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Abortion Cases in The Higher Federal Courts: Clarification Needed After *June Medical*

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With the confirmation of Justice Amy Coney Barrett to the United States Supreme Court last October, pro-life advocates are more optimistic that the Court will uphold legal protections for unborn children and their mothers. However, so far this term the Court has not taken any significant action.

The Court recently announced that it will review a **Sixth Circuit** decision that affirmed the injunction of a **Kentucky** ban on dismemberment abortions. However, the Court has *not* agreed to review critical elements of abortion jurisprudence; rather, in *Cameron v. EMW Women's Surgical Center*[i] the Court will consider whether a state attorney should be permitted to intervene after a federal court of appeals invalidates a state statute, when no other state actor will defend the law.

Nevertheless, the Court still has an opportunity this term to hear an argument focused on abortion law. The State of **Mississippi** is asking the Court to clarify or modify the legal standards that are applied to laws that impact abortion in *Dobbs v. Jackson Women's Health Organization*.[ii] This review is desperately needed, because the Court's 2020 decision in *June Medical Services v. Russo*[iii] further obfuscated the law for legislators and judges who are trying to determine the constitutionality of proposed and existing abortion laws.

Furthermore, as demonstrated by the volume of cases currently before the U.S. Courts of Appeals, there will be plenty more opportunities for the Supreme Court to affirm the states' interests in protecting unborn children and their mothers. Most notably, in April the **Sixth Circuit** reversed a lower court's injunction of **Ohio's** ban on abortions sought solely because the unborn child has Down syndrome.[iv] Because this decision conflicts with Seventh and Eighth Circuit decisions affirming the injunctions of similar laws in Indiana and Arkansas, respectively, there is now a clear "circuit split" on the constitutionality of these laws. This conflict greatly increases the chance that the Supreme Court will review one of these cases.

Also encouraging is the fact that hundreds of pro-life measures have been introduced at the state level so far in 2021, further pressuring the Court to recognize that its role as a national legislative arbiter/medical board on abortion policy is a failed experiment, and that abortion regulation needs to return to legislatures.

Undue Burden or Balancing Test?

In 2016, the Court (which then included Justices Kennedy and Ginsburg, and did not include Justices Gorsuch, Kavanaugh, and Barrett) created and applied a new "balancing test" to determine whether Texas health and safety standards infringe on a woman's "constitutional right" to abortion in *Whole Woman's Health v. Hellerstedt.*[v] The balancing test is less deferential

to legislative efforts to protect unborn children and their mothers than the undue burden analysis that had been applied in abortion cases since the 1992 case, *Planned Parenthood v. Casey*.[vi]

The Court's review of similar Louisiana standards in the 2020 case, *June Medical Services v. Russo*,[vii] did not produce a majority opinion to clarify how lower courts should review abortion laws. The plurality—Justices Breyer, Ginsburg, Sotomayor, and Kagan—applied the *Whole Woman's Health* balancing test to strike down the challenged law; the remaining justices, including Chief Justice Roberts (who joined the plurality in judgment on the basis of *stare decisis*), criticized the plurality's reasoning.

Courts are now struggling to determine which *June Medical* opinion to follow—the plurality's opinion or Chief Justice Roberts's concurrence, which rejected the balancing test but was needed by the plurality to strike down the law. There is presently a split in opinion among federal circuit courts of appeals. The Sixth Circuit[viii] and the Eighth Circuit[ix] have held that Chief Justice Roberts's concurrence in *June Medical* is controlling precedent for future cases, but the Fifth Circuit held that "*June Medical* [] does not furnish a controlling rule of law on how a court is to perform [undue burden] analysis. ... Instead, *Whole Woman's Health's* articulation of the undue burden test as requiring balancing a law's benefits against its burdens retains its precedential force."[x]

This split must be resolved by the Supreme Court to prevent additional conflict among the lower courts.

