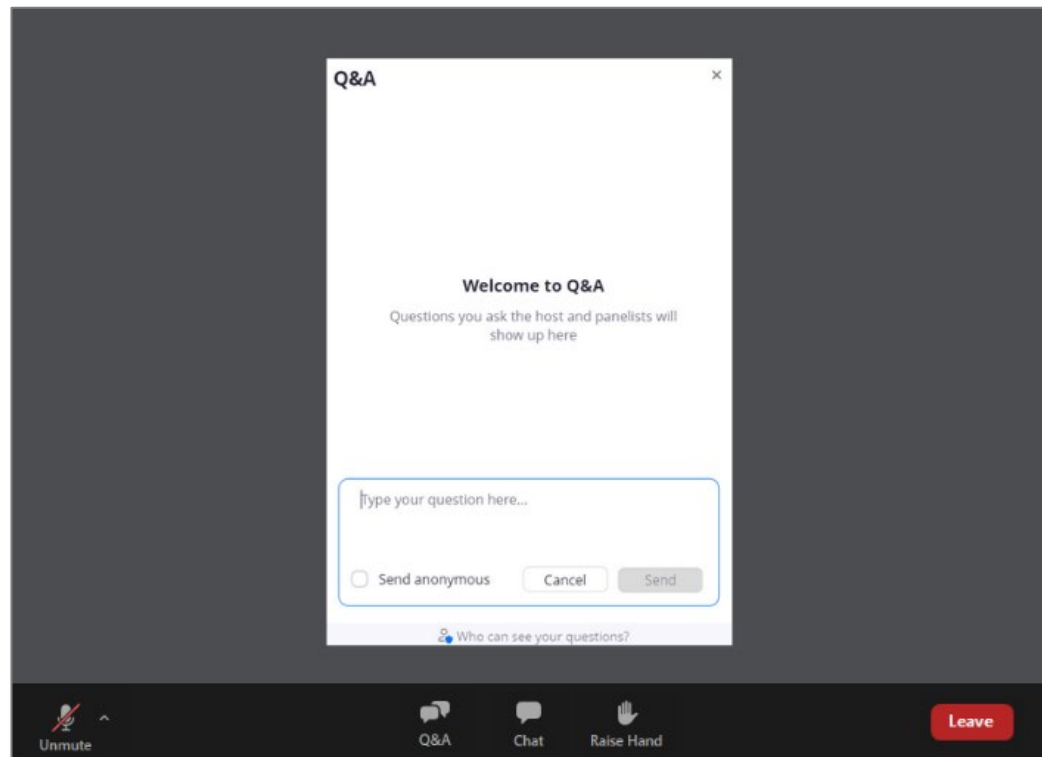


***Dobbs v. Jackson Women's
Health Organization:***
**The New Reproductive Health
Landscape**

**Webinar
July 7, 2022**

Zoom Q&A

1. Open the Q&A panel
2. Type your question
3. Click “Send”



Moderator and Presenters



Summer Ghaith, J.D./M.D. Candidate,
Legal Researcher, Network for Public
Health Law, Western Region Office



Jennifer Piatt, J.D., Deputy Director,
Network for Public Health Law, Western
Region Office



Erica N. White, J.D., Staff Attorney,
Network for Public Health Law, Western
Region Office

Today's Discussion:

- (1) **The *Dobbs* decision and legal impacts**
- (2) **Alternate litigation emerging nationally to protect reproductive health access**
- (3) **Current legislative and executive approaches, with primary focus on approaches designed to promote reproductive health and access**

Roe v. Wade and Planned Parenthood v. Casey

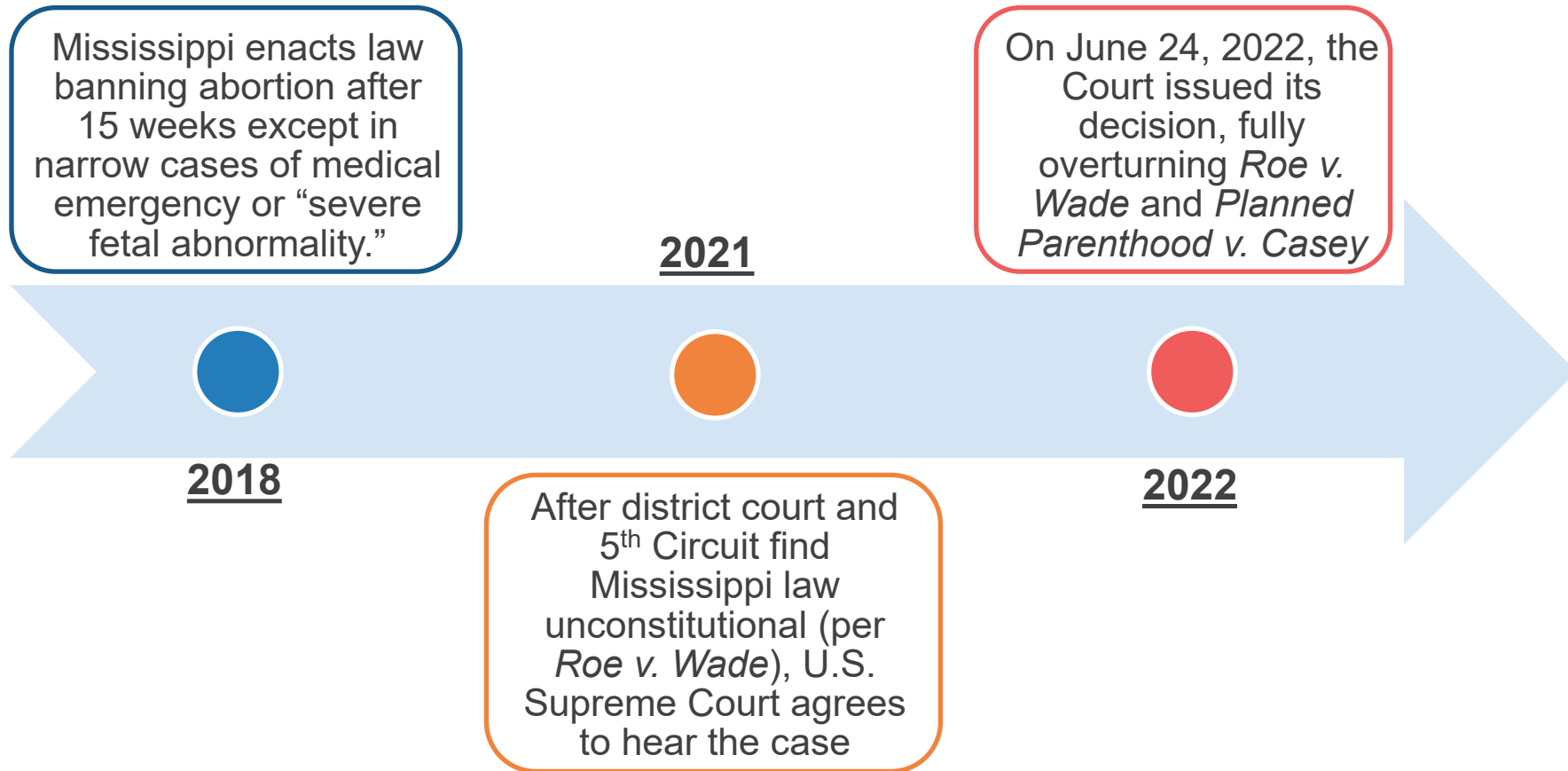
Roe v. Wade (1973)

