

## State Advocacy Strategy: Abortion Rights and Access

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## **Strategy Overview**

### **Advocacy Goals**

- Support work of partners and coalitions
- Influence state legislation to mitigate harm and increase protection
- Educate the public on upcoming ballot measures and the larger reproductive rights legislative landscape
- Galvanize public engagement
- Influence attorneys general to minimize harmful enforcement or prosecutorial efforts

### **Mitigating Harm**

1. Counter new harmful bills (in regular or special legislative sessions)
  - Focuses: Abortion bans and restrictions, medication abortion, interstate travel, contraception
    - a. Call or write elected officials (e.g. state legislators and governors)
    - b. Write legislative testimony
2. Counter harmful ballot measures and constitutional amendments
  - Focuses: Anti-abortion state constitutional amendments, fetal personhood state statutes
    - a. Educate voters
3. Write to attorneys general requesting they don't enforce bans or prosecute providers

### **Increasing Protection**

1. Support new protective bills (in regular or special legislative sessions) and advocate for protective executive orders
  - Focuses: Codification of the right to abortion, provider pool expansion, insurance coverage, establishment of state funds, protection from interstate prosecution
    - a. Call or write elected officials (e.g. state legislators and governors)
    - b. Write legislative testimony
2. Support protective ballot measures and constitutional amendments
  - Focus: Enshrining in state constitutions the right to abortion and contraception
    - a. Educate voters

### **Public Education and Engagement**

1. Post on social media
  - a. e.g. lift up real-life stories
2. Publish press releases, op-eds, or letters to the editor
3. Circulate petitions or action alerts to influence elected officials or attorneys general

### **Dobbs v. Jackson Women's Health Organization**

On June 24, 2022, the Supreme Court released its [decision](#) in *Dobbs v. Jackson Women's Health Organization*, overruling [Roe v. Wade](#) and *Planned Parenthood v. Casey* and overturning the federal constitutional right to abortion. This ruling leaves the right to abortion services up to federal or state legislation. As a [bill](#) that federally codifies the right to abortion has not passed the US Senate, many state legislatures have exercised authority to legislate abortion.

## **State-level Measures**

### **Legislation<sup>1</sup>**

#### **Legislative Sessions**

The dates and lengths of state legislatures' regular [legislative sessions](#) vary and several state legislatures meet throughout the year. For states with a limited session length, they can also convene to address a time-sensitive topic in [special sessions](#), called by the governor or legislature, depending on state requirements. Elected officials in numerous states have requested special legislative sessions to try to pass more restrictive or protective abortion laws.

Of states that have held special sessions in the 2022 calendar year, Indiana passed a near-total abortion ban ([S.B. 1](#)) beginning at conception, with exceptions for serious risk to the pregnant person's health or life, or fatal fetal anomaly, and limited exceptions for rape and incest. Providers who violate the law could be subject to a felony charge and between one and six years in prison. This ban is preliminarily enjoined (blocked) by a county judge. Similarly, West Virginia passed a near-total abortion ban ([H.B. 302](#)) beginning at conception, with exceptions for a medical emergency and limited exceptions for rape and incest. The law narrows who can perform an abortion to doctors with hospital admitting privileges, who may lose their medical licenses for violating the law. Others who provide an abortion could be subject to a felony charge and between three and ten years in prison.

The South Carolina Senate convened for a special session in September to vote on a near-total abortion ban without exceptions for rape and incest. They could not overcome a filibuster and instead passed an amended [bill](#), which gutted the near-total ban and updated the state's existing six-week abortion ban ([S.1](#)), which is temporarily enjoined by the South Carolina Supreme Court. The bill shortens the timeframe in which someone can have an abortion in cases of rape or incest and tries to address what the Court identified as justification for its injunction. The South Carolina House is expected to reconvene shortly to consider this bill.