Opportunities to Stop Dodging the Hard Questions

June Medical was an anomaly, because the Court has otherwise refused to make substantive abortion decisions since becoming arguably more conservative. In 2019, the Court declined to review an **Eleventh Circuit** decision enjoining a second-trimester dismemberment abortion ban in **Alabama**,[xi] and a **Seventh Circuit** decision enjoining a ban on discriminatory abortions in **Indiana**.[xii] In July 2020, the Court vacated and remanded two Indiana cases for further consideration in light of *June Medical*.[xiii] One case addressed whether a state can require ultrasound as part of an 18-hour reflection period before an abortion. The other case, which is now back before the Supreme Court (see below), addressed enhancements to a parental involvement law.

In *Dobbs*, mentioned above, the State of **Mississippi** is asking for clarification on three significant issues: (1) the constitutionality of pre-viability bans on abortion; (2) what standard should be used to analyze challenged abortion laws; and (3) whether abortion providers have third-party standing to invalidate protections for women's health.[xiv] However, while the case has

been on the Court's conference list since late September, the Court has not yet decided or announced if it will hear the case.

In *Box v. Planned Parenthood*, the State of **Indiana** has asked the Court to answer whether "[w]hen a court permits an unemancipated minor to have an abortion, [] the State [may] require that her parents be notified before the abortion occurs except where such notice would contravene her best interests."[xv] Like *Dobbs*, *Box* may present an opportunity for the Court to clarify which standard should be applied to abortion cases.

In *Rutledge v. Little Rock Family Planning Services*, the State of **Arkansas** has asked the Court to review the **Eighth Circuit's** injunction of a law banning abortion sought because of a Down syndrome diagnosis.[xvi] Given that there is now a circuit split on this question, as discussed above, the lower courts and state legislators need the Court to decide whether these laws are constitutional.

With many states enacting both abortion limits that apply before viability and health and informed consent provisions, the presence of widespread confusion in circuit courts over how to conduct undue burden analysis, and the proliferation of lawsuits filed by abortion providers challenging the very laws written to protect their patients, the Court should grant the petition for *writ of certiorari* in *Dobbs*, *Box*, and/or *Rutledge.*

Title X Funding Cases in Limbo

The Supreme Court agreed to review challenges to the Trump Administration's Title X regulations that protect the integrity of the program by blocking program recipients from performing or referring for abortions.[xvii] While the Ninth Circuit issued an *en banc* decision upholding the regulations,[xviii] the Fourth Circuit issued an *en banc* decision affirming an injunction of the regulations in Maryland only.[xix] However, the Biden administration has filed a joint stipulation with the plaintiffs that the consolidated case be dismissed. Nineteen states and the American Association of Pro-life Obstetricians & Gynecologists have petitioned to intervene in the case. The Court has not yet responded to any of these stipulations or petitions.

Cases on the Horizon

At least 23 abortion-related cases are pending in federal appellate courts. There are also numerous cases pending in federal district and state courts that could eventually find their way to the Supreme Court.

The challenged abortion laws before federal circuit courts can be divided into three main groups: (I) Limitations on the availability of taxpayer dollars to abortion providers; (II) pre-viability gestational bans or restrictions (abortion procedure, discriminatory intent, or gestation); and (III) health, safety, and informed consent laws.

I. Limitations on the Availability of Taxpayer Dollars to Abortion Providers.

A. Medicaid: Private Right of Action and Free Choice of Provider

In recent years, states have enacted laws or taken administrative actions that disqualified abortion providers from participation in their Medicaid programs. When challenging these state laws, abortion providers have raised two interdependent claims in litigation: (1) that under 42 U.S.C. § 1983 and 42 U.S.C. § 1396a(a)(23), Medicaid recipients have a private right of action to challenge a state's disqualification of a Medicaid provider in court; and (2) that the exclusion of abortion providers from a state's Medicaid program violates federal law, specifically the Medicaid statute's "free choice of provider" provision.

The **Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits** have held that §1396a(a)(23)(A) of the federal Medicaid statute confers a private right of action, enabling Medicaid recipients to sue.[xx] The **Fourth**, **Fifth, Seventh, Ninth, and Tenth Circuits**[xxi] also have held that terminations of abortion providers from Medicaid programs violated the Free Choice of Provider provision.

