortion is necessary, “a physician’s best clinical judgment may be exercised in the light of all factors (physical, emotional, psychological, familial and the woman’s age) relevant to the well-being of the woman”); R.I. Gen. Laws § 23-4.13-2(d) (allowing abortions post-viability “when necessary, in the medical judgment of the physician, to preserve the life or health” of the pregnant person). Some states specifically allow the exception to apply when pregnancy causes a risk to the *mental* health of the pregnant person, *see, e.g.*, Mass. Gen. Laws Ann. ch. 112, § 12N(ii); Mich. Const. Art. I, § 28(1); VA Code Ann. § 18.2-74(b), while others specify that risks to the pregnant person’s mental health do not allow the exception to apply, Ga. Code Ann. § 16-12-141(a)(3).

¹³ For instance, in Oklahoma, the state Supreme Court ruled an abortion ban with an exception only for a “medical emergency”—which it took to mean requiring an actual and present danger—unconstitutional, because the state constitution required abortion be permitted “when necessary to preserve [a pregnant woman’s] life,” which did not require the actual emergency to occur. *Okla. Call for Reprod. Just. v. Drummond*, 526 P.3d 1123, 1130–32 (Okla. 2023).

¹⁴ *See, e.g.*, Idaho Code § 18-622(2)(a)(1); Ark. Code Ann. § 5-61-304; 21 Okla. Stat. Ann. § 861; S.D. Codified Laws § 22-17-5.1.

¹⁵ *See, e.g.*, Ariz. Rev. Stat. Ann. § 36-2321(7); Ky. Rev. Stat. § 311.772(4); La. Stat. Ann. § 40:1061(F); Ga. Code Ann. § 16-12-141(a)(3); Kan. Stat. Ann. § 65-6703(a)(2), Kan. State. Ann. S 6724(c)(2); Mo. Ann. Stat. § 188.015(7); Neb. Rev. Stat. Ann. § 71-6901(8); N.H. Rev. Stat. Ann. § 329:44(III); N.C. Gen. Stat. Ann. § 90-21.81(1); Ohio Rev. Code Ann. § 2919.201(B)(1)(b); 18 Pa. Cons. Stat. Ann. § 3211(b); S.C. Code Ann. § 44-41-320(1); Tenn. Code Ann. § 39-15-213(c); Tex. Health & Safety Code § 170A.002(b); Utah Code Ann. § 76-7-302; W. Va. Code Ann. § 16-2R-2; W.S.A. §§ 253.10(2)(d).

¹⁶ Ala. Code § 26-23H-4(b); Ind. Code § 16-34-2-1; N.D. Cent. Code Ann. § 12.1-19.1-03(1).

¹⁷ Ky. Rev. Stat. § 311.772(4).

¹⁸ The two highest profile challenges on such a theory have arisen in Texas. *First*, 22 plaintiffs with life-threatening pregnancy complications sued the state of Texas seeking a declaratory judgment that the relevant Texas exception allowed “abortion care for pregnant persons with emergent medical conditions.” The lower court granted temporary relief, but that ruling was stayed pending review by the Texas Supreme Court. *See*

The federal government has sought to bolster the exceptions for the life and health of the pregnant person via the U.S. Department of Health and Human Services (“HHS”) federal guidance stating that the Emergency Medical Treatment and Labor Act (“EMTALA”) preempts any state law that prohibits abortion *without* “an exception for the life of the pregnant person.”¹⁹ EMTALA requires hospitals receiving Medicare funds to provide appropriate stabilizing medical treatment to any individual who comes to a hospital emergency department presenting with an emergency medical condition, including when a condition could result in serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

The HHS guidance and the scope of EMTALA preemption arguments are currently being litigated. In Texas, two national groups of physicians and state officials sued HHS and obtained a preliminary injunction against the guidance, which is currently on appeal to the Fifth Circuit.²⁰ However, in Idaho, the United States sued the state seeking to enjoin Idaho’s Defense of Life Act as preempted by EMTALA.²¹ The district court granted the preliminary injunction, and the state appealed the decision to the United States Supreme Court, seeking a stay of the injunction. The Supreme Court granted the stay application and has agreed to hear the case to resolve whether and how these exceptions must conform to the relevant EMTALA requirements.²² The Court’s resolution may clarify hospitals’ potential liability in emergency situations.

C. Extent of Liability (Criminal Penalties)

Criminal penalties for abortion bans vary widely by state, including both misdemeanors and felonies, with maximum penalties ranging from one year to life in prison.²³ Penalties also frequently include maximum fines of \$10,000 to \$100,000²⁴ per violation, and may also include the suspension or revocation of a professional license.

Temporary Injunction Order, *Zurawski v. State of Texas*, No. D-1-GN-23-000968 (Tex. Dist. Ct., Travis Cnty. Aug. 4, 2023); *State of Texas v. Zurawski*, No. 23-0629 (Tex. Aug. 7, 2023). *Second*, an individual pregnant woman sought declaratory relief that she could obtain abortion care under the life-of-the-mother exception for the same reason. Again, the district court granted the relief sought, including a TRO restraining the state from enforcing Texas’s abortion bans against the woman and her husband, as well as medical professionals, with respect to her pregnancy. *Cox v. State of Texas*, Cause No. D-1-GN-23-008611 (Tex. Dist. Ct., Travis Cnty. Dec. 7, 2023). The Texas Supreme Court vacated the relief, ruling that because plaintiff’s doctor did not assert that her condition was “life-threatening,” the exception did not apply. The court opined that the statute was sufficiently clear, as it required a doctor to operate “within the zone of reasonable medical judgment, which is what doctors do every day.” *In re State of Texas*, 682 S.W.3d 890, 894 (Tex. Dec. 11, 2023).

