



*Washington Insider*



Arina Grossu Agnew, MA, MS  
Founder and Principal  
Areté Global Consulting  
Fellow  
Center on Human Exceptionalism  
Discovery Institute



## **Proposed Regulations by the Executive Branch**

### *Abortion Mandate*

The Biden administration is attempting to hijack the bipartisan Pregnant Workers Fairness Act—a piece of legislation described by the Alliance Defending Freedom (ADF) as “a transformational pro-life, pro-woman law”—to “impose an abortion mandate on virtually every employer in the country, even those whose religious beliefs dictate that life begins at conception.”<sup>1</sup>

The Pregnant Workers Fairness Act was signed into law by President Biden on December 29, 2022. The legislation, which “received broad bi-partisan support in both chambers of Congress and from a wide variety of organizations representing industries, business associations, individual businesses, numerous civil rights and women’s rights organizations, unions, and faith-based organizations,”<sup>2</sup> “requires a covered entity to provide reasonable accommodations to a qualified employee’s or applicant’s known limitation related to, affected by, or arising out of pregnancy,

- 
1. Julie Blake, “Biden Admin Hijacks Pregnant-Workers Law to Impose Illegal Abortion Mandate,” Alliance Defending Freedom, August 7, 2023, <https://adflegal.org/press-release/biden-admin-hijacks-pregnant-workers-law-impose-illegal-abortion-mandate>.
  2. Equal Employment Opportunity Commission (EEOC), “Regulations to Implement the Pregnant Worker Fairness Act,” proposed rule, 88 Fed. Reg. 54714 (August 11, 2023) (to be codified at 29 C.F.R 1636), <https://www.federalregister.gov/public-inspection/2023-17041/regulations-to-implement-the-pregnant-workers-fairness-act>.

childbirth, or related medical conditions, absent undue hardship on the operation of the business of the covered entity.”<sup>3</sup>

In the process of enacting this law, the Biden administration’s Equal Employment Opportunity Commission (EEOC) has issued a proposed rule, which defines “related medical conditions” to include abortion. Specifically, “‘Related medical conditions’ are medical conditions which relate to, are affected by, or arise out of pregnancy or childbirth, as applied to the specific employee or applicant in question, including, but not limited to, termination of pregnancy, including via miscarriage, stillbirth, or abortion.”<sup>4</sup> As ADF notes, “[the] proposed rule hijacks the bipartisan law, which does not address abortion,” thereby “violat[ing] state laws protecting the unborn and employers’ pro-life and religious beliefs.”<sup>5</sup>

The EEOC will be accepting public comments on the proposed rule for 60 days, from August 11 to October 9, 2023. All comment submissions must include the agency name—Equal Employment Opportunity Commission—and regulatory information number (RIN)—3046-AB30. Individuals and organizations may file public comments by following the instructions at <https://www.regulations.gov>.

### *Grants Rule*

The *Federal Register* describes the proposed rule regarding the US Department of Health and Human Services (HHS) Grants Regulation as a rule “to repromulgate and revise certain regulatory provisions of the HHS, Uniform Administrative Rule Requirements, Cost Principles, and Audit Requirements for HHS Awards, previously set forth in a final rule published in the Federal Register.”<sup>6</sup> The final part of the proposed rule is problematic, because it seeks to expand the scope of the definition of sex. As stated in the rule, “In statutes that HHS administers, which prohibit discrimination on the basis of sex, the department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender identity.”<sup>7</sup> In other words, HHS is claiming the authority to decide what discrimination on the basis of sex means in the context of statutes over which it has regulatory authority.

The register states that thirteen statutes would be affected by this rule, including the statute that applies to children with serious emotional disturbances.<sup>8</sup> Though the rule provides for a religious exemption, it is inadequate, as even if HHS agrees that an entity is exempt from some aspect of the rule—after the entity has notified

---

3. EEOC, “Regulations,” proposed rule, 88 Fed. Reg. 54772 (29 C.F.R. 1636 [Appendix A]).

4. EEOC, “Regulations,” proposed rule, 88 Fed. Reg. 54714 (29 C.F.R. 1636.3 [b]).

5. Blake, “Biden Admin.”

6. Office for Civil Rights (OCR), Office of the Assistant Secretary for Financial Resources (ASFR), and Department of Health and Human Services (HHS), “Health and Human Services Grants Regulation,” proposed rule, 88 Fed. Reg. 44750 (July 13, 2023) (to be codified at 45 C.F.R. 75 [summary]), <https://www.federalregister.gov/documents/2023/07/13/2023-14600/health-and-human-services-grants-regulation>.

7. OCR, ASFR, and HHS, “Health and Human Services,” proposed rule, 88 Fed. Reg. 44759 (45 C.F.R. 75.300 [e]).

8. OCR, ASFR, and HHS, “Health and Human Services,” proposed rule, 88 Fed. Reg. 44759 (45 C.F.R. 75.300 [e]).

the department that, in its view, it should receive an exemption or modified application of certain provisions—the exemption will only apply to that specific case.

Individuals and organizations may file public comments regarding this proposed rule until September 11, 2023 at <https://regulations.gov>. The commenter should search for the Docket ID number HHS-OCR-2023-0011 and observe the subsequent instructions. The comment must be identified by the Regulation Identifier Number (RIN) 0945-AA19.

### *HIPAA Privacy Rule*

The so-called “HIPAA Privacy Rule to Support Reproductive Health Care Privacy,” according to the Federal Register, “would modify existing standards permitting uses and disclosures of protected health information (PHI) by limiting uses and disclosures of PHI for certain purposes where the use or disclosure of information is about reproductive health care that is lawful under the circumstances in which such health care is provided. The proposal would modify existing standards by prohibiting uses and disclosures of PHI for criminal, civil, or administrative investigations or proceedings against individuals, covered entities or their business associates (collectively, ‘regulated entities’), or other persons for seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided.”<sup>9</sup> The administration’s justification for the proposed rule rests on the assertion that the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* “generat[ed] significant confusion for individuals, health care providers, family, friends, and caregivers regarding their ability to privately seek, obtain, provide, or facilitate health care,” because the decision “raised the prospect that highly sensitive PHI would be disclosed under circumstances that did not exist before.”<sup>10</sup> However, the Ethics and Public Policy Center points out that “HHS has not established that *Dobbs* has caused confusion,”<sup>11</sup> but rely on “other groups’ short-term reactions to and unsupported claims about *Dobbs*’ impact”<sup>12</sup> as their justification.