#### **Harmful Legislation**

##### *Abortion Bans*

In anticipation of the *Dobbs* decision, [26 states](#) have been predicted to ban abortion, stripping more than 36 million women, and other people who may become pregnant, of the right of reproductive choice. These states were identified [based on](#) their:

- Enjoined pre- or post-*Roe* bans, which could be implementable by a court ruling;
- “Trigger” bans, which are existing laws that take effect automatically or by swift state action in the absence of *Roe*, banning abortion after a particular gestational age or entirely with few exceptions;
- State constitutions that explicitly prohibit the protection of abortion rights or the use of public funds for abortion, or that specify maximum abortion restrictions permitted under the US Constitution; and
- Recent political history.

Each of the 26 states have multiple bans on the books, and changing court injunctions and delayed implementation of some trigger laws have made the legislation hard to disaggregate.

Abortion is [currently banned](#) at conception with very limited exceptions in at least thirteen states: Alabama, Arizona, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. Other states are likely to impose near-total bans as they have unenforced pre-*Roe* bans awaiting hearings, or trigger bans that are temporarily enjoined and could be reinstated by a court ruling.

Many other states are enforcing pre-viability bans, or bans on abortion before a fetus is likely to survive outside a pregnant person's womb. These include bans after six weeks from the last menstrual period (LMP), often [erroneously](#) referred to as “fetal heartbeat bills,” as this is the period at which electrical activity is typically

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<sup>1</sup> Information about specific states' special legislative sessions and the bans states are enforcing was last updated on September 24, 2022. The legislative landscape is rapidly changing so please cross-reference with updated external resources, such as the advocacy resources linked in the “For Your Work” section of this document.

detectible. This is in effect in Georgia and temporarily or permanently enjoined in numerous other states. Florida is enforcing a ban at 15 weeks LMP, Utah at 18 weeks LMP, North Carolina at 20 weeks LMP, and numerous other states at 22 weeks LMP.

Abortion bans often introduce fetal personhood language into state statutes by referring to a fetus as an “unborn child” or “baby.” There have also been attempts to explicitly codify that a fetus has the full rights of a person. Georgia’s six weeks LMP ban entitled the [Living Infants Fairness and Equality \(LIFE\) Act](#) classifies a fetus as a “natural person,” entitling it to equal protection of the laws including life.

The legal ramifications for acting against abortion bans vary. Some laws target physicians with fines, revocation of medical licenses, and/or felony charges, which in some states are punishable with life imprisonment. Others allow private citizens to bring a civil action against an individual who helps someone provide or obtain abortion services. These laws pose the greatest concern about violations of data privacy including subpoenas and/or use of digital communication records, abortion-related internet searches, menstrual tracking apps, location data, and online payment records for prosecution purposes. Of note, [states](#) that make performing an abortion a felony also have laws that prohibit people from voting while in prison, on parole, and/or with a prior felony conviction, making abortion bans a threat to voting rights.

Anti-choice legal and advocacy organizations have released model legislation to ban abortion. The National Association of Christian Lawmakers published a model bill mirroring the Texas abortion ban ([S.B. 8](#)), banning abortion at around six weeks LMP and enabling private citizens to bring a civil action against someone who performs or supports an abortion. The model appears to have since been removed from the organization’s website.

The National Right to Life Committee’s [model](#) legislation recommends banning abortion except if the pregnant person’s life is at risk, and banning telehealth for abortion services. It suggests mandating that providers submit reports about each abortion to a state agency, requiring that state medical licensing boards revoke a provider’s license for violation of the law, and making causing an abortion a Level 2 or 3 Felony. It establishes a course for civil action, subjecting individuals who assist someone in obtaining an abortion, including via web or phone-based information or referrals, to a civil penalty, and enabling people who impregnate to bring a civil action for Wrongful Death. The model also grants a state’s attorney general prosecutorial power in case a prosecuting attorney does not enforce criminal penalties.

#### *Abortion Restrictions*

In addition to abortion bans, there are many types of abortion [restrictions](#) that curb access to care, taking the form of:

- Gestational limits prohibiting abortion after a specified point in pregnancy;
- Medically unnecessary clinician and facility requirements;
- Parental notification or consent requirements for minors;
- Mandated, medically unnecessary counseling, ultrasounds, or waiting periods; and
- Public funding and private insurance restrictions.

