

Tracking and evaluating the impact of a post-Dobbs legal landscape on abortion access

Adrienne R. Ghorashi, JD (she/her)
Lead Law and Policy Analyst
Temple University Center for Public Health Law Research

Disclosure Statement

The research presented herein was supported by the Society of Family Planning Research Fund. The content is solely the responsibility of the presenter and does not necessarily represent the views of the funder.

The presenter has no personal or commercial relationships to disclose.

This presentation is for educational purposes only and **does not** constitute legal advice. Please consult an attorney practicing in your state.

Thank you to my abstract co-author, Cydney Murray JD!

Abortion Regulation Under Roe

- While *Roe v. Wade* protected the constitutional right to an abortion, states were still able to restrict it as long as it did not impose an “undue burden” (*Casey*)
- This led to a complex patchwork of state laws with varying access by jurisdiction, further complicated by case law, AG opinions and litigation battles
- Examples of restrictions upheld include mandatory waiting periods, insurance and Medicaid bans, and provider and facility requirements.
- Abortion restrictions disproportionately harm BIPOC, people with low incomes, those already parenting, and young people, which make up the majority of abortion seekers in the US

Aftermath of *Dobbs v. Jackson*

- When the *Dobbs* decision was announced, it led to sudden drastic changes in state law resulting in chaos and uncertainty for providers, patients, and advocates
- “Trigger laws” banning abortion contingent on the overturning of *Roe* and “pre-*Roe*” abortion bans that were not previously in effect suddenly became legally enforceable
- Because many abortion restrictions were held unconstitutional under *Roe* and *Casey*, this leaves the status of these laws unclear and open to new legal challenges
- A sharp divide emerged amongst states moving to ban all or most abortions and those trying to strengthen access for both in and out-of-state abortion seekers

Changes in Abortion Access

- Abortion services were immediately unavailable in a number of states (largely concentrated in the South and Midwest)
- Increase in travel, wait times, and costs for out-of-state abortions
- Pregnant people unable to get abortion care until they are extremely sick or dying due to narrow exceptions (e.g. ectopic pregnancy)
- Maternal morbidity and mortality—3x higher (or more) for Black women
- Ripple effects on access to contraception, IVF, and other healthcare



Post-Dobbs Legal Tracking

Sentinel Surveillance of Emerging Laws and Policies

Legal Epidemiology

The scientific study and deployment of law as a factor in the cause, distribution, and prevention of disease and injury in a population.

Tracking a Post-Dobbs Legal Landscape

- State abortion laws are complex, overlapping, and changing constantly—even more challenging to track the rapid legal developments following *Dobbs*
- CPHLR and SFP conceptualized a database to serve as a resource for researchers seeking to better understand the impact of the Dobbs decision, and is a companion resource to the SFP #WeCount project
- Focus on service delivery impact as legislatures aim to increasingly criminalize anyone involved in providing, supporting, or seeking abortion care
- Important to document historical changes over time in order to support rigorous research on the effects on sexual and reproductive health, wellbeing and equity

Database Methods and Scope

- Uses sentinel surveillance methods, a type of scientific legal mapping, to collect and code key features of the law and changes over time
- Covers legal developments from June 1, 2022 – June 1, 2023 and includes state statutes, regulations, court opinions, attorney general opinions, and executive orders in all 50 states and DC
- Coding framework focused on existing areas of regulation most likely to be impacted by the decision and emerging legislative efforts to restrict or protect access
- Stakeholder interviews with researchers and experts conducted to further inform the scope and ensure key variables are included

