

STATE-BASED ABORTION PROTECTIONS

JANUARY 20, 2023

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. This memo was updated with certain key cases and information through January 20, 2023.

1. Which states currently expressly protect abortion rights?

Sixteen (16) states have passed statutes specifically protecting abortion rights (see Table 1). Following the November 2022 midterm elections, California, Michigan, and Vermont have all adopted proposals to amend their state constitutions to expressly recognize and protect reproductive liberty. In addition, 9 state Supreme Courts have interpreted state constitutional language as protecting abortion rights (see Table 2). Five (5) states (CA, IL, MA, NJ, VT) have both statutory and constitutional protections.

Recently, some states have implemented [additional measures](#) to expand abortion access. For example, several states (including CA, IL, ME, MD, MA, NY, OR, and WA) [require health plans to cover abortions](#) without imposing cost-sharing on beneficiaries and several others (including CA, CT, DE, MD, and WA) [permit providers other than licensed physicians](#) (e.g., nurse practitioners, physician assistants, licensed certified midwives) to perform abortions. Additionally, to counteract laws in anti-abortion states which target abortion providers, several states (including CA, CT, NJ, NM, NY, and WA) have introduced or passed laws to weaken or prohibit investigation of in-state providers by out-of-state officials. Similarly, some state governors have signed executive orders ([CO](#), [MA](#), [MI](#), [NC](#), [NM](#), and [NV](#)) to protect abortion providers and patients from extradition to abortion-hostile states or ordered non-cooperation ([ME](#), [MA](#), [PA](#), and [RI](#)) with out-of-state abortion investigations.

Table 1. State Statutes Protecting Abortion Rights

STATE	STATUTE	STATUTORY LANGUAGE	CONNECTION TO ROE V. WADE
CA	Reproductive Privacy Act , Cal. Health & Safety Code §§ 123460-123468 (2003).	<p>§ 123462 – “The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that:</p> <ul style="list-style-type: none"> (a) Every individual has the fundamental right to choose or refuse birth control. (b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article. (c) The state shall not deny or interfere with a woman’s fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted by this article.” <p>§ 123464 – “The following definitions shall apply for purposes of this chapter:</p> <ul style="list-style-type: none"> (a) “Abortion” means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.” 	No
CO	Reproductive Health Equity Act , Colo. Rev. Stat. § 25-6-401-406 (added Apr. 2022).	<p>§ 25-6-402 – “As used in this part [], unless the context otherwise requires:</p> <ul style="list-style-type: none"> (1) ‘Abortion’ means any medical procedure, instrument, agent, or drug used to terminate the pregnancy of an individual known or reasonably believed to be pregnant with an intention other than to increase the probability of a live birth. . . . (4) ‘Reproductive health care’ means health care and other medical services related to the reproductive processes, functions, and systems at all stages of life. It includes, but is not limited to, family planning and contraceptive care; abortion care; . . .” <p>§ 25-6-403 –</p> <ul style="list-style-type: none"> (1) “Every individual has a fundamental right to make decisions about the individual’s reproductive health care, including the fundamental right to use or refuse contraception. (2) A pregnant individual has a fundamental right to continue a pregnancy and give birth or to have an abortion and to make decisions about how to exercise that right. . . .” 	Prompted by <i>Dobbs</i> but not based on <i>Roe</i> .
CT	Conn. Gen. Stat. § 19a-602 (amended 2022).	<ul style="list-style-type: none"> (a) “The decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the patient in consultation with the patient’s physician or, pursuant to the provisions of subsection (d) of this section, the patient’s advanced practice registered nurse, nurse-midwife or physician assistant. (b) No abortion may be performed upon a patient after viability of the fetus except when necessary to preserve the life or health of the patient.” 	Prompted by <i>Dobbs</i> but not based on <i>Roe</i> .
DE	Del. Code Ann. tit. 24, §§ 1702, 1790(a) (amended 2017).	<p>§ 1702 –</p> <p>“(18) ‘Viability’ means the point in a pregnancy when, in a physician’s good faith medical judgment based on the factors of a patient’s case, there is a reasonable likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.”</p> <p>§ 1790 -</p>	No