However, in *Planned Parenthood v. Kauffman*, the **full Fifth Circuit** overruled *Planned Parenthood of Gulf Coast, Inc. v. Gee*, and thus vacated a Texas district court's preliminary injunction. Through this ruling the **Fifth Circuit** has now joined the **Eighth Circuit**[xxii] in holding that the Medicaid statute does not permit recipients to challenge a state's determination that a provider is not qualified to participate in the state's Medicaid program.[xxiii]

This development is significant, because there is now a stronger Circuit split—five Circuits have recognized a private right of action, while two have not. Since 2018, the U.S. Supreme Court has declined to review decisions from the Fourth,[xxiv] Fifth,[xxv] and Tenth[xxvi] Circuits enjoining laws in South Carolina, Louisiana, and Kansas, respectively. However, South Carolina is now appealing the trial court's permanent injunction of its law to the Fourth Circuit. Further, plaintiffs in the Fifth Circuit case are preparing to file a petition for *writ of certiorari* with the Supreme Court.

B. Title X

See discussion above.

C. Obamacare Abortion Premium

In the **Fourth Circuit** case, *Planned Parenthood v. Azar*, the Department of Health and Human Services is appealing a decision in federal court in **Maryland** that enjoined the provision in Obamacare that requires a separate insurance premium payment for abortion coverage in insurance plans that cover abortion within an Exchange.[xxvii] In the **Ninth Circuit**, the Department is appealing two similar cases out of California[xxviii] and Washington.[xxix] The Biden Administration has asked that these cases be held in abeyance while the department "work[s] diligently to review the issues presented…."[xxx]

II. Pre-viability Gestational Bans or Restrictions (Abortion Procedure, Discriminatory Intent, or Gestation).[xxxi]

A. 2nd-Trimester Dismemberment (D&E) Bans

At least 13 states have enacted bans or restrictions on second-trimester Dilation and Evacuation abortions (D&E), also known as dismemberment abortions ("dismemberment bans"). While three of these laws are in effect,[xxxii] no challenged ban has been upheld by a federal circuit court. On June 28, 2019, the United States Supreme Court denied the petition for a *writ of certiorari*[xxxiii] submitted by the State of **Alabama**, appealing the **Eleventh Circuit** holding that the state's ban is unconstitutional.[xxxiv]

In *Hopkins v. Jegley*,[xxxv] **Arkansas** is seeking review from the **Eighth Circuit** after the district court issued a preliminary injunction against the state's dismemberment ban.[xxxvi]

In January 2021, the full **Fifth Circuit** reheard *Whole Woman's Health v. Paxton,*[xxxvii] a case challenging **Texas's** dismemberment ban after the lower court's injunction was affirmed by a panel of the Circuit court. If the Fifth Circuit reverses these previous decisions, a circuit split will develop, and the Supreme Court may be more likely to accept a petition for review.

B. Discriminatory Abortion Bans

At least 18 states have enacted bans on the performance of abortion sought because of the sex of the unborn child, the child's race, and/or the presence of a genetic anomaly; one or more laws in at least seven of these states are presently enjoined.

On May 28, 2019, in *Box v. Planned Parenthood of Indiana and Kentucky Inc.*, the United States Supreme Court declined to review an **Indiana** law that prohibited sex, race, and disability-selective abortions. The Court stated that "[o]nly the **Seventh Circuit** has thus far addressed this kind of law." The Court followed the "ordinary practice of denying petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals."[xxxviii]

However, as discussed in the introduction, on April 13, 2021, the **Sixth Circuit** reversed a lower court's injunction of an **Ohio** ban on abortion sought solely because of a prenatal diagnosis of Down syndrome in *Preterm-Cleveland v. McCloud*.[xxxix] There is also an appeal pending before the **Sixth Circuit** of an injunction against a **Tennessee** law banning abortion sought because of the unborn infant's sex, race, or Down syndrome diagnosis**,** in *Memphis Center for Reproductive Health v. Slatery.*[xl] In this case, the Sixth Circuit stayed the injunction against the discrimination bans (*i.e.*, permitted enforcement of the bans) while considering the appeal of the preliminary injunction.[xli]

