

12-1-2025

Shielding Freedoms: State Noncooperation in Hunts for Evidence and People

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Recommended Citation

Mary D. Fan, *Shielding Freedoms: State Noncooperation in Hunts for Evidence and People*, 100 Wash. L. Rev. 911 (2025).

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SHIELDING FREEDOMS: STATE NONCOOPERATION IN HUNTS FOR EVIDENCE AND PEOPLE

Mary D. Fan*

Abstract: The nation is fracturing into a patchwork of rights and punishment. What some states and localities safeguard as rights, other jurisdictions are criminalizing and punishing. As the divides in rights and punishment deepen, some states are becoming sanctuaries for freedoms penalized elsewhere and enacting shield laws prohibiting cooperation with criminalization and punishment states. A prime example is shield laws protecting people seeking to exercise reproductive rights or obtain gender-affirming care. Major jurisdictions for healthcare and technology-related businesses, such as Washington, California, New York, and Massachusetts, have enacted shield laws that prohibit law enforcement and companies from complying with subpoenas seeking witnesses or other evidence in the investigation or prosecution of abortion or gender-affirming care. This Article is about the rise of resistance by refusal to cooperate with interstate evidence-gathering as the nation fractures over rights protection and punishment.

The Article advances the normative case for disrupting the modern march toward collaborating in evidence-gathering across state borders, drawing on history illuminating that comity is not a straitjacket binding states to punitive restrictions nor always desirable. As fierce cultural and legal divides split the nation, interstate comity and cooperation are giving way to the need to protect a higher standard of rights from dissolution and punishment. The Article envisions how shield laws can expand to cover new challenges, such as using automated license plate reader databanks to hunt for people trying to exercise reproductive rights across state lines or in immigration investigations.

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INTRODUCTION

The subpoenas hunting for Texas children seeking gender-affirming care in Washington state came right before Thanksgiving.¹ Treatment addresses the distress of gender dysphoria that arises from an incongruence between one’s physically assigned gender at birth and one’s gender identity, and may include hormone therapy, puberty suppression, and surgery.² The timeline set by the Texas state court issuing the subpoenas was exploding and aggressive: Respond in twenty days with no time extensions despite the holidays unless the hospital waived its right to challenge jurisdiction.³ The Texas Attorney General claimed that Texas courts had jurisdiction over the Seattle hospital thousands of miles out of state because some of the hospital’s remote workers resided in Texas.⁴ In one of the first uses of Washington’s shield law, Seattle Children’s Hospital refused to comply with the subpoena, explaining that the shield law prohibits compliance with subpoenas for witnesses or other evidence in civil or criminal investigations of persons seeking abortions or gender-

1. Plaintiff Seattle Children’s Hospital’s Special Appearance and Subject thereto, Original Petition to Set Aside Civil Investigative Demands or in the Alternative, Request for Extension of Time to Respond and Request to Modify Demands at 27, *Seattle Children’s Hosp. v. Off. of the Att’y Gen. of Tex.*, No. D-1-GN-23-008855 (Tex. Dist. Ct., Travis Cnty. Dec. 7, 2023) [hereinafter *State of Tex. Off. of the Att’y Gen., Civ. Investigative Demand*]; Bayliss Wagner, *Seattle Hospital Sues Texas AG for Demanding Children’s Gender-Affirming Records*, USA TODAY (Dec. 23, 2023, at 6:15 PM ET), <https://www.usatoday.com/story/news/nation/2023/12/23/texas-seeks-residents-gender-care-records-from-seattle-childrens/72021017007/> [<https://perma.cc/YA5X-57Q6>].

2. Laura L. Kimberly, Kelly McBride Folkers, Phoebe Friesen, Darren Sultan, Gwendolyn P. Quinn, Alison Bateman-House, Brendan Parent, Craig Konnoth, Aron Janssen, Leshia D. Shah, Rachel Bluebond-Langner & Caroline Salas-Humara, *Ethical Issues in Gender-Affirming Care for Youth*, 142 PEDIATRICS 1, 1–2 (2018); *see also, e.g.*, *Brandt v. Rutledge*, 667 F. Supp. 3d 877, 888 (E.D. Ark. 2023) (discussing gender-affirming care for transgender children and gender dysphoria).

3. *State of Tex. Off. of the Att’y Gen., Civ. Investigative Demand*, *supra* note 1, at 2.

4. *See id.* at 4 (noting that Seattle Children’s Hospital has a registered agent in Texas), 6 (noting that Seattle Children’s Hospital is registered to do business in Texas but contesting jurisdiction).

affirming health care.⁵ Ultimately, the case settled with Seattle Children’s Hospital voluntarily withdrawing its business registration in Texas—and never releasing the data that Texas demanded.⁶

Deep divides in access to rights and the risk of punishment are driving numerous states to enact shield laws to protect people seeking reproductive freedom and access to gender-affirming treatment.⁷ In 2023, Washington became the sixth state to enact a shield law after the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*⁸ jolted the nation.⁹ *Dobbs* held that there is no constitutional right to abortion, overruling long-settled precedents in *Roe v. Wade*¹⁰ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.¹¹ *Dobbs* left the decision over how to regulate abortion to the states.¹² In response, nineteen states have enacted or revived bans on abortion earlier than the *Roe v. Wade* standard of viability, extinguishing and punishing a formerly fundamental reproductive right.¹³

Further fracturing the nation, twenty-seven states and Puerto Rico have enacted laws prohibiting the provision of gender-affirming care to

5. Engrossed Substitute H.B. 1469, 68th Leg., Reg. Sess. (Wash. 2023), *codified at* WASH. REV. CODE § 70.02.010 (2025).

6. Joint Motion to Dismiss and Agreed Order of Dismissal, *Seattle Children’s Hosp. v. Off. of the Att’y Gen. of Tex.*, No. D-1-GN-23-008855 (Tex. Dist. Ct., Travis Cnty. Apr. 19, 2024).

7. For a map of states enacting shield laws, see *State Shield Laws: Protections for Abortion and Gender-Affirming Care Providers*, KAISER FAM. FOUND. (July 2025), <https://www.kff.org/womens-health-policy/state-indicator/shield-laws> [<https://perma.cc/58YT-GU9B>].

8. 597 U.S. 215 (2022).

9. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231–33, 292 (2022) (holding that states may ban abortions and overruling *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992)). *See also, e.g.*, Nina Shapiro, *Amid Post-Roe Landscape, WA Lawmakers Pass Abortion “Shield Law,”* SEATTLE TIMES (Apr. 12, 2023), <https://www.seattletimes.com/seattle-news/politics/amid-post-roe-landscape-wa-lawmakers-pass-abortion-shield-law/> [<https://perma.cc/2TAT-XNNT>] (chronicling passage); Samantha Reidel, *Washington State Passed a “Shield Law” to Protect Trans People and Abortion Seekers*, THEM (Apr. 12, 2023), <https://www.them.us/story/washington-state-shield-law-trans-health-care-abortion> [<https://perma.cc/B44X-SYKY>] (noting that Washington became the sixth state to pass such a law).

10. 410 U.S. 113 (1973).

11. 505 U.S. 833 (1992); *Dobbs*, 597 U.S. at 231–33, 292.

12. *Dobbs*, 597 U.S. at 292.

13. For a map of abortion laws, see Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Laws Across the Country*, N.Y. TIMES (July 2, 2025, at 11:15 AM ET), <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html> [<https://perma.cc/23YJ-JLXL>]. For a summary of laws criminalizing physicians who provide abortions, see Mabel Felix, Laurie Sobel & Alina Salganicoff, *Criminal Penalties for Physicians in State Abortion Bans*, KAISER FAM. FOUND. (Mar. 4, 2025), <https://www.kff.org/womens-health-policy/issue-brief/criminal-penalties-for-physicians-in-state-abortion-bans/> [<https://perma.cc/339S-SENQ>].

minors.¹⁴ Six of those states and Puerto Rico make providing such health care a felony.¹⁵ The rise of state prohibitions on gender-affirming care for minors has roused litigation, with parents and doctors arguing that the laws violate the Equal Protection rights of children with gender dysphoria, the Due Process rights of parents to direct the care of their children, and the First Amendment rights of physicians.¹⁶ On June 18, 2025, the United States Supreme Court in *United States v. Skrmetti*¹⁷ rejected an Equal Protection challenge to a Tennessee law prohibiting the provision of gender-affirming care to minors, emboldening states implementing bans.¹⁸

This Article is about the challenge to interstate comity and cooperation posed by state refusal to cooperate in evidence-gathering or punitive law enforcement as steep gradients between rights and penalties fracture the nation. Drawing on history, the Article advances the argument that comity is neither a rigid straitjacket nor always desirable and envisions how shield laws might expand to cover new challenges.¹⁹ The Article proposes

14. *Bans on Best Practice Medical Care for Transgender Youth*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans [https://perma.cc/2CRW-P63Q] (last visited Oct. 28, 2025). *See also, e.g.*, ALA. CODE § 26-26-4 (2025) (criminalizing the provision of gender-affirming care as a felony offense); Mary D. Fan, *Abortion Ally or Abettor: Accomplice and Conspiracy Liability after Dobbs*, 93 GEO. WASH. L. REV. 1, 16 (2025) (discussing examples); Trisha Ahmed, *North Dakota Governor Signs Law Criminalizing Trans Health Care for Minors*, PBS NEWS (Apr. 20, 2023, at 2:35 PM ET), <https://www.pbs.org/newshour/politics/north-dakota-governor-signs-law-criminalizing-trans-health-care-for-minors> [https://perma.cc/72PM-GRSX] (summarizing new criminal law in North Dakota); Audrey Dutton, *New Law Makes It a Crime in Idaho to Provide Gender-Affirming Care to Transgender Youth*, IDAHO CAP. SUN (Apr. 4, 2023), <https://idahocapitalsun.com/2023/04/04/it-is-now-a-crime-in-idaho-to-provide-gender-affirming-care-to-transgender-youth> [https://perma.cc/46ZJ-NWR6] (discussing Idaho's criminalization legislation); Thalia Beaty, Brendan Farrington & Hannah Schoenbaum, *Transgender Adults in Florida Are Blindsided That a New Law Also Limits Their Access to Health Care*, ASSOCIATED PRESS (June 4, 2023), <https://apnews.com/article/florida-transgender-health-care-adults> [https://perma.cc/9TV2-LPET] (discussing Florida's criminalization legislation).