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- (a) “A physician may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability.
 - (b) A physician may not terminate, attempt to terminate, or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth after viability, unless, in the good faith medical judgment of the physician, the termination is necessary for the protection of the woman’s life or health or in the event of a fetal anomaly for which there is not a reasonable likelihood of the fetus’s sustained survival outside the uterus without extraordinary medical measures.
 - (c) A physician assistant or an advanced practice registered nurse may prescribe medication for the termination of pregnancy including Mifeprex, Mifepristone, and Misoprostol.”
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HI [Hi. Rev. Stat. § 453-16](#) (2015).

- “(a) No abortion shall be performed in this State unless:
- (1) The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
 - (2) The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof, or in a clinic or physician's or osteopathic physician's office.
- (b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.
- (c) The State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female.
- (d) Any person who knowingly violates subsection (a) shall be fined not more than \$1,000 or imprisoned not more than five years, or both.
- (e) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.”
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No

IL [Reproductive Health Act, 755 Ill. Comp. Stat. 55](#) (2019).

- [§ 55/1-5](#) – “This Act sets forth the fundamental rights of individuals to make autonomous decisions about one's own reproductive health, including the fundamental right to use or refuse reproductive health care. This includes the fundamental right of an individual to use or refuse contraception or sterilization, and to make autonomous decisions about how to exercise that right; and the fundamental right of an individual who becomes pregnant to continue the pregnancy and give birth to a child, or to have an abortion, and to make autonomous decisions about how to exercise that right. This Act restricts the ability of the State to deny, interfere with, or discriminate against these fundamental rights.
- The purposes of this Act are:
- (1) To establish laws and policies that protect individual decision-making in the area of reproductive health and that support access to the full scope of quality reproductive health care for all in our State; and
 - (2) To permit regulation of reproductive health care, including contraception, abortion, and maternity care, only to the extent that such regulation is narrowly tailored to protect a compelling State interest, which for the purposes of this Act means: consistent with accepted standards of clinical practice, evidence based, and narrowly tailored for the limited purpose of protecting the health of people seeking such care and in the manner that least restricts a person’s autonomous decision-making.”
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No

[§ 55/1-15](#) –



		(a) "Every individual has a fundamental right to make autonomous decisions about the individual's own reproductive health, including the fundamental right to use or refuse reproductive health care. (b) Every individual who becomes pregnant has a fundamental right to continue the pregnancy and give birth or to have an abortion, and to make autonomous decisions about how to exercise that right. . . ."	
ME	Me. Rev. Stat. Ann. tit. 22, § 1598 (amended 2019).	1. "It is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in section 1597-A. After viability an abortion may be performed only when it is necessary to preserve the life or health of the mother. It is also the public policy of the State that all abortions may be performed only by a health care professional, as defined in section 1596, subsection 1, paragraph C. 2. Definitions. As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings. A. 'Abortion' means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical or by the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus. B. 'Viability' means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial-life supportive systems."	No
MD	Md. Code Ann., Health-Gen. § 20-209 (amended 2022).	(b) "Except as otherwise provided in the subtitle, the State may not interfere with the decision of a woman to terminate a pregnancy: 1) Before the fetus is viable; or 2) At any time during the woman's pregnancy, if: i. The termination procedure is necessary to protect the life or health of the woman; or ii. The fetus is affected by genetic defect or serious deformity or abnormality. (c) The Department may adopt regulations that: 1) Are both necessary and the least intrusive method to protect the life or health of the woman; and 2) Are not inconsistent with established clinical practice."	No
MA	Mass. Gen. Laws. ch. 112, §§ 12L , 12M , 12N ; see also §§ 12K and 12O-R (2021).	§ 12L – "The commonwealth, or a subdivision thereof, shall not interfere with a person's personal decision and ability to prevent, commence, terminate or continue their own pregnancy consistent with this chapter, or restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided." § 12M – "A physician, physician assistant, nurse practitioner or nurse midwife may perform an abortion consistent with the scope of their practice and license if, in their best medical judgment, the pregnancy has existed for less than 24 weeks." § 12N – "If a pregnancy has existed for 24 weeks or more, no abortion may be performed except by a physician and only if it is necessary, in the best medical judgment of the physician, to preserve the life [or physical/mental health] of the patient, . . . , [or] an abortion is warranted because of a lethal fetal anomaly or the fetus is incompatible with sustained life outside the uterus."	No