#### *Medication Abortion*

Medication abortion is the safe and effective regimen of taking a combination of the drugs mifepristone and misoprostol to end an early pregnancy. The US Food and Drug Administration (FDA) [approved](#) the use of mifepristone as an abortifacient up to the tenth week after the last menstrual period, taken in consultation with a [healthcare provider](#). In 2021, the [FDA](#) removed mifepristone’s in-person dispensing requirement and expanded its distribution to include certified pharmacies, enabling it to be procured by mail and approving provider consultation to be done by telehealth.

In 2020, medication abortion accounted for more than half of all US abortions. However, many states have [restrictions](#) that impact its use including mandated counseling, ultrasounds, or waiting periods. Currently, 29 states require prescribers to be physicians and 19 states require a provider to be physically present while a patient takes the medication, prohibiting the use of telemedicine. States with abortion bans also prohibit medication abortion and

some states have proposed bills explicitly banning the use of medication abortion, such as [Arizona](#) and [Wyoming](#). Of note, [Oklahoma](#) explicitly prohibits self-managed abortion and [South Carolina](#) criminalizes it. There are also growing [concerns](#) about the use of existing laws, including fetal harm laws and pre-*Roe* criminal abortion laws, to criminalize people who self-manage their own abortions.

Because of the requirement that a clinician is licensed in the state in which a patient receives care, there is uncertainty about the legal recourse for out-of-state providers who prescribe abortion medication to patients in states in which it is illegal. Pro-choice advocates are uplifting [Plan C](#), which has a state directory of at-home abortion medication providers. It often lists [AidAccess](#), an Austria-based medication abortion provider that provides people in US states that don't permit medication abortion by telemedicine with a virtual consultation with a European physician, and enables them to order the medication by mail from an India-based pharmacy. Despite these resources, concerns remain about future efforts to prosecute people who self-manage their own abortions.

### *Interstate Travel*

With a predicted rise in individuals traveling out-of-state for abortion services, anti-choice organizations and legislators are discussing how to prohibit interstate travel for reproductive health care. According to [The Washington Post](#), the Thomas More Society, a conservative legal organization, is drafting model legislation for state legislators that would allow private citizens to sue individuals who help someone obtain an abortion out-of-state. Measures of this sort failed in [Missouri](#)'s 2022 legislative session but could be reintroduced. Of note, anti-choice groups are using human trafficking language to refer to interstate travel for reproductive health care.

### *Contraception*

The Supreme Court's ruling in *Griswold v. Connecticut* established a constitutional right to contraception. However, with increased laws banning abortion at conception, there are legal concerns about their interpretation to impede [contraception](#). This could most likely be used to target intrauterine devices (IUDs), a long-acting reversible contraceptive that prevents fertilization, and emergency contraception that prevents ovulation, both of which could prevent implantation of a fertilized egg. Some state legislators have already talked about banning these methods of contraception and, in states with near-total bans, there have been examples of health care providers temporarily halting the provision of emergency contraception because of confusion about state statutes.

## **Protective Legislation Etc.**

### *Protective Legislation*

There are [16 states and the District of Columbia](#) with legislation that protects the right to abortion. Some of these states have [additional legislative protections](#), such as [laws](#) that explicitly codify the right to abortion, expand the pool of clinicians qualified to provide abortion services, require insurance plans to cover abortion, establish state funds to cover abortion care costs, or protect people who provide, support, or seek abortion services from out-of-state penalties.

Connecticut passed a [law](#) designed to protect people who provide, assist with, seek, or receive abortion services in Connecticut and face legal ramifications out-of-state. It forbids state agencies and health care providers from assisting in related interstate investigations, protects accused individuals from extradition, establishes a cause of action for sued individuals to recover certain costs, and works to increase abortion access by expanding the type of practitioners allowed to perform related services. [New York](#) and [New Jersey](#) passed laws with some of the same provisions.