15. *Bans on Best Practice Medical Care for Transgender Youth*, *supra* note 14.

16. *Compare, e.g.*, *Brandt v. Rutledge*, 667 F. Supp. 3d 877, 885, 916–25 (E.D. Ark. 2023) (enjoining Arkansas law barring gender-affirming care to minors to protect the Equal Protection and Due Process rights of children and parents and the First Amendment rights of doctors), *and* *Abbott v. Doe*, No. 03-22-00126-CV, 2022 WL 837956, at *2 (Tex. Ct. App. Mar. 21, 2022) (preliminarily enjoining the Texas Governor's interpretation of the definition of child abuse to include gender-affirming care), *with* *Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205, 1224, 1231 (11th Cir. 2023) (reversing the lower court's grant of a preliminary injunction for Alabama's criminalization of gender-affirming care, ruling the plaintiffs did not show a likelihood of prevailing on the merits of their constitutional claims).

17. 605 U.S. 495 (2025).

18. *United States v. Skrmetti*, 605 U.S. 495, 505, 516–24 (2025); *see also* TENN. CODE ANN. §§ 68-33-103, 68-33-107 (2025) (prohibiting and sanctioning the provision of gender-affirming care by medical providers).

19. *See infra* Parts II–III.

expanding protections to address the use of aggregated data from automated license plate readers (ALPR) to hunt for people seeking reproductive or gender-affirming care out of state, or undocumented immigrants.²⁰ Familiar to anyone who has gotten a speeding ticket or toll notice based on an automated camera mounted to a traffic light, freeway sign, overpass, bridge, or other fixed structures or patrol cars, increasingly pervasive ALPR technology records your license plate and vehicle details.²¹ ALPR technology also permits tracking of movements because of their ubiquity on roadways across the nation.²² First-in-the-nation Illinois protections prohibiting the use of ALPR data to investigate reproductive rights-seekers or immigrants offer a useful template for addressing this challenge, left unaddressed in many shield laws, including that of Washington state.²³

The rise of shield laws challenges the normative assumptions behind the march toward interstate comity and cooperation as a teleological good and invites lessons from the past when states resisted other freedom-stifling tactics from neighboring states.²⁴ Historically, a state's borders bounded the power to subpoena evidence or persons.²⁵ Over time, states adopted rules such as the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Procedures and the Uniform Interstate Depositions and Discovery Act to smooth evidence-

20. Arwa Mahdawi, *A Dystopian Surveillance Fear Has Become Reality in Texas*, THE GUARDIAN (May 31, 2025), <https://www.theguardian.com/commentisfree/2025/may/31/a-dystopian-surveillance-fear-has-become-reality-in-texas> [<https://perma.cc/9NC7-7U7G>]; Rindala Alajaji, *She Got an Abortion. So a Texas Cop Used 83,000 Cameras to Track Her Down*, ELECTRONIC FRONTIER FOUND. (May 30, 2025), <https://www.eff.org/deeplinks/2025/05/she-got-abortion-so-texas-cop-used-83000-cameras-track-her-down> (last visited Oct. 10, 2025).

21. See, e.g., *ACLU Found. v. Superior Ct. of L.A. Cnty.*, 400 P.3d 432, 435 (Cal. 2017) (describing the operation of ALPRs); Maneka Sinha, *The Automated Fourth Amendment*, 73 EMORY L.J. 589, 609 (2024) (“ALPRs use high-speed cameras mounted on police vehicles or stationary structures to automatically take pictures of thousands of license plates a minute.”).

22. See, e.g., *United States v. Tuggle*, 4 F.4th 505, 509 (7th Cir. 2021) (describing the dawning future of “the perpetual gaze of cameras,” and how “[c]amera-studded streets, highways, and transit networks will generate precise information about each vehicle and its passengers, for example, recording peoples’ everyday routes and deviations therefrom”).

23. Press Release, Ill. Sec’y of State, *Giannoulis Cracks Down on Unlawful Use of License Plate Reader Data* (June 12, 2025), <https://www.ilsos.gov/news/2025/june/250612d1.pdf> [<https://perma.cc/JBC6-SAAG>] [hereinafter *Giannoulis*].

24. See *infra* Part II.

25. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877), *overruled by* *Shaffer v. Heitner*, 433 U.S. 186 (1977). See also Rhonda Wasserman, *The Subpoena Power: Pennoyer’s Last Vestige*, 74 MINN. L. REV. 37, 52 (1989) (discussing historical evolution).

gathering and subpoenaing witnesses across borders.²⁶ Even health privacy laws have exceptions authorizing disclosure pursuant to subpoena, court order, or warrant to federal, state, or local law enforcement investigating or prosecuting crimes.²⁷ Seeking to protect rights that are increasingly being penalized, twenty-two states and Washington, D.C. have enacted shield laws prohibiting the release of information and refusing to cooperate in investigations and prosecutions pertaining to abortion and gender-affirming care.²⁸

The Article proceeds in three parts. Part I explains how interstate conflicts over rights and punishment are giving rise to state shield laws to protect assistance to people in states that penalize abortions or gender-affirming care.²⁹ The states penalizing such health care are called “prohibition states” and the states protecting the right to care are called “free states” for short in the Article. This Part explains how shield laws work, including prohibitions on turning over evidence and people, protections for professional licensing and malpractice insurance, and refusals to recognize out-of-state judgments. Another innovation is the clawback lawsuit, which allows people held liable out of state for facilitating abortion rights to bring a lawsuit in the shield state against the party that sued them in the penalization state.³⁰ The plaintiff in the clawback suit can recover the amount of the out-of-state judgment as a remedy for interference with reproductive rights.³¹

Part II advances the normative case for shield laws disrupting interstate comity in evidence-gathering, drawing on history to show that comity is not absolute nor untainted as a principle. Cases regarding enslaved peoples and persons assisting enslaved peoples illuminate the normative value in resisting claims of comity to pursue a higher vision of rights and protection.³²

26 UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT (UNIF. L. COMM’N 2007); UNIF. ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN CRIM. PROC. (UNIF. L. COMM’N 1936); David S. Cohen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 45–46 (2023).

27. 45 C.F.R. § 164.512(f) (2025).

28. *Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide*, UCLA SCH. OF L. (Oct. 2025), <https://law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy/shield-laws-reproductive-and-gender-affirming-health-care-state-law-guide> [<https://perma.cc/TQY8-EZFJ>]; Pam Belluck, *A New Abortion Access Policy*, N.Y. TIMES (Feb. 22, 2024), <https://www.nytimes.com/2024/02/22/briefing/abortion-access-dobbs-roe.html> [<https://perma.cc/AN8X-GLUK>].

29. *See infra* Part I.

30. *See infra* section I.C.

31. *See infra* section I.C.

32. *See infra* Part II.

Part III considers how shield laws can extend beyond the current contexts of protecting reproductive and gender rights in the interstate context.³³ This Part proposes prohibiting the use of aggregated data from ALRPs to hunt for undocumented persons or people seeking reproductive or gender-affirming care.³⁴

I. THE RISE OF SHIELD LAWS TO PROTECT REPRODUCTIVE AND GENDER FREEDOMS

The first flush of scholarly proposals after *Dobbs* advocated for an abortion care privilege to shield the information of people seeking abortions out of state from the reach of abortion-criminalizing states.³⁵ Scholars proposed congressional action to codify a federal privilege and envisioned that states would follow.³⁶ On-the-ground political realities upend the federal privilege-led model. Congress is divided, with the majority more likely to restrict abortion access rather than protect reproductive rights.³⁷ Instead, states are taking the lead in shaping abortion shield laws that offer a wider array of protections against information sharing, evidence-gathering, extradition, and more.³⁸ Twenty-two states and the District of Columbia have enacted shield laws protecting reproductive rights as of July 2025.³⁹ Eighteen states and the District of Columbia also have shield protections for gender-affirming care.⁴⁰

The import of shield laws is exemplified in the case of New York physician Dr. Margaret Carpenter. An enterprising leader in women's health, Dr. Carpenter became one of the first doctors to be criminally charged by abortion-criminalizing states for prescribing pills across state

33. See *infra* Part III.

34. See *id.*

35. Aziz Z. Huq & Rebecca Wexler, *Digital Privacy for Reproductive Choice in the Post-Roe Era*, 98 N.Y.U. L. REV. 555, 639–42 (2022) (proposing that Congress enact a federal abortion data privilege and that states codify variations of such privilege in their state codes); Tom Lininger, *Abortion, the Underground Railroad, and Evidentiary Privilege*, 80 WASH. & LEE L. REV. 663, 716–31 (2023) (proposing a confidential abortion communications privilege).