NV	<p>Nev. Rev. Stat. § 442.250 (1990). Section 442.250 was approved by referendum and is not subject to legislative amendment or repeal.</p>	<p>1. "No abortion may be performed in this state unless the abortion is performed:</p> <p>a. By a physician licensed to practice in this state or by a physician in the employ of the government of the United States who:</p> <ul style="list-style-type: none">(1) Exercises his or her best clinical judgment in the light of all attendant circumstances including the accepted professional standards of medical practice in determining whether to perform an abortion; and(2) Performs an abortion in a manner consistent with accepted medical practices and procedures in the community. <p>b. Within 24 weeks after the commencement of the pregnancy.</p> <p>c. After the 24th week of pregnancy 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."</p>	No
NJ	<p>N.J. Rev. Stat. § C.10:7-2 (Jan. 2022).</p>	<p>a. "Every individual present in the State, including, but not limited to, an individual who is under State control or supervision, shall have the fundamental right to: choose or refuse contraception or sterilization; and choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy. The New Jersey Constitution recognizes the fundamental nature of the right to reproductive choice, including the right to access contraception, to terminate a pregnancy, and to carry a pregnancy to term, shall not be abridged by any law, rule, regulation, ordinance, or order issued by any State, county, or local governmental authority. Any law, rule, regulation, ordinance, or order, in effect on or adopted after the effective date of this act, that is determined to have the effect of limiting the constitutional right to freedom of reproductive choice and that does not conform with the provisions and the express or implied purposes of this act, shall be deemed invalid and shall have no force or effect."</p>	Based on N.J. Supreme Court cases.
NY	<p>A Reproductive Health Act, N.Y. Pub. Health Law art. 25-A, §§ 2599-aa and 2599-bb (added 2019).</p>	<p>§ 2599-aa – "The legislature finds the comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality. Therefore, it is the policy of the state that:</p> <ul style="list-style-type: none">1. Every individual has the fundamental right to choose or refuse contraception or sterilization.2. Every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion, pursuant to this article.3. The state shall not discriminate against, deny, or interfere with the exercise of the rights set forth in this section in the regulation or provision of benefits, facilities, services or information."<p>§ 2599-bb –</p><p>1. "A health care practitioner licensed, certified, or authorized under title eight of the education law, acting within his or her lawful scope of practice, may perform an abortion when, according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case: the patient is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient's life or health."</p>	No
OR	<p>Or. Rev. Stat. § 659.880 (added 2017).</p>	<p>"A public body as defined in ORS 174.109 or, except as provided in ORS 435.225, an officer, employee or agent of a public body may not:</p> <ul style="list-style-type: none">(1) Deprive a consenting individual of the choice of terminating the individual's pregnancy;(2) Interfere with or restrict, in the regulation or provision of benefits, facilities, services or information, the choice of a consenting individual to terminate the individual's pregnancy;	No



