

# A federal rule change could moot interstate battles over mifepristone

## Overview

When the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022) 597 U.S. 215 reverted many questions about abortion rights back to the states, it set the stage for an interstate battle over telemedicine services that cross state lines. The opening moves in that battle are already playing out, and it is too early to predict who will prevail in that fight. But it may all soon be moot if the Federal Drug Administration restricts the current availability of mifepristone through telehealth. Several state attorneys general are currently urging the FDA to do so — a move that if successful will eliminate interstate prescriptions altogether.

## Analysis

### The telemedicine state of play after *Dobbs*

After *Dobbs*, several states amended their state constitutions to acknowledge a fundamental right to reproductive freedom, which includes the right to an abortion.<sup>[1]</sup> Conversely, a few other states amended their constitutions to restrict or bar access to abortion.<sup>[2]</sup> This sets up an interstate conflict over telehealth medicine, which is medical services provided remotely and across state borders: each end of a medical transaction can be in different states with opposing laws. The question is which state's laws apply in scenarios where a doctor in a state that permits abortion remotely prescribes abortifacients to a patient in a state that bans such medications. These disputes present difficult federalism and choice-of-law questions.

Anticipating this problem, states that broadened reproductive health care rights also enacted shield laws to protect patients and health care providers against civil and criminal penalties sought by other states. As of July 2025, 22 states and Washington D.C. have shield laws for reproductive health care.<sup>[3]</sup> The scope of these shield laws varies by state and can include protection against criminal prosecution, civil

liabilities, and professional discipline. In general, the point of a shield law is to guarantee that a provider's state will protect them from out-state prosecution and refuse the other state's process.

As examples, both California and New York have enacted robust reproductive health shield laws. California has specifically acknowledged telehealth as a means to ensure reproductive health; in those situations, California law governs any action — civil or criminal — that relates to reproductive health care.<sup>[4]</sup> And in California, if another state's law authorizes a civil action for aiding or abetting an abortion, California courts may not enforce and must stay that civil judgment.<sup>[5]</sup> As for criminal actions, both California and New York prohibit arrest for providing or supporting legally protected reproductive health activity and will not recognize any extradition demands by another state.<sup>[6]</sup>

On this stage, two states that have restricted or eliminated abortion — Texas and Louisiana — have taken aim against two doctors (one in New York, the other in California) who prescribe abortion pills over the internet. Both Texas and Louisiana have filed civil and criminal charges against physicians in California and New York.

### **How the conflict plays out — the Carpenter and Coeytaux cases**

As alleged in court filings, in May 2024 a woman in Texas became pregnant.<sup>[7]</sup> Using telehealth services, the Texas resident received prescriptions from New York physician Dr. Margaret Carpenter for mifepristone and misoprostol, both abortion-inducing drugs.<sup>[8]</sup> The Texas resident went to a hospital after experiencing hemorrhaging at about nine weeks; the biological father later discovered the two medications at the residence.<sup>[9]</sup>

After *Dobbs*, Texas law generally prohibits a person from knowingly performing, inducing, or attempting an abortion and prohibits telehealth prescriptions for abortion pills.<sup>[10]</sup> The act of performing, inducing, or attempting an abortion in violation Texas law is a felony — but the Texas attorney general may also separately pursue a \$100,000 civil penalty.<sup>[11]</sup> In December 2024, Texas filed a lawsuit seeking

to prohibit Dr. Carpenter from prescribing medications through telehealth and to impose \$250,000 in civil penalties.<sup>[12]</sup> When Dr. Carpenter did not respond, a Texas court issued a default judgement against her.<sup>[13]</sup> And then in February 2025, the court issued an order granting a permanent injunction against Dr. Carpenter, finding that she practiced medicine in Texas without a license and knowingly induced an abortion.<sup>[14]</sup> The court fined Dr. Carpenter \$100,000, along with fees, costs, and interest.<sup>[15]</sup>