36. Huq & Wexler, *supra* note 35, at 639–42.

37. Sandhya Raman, *GOP Majority Renews Focus on Abortion*, ROLL CALL (Jan. 23, 2025), <https://rollcall.com/2025/01/23/gop-majority-renews-focus-on-abortion/> [https://perma.cc/NT6N-BE2P].

38. *Interstate Shield Laws*, CTR. REPROD. RTS. (June 26, 2024), <https://reproductiverights.org/interstate-shield-laws/> [https://perma.cc/QBW4-PU4S].

39. *State Shield Laws: Protections for Abortion and Gender-Affirming Care Providers*, *supra* note 7.

40. *Id.*

lines.⁴¹ While working as a medical resident in Ethiopia, Dr. Carpenter saw the lack of screening for one of the most common cancers found in women, cervical cancer. She founded Go Doc Go to train doctors and midwives in Ethiopia, Senegal, The Gambia, and Haiti to conduct screenings and offer tests for human papillomavirus.⁴² After *Dobbs* permitted states to criminalize abortion, Dr. Carpenter helped women marooned in abortion criminalization states through her work with the Abortion Coalition for Telemedicine.⁴³ She cofounded the organization.⁴⁴

Abortion criminalization laws typically treat the pregnant person as the victim and the medical provider as the criminal perpetrator, proscribing the provision of abortion.⁴⁵ Criminal laws also punish people who help someone get an abortion, for example, by transporting the abortion-seeker.⁴⁶ Dr. Carpenter’s medical care for pregnant people seeking abortions drew a \$100,000 civil penalty from Texas and criminal prosecution by Louisiana.⁴⁷

New York’s refusal to enforce the Texas judgment or extradite Dr. Carpenter is an exemplar of key protections in shield laws.⁴⁸ How do shield laws protect people like Dr. Carpenter trying to help persons stranded in states that criminalize abortions or prohibit gender-affirming care? This Part explains some of the key protections in state shield laws, clustered into three conceptual categories. The largest set of protections revolves around resistance by refusal to act—prohibitions on cooperating with penalizing states to secure evidence, witnesses, or extradition.⁴⁹

41. Alaa Elassar, *New York Doctor Indicted in Louisiana Abortion Case Recognized as a Leader in Women’s Health*, CNN (Feb. 23, 2025), <https://www.cnn.com/2025/02/23/us/abortion-margaret-carpenter-new-york> [https://perma.cc/6W4S-T6DR].

42. *Id.*

43. *Id.*

44. *Id.*

45. *See, e.g.*, *State v. Rose*, 267 P.2d 109, 112 (Idaho 1954) (stating the “vast majority of courts passing on the question” before *Roe v. Wade* held that the pregnant person is the victim and cannot be prosecuted under an abortion criminalization statute); *Richmond v. Commonwealth*, 370 S.W.2d 399, 400 (Ky. 1963) (describing the “generally accepted view . . . that the woman upon whom an abortion is performed is not an accomplice; that she is a victim rather than an offender”); *Wolcott v. Gaines*, 169 S.E.2d 165, 166 (Ga. 1969) (“The female upon whom a criminal abortion has been performed is not an accomplice with the perpetrator of the offense”) (quoting *Gullatt v. State*, 80 S.E. 340, 341 (Ga. 1913)).

46. *See Fan, supra* note 14, at 5, 11–13 (discussing accomplice and conspiracy liability for people who assist pregnant persons in obtaining abortion).

47. Final Judgment and Order Granting Permanent Injunction at 2, *Texas v. Carpenter*, No. 471-08943-2024 (Tex. Dist. Ct., Collin Cnty. Feb. 13, 2025); Extradition Warrant from Jeff Landry, Governor of Louisiana, to the Governor of New York for Margaret D. Carpenter, for the Crime of Criminal Abortion by Means of Abortion-Inducing Drugs (Feb. 11, 2025) (on file with author).

48. Elassar, *supra* note 41.

49. *See infra* section I.A.

Another set of protections centers on refusal to recognize judgments and penalties by states that punish abortion or gender-affirming care.⁵⁰ Finally, some states go further with affirmative grants of remedies, such as opening state courts for clawback lawsuits that enable people to sue those who interfere with the exercise of rights recognized in the shielding state.⁵¹

Shield laws may go farther than the three main clusters of protections summarized here, such as facilitating telehealth and regulating malpractice insurance consequences.⁵² The goal of this Part is to offer a wieldy taxonomy organizing widespread types of shield law protections into three main clusters, with a focus on those that disrupt the notion of interstate cooperation and comity as normative goods.

A. *Refusal to Cooperate in Evidence-Gathering or Extradition*

Historically, the capacity of a state to exercise its powers to compel the production of evidence or attendance of witnesses was confined to its territorial borders.⁵³ Because modern life frequently traverses state boundaries, the law has evolved to facilitate cooperative evidence-gathering. Obtaining evidence across state borders is facilitated by the Uniform Interstate Depositions and Discovery Act (UIDDA), which has been adopted by forty-seven states; Washington, D.C.; and the U.S. Virgin Islands.⁵⁴ In the criminal context, the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, adopted by all fifty states, creates an orderly interstate process to compel witnesses to provide evidence.⁵⁵ Beyond formal requests and procedures, law enforcement agencies often cooperate with each other in interstate

50. See *infra* section I.B.

51. See *infra* section I.C.

52. For a more detailed discussion, see, e.g., David S. Cohen, Greer Donley & Rachel Rebouché, *Abortion Shield Laws*, 2 NEJM EVID. 1, 1–4 (2023) (breaking down types of protections into nine points); David S. Cohen, Greer Donley, Rachel Rebouché & Isabelle Aubrun, *Understanding Shield Laws*, 51 J. L. MED. & ETHICS 584, 585–89 (2023) (comparing shield law protections in seven states across nine features).

53. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877), *overruled by* *Shaffer v. Heitner*, 433 U.S. 186 (1977); Wasserman, *supra* note 25, at 52.

54. *Interstate Depositions and Discovery Act, Enactment History*, UNIF. LAW COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=181202a2-172d-46a1-8dcc-cdb495621d35> [<https://perma.cc/T9V3-HH8U>].

55. See Wasserman, *supra* note 25, at 154 App. V (listing enacting statutes for all fifty states and D.C.). But see *Attendance of Out-of-State Witnesses Act, Enactment History*, UNIF. LAW COMM'N, (July 7, 2025, 9:10 PM), <https://www.uniformlaws.org/committees/community-home?communitykey=69a013a1-5b59-4d8d-ae3-deb474a4a6b8> [<https://perma.cc/9YD2-6HFT>] (listing enactments in forty-one states and D.C.).

evidence-gathering and seizures as a matter of reciprocity and interstate relations.⁵⁶

Similarly, modern law facilitates the interstate transfer of criminally charged defendants. The Extradition Clause of the U.S. Constitution requires states to deliver criminal fugitives—persons who “flee from Justice.”⁵⁷ Federal law implements the Constitution’s Extradition Clause by requiring the “executive authority” of the state “to which such person has fled” to secure and arrest the fugitive upon receiving certified authentic charging documents from the state “from whence the person so charged has fled.”⁵⁸ The duty to extradite arises even if the state requested to extradite does not criminalize the conduct that is the basis of the charge in the requesting state.⁵⁹ In the context of providers of reproductive or gender-affirming care, the targets of a prohibition state typically are not fugitives who fled to another state as contemplated in the plain text of the Constitution’s Extradition Clause and congressional legislation implementing its command.⁶⁰ Rather, like Dr. Carpenter, they are residents of a free state providing care that is lawful in the free state. This Article uses the term “free state” to refer to a state that recognizes the right to abortion and permits gender-affirming care in contrast to states penalizing such health care. The transfer of criminal defendants charged or convicted in another state is facilitated by the Uniform Criminal Extradition Act, adopted by most states, including Washington state.⁶¹ Sweeping more broadly than the Constitution’s focus on fugitives fleeing from the charging state, the Act also authorizes returns of persons charged in another state “even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.”⁶²

After *Dobbs*, commentators expressed concern that abortion criminalization states would use Uniform Act procedures to target care

56. See Cohen et al., *supra* note 26, at 45 (noting such cooperation).

57. U.S. CONST. art. IV, § 2, cl. 2.

58. 18 U.S.C. § 3182.

59. *Puerto Rico v. Branstad*, 483 U.S. 219, 225, 227 (1987) (“reaffirm[ing] the conclusion that the commands of the Extradition Clause are mandatory, and afford no discretion to the executive officers or courts of the asylum State” (quoting *Kentucky v. Dennison*, 65 U.S. 66, 103 (1860))).