¹⁹ *Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss*, CMS, CTRS. FOR MEDICARE & MEDICAID SERVS. (July 11, 2022), <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurvey/certificationgeninfo/policy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0>.

²⁰ *Texas v. Becerra*, 623 F.Supp.3d 696 (N.D. Tex. 2022).

²¹ *United States v. Idaho*, 623 F.Supp.3d 1096, 1102 (D. Idaho 2022).

²² *Idaho v. United States*, 144 S.Ct. 541 (Jan. 5, 2024).

²³ AL Code § 26-23H-6 (felony); Tex. Health & Safety Code § 170A.004 (felony); Fla. Stat. § 390.0111(10)(a) (felony); Ind. Code Ann. § 16-34-2-7 (felony and misdemeanor).

²⁴ *See, e.g.*, Ind. Code Ann. § 35-50-2-6(b); Ark. Code Ann. § 5-61-404(b); Ariz. Rev. Stat. §§ 36-2324, 2325; Idaho Code § 18-622; Iowa Code Ann. § 146B.3(1); Fla. Stat. § 456.072(1).

Most criminal bans restrict the conduct of medical providers,²⁵ and exempt the individual who obtained an abortion.²⁶ South Carolina is currently the only state in which the abortion laws expressly contemplate compelling the individual who received an abortion to testify in a criminal prosecution, however the law expressly exempts them from prosecution.²⁷

II. SECONDARY LIABILITY

States seeking to criminalize assisting in an abortion either codify that in the ban itself,²⁸ or rely on the state's general criminal aiding-and-abetting laws.²⁹ Enforcement efforts in at least one state (Texas) have also focused on charging individuals who assist state residents with obtaining a legal abortion outside of the state in which abortion is criminalized.³⁰

In addition to aiding and abetting liability, state enforcement officials have looked to general theories of indirect criminal liability, such as accomplice liability, criminal conspiracy, accessory after the fact, and federal and state Racketeer Influenced and Corrupt Organizations (“RICO”) statutes to attach criminal liability to those who assist in the provision of abortion care. These theories of secondary liability are less developed in the abortion context but have gained traction.³¹

While thus far untested, these state laws could be used to criminalize employers' provision of insurance benefits that allow employees to travel out-of-state to access abortion care, to charge hospital staff and administrators who assist with an illegal abortion, or even to reach as far as potentially covering family members and friends who helped their loved

²⁵ See, e.g., Fla. Stat. § 390.0111; Ga. Code Ann. § 16-12-141; N.D. Cent. Code Ann. § 12.1-19.1-02; Ohio Rev. Code Ann. § 2919.195, Utah Code Ann. §§ 76-7a-101, 76-7a-201; W. Va. Code, § 61-2-8; Wyo. Code § 35-6-101 *et seq.*

²⁶ See, e.g., Ala. Code § 26-23H-5; Ariz. Rev. Stat. Ann. § 36-2324(B); Ark. Code Ann. § 5-61-304(c)(1); Idaho Code § 18-622(5); Ky. Rev. Stat. § 311.772(5); La. Stat. Ann. § 40:1061(H); Miss. Code Ann. § 41-41-45(4); Mo. Rev. Stat. § 188.017(2); Tenn. Code Ann. § 39-15-216(f); Tex. Health & Safety Code §§ 170A.003, 171.206(b).

²⁷ S.C. Code § 44-41-80(b). Other states have prosecuted pregnant individuals for receiving abortion care under different state statutes and theories. The Pregnancy Justice Center published a report indicating that pregnant individuals who have abortions may face prosecution for mistreating fetal remains, feticide, murder or manslaughter, fetal assault, among other state criminal statutes. See *The Rise of Pregnancy Criminalization: A Pregnancy Justice Center Report* at 27, (Sept. 2023), available at <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/9-2023-Criminalization-report.pdf>.

²⁸ See, e.g., 21 Okla. Stat. § 861; Tex. Health & Safety Code §§ 170A.003, 171.206(b).

²⁹ See, e.g., Complaint, *Marcus A. Silva v. Noyola et al.*, Cause No. 23-CV-0375 (Galveston Cnty. Texas, March 10, 2023).

³⁰ See, e.g., *In re Zach Maxwell*, Cause No. C2022388, Rule 202 Petition at 6 (Hood Cty. Dist. Ct., Tex., Sept. 1, 2022) available at <https://aflegal.org/wp-content/uploads/2022/02/1-In-re-Ashley-Maxwell-Rule-2-2.2b-petition-2.2.2022-REDACTED.pdf> (“If any Texas resident beyond the six-week limit ingested either of those two drugs in Texas, then the abortion violated the Texas Heartbeat Act.”), *In Fund Texas Choice v. Paxton*, 1:22-cv-00859 (W.D. Tex. Aug. 23, 2022), a Texas district court enjoined Texas district attorneys and prosecutors from pursuing legal relief against abortion and practical support funds, or providers, for providing out of state care to abortion seekers in Texas. *Fund Texas Choice v. Paxton*, 658 F. Supp.3d 377, 415 (W.D. Tex. 2023).