Written by Justice Blackmun, *Roe* guaranteed the individual right to abortion, preventing states from fully banning pre-viability abortions (currently, roughly 24 weeks' gestation)

Planned Parenthood v. Casey (1992)

Written by Justices O'Connor, Kennedy, and Souter, *Casey* clarified that states *can regulate* pre-viability abortions, but cannot impose an undue burden on the right to abortion (e.g., requiring spousal consent)

Dobbs v. Jackson Women's Health Organization



The *Dobbs* Decision: Reasoning

Constitutional
Text & Nation's
History

Rejecting
Stare Decisis

Setting a New
Standard

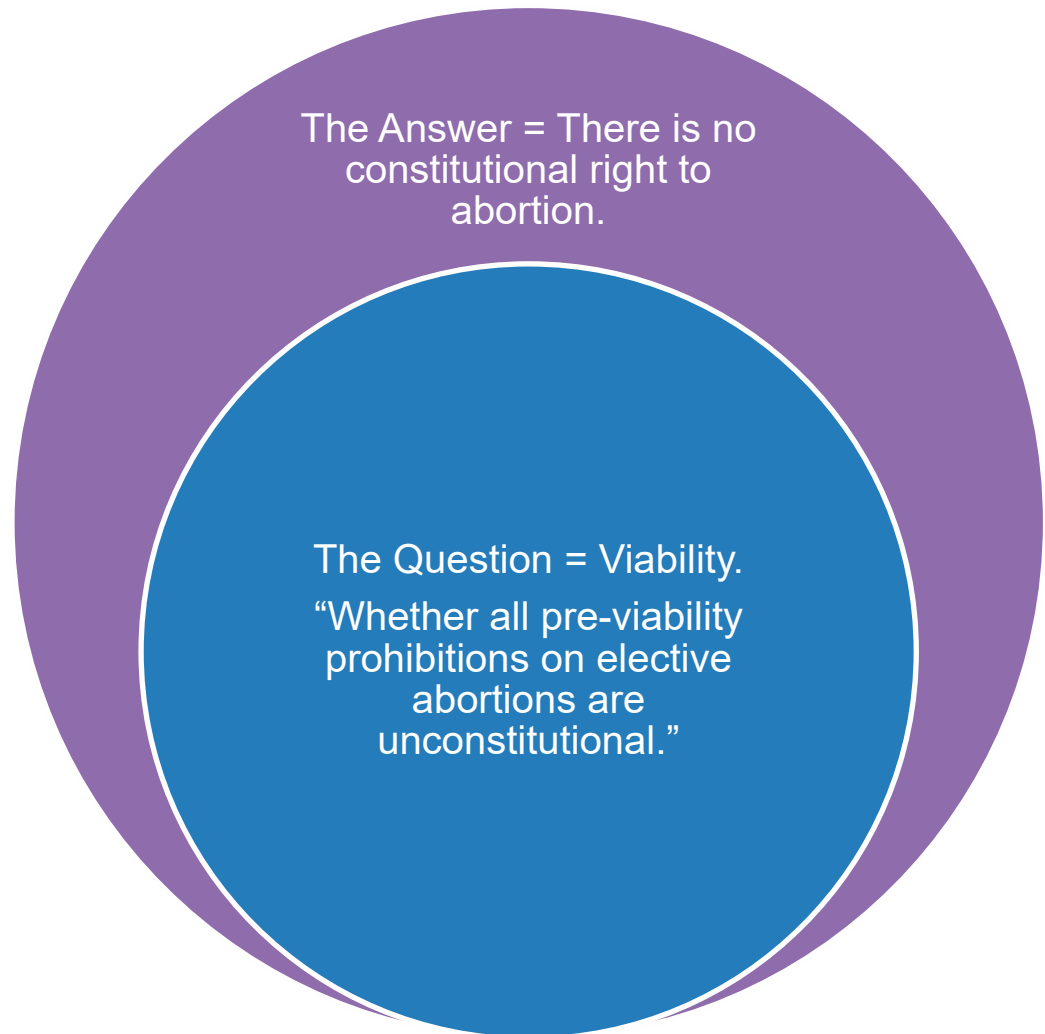
The *Dobbs* Decision: Constitutional Analysis