60. See U.S. CONST. art. IV, § 2, cl. 2 (“A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.”).

61. See, e.g., WASH. REV. CODE § 10.88 (2025) (codifying the Uniform Criminal Extradition Act).

62. WASH. REV. CODE § 10.88.250(1) (2025).

providers in states that recognize reproductive rights.⁶³ Abortion care that crosses state lines can arise where medical providers in free states prescribe abortion medications to persons in prohibition states.⁶⁴ In 2023, more than half of all U.S. abortions—sixty-three percent—occurred via medications, most commonly using the two-drug combination of mifepristone and misoprostol.⁶⁵ Shield law protections that allow health care providers in free states like New York and Colorado to prescribe abortion medications to people in prohibition states by telehealth are rousing outrage and calls for prosecution in criminalization jurisdictions.⁶⁶ Interstate investigations may also arise when people seeking abortions or gender-affirming care for minors travel to free states for care before returning home to a state that prohibits such care.⁶⁷

Another concern is the issuance of an extraterritorial search warrant or wiretap order by a prohibition state for data or other evidence held in a free state.⁶⁸ Consider, for example, the interplay of state rules between two neighboring states with fundamentally different views on abortion and gender-affirming care for minors: Washington state and Idaho. Idaho criminalizes all abortions and aid to people seeking care out of state as the felony offense of abortion trafficking.⁶⁹ In contrast, Washington law protects the right to abortion.⁷⁰ Idaho Rule of Criminal Procedure 41 permits the issuance of extraterritorial warrants, while recognizing that

63. *E.g.*, Cohen et al., *supra* note 26, at 46; Huq & Wexler, *supra* note 35, at 603; Pierce H. Stanley, *Abortion Privacy in the Digital Age: An Examination of California's Post-Dobbs Informational Privacy Right*, 34 ALB. L.J. SCI. & TECH. 160, 178–82 (2025).

64. *See* David S. Cohen, Greer Donley & Rachel Rebouché, *Abortion Pills*, 76 STAN. L. REV. 317, 320, 322, 325–28 (2024) (detailing the “war on abortion pills” arising among the states).

65. Rachel K. Jones & Amy Friedrich-Karnik, *Medication Abortion Accounted for 63% of All US Abortions in 2023—An Increase from 53% in 2020*, GUTTMACHER INST. (Mar. 2024), <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020> [https://perma.cc/6ZZZ-ZG7R].

66. Nathaniel Weixel, *Red State Abortion Bans Headed for Clash with Blue State Shield Laws*, THE HILL (May 20, 2024), <https://thehill.com/policy/healthcare/4671299-abortion-bans-clash-shield-laws/> [https://perma.cc/4SU7-YP4S]; Praveena Somasundaram, *Telehealth and Shield Laws Aided Abortion Rise Last Year, Report Says*, WASH. POST (June 23, 2025), <https://www.washingtonpost.com/nation/2025/06/23/abortion-pills-telehealth-increase/> [https://perma.cc/4VW7-T4DP].

67. *See* Fan, *supra* note 14, at 3–5, 16 (discussing the risks of criminal liability for aiding people traveling out of state for abortion or gender-affirming care).

68. *See, e.g.*, Leslie P. Francis, *Protecting Electronic Health Records After Dobbs*, 64 SANTA CLARA L. REV. 265, 303–06 (2024) (discussing extraterritorial search warrants).

69. IDAHO CODE §§ 18-606, 18-622, 18-623 (2025); *see also* Matsumoto v. Labrador, 122 F.4th 787, 787–88 (9th Cir. 2024) (partially reversing and partially upholding district court’s preliminary injunction against § 18-623, Idaho’s new abortion trafficking law).

70. WASH. REV. CODE § 9.02.100(2) (2025). Washington state legislators are also trying to amend the state constitution to enshrine abortion rights. S.J. Res. 8202, 68th Leg., Reg. Sess. (Wash. 2024).

state law enforcement does not have authority to execute the warrant outside of the state.⁷¹ Usually, a person in Washington must comply with valid criminal processes issued by another state court.⁷² Washington state law enforcement customarily may also cooperate with other agencies in investigative actions, either via “a mutual law enforcement assistance agreement” or at the request of an officer of the other agency.⁷³

Shield laws block the usual myriad avenues for interstate evidence-gathering, securing of witnesses, arrests, searches, and other law enforcement cooperation.⁷⁴ Consider, for example, Washington state’s shield law, enacted on April 27, 2023.⁷⁵ The shield law protects the provision of “gender-affirming treatment and reproductive health care services that are lawful in the state of Washington”—termed “[p]rotected health care services”—to all patients, “regardless of the location of the person receiving the services.”⁷⁶ The shield law declares that the laws of other states penalizing the provision or receipt of reproductive or gender-affirming health care legal in Washington are against the state’s public policy.⁷⁷ Therefore, state courts, law enforcement, boards, agencies, departments, and employees may not effectuate arrest warrants or wiretap orders; cooperate in investigations; nor “issue a subpoena, warrant, court order, or other civil or criminal legal process” in connection with such out-of-state civil or criminal investigations into the provision or receipt of protected health care services.⁷⁸ Business entities incorporated in the state or with principal place of business in the state may not provide information, records, or assistance, nor “[c]omply with a subpoena, warrant, court order, or other civil or criminal legal process” in connection with a civil or criminal investigation into the provision or receipt of such

71. IDAHO R. CRIM. P. 41.

72. WASH. REV. CODE § 10.96.040 (2025).

73. *Id.* § 10.93.070(3) (2025).

74. *E.g.*, CAL. PENAL CODE § 847.5 (Deering 2025) (prohibiting California law enforcement and courts from cooperating with criminal investigations or prosecutions for reproductive care that is legal in California); CAL. CIV. CODE §§ 56.191, 56.108 (Deering 2025) (prohibiting disclosure of information relating to abortion or gender-affirming care to out-of-state investigations or prosecutions or pursuant to out-of-state subpoenas); WASH. REV. CODE § 7.115.020–.030 (2025) (prohibiting law enforcement, courts, and business entities in the state from complying with subpoenas, warrants, or other process seeking information about gender-affirming treatment or reproductive care lawful in Washington); OR. REV. STAT. §§ 24.500, 435.210, .240 (2025) (prohibiting cooperation with out-of-state investigations or enforcement of subpoenas related to reproductive or gender-affirming care lawful in Oregon).

75. Engrossed Substitute H.B. 1469, 68th Leg., Reg. Sess. (Wash. 2023).

76. WASH. REV. CODE §§ 7.115.010(3), .020(1) (2025).

77. *Id.* § 7.115.020(2).

78. *Id.* § 7.115.020(2)(a)–(c).

protected health care.⁷⁹ The Washington state legislature further expanded the shield law on May 12, 2025 to extend the protections to people who assist others in obtaining protected health treatment.⁸⁰

Washington's codification of uniform laws and other provisions that usually facilitate cooperation are also amended with provisos against release of such information or cooperation in the context of investigations into protected health care.⁸¹ For example, the provision on extradition now contains a subsection prohibiting the surrender of any person where the criminal charge is based on the provision or receipt of reproductive or gender-affirming care that is lawful in Washington state.⁸² The state's codification of the Uniform Interstate Depositions and Discovery Act is now amended to require a certification that the "foreign subpoena" does not pertain to the provision or receipt of protected health care and to provide that any foreign subpoenas pertaining to such provision or receipt of care be quashed.⁸³ The state's provision requiring Washingtonians to comply with valid out-of-state criminal processes is now amended to require that the process must have "an attestation, made under penalty of perjury, stating that such process does not relate to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined" in the state's shield law.⁸⁴ The law also provides that Washingtonians are not required to comply with criminal process pertaining to such provision or receipt of protected health care.⁸⁵ The state's codification of the Uniform Act to Secure the Attendance of Witnesses is now amended to provide that a "summons of a witness to testify in the prosecution or a grand jury investigation in another state is prohibited if such prosecution or grand jury investigation is related to the provision [or] receipt" of protected health care services.⁸⁶

Similarly, New York's shield laws amend longstanding rules on interstate cooperation in evidence-gathering and extradition, including the

79. *Id.* § 7.115.020(2)(d).

80. S.B. 5632, ch. 248, 69th Leg., Reg. Sess. (Wash. 2025).

81. *E.g.*, WASH. REV. CODE § 10.88.250(2) (2025) (no extradition of person charged for provision of protected health care); *Id.* § 5.51.020(1)(b), (4) (providing for a quashing of any subpoena related to the provision or receipt of protected health care).

82. *Id.* § 10.88.250(2).

83. *Id.* § 5.51.020(1)(b), (4).

84. *Id.* § 10.96.040(1).

85. *Id.* § 10.96.040(2).

86. *Id.* § 10.55.020(5).

state's codification of uniform laws promoting such cooperation.⁸⁷ For example, New York's codification of the Uniform Depositions and Discovery Act, facilitating interstate evidence-gathering by subpoenas, is now amended to foreclose subpoenas pertaining to protected health services, including reproductive and gender-affirming care, that occurred in New York.⁸⁸ New York law also forbids state and local employees from cooperating with or providing information to any out-of-state actor regarding the provision of protected health services lawful in New York by providers physically present in the state.⁸⁹

New York law now forbids the governor from honoring an extradition requested where criminal liability stems in whole or part from the provision of protected health care lawful in the state "unless the executive authority of the demanding state shall allege in writing that the accused was physically present in the demanding state at the time of the commission of the alleged crime, and that thereafter he, she or they fled from that state."⁹⁰ The latter carveout for a fugitive who was physically present in the extradition-requesting state and then fled accommodates constitutional obligations to extradite fugitives who fled from the prosecuting jurisdiction to another state.⁹¹ As the case of Dr. Carpenter illustrates, the paradigmatic shield law context is of an abortion provider in a free state providing care to a person from a prohibition state.⁹² The target of the prohibition state is not a fugitive within the meaning of the Constitution's Interstate Rendition Clause because they did not flee from the prohibition state. Thus, new shield laws amend longstanding widespread rules of interstate cooperation to protect the provision of

87. Compare, e.g., N.Y. CRIM. PROC. LAW art. 570 (Consol. 2025) (codifying the Uniform Criminal Extradition Act), and N.Y. C.P.L.R. art. 31, § 3119 (Consol. 2025) (codifying the Uniform Interstate Depositions and Discovery Act), with N.Y. CRIM. PROC. LAW § 570.17 (Consol. 2025) (providing that the governor will not extradite where criminal liability is based in whole or in part on the provision of protected reproductive health care services unless "the accused was physically present in the demanding state at the time of the commission of the alleged crime, and that thereafter he, she or they fled from that state"); N. Y. C.P.L.R. § 3119(g)(1) (Consol. 2025) (prohibiting the issuance of subpoena "in connection with an out-of-state proceeding relating to any legally protected health activity which occurred in this state" notwithstanding the codification of the Uniform Interstate Depositions and Discovery Act).