³¹ See, e.g., Reply in Support of Motion to Dismiss, Dkt. No. 36, *Yellowhammer Fund v. Marshall*, No. 2:23-cv-00450 (M.D. Ala. Oct. 12, 2023) (Defendant, the Alabama Attorney General, argued that under Alabama's conspiracy statute, “conspiring to procure an out-of-state abortion constitutes a crime.”).

one obtain abortion medication.³² Early state enforcement efforts have expansively construed theories of secondary liability to pursue a large array of actors.³³

A. Aiding and Abetting Liability

In general, a person incurs aiding-and-abetting liability when he or she assists in conduct that gives rise to criminal or civil liability. An individual can be liable for criminal aiding-and-abetting liability, civil aiding-and-abetting liability, or both, depending on the state. Criminal aiding-and-abetting charges can be brought by state or local law enforcement authorities. Civil aiding-and-abetting suits are generally brought by private individuals or entities, though a state can authorize a state agency or other authority to bring a civil action as well.

General aiding-and-abetting laws. Most, if not all, states criminalize aiding and abetting. Generally, though each state’s aiding and abetting laws vary, an individual may be criminally liable for the commission of the offense to the same extent as the principal offender.³⁴ Different state laws use different language to define aiding and abetting—*e.g.*, inducing,

³² For example, in Texas, Texas Rule of Civil Procedure 202 enables an individual to petition the court for a pre-suit deposition of a witness. In the abortion context, anti-abortion activists in Texas have relied on this mechanism to bring suits against under Section 171.208 of the Texas Health and Safety Code. *See, e.g., In re Janna Moore*, Cause No. 22-1519-B, Texas Rule 202 Petition at 2 (Smith Cnty. Dist. Ct., Tex. July 15, 2022) (seeking to depose the chair of Sidley Austin LLP’s management committee based on internal memo promising that the firm would continue to provide employees covered by their health insurance plans with access to legal abortion care, including travel reimbursements where necessary); *In re Maxwell*, Cause No. C2022388, Texas Rule 202 Petition at 2 (Hood Cnty. Dist. Ct., Tex., Sept. 1, 2022) (arguing that helping Texan women access and pay for abortions, including paying for transportation to a state where abortion is still legal, exposes organization to civil liability).

³³ The Associated Press, *A Nebraska Woman is Charged with Helping Her Daughter Have an Abortion*, NAT’L PUB. RADIO (Aug. 10, 2022), <https://www.npr.org/2022/08/10/1116716749/a-nebraska-woman-is-charged-with-helping-her-daughter-have-an-abortion> (woman charged with performing unlicensed abortion when she aided her daughter’s abortion); *Alabama’s Attorney General Says the State can Prosecute Those Who Help Women Travel for Abortions*, ASSOCIATED PRESS (August 31, 2023), <https://apnews.com/article/alabama-abortion-steve-marshall-2157a7d0bfad02aad1ca41e61fe4de33>; Sean Murphy, *Clergy, Social Workers Fear Fallout from Okla. Abortion Laws*, ASSOCIATED PRESS (Aug. 15, 2022), <https://apnews.com/article/abortion-religion-oklahoma-city-c1f66720db215ead0995c8ed7a833354> (Oklahoma legislator discussing use of law banning the aiding and abetting of an abortion to target corporations that provide money to people seeking abortions), *but see* Sean Murphy, *Oklahoma AG Urges Prosecution for Performing an Abortion*, ASSOCIATED PRESS (Aug. 31, 2022), <https://apnews.com/article/abortion-health-oklahoma-city-0b5156fbfadbf7635c60e5fce36dc4c> (Oklahoma attorney general stating ban on aiding and abetting of abortions could not be used to prosecute abortion advocacy groups: “Oklahoma law prohibits aiding and abetting the commission of an illegal abortion, but [Oklahoma Attorney General John O’Connor] urged prosecutors to take great care to avoid infringing on advocacy, which is constitutionally protected free speech.”); Kelcie Moseley-Morris, *University of Idaho Releases Memo Warning Employees that Promoting Abortion is Against State Law*, IDAHO CAP. SUN (Sept. 26, 2022), <https://idahocapitalsun.com/2022/09/26/university-of-idaho-releases-memo-warning-employees-that-promoting-abortion-is-against-state-law/> (State university forbidding employee from discussing abortion to avoid violating state felony ban on aiding abortion).