### *Executive Orders*

In multiple states, governors have signed executive orders to protect and expand access to abortion care; compel state agencies to protect people providing, assisting with, or seeking abortion services; prohibit state agencies from assisting in interstate abortion-related investigations or proceedings; and protect accused individuals from extradition. Such orders have been signed in at least eight states: [Colorado](#), [Maine](#), [Massachusetts](#), [Michigan](#), [Nevada](#), [North Carolina](#), [Pennsylvania](#), [Rhode Island](#). In [Chicago](#), Illinois, the mayor signed an executive order with similar elements for the city.

## Ballot Measures and Constitutional Amendments

States have their own constitutions, and every state except Delaware requires that voters ratify a proposed constitutional amendment, which is done through a ballot measure. A ballot measure is a state constitutional amendment or state statute appearing on a statewide ballot for voters to decide, typically with a simple majority.

[Ballot measures](#) typically take one of two forms dependent upon what is permitted by a state:

1. **Legislatively referred measures:** A state's legislature passes an amendment or state statute and it goes to the statewide ballot. The size of the legislature's necessary affirmative vote varies by state and some states require legislatures to approve the measure in two successive legislative sessions.
2. **Initiated measures:** Citizens propose an amendment or state statute and collect a minimum number of valid signatures, at which point it goes directly to the statewide ballot (direct initiatives), or to the legislature, which can put it on the statewide ballot (indirect initiatives). This process is only an option in a limited number of states.

Some state constitutions explicitly address, or have been interpreted by state high courts to address, abortion. Some explicitly do not protect the right to abortion or use of public funds for abortion. [Others](#) go beyond the US Constitution and protect the right to abortion explicitly, or have language that has been interpreted to protect the right to abortion and/or abortion-related Medicaid funding, such as under the right to privacy, equal protection, or autonomy.

In 2022, voters in five states vote on abortion-related ballot measures to amend their state constitutions regarding the right to reproductive choice.

### Harmful Ballot Measures

In [Kentucky](#), voters will vote on a constitutional amendment specifying that the constitution does not protect the right to abortion or require funding for abortion care. [Kansas](#) had a similar ballot measure, which, in a victory for reproductive rights, failed with a nearly 60% vote in opposition. In [Montana](#), voters will vote on a referred state statute that would classify fetuses born alive at any stage of development as "legal persons" and would require the provision of medical care to them.

Looking ahead, in Pennsylvania, the state legislature approved a [referred amendment](#) specifying that the constitution does not protect the right to abortion or require funding for abortion care. This will have to pass in the next legislative session so it could appear on the statewide ballot as early as 2023. In Iowa, the state legislature approved a similar [referred amendment](#) in 2021 and will have to pass it again in the next biennium legislative session in 2023 so it could appear on the statewide ballot in 2024.

### Protective Ballot Measures

Some states are also working to amend their state constitutions to enshrine the right to abortion. California and Vermont voters will vote on referred constitutional amendments protecting the rights to [abortion and contraception](#) explicitly and [reproductive liberty](#), respectively. These amendments would enhance the protections already afforded by the states' codification of the right to abortion.

In Michigan, abortion-rights activists garnered enough signatures to get on the ballot an [initiated constitutional amendment](#) establishing the right to reproductive freedom including abortion and contraception. This would protect against the state's unenforced, pre-*Roe*, near-total abortion ban.

Looking ahead, in New York, the state legislature approved a [referred amendment](#) that would enshrine equal rights under the law in the state constitution, including protection against discrimination on the basis of pregnancy and pregnancy outcomes. This will have to pass in the next legislative session so it could appear on the statewide ballot in 2023.

## **Enforcement: Attorneys General**

A state attorney general's [role](#) is to serve as counselor to their legislature and state agencies and represent public interest. Their powers and responsibilities [vary](#) by locale but typically include representing the state and state agencies before state and federal courts, enforcing some state and federal laws, and handling criminal prosecutions. Already, some state attorneys general have been engaged in litigation around their state's abortion laws, and others have spoken about whether or not they intend to enforce their state's bans.

