

Abortion Shield Laws in Action

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In 2022, when *Roe v. Wade* was on the cusp of being overruled, we wrote that “the interjurisdictional abortion wars are coming.”¹ They have now arrived.

For the first two years following *Roe*’s reversal, states took different approaches to abortion, but did not challenge each other’s abortion policies in court. Late in 2024, that changed with *Texas v. Carpenter*, a case in which Texas is seeking to impose civil liability on a New York abortion provider who is providing abortion care in compliance with New York law.² In late January 2025, the stakes got even higher when Louisiana indicted the same physician under Louisiana’s criminal abortion ban.³

To understand these cases, it’s important to understand the landscape of abortion after *Dobbs v. Jackson Women’s Health Organization*—the 2022 Supreme Court case that overturned *Roe*. Twelve states now ban abortion at any stage of pregnancy with only very limited exceptions. Another ten ban abortion at a point before fetal viability, some as early as six weeks gestation⁴

However, for a complex web of reasons, the average number of abortions has increased nationally since *Dobbs*. Abortion providers have changed their practices, patients have found ways to travel to states where abortion remains legal, and abortion supporters have donated large amounts of money to help facilitate care.⁵ Perhaps most significantly, the transit of mailed abortion pills across the country has increased, helping people gain access to abortion even if they cannot travel.

Abortion pills are the most common form of abortion in the United States.⁶ The two-drug regimen consists of mifepristone followed by misoprostol, usually taken 24-48 hours apart. This regimen is very safe and effective and has been FDA-approved in the United States since 2000. In 2023, the FDA, having considered voluminous research on the safety and efficacy of telemedicine for medication abortion, permanently eliminated the rule that required people to pick up the medications from a healthcare facility.⁶

Since *Dobbs*, the accessibility of abortion pills has spiked. International pharmacies offer pills directly to patients via the internet, and virtual abortion practices, with licensed doctors in multiple states, have expanded their reach.⁶ But a large part of the increase has come from U.S. doctors practicing in states with newly passed shield laws. These new laws seek to protect people in a shield state who provide or otherwise assist with reproductive healthcare from legal liability stemming from antiabortion states.⁶ Abortion-supportive states started passing shield laws to prepare for the post-*Dobbs* reality of antiabortion states trying to curb abortion access beyond their borders. We helped draft the first shield law in Connecticut and continue to consult with legislators and advocates about them. There are currently nineteen jurisdictions with shield laws and several more with executive orders that have a similar (albeit more limited) effect.⁷

Here is how shield laws operate: if a Tennessee patient travels to Illinois to get an abortion, Illinois's shield law will make it difficult for Tennessee to prosecute or sue the Illinois abortion provider for caring for the Tennessee patient. Shield laws also prohibit using the resources of the state where abortion remains legal—courts, law enforcement, the extradition process, medical boards, malpractice companies—to punish care that was lawful in the shield state.

In eight states, the shield law protects not only a clinician delivering care to a patient who travels to the shield state, but also to a clinician who delivers care to a patient via telemedicine and mailed medication, regardless of where the patient is located—so long as the doctor is licensed in the shield state and is physically located in that state when delivering care.⁷ Thus, under these laws, the shield state will protect a healthcare provider who mails abortion pills to a patient physically located in another state, even if the provider does not have a license in the patient’s state and even if that state bans abortion. At present, roughly 10,000 patients in abortion-restrictive states receive care each month under these laws.

Leaders of the antiabortion movement have publicly decried this shield law provision since its inception. But *Texas v. Carpenter* is the first attack on a provider in a shield state. This lawsuit, filed in December 2024, was brought by the Attorney General of Texas against a physician who practices and is licensed in New York.² The lawsuit alleges that a woman in Texas received abortion pills from the New York doctor and used those pills to end her pregnancy. A man, who the lawsuit identifies as the fetus’s “biological father,” found a pill bottle with the doctor’s name on it after the woman received post-abortion care at a local hospital. He complained to the Attorney General’s office, which brought a civil lawsuit against the New York physician under Texas’s abortion and licensing laws.