The real motivation for this proposed rule becomes clear in its definitions section, where the agency attempts to redefine such terms as

- 
9. Office for Civil Rights (OCR), Office of the Assistant Secretary for Financial Resources (ASFR), and Department of Health and Human Services (HHS), “HIPAA Privacy Rule to Support Reproductive Health Care Privacy,” proposed rule, 88 Fed. Reg. 23506 (45 C.F.R. 160, 164 [summary]), <https://www.federalregister.gov/documents/2023/04/17/2023-07517/hipaa-privacy-rule-to-support-reproductive-health-care-privacy>.
  10. OCR, ASFR, and HHS, “HIPAA Privacy,” proposed rule, 88 Fed. Reg. 23509 (45 C.F.R. 160, 164 [overview]).
  11. EPPC, “EPPC Scholars and Others Submit Comments Opposing HIPAA Privacy Reproductive Health Care Privacy Rule,” Ethics and Public Policy Center, June 16, 2023, <https://eppc.org/news/eppc-scholars-and-others-submit-comments-opposing-hipaa-privacy-reproductive-health-care-privacy-rule/>.
  12. Eric Kniffin and Natalie Dodson, “EPPC Scholars Comment Opposing ‘HIPAA Privacy Rule To Support Reproductive Health Care Privacy,’ RIN 0945-AA20,” Ethics and Public Policy Center, June 16, 2023, 2, <https://eppc.org/wp-content/uploads/2023/07/EPPC-Scholars-Comment-Opposing-the-HIPAA-Privacy-Reproductive-Health-Care-NPRM.pdf>.

- “Public health”—to exclude so-called “reproductive health care,” which will “[inhibit] state health departments’ collection of health data and investigations and enforcement of health and safety regulations;”<sup>13</sup>
- “Person”—to exclude the unborn;
- “Health care”—to include “reproductive health care;”
- and “Reproductive health care”—to include abortion as well as “drugs and surgeries related to ‘gender transition,’ [such] as puberty blockers, cross-sex hormones, and the removal of reproductive organs.”<sup>14</sup>

Public comments for this proposed rule closed on June 16, 2023.

*Gender Identity Mandate in Athletics—Title IX Proposed Rule*

In the convoluted language of the administrative state, the proposed rule “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” would

“amend [the Department of Education’s] regulations implementing Title IX of the Education Amendments of 1972 (Title IX) to set out a standard that would govern a recipient’s adoption or application of sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female athletic team consistent with their gender identity. The proposed regulation would clarify Title IX’s application to such sex-related criteria and the obligation of schools and other recipients of Federal financial assistance from the Department (referred to below as ‘recipients’ or ‘schools’) that adopt or apply such criteria to do so consistent with Title IX’s nondiscrimination mandate.”<sup>15</sup>

In layman’s terms, the Department’s proposal, “would mandate student participation in sex-specific athletics teams on the basis of ‘gender identity’ at federally funded educational institutions.”<sup>16</sup> This “would allow males in practically every circumstance to participate on and compete against female sports teams. [The Department’s] proposed regulatory standard would thus deny females the equal opportunities in athletics they have enjoyed for 50 years, turning Title IX’s long-standing protections from sex discrimination on their heads.”<sup>17</sup> As the Ethics

13. Kniffin and Dodson, “EPPC Scholars Comment Opposing,” 4.

14. Kniffin and Dodson, “EPPC Scholars Comment Opposing,” 7.

15. Office for Civil Rights, Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” proposed rule, 88 Fed. Reg. 22860 (to be certified at 34 C.F.R 106 [summary]), <https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

16. Rachel Morrison, Mary Hasson, and Eric Kniffin, “EPPC Scholars and Others Submit Comments Opposing ED’s Proposed Gender Identity Mandate in Athletics,” Ethics and Public Policy Center, May 15, 2023, <https://eppc.org/news/eppc-scholars-and-others-submit-comments-opposing-eds-proposed-gender-identity-mandate-in-athletics/>.

17. Morrison, Hasson, and Kniffin, “EPPC Scholars and Others Submit Comments Opposing ED’s.”

and Public Policy Center stated, “The proposed regulatory standard contradicts long-standing scientific understandings of the human person and places ideology ahead of sound policy. It turns the clock back on girls’ and women’s rights, harms children’s interests, and ignores religious freedom of educational institutions and students.”<sup>18</sup> Public comments on this proposed rule closed on May 15, 2023.

#### *Contraceptive Mandate Proposed Rule*

The Biden administration continues to attempt to circumvent religious and moral exemptions for employers who do not believe in providing contraceptive coverage to employees. In the proposed rule, “Coverage of Certain Preventive Services Under the Affordable Care Act,” the US Departments of Health and Human Services, Treasury, and Labor “would maintain the current religious exemption, create a new ‘individual contractive arrangement’ to pay third-party providers to provide contraceptive services, and revoke the moral exemption for those that object to contraceptive coverage based on non-religious moral beliefs.”<sup>19</sup> As explained by ADF, the agencies are attempting an “alternative approach,”<sup>20</sup> in which, “where there is a religious objection by a plan sponsor, ‘the health insurance issuer would still be required to fulfill its separate and independent obligation to provide contraceptive coverage.’”<sup>21</sup> By the convoluted reasoning of the Biden administration, “the issuer they hired to provide coverage would be the entity providing objectionable contraceptive and abortifacient items to persons covered by that plan.”<sup>22</sup> This is, of course, a distinction without a difference, as ADF explains: “The coverage would be part of the plan as a matter of religious ethics and common sense. That will be true even if the agencies declare through some legal fiction that the obligation, coverage, and payments are somehow separate.”<sup>23</sup> Public comments on this proposed rule closed on April 3, 2023.

