

# Two Years Post-Roe: Our Current Reproductive Health Landscape

June 27, 2024



**NoHLA**  
Northwest Health Law Advocates

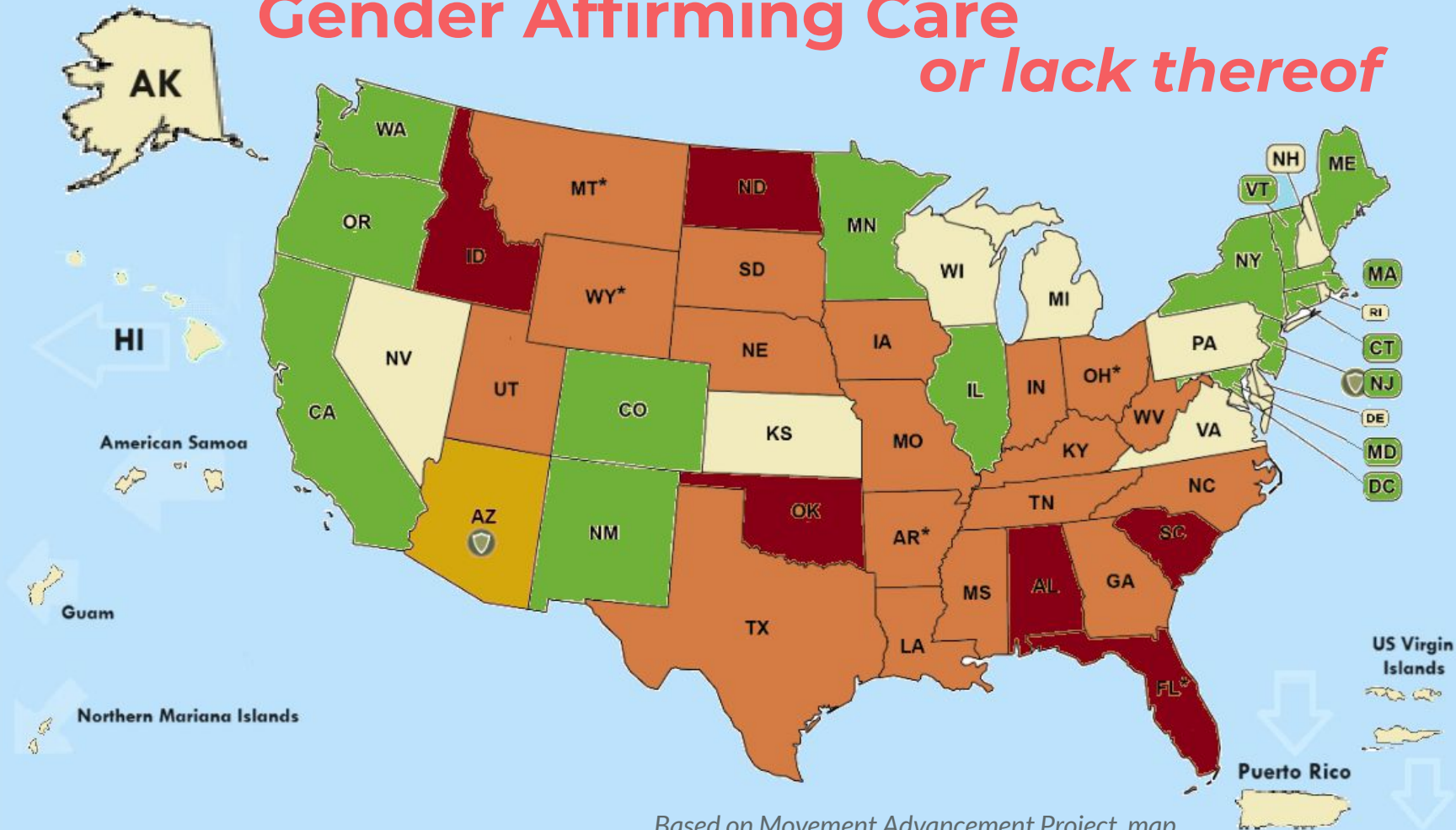
**ACLU**  
Washington

# Overview of Post-Roe Landscape





# Gender Affirming Care or lack thereof



Based on Movement Advancement Project map

# Key National Legal Cases





# FDA v. AHM (Mife Case): What's at Stake?

- Lawsuit by anti-abortion doctors challenging FDA approval of mifepristone and rules about use.
- Estimated that 63% of abortions in the U.S. formal healthcare system in 2024 were medication abortions (Guttmacher).



# ***FDA v. AHM: What Has Happened and Next Steps?***

- **Issues:**
  - Do the plaintiffs have standing to bring this case at all?
  - Did the FDA properly follow procedures and evidence when it made it easier to access mifepristone in 2016 and 2021?
- SCOTUS unanimously found that the plaintiffs lacked standing, they cannot challenge the FDA's actions.
- People in Washington and other abortion-access states CAN still access mifepristone.
- **Continuing concerns:**
  - Future lawsuits that have a stronger standing basis
  - Comstock Act - it will be back