In *Hopkins v. Jegley*,[xlii] **Arkansas** is seeking review from the **Eighth Circuit** after the district court issued a preliminary injunction against the state's ban on abortion sought because of the unborn child's sex.[xliii] In January 2021, in *Little Rock Family Planning Services v. Rutledge*, the **Eighth Circuit** affirmed an injunction against an **Arkansas** ban on abortion sought because of a Down syndrome diagnosis and remanded the case to the district court.[xliv] The State of Arkansas has petitioned the United States Supreme Court for review.[xlv]

In *Reproductive Health Services of Planned Parenthood v. Parson*, **Missouri** is appealing an injunction against a law prohibiting abortion sought because of a diagnosis of Down syndrome, also before the **Eighth Circuit**.[xlvi]

There is now a clear split between the **Seventh and Eighth Circuits** and the **Sixth Circuit** Courts of Appeals on the constitutionality of Down syndrome-selective abortion bans. This circuit split increases the likelihood that the Supreme Court will review the constitutionality of discriminatory abortion bans in the future, and may grant Arkansas's petition in *Rutledge*.

C. Gestation Bans

Recently enacted gestational limits on abortion range from conception to 22 weeks. Most, if not all, of the laws with limitations before 22 weeks have been or are likely to be enjoined at the trial court level. In *Jackson Women's Health v. Dobbs*, the State of **Mississippi** has asked the **U.S. Supreme Court** to review the **Fifth Circuit**'s decision affirming the injunction of a limit on abortion at or after 15 weeks of gestation (see discussion in introduction).[xlvii] The **Fourth**

Circuit is reviewing the injunction of a 20-week gestation limit in **North Carolina** in *Bryant v. Woodall,*[xlviii] and **South Carolina** is appealing the recent injunction of a six-week gestation limit in *Planned Parenthood South Atlantic v. Wilson*.[xlix] The **Sixth Circuit** is reviewing a **Tennessee** injunction of a graduated gestational ban beginning with the fetal heartbeat in *Memphis Center for Reproductive Health v. Slatery.*[l]

In *Reproductive Health Services of Planned Parenthood of the St. Louis Region v. Parson*, the State of **Missouri** is appealing to the **Eighth Circuit** a lower-court decision enjoining restrictions on abortion after eight weeks, 14 weeks, 18 weeks, and 20 weeks.[li] In January 2021, in *Little Rock Family Planning Services v. Rutledge*, the **Eighth Circuit** affirmed an injunction on an **Arkansas** restriction on abortions after 18 weeks, and remanded the case to the district court.[lii] In the **Eleventh Circuit**, the state of **Georgia** is appealing a lower court decision enjoining a six-week ban in *SisterSong v. Kemp.*[liii]

III. Health, Safety, and Informed Consent Laws.

A. Admitting Privileges or Arrangements and Clinic Licensing

Litigation challenging laws and regulations pertaining to the health and safety of women considering or seeking abortion continues to proliferate. In a **Louisiana** case on appeal to the **Fifth Circuit**, *Planned Parenthood Gulf Coast v. Russo*, the plaintiffs are challenging clinic licensing laws. Oral arguments were heard in January 2019.[liv]

In *EMW Women's Surgical Center v. Friedlander*, the Sixth Circuit reversed a trial court decision that had permanently enjoined a **Kentucky** law that required abortion clinics to maintain written "transfer agreements" with a licensed acute care hospital and written "transport agreements" with a licensed ambulance service.[lv] Further, the Sixth Circuit denied a rehearing *en banc* in December 2020.[lvi]

B. Parental Involvement and Reflection Periods

The **Eleventh Circuit** is reviewing a trial court decision enjoining a law that modified the judicial proceedings required for a minor to bypass a parental consent requirement in **Alabama** in *Reproductive Health Services v. Bailey.*[lvii] In *Planned Parenthood v. Box*, the State of **Indiana** is seeking review from the Supreme Court of a case requiring parental notification, as discussed in the introduction.[lviii]

In *Slatery v. Bristol Regional Women's Center*, the **Sixth Circuit** has agreed to hear *en banc* **Tennessee's** request that the court stay an injunction of a law that requires a reflection period

before an abortion.[lix] Days before the full court agreed to hear the case, the state filed an emergency petition with the Supreme Court[lx] seeking the stay.