---

18. Morrison, Hasson, and Kniffin, “EPPC Scholars and Others Submit Comments Opposing ED’s.”

19. Rachel N. Morrison, Eric Kniffin, and Natalie Dodson, “EPPC Scholars and Others Submit Comments Opposing Contraceptive Mandate Proposed Rule,” Ethics and Public Policy Center, April 3, 2023, <https://eppc.org/news/eppc-scholars-and-others-submit-comments-opposing-contraceptive-mandate-proposed-rule/>.

20. Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services, “Coverage of Certain Preventive Services Under the Affordable Care Act,” proposed rule, 88 Fed. Reg. 7236 (to be codified at 26 C.F.R 54, 29 C.F.R. 2590, 45 C.F.R 147, 45 C.F.R 156), <https://www.federalregister.gov/documents/2023/02/02/2023-01981/coverage-of-certain-preventive-services-under-the-affordable-care-act>.

21. Matthew S. Bowman, “Coverage of Certain Preventive Services Under the Affordable Care Act CMS-9903-P; RIN 0938-AU94; CMS-2023-0016-0001,” Alliance Defending Freedom, April 3, 2023, 2, <https://adflegal.org/sites/default/files/2023-04/ADF-PublicCommentHHS-ContraceptiveMandate.pdf>.

22. Bowman, “Coverage of Certain Preventive,” 2.

23. Bowman, “Coverage of Certain Preventive,” 2.

*Nine Agency Proposed Regulations for Partnerships with Faith-Based and Neighborhood Organizations*

Nine government agencies—the US Departments of Education, Homeland Security, Agriculture, Health and Human Services, Housing and Urban Development, Justice, Labor, Veterans Affairs, and the Agency for International Development—in January proposed a rule which they described as “amend[ing] their regulations to clarify protections for beneficiaries and potential beneficiaries receiving federally funded social services and the rights and obligations of organizations providing such services.”<sup>24</sup> In actuality, these agencies were removing language from existing rules that, according to ADF, “ensures that faith-based organizations can preserve their religious autonomy and identity when participating in federally funded programs.”<sup>25</sup> These agencies would be cutting off funding to various non-federal government partners, “including state and local governments, school districts, nonprofit organizations, and institutions of higher education, among others—which . . . use the federal funds to provide services to the programs’ beneficiaries.”<sup>26</sup> In short, “the proposed rule would gut religious accommodation protections for faith-based organizations partnering with the agencies to serve beneficiaries.”<sup>27</sup> Public comments on this proposed rule closed on March 14, 2023.

### Federal Legislation

*Senate Introduces Resolution Celebrating Women’s Sports*

In defiance of the transgender movement’s assault on female sports, Senator Joni Ernst in June 2023 introduced a resolution “celebrating the expansion of opportunities for female athletes since the enactment of Title IX and recognizing the need to

- 
24. Department of Education, Department of Homeland Security, Department of Agriculture, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Veterans Affairs, and Department of Health and Human Services, “Partnerships With Faith-Based and Neighborhood Organizations,” proposed rule, 88 Fed. Reg. 2395 (to be certified at 2 C.F.R 3474, 6 C.F.R 19, 7 C.F.R 16, 22 C.F.R 205, 24 C.F.R 5, 28 C.F.R 38, 29 C.F.R 2, 34 C.F.R 75, 34 C.F.R 76, 38 C.F.R 50, 38 C.F.R 61, 38 C.F.R 62, 45 C.F.R 87), <https://www.federalregister.gov/documents/2023/01/13/2022-28376/partnerships-with-faith-based-and-neighborhood-organizations#open-comment>.
  25. “ADF Urges Biden Admin Not to Discriminate against Faith-Based Organizations,” Alliance Defending Freedom, March 15, 2023, <https://adflegal.org/press-release/adf-urges-biden-admin-not-discriminate-against-faith-based-organizations>.
  26. Rachel N. Morrison, “Nine Agencies Propose Regulations for Partnerships with Faith-Based and Neighborhood Organizations,” The Federalist Society, March 7, 2023, <https://fedsoc.org/commentary/fedsoc-blog/nine-agencies-propose-regulations-for-partnerships-with-faith-based-and-neighborhood-organizations>.
  27. Rachel Morrison and Eric Kniffin, “EPPC Scholars and Others Oppose Proposed Rule for Faith-Based Organizations Partnering with Nine Agencies,” Ethics and Public Policy Center, March 14, 2023, <https://eppc.org/news/eppc-scholars-and-others-oppose-proposed-rule-for-faith-based-organizations-partnering-with-nine-agencies/>.



preserve fairness in women's sports.”<sup>28</sup> ADF commended Senator Ernst, pointing out, “Women fought long and hard for equal athletic opportunities—they shouldn't be sidelined in their own sports.”<sup>29</sup> They further stated, “As we continue to witness increasing incidents nationwide of males dominating girls' athletic competitions, it's imperative to affirm that biology, not identity, is what matters in athletics.”<sup>30</sup>

#### *Resolutions Commemorating Roe v. Wade Reversal Introduced in Congress*

On June 22, 2023, the one-year anniversary of the US Supreme Court's landmark decision overturning *Roe v. Wade* in the case of *Dobbs v. Jackson Women's Health Organization*, Senator Marco Rubio and Representative Chris Smith introduced companion resolutions celebrating this important event. ADF noted the significance of the occasion, stating, “With *Roe* gone, laws across the country can now affirm that life is a human right and ensure women have greater access to the support and resources they need and deserve. Over the last year, we've seen many states enact laws that do just that, saving countless lives. We're grateful to Sen. Rubio and Rep. Smith for introducing these resolutions celebrating *Dobbs* and the states that have taken critical steps to protect life.”<sup>31</sup>