		<p>(3) Prohibit a health care provider, who is acting within the scope of the health care provider's license, from terminating or assisting in the termination of a patient's pregnancy; or</p> <p>(4) Interfere with or restrict, in the regulation or provision of benefits, facilities, services or information, the choice of a health care provider, who is acting within the scope of the health care provider's license, to terminate or assist in the termination of a patient's pregnancy."</p>	
RI	<p>Reproductive Privacy Act, 23 R.I. Gen. Laws § 23-4.13-2 (added 2019).</p>	<p>"Neither the state, nor any of its agencies, or political subdivisions shall:</p> <p>(1) Restrict an individual person from preventing, commencing, continuing, or terminating that individual's pregnancy prior to fetal viability;</p> <p>(2) Interfere with an individual person's decision to continue that individual's pregnancy after fetal viability;</p> <p>(3) Restrict an individual person from terminating that individual's pregnancy after fetal viability when necessary to preserve the health or life of that individual;</p> <p>(4) Restrict the use of evidence-based, medically recognized methods of contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d); or</p> <p>(5) Restrict access to evidence-based, medically recognized methods of contraception or abortion or the provision of such contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d). . . .</p> <p>(d) The termination of an individual's pregnancy after fetal viability is expressly prohibited except when necessary, in the medical judgment of the physician, to preserve the life or health of that individual."</p>	<p>The bill summary states: "Serves to codify the privacy rights guaranteed by the decision reached in ... <i>Roe v. Wade</i> ... and its progeny."</p>
VT	<p>Freedom of Choice Act, Vt. Stat. Ann. tit. 18, §§ 9493 and 9494 (added 2019).</p>	<p>§ 9493 –</p> <p>(a) "The State of Vermont recognizes the fundamental right of every individual to choose or refuse contraception or sterilization.</p> <p>(b) The State of Vermont recognizes the fundamental right of every individual who becomes pregnant to choose to carry a pregnancy to term, to give birth to a child, or to have an abortion."</p> <p>§ 9494 –</p> <p>(a) "A public entity as defined in section 9496 of this title shall not, in the regulation or provision of benefits, facilities, services, or information, deny or interfere with an individual's fundamental rights to choose or refuse contraception or sterilization or to choose to carry a pregnancy to term, to give birth to a child, or to obtain an abortion.</p> <p>(b) No State or local law enforcement shall prosecute any individual for inducing, performing, or attempting to induce or perform the individual's own abortion."</p>	<p>No</p>
WA	<p>Reproductive Privacy Act, Wash. Rev. Code. §§ 9.02.100-170</p>	<p>§ 9.02.100 – "The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the state of Washington that:</p> <p>(1) Every individual has the fundamental right to choose or refuse birth control;</p>	<p>No</p>



(as [amended](#) in 2022).

- (2) Every pregnant individual has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902;
- (3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state shall not deny or interfere with a pregnant individual's fundamental right to choose or refuse to have an abortion; and
- (4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information.

§ 9.02.110 – The state may not deny or interfere with a pregnant individual's right to choose to have an abortion prior to viability of the fetus, or to protect the pregnant individual's life or health. A physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice may terminate and a health care provider may assist a physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice in terminating a pregnancy as permitted by this section."

2. Which state Supreme Courts have interpreted their state constitutions as protecting a right to abortion?

Nine (9) state Supreme Courts (AK, CA, FL, IL, KS, MA, MN, MT, NJ) have affirmed that their state constitutional language protects abortion rights (see Table 2) on several bases, principally: (i) relying on prior U.S. Supreme Court reasoning in [Roe](#) as guiding state constitutional interpretation, (ii) independently interpreting state constitutions as providing a right to abortion, or (iii) utilizing a combination of (i) and (ii). Certain rationales may be directly impacted by the *Dobbs* decision.

- i. **Roe v. Wade**. Only the [Illinois Supreme Court](#) appears to have relied solely on *Roe* to affirm a right to abortion, [finding](#) "no state grounds for deviating from the [] Supreme Court's interpretation that the federal due process clause protects a woman's right to an abortion."
- ii. **State Constitutional Language**. Four (4) state Supreme Courts (CA, KS, MN, NJ) interpreted their state constitutional language as providing a right to abortion. While these courts referenced *Roe*—with the exception of [California](#), whose court decided the issue 4 years before *Roe*—they did not base their analyses on *Roe*, instead independently interpreting state constitutional language as guaranteeing a right to abortion.
- iii. **Both (i) and (ii)**. Four (4) state Supreme Courts (AK, FL, MA, MT) affirmed a state constitutional right to abortion based on *Roe* and independent state constitutional analysis.