Dataset Inclusion Criteria

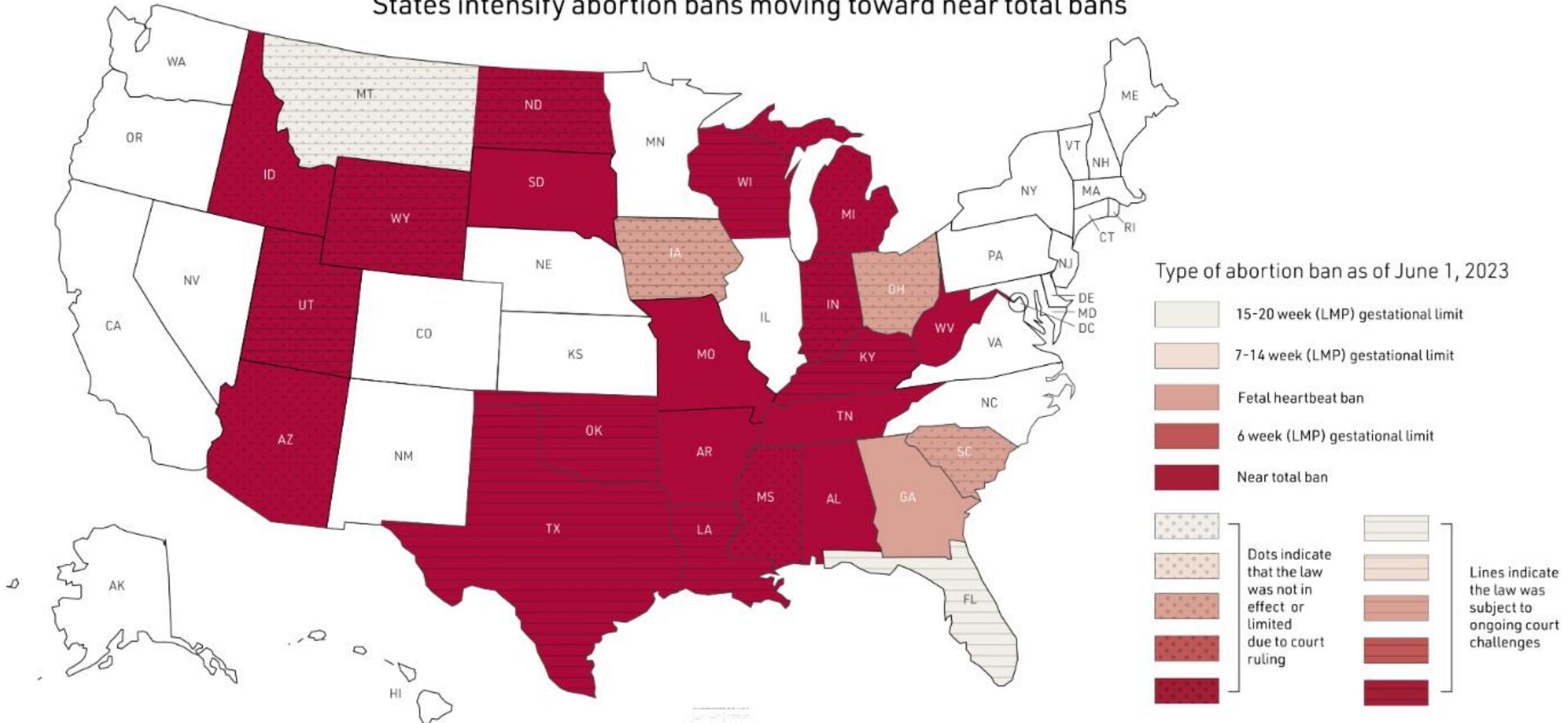
- Key features of the law included:
 - Laws banning abortion, including trigger bans, total or near-total bans, gestational age limits, “fetal heartbeat” bans, method bans, and reason-based bans
 - Restrictions on medication abortion, telehealth for abortion and self-managed abortion
 - Criminal, civil, and licensing penalties for violations of certain abortion laws
 - Interstate “shield laws” protecting providers and patients from certain legal actions
 - Abortion protections such as a codified right to abortion, expanded access, increased funding, insurance coverage, and data privacy measures
 - Ballot measures related to abortion protections and restrictions