#### *Congress Reintroduces Discriminatory, Deceptively Named 'Equality Act'*

ADF describes the “deceptively named”<sup>32</sup> Equality Act as “a direct attack on the truth that every person is either male or female.” Despite claiming to advance “tolerance and empowerment,” the Act actually “threatens religious freedom, fairness and safety for women and girls, and the ability of everyday Americans to live in alignment with their beliefs.” ADF's CEO, President, and General Counsel Kristen Waggoner points out that the country is already seeing “growing instances nationwide of the devastating harms of policies like the Equality Act,” which have been implemented in various states. Through the Equality Act, the federal government is seeking to expand those “devastating harms,” which Waggoner outlines: “Young women are being forced to compete against males in sports. Female students are punished when they object to their male classmates' presence in showers and locker rooms. Abused women can't sleep in peace in homeless shelters when they are forced to lie next to men. Courageous teachers are being disciplined for refusing to lie to students about biological sex. Religious schools and service organizations are punished for operating consistent with the faith that inspired them to serve their communities.”<sup>33</sup>

---

28. “Senate Introduces Resolution Celebrating Women's Sports,” Alliance Defending Freedom, June 22, 2023, <https://adflegal.org/press-release/senate-introduces-resolution-celebrating-womens-sports>.

29. ADF, “Senate Introduces Resolution.”

30. ADF, “Senate Introduces Resolution.”

31. “Resolution Commemorating *Roe v. Wade* Reversal Introduced in Congress,” Alliance Defending Freedom, June 22, 2023, <https://adflegal.org/press-release/resolutions-commemorating-roe-v-wade-reversal-introduced-congress>.

32. “Congress Reintroduces Discriminatory, Deceptively Named 'Equality Act,’” Alliance Defending Freedom, June 21, 2023, <https://adflegal.org/press-release/congress-reintroduces-discriminatory-deceptively-named-equality-act>.

33. “Congress Reintroduces.”

*Sen. Tuberville Held Up Department of Defense  
Nominations because of Abortion*

In October 2022, the US Department of Defense (DOD) issued a memorandum which “outlined the Department of Defense’s intent to develop policy, procedures, and programs to expand taxpayer-subsided (sic) abortion in the military beyond what is currently allowed under federal law.” The current law, which was passed in 1984, allows the DOD to fund abortions only in cases of rape, incest, or “pregnancies that threaten the life of the mother. These rules apply to both service members and their spouses and dependents.”<sup>34</sup>

Senator Tuberville first placed a hold on DOD nominations on December 5, 2022, in response to the Department’s defiant neglect to respond to Senators’ “questions about the military’s memos on reproductive care.” When Pentagon officials finally met with Senators on December 7, 2022, they “revealed their intent to announce a new policy that would cover travel and leave for service members and their dependents seeking abortions. Following the briefing, on December 9, 2022, Senator Tuberville notified Secretary Austin that he would place an additional hold on Department of Defense nominees if the Department implemented its abortion plan, which Senator Tuberville believes is illegal.” Nevertheless, the DOD’s plan was formally implemented on February 16, 2023. “According to a third-party study cited by officials, the number of abortions subsidized by the Department of Defense under the new policy could increase to 4,100 annually—205 times the number of abortions performed [by the DOD] in recent years.”<sup>35</sup>

Following the announcement of the plan, Senator Tuberville, on March 8, 2023, “followed through with his pledge to hold all general and flag officer nominations on the Senate floor.” Such a hold “simply requires military nominations and promotions to be processed through regular order rather than being approved by unanimous consent in large batches.” Senator Tuberville recently stressed, following a briefing with DOD officials, that the Department’s current policy “could be used to facilitate a late term abortion for enlisted members and their dependents. Pentagon officials confirmed that this policy would facilitate abortion up to the moment of birth depending on the state.” As the Senator pointed out, “What we’re talking about with this new policy that no one in this building voted on is taxpayer funding for elective late term abortions.”<sup>36</sup> As of August 19, 2023, Tuberville and the DOD remain “at a standstill” on the issue.<sup>37</sup>

---

34. Tommy Tuberville, “Tuberville Maintains Pentagon Nomination Hold, DOD Fails to Provide Answers,” press release, July 20, 2023, <https://www.tuberville.senate.gov/newsroom/press-releases/tuberville-maintains-pentagon-nomination-hold-dod-fails-to-provide-answers/>.

35. Tuberville, “Tuberville Maintains Pentagon Nomination Hold.”

36. Tuberville, “Tuberville Maintains Pentagon Nomination Hold.”

37. Paul Gattis, “Time for Republicans to Bring Tuberville ‘into Line’ and End Military Holds, Senator Says,” Alabama (website), August 19, 2023, <https://www.al.com/news/2023/08/time-for-republicans-to-bring-tuberville-into-line-and-end-military-holds-senator-says.html>.

*Pro-life Appropriations in the House*

In June 2023, House Republicans announced that, “In recognition of the first anniversary of the Supreme Court’s *Dobbs* ruling,” they would be seeking to protect life in Fiscal Year 2024 appropriations bills.<sup>38</sup> Specific bills in which the legislators promised “key pro-life provisions,” as well as preventions against “taxpayer dollars...being used for abortion on demand,”<sup>39</sup> included those related to Military Construction and Veterans Affairs, Agriculture, Rural Development, the FDA, and Defense. As the Faith and Freedom Coalition noted, “The work of Republicans on the Appropriations Committee is an essential bulwark against abortion.”<sup>40</sup>

## The States

*Summary of the State of Pro-life Laws*

ABORTION BANS IN THE STATES POST-DOBBS. Conditional laws banning abortion upon the overturning of *Roe v. Wade* immediately went into effect in nine states—Alabama, Arkansas, Kentucky, Louisiana, Missouri, Oklahoma, South Dakota, Texas, and Utah—following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. Sadly, Utah’s ban as well as a conditional law in Wyoming are currently blocked by the courts.