Separately, a grand jury in Baton Rouge, Louisiana indicted Dr. Carpenter in January 2025 for criminal abortion.<sup>[16]</sup> In May 2023, Louisiana had classified mifepristone and misoprostol as Schedule IV controlled substances.<sup>[17]</sup> And in Louisiana a person knowingly causes a criminal abortion by “delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug.”<sup>[18]</sup> According to news reports, a teen’s mother procured a prescription online from Dr. Carpenter and then told the teenager to take the medicine and terminate the pregnancy.<sup>[19]</sup> An arrest warrant issued for both the teen’s mother and Dr. Carpenter.<sup>[20]</sup> New York Governor Kathy Hochul refused to extradite Dr. Carpenter to Louisiana, because New York’s shield laws prevent Dr. Carpenter’s arrest.<sup>[21]</sup>

Texas and Louisiana have also pursued a federal wrongful death suit and criminal charges against Dr. Rémy Coeytaux, a solo practitioner in California. In July 2025, a Texas man sued Dr. Coeytaux in federal court for wrongful death by allegedly mailing abortion pills to the man’s girlfriend.<sup>[22]</sup> The suit also alleged a violation of the Comstock Act, which prevents the “use of the mails to circulate or deliver matter to corrupt the morals of the people.”<sup>[23]</sup> But this federal litigation against Dr. Coeytaux is stayed until Texas House Bill 7 — which allows private citizens to sue anyone who mails, transports, delivers, prescribes, or provides an abortion-inducing drug to or from any person in Texas — becomes effective on December 4.<sup>[24]</sup> Meanwhile, the Texas attorney general sent Dr. Coeytaux a cease and desist letter, noting that penalties for each violation of the Human Life Protection Act are

\$100,000.<sup>[25]</sup> There also is an outstanding criminal arrest warrant for Dr. Coeytaux from Louisiana.<sup>[26]</sup>

### **Although state shield laws are effective against out-of-state criminal charges, they may falter against civil judgments**

Success in defending against these legal claims depends upon their nature: criminal and civil claims have distinct analyses. Pending criminal charges fall squarely within the penal exception of the federal constitution's Full Faith and Credit Clause; as a result, those charges are not enforceable in shield states such as California or New York. But any civil judgment, especially a federal one, may have a higher likelihood of success.

Under the federal constitution, states must give full faith and credit to the judicial proceedings of every other state.<sup>[27]</sup> The purpose of the Full Faith and Credit Clause (FFC) is to ensure that judgments entered in one state are recognized in another.<sup>[28]</sup> The FFC seeks to prevent re-litigation of adjudicated judgments in other states and resolve interstate conflict-of-laws issues like those presented here.<sup>[29]</sup> But there are limits to what states must do.

The FFC is ineffective in the criminal penalty context because states are not required to enforce the penal laws of another. The penal judgment exception looks to whether the statute punishes an offense against the public, as opposed to providing a private remedy to a person injured for a wrongful act.<sup>[30]</sup> "Crimes and offenses against the laws of any state can only be defined, prosecuted and pardoned by the sovereign authority of that State; and the authorities, legislative, executive or judicial, of other States take no action with regard to them, except by way of extradition to surrender offenders to the State whose laws they have violated, and whose peace they have broken."<sup>[31]</sup> So no state will be required to enforce Louisiana's penal judgment.

A civil judgment imposed in Texas is more complicated. Again, a final judgment typically must be accepted by another state under the FFC. But there are

exceptions, like the penal judgment and public policy exceptions. A threshold question here is whether the penal judgment exception can apply against the Texas civil judgment. If it does that is the most viable option for California and New York, because the public policy exception likely does not apply.

Only exceptional civil judgments fall within the penal judgment exception. Although the penal law exception has been recognized to exist in the civil context, state courts have rarely applied it to bar enforcement of another state's judgment.<sup>[32]</sup> Yet this may be such an exceptional case: the essential character and effect of the cause of action — inducing an abortion or wrongful death — may tip the scales in favor of applying the penal judgment exception.<sup>[33]</sup> And the fact that the action is pursued by the state's attorney general as a civil enforcement action, rather than a private party pursuing damages for injury, may be an important factor.