# Idaho & Moyle, et al. v. US: What's at Stake?

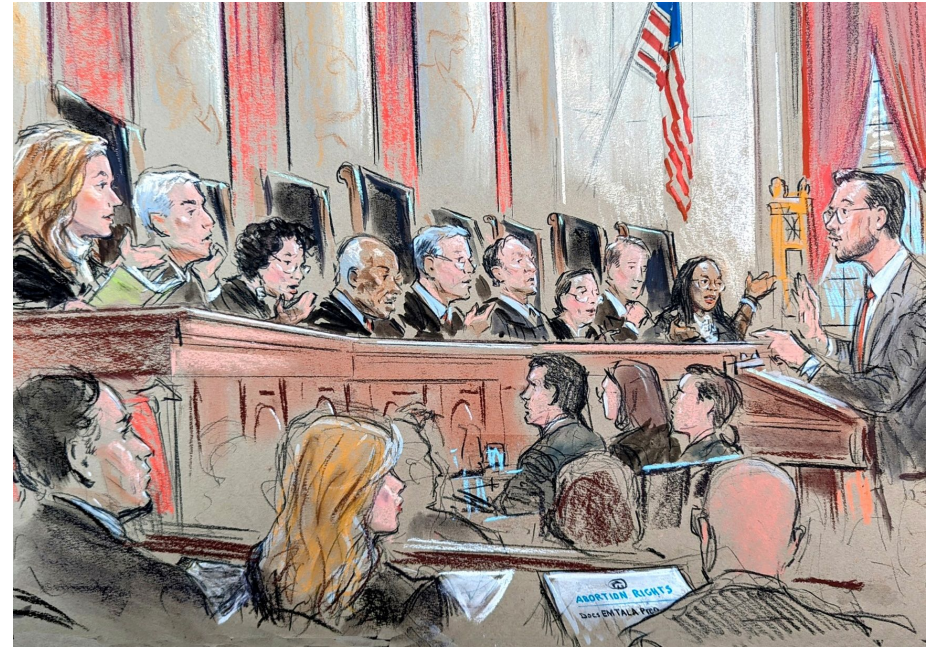


- Emergency Medical Treatment and Labor Act (EMTALA)
  - 1986 federal law
  - Hospitals receiving Medicare funds must provide “stabilizing treatment” to anyone coming to the hospital with an emergency medical condition
- After *Dobbs*, the DOJ sought an injunction in Idaho to allow patients to receive emergency abortions
- **SCOTUS question:** Does EMTALA preempt an Idaho law that criminalizes most abortion in the state?



## *Idaho & Moyle, et al. v. US: What's Next?*

- SCOTUS dismissed the case as “improvidently granted”
- The lower court’s stay is back in place as litigation continues
- Washington has a state version of EMTALA - Protecting Pregnant Patients Act



# ***Braidwood Management v. Becerra: What's at Stake?***

Lawsuit challenges federal requirement that most insurance plans cover preventive care services without patient cost-sharing.



- Affordable Care Act (ACA) requires most insurance plans to cover preventive services with no patient cost-sharing, when recommended by US Preventive Services Task Force (USPSTF) and other expert committees
- Expert committees' guidelines require coverage of contraception and PrEP medication to prevent HIV, along with many other services
- Christian-owned business and individuals sued in TX, challenging the preventive services law on constitutional and religious claims

# ***Braidwood Management v. Becerra: What Will Happen?***

Access to many preventive services without cost barriers is at risk for Washingtonians and across the country as lawsuit proceeds.

- Lower court in TX (2022-3):
  - Held preventive services law violates: (1) the Constitution's Appointments Clause because of the way expert committees were appointed, and (2) the Religious Freedom Restoration Act because it requires coverage of PrEP
  - Broad ruling would have blocked government from requiring health plans to cover many preventive services – but did not take effect due to pending appeal
- Fifth Circuit Court of Appeals (June 2024):
  - Agreed that expert committee process violates Appointments Clause, but narrowed ruling so it only applies to plaintiffs who sued, not universally
  - Sent case back to lower court to consider recent change to how experts are appointed
- Case may ultimately make its way up to Supreme Court
- New state law [ESHB 1957](#) protects WA residents in state-regulated plans, but not all plans

# State Protections and Work Ahead





# Protecting Pregnant Patients Act

- SB 5140 passed in 2021. It protects pregnant patients experiencing pregnancy complications, including miscarriages and ectopic pregnancies.
- Health entities, like hospitals, may not prevent medical professionals from providing treatment to patients experiencing pregnancy complications, if failure to provide the care would violate the standard of care, risk a patient's life, or result in irreversible harm to a patient's body.





# My Health My Data & Shield Law

WA. My Health My Data Act ( HB 1155) passed 2023

Prevents apps, websites, and other entities from selling and sharing people's health data, without their opt-in consent or authorization. Requires privacy policies. Allows the withdrawal of consent and data deletion. Restricts geofencing.

WA. Shield Law (HB 1469) passed 2023

Better protects people seeking, providing, or helping others obtain reproductive or gender affirming care that is lawful in Washington state. Includes preventing non-fugitive extradition, and limiting Washington courts and law enforcement agencies' cooperation with out-of-state investigations or legal proceedings.



# I-2081 Litigation

- So-called “Parents’ Bill of Rights” sets out 15 rights for parents of public school students.
  - Expands parents’ rights to access education records to include any health records—including mental health and sexual and reproductive health, which youth have a right to keep private under existing law.
  - Requires schools to notify parents if they offer or arrange for health care in some circumstances.
  - Undermines protections for youth accessing shelter when they are not safe at home.
  - Creates burdensome, very broad curriculum notice and opt out, covering morality, religion, mental health, sexual activity, and more.
- *LCYC v. State of Washington* - challenge to 2081 under WA Const. Art. II, Sec. 37.
- Preliminary Injunction: Part of I-2081 put on hold! Health information and records still protected by state law.

# OTC Contraception



2019 WA's Reproductive Parity Act goes into effect\*

2023 FDA approves first over-the-counter contraceptive pill

March 2024 Opill on shelves



# Learn More & Get Involved!

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