Currently, abortion is fully banned in 14 states: Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. An additional 14 states currently have some form of abortion restriction. Georgia leads the way with a six-week ban, followed by Nebraska and North Carolina with 12-week bans and Arizona and Florida with 15-week bans. Utah is the only state to have an 18-week ban, and Iowa is the only state with a 20-week ban. Three states, Kansas, Ohio, and South Carolina, currently enforce 22-week bans, and Massachusetts, New Hampshire, and Pennsylvania have 24-week bans. Nevada finishes the list with a 25-week ban.<sup>41</sup>

NEWLY ENACTED PRO-LIFE LEGISLATION IN 2023. Six states—Florida, Nebraska, North Carolina, South Carolina, Utah, and Wyoming—have enacted new pro-life legislation in 2023. In Florida, a six-week abortion ban was signed by Governor Ron DeSantis on April 13. Whether the law goes into effect will depend

---

38. House Appropriations Committee, “Pro-Life Protections Strengthened in FY24 Appropriations Bills,” House Appropriations blog, June 24, 2023, <https://appropriations.house.gov/news/blog/pro-life-protections-strengthened-fy24-appropriations-bills>.

39. Timothy Head, “Statement on Recent Accomplishments of House Republicans on the Appropriation Committee,” Faith and Freedom Coalition, <https://www.ffcoalition.com/statement-from-timothy-head-executive-director-of-the-faith-freedom-coalition-on-recent-accomplishments-of-house-republicans-on-the-appropriations-committee/>.

40. House Appropriations Committee, “Pro-Life Protections.”

41. “The information in this section is taken from Abortion Guidelines by State,” Abortion Finder, accessed September 5, 2023, <https://www.abortionfinder.org/abortion-guides-by-state>; and Kelly Baden and Jennifer Driver, “The State Abortion Policy Landscape One Year Post-Roe,” Guttmacher Institute, June 2023, <https://www.guttmacher.org/2023/06/state-abortion-policy-landscape-one-year-post-roe>.

on the Florida Supreme Court's decision regarding the state's current 15-week ban in a case beginning on September 8. If the 15-week ban is upheld, the six-week ban will then go into effect thirty days later.

In Nebraska, a 12-week abortion ban was passed as an amendment to a bill banning so-called "gender-affirming care" for minors, which took effect on May 22. Another 12-week ban on abortion was passed in North Carolina but was vetoed by Governor Roy Cooper (D). However, the legislature overrode the Governor's veto, and the law went into effect on July 1.

South Carolina Governor Henry McMaster signed a 6-week abortion ban into law on May 25. However, it has not yet been enacted, as it was temporarily blocked by a judge following a legal challenge. Meanwhile, Utah Governor Spencer Cox signed a law in March that would have mandated the closure of all abortion facilities once the current facility licenses expired. Unfortunately, this law has been temporarily blocked by a judge.

Finally, Wyoming Governor Mark Gordon signed into law the nation's first outright ban on chemical abortion in March. Due to a legal challenge, it is not currently in effect.

**STATES THAT ENACTED PRO-ABORTION LEGISLATION.** In 2023, ten states plus Washington, DC, enacted sixteen so-called shield laws, which are described by the Guttmacher Institute as laws that "provide legal protections for patients and providers, and in some cases practical support volunteers, from punishments or investigations in states that have banned abortion" such as by "prohibit[ing] state agencies from assisting in investigating, subpoenaing or extraditing an individual to a state where abortion is banned," "ensur[ing] medical professionals do not face any punishment from licensing boards for providing abortion care that is legal in one state but banned in another," and "protect[ing] patient medical information and data from investigators in other states."<sup>42</sup> The states which have enacted such policies are Colorado, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Mexico, New York, Vermont and Washington.

Additionally, the Guttmacher Institute lists a total of thirty pro-abortion measures enacted in 2023. These include a law in Colorado targeting pregnancy resource centers, Michigan repealing their state's pre-*Roe v. Wade* abortion ban, New York requiring access to chemical abortion to be available on all public college, community college, and university campuses, and Rhode Island ensuring that state funds for abortion coverage can be used by those who qualify for public health insurance, including state employees.

**UPDATE ON STATES' BANS ON CHEMICAL ABORTION.** Bans on chemical abortion continue to be an important front in the battle for life. Four states have enacted laws banning or placing restrictions on these drugs. In Arkansas, a "new law threatens physicians with loss of their medical license if they mail medication abortion pills." Florida "banned mailing medication abortion pills to patients;"<sup>43</sup> however, as with the state's 6-week abortion ban, whether the law takes effect will depend on the state Supreme Court's ruling regarding Florida's 15-week abortion

---

42. Baden and Driver, "The State Abortion Policy."

43. Baden and Driver, "The State Abortion Policy."

ban, which is scheduled to be litigated in September. A Montana law requiring new reporting requirements for “healthcare providers” distributing abortion drugs will go into effect in October. Finally, Wyoming enacted the country’s first complete ban of chemical abortions, but it has been temporarily blocked by a judge while being litigated.

**STATES THAT HAVE BANNED TRANSGENDER INTERVENTIONS ON MINORS.** A total of twenty-three states have enacted bans on transgender interventions on minors. Twenty-two of these states have banned both surgical and medication (hormone) interventions while one state, Alaska, has enacted a ban solely on surgical interventions. The twenty-two states with bans on both forms of intervention are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Nebraska, Mississippi, Missouri, Montana, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and West Virginia. Unfortunately, injunctions to block the ban on hormone interventions have been placed on these laws in Florida, Indiana, Kentucky, and Tennessee. The bans on surgical interventions remain in place. Additionally, Arkansas’ SAFE Act, which enacted these bans in 2021, has never gone into effect, as it was first temporarily blocked pending litigation and was ruled unconstitutional by a federal judge who placed a permanent block on the legislation on June 20, 2023. However, the ruling is currently being appealed by the state.