Trends in State-Level Policy Developments

June 1, 2022 – June 1, 2023

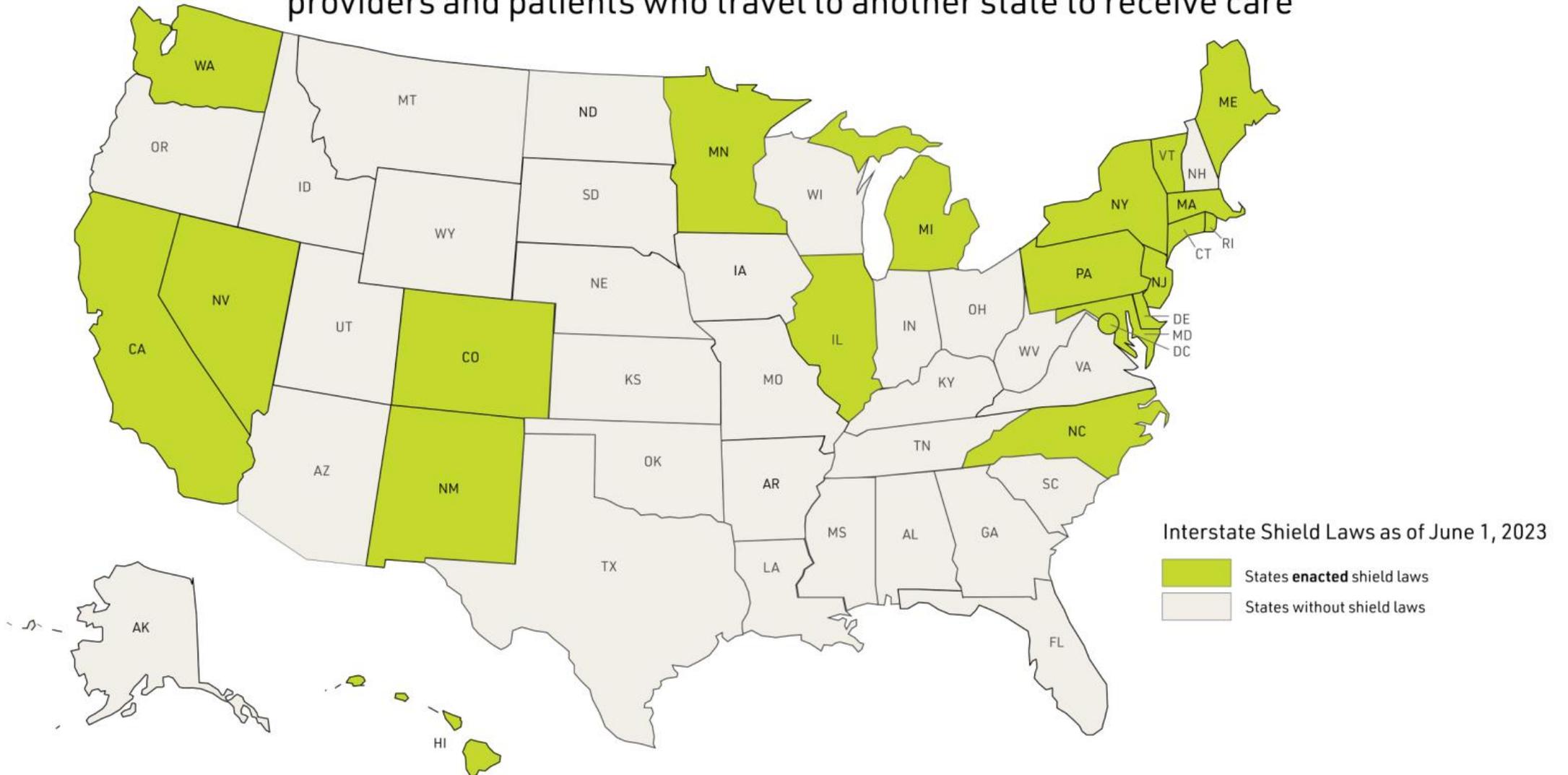
States intensify abortion bans moving toward near total bans



Idaho “Abortion Trafficking” Ban

- Idaho Code § 18-623:
 - (1) An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion ... or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state **commits the crime of abortion trafficking.**
 - (3) It shall not be an affirmative defense to a prosecution ... that the abortion provider or the abortion-inducing drug provider is located in another state.
 - (5) Any person who commits the crime of abortion trafficking ... shall be punished by imprisonment in the state prison for no less than two (2) years and no more than five (5) years.