How Texas structured its abortion laws also favors applying the penal judgment exception here. Under Texas law, the very same act (inducing an abortion) may be subject to either a criminal or civil penalty. And the designated criminal offense (a first degree felony if the unborn child dies, or generally a second degree felony) corresponds with the most serious of crimes.<sup>[34]</sup> So does the punishment: five to 99 years for first degree felonies and two to 20 years for second degree felonies.<sup>[35]</sup> Similarly, a wrongful death claim stemming from an abortion may also be subject to the penal judgment exception should that claim focus on the prescriber's degree of culpability as opposed to the loss suffered by the claimant.<sup>[36]</sup>

The penal law exception remains the best option for California and New York, because the public policy exception likely will not apply to prevent enforcing a civil judgment under the FFC. Although the public policy exception might prevail in a choice of law dispute (if the suit was brought in California to enforce the Texas law against abortion),<sup>[37]</sup> it may not withstand a FFC challenge to enforcing a judgment.<sup>[38]</sup> High court authority on this subject is divided. Almost 100 years ago the public policy exception had broader application and placed limits on the extent to which one state's policy could be subordinated to another's.<sup>[39]</sup> But more recently

the Supreme Court has reduced its application to judgments: “A court may be guided by the State’s ‘public policy’ in determining the *law* applicable to a controversy, but our decisions support no roving ‘public policy exception’ to the full faith and credit due *judgments*.”<sup>[40]</sup> And applying the public policy exception to a civil judgment would effectively make one state’s policy on abortion subordinate to the policy of another — a result that appears to conflict with *Dobbs* itself.

These theoretical choice-of-law questions are about to become very real issues. When Texas sought to enforce the \$100,000 judgment against Dr. Carpenter, the Ulster County clerk in New York refused to file the summary judgment from Texas, citing the shield law.<sup>[41]</sup> After the clerk rebuffed a second request, Texas filed suit against the clerk in the Ulster County Supreme Court, relying on the FFC.<sup>[42]</sup> The clerk sought to dismiss the petition; after all, New York’s shield law prohibits any state or local employee from cooperating in this context.<sup>[43]</sup> New York State Attorney General Letitia James sought to intervene to defend the constitutionality of New York’s shield laws.<sup>[44]</sup> Avoiding the constitutional question altogether, the court ruled that the plain language of New York’s shield law barred the clerk from filing the summary judgment and dismissed the petition.<sup>[45]</sup>

Despite the stakes, an appeal is unlikely. As the order explained, although Texas discussed the intersection of the FFC and New York’s shield law, Texas made it “abundantly clear” that it was not seeking an “independent declaration” that the shield law was unconstitutional.<sup>[46]</sup> The upshot: shield laws have not yet faced a full, facial constitutional challenge. But as discussed next, if the FDA acts that challenge might be over before it even begins.

### **Meanwhile, the federal government may intervene**

The wildcard here is that a change in FDA regulations on mifepristone could settle this interstate conflict by ending telemedicine prescriptions for abortifacients. The discussion above applies only to claims for performing, inducing, or attempting an abortion. Claims about providing mifepristone by telehealth likely would be governed by current FDA rules — state laws restricting access to mifepristone are

arguably preempted by federal law under the Commerce Clause because they undermine the FDA's authority to oversee drug safety.<sup>[47]</sup> And in 2024 the high court unanimously ruled that abortion opponents lacked standing to sue concerning the FDA's approval and access to mifepristone.<sup>[48]</sup>

As a result, Kansas, Idaho, and Missouri sought to have the FDA require in-person — not telehealth — prescriptions for mifepristone.<sup>[49]</sup> Louisiana also sued the FDA to reinstate the in-person dispensing requirement for mifepristone, which the FDA removed in 2023.<sup>[50]</sup> This lawsuit follows on the heels of Health and Human Services Secretary Robert F. Kennedy, Jr.'s promise to examine mifepristone's safety and efficacy when it is administered without direct medical supervision.<sup>[51]</sup> The FDA safety review of mifepristone is ongoing, but Secretary Kennedy has given no timeline and few details about the review itself.<sup>[52]</sup> With no forthcoming information, the ACLU filed a lawsuit to compel the FDA to provide information about that review.<sup>[53]</sup> That litigation, too, is ongoing.