Table 2. State Constitutional Interpretations Protecting Abortion Rights


STATE	CONSTITUTIONAL PROVISION	BASED ON <i>ROE V. WADE</i>	BASED ON STATE CONSTITUTION	RELEVANT SUPREME COURT CASES
AK	Alaska Const. art. I, § 22 (amended 1972) (right to privacy).	X	X	Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice , 948 P.2d 963, 969 (Alaska 1997) (“[W]e are of the view that reproductive rights are fundamental, and that they are encompassed within the right to privacy expressed in article I, section 22 of the Alaska Constitution.”). See also State v. Planned Parenthood of the Great Nw. , 436 P.3d 984, 1001 (Alaska 2019) (reaffirming that the right to reproductive choice is a fundamental right).
CA	Cal. Const. art. I, § 1 (added 1974) (right to privacy).		X	People v. Belous , 458 P.2d 194, 199 (Cal. 1969) (“The fundamental right of the woman to choose whether to bear children follows from the Supreme Court’s and this court’s repeated acknowledgment of a ‘right of privacy’ or ‘liberty’ in matters related to marriage, family, and sex.”). See also Comm. to Defend Reprod. Rts. v. Myers , 625 P.2d 779, 784 (Cal. 1981) (“[U]nder article I, section 1 of the California Constitution all women in this state – rich and poor alike – possess a fundamental constitutional right to choose whether or not to bear a child.”).
FL	Fla. Const. art. I, § 23 (right to privacy).	X	X	Gainesville Woman Care, LLC v. State , 210 So. 3d. 1243, 1253 (Fla. 2017) (citing In re T.W. , 551 So. 2d 1186, 1192 (Fla. 1989)) (“Florida’s privacy provision is clearly implicated in a woman’s decision of whether or not to continue her pregnancy.”).
IL	Ill. Const. art I, § 2 (due process clause).	X		Hope Clinic for Women, Ltd. v. Flores , 991 N.E.2d 745, 760 (Ill. 2013) (“[W]e interpret our state due process clause to provide protections, with respect to abortion, equivalent to those provided by the federal due process clause.”).
KS	Kan. Const. B. of R. § 1 (equal and inalienable rights).		X	Hodes & Nauser, MDS, P.A. v. Schmidt , 440 P.3d 461, 466 (Kan. 2019) (“This right [to personal autonomy] allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy.”).

MA	Mass. Const. pt. 1, art. X (due process clause).	X	X	<p>Moe v. Secretary of Admin & Finance, 417 N.E.2d 387, 402 (Mass. 1981) (“[O]ur Declaration of Rights affords the privacy rights asserted here [to choose whether to have an abortion] no less protection than those guaranteed by the First or Fifth Amendments to the Federal Constitution.”).</p> <p>See also Planned Parenthood League of Mass. v. Attorney General, 424 Mass. 586, 590 (Mass. 1997) (reaffirming that women have a constitutional right to reproductive choice).</p>
MN	Minn. Const. art. 1, §§ 2, 7, 10 (implicit right to privacy).		X	<p>Women of the State v. Gomez, 542 N.W.2d 17, 19 (Minn. 1995) (“[W]e have interpreted the Minnesota Constitution to afford broader protection than the United States Constitution of a woman’s fundamental right to reach a private decision on whether to obtain an abortion....”).</p>
MT	Mont. Const. art. II, § 10 (right to privacy).	X	X	<p>Armstrong v. State, 989 P.2d 364, 370 (Mont. 1999) (“[W]e conclude that Article II, Section 10, protects a woman’s right of procreative autonomy--i.e., here, the right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from a health care provider of her choice.”).</p> <p>See also Weems v. State, 440 P.3d 4, 11 (Mont. 2019) (reaffirming the legality of early-term abortions).</p>
NJ	N.J. Const. art. 1, ¶ 1 (1947) (right to life, liberty and property).		X	<p>Right to Choose v. Byrne, 450 A.2d 925, 934 (N.J. 1982) (“The right to choose whether to have an abortion, however, is a fundamental right of all pregnant women....”).</p> <p>See also Planned Parenthood of Cent. N.J. v. Farmer, 762 A.2d 620, 626 (N.J. 2000) (reaffirming that women have a fundamental right to choose whether to have an abortion).</p>