Interstate "Shield laws" attempt to limit the liability of abortion providers and patients who travel to another state to receive care



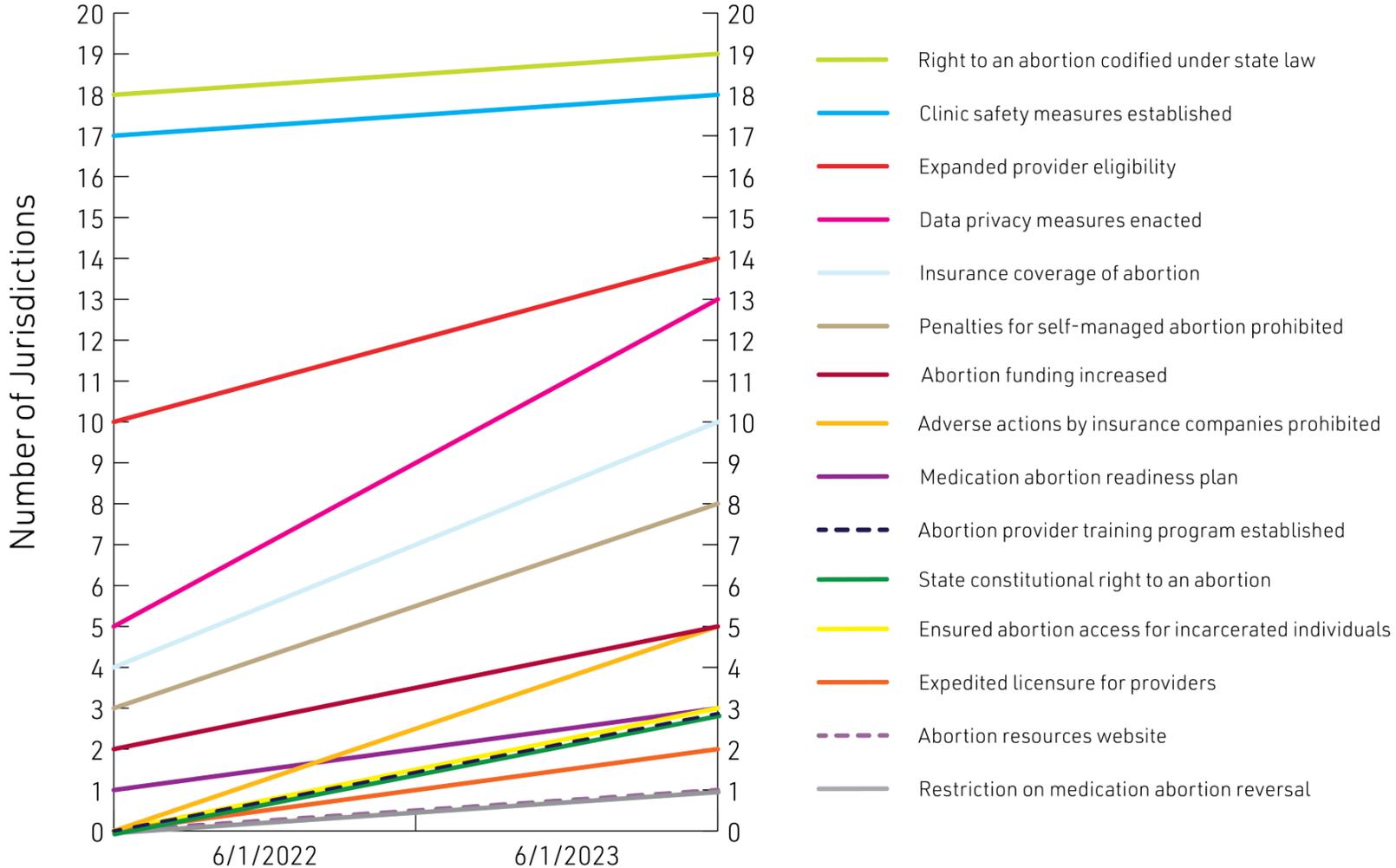
What can Shield Laws do?