88. N. Y. C.P.L.R. § 3119(g) (Consol. 2025) (noting that "no court . . . shall issue a subpoena under this section in connection with an out-of-state proceeding relating to any legally protected health activity which occurred in this state").

89. N.Y. EXEC. LAW § 837-X (Consol. 2025).

90. N.Y. CRIM. PROC. LAW § 570.17 (Consol. 2025).

91. See U.S. CONST. art. IV, § 2, cl. 2 ("A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.").

92. See *supra* notes 41–48.

reproductive and gender-affirming care that is lawful in the free state, even if criminalized in other jurisdictions.

B. Nonenforcement of Punitive Laws or Judgments and Protections Against Adverse Licensing or Malpractice Insurance Actions

Interstate comity is such a time-honored tradition that one aspect of the principle is enshrined in the Full Faith and Credit Clause of the U.S. Constitution.⁹³ Article IV, Section 1 of the Constitution provides: “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”⁹⁴ The principle behind giving full faith and credit between state judgments is “to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation.”⁹⁵ To facilitate the interstate enforcement of judgments, most states, including Washington state and New York, have adopted the Uniform Enforcement of Foreign Judgments Act.⁹⁶ Under the uniform provisions, an authenticated “foreign judgment”—meaning a judgment from another state—is filed with the clerk of any superior or district court or county in the state.⁹⁷ When filed, an out-of-state judgment “may be enforced, extended, or satisfied” the same as a judgment obtained in-state.⁹⁸

The obligation to give full faith and credit to out-of-state judgments is not absolute, however. The Full Faith and Credit Clause does not obligate states to recognize or enforce another state’s criminal laws or penal judgments.⁹⁹ The rationale is that:

Crimes and offences 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

93. U.S. CONST. art. IV, § 1.

94. *Id.*

95. *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

96. WASH. REV. CODE § 6.36 (2025); N.Y. C.P.L.R. art. 54 (Consol. 2025).

97. WASH. REV. CODE §§ 6.36.010, .025 (2025).

98. *Id.*

99. *See Pac. Emps. Ins. Co. v. Indus. Accident Comm’n*, 306 U.S. 493, 502 (1939) (collecting cases and noting the Supreme Court has “often . . . recognized” that the obligation to give full faith and credit is limited by conflicting state laws or policies).

extradition to surrender offenders to the State whose laws they have violated, and whose peace they have broken.¹⁰⁰

Even in civil cases, the jurisdiction rendering judgment must also successfully acquire jurisdiction over the nonresident defendant.¹⁰¹

The United States Supreme Court has often held that a conflicting state policy or statute can be a basis to decline to give full faith and credit to another state's law or judgment.¹⁰² The interest of the state declining to give full faith and credit must be sufficiently weighty to override the comity interests of the Clause.¹⁰³ For example, the Supreme Court has repeatedly recognized that a state's interest in offering its resident a remedy pursuant to its workman's compensation statute overrides the obligation to give full faith and credit to another state's statutory regime.¹⁰⁴ State courts recognize that the public policy exception permits states to decline to recognize the judgments of another state if the state's conflicting policy interest is sufficiently substantial.¹⁰⁵ Exemplifying the exceptions, the new state shield laws refuse to apply a prohibition to a state's criminal or civil judgments or laws imposing liability for providing or receiving reproductive or gender-affirming care.¹⁰⁶ For example, Washington state declares that it is against public policy to impose

100. *Huntington v. Attrill*, 146 U.S. 657, 669 (1892).

101. *Haddock v. Haddock*, 201 U.S. 562, 567 (1906), *overruled on other grounds by*, *Williams v. North Carolina*, 317 U.S. 287 (1942); *Huntington*, 146 U.S. at 685.

102. *See Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 546 (1935) ("It has often been recognized by this Court that there are some limitations upon the extent to which a state will be required by the full faith and credit clause to enforce even the judgment of another state, in contravention of its own statutes or policy.").

103. *Williams*, 317 U.S. at 294–95; *Huntington*, 146 U.S. at 666–69.

104. *Pac. Emps.*, 306 U.S. at 501–02; *Alaska Packers*, 294 U.S. at 547.

105. *E.g.*, *Lucas v. Est. of Stavos*, 609 N.E.2d 1114, 1120 (Ind. Ct. App. 1993) ("Nevertheless, even where the judgment of a sister state is valid and immune from collateral attack, the full faith and credit clause does not compel a forum state to subordinate its policies and interests to the conflicting policies of another state."); *Brandon-Thomas v. Brandon-Thomas*, 163 So. 3d 644, 646 (Fla. Dist. Ct. App. 2015) ("And while neither Florida nor any other state is required to give full faith and credit to another state's laws and judgments that conflict with that state's legitimate public policy, the Full Faith and Credit Clause 'ought not lightly to be set aside.'") (internal citations and quotation marks omitted).

106. *E.g.*, CAL. HEALTH & SAFETY CODE § 123467.5 (Deering 2025) (declaring a ban state's laws "contrary to the public policy of this state" and providing that the state shall not apply such contrary law in court nor enforce or satisfy a civil judgment produced under such law); MASS. GEN. LAWS ch. 112, § 5F 1/2 (2025) ("Notwithstanding any general or special law to the contrary, no person shall be subject to . . . any judgment, discipline or other sanction arising from such health care services if the services as provided would have been lawful and consistent with good medical practice if they occurred entirely in the commonwealth."); WASH. REV. CODE § 7.115.020(1), (4) (2025) ("A state court, judicial officer, court employee or clerk, or public employee or official shall not apply to a case or controversy heard in state court any law that is contrary to this state's public policy as described in this section.").

criminal and civil liability for providing abortion or gender-affirming care that is lawful in the state and bars state courts or personnel from collaborating to enforce such liability laws.¹⁰⁷ California law similarly declares laws in other states punishing abortion or gender-affirming care contrary to state policy and provides: “The state shall not . . . [e]nforce or satisfy a civil judgment received through an adjudication” under such law contrary to California’s public policy.¹⁰⁸

State shield laws also protect against adverse licensing consequences, discipline, or fines associated with the provision of abortion or gender-affirming care.¹⁰⁹ For example, Washington state law specifically excludes discipline or adverse judgments for providing abortions or gender-affirming care lawful in the state as a basis for a finding of unprofessional conduct or license denial, suspension, or revocation.¹¹⁰ Massachusetts law establishes an even more comprehensive set of protections for licensing, providing:

Notwithstanding any general or special law to the contrary, no person shall be subject to discipline by the board, including the revocation, suspension or cancellation of the certificate of registration or reprimand, censure or monetary fine, for providing or assisting in the provision of reproductive health care services or gender-affirming health care services . . . or for any judgment, discipline or other sanction arising from such health care services if the services as provided would have been lawful and consistent with good medical practice if they occurred entirely in the commonwealth.¹¹¹

As an additional safeguard, Massachusetts law provides:

The board shall not make available for public dissemination on a physician’s individual profile the record of any criminal conviction or charge for a felony or serious misdemeanor, final disciplinary action by a licensing board in another state or a malpractice court judgment, arbitration award or settlement that resulted from providing or assisting in the provision of

107. WASH. REV. CODE § 7.115.020(1), (4) (2025).

108. CAL. HEALTH & SAFETY CODE § 123467.5 (Deering 2025).

109. *E.g.*, MASS. GEN. L ch. 112, § 5F 1/2 (2025) (“Notwithstanding any general or special law to the contrary, no person shall be subject to discipline by the board, including the revocation, suspension or cancellation of the certificate of registration or reprimand, censure or monetary fine, for providing or assisting in the provision of reproductive health care services or gender-affirming health care services.”).

110. WASH. REV. CODE § 18.130.180, .450 (2025).

111. MASS. GEN. LAWS ch. 112, § 5F 1/2 (2025).

reproductive health care services or gender-affirming health care services.¹¹²

Some states, such as California and New York, go even further and prohibit malpractice insurers from taking adverse actions because of an out-of-state investigation, discipline, or lawsuit for providing reproductive or gender-affirming care.¹¹³

The exceptions to the Full Faith and Credit Clause for criminal judgments and foreign state laws that are contrary to the laws or public policy of a state, support such protections.¹¹⁴ The stark divide between criminalization and rights protection demonstrates the severe policy conflicts when it comes to abortion and gender-affirming care. The underlying rights of bodily autonomy and privacy at stake in abortion are so weighty that for nearly half of a century, it was a fundamental constitutional right.¹¹⁵ As for the provision of gender-affirming care, even the majority of the United States Supreme Court upholding Tennessee’s law criminalizing such care for minors observed the “fierce scientific and policy debates” over such care and acknowledged “the implications for all are profound.”¹¹⁶ A state’s choice to continue to protect a longstanding former constitutional right—or gender-affirming care with its “profound implications”—is similarly weighty.