³⁴ In most states, a person who has a legal duty to prevent an act and who fails to take legally required action to prevent it from occurring is also liable for aiding and abetting. State laws vary, but at the federal level, “there is no requirement that a de facto principal be convicted of an offense prior to convicting someone as an aider and abettor.” That said, “[t]he proof must show someone other than the aider and abettor could have satisfied all the requirements of the substantive offense.” *Criminal Resource Manual: 2479. What Is Not Required To Prove Aiding And Abetting*, U.S. DEP’T OF JUST., <https://www.justice.gov/archives/jm/criminal-resource-manual-2479-what-not-required-prove-aiding-and-abetting> (citing cases) (last visited May 8, 2024).

causing, facilitating, encouraging, etc.—which can affect the specific situations in which aiding-and-abetting liability arises in a given state.³⁵ For an individual to be convicted of aiding and abetting a crime, that person must be shown to have acted with *knowledge* of the unlawful purpose of the principal offender, and the *intent* to encourage, facilitate, promote, or assist in the commission of the crime.³⁶

Abortion-specific aiding-and-abetting laws. Certain states have enacted aiding-and-abetting laws that specifically criminalize facilitating abortions.³⁷ For example, Florida prohibits “actively participat[ing] in” the performance of an abortion.³⁸ Because Florida’s statute focuses on any “person” who “actively participates” in an abortion, it could be read to penalize not just abortion providers but those who aid and abet an abortion. Texas’s pre-*Roe* abortion ban imposes direct civil and criminal liability for aiding and abetting abortion care.³⁹ Oklahoma law also prohibits aiding and abetting “the commission of an unlawful abortion, which may include advising a pregnant woman to obtain an unlawful abortion.”⁴⁰

B. Conspiracy

State Attorneys General in Alabama and Louisiana have taken the position that a conspiracy to have an abortion if formed within the state—even if the procedure itself is performed outside of the state—is illegal under state conspiracy laws.⁴¹ Whether courts will

³⁵ See, e.g., *Zimmerman v. City of Austin*, 620 S.W.3d 473, 477, n.3 (Tex. Crim. App. 2021) (citing *Beier v. State*, 687 S.W.2d 2, 3 (Tex. Crim. App. 1985) (en banc)). In *Zimmerman*, an Austin homeowner sued the City of Austin and the City Manager contending that they had violated Texas’s abortion statutes by providing money to abortion-assistance organizations. *Id.* at 477. The homeowner’s complaint relied on Texas’s criminal aiding-and-abetting statute, Section 7.02. The suit, which preceded *Dobbs*, was dismissed for lack of subject matter jurisdiction as the court concluded that Texas’s criminal abortion restrictions were unconstitutional under then-binding Supreme Court precedent. *Id.* at 488. The Supreme Court of Texas, after the Supreme Court’s decision in *Dobbs*, vacated the judgments of the lower courts and remanded to the trial court “to address in this first instance the effect of this change in the law—and the effect of any intervening factual developments.” *Zimmerman v. City of Austin*, 658 S.W.3d 289, 291 (Tex. 2022).

³⁶ This element requires *contemporaneous* intent to promote or assist the commission of the specific offense. See, e.g., *Metcalfe v. State*, 597 S.W.3d 847, 856 (Tex. Crim. App. 2020) (“Although we can look to events taking place after commission of the offense, the intent to promote or assist must have been formed contemporaneously with, or before, the crime alleged was committed.”).

³⁷ Oklahoma, Florida, and Texas have all enacted such provisions. Meanwhile, Alabama, Arizona, Arkansas, Florida, and Ohio have considered such a provision. See H.B. 4327, 2022 Leg., Reg. Sess. (Okla. 2022); H.B. 23, 2022 Leg., Reg. Sess. (Ala. 2022); H.B. 2483, 55th Leg., 2nd Reg. Sess. (Ariz. 2022); S.B. 13, 93rd Gen. Assemb., 2nd Extraordinary Sess. (Ark. 2021); H.B. 167, 124th Leg., Reg. Sess. (Fla. 2022); H.B. 480, 134th Gen. Assemb., Reg. Sess. (Ohio 2021).

³⁸ Fla. Stat. § 390.0111(10)(a); see also *id.* §§ 775.082(3)(e), 775.083(1)(c).

³⁹ See Tex. Rev. Civ. Stat. art. 14212.2; Tex. Pen. Code Art. 1192 (1925) (“Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.”).

⁴⁰ See Oklahoma Attorney General Memorandum, *Guidance for Oklahoma Law Enforcement following Dobbs v. Jackson Women’s Health Org.*, OCRJ v. Drummand, and OCRJ v. Oklahoma, at 3 (Nov. 21, 2023), available at https://www.oag.ok.gov/sites/g/files/gmc766/f/documents/2023/memo_to_law_enforcement_part_ii_final.pdf (citing 21 Okla. Stat. Ann. §§ 171-172, 861).

⁴¹ See Reply in Support of Motion to Dismiss, Dkt. No. 36, *Yellowhammer Fund v. Marshall*, Case No. 2:23-cv-00450 (M.D. Ala. Oct. 12, 2023), available at https://lawyeringproject.org/wp-content/uploads/2023/10/20231012_AL-Aid_AG-Reply-MTD.pdf (Defendant, the Alabama Attorney General, argued that under Alabama’s conspiracy statute, “conspiring to procure an out-of-state abortion constitutes a crime.”); see also Letter from Jeff Landry, Louisiana Attorney General, to John Schroder, Louisiana Treasurer (Apr. 5, 2022), available at <https://www.ag.state.la.us/Article/13023> (asking Treasurer Schroder to exclude Citigroup from state business for covering out-of-state travel expenses of employees seeking abortions).

construe these state statutes so broadly remains to be seen. So far, relatively few attempts have been made to prosecute individuals under state conspiracy laws. In *Yellowhammer Fund v. Marshall*, No. 2:23-cv-00450 (M.D. Ala. 2023), the abortion clinic brought suit to determine whether the Alabama Attorney General can pursue criminal charges, specifically conspiracy charges, against abortion providers and funders for aiding individuals seeking out-of-state abortions. The court has not yet ruled on Alabama's motion to dismiss at the time of publication, but the case suggests that the scope of these secondary liability theories in the abortion context will continue to be litigated.