- Key features of interstate shield laws prohibit:
 - Disclosure of health records and communications records
 - Issuance of a subpoena, summons to testify, or warrant
 - Enforcement of out-of-state judgments
 - Assisting investigations or proceedings, extradition, arrest
 - Applying out-of-state laws in state court
 - Imposing provider sanctions
 - Plus allowing damages to be recovered (“clawback”)

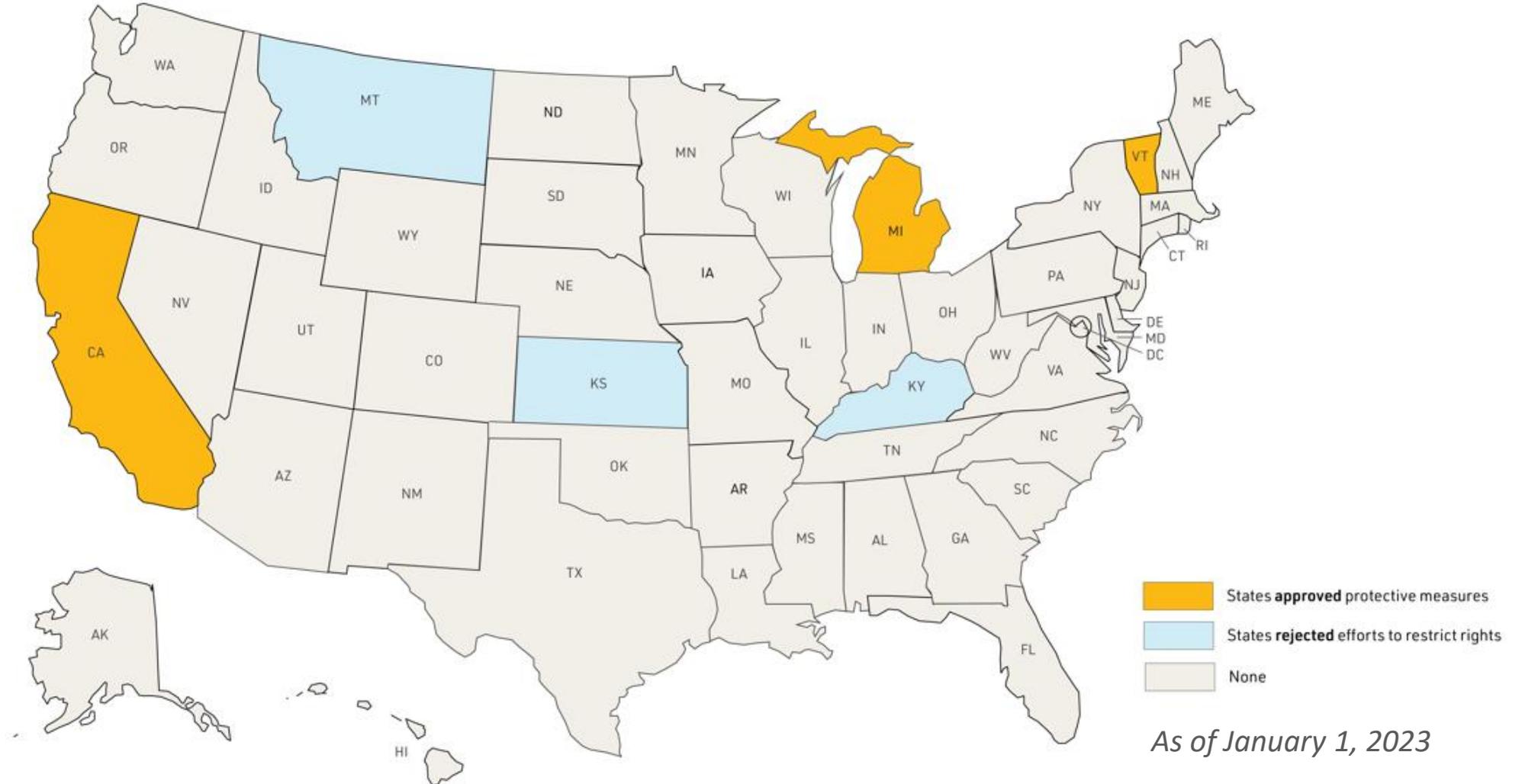
Telemedicine Shield Law Developments

- Mass. Gen. Laws Ch. 12 § 11I ½(a):
 - Definition of “legally-protected health care activity” includes “that the provision of such a health care service by a person duly licensed under the laws of the commonwealth and ***physically present in the commonwealth*** and the provision of insurance coverage for such services shall be legally protected if the service is permitted under the laws of the commonwealth, ***regardless of the patient’s location ...***”
- N.Y. Crim. Pro. § 570.17.:
 - Definition of “legally protected health activity” includes “all services...***whether provided in person or by means of telehealth or telehealth services***...relating to pregnancy, assisted reproduction, contraception, miscarriage management or the termination of a pregnancy, and self-managed terminations.”

State Laws Protecting Access to Abortion Post-*Dobbs*, June 1, 2022–June 1, 2023



Ballot Measures Protecting Abortion/Rejecting Restrictions



Where Does This Leave Us?

Legal and Public Health Impact of Dobbs

Access the Post-*Dobbs* Dataset



SCAN TO EXPLORE THE DATA

<https://lawatlas.org/datasets/post-dobbs-state-abortion-restrictions-and-protections>

Free Legal Data



LawAtlas.org – 120+ datasets covering more than 20 areas of public health



PDAPS.org – 20+ datasets focused on laws related to prescription drug use



CityHealth.org – Data power this ranking tool of the 40 largest cities in the US across nine domains

THANK YOU!

Keep In Touch:

Email: Adrienne.Ghorashi@temple.edu