Following *Dobbs*, some attorneys general filed a [joint statement](#) that they will not prosecute people who provide, support, or seek abortions on the grounds that they don't believe in using public resources to criminalize people for personal medical decisions. This presents an opportunity to write to attorneys general requesting they do not enforce bans or prosecute providers.

## **A Threat to Other Individual Liberties**

Legal scholars have discussed the rarity of a decision like *Dobbs*, noting that when the US Supreme Court has overturned prior precedent, it has usually been to expand the protection of constitutional rights. Legal experts have also expressed concern about the risk that such a precedent poses to other fundamental rights, including same-sex marriage, certain acts of intimate conduct, and contraception. These concerns, in addition to increased abortion restrictions and bans, motivate the League to monitor and address contraception legislation.

## **Conclusion**

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* to overturn the constitutional right to abortion eliminated a fundamental right that women and people who may become pregnant have held for nearly fifty years. People across the country have always faced inequitable logistical and sociocultural barriers to exercising the right to an abortion, and abortion bans will exacerbate existing inequities, disproportionately affecting communities that have systematically been marginalized, surveilled, and criminalized.

After *Dobbs*, 26 states have been predicted to ban abortion and, as of September 24<sup>th</sup>, 2022, seventeen states were enforcing abortion bans ranging from near total bans to bans up to 20 weeks LMP. The rapidly shifting legislative and litigative landscape can make it hard to understand the practical implications of state laws and we have already seen examples of the devastating consequences of state statutes that outlaw receipt of an abortion, or even criminalize the provision of abortion services, as well as the legal confusion that surrounds them.

The League of Women Voters of the United States believes that public policy must affirm the constitutional right of privacy of the individual to make reproductive choices, and that every US resident should have access to a basic level of quality health care at an affordable cost, including abortion. As an ally to our partners who are experts on reproductive health and rights, the League is well positioned to help counter harmful, and support new protective, state bills and ballot measures by calling or writing elected officials, writing legislative testimony, and educating voters. Leagues may use public education to help build momentum, and engage the public with petitions or action alerts to harness the power of the people.

## **For Your Work**

### **LWVUS Positions**

The League of Women Voters of the United States [believes](#)...

- Public policy must affirm the constitutional right of privacy of the individual to make reproductive choices;
- Every US resident should have access to a basic level of quality health care at an affordable cost, including abortion;
- Individual rights protected by the Constitution should not be weakened or abridged; and
- Voting is a fundamental citizen right that must be guaranteed.

## Messaging

- LWVUS [abortion rights messaging guidance](#)
- Banning abortion could lead to a 21% increase in pregnancy-related deaths and a 33% increase among Black women ([University of Colorado Boulder](#)).
- Abortion bans disproportionately affect underserved communities that already face greater barriers to quality and accessible health care. This includes Black, Indigenous, and other people of color, individuals with low incomes, people with disabilities, people in rural areas, members of the LGBTQIA+ community, and immigrants.
- 61% of US adults think that abortion should be legal in all or most cases ([Pew Research Center](#)) and other research suggests that more than 80% of Americans say abortion should be legal in all or certain cases ([Gallup](#)).

## Additional Advocacy Resources

- State abortion bans throughout pregnancy: [Guttmacher Institute](#)
- State abortion bans/restrictions/protections maps: [Center for Reproductive Rights](#), [Guttmacher Institute](#), [Planned Parenthood](#)
- State abortion laws: [Guttmacher Institute](#)
- Medicaid coverage of abortion: Guttmacher Institute ([overview](#), [state funding](#))
- Medication abortion: Guttmacher Institute ([overview](#), [by state](#)), [Kaiser Family Foundation](#)

## Partnership Note

The League is following the leadership of our partner organizations with years of expertise and advocacy within the reproductive rights movement, including:

- Center for Reproductive Rights,
- Moms Rising,
- NARAL Pro-Choice America,
- National Abortion Federation,
- National Latina Institute for Reproductive Health,
- National Network of Abortion Funds,
- The National Women's Health Network,
- National Women's Law Center, and
- Planned Parenthood.

We encourage you to follow their social media and visit their websites for engagement opportunities and messaging guidance.