C. *Opening State Courts for Indemnification Remedies by Clawback Lawsuits*

Some shield statutes go further than merely refusing to cooperate with investigations into abortion or gender-affirming care or to recognize out-of-state legal processes, judgments, or statutes. Shield statutes can also offer affirmative remedies for people targeted for providing or assisting

112. *Id.*

113. *See, e.g.*, CAL. INS. CODE § 11589.1(c) (Deering 2025) (“An insurer providing professional liability insurance for health care providers in this state shall not deny coverage for liability for damages arising from offering or performing abortion, contraception, gender-affirming health care, or care related to those health care services, if those services are within the scope of the insured’s license, the services are lawful in the state where they are offered or performed, and the policy would otherwise cover liability for such damages arising from performing or rendering other professional services within the insured’s scope of license.”); N.Y. INS. LAW § 3436-A (Consol. 2025) (“Every insurer that issues or renews medical malpractice insurance covering a health care provider licensed to practice in this state shall be prohibited from taking any adverse action against a health care provider solely on the basis that the health care provider engages in legally protected health activity . . . Such policy shall include health care providers who prescribe abortion medication to out-of-state patients by means of telehealth.”).

114. *See supra* section I.B.

115. *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by*, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

116. *United States v. Skrmetti*, 605 U.S. 495, 505–06, 525 (2025).

in abortions or gender-affirming care. Clawback lawsuits are an innovation that open state courts to remedial lawsuits, helping indemnify people targeted by adverse judgments in prohibition states.¹¹⁷ Clawback lawsuits go beyond a refusal to recognize adverse judgments, instead opening a new avenue to obtain damages from parties who seek to enforce adverse judgments for the provision of protected health care.¹¹⁸

Clawback lawsuits are particularly valuable because some states, such as Idaho and Texas, have created civil actions to impose damages against abortion providers and other people who help abortion-seekers.¹¹⁹ For example, Texas allows “[a]ny person,” other than a state or local government employee, to:

[B]ring a civil against any person who: (1) performs or induces an abortion in violation of this subchapter; (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise . . . or (3) intends to engage in the conduct.¹²⁰

Prevailing parties can obtain statutory damages of at least \$10,000 for each abortion performed or assisted, plus costs and attorney’s fees.¹²¹ Idaho permits civil suits for abortions by “the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child.”¹²² The claimant may recover “[a]ll damages” plus “statutory damages in an amount not less than twenty thousand dollars (\$20,000) from the medical professionals who

117. *E.g.*, CONN. GEN. STAT. § 52-571n (2025) (civil action to recover damages for liability based on provision of gender-affirming or reproductive care); N.Y. CIV. RIGHTS LAW, § 70-B (Consol. 2025) (clawback lawsuits for unlawful interference with protected rights); WASH. REV. CODE § 7.115.040 (2025) (providing private right of action for people subject to out-of-state legal action for offering legally protected health services including abortion and gender-affirming care).

118. Cohen et al., *supra* note 52, at 588.

119. *See, e.g.*, IDAHO CODE § 18-8807 (2025) (“Civil Causes of Action. (1) Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child may maintain an action.”); TEX. HEALTH & SAFETY CODE § 171.208 (West 2025) (“Civil Liability for Violation or Aiding or Abetting Violation. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who: (1) performs or induces an abortion in violation of this subchapter; (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter.”).

120. TEX. HEALTH & SAFETY CODE § 171.208(a) (West 2025).

121. *Id.* § 171.208(b).

122. IDAHO CODE § 18-8807 (2025).

knowingly or recklessly attempted, performed, or induced an abortion” as well as costs and attorney’s fees.¹²³

Consider what would happen if a Washington abortion provider were sued for helping a pregnant person from neighboring Idaho who went to the closest free state for care. Washington shield law creates a civil claim for interference with protected health services.¹²⁴ The targeted provider of care need not even wait for an adverse judgment from the Idaho lawsuit because the civil claim in Washington state can be filed whenever an adverse action commences against the provider of protected health care services.¹²⁵ Moreover, the Washington care provider can also file a civil claim upon receiving a subpoena pertaining to the provision of protected health care that is lawful in Washington state.¹²⁶ The clawback suit allows a prevailing Washington care provider to recover:

- (a) Actual damages including, but not limited to, costs and reasonable attorneys’ fees spent in defending the underlying action;
- (b) Costs and reasonable attorneys’ fees incurred in bringing an action under this section as may be allowed by the court; and
- (c) Statutory damages up to \$10,000 if the underlying action is found to be frivolous.¹²⁷

Washington’s clawback suit provision is among the more generous offered by shield laws because a judgment need not be entered.¹²⁸ Other states, such as California and New York, also have more generous clawback suit provisions that do not require the entry of judgment before a civil action may be brought.¹²⁹ In contrast, clawback lawsuit provisions in states such as Connecticut require that an adverse judgment first be

123. *Id.*

124. WASH. REV. CODE § 7.115.040 (2025).

125. *Id.* § 7.115.040(1)(a)(i).

126. *Id.* § 7.115.040(1)(a)(ii)(A).

127. *Id.* § 7.115.040(3).

128. *See id.* § 7.115.040 (providing that a claim arises when an underlying action commences against the aggrieved party).

129. *E.g.*, CAL. HEALTH & SAFETY CODE § 123469 (Deering 2025) (“A party whose reproductive rights are protected by this article and whose reproductive rights are interfered with . . . may bring a civil action against an offending state actor in a state superior court.”); N.Y. CIV. RIGHTS LAW § 70-b (Consol. 2025) (“Such claim shall arise when a person demonstrates that they exercised or attempted to exercise, or facilitated or attempted to facilitate the exercise of a right protected under the constitution of the state of New York and/or protected or permitted by the laws of the state of New York, to obtain or provide the medical care described in subdivision six of this section, and such exercise, provision, facilitation, or attempt thereof results in litigation or criminal charges brought against that person in any court in the United States or its territories.”).

entered against the plaintiff.¹³⁰ Going beyond a refusal to recognize adverse out-of-state judgments, clawback lawsuits are a vigorous remedial clapback that address the substantial chilling effects posed by the financial costs of defending against out-of-state investigations, civil suits, and prosecutions.

II. DISRUPTING THE TIDY MARCH TOWARD INTERSTATE COMITY

One of the accusations lodged against shield laws is the challenge posed to interstate comity.¹³¹ Even the three scholars whose work helped spark the rise of shield laws, Professors David S. Cohen, Greer Donley, and Rachel Rebouché, acknowledged that though shield protections “are on constitutionally firm ground, there is no denying that each of these proposals would threaten basic principles of comity between states, possibly resulting in the breakdown of state-to-state relations and ultimately retaliation.”¹³² This Part makes the normative case for disrupting interstate comity, showing that comity is not a straitjacket binding states to the most punitive restrictive approach, nor untainted in the nation’s history. The Part draws on cases involving comity claims and enslaved peoples to illuminate that interstate comity can be a cover for problematic practices in need of disruption.

A. *Romantic Appeals to Comity*

Dismayed by the rise of state shield laws protecting the provision of abortion and gender-affirming care, the conservative Heritage Foundation decried the disruption to interstate comity posed by the laws.¹³³ In a preview of likely future arguments to courts trying to invalidate aspects of state shield laws, the legal memorandum claimed that common provisions in shield laws violate constitutional commands to give “‘Full Faith and Credit’ to the ‘judicial proceedings of every other State’ and to

130. See, e.g., CONN. GEN. STAT. § 52-571m (2025) (“When any person has had a judgment entered against such person, in any state, where liability, in whole or in part, is based on the alleged provision, receipt, assistance in receipt or provision, material support for, or any theory of vicarious, joint, several or conspiracy liability derived therefrom, for reproductive health care services that are permitted under the laws of this state, such person may recover damages from any party that brought the action leading to that judgment or has sought to enforce that judgment.”).

131. Thomas Jipping, *Abortion “Shield” Laws Undermine Interstate Comity and Medical Practice and Raise Constitutional Questions*, THE HERITAGE FOUND. (Dec. 30, 2024), <https://www.heritage.org/sites/default/files/2024-12/LM366.pdf> [<https://perma.cc/HNJ9-W6PN>].