The doctor did not respond to the lawsuit or appear for the hearing, which was her right, and New York’s shield law meant her home state would not force her to cooperate with the suit. As a

result, the Texas state court entered a default judgment against the doctor for over \$100,000 in damages and attorney fees, while also enjoining her from mailing pills to Texas in the future.²

The Texas court's judgment cannot be effectuated without an order from a New York court and, citing New York's shield law, a New York country clerk recently refused Texas's request to enforce the order.² For most matters, states enforce the civil judgments of other states out of comity and as required by the Full Faith and Credit Clause of the U.S. Constitution. However, when an out-of-state judgment is not related to redress or compensation for an actual injury (including this case, as the abortion patient was unharmed) but rather is a form of punishment, New York courts are not required to enforce the out-of-state judgment. Further, even if a New York court recognizes the judgment, New York's shield law allows the physician to initiate a "clawback" lawsuit to recoup the money she would have been forced to pay.¹

A lengthy legal battle undoubtedly lies ahead, one that possibly will land before the U.S. Supreme Court. Almost certainly, there will be more cases (civil or criminal) involving abortion shield providers in the future. As noted, Louisiana indicted the same New York doctor under its criminal abortion ban. Criminal indictments raise a different set of legal issues for shield providers, predominantly related to the U.S. Constitution's Extradition Clause. Shield laws are the strongest against criminal prosecution, as they prohibit extradition. Indeed, New York's Governor refused to comply with Louisiana's extradition request, stating she would never comply and was under no duty to do so.³ The Constitution's Extradition Clause requires extradition only if the person was present in the charging state at the time of the alleged crime,

which was not true for this physician.¹ Without extradition, the doctor will not stand trial in Louisiana or any other state that tries to prosecute her for mailing abortion pills.

The stakes of these cases are momentous. Will people living in states with abortion bans continue to be able to receive care from licensed U.S. providers in shield states? Or will they be forced to carry an unwanted pregnancy or find other ways to end their pregnancies? And will abortion providers be at risk of crippling fines or jail time for caring for patients across the country? In this post-*Dobbs* environment, upending shield laws will close an avenue to care on which tens of thousands have relied despite abortion bans in their home state.

¹ Cohen DS, Donley G, Rebouché R. The New Abortion Battleground. *Columbia Law Rev.* 2023;123(1): 1–101. <https://columbialawreview.org/content/the-new-abortion-battleground/>.

² Texas v. Margaret Daley Carpenter Petition and Application for Temporary and Permanent Injunctive Relief. District Court of Collin County, Texas. Published December 12, 2024. Accessed February 14, 2025. <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Dr%20Carpenter%20Filed%20Petition.pdf>; Belluck P, New York County Clerk Blocks Texas Court Filing Against Doctor Over Abortion Pills. *New York Times*. Published March 27, 2025. Accessed April 8, 2025.

³ Belluck P, Oreskes B, Cochrane E. Abortion Provider Won't Be Extradited to Louisiana, N.Y. Governor Says. *New York Times*. Published February 13, 2025. Accessed April 1, 2025.

⁴ US abortion policies and access after Roe. Guttmacher Institute. Published 2025. Accessed April 6, 2025. <https://states.guttmacher.org/policies>.

⁵ Cohen DS, Joffe C. *After Dobbs: How the Supreme Court Ended Roe But Not Abortion*. Beacon Press; 2025.

⁶ Cohen DS, Donley G, Rebouché R. Abortion Pills. *Stanford Law Rev.* 2024; 76: 317–402. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2024/02/Cohen-76-Stan.-L.-Rev.-317.pdf>.

⁷ Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide. UCLA Law. Last updated February 2025. Accessed April 1, 2025. <https://law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy/shield-laws-reproductive-and-gender-affirming-health-care-state-law-guide>.