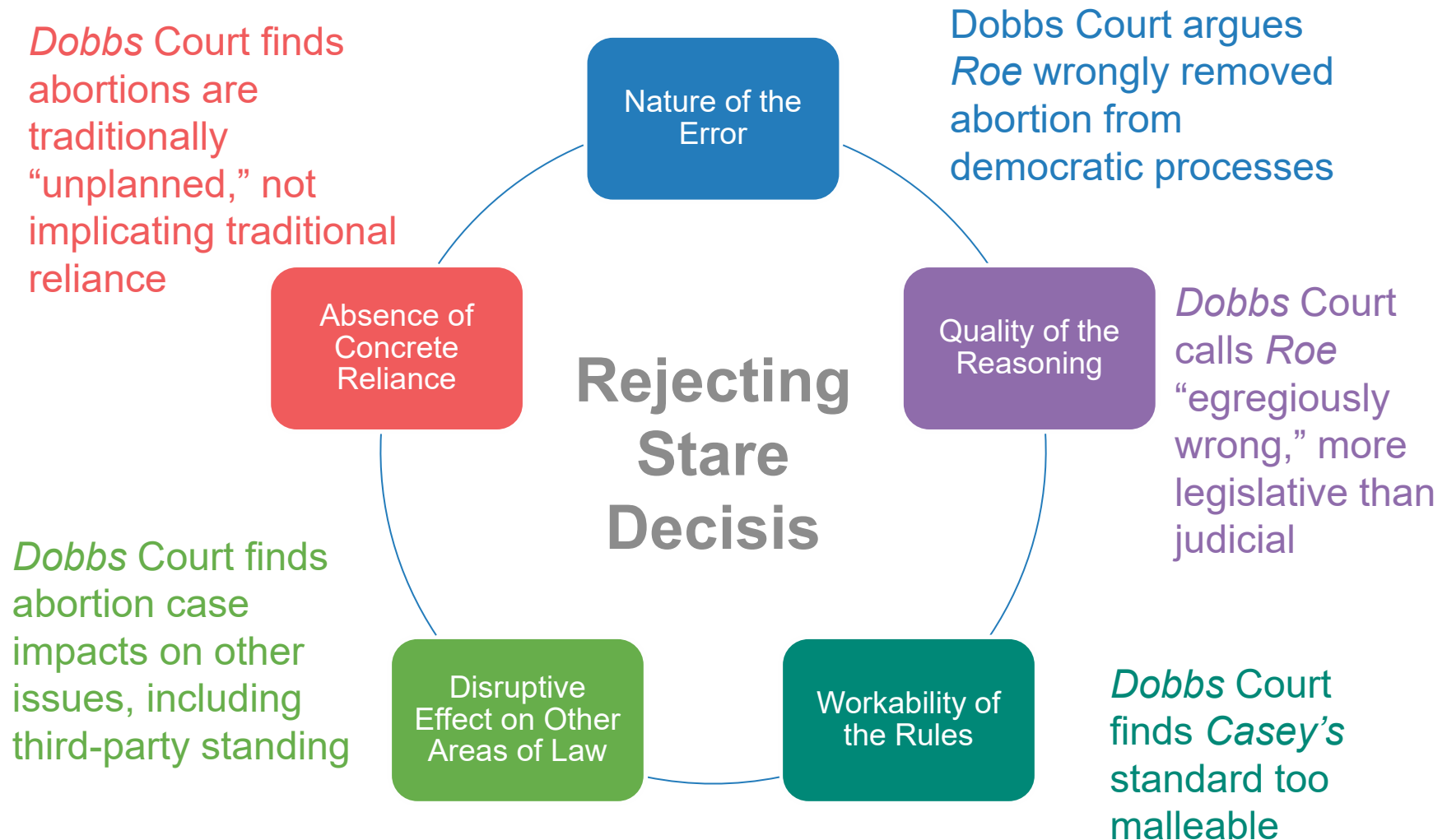
The *Dobbs* Court concluded that abortion is not mentioned in the Constitution's text nor is it deeply rooted in the nation's history and traditions – e.g., it is *not* a fundamental right.

The *Dobbs* Decision: Scope

Mississippi initially challenged the viability line, but the Court's eventual opinion in *Dobbs* goes well beyond this line, reasoning that the Constitution does not protect any right to abortion.



The *Dobbs* Decision: Dismissing *Roe*



The *Dobbs* Decision: A New Standard

Abortion is not a fundamental right under the Constitution, requiring only **rational basis review** in future challenges:

Law must be rationally related to a legitimate government interest.

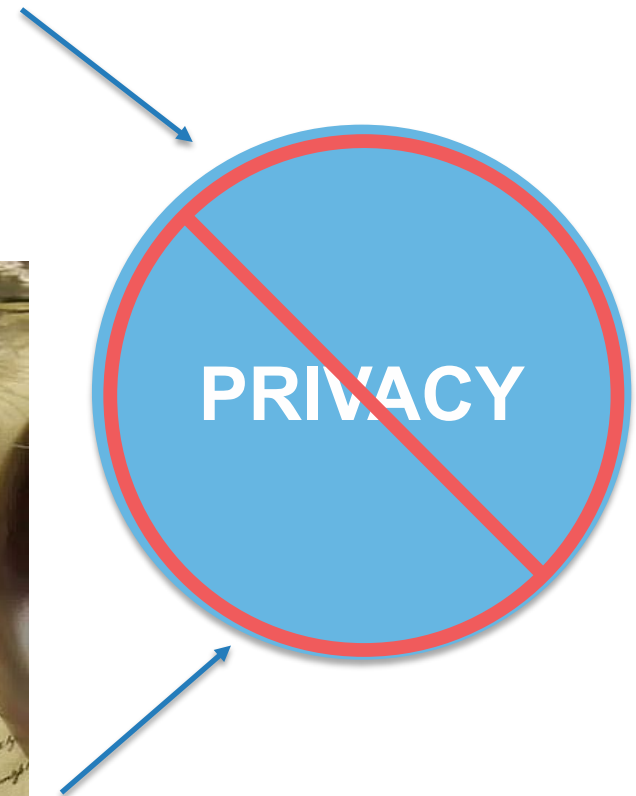


Dobbs further announced that “**legitimate interests include**

- respect for and preservation of prenatal life at all stages of development, . . .;
- the protection of maternal health and safety;
- the elimination of particularly gruesome or barbaric medical procedures;
- the preservation of the integrity of the medical profession;
- the mitigation of fetal pain; and
- the prevention of discrimination on the basis of race, sex, or disability.”