III. MEDICATION ABORTION

Medication abortion does not require a procedure but instead involves a two-drug regimen of first mifepristone, which stops the pregnancy from growing, and second of misoprostol, which is taken 24-48 hours later to expel the pregnancy. Mifepristone first received FDA approval in 2000. Although the FDA's approval of mifepristone is currently subject to legal challenge in *Alliance for Hippocratic Medicine v. FDA*, No. 22-A-902 (U.S.), discussed below, the use of mifepristone remains legal. Since its approval, the use of medication abortion has steadily increased in the United States, comprising more than 53% of all domestic abortions performed in 2022. This section discusses laws specifically regulating medication abortion.

A. Medication abortion-specific restrictions

Even prior to *Dobbs*, many states restricted access to medication abortion, including by limiting who could prescribe it (*e.g.*, physicians only),⁴² as well as dictating where it could be taken (*e.g.*, only in a doctor's office),⁴³ including in some cases specifying that medication abortion could not be prescribed via telemedicine.⁴⁴ Following *Dobbs*, this trend has continued, including banning the shipping and delivery of medication abortion.⁴⁵

B. Medication abortion-specific shield laws

Post-*Dobbs*, some states have begun enacting laws to protect medical providers from out-of-state prosecutions and lawsuits related to abortion, referred to as "shield laws." For example, in New York, health care providers who help others access a "legally protected health activity" are protected.⁴⁶ The law defines "legally protected health activity" to include "reproductive health services," including, among other things, "services, care, or products of a . . . prescribing[] or dispensing nature relating to the human reproductive system." And it applies regardless of the patient's location.⁴⁷

While not yet challenged legally and so not resolved, prescribing and sending abortion medication into such states may be considered inconsistent with the concept of "legally

⁴² See, *e.g.*, Tex. Health & Safety Code Ann. § 171.003.

⁴³ See, *e.g.*, Neb. Rev. Stat. Ann. § 28-335.

⁴⁴ See, *e.g.*, Ind. Code Ann. § 16-34-1-11.

⁴⁵ See, *e.g.*, Ariz. Rev. Stat. § 36-2160(B); Ark. Code Ann. § 20-16-1504(b); Mont. Code Ann. § 50-20-704; Tenn. Code Ann. § 63-6-1103; Tex. Health & Safety Code § 171.063(b-1).

⁴⁶ N.Y. Crim. Proc. Law § 570.17(2).

⁴⁷ N.Y. Crim. Proc. Law § 570.17(1)(a),(b).

protected health activity” since it would otherwise be illegal (and not usually protected) to dispense in a state where mifepristone is restricted by other laws.

There have also been concerns that state abortion shield laws are ineffective given the constitutional provision permitting states to extradite citizens to enforce their own laws.⁴⁸ The Extradition Clause, however, only prevents state citizens from evading prosecution in their home state. It does not allow one state to hale another state’s citizens into court for conduct that took place outside of that state’s borders.⁴⁹

C. Impact of Federal Law on Medication Abortion Laws

1. Comstock Act

Enacted in 1873, the Comstock Act (18 U.S.C. § 1461 *et seq.*), as relevant here, comprises two sections of the U.S. Code that purport to ban shipments of abortion-producing drugs. Section 1461 bans the shipment of medications known to cause abortion by U.S. mail, while Section 1462 bans such shipments by common carriers such as FedEx. Following *Roe v. Wade*, the Comstock Act, although never repealed, was widely understood to be unconstitutional as applied to abortion-producing drugs. In the wake of *Dobbs*, however, there is renewed interest in whether this 150-year-old statute applies to shipments of abortion-producing drugs like mifepristone.

In December 2022, the Department of Justice (“DOJ”) issued an opinion concluding that, in general, shipping mifepristone does not violate the Comstock Act.⁵⁰ First, DOJ concluded that the Comstock Act does not prohibit the mailing of abortion drugs where the shipper lacks the intent that the recipient of the drugs will use them illegally. Relying on pre-*Roe* appellate cases interpreting the Comstock Act to apply only to unlawful abortions and contraception, DOJ cited evidence that the United States Postal Service (“USPS”) accepted the narrowed construction with regard to contraception and had informed Congress of the agency’s acceptance of the narrowed construction. DOJ explained that Congress amended the Act several times without changing the wording of the abortion provision, suggesting legislative ratification of the courts’ narrower interpretation. Second, DOJ concluded that although some states sometimes ban the use of mifepristone, there are “manifold ways in which recipients in every state may use these drugs...without violating state law,” such as to save the mother’s life.⁵¹ Accordingly, a shipper of mifepristone to any state would not necessarily intend that the mifepristone will be used for an illegal abortion, so the shipper would not violate the Comstock Act unless some other proof of intent were evident.

State officials and commentators seeking to restrict abortion access disagree with this narrow interpretation. The Comstock Act does not expressly refer to illegal abortion—just

⁴⁸ U.S. Const., Art. IV, § 2, Clause 2 (Interstate Extradition Clause).