C. Physician-Only Laws, Telemedicine, and Abortion-Inducing Drugs

On January 12, 2021, in *American College of Obstetricians & Gynecologists v. FDA*, the United States Supreme Court stayed an injunction of FDA health and safety regulations of the abortion-inducing drug, mifepristone, that had been granted by a **Maryland** district court (**Fourth Circuit)** for the duration of the pandemic.[lxi] However, on April 12, 2021, President Biden's acting FDA commissioner wrote a letter stating that as long as other requirements in the REMS are met, FDA "intends to exercise enforcement discretion" during the COVID-19 pandemic "with respect to the in-person dispensing requirement of the Mifepristone REMS Program, including any in-person requirements that may be related to the Patient Agreement Form." Also, FDA will permit "the dispensing of mifepristone through the mail either by or under the supervision of a certified prescriber, or through a mail-order pharmacy when such dispensing is done under the supervision of a certified prescriber." On April 15, 2021, the Fourth Circuit granted the joint motion filed by FDA and the plaintiffs to hold the appeal in abeyance "to allow the parties time to assess how to proceed in light of new developments in the case."[lxii]

D. Dignified Disposition of Fetal Remains

The **Fifth Circuit** heard oral arguments in September 2019 in the case *Whole Women's Health v. Young*, where **Texas** is appealing the injunction of a law regulating how abortion providers dispose of fetal remains after an abortion.[lxiii] Also, in *Hopkins v. Jegley*,[lxiv] **Arkansas** is seeking review from the **Eighth Circuit** after the district court issued a preliminary injunction against a state law that included a requirement for the dignified disposition of aborted infants.[lxv] The Supreme Court upheld an Indiana law regulating the disposition of fetal remains in *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*; however, because the Court determined that the law did not impact abortion access, their analysis did not rely upon or alter Supreme Court abortion jurisprudence.[lxvi] The Fifth and Eighth Circuits may adopt the Supreme Court's reasoning, or may apply to these measures the heightened scrutiny typically applied to abortion-related laws.

E. Abortion Reporting

In *Planned Parenthood v. Commissioner*, **Indiana** has appealed to the **Seventh Circuit** the injunction of a law requiring abortion reporting**.**[lxvii]