The *Dobbs* Decision: Constitutional Analysis

The Court concluded that abortion **is not mentioned in the Constitution's text** nor is it deeply rooted in the nation's history and traditions – e.g., it is *not* a fundamental right.



The *Dobbs* Decision: Potential Impacts

Majority:

“[W]e emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.”

Marriage
Equality

Justice Thomas Concurrence:

“[I]n future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.”

PRIVACY

Contra-
ception

Sexual
intimacy

The Dobbs Decision: Potential Impacts



Justice Kavanaugh's Concurrence:

“[M]ay a State bar a resident of that State from traveling to another State to obtain an abortion? *In my view*, the answer is no based on the constitutional right to interstate travel. May a State retroactively impose liability or punishment for an abortion that occurred before today’s decision takes effect? *In my view*, the answer is no based on the Due Process Clause or the *Ex Post Facto* Clause.”

Today's Discussion:

- (1) The *Dobbs* decision and legal impacts
- (2) **Alternate litigation emerging nationally to protect reproductive health access**
- (3) Current legislative and executive approaches, with primary focus on approaches designed to promote reproductive health and access

State-level Bans Reinstated



Mississippi



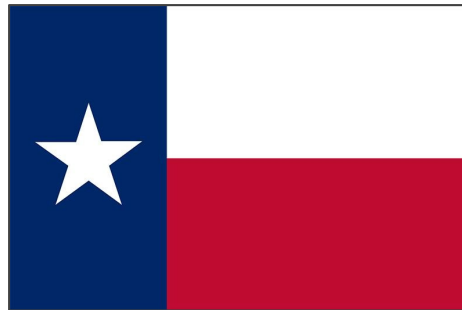
Alabama



Tennessee



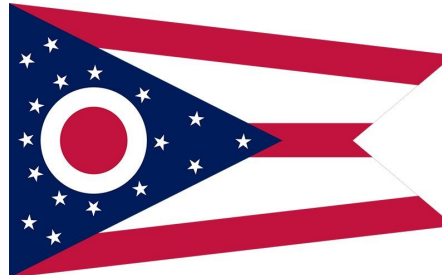
South Carolina



Texas



Florida



Ohio

Federal Court Challenges: **South Carolina & Tennessee**

On June 27, a **federal district court** ruled that a law restricting abortions in South Carolina after six weeks of pregnancy **can take effect immediately** in the state.



On June 28, the **U.S. Court of Appeals for the Sixth Circuit** lifted an injunction on Tennessee's 2020 abortion ban, allowing it to go into effect.



State Constitutional Challenges



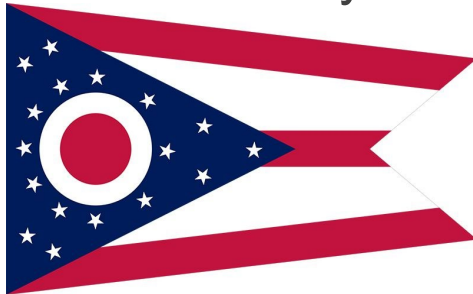
Kentucky



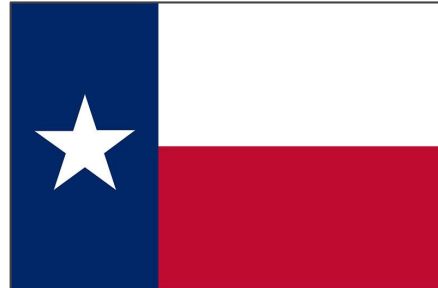
Louisiana



Florida (failed?)



Ohio (failed)



Texas (failed)



Utah



Idaho



Mississippi (failed)

“Failed” = state courts, post-*Dobbs*, did not recognize abortion rights as included in the state constitution.

State Constitution-Based Challenges: **Florida**

On July 5, Florida's abortion ban was **reinstated** after initial success when a state judge granted a restraining order on June 30, holding that the Florida law violates **privacy protections** in the **state constitution**.

Florida argues 15-week abortion case belongs on fast track to state Supreme Court

BY JIM SAUNDERS NEWS SERVICE OF FLORIDA

UPDATED JULY 06, 2022 3:15 PM


Miami Herald

Florida's 15-week abortion ban reinstated

The state appealed a decision by a state judge, allowing the abortion ban.

By [Nadine El-bawab](#) and [Ely Brown](#)
July 05, 2022, 2:58 PM



 Share



State Constitution-Based Challenges: **Mississippi**

On July 5, a judge denied a request from Mississippi's only abortion clinic to temporarily block the state's trigger law banning most abortions, holding that the **plaintiffs did not show they were likely to win on a claim that the Mississippi Constitution protects a right to terminate a pregnancy.**

LEGAL

Judge won't block law banning most Mississippi abortions

The Mississippi law was at the center of last month's landmark Supreme Court ruling.

POLITICO



State Constitution-Based Protections



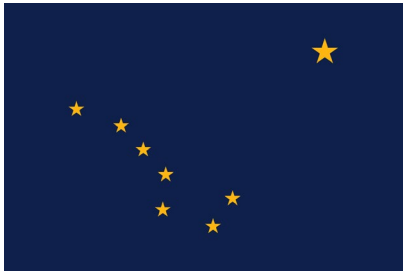
STATE-BASED ABORTION PROTECTIONS

JUNE 29, 2022

In light of the overturning of *Roe v. Wade* by the U.S. Supreme Court in [*Dobbs v. Jackson Women's Health Organization*](#) on June 24, 2022, this Memo examines current state-based abortion protections via (1) state statutory and constitutional language, (2) state Supreme Court decisions, (3) state constitutional amendment proposals, and (4) litigation addressing state-based constitutional abortion rights.