More than 20 years ago, the FDA approved the use of Mifeprex after a comprehensive review of its safety. Consequently, the FDA litigation has focused only on re-instating in-person prescriptions for abortifacients — not challenging their availability head-on. But Secretary Kennedy has based recent health policy decisions (about for example vaccines, autism, and Tylenol) on unreliable science.<sup>[54]</sup> If Secretary Kennedy does the same here, it would not only end this interstate battle over abortion rights, but it would also eliminate all access to medicated abortions.

## **Conclusion**

Shield laws are intended to defend telehealth providers against charges sought by other states, and so far they have been effective. The ultimate outcome is unclear: civil judgments may withstand the FCC under the penal judgment exception, especially when the cause of action mirrors a criminal offense; otherwise, they will have full force and effect. But these battles will be all for naught if the FDA eliminates prescriptions for abortion pills through tele-health — or altogether.

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1. Cal. Const., art I, § 1.1 (“The state shall not deny or interfere with an individual’s reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion(.)”); N.Y. Const., art. I, § 11 (prohibiting discrimination based upon pregnancy, pregnancy outcomes, reproductive healthcare and autonomy); see also Ariz. Const., art. 2, § 8.1 (every individual has the fundamental right to an abortion; prohibits state law from enforcing any law that penalizes a person or entity for aiding or assisting a pregnant person’s right to an abortion); Colo. Const., art. 2, § 32 (right to abortion recognized); Md. Const., art. 48 (fundamental right to reproductive freedom includes right to end one’s pregnancy); Mich. Const., art. I, § 28 (fundamental right to reproductive freedom includes abortion care); Mo. Const., art. I, § 36 (government shall not infringe on fundamental right to reproductive freedom, which includes abortion care); Nev. Const., art. I, § 25 (fundamental right to reproductive freedom, but allowing state to regulate after fetal viability); Oh. Const., art. I, § 22 (all individuals have the right to carry out reproductive decisions, including abortion, but prohibiting abortion after fetal viability, with exceptions); Vt. Const., art. 22 (personal reproductive liberty). ↑
2. La. Const., art. I, § 20.1 (“To protect human life, nothing in this constitution shall be construed to secure or protect a right to abortion or require funding for abortion.”); see also Ala. Const., art. I, § 36.06 (recognizing the sanctity of unborn life; nothing secures or protects the right to an abortion or its funding); Neb. Const., art I, § 31 (“unborn children shall be protected from abortion in the second and third trimesters(.)”except when necessitated by a medical emergency or when a the pregnancy results from sexual assault or incest); Tenn. Const., art. I, § 36 (nothing in the constitution protects the right to an abortion); see also Tex. Health & Saf. Code § 170A.002 (prohibiting physicians from performing abortions unless there is a life-threatening physical condition caused by the pregnancy). ↑



3. *State Shield Laws: Protections for Abortion and Gender-Affirming Care Providers* (July 2025) KFF. ↑
4. Health & Saf. Code § 123468.5 (California law governs any civil or criminal action against a person who provides reproductive healthcare services (including tele-health) if the provider was located in any state where the care was legal at the time of the challenged conduct). ↑
5. Health & Saf. Code § 123467.5 (California shall not enforce a civil judgment received through an adjudication under a law of another state authorizing a person to bring a civil action against person or entity doing act related to abortion); Code Civ. Proc. § 1710.50(a)(4) (a California court must stay enforcement of a judgment of another state if the judgment was obtained against a person or entity for exercising a right guaranteed by the California Constitution; the stay will remain in effect until the statute of limitations elapses). ↑
6. Pen. Code § 13778.2 (prohibiting cooperation and arrest for adding in the performance of an abortion in California or obtaining an abortion in California if abortion is lawful in California); Governor's Exec. Order N-12-22 (June 27, 2022) (notwithstanding Penal Code section 1549.1, the Governor's Office shall decline any extradition request to arrest any person charged with a criminal violation for providing reproductive health care services unless required by the U.S. Constitution or if the acts forming the basis for the prosecution would also be a crime in California); N.Y. Crim. Proc. Law § 570.17 (Governor shall not recognize demand for extradition of a person if criminal liability is based in part on provision of legally protected health care activity performed in New York, with exceptions if required by federal law or it is alleged that accused was physically present in demanding state at the time of the commission of the crime and then fled); Pen. Code § 847.5 (b); N.Y. Crim. Proc. Law § 140.10 (3-a) (police officer may not arrest any person for performing legally protected health care activity within New York); see also Pen. Code § 847.5 (c) & (d) (California law forbids fugitive recovery agents from apprehending the same; otherwise, the person taken into custody may pursue a civil action against the agent and the bond company).