⁴⁹ *See Hyatt v. New York*, 188 U.S. 691, 712–13 (1903) (“[T]he person who is sought must be one who has fled from the demanding state, and he must have fled (not necessarily directly) to the state where he is found.”).

⁵⁰ Office of Legal Counsel, Memorandum Opinion, Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions, (December 23, 2022), available at <https://www.justice.gov/olc/opinion/file/1560596/download>.

⁵¹ *See id.*

“abortion”—so OLC may well conclude that the Comstock Act bars the shipment of mifepristone even when the abortion would be legal under state law. An administration seeking to restrict access to abortion may also believe that the Comstock Act’s *mens rea* requirement is satisfied if the shipper knew the mifepristone would be used for purposes of abortion.

2. U.S. Food and Drug Administration (FDA)

Since approving mifepristone in 2000, the FDA has regulated and periodically expanded its use through revisions to the drug’s Risk Evaluation and Mitigation Strategy (REMS) program. In November 2022, plaintiffs seeking to restrict abortion access filed a lawsuit in Texas against the FDA. The case challenges the FDA’s approval of mifepristone in 2000 and subsequent actions taken by the agency to expand access to the drug since its approval, including the 2016 decision to expand the timeframe for availability from seven to ten weeks gestation,⁵² and the 2023 decision permitting certified pharmacies to dispense mifepristone in-person or by mail.⁵³

In April 2023, a federal district court in Texas issued a preliminary injunction that effectively suspended the FDA’s original 2000 approval of mifepristone, stating that the FDA improperly approved of the medication. Days later, the Department of Justice appealed the decision, and the Fifth Circuit ruled that the original 2000 approval by the FDA was valid, disagreeing with the district court. However, the Fifth Circuit agreed with the district court’s ruling that the FDA’s decisions to expand access to mifepristone from 2016 onward were invalid. The Department of Justice then sought emergency relief from the Supreme Court, which issued a temporary stay of the district court’s decision. While the case is pending, therefore, the FDA REMs program for dispensing mifepristone remains fully intact and lawful.

In August 2023, the Fifth Circuit ruled that the FDA had the authority to allow mifepristone to be provided under the REMS program, but struck down all amendments made by the FDA starting in 2016. On December 13, 2023, the Supreme Court announced that it would hear argument in the consolidated cases of *Alliance for Hippocratic Medicine v. FDA* and *Alliance for Hippocratic Medicine v. Danco*, in which the Court will consider the FDA’s expansion of its mifepristone authorization, including distribution by mail and retail pharmacies.⁵⁴ Notably, the Court declined to grant Alliance for Hippocratic Medicine’s cross-petition challenging the FDA’s original certification of mifepristone.

⁵² *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. FOOD & DRUG ADMIN., (Sept. 1, 2023), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

⁵³ *Information about Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. FOOD & DRUG ADMIN. (Mar. 23, 2023), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/information-about-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

⁵⁴ U.S. Sup. Ct., Order List: 601 U.S. (Dec. 13, 2023), https://www.supremecourt.gov/orders/courtorders/121323zr_f204.pdf (granting cert. and consolidating cases *FDA, et al. v. Alliance Hippocratic Medicine, et al.* and *Danco Laboratories LLC v. Alliance Hippocratic Medicine, et al.*).

Other lawsuits have been filed arguing that the FDA’s approval of mifepristone preempts any state law restrictions. As of the time of publication one has been dismissed⁵⁵ and one remains pending.⁵⁶

IV. TERRITORIAL CONCERNS

Given the varying legality of and penalties for abortion in different states, extraterritorial application of state law to determine under what state law an individual can be prosecuted or arrested for an abortion⁵⁷ is a key issue.

A. Extraterritorial Application

A state’s ability to criminalize and prosecute out-of-state conduct is limited. For instance, under the Model Penal Code, actions taken outside the state establish criminal liability enforceable by that state only when those actions constitute an attempt or conspiracy to commit a crime within the state; where there is express extraterritorial intent in the language of the statute; or if the conspiracy occurred in the state and the conduct was also an offense in the state in which it occurred.⁵⁸

Abortion bans therefore apply to conduct in the state, but should not apply to out-of-state conduct.⁵⁹ Moreover, prosecuting someone who travels to another state to seek an abortion would likely violate the constitutional right to interstate travel.⁶⁰ The Supreme Court prior to *Roe* made clear that the right protects “persons who enter [a state] seeking the medical services that are available there,” such as abortion.⁶¹ Justice Kavanaugh, in a *Dobbs* concurrence, reiterated that a state may not “bar a resident of that State from traveling to another State to obtain an abortion” based on the “constitutional right to interstate travel.”⁶²

In the wake of *Dobbs*, two debates have arisen as to the issue of a state law’s application to potentially out-of-state abortions. First, given medication abortion’s two-pill regime, questions arise as to when exactly the abortion occurs in the process.⁶³ Advocates

⁵⁵ See *GenBioPro, Inc. v. Sorsaia*, No. 3:23-0058, 2023 WL 5490179, at *15 (S.D. W. Va. Aug. 24, 2023).