Source: <https://www.networkforphl.org/resources/state-based-abortion-protections/>

State Constitution-Based Protections



Alaska



California



Florida



Illinois



Kansas



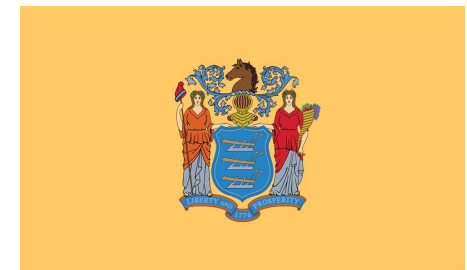
Massachusetts



Minnesota



Montana



New Jersey

State Constitution-Based Challenges: **Michigan**

Governor Gretchen Whitmer filed a lawsuit in April 2022 to invalidate a 1931 state law that makes abortions a felony. The law has been temporarily blocked pending litigation.

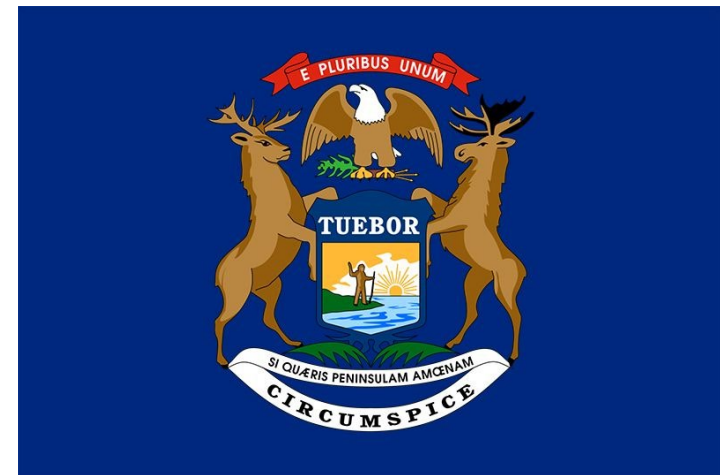
Whitmer's lawsuit asks the **state supreme court** to recognize a constitutional right to an abortion under the Due Process Clause of the Michigan Constitution.



Whitmer Files Motion in Michigan Supreme Court
to Protect Constitutional Right to Abortion

June 24, 2022

Michigan.gov



Multiple “Tiers” of Laws: **Iowa**

Iowa governor asks court to reinstate six-week abortion ban

Iowa Public Radio | By [Katarina Sostaric](#)

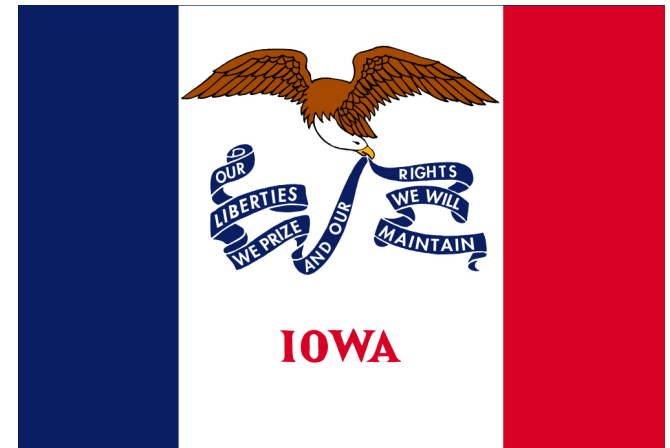
Published June 28, 2022 at 5:16 PM CDT



Iowa Supreme Court overturns 2018 ruling, says abortion isn't protected by the state constitution

Iowa Public Radio | By [Natalie Krebs](#), [Grant Gerlock](#), [Kendall Crawford](#)

Published June 16, 2022 at 2:06 PM CDT



Evolving Legal Landscape: **Wisconsin**

In Wisconsin, Attorney General Josh Kaul filed a lawsuit challenging an abortion ban from 1849, arguing that **modern generations never consented to it.**

The law **conflicts** with later Wisconsin laws.



Attorney General Josh Kaul sues to block Wisconsin's abortion ban

The lawsuit argues that a 1985 law that allows abortions up to the point of a fetus' viability supersedes the 1849 ban

By Madeline Fox

Published: Tuesday, June 28, 2022, 1:55pm

Updated: Tuesday, June 28, 2022, 4:00pm



Vague or Unclear Laws: **Louisiana**

An abortion trigger law was **blocked** on June 27 (at least until a hearing on July 8). Abortion providers sued arguing the bans were unlawfully vague.

The lawsuit alleges that the law is **unclear** on when the ban takes effect and unclear on medical exceptions.

Following a 2020 ballot measure, the state constitution cannot be “construed to secure or protect a right to abortion or require the funding of abortion.”



GenBioPro

GenBioPro, a manufacturer of generic abortion pills, sued the state of Mississippi in 2020 over state restrictions limiting access to the drugs in the state.

The lawsuit alleges that state restrictions are unduly excessive and are **preempted** by **FDA authority**.



Abortion drug maker says Mississippi can't ban pill despite Supreme Court ruling

By Brendan Pierson

July 1, 2022
1:02 PM CDT



REUTERS



Religious Freedoms Arguments: **Florida**

A synagogue in Florida, Congregation L'Dor Va-Dor, argues that the state law banning abortions violates **First Amendment rights**.

Synagogue Sues Florida, Saying Abortion Restrictions Violate Religious Freedoms

A South Florida congregation said that under Jewish law, abortion “is required if necessary to protect the health, mental or physical well-being” of a pregnant woman.