**STATES THAT HAVE MADE TRANSGENDER INTERVENTIONS ON MINORS EASIER.** Seventeen states have passed laws to make transgender interventions on minors easier. These are Washington, Oregon, California, Nevada, Colorado, New Mexico, Minnesota, Michigan, Illinois, Maine, New York, Vermont, Massachusetts, Connecticut, New Jersey, Delaware, and Maryland. Common forms of legislation include “psychotherapy bans,” which supposedly protect minors from so-called conversion therapy; attacks on parental rights; legal protections for “clinicians” performing interventions on minors; and establishment of “sanctuary states,”<sup>44</sup> protecting “clinicians” from legal action in other states.

## Courts and the Supreme Court

### *Groff v. DeJoy Case—a Supreme Court Case*

According to *Time* magazine, “*Groff v. DeJoy* rose to the Supreme Court after a Christian former postal worker living in rural southeast Pennsylvania sued the post office. Gerald Groff argued that his job did not allow him to observe Sabbath on Sundays and punished him when he did not work those days.” In June, the Supreme Court unanimously revised the legal standard in Groff’s favor, ruling that “employers will have to meet a higher standard to deny religious accommodations in the workplace.” Previously, employers were only required to “demonstrate a de minimis (minimal) cost to deny a worker’s request for a religious accommodation.” The updated standard will now require employers to “‘show that the burden of granting an accommodation’ has ‘substantial increased costs in relation to the conduct of its particular business.’” As *Time* notes, “it’s not just observance of the

---

44. Foundation Against Intolerance and Racism, “Gender Healthcare Policy Map,” Fair for All, August 2023, <https://www.fairforall.org/gender-healthcare-policy-map/>.

Sabbath that will be affected by the Supreme Court's ruling, but all sorts of religious accommodations tied to scheduling, dress, and even abortion."<sup>45</sup>

*Pharmacy Abortion Mandate in State of Texas and Mayo Pharmacy v. US Department of Health and Human Services*

The *State of Texas and Mayo Pharmacy v. US Department of Health and Human Services* case arose in response to a directive issued by the US Department of Health and Human Services weeks after the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. This directive required "all pharmacies that serve patients with Medicare, Medicaid, or other federally funded coverage to stock and dispense chemical abortion drugs." The state of Texas, which has multiple laws protecting unborn human life, quickly "filed a lawsuit against the Biden administration for illegally attempting to preempt its laws and force pharmacies to dispense chemical abortion drugs."<sup>46</sup> Meanwhile, Kevin Martian, a devout Catholic pharmacist running the independent Mayo Pharmacy in Bismarck, North Dakota, found himself facing the loss of his business, as he does not dispense chemical abortion drugs, due to his religious beliefs. In February 2023, Mayo Pharmacy joined Texas' lawsuit. In July, a federal district court ruled that the case could proceed, "rejecting the [Biden] administration's attempt to dismiss the pharmacy's case." In its decision, the US District Court for the Western District of Texas, Midland-Odessa Division strongly admonished the administration, stating, "This administration has, before and since *Dobbs*, openly stated its intention to operate by fiat to find non-legislative workarounds to Supreme Court dictates. This Court will not play along with such a breach of constitutional constraints."<sup>47</sup>

*Christian Adoption Agency Case in New Hope Family Services v. James*

ADF took up the case of a Syracuse-based adoption agency, New Hope Family Services, in September 2021 "after the New York Division of Human Rights threatened to investigate and penalize the Christian nonprofit because it places infants with couples consisting of a mother and father committed to each other in marriage." As described by ADF, "The state agency served threatening information demands on New Hope even though, in a separate lawsuit between New Hope and another New York state agency, two federal courts found that the state likely violated New Hope's First Amendment rights by attempting to force it to place children in a manner inconsistent with its religious beliefs." The separate lawsuit, which ADF also litigated, concluded with state officials agreeing to pay "\$250,000 in attorneys' fees and costs and ensure that New York's Office of Children and Family Services would

45. Sanya Mansoor, "Supreme Court Strengthens Religious Freedom Protections for Workers," *Time*, June 29, 2023, <https://time.com/6291256/groff-dejoy-religious-freedom-supreme-court/>.

46. "Mayo Pharmacy Challenging Mandate to Dispense Abortion Drug, Alliance Defending Freedom, revised August 1 2023, <https://adflegal.org/article/mayo-pharmacy-challenging-mandate-dispense-abortion-drugs>.

47. "Court Allows Pharmacy's Case against Biden Admin to Proceed," Alliance Defending Freedom, July 13, 2023, <https://adflegal.org/press-release/court-allows-pharmacies-case-against-biden-admin-proceed>.

no longer target New Hope for its religious policies.” One month later, *New Hope Family Services v. James* was settled, this time “with New York officials agree[ing] to pay an additional \$25,000 in attorneys’ fees and costs, and broadly confirm[ing] New Hope’s right to continue its critical work of placing infants in permanent homes without government harassment.”<sup>48</sup>

*CA to Pay \$300,000 for Trying to Force Religious Doctors to End Patients’ Lives in Christian Medical & Dental Associations v. Bonta*

In 2015, California enacted the controversial End of Life Options Act, legalizing assisted suicide. The state did not stop at legalizing the practice, however, but quickly progressed to “eliminate important safeguards from the End of Life Options Act.” The state then went on, “despite the medical-ethics consensus that no physician should be forced to participate in physician-assisted suicide even where the practice is allowed,” to enact “a law that required doctors to participate in physician-assisted suicide against their religious convictions and professional ethics.” In February 2022, ADF “filed the lawsuit, *Christian Medical & Dental Associations v. Bonta*” to challenge this law. In May 2023, the case was favorably settled, with state officials agreeing “to not enforce ‘any criminal or civil punishment, including professional discipline or licensing sanction for a California-licensed physician’s refusal or failure to’ document a request, refer, or assist a patient in any way with ending his life,” as well as requiring the state “to pay \$300,000 toward the doctors’ attorneys’ fees and costs.”<sup>49</sup>