3. Which states are proposing statutory or constitutional action to affirm a right to abortion?

As of this document’s publication, [16 states and D.C.](#) have enacted laws to protect individuals’ reproductive rights, and additional protections have been introduced in state legislatures nationwide. For up-to-date information on state legislation regarding abortion rights, see the Guttmacher Institute’s [State Legislation Tracker](#).

Several states have sought to [amend their constitutions](#) to explicitly recognize a right to abortion. As of this document’s publication, voters in [California](#), [Vermont](#), and [Michigan](#) have adopted 2022 ballot measures expressly adding reproductive freedom rights to their state constitutions. In [Arizona](#) and [Maryland](#), similar ballot initiatives were proposed but did not make the 2022 ballot. Arizona abortion rights [activists have stated](#) that they will continue their efforts to get the measure on the ballot in 2024, and additional states, including [New York](#) and [South Dakota](#), may similarly witness abortion rights measures on future ballots. In [Oklahoma](#), a petition for a constitutional amendment in favor of reproductive freedom [was withdrawn](#), but proponents indicated that it was a strategic withdrawal to increase their chances of eventually getting the amendment on the ballot.



In contrast, 4 states (AL, LA, TN, WV) have passed constitutional amendments that [explicitly reject the existence of abortion protections](#). Kansas residents had an opportunity to similarly amend their constitution, but in a vote on August 2, 2022, [Kansas voters defeated the Kansas No State Constitutional Right to Abortion and Legislative Power to Regulate Abortion Amendment](#). In [Kentucky](#), voters rejected a similar measure in the 2022 midterm elections. Efforts to place similar measures on the ballot in [Florida](#), [Massachusetts](#), [Nevada](#), and [Oklahoma](#) were unsuccessful. [Montana](#) voters rejected a 2022 ballot initiative seeking statutory codification of a “born-alive infant’s” status as a legal person, while [Oklahoma’s](#) attempt to get a similar constitutional amendment on the 2022 ballot was unsuccessful. Several states (PA, IA, NV and WA) may witness anti-abortion initiatives [on future ballots](#).

4. What current litigation exists regarding state-based abortion rights?


The following list captures noteworthy litigation surrounding state-based abortion rights in the aftermath of the *Dobbs* decision. For up-to-date information on all abortion-related lawsuits filed in state courts, see the [State Court Abortion Litigation Tracker](#) jointly created by the Brennan Center for Justice and Center for Reproductive Rights. For up-to-date information on the legal status of abortion in every state, see The New York Times’ page, [Tracking the States Where Abortion is Now Banned](#).

Idaho. On March 23, 2022, Idaho Governor Brad Little signed [Senate Bill 1309](#), allowing private lawsuits against providers who perform abortions after fetal heartbeat detection. On March 30, Planned Parenthood [sought to](#) block enforcement of the bill under various provisions of Idaho’s Constitution. After the *Dobbs* decision was released, Planned Parenthood filed two additional lawsuits on [June 27](#) and [July 25](#). The three cases were consolidated and, on August 12, the Idaho Supreme Court issued [an order](#) allowing the ban to take effect. On January 5, 2023, the Idaho Supreme Court held [in a 3-2 decision](#) that the state’s constitution does not protect a right to abortion. Distinct litigation involving federal preemption of the law via the Emergency Medical Treatment and Active Labor Act (EMTALA) is addressed further [in other Network resources](#).