⁵⁶ *Bryant v. Stein*, No. 23-cv-77 (M.D.N.C.) (Suit by abortion providers challenging North Carolina’s abortion ban as preempted by the FDA’s regulation of mifepristone. A motion to dismiss hearing on the case was held in January of 2024.).

⁵⁷ Research has shown that pregnant people are travelling from states with abortion bans to more open states to get an abortion. See Kimya Forouzan, Amy Friedrich-Karnik, & Isaac Maddow-Zimet, *The High Toll of US Abortion Bans: Nearly One in Five Patients Now Traveling Out of State for Abortion Care*, GUTTMACHER INST. (Dec. 7, 2023), <https://www.guttmacher.org/2023/12/high-toll-us-abortion-bans-nearly-one-five-patients-now-traveling-out-state-abortion-care>.

⁵⁸ MODEL PENAL CODE § 1.03; see also, e.g., Tex. Pen. Code Ann. § 1.04; Mo. Ann. Stat. § 541.191.

⁵⁹ See *Fund Texas Choice v. Paxton*, 658 F.Supp.3d 377, 397–401 (W.D. Tex. 2023) (holding Texas’s criminal abortion ban “does not penalize out-of-state abortions, and as such, does not penalize conduct related to out-of-state abortions”); see also *Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 742–43 (Mo. 2007) (stating in the civil context that it could not enforce an abortion restriction (regarding parental consent) on abortions performed out of state).

⁶⁰ *Saenz v. Roe*, 526 U.S. 489, 498, 501 (1999) (quoting *United States v. Guest*, 383 U.S. 745, 757 (1966)); see also U.S. Const. amend. XIV, § 1.

⁶¹ *Doe v. Bolton*, 410 U.S. 179, 200 (1973); see also *Bigelow v. Virginia*, 421 U.S. 809, 824 (1975).

⁶² *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 346 (2022) (Kavanaugh, J., concurring).

⁶³ Although some pre-*Roe* law has suggested that the site of a medication abortion is the site the medication was ingested, that does not answer the question as to which pill must be ingested. See *Crossett v. State*, 235 S.W.

seeking to restrict access to abortion have expressed the position that if any or either of the two abortion pills are ingested in a state, that state has jurisdiction over the abortion.⁶⁴ Although untested, prosecutors may also take this position. Second, prosecutors, such as in Texas and Alabama, have suggested they could charge entities in states with violating bans if those entities assist in funding any out-of-state abortions.⁶⁵ Abortion funds in both Texas⁶⁶ and Alabama⁶⁷ have filed lawsuits seeking injunctive and declaratory relief to prevent the Attorneys General in those states from making good on their statements to prosecute out-of-state activity. These lawsuits seek to challenge these public statements from their Attorneys General as both chilling their First Amendment speech and expression rights and interfering with their constitutional rights to interstate travel.⁶⁸ The Texas lawsuit was decided without resolving the issue, on the grounds that the Texas pre-*Roe* statutes that Plaintiffs challenged were repealed by implication⁶⁹ (and is on appeal), and in Alabama, a motion to dismiss is pending.⁷⁰ Plaintiffs in the Alabama case challenge the Attorney General's interpretation of the law based on a theory that a state cannot also prosecute people assisting others in exercising their fundamental right to travel, and the federal government filed a statement of interest brief in that case further articulating its support of that theory.⁷¹

B. Anti-Extradition Laws

In order to effectively punish (and prosecute unless prosecuting in absentia) individuals in other states, a ban state must first extradite the individual. Nineteen states have passed laws limiting states from extraditing individuals charged under another state's abortion ban, which are often focused on protecting providers in the non-ban state who provide abortions to pregnant people from states with bans.⁷² These anti-extradition laws have not been tested and, despite careful drafting, may face constitutional challenges based on the Extradition Clause of the Constitution, which requires a state return a person who "fle[d]" the state in which they committed a crime to the state with jurisdiction.⁷³ However,

599, 601 (Tex. Crim. App. 1921) (when abortion medication was purchased in Travis County, then mailed to the patient in Dawson County who took the pills there, venue was proper in Dawson County, where the "act was committed").

⁶⁴ See, e.g., *In re Janna Moore*, Cause No. 22-1519-B, Rule 202 Petition at 2 (Smith Cnty. Dist. Ct., Tex. July 15, 2022) (arguing that Texas's criminal prohibitions on abortions "extend to drug-induced abortions if any part of the drug regimen is ingested in Texas, even if the drugs were dispensed by an out-of-state abortionist").

⁶⁵ See, e.g., Alabama Attorney General Steve Marshall, Jeff Poor Show FM Talk 1065, August 11, 2022 at 4:29:09 p.m., 8:00–10:01, available at <https://fmtalk1065.com/podcast/alabama-attorney-general-steve-marshall-jeff-poor-show-thursday-8-11-22>; *Fund Texas Choice v. Paxton*, 658 F.Supp.3d 377, 400–01 (W.D. Tex. 2023) (describing Texas Attorney General statements to that effect).

⁶⁶ See *Fund Texas Choice*, 658 F.Supp.3d at 384.

⁶⁷ Complaint, *Yellowhammer Fund v. Marshall*, No. 2:23-cv-00450 (M.D. Ala. July 31, 2023), Dkt. No. 1. Plaintiffs argue that this interpretation of state law is overbroad and would violate the First Amendment, the right to travel, and the Due Process Clause of the Fourteenth Amendment. *Id.*

⁶⁸ *Fund Texas Choice*, 658 F.Supp.3d at 410.