The New York Times

Source: <https://www.nytimes.com/2022/06/16/us/florida-abortion-law-judaism.html>



Today's Discussion:

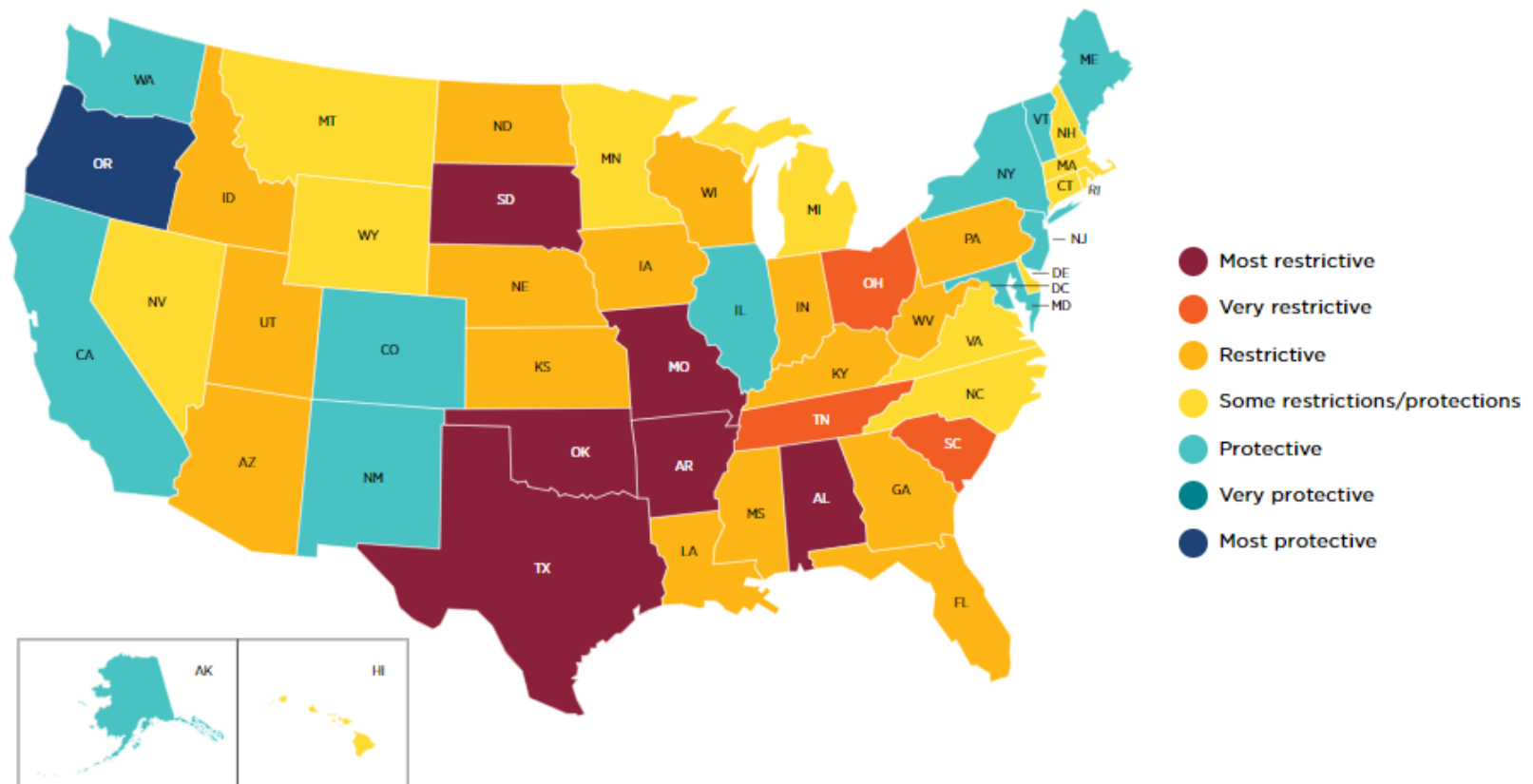
- (1) The *Dobbs* decision and legal impacts
- (2) Alternate litigation emerging nationally to protect reproductive health access
- (3) **Current legislative and executive approaches, with primary focus on approaches designed to promote reproductive health and access**

Interactive Map: US Abortion Policies and Access After Roe

The abortion landscape is fragmented and increasingly polarized. Many states have abortion restrictions or bans in place that make it difficult, if not impossible, for people to get care. Other states have taken steps to protect abortion rights and access. To help people understand this complex landscape, our interactive map groups states into one of seven categories based on abortion policies they currently have in effect. Users can select any state to see details about abortion policies in place, characteristics of state residents and key abortion statistics, including driving distance to the nearest abortion clinic.

The map reflects state policies in effect as of July 5, 2022.

[FAQ](#) | [Methodology](#) | [Contact Us](#)



State Actions: Anti-Abortion

Current Ban Enforcement

At least 8 states are currently enforcing (or currently able to enforce) complete abortion bans:

- **Alabama, Arkansas, Missouri, Oklahoma, South Dakota, Texas, Wisconsin, West Virginia**

In these states, punishments include:

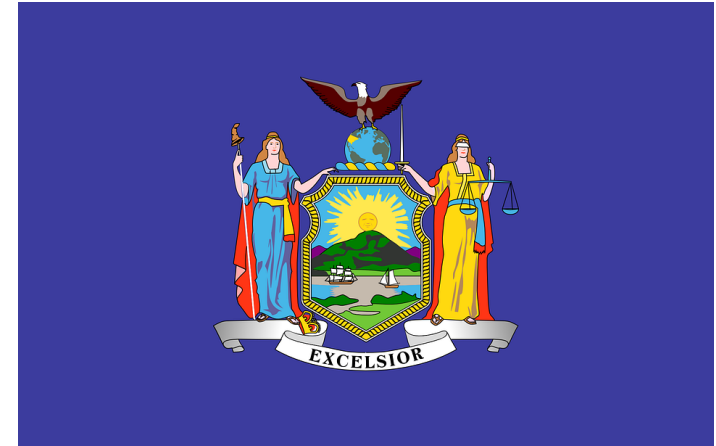
- **Terms of imprisonment ranging from 2 years to 99 years; and**
- **Fines ranging from \$1,000 to \$100,000.**

Several additional states have passed trigger laws set to become effective at least 30 days after *Roe's* overturning. Additional states bans may currently be blocked through court challenge (KY, LA, UT).