*Unlawful FDA Approval of Chemical Abortion Drugs before 5th Circuit in Alliance for Hippocratic Medicine v. US Food and Drug Administration*

In November 2022, ADF, on behalf of the Alliance for Hippocratic Medicine, the American Association of Pro-Life Obstetricians and Gynecologists, the American College of Pediatricians, the Christian Medical & Dental Associations, and doctors Shaun Jester, Regina Frost-Clark, Tyler Johnson, and George Delgado, filed the nation’s “first lawsuit to challenge federal government officials for their illegal approval of chemical abortion drugs that harm women and girls.” The case challenges what ADF calls “the FDA’s unprecedented and unlawful actions to approve chemical abortion drugs and later to remove crucial safeguards.”<sup>50</sup>

ADF has argued that these actions by the federal government “do not reflect ‘scientific’ judgment but rather reveal politically driven decisions to push a dangerous drug regimen without regard to women’s health or the rule of law.”<sup>51</sup> ADF

---

48. “Second Victory for Christian Adoption Agency: New York Ends Targeted Harassment,” Alliance Defending Freedom, May 18, 2023, <https://adflegal.org/press-release/second-victory-christian-adoption-agency-new-york-ends-targeted-harassment>.

49. “CA to Pay \$300K for Trying to Force Religious Doctors to End Patient’s Lives,” Alliance Defending Freedom, May 17, 2023, <https://adflegal.org/press-release/ca-pay-300k-trying-force-religious-doctors-end-patients-lives>.

50. “Unlawful FDA Approval of Chemical Abortion Drugs before 5th Circuit,” Alliance Defending Freedom, May 16, 2023, <https://adflegal.org/press-release/unlawful-fda-approval-chemical-abortion-drugs-5th-circuit>.

51. “ADF, “Unlawful FDA Approval.”

describes the specific abuses in question as follows: “The FDA never studied the safety of the drugs under the labeled conditions of use, ignored the potential impacts of the hormone-blocking regimen on the developing bodies of adolescent girls, disregarded the substantial evidence that chemical abortion drugs cause more complications than surgical abortions, and eliminated necessary safeguards for pregnant girls and women who undergo this dangerous drug regimen.”<sup>52</sup>

A federal district court first provided a promising order reinstating many of the necessary safeguards to protect “the health and safety of women and girls against chemical abortion drugs.” The fifth Circuit court then upheld portions of the district court’s order “including prohibiting abortionists from sending chemical abortion drugs through the mail, which the FDA had been allowing since 2021 in direct violation of longstanding federal law,” moving “the permissible gestational age of the baby for which a girl or woman may take chemical abortion drugs,” back to seven weeks’ gestation from the ten weeks’ gestation the FDA had extended it to, “reinstating necessary doctor visits, and bringing back the requirement that abortionists must check women for complications after their chemical abortions.” Unfortunately, “after an emergency appeal by the FDA, the US Supreme Court opted to pause any implementation of the district court’s decision until the full appeal concludes.”<sup>53</sup>

On August 16, 2023, “a unanimous panel for the US Court of Appeals for the 5th Circuit ruled that the FDA must restore critical safeguards for chemical abortion drugs and disallow their shipment by mail.”<sup>54</sup> In addition to the restrictions on shipping chemical abortion drugs, “the 5th Circuit upheld the district court’s conclusion reinstating the original 2000 safeguards, including the seven weeks’ gestational limitation, necessary office visits, non-fatal adverse event reporting and physician dispensation.”<sup>55</sup> In its opinion on the case, the Court firmly rebuked the FDA, stating the FDA “failed to consider the cumulative effect of removing several important safeguards at the same time. It failed to consider whether those ‘major’ and ‘interrelated’ changes might alter the risk profile, such that the agency should continue to mandate reporting of non-fatal adverse events. And it failed to gather evidence that affirmatively showed that mifepristone could be used safely without being prescribed and dispensed in person.” The Court also pointed out the absurdity of the FDA “eliminating the provider-reporting requirement,” and then using “the resulting absence of data to support its decision”<sup>56</sup> to approve mail-order abortion.

*Five Pro-life Activists Accused of Violating the FACE Act in US v. Handy*

On August 9, 2023, proceedings began against five pro-life activists accused of violating the Freedom of Access to Clinic Entrances (FACE) Act. The FACE Act

---

52. “Alliance for Hippocratic Medicine v. U.S. Food and Drug Administration,” Alliance Defending Freedom, August 16, 2023, <https://adfmedia.org/case/alliance-hippocratic-medicine-v-us-food-and-drug-administration>.

53. “Alliance for Hippocratic.”

54. “Appeals Court Rules FDA Must Restore Safeguards for Chemical Abortion Drugs,” Alliance Defending Freedom, revised August 16, 2023, [https://adflegal.org/article/appeals-court-rules-fda-must-restore-safeguards-chemical-abortion-drugs?sourcecode=11028946\\_r200](https://adflegal.org/article/appeals-court-rules-fda-must-restore-safeguards-chemical-abortion-drugs?sourcecode=11028946_r200).

55. Alliance for Hippocratic.”

56. “Alliance for Hippocratic.”