⁶⁹ *Id.* at 411.

⁷⁰ Motion to Dismiss, *Yellowhammer Fund v. Marshall*, No. 2:23-cv-00450 (M.D. Ala. Aug. 28, 2023), Dkt. No. 28. The Motion can be found online at <https://www.courtlistener.com/docket/67649369/28/yellowhammer-fund-v-marshall-lead/>.

⁷¹ Statement of Interest of the United States in Support of Plaintiffs' Right to Travel Claim, *Yellowhammer Fund v. Marshall*, No. 2:23-cv-00450 (M.D. Ala. Nov. 9, 2023), Dkt. No. 40; see *Edwards v. California*, 314 U.S. 160, 171–74 (1941).

⁷² See, e.g., N.Y. Crim. Proc. §§ 140.10(3-a), 570.17.

⁷³ U.S. Const. art. IV, § 2, cl. 2. Moreover, federal law requires the governor of each state to return fugitives to their original state upon demand. See 18 U.S.C. § 3182; see also *Puerto Rico v. Branstad*, 483 U.S. 219, 226–28 (1987).

as noted above (§ III.B.), the Extradition Clause does not contemplate extradition of people who did not flee, meaning a state is not constitutionally required to extradite a provider who never stepped foot in the state where abortion is banned.⁷⁴

C. Anti-Travel Laws

One jurisdiction is also directly targeting travel, although with minimal success. An Idaho “abortion trafficking” law prohibits an adult from assisting a minor in obtaining an abortion by transporting the minor within the state.⁷⁵ A federal court has preliminarily enjoined that law under the First Amendment.⁷⁶ Whether this law succeeds will likely determine whether other states follow Idaho’s lead as to travel bans.⁷⁷ Idaho also recently charged two individuals with felonies such as kidnapping for taking a minor out of state to obtain an abortion. Although there is debate as to whether this case relates to abortion trafficking (the defendants were not charged under that law),⁷⁸ how this case plays out in the shadow of the state abortion trafficking law may hint at how such travel bans will be enforced in the future.

V. AROUND THE CORNER

Beyond the increase in abortion bans and laws shortening the time a patient has to obtain an abortion, certain trends in abortion restrictions have developed since *Dobbs* was decided. One such trend is the increase in laws that specifically address the liability of the pregnant person, including laws that indicate that abortion patients cannot be held criminally liable under the law,⁷⁹ and laws that indicate that they can.⁸⁰ Similarly, more prosecutors may attempt to prosecute the pregnant person under other statutes, such as statutes criminalizing abuse of a corpse.⁸¹

In addition, a number of states have enacted medication-specific bans.⁸² Looking forward, more such laws will likely pass in restrictive states. Further, at the local level, a

⁷⁴ See *Hyatt v. New York*, 188 U.S. 691, 712–13 (1903) (“[T]he person who is sought must be one who has fled from the demanding state, and he must have fled (not necessarily directly) to the state where he is found.”).

⁷⁵ Idaho Code § 18-623(1).

⁷⁶ *Matsumoto v. Labrador*, No. 1:23-CV-00323, 2023 WL 7388852, at *23–24 (D. Idaho Nov. 8, 2023).

⁷⁷ Several localities in states with bans, such as Texas, have also passed ordinances creating a private right of action against those using the jurisdiction’s roads to transport a pregnant person for an abortion in another state. See Jayme Lozano Carver, *Amarillo City Council Says it Needs More Time to Debate Abortion Travel Ban*, TEX. TRIBUNE (Dec. 19, 2023), <https://www.texastribune.org/2023/12/19/amarillo-texas-abortion-travel-ban-vote/>.

⁷⁸ Nicole Blanchard, *Idaho Girl Went Out of State for an Abortion. Why Her Boyfriend Faces a Criminal Charge*, SPOKESMAN-REVIEW (Nov. 29, 2023), <https://www.spokesman.com/stories/2023/nov/29/idaho-girl-went-out-of-state-for-an-abortion-why-h/>.

⁷⁹ See, e.g., S.D. Codified Laws § 22-17-5.2 (effective July 1, 2023).

⁸⁰ See, e.g., KY H.B. 300, 2023 Regular Session (introduced Feb. 14, 2023).

⁸¹ For example, in December 2023, an Ohio woman was charged with abuse of a corpse after miscarrying in her home. Julie Carr Smyth, *A Black Woman was Criminally Charged After a Miscarriage. It Shows the Perils of Pregnancy Post-Roe*, ASSOCIATED PRESS (Dec. 16, 2023), <https://apnews.com/article/ohio-miscarriage-prosecution-brittany-watts-b8090abfb5994b8a23457b80cf3f27ce>.

⁸² See, e.g., Ariz. Rev. Stat. § 36-2160(B); Ind. Code Ann. § 16-34-2-1(a)(1)(C); MCA § 50-20-704; Neb. Rev. Stat. Ann. § 28-335(2); S.C. Code Ann. § 40-47-37(C)(6); Tex. Health & Safety Code § 171.063.

growing number of cities and other localities have attempted to restrict abortion. Finally, a Republican-led federal legislature may attempt to restrict abortion at the federal level.