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[i] Sup. Ct. No. 20-601.
[ii] Sup. Ct. No. 19-1392.
[iii] 140 S.Ct. 2103 (2020).
[iv] *Preterm-Cleveland v. McCloud* , 6th Cir. No. 18-3329; ___ F.3d ___ (6th Cir. 2021).
[v] 136 S.Ct. 2292 (2016). Majority: Justices Kennedy, Ginsburg, Breyer, Sotomayor, and Kagan. Dissenting: Chief Justice Roberts, Justices Thomas, and Justice Alito.
[vi] 505 U.S. 833 (1992).
[vii] 140 S.Ct. 2103 (2020).
[viii] *EMW Women's Surgical Center v. Friedlander*, 978 F.3d 418 (6th Cir. 2020); *Preterm-Cleveland v. McCloud*, 6th Cir. No. 18-3329; ___ F.3d ___ (6th Cir. 2021).
[ix] *Hopkins v. Jegley*, 968 F.3d 912 (8th Cir. 2020).
[x] *Whole Woman's Health v. Paxton*, 978 F.3d 896, 904 (5th Cir. 2020). This decision was vacated, and the case is now being reviewed by the full Fifth Circuit. *Whole Woman's Health v. Paxton*, 978 F.3d 974, 975 (5th Cir. 2020).
[xi] *Harris v. West Alabama Women's Center*, 139 S.Ct. 2606 (2019).
[xii] *Box v. Planned Parenthood*, 139 S. Ct. 1780 (2019). The Court upheld an Indiana law regulating the disposition of fetal remains, but not based on undue burden analysis.
[xiii] *Box v. Planned Parenthood*, 896 F.3d 809 (7th Circ. 2018); *Box v. Planned Parenthood*, 949 F.3d 997 (7th Cir. 2019).
[xiv] *Dobbs v. Jackson Women's Health Organizatio*n, Sup. Ct. No. 19-1392.
[xv] Sup. Ct. No. 21-____.
[xvi] Sup. Ct. No. 20-1434.
[xvii] *American Medical Association v. Cochran*, Sup. Ct. No. 20-429; *Oregon v. Cochran*, Sup. Ct. No. 20-539; *Cochran v. Mayor and City Council*, Sup. Ct. No. 20-454.
[xviii] *Becerra v. Azar*, 950 F.3d 1067 (9th Circ. 2020).
[xix] *Mayor and City Council v. Azar*, 973 F.3d 258 (4th Cir. 2020). A challenge to the regulations in Maine has been stayed in the First Circuit pending the Supreme Court's review of the Ninth and Fourth Circuit cases. *Family Planning Association of Maine v. U.S. Dep't of Health & Human Services*, 1st Cir. No. 20-1781.
[xx] *Planned Parenthood South Atlanta v. Baker*, 941 F.3d 687, 690 (4th Cir. 2019) (holding § 1396a(a)(23) creates a private right of action); *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205, 1224-29 (10th Cir. 2018), *cert denied*, 139 S. Ct. 638 (2018) (same); *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 457-62 (5th Cir. 2017), *cert. denied*, 139 S. Ct. 408 (2018) (same); *Planned Parenthood Ariz. Inc. v. Betlach*, 727 F.3d 960, 965-68 (9th Cir. 2013) (same); *Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962, 972-77 (7th Cir. 2012) (same); *Harris v. Olszewski*, 442 F.3d 456, 460-65 (6th Cir. 2006) (same).
[xxi] *Baker*, 941 F.3d 687, 690, p. 3; *Andersen*, 882 F.3d at 1229-36; *Gee*, 862 F.3d at 462-68; *Betlach*, 727 F.3d at 968-74; *Comm'r of Ind.*, 669 F.3d at 977-80.