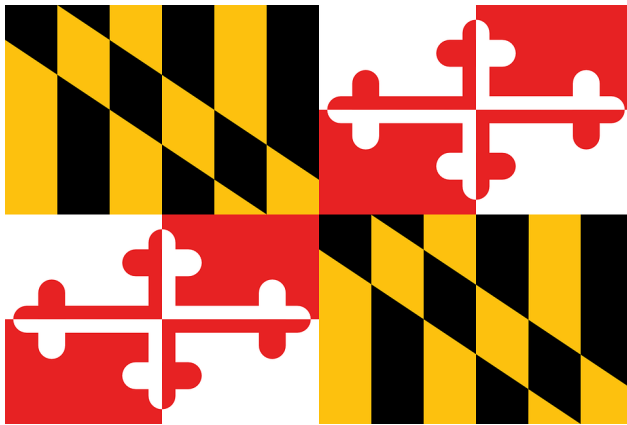
Legislative Actions: Pro-Abortion

New York: Post-Draft Legislation

- Prohibiting **licensure misconduct** for providing abortions to out-of-state patients
- Prohibition of adverse actions by malpractice insurance carriers for repro health services
- Establishing a cause of action “for those who unlawfully interfere with the rights to reproductive healthcare”
- Extends address confidentiality to repro health providers
- **Blocking NYS participation in out-of-state abortion cases, both civil and criminal** (e.g., no **extradition**, no honoring of out-of-state subpoenas)



MD & OR: 2022 State Medicaid Updates



Maryland:

State law, passed over Governor's veto, **expands abortion provider categories;**

Establishes Abortion Care Clinical Training Program (\$3.5 million annually)

Requires private insurers to cover abortion AND requires matching Medicaid coverage (e.g., without cost sharing)



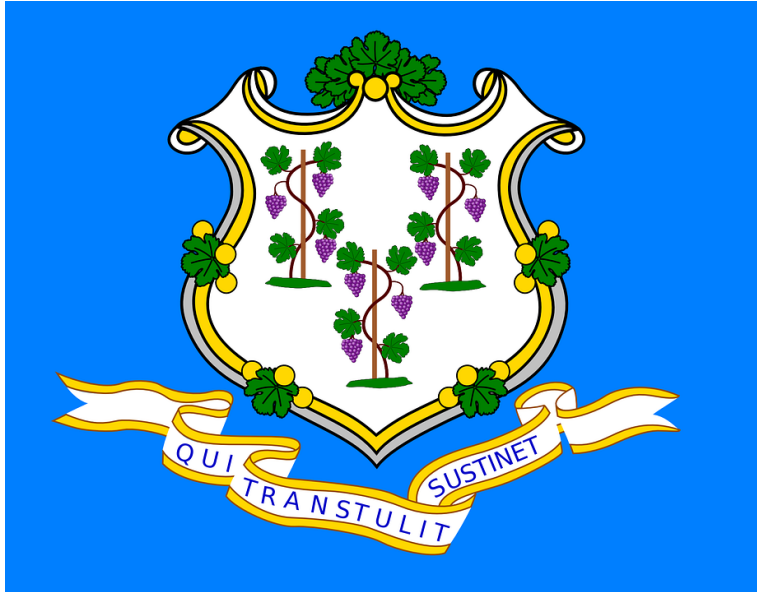
Oregon:

Among other provisions, **law signed in March** empowers OHA to fund repro health services and education

Law signed in April allocates \$15 million to the Oregon Health Authority for reproductive health equity

Connecticut: Post-Draft Legislation

Law signed in May 2022:

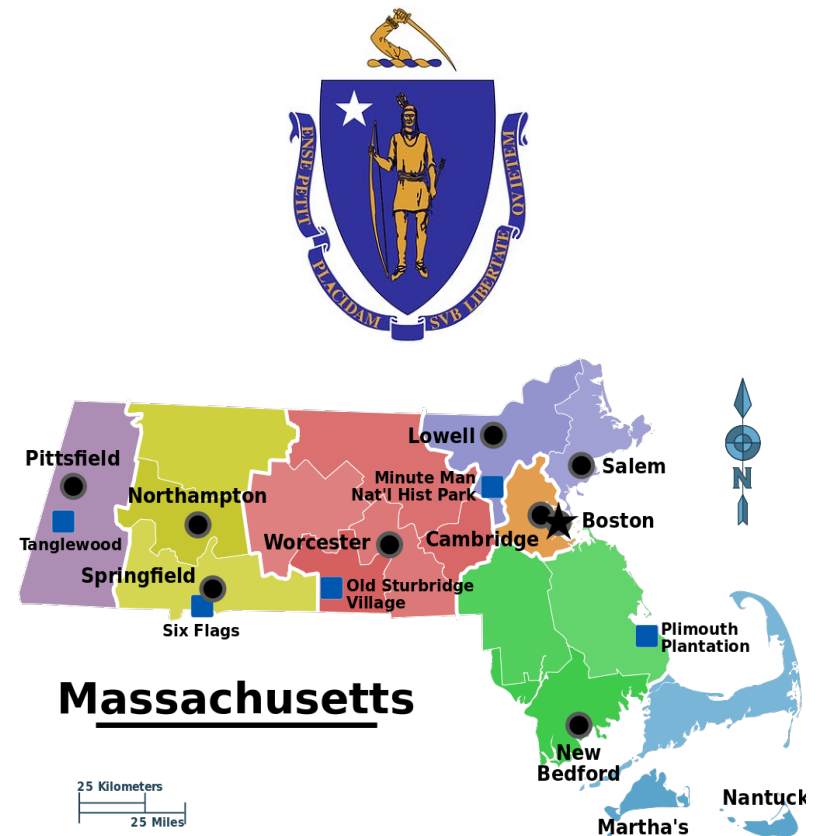
- Provides damages and attorneys' fees to persons sued in any state for providing repro health services legal in CT (including costs incurred both in the other state and in CT)
 - Prevents prosecution or assistance in proceedings related to out-of-state persons receiving repro health services in CT
- 
- Expands medication abortion provider categories to include APRNs, nurse-midwives, and physician assistants