Michigan. On April 7, 2022, [Michigan Governor Gretchen Whitmer sued](#) to establish a constitutional right to abortion under [Michigan’s Due Process Clause](#). Governor Whitmer and Planned Parenthood also separately sought to block Michigan’s pre-Roe ban—which criminalized abortions without exceptions—on state constitutional grounds. On September 7, a state judge [permanently enjoined the ban](#), holding that it violated the fundamental right to bodily autonomy protected by the due process clause of the Michigan Constitution.

Oklahoma. On May 26, 2022—the day after [Oklahoma Governor Kevin Stitt signed a law](#) that makes abortion almost entirely illegal—abortion rights advocates [filed suit](#) directly with the Oklahoma Supreme Court, bypassing lower courts. [Another lawsuit was filed](#) on July 1, after the *Dobbs* decision was released, challenging two Oklahoma anti-abortion laws. Both lawsuits claim that Oklahoma’s anti-abortion laws are in violation of the state’s constitution. The abortion rights advocates [requested an emergency order](#) to block the laws while litigation proceeds, but no order was granted. Both cases are still pending.

Florida. On June 1, 2022, Planned Parenthood [filed a lawsuit](#) challenging Florida’s [15-week abortion ban](#)—which provides no exceptions for rape, incest, or human trafficking—stating that the law blatantly violates Florida’s explicit constitutional right to privacy. On June 10, a Florida synagogue [also challenged the ban](#), citing additional religious objections. The ban was scheduled to take effect on July 1, but on June 30, a state court judge [temporarily blocked its enforcement](#). Less than a week later, however, [the ban was automatically reinstated](#) after the Florida Attorney General appealed the decision on July 5. On August 11, 2022, Planned Parenthood [asked the Florida Supreme Court](#) to review the reinstatement of the ban.



Iowa. On June 17, 2022, the Iowa Supreme Court [reversed its 2018 decision](#) declaring abortion [a fundamental right under Iowa's Constitution](#). In issuing the decision, [the Court noted](#) that it still had not determined “what constitutional standard should replace it [the stricter standard from its 2018 decision].” Iowa Governor Kim Reynolds petitioned for a rehearing to get some clarity on what standard would apply to abortion restrictions in the future, but the petition was denied. On August 11, Reynolds filed a [motion](#) asking the district court to allow enforcement of a six-week abortion ban, which was signed in 2018 but held unconstitutional in 2019.

Kentucky. On June 27, 2022, several organizations and individuals, including Planned Parenthood, [sued to block implementation of Kentucky's trigger and six-week bans](#), claiming they violated several provisions of Kentucky's constitution, including privacy-based protections. On June 30, a circuit court judge [granted a temporary restraining order](#) against the bans. Kentucky Attorney General Daniel Cameron's request to overturn the injunction [was denied](#) by both the Kentucky Court of Appeals and Kentucky Supreme Court. However, on August 2, a state appellate judge [allowed the bans to go into effect](#). The Kentucky Supreme Court denied an emergency request for relief on August 18, and [heard further oral arguments on November 15, 2022](#). Additionally, three Jewish women have [filed a lawsuit](#) in Kentucky alleging that the ban infringes their religious freedom as protected by Kentucky's Religious Freedom Restoration Act. On October 26, the Kentucky attorney general [filed a notice of removal](#) to have the case heard in a federal district court rather than state court.


Mississippi. On June 27, 2022, Jackson Women's Health Organization [filed a complaint](#), arguing that Mississippi's constitution protects the right to abortion. Its request for a temporary injunction on Mississippi's near-total ban [was rejected](#) on July 5. The judge cited the state constitution's explicit failure to use the term “abortion” to justify its determination.