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7. This description of the alleged facts relies on Petition and Application for Temporary and Injunctive Relief, *Texas v. Carpenter* (Dec. 12, 2024) 471-08943-2024 at 5, ¶ 22 (hereafter Petition). ↑
8. Petition at 5, ¶ 23, quoting, Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks of Gestation, U.S. Food & Drug Administration. ↑
9. Petition at 5-6, ¶ 24 ↑
10. Tex. Health & Saf. Code, §§ 170A.002(a)-(b)(generally prohibiting abortion, except if pregnancy poses threat to life of pregnant female), 171.063(b-1), (c)(1),(6) (restrictions on providing abortion-inducing drugs; prohibiting prescription by mail; prohibiting prescription after seven weeks).) ↑
11. Tex. Health & Saf. Code, §§ 170A.002, 170A.004 (abortion in violation of section 170A.002 punished as a felony), 170A.005 (violation of section 170A.002 subject to a \$100,000 civil penalty, enforceable by the attorney general), 170A.006 (civil remedies unaffected, even though violation of section 170A.002 may be punished by criminal or civil penalty). ↑
12. Petition and Application for Temporary and Permanent Injunctive Relief, *Texas v. Carpenter* (TX. Dist. Ct. Dec. 12, 2024) 471-08943-2024 at 1, ¶ 3 (hereinafter Petition for Injunctive Relief). ↑
13. Final Judgement and Order Granting Permanent Injunction, *Texas v. Carpenter* (TX. Dist. Ct. Feb. 13, 2025) 471-08943-2042 at 1 (hereafter Final Judgement). ↑
14. Final Judgment at 1. ↑
15. Final Judgment at 2. ↑
16. *State of Louisiana v. Dr. Margaret D. Carpenter* (La. 18th Jud. Dist. Ct., Parish West Baton Rouge Jan. 31, 2025) 250187. ↑

17. La. Rev. Stat. § 964. ↑
18. “Criminal abortion by means of an abortion-inducing drug is committed when a person knowingly causes an abortion to occur by means of delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug.” La. Rev. Stat. § 87.9 (offense punishable by one to five years in state prison and a fine between \$5,000 and \$50,000). ↑
19. Halpert, *New York doctor indicted for prescribing Louisiana teen abortion pill* (Jan. 31, 2025) BBC. ↑
20. Cline, et al., *Arrest warrant issued for New York doctor indicted in Louisiana for prescribing abortion pill* (Jan. 31, 2025) Associated Press. ↑
21. Belluck, et al., *Abortion Provider Won’t Be Extradited to Louisiana, N.Y. Governor Says* (Feb. 13, 2025) New York Times. ↑
22. Complaint, *Jerry Rodriguez v. Remy Coeytaux* (U.S. Dist., S.D. Tex. Jul. 20, 2025) 3:25-cv-225. ↑
23. 18 U.S.C. §§ 1461–1462; *Swearingen v. U.S.* (1896) 161 U.S. 446, 450–451. ↑
24. Joint Motion to Stay Defendant’s Deadline to Answer Plaintiff’s Complaint, *Rodriguez v. Coeytaux* (U.S. Dist., S.D. Tex. Sep. 29, 2025) 3:25-cv-225 & Order, *Rodriguez v. Coeytaux* (U.S. Dist., S.D. Tex. Sep. 30, 2025) 3:25-cv-225. ↑
25. Cease and Desist Letter from Attorney General Ken Paxton to Remy Coeytaux, Aug. 14, 2025. ↑
26. Cline, et al., *Louisiana issues a warrant to arrest California doctor accused of mailing abortion pills* (Sep. 29, 2025) Associated Press. ↑
27. U.S. Const., art. IV, § 1. ↑
28. *Milwaukee County v. M.E. White* (1935) 296 U.S. 268, 276–277. ↑