Executive Actions: Pro-Abortion

Massachusetts

Gov. Charlie Baker issued [Executive Order No. 600](#) on June 24, 2022:

- Massachusetts executive agencies **prevented from assisting out-of-state abortion investigations/proceedings**;
- Licensure boards to work with executive agencies to **protect licensees from discipline** based on actions taken in other states for providing repro health services
- Refusal to **extradite** persons to other states for repro health-related crimes



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

Minnesota

Gov. Tim Walz issued [Emergency Executive Order 22-6](#) on June 25, 2022:

- State agencies must coordinate to protect the provision of repro health care services in the state; Departments to provide a report on services on August 1, 2022
- **No state agencies will assist other state investigations or proceedings** related to provision of legal repro services
- Refusal to **extradite** persons charged with repro health-related crimes



New Mexico

Gov. Michelle Lujan Grisham issued [Executive Order 2022-107](#) on June 27, 2022:

Preventing state agency assistance with investigations or proceedings of other states related to provision of legal repro health services

Ensure against discipline from New Mexico licensing boards related to other state discipline for repro health services

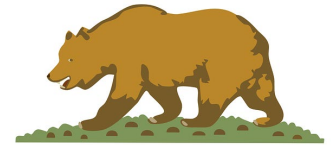
Refusal to extradite persons charged with repro health-related crimes



Multi-State Commitment to Reproductive Freedom

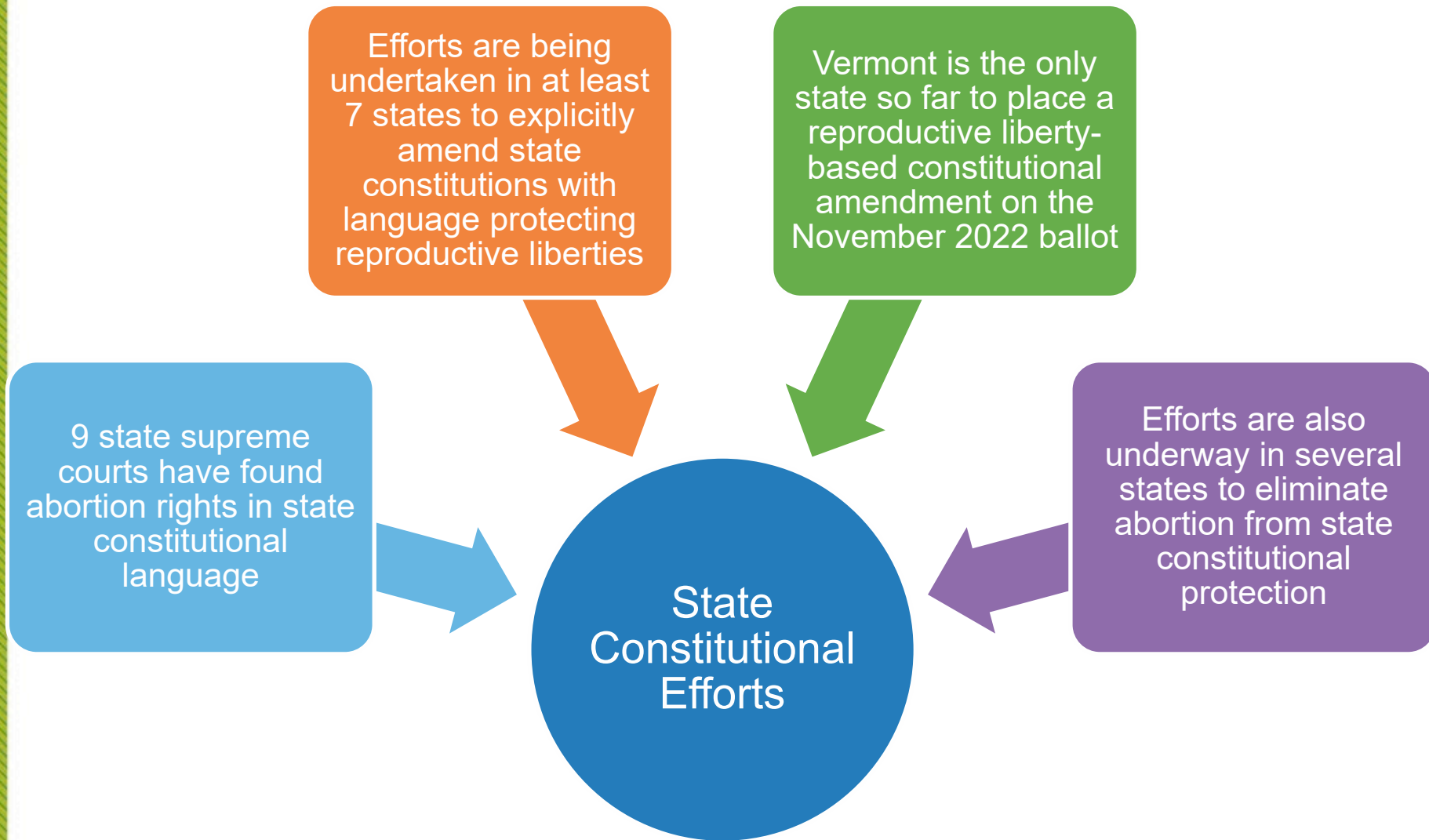
Governors of Washington, Oregon, and California signed a [multi-state agreement](#) on June 24, 2022:

- Protect against other state efforts targeting patients, professionals, and others;
- **Protect against cooperation with out-of-state investigations, inquiries, and arrests;**
- Refuse **extradition** for criminal prosecution, and prevent subpoenas or summons issuing in these cases;
- Protect against medical record misuse;
- Protect against adverse liability insurance actions;
- **Support legislation to protect licensed professionals from adverse licensing determinations;**
- Expand access to abortion services; and
- Defend against misinformation.



CALIFORNIA REPUBLIC





Questions, Thoughts, Comments



Thank you!



jennifer.piatt@asu.edu | @jen_piatt



ericawhite@asu.edu | @EricaNWhite