Twitter: [@AGhorashiEsq](https://twitter.com/AGhorashiEsq)

CPHLR Resources:

Center for Public Health Law Research:

<http://publichealthlawresearch.org/>

LawAtlas: <http://lawatlas.org/>

PDAPS: <http://pdaps.org/>

MonQcle: <https://monqcle.com/>

Twitter: [@PHLR_Temple](https://twitter.com/PHLR_Temple), [@LawAtlas](https://twitter.com/LawAtlas), [@PDAPSbyCPHLR](https://twitter.com/PDAPSbyCPHLR)

EXAMINING WORKPLACE PREGNANCY DISCRIMINATION

Prashasti Bhatnagar, Esq., M.P.H.
Kirwan Institute for the Study of Race & Ethnicity
The Ohio State University

Who We Are

The Institute For Healing Justice & Equity (IHJE) is a multidisciplinary group of faculty, staff, collaborators, and partners working together to eliminate disparities caused by systemic oppression through systems change and deep community partnership. Read more about us [here](#).



Team Members



**Prashasti Bhatnagar, JD,
MPH**



**Crystal N. Lewis, JD,
MPH**



**Kemba Noel-London,
PhD**



**Ruqaiijah Yearby, JD,
MPH**

OUR PROJECT

- 50-state and federal survey of **workplace protections against pregnancy discrimination** in the United States
- Connecting **workplace discrimination** and **maternal/infant health inequities**
- Envisioning a **health justice** approach to eliminating pregnancy discrimination

WORKPLACE PREGNANCY DISCRIMINATION

- Discrimination in **hiring, maintaining employment, and obtaining accommodations** on the job
- Between 2010 and 2021, **nearly 40,000 pregnancy discrimination cases** were filed with EEOC
 - **4 in 10** pregnancy discrimination claims were filed by **Black women**
- **Black women and Latinx women** are disproportionately overrepresented in occupational environments requiring **intensive physical labor and long working hours**

LEGAL LANDSCAPE: PREGNANCY DISCRIMINATION

1

**REASONABLE
ACCOMMODATIONS**

2

BREASTFEEDING

3

PAID LEAVE

**STATES WITH NO REASONABLE
ACCOMMODATIONS, BREASTFEEDING,
OR PAID LEAVE LAWS HAVE ALSO
CRIMINALIZED AND PROHIBITED
ABORTION CARE**