132. Cohen et al., *supra* note 52, at 52.

133. Jipping, *supra* note 131.

return fleeing fugitives.”¹³⁴ The memorandum also deplored the shield laws for undermining the interstate cooperation that “has been the norm for more than two centuries.”¹³⁵ The memorandum argues that shield laws conflict with the widespread adoption of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings and the Interstate Depositions and Discovery Act, among other laws facilitating interstate cooperation in criminal and civil matters.¹³⁶

Interstate comity and cooperation are venerable, long-held ideals in the American tradition.¹³⁷ Comity mediates horizontal federalism—the relationship between states.¹³⁸ As the Supreme Court explained in 1839:

The intimate union of these states, as members of the same great political family; the deep and vital interests which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, and friendship, and kindness towards one another, than we should be authorized to presume between foreign nations.¹³⁹

Progress in interstate comity and cooperation in evidence-gathering, achieved through adoption of uniform acts, are usually viewed as normative goods.¹⁴⁰ For example, the Supreme Court praised the widespread adoption by states of the Uniform Law to Secure the Attendance of Witnesses, writing:

The Constitution did not purport to exhaust imagination and resourcefulness in devising fruitful interstate relationships. It is not to be construed to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual States with a view to increasing harmony within the federalism created by the Constitution. Far from being divisive, this legislation is a catalyst of cohesion. It is within the unrestricted area of action left to the States by the Constitution.¹⁴¹

Comity is largely a pragmatic principle of mutual respect between states rather than a binding rule, beyond the minimum constitutional

134. *Id.* at 1 (quoting U.S. CONST. art. IV, §§ 1–2).

135. *Id.*

136. *Id.* at 10.

137. *See, e.g., Nevada v. Hall*, 440 U.S. 410, 419 (1979), *overruled on other grounds by*, *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230 (2019) (discussing “prevailing notions of comity” at the time of the framing of the U.S. Constitution).

138. *See* Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 568 (2008) (discussing comity principles in light of horizontal federalism).

139. *Bank of Augusta v. Earle*, 38 U.S. 519, 590 (1839).

140. *See, e.g., People of State of N. Y. v. O’Neill*, 359 U.S. 1, 5–6 (1959) (praising uniform act in forging interstate relationships and increasing harmony and cohesion).

141. *Id.* at 6.

provisions of fugitive extradition and Full Faith and Credit discussed in Part I.¹⁴² Even while waxing lyrical about comity, the Court recognized that the aspiration of comity is not a rigid rule when states have conflicting interests: “And when (as without doubt must occasionally happen) the interest or policy of any state requires it to restrict the rule, it has but to declare its will, and the legal presumption is at once at an end.”¹⁴³ As the Supreme Court explained in a 1900 case:

Comity is not a rule of law, but one of practice, convenience, and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. But its obligation is not imperative. If it were, the indiscreet action of one court might become a precedent, increasing in weight with each successive adjudication, until the whole country was tied down to an unsound principle. Comity persuades; but it does not command.¹⁴⁴

Thus, comity is not an absolute, nor a straitjacket. While some aspects of interstate comity are embedded in the Constitution, the requirements are limited.¹⁴⁵ The Extradition Clause by its plain text only applies to cases involving a fugitive who fled from the charging state—not to someone like Dr. Carpenter who offered services while in a free state.¹⁴⁶ Moreover, states need not give full faith and credit to another state’s criminal laws, penal judgments, or in other contexts where a state has strong public policy reasons to decline to recognize another state’s judgment or laws.¹⁴⁷

B. The Anti-Freedom Taint of Comity Claims in American History

The principle of comity also bears a taint in American history that warrants caution. Judicial ambivalence to claims of comity in American jurisprudence is particularly striking in cases involving enslaved peoples. In the 1841 case of *The Amistad*,¹⁴⁸ for example, the Supreme Court

142. See discussion *supra* notes 57–61, 93–105; see also, e.g., Erbsen, *supra* note 138, at 568 (“A fascinating aspect of horizontal federalism jurisprudence is that comity rules generally do not exist. The Supreme Court cites interstate comity as an ideal, but not as a judicially enforceable mechanism for denying state power in circumstances where capacity exists free from constraint and central control.”).

143. *Earle*, 38 U.S. at 590.

144. *Mast, Foos & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 488 (1900).

145. See *supra* section I.A.

146. *Id.*

147. See *supra* section I.B.

148. 40 U.S. 518 (1841).

declined to intervene to return fugitive enslaved peoples to Spanish claimants, writing:

The question of the surrender of fugitive slaves to a foreign claimant, if the right exists at all, is left to the comity of the states which tolerate slavery. The government of the United States has nothing to do with it. . . . It may comport with the interest or feelings of a slave state to surrender a fugitive slave to a foreigner, or at least to expel him from their borders. But the people of New England, except so far as they are bound by the compact, would cherish and protect him.¹⁴⁹

The Court's usage of the term comity in *The Amistad* is particularly striking because it illuminates the stark moral, normative, and legal divisions within the United States and illustrates how states that enslave people have more in common with foreign enslaving nations than other states within the Union.¹⁵⁰ *The Amistad* shows that even in the nation's early days and jurisprudence, states had deep moral and legal divides between freedom and punishment that counseled against binding states to the most punitive and restrictive approach.

A Supreme Court decision issued at the brink of the American Civil War illuminated the profound concern over forcing states to be complicit in the punitive and regressive regimes of other states to which they have moral objections.¹⁵¹ *Commonwealth of Kentucky v. Dennison*¹⁵² involved "Willis Lago, free man of color," charged by Kentucky with the "crime of assisting a slave to escape."¹⁵³ Kentucky demanded that Ohio extradite Lago.¹⁵⁴ The Governor of Ohio refused to do so.¹⁵⁵ Offering legal grounds for declining, the Attorney General of Ohio explained there was no obligation to extradite on the basis of conduct that was not a crime in Ohio, "nor affecting the public safety, nor regarded as *malum in se* by the general judgment and conscience of civilized nations."¹⁵⁶

149. *United States v. The Amistad*, 40 U.S. 518, 551–52 (1841).

150. *See id.* at 524–26 (discussing claim by the Spanish minister for return of enslaved persons aboard a Spanish vessel as "the property of Spanish subjects" and noting the "slave trade between the coast of Africa and the island of Cuba").

151. *See Kentucky v. Dennison*, 65 U.S. 66, 69 (1860), *overruled by*, *Puerto Rico v. Branstad*, 483 U.S. 219, 220 (1987).

152. 65 U.S. 66 (1860).

153. *Id.* at 67.

154. *Id.*

155. *Id.*

156. *Id.* at 68–69.

Chief Justice Roger B. Taney—notorious for his authorship of *Dred Scott v. Sandford*¹⁵⁷—also authored the opinion in *Kentucky v. Dennison*.¹⁵⁸ Chief Justice Taney came from a family that owned enslaved persons for generations and became a fervent believer that states had the right to perpetuate the institution of enslaving people.¹⁵⁹ In *Dred Scott v. Sandford*, he infamously ruled that African-Americans, free or enslaved, were not citizens of the United States, not included in the Constitution’s promise that “all men are created equal,” and “had no rights which the white man was bound to respect.”¹⁶⁰ The decision is widely considered the worst decision ever issued by the Supreme Court—despite several serious contenders for the atrocious title—and a terrible stain on the nation’s jurisprudence.¹⁶¹ The notorious Confederacy sympathizer also ruled that Congress could not prohibit slavery in the federal territories and enslaved persons in the territories could not become free.¹⁶²

Deciding *Kentucky v. Dennison* three years after *Dred Scott*, Chief Justice Taney rejected Ohio’s argument that the Constitution did not obligate it to extradite a free person for rescuing an enslaved person though such conduct was no crime in Ohio.¹⁶³ He acknowledged that:

[I]n the early days of the Government, Congress relied with confidence upon the co-operation and support of the States, when exercising the legitimate powers of the General Government, and were accustomed to receive it, upon principles of comity, and from a sense of mutual and common interest, where no such duty was imposed by the Constitution.¹⁶⁴

He noted that “the co-operation of the States was a matter of comity, which the several sovereignties extended to one another for their mutual benefit” and “not regarded by either party as an obligation imposed by the

157. 60 U.S. 393 (1857).

158. *Id.* at 95; see also *Dred Scott v. Sandford*, 60 U.S. 393, 399 (1857), *superseded by*, U.S. CONST. amends. XIII, XIV (1868) (authored by Chief Justice Taney).

159. Timothy S. Huebner, “*The Unjust Judge*”: Roger B. Taney, the Slave Power, and the Meaning of Emancipation, 40 J. SUP. CT. HIST. 249, 249–50, 259 (2015); Timothy S. Huebner, *Roger V. Taney and the Slavery Issue: Looking Beyond—and Before—Dred Scott*, 97 J. AM. HIST. 17, 18, 34–37 (2010).

160. *Dred Scott*, 60 U.S. at 407, 410, 451–53.

161. See, e.g., Mark A. Graber, *Desperately Ducking Slavery: Dred Scott and Contemporary Constitutional Theory*, 14 CONST. COMMENT. 271, 271–72 (1997) (collecting commentary on how *Dred Scott* is the “worst ever,” “worst atrocity” and “the most disastrous opinion the Supreme Court has ever issued”).

162. *Dred Scott*, 60 U.S. at 396–97 (1857); see also Huebner, *supra* note 159, at 254 (noting that Chief Justice Taney “openly sympathized with the Confederacy”).

163. *Kentucky v. Dennison*, 65 U.S. 66, 100–01 (1861), *overruled by*, *Puerto Rico v. Branstad*, 483 U.S. 219, 220 (1987).

164. *Dennison*, 65 U.S. at 108.