“prohibits threats of force, obstruction and property damage intended to interfere with reproductive health care services,’ according to the Department of Justice.”<sup>57</sup> It was enacted by the Clinton administration in 1994 as a reaction against the Operation Rescue sit-ins being staged by pro-life activists. In these peaceful protests, pro-lifers would use their bodies to blockade the entrances to abortion facilities, preventing any abortions from taking place. As one journalist described it, “FACE was enacted during the 1990s, at a time when Operation Rescue sit-ins were having some success in saving unborn lives. Unhappy with the loss of business, and despairing of the ability of local authorities to stop the rescues—even though many of the pro-lifers were sent to jail . . . the abortion industry demanded and got the FACE law passed by Congress and signed by President Clinton. FACE empowered federal courts to impose draconian sentences—up to 10 years in prison—for these peaceful, prayerful sit-ins.”<sup>58</sup>

Despite the FACE Act ostensibly applying to both abortion facilities and pregnancy resource centers, the Daily Signal reports, “According to PAAU [the Progressive Anti-Abortion Uprising], the Department of Justice has indicted 126 pro-life people under the FACE Act since its enactment in 1994. There have been only three indictments of pro-abortion activists under it. ‘That is in the face of nearly 70 attacks on [pro-life pregnancy resource centers] since the *Dobbs* leak, and many of those have been extremely violent, including firebombs, so the unequal application of this law clearly highlights why FACE needs to be repealed,’ said Terrisa Bukovinac, founder of the PAAU.”<sup>59</sup>

The FACE Act largely put an end to the rescue movement for two decades, but, in recent years, pro-lifers have begun to resurrect the practice despite the significant legal risks. In October 2020, ten pro-life activists participated in one such demonstration at Washington Surgi-Clinic, the abortion facility in Washington, DC, run by notorious late-term abortionist Cesare Santangelo, who was exposed by Live Action in 2013 as willing to leave babies born alive after an abortion to die. At the time of the rescue, the participants were arrested by local authorities and interviewed by an FBI agent, but no federal charges were forthcoming . . . until two years later. At that time, two pro-life women—Terrisa Bukovinac, founder of PAAU, and Lauren Handy, a participant in the 2020 rescue—recovered the bodies of 115 babies killed by Santangelo, including five late-term babies who appear to have been killed after birth or through illegal partial-birth abortion. The women alerted DC authorities to the existence of the bodies, in hopes that an investigation would ensue. Instead, in the early morning the very next day, FBI agents rounded up nine of the pro-lifers involved in the 2020 rescue (a tenth participant was arrested at a later date). They were charged with “conspiracy against rights and a FACE Act

---

57. Elise McCue, “As Trials Near, Pro-Life Activists Demand Repeal of Unequally Enforced FACE Act,” Daily Signal, Heritage Foundation, August 10, 2023, <https://www.dailysignal.com/2023/08/10/trials-near-pro-life-activists-demand-repeal-unequally-enforced-face-act/>.

58. Rick Hinshaw, “On Its FACE, a Grace Injustice,” Rick Hinshaw Reading the Signs, August 9, 2023, <https://rickhinshawreadingthesigns.wordpress.com/2023/08/09/on-its-face-a-grave-injustice/>.

59. McCue, “As Trials Near.”

offense.” The indictment states, “If convicted of the offenses, the defendants each face up to a maximum of 11 years in prison, three years of supervised release and a fine of up to \$350,000. The case is being investigated by the FBI’s Washington, DC Field Office. The case is being prosecuted by the Justice Department’s Civil Rights Division and the Public Corruption and Civil Rights Section of the US Attorney’s Office for the District of Columbia.”<sup>60</sup>

Five of the defendants—Lauren Handy, John Hinshaw, Will Goodman, Heather Itoni, and Herb Geraghty—were tried in US District Court in Washington DC before Judge Colleen Kollar-Kotelly in August in *US v. Handy*. The remaining four defendants will be tried in September.

On August 29, the jury declared all five defendants in *US v. Handy* guilty of violating the FACE Act and of conspiracy against rights. It had been expected that the nonviolent pro-lifers would be released to await sentencing, but, in a turn of events that shocked witnesses, the prosecution requested that they be immediately taken into custody. Judge Kollar-Kotelly declared she had “no discretion,” in the matter and instructed US Marshals to remove the prisoners. They are currently awaiting sentencing, which may not take place for months, in Alexandria Detention Center, just outside Washington, DC. Attorneys from the Thomas More Society representing lead defendant Lauren Handy filed an emergency motion on August 30 seeking Handy’s release from pre-sentencing detention. Judge Kollar-Kotelly denied the motion the next day, but the attorneys immediately filed an emergency appeal with the US Court of Appeals for the DC Circuit and are awaiting the Court’s judgment.

During the trial, Terrisa Bukovinac told the Christian Post “she doesn’t expect justice from the court within the coming weeks [but] she indicated that there will be more opportunities to challenge the FACE Act during the appeal process to challenge the law. Regarding the trial and its eventual outcome, Bukovinac believes the case will put a ‘spotlight’ on what she described as the ‘injustice’ of the FACE Act.”<sup>61</sup> Prior to the enactment of FACE, blockades of abortion facilities were treated as local crimes to be handled by local authorities. The justification cited by the abortion lobby for federal intervention in these matters was the “constitutional right,” to abortion, which the Supreme Court invented in *Roe v. Wade*. However, following the Court’s decision in *Dobbs v. Jackson Women’s Health Organization* last summer, this “constitutional right to abortion,” no longer exists. Therefore, the federal government no longer has any legal interest in defending abortion facilities and such matters should be returned to local authorities to handle. This is the argument the defense is expected to make on appeal.

ARINA GROSSU AGNEW

---

60. Office of Public Affairs, “Nine Defendants Indicted on Federal Civil Rights Conspiracy and Freedom of Access to Clinic Entrances Act (FACE Act) Offenses for Obstructing Patients and Providers of a Reproductive Health Services Facility,” press release, March 30, 2020, <https://www.justice.gov/opa/pr/nine-defendants-indicted-federal-civil-rights-conspiracy-and-freedom-access-clinic-entrances>.

61. Samantha Kamman, “Trial Begins for Pro-Life Activists Facing 11 Years in Prison for Abortion Clinic Blockade,” Christian Post, August 10, 2023, <https://www.christianpost.com/news/trial-begins-for-pro-life-activists-facing-11-years-in-prison.html>.