State	Limitations on Abortion	Reasonable Accommodations Laws	Breastfeeding Laws	Paid Leave Laws
Alabama	Yes (total ban)	No	No	No
Arizona	Yes (restrictions)	No	No	No
Florida	Yes (restrictions)	No	No	No
Iowa	Yes (restrictions)	No	No	No
Missouri	Yes (total ban)	No	No	No
Ohio	Yes (restrictions)	No	No	No
South Dakota	Yes (total ban)	No	No	No
Wisconsin	Yes (total ban)	No	No	No
Wyoming	Yes (restrictions)	No	No	No

ASSOCIATED HEALTH OUTCOMES

- Workplaces that require physical labor during pregnancy, **without any accommodations**, are associated with increased likelihood of **adverse pregnancy outcomes**, such as:
 - miscarriage
 - preterm birth
 - low birth weight for infants

STATE OF MATERNAL & INFANT HEALTH

- The maternal mortality rate for 2020 was **23.8 deaths per 100,000** live births compared with a rate of 20.1 in 2019
- In 2020, the maternal mortality rate for **non-Hispanic Black women was 55.3 deaths per 100,000** live births, 2.9 times the rate for non-Hispanic White women
- Mothers who took paid maternity leave experienced a **51% decrease** in the odds of being rehospitalized at 21 months postpartum

STATES WITH HIGHEST MATERNAL/INFANT MORTALITY RATES HAVE

- Criminalized and prohibited abortion care
- No paid leave laws

State	Limitations on Abortion	Paid Leave Laws	Maternal Mortality Rate (per 100,000 live births)	Infant Mortality Rate (per 1000 live births)
Alabama	Yes (total ban)	No	36.2	6.99
Arkansas	Yes (total ban)	No	40.4	7.38
Kentucky	Yes (total ban)	No	39.7	6.43
Louisiana	Yes (total ban)	No	31.8	7.59
Mississippi	Yes (total ban)	No	30.2	8.12
Tennessee	Yes (total ban)	No	34.6	6.38
South Dakota	Yes (total ban)	No	NR	7.3
West Virginia	Yes (total ban)	No	NR	7.33

3 OF THESE STATES WITH HIGH INFANT MORTALITY RATES HAVE

- No reasonable accommodations*^
- No breastfeeding laws^

(*beyond federal standard)
(^except West Virginia)

State	Limitations on Abortion	Paid Leave Laws	Maternal Mortality Rate (per 100,000 live births)	Infant Mortality Rate (per 1000 live births)
Alabama	Yes (total ban)	No	36.2	6.99
Arkansas	Yes (total ban)	No	40.4	7.38
Kentucky	Yes (total ban)	No	39.7	6.43
Louisiana	Yes (total ban)	No	31.8	7.59
Mississippi	Yes (total ban)	No	30.2	8.12
Tennessee	Yes (total ban)	No	34.6	6.38
South Dakota	Yes (total ban)	No	NR	7.3
West Virginia	Yes (total ban)	No	NR	7.33

**BUILDING A
HEALTH JUSTICE APPROACH
TO ELIMINATE WORKPLACE
PREGNANCY DISCRIMINATION**

BUILDING A HEALTH JUSTICE APPROACH

1

INTERSECTIONAL MOVEMENT

- Community power ⇔ worker-led organizing and advocacy
- Engaging labor, immigration, health, reproductive, and racial justice movements

2

STRUCTURAL CHANGE

- Paid leave laws
 - Leave for any reason: IL, ME, NV
 - Family & medical leave: CA, CO, CT, DE, DC, MA, MD, MN, NH, NJ, NY, OR, RI, and WA
- UBI/Direct Cash Assistance programs to new parents (e.g., Washington, DC)

WHAT'S NEXT FOR US

- Upcoming research report on workplace pregnancy discrimination and health inequities with dynamic legal database in AirTable
 - “The Persistence of Workplace Pregnancy Discrimination and Health Inequities in the United States: A 50-State and Federal Policy Surveillance of Workplace Pregnancy Anti-Discrimination Laws and Associated Health Inequities”
- Developing critical legal epidemiology to explicate the role of law as a tool of oppression
- Developing first-of-its kind rubric to evaluate pregnancy discrimination elimination efforts in the United States

THANKS!

CONTACT INFORMATION

Prashasti Bhatnagar, Esq., M.P.H.
bhatnagar.69@osu.edu