Constitution.”¹⁶⁵ Rather, the states could decide whether to cooperate “as might best comport with their own sense of justice, and their own interest and convenience.”¹⁶⁶ Yet Chief Justice Taney concluded that the duty to surrender Lago for rescuing an enslaved person was mandatory under the Constitution’s Fugitive Extradition Clause.¹⁶⁷ Chief Justice Taney’s condemnation of Ohio for refusing to surrender a free man to a slavery state was apparently largely expressive—because he also concluded that federal courts could not compel the Governor of Ohio to extradite.¹⁶⁸

More than 125 years later, the nation’s first African-American Supreme Court Justice Thurgood Marshall, writing for the majority, would overrule part of Chief Justice Taney’s holding in *Kentucky v. Dennison*.¹⁶⁹ Justice Marshall explained that *Dennison*’s conclusion that the federal government could not compel a state to perform by mandamus was a product of its perilous times—1861—“facing the looming shadow of a Civil War.”¹⁷⁰ In modern times, federal courts could and do compel states to perform.¹⁷¹ In Justice Marshall’s times, federal courts were compelling recalcitrant state courts to raise the standard of justice and barring states from civil rights violations.¹⁷² As a civil rights attorney before becoming a Supreme Court Justice, Thurgood Marshall filed mandamus actions to desegregate schools.¹⁷³ Indeed, as an example of how modern federal courts compel recalcitrant states to perform, Justice Marshall cited the school desegregation cases *Brown v. Board of Education*¹⁷⁴ and *Green v. New Kent County School Board*.¹⁷⁵

History’s lesson is to view with caution claims of comity that would coerce states into collaborating with punitive restrictive regimes. Comity is not an unqualified normative good. If interpreted too rigidly, comity would bind states aiming for a higher standard of freedom to the lowest, most restrictive punitive approach. Not even the notorious Chief Justice Taney went so far as to compel the free state of Ohio to be

165. *Id.* at 109.

166. *Id.*

167. *Id.*

168. *Id.* at 109–10.

169. *Puerto Rico v. Branstad*, 483 U.S. 219, 219–20 (1987).

170. *Id.* at 227–28.

171. *Id.* at 228.

172. *See, e.g.*, John K. Pierre, *Brown v. Board & the Quest for Desegregated Public Education in East Baton Rouge Parish*, 51 LA. B.J. 414, 415 (2004) (discussing how as a civil rights attorney, Thurgood Marshall and colleagues requested mandamus to desegregate a Louisiana law school).

173. *Id.* at 415.

174. 347 U.S. 483 (1954).

175. *Puerto Rico v. Branstad*, 483 U.S. 219, 229 (1987) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Green v. New Kent Cnty. Sch. Bd.*, 391 U.S. 430 (1968)).

complicit in a slavery state's repressive regime of criminalizing people who helped rescue enslaved persons.¹⁷⁶ While there may be a concern that shield laws refusing to cooperate may "intensify interstate conflict,"¹⁷⁷ history teaches that being complicit in punitive regimes that are morally objectionable to a state with a higher vision of freedom also risks severe interstate conflict.¹⁷⁸ Shield laws are an important innovation in a time of fierce national divides in rights protection and punishment, preserving the flexibility and freedoms of horizontal federalism.

III. THE FUTURE OF SHIELD LAWS AND HUNTS FOR HUMANS

Since the passage of shield laws after the demise of *Roe v. Wade* in 2022, political fractures in the nation have grown even more extreme.¹⁷⁹ In his second administration, President Donald Trump has intensified aggressive hunts for undocumented people, ordering masked Immigration and Customs Enforcement (ICE) agents to "deliver[] the single largest Mass Deportation Program in History."¹⁸⁰ Impelled by demands to meet massive deportation quotas, the federal government is transgressing norms and safeguards in the search for undocumented persons to

176. See discussion *supra* notes 163–168.

177. Cohen et al., *supra* note 52, at 52.

178. See, e.g., Alejandra Caraballo, Cynthia Conti-Cook, Yveka Pierre, Michelle McGrath & Hillary Aarons, *Extradition in Post-Roe America*, 26 CUNY L. REV. 1, 29 (2023) (discussing interstate conflicts over extradition just before the U.S. Civil War); Stephen R. McAllister, *A Marbury v. Madison Moment on the Eve of the Civil War: Chief Justice Roger Taney and the Kentucky v. Dennison Case*, 14 GREEN BAG 2d 405, 406 (2011) (discussing the precarious position of the states and the United States Supreme Court in deciding *Kentucky v. Dennison* "only ten days after President Abraham Lincoln's inauguration and less than a month before Confederate forces fired on Fort Sumter, one of the most volatile periods in both the Court's and the Country's history").

179. Daniel A Cox & Ruy Teixeira, *The 2024 Presidential Election: Evolving Political Coalitions and Familiar Partisan Divisions*, SURV. CTR. AM. LIFE (June 29, 2023), <https://www.americansurveycenter.org/research/the-2024-presidential-election-evolving-political-coalitions-and-familiar-partisan-divisions/> [<https://perma.cc/KNJ7-CNM2>].

180. Samantha Waldenberg & Priscilla Alvarez, *Trump Orders ICE Officers to Expand Deportation Efforts in Democratic Cities*, CNN (June 16, 2025, at 11:08 AM ET), <https://www.cnn.com/2025/06/16/politics/trump-immigration-democratic-deportation-efforts> [<https://perma.cc/5FAX-NCMQ>]; Leila Fadel, Adam Bearne, Barry Gordemer & H.J. Mai, *Masked Immigration Agents Are Spurring Fear and Confusion Across the U.S.*, NPR MORNING ED. (July 10, 2025, at 5:00 AM ET), <https://www.npr.org/2025/07/09/nx-s1-5440311/ice-raids-masked-agents> [<https://perma.cc/JNU2-KMNZ>]; Ray Sanchez & Allsha Ebrahimji, *Masked ICE Officers: The New Calling Card of the Trump Administration's Immigration Crackdown*, CNN (June 12, 2025), <https://www.cnn.com/us/ice-immigration-officers-face-masks> [<https://perma.cc/XG76-WFZV>].

deport.¹⁸¹ Emboldened states are pursuing aggressive investigations of abortion across state lines.¹⁸² This Part considers the potential expansion of shield laws to address new controversies, including the use of automated license plate reader (ALPR) data to investigate a Texas woman who self-administered an abortion, and to conduct immigration investigations.

In May 2025, the Sheriff's office in Johnson County, Texas, asked the company that supplies ALPRs to forty-nine states to search its databanks to find a woman who had self-administered an abortion.¹⁸³ The company, called Flock Safety, sells the plate-reading cameras and access to its centralized database to law enforcement agencies in thousands of U.S. cities.¹⁸⁴ Mounted ubiquitously on streetlights, overpasses, poles, and police vehicles throughout the nation, the ALPRs are a powerful investigative tool for tracking people's movements.¹⁸⁵ Law enforcement agencies that subscribe to Flock's national search network—including the Texas sheriff's office—can use the company's Talon platform to hunt through data pooled from Flock's more than 83,000 cameras across the United States, including states with abortion shield laws like Washington state and Illinois.¹⁸⁶ The data includes the license plate number, vehicle details, and movement information, enabling investigators to track a

181. Luke Barr & Julia Reinstein, *Trump Authorizes ICE to Target Courthouses, Schools and Churches*, ABC NEWS (Jan. 22, 2025), <https://abcnews.go.com/Politics/trump-authorizes-ice-target-schools-churches/story?id=117954409> [<https://perma.cc/E9P9-ALRN>].

182. Pam Belluck & Emily Cochrane, *New York Doctor Indicted in Louisiana for Sending Abortion Pills There*, N.Y. TIMES (Jan. 31, 2025), <https://www.nytimes.com/2025/01/31/health/abortion-louisiana-new-york-prosecution-shield-law.html> [<https://perma.cc/AN8X-GLUK>]; John Marcus, *Texas Police Used Nationwide License Plate Reader Network to Track Woman Who Had Self-Managed Abortion*, THE INDEPENDENT (May 29, 2025), <https://www.the-independent.com/news/world/americas/crime/texas-abortion-license-plate-camera-b2760411.html> [<https://perma.cc/4A2Q-YQQN>].

183. Giannoulas, *supra* note 23; Tom Ackerman, *Official: Texas Authorities Illegally Access Illinois Data to Locate Woman Who Had Abortion*, STATE JOURNAL-REGISTER (June 12, 2025), <https://abc7chicago.com/post/secretary-state-alexi-giannoulas-speak-reports-texas-police-illegally-accessed-illinois-license-plate-reader-data/16732423/> [<https://perma.cc/PRF9-RS7L>].

184. *License Plate Recognition Cameras*, FLOCK SAFETY, <https://www.flocksafety.com/ebooks/license-plate-reader-cameras-overview> [<https://perma.cc/ZY6C-PSB3>].

185. Johana Bhuiyan, *How Expanding Web of License Plate Readers Could Be 'Weaponized' Against Abortion*, THE GUARDIAN (Oct. 6, 2022), <https://www.theguardian.com/world/2022/oct/06/how-expanding-web-of-license-plate-readers-could-be-weaponized-against-abortion> [<https://perma.cc/48VD-PD2M>].

186. Marcus, *supra* note 182.

person's movements across state lines—even potentially to an out-of-state clinic to find care banned in their home state.¹⁸⁷

When news broke that Texas had used ALPR data, including data from shield states Illinois and Washington, to track the Texas woman who self-administered an abortion, Illinois had a stronger basis to object than Washington state.¹⁸⁸ Illinois was the first state in the nation to adopt restrictions against sharing ALPR information to interfere with a person's right to choose health care services or to investigate a person's immigration status.