29. *Sutton v. Leib* (1952) 342 U.S. 402, 407. ↑
30. *Huntington v. Attrill* (1892) 146 U.S. 657, 673-674. ↑
31. *People v. Laino* (2004) 32 Cal.4th 878, 889 quoting *Huntington v. Attrill* (1892) 146 U.S. 657, 669. ↑
32. Zambrano, et al., *Full Faith & Credit & Abortion Laws* (2023) 98 NYU L. Rev. Online 382, 401 & n. 119. ↑
33. See *McGrath v. Tobin* (R.I. 1954) 103 A.2d 795, 800. ↑
34. Tex. Pen. Code, §§ 19.02(c) (murder), 22.021(e) (aggravated sexual assault), 29.03(b) (aggravated robbery); Tex. Pen. Code, §§ 19.04(b) (manslaughter), 22.01(b-2) (assault on a peace officer). ↑
35. Tex. Pen. Code, § 12.32(a) (punishment for first degree felony); Tex. Pen. Code, § 12.33 (punishment for second degree felony). ↑
36. See *Massachusetts Bonding & Ins. Co. v. U.S.* (1956) 352 U.S. 128, 129-133. ↑
37. Zambrano, 98 NYU L. Rev. Online at 393-394. ↑
38. Brilmayer, *Abortion, Full Faith and Credit, and the “Judicial Power” Under Article III: Does Article IV of the U.S. Constitution Require Sister-State Enforcement of Anti-Abortion Damages Awards?* (2024) 44.3 Columbia J. Gender & Law 441, 466-67; see also Zambrano, 98 NYU L. Rev. Online at 398, citing *Baker ex rel. Thomas v. General Motors* (1998) 555 U.S. 222, 233. ↑
39. See *Milwaukee County v. M.E. White* (1935) 296 U.S. 268, 273 and Brilmayer, 44.3 Columbia J. Gender & Law at 466-67. ↑
40. See *Baker v. Gen. Motors Corp.* (1998) 522 U.S. 222, 223, italics in original, and Brilmayer, 44.3 Columbia J. Gender & Law at 466-467. ↑
41. Statement from Acting County Clerk Taylor Bruck on Filing from Texas

Attorney General Ken Paxton (Mar. 27, 2025). ↑

42. Acting County Clerk Taylor Bruck Bucks Texas—Again (July 14, 2025); Verified Petition, *Texas v. Bruck* (NY. Sup. Ct., July 28, 2025) EF2025-2536. ↑

43. N.Y. Exec. Law § 837-x. ↑

44. *Attorney General James Defends New York’s Shield Law Against Texas Attack* (Sept. 8, 2025) New York State Attorney General. ↑

45. Decision Order and Judgment, *Texas v. Bruck* (NY. Sup. Ct., Oct. 31, 2025) EF2025-2536 at 4. ↑

46. *Id.* at 5. ↑

47. Zettler, et al., *State Restrictions on Mifepristone Access—The Case for Federal Preemption* (2022) 386 N. Engl. J. Med. 705-707. ↑

48. *Food and Drug Administration v. Alliance for Hippocratic Medicine* (2024) 602 U.S. 367, 374. ↑

49. Complaint, *Alliance for Hippocratic Medicine, v. Food and Drug Administration* (Nov. 11, 2022) 2:22-cv-00223. ↑

50. *Louisiana, et. al v. U.S. Food and Drug Administration, et. al* (U.S. Dist., W.D. Louisiana) 6:25-cv-01491. ↑

51. Department of Health and Human Services, letter regarding review of Mifepristone (Sept. 19, 2025) at 1. ↑

52. Szabo, *The Abortion Pill Is Safe. Scientists Fear an FDA Investigation Will Ignore Science* (Oct. 30, 2025) Scientific American. ↑

53. Complaint, *American Civil Liberties Union v. Food and Drug Administration* (Nov. 13, 2025) 8:25-cv-03736. ↑

54. *Id.* ↑