South Carolina. On June 27, 2022, [a federal district court](#) ruled that a law restricting abortions in South Carolina after six weeks of pregnancy can take effect immediately. On July 13, 2022, [abortion providers filed a lawsuit](#) challenging the ban, arguing that it violates the state constitutional rights to privacy and equal protection. On August 17, the South Carolina Supreme Court [temporarily blocked](#) the ban, and on January 5, 2023, the South Carolina Supreme Court [permanently overturned the ban in a 3-2 decision](#) holding that the state's constitution protects the right to abortion via its explicit language guarding privacy.

Utah. On June 27, 2022 a district judge in Utah [temporarily blocked](#) a near-total state abortion ban in response to [a lawsuit](#) filed by Planned Parenthood Association of Utah, which argued that several provisions in Utah's state constitution protect abortion rights. When the temporary order expired on July 11, the district judge [granted a preliminary injunction](#) against enforcement of the ban. On October 3, the [Utah Supreme Court](#) agreed to hear the case, but for now, the lower court's injunction remains in place.

Ohio. On June 30, 2022, organizations including Planned Parenthood and the ACLU [challenged Ohio's 6-week abortion ban](#), which provides no exceptions for rape or incest, arguing that the law is unconstitutional under the Ohio Constitution. The Ohio Supreme Court [rejected](#) their [emergency request](#) to block the ban. On July 12, 2022, the [Jewish community announced their plan to join this lawsuit](#), arguing the law infringes religious freedoms. On October 7, 2022, a [state trial court judge blocked the ban indefinitely](#) while the constitutional issues are decided, declaring that “the Ohio Constitution confers a fundamental right on all of Ohioans to privacy, procreation, bodily integrity and freedom of choice in health care decision-making.”

Another lawsuit was filed in Ohio on September 2 by various abortion rights advocates. The [complaint alleged](#) that Ohio's abortion ban violates constitutional rights to liberty, equal protection, and due process. On October 12, a state judge granted plaintiffs a [preliminary injunction](#) against enforcement of the abortion ban.



North Dakota. On July 7, 2022, North Dakota's only abortion clinic sued state officials over the state's trigger ban, asserting that the law is unconstitutional because the North Dakota Constitution guarantees "[the rights of life, liberty, safety, and happiness, all of which protect the right to abortion.](#)" On July 28, 2022, the [district court temporarily](#) blocked the ban, determining that the [Attorney General had prematurely enacted it](#) after the *Dobbs* opinion was issued on July 24, 2022. On August 25, a state judge [granted](#) a request to continue the injunction on the ban as constitutional issues are decided, and [reaffirmed that ruling](#) in late October.

Wyoming. On July 27, 2022, a Wyoming district Judge temporarily blocked the state's abortion [trigger ban](#) (passed in March 2022). On August 10, 2022, the district court preliminarily enjoined its enforcement, [acknowledging that the statute could](#) "interfere[] with the fundamental right of women in Wyoming to make their own healthcare decisions" and was unconstitutionally vague. The Wyoming Supreme Court [declined to rule](#) on questions certified by the District Court, leaving the issues to be resolved in federal court for now.

Indiana. On September 22, 2022, an [Indiana judge temporarily blocked the near-total ban](#) on abortion, writing that the ban "materially burdens the bodily autonomy of Indiana's women and girls" guaranteed by Indiana's Constitution. The [Indiana Supreme Court](#) has granted an appeal in the case and [heard oral arguments](#) on January 19, 2023. Additionally, a [Jewish organization](#) filed suit in Indiana on September 8, arguing that the ban violates Indiana's Religious Freedom and Restoration Act. On December 2, a state judge granted plaintiffs' motion for a [preliminary injunction](#) against enforcement of the ban.

Additional Resources

The Network for Public Health Law has developed (and is regularly updating) [a series of reproductive health resources](#) in the aftermath of the *Dobbs* decision, including: (1) [Abortion Access: Post-Dobbs Litigation Themes](#); (2) [Ballot Measures on Abortion Access](#); (3) [State-Based Abortion Protections](#); (4) [Abortion Access: A Post-Roe Public Health Emergency](#).

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