[xxii] *Does v. Gillespie*, 867 F.3d 1034, 1039-45 (8th Cir. 2017) (holding § 1396a(a)(23)(A) does not create a private cause of action).
[xxiii] 981 F.3d 347 (5th Cir. 2020).
[xxiv] *Planned Parenthood South Atlanta v. Baker*, 941 F.3d 687 (4th Cir. 2019), *cert denied*, S. Ct. No. 19-1186 (2020).
[xxv] *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017), *cert. denied*, 139 S. Ct. 408 (2018).
[xxvi] *Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205 (10th Cir. 2018), *cert denied*, 139 S. Ct. 638 (2018).
[xxvii] *Planned Parenthood v. Azar*, 2020 WL 3893241 (D. MD 2020); 4th Cir. No. 20-2006.
[xxviii] *State of California v. U.S. Dept. of Health and Human Services*, 9th Cir. No. 20-16802.
[xxix] *Washington v. Azar*, 9th Cir. No. 20-35521.
[xxx] *See Id.*, Status Report (Mar. 2021).
[xxxi] Some of these bans or limitations are on the edge of viability (*i.e.*, 22-week bans). Bans on dismemberment abortion and discriminatory abortions apply after viability as well.
[xxxii] Mississippi, Nebraska, and West Virginia.
[xxxiii] *Harris v. West Alabama Women's Center*, 139 S.Ct. 2606 (2019).
[xxxiv] *W. Ala. Women's Ctr. v. Williamson,* 900 F.3d 1310 (11th Cir. 2018).
[xxxv] 8th Circ. No. 21-1068.
[xxxvi] 2021 WL 41927 (E.D. AR. 2021). This case also challenges provisions that require abortion providers to seek patients' medical records, dispose of fetal remains in a humane manner, disclose information about minors' abortions to law enforcement, and prohibit sex-selection abortions.
[xxxvii] 5th Cir. No. 17-51060; 280 F. Suppl. 3d 938 (W.D. TX 2017).
[xxxviii] *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*, 139 S. Ct. 1780, 1782 (2019). The Court upheld a challenged provision that requires the humane disposal of fetal remains.
[xxxix] 6th Cir. No. 18-3329; ___ F.3d ___ (6th Cir. 2021).
[xl] 6th Cir. No. 20-5969; 2020 WL 3957792 (M.D. TN 2020). This case also challenges a graduated gestational ban beginning with a fetal heartbeat.
[xli] 6th Cir. No. 20-5969, *Memphis Ctr for Repro Health v. Herbert Slatery, III,* Originating Case No. 3:20-cv-00501, Order (Nov. 20, 2020).
[xlii] 8th Circ. No. 21-1068.
[xliii] 2021 WL 41927 (E.D. AR 2021). This case also challenges provisions that require abortion providers to seek patients' medical records, dispose of fetal remains in a humane manner, disclose information about minors' abortions to law enforcement, and restrict dismemberment abortions.
[xliv] 984 F.3d 682 (8th Cir. 2021). The challenged law in this case also limits abortion after 18 weeks and prohibits non-physicians from performing abortions.
[xlv] Sup. Ct. No. 20-1434.
[xlvi] 8th Cir. No. 19-2882; 19-3134. The challenged law in this case also contains a graduated gestational ban (eight weeks; 14 weeks; 18 weeks; 20 weeks).
[xlvii] Sup. Ct. No. 19-1392; 5th Cir. No. 18-60868**;** 945 F.3d 265 (5th Cir. 2019).
[xlviii] 4th Cir. No. 19-1685; 1:16-CV-01368 (M.D. NC 2019).
[xlix] 4th Cir. No. 21-____.
[l] 6th Cir. No. 20-5969; 2020 WL 3957792 (M.D. TN 2020). The law challenged in this case also prohibits discriminatory abortion based on an unborn infant's sex, race, or Down syndrome diagnosis.

[li] 8th Cir. No. 19-2882; 19-3134 Case No. 2:19-cv-4155-HFS (W.D. MO Aug. 27, 2019). The law challenged in this case also prohibits discriminatory abortion based on an unborn infant's Down syndrome diagnosis.
[lii] 984 F.3d 682 (8th Cir. 2021). The challenged law in this case also prohibits non-physicians from performing abortions and prohibits abortion based on an unborn infant's Down syndrome diagnosis.
[liii] 11th Cir. No. 20-13024; 2020 WL 3958227 (N.D. GA 2020).
[liv] 5th Cir. No. 18-30699.
[lv] 2018 U.S. Dist. LEXIS 208844 (W.D. KY 2018).
[lvi] 831 Fed.Appx. 748 (6th Cir. 2020).
[lvii] 11th Cir. No. 17-13561; *Reproductive Health Services v. Marshall*, 268 F. Supp. 3d 1261 (M.D. AL 2017).
[lviii] Sup. Ct. No. 21-____.
[lix] *Slatery v. Bristol Regional Women's Center*, 6th Cir. 20-6267, Order Denying Motion for Stay Pending Appeal (6th Cir. Feb. 19, 2021); Order Granting Petition for Initial Hearing *en banc* (6th Cir. Apr. 9. 2021).
[lx] Sup. Ct. No. 20A55.
[lxi] *Food and Drug Administration v. American College of Obstetricians and Gynecologists*, On Application for Stay, 592 U. S. ____ (2021).
[lxii] *American College of Obstetricians and Gynecologists v. Food and Drug Administration*, Order, 20-1824 (4th Cir. Apr. 15, 2021).
[lxiii] 5th Cir. No. 18-50730.
[lxiv] 8th Circ. No. 21-1068.
[lxv] 2021 WL 41927 (E.D. AR 2021). This case also challenges provisions that require abortion providers to seek patients' medical records, disclose information about minors' abortions to law enforcement, prohibit sex-selection abortions, and restrict dismemberment abortions.
[lxvi] 139 S. Ct. 1780 (2019).
[lxvii] 7th Cir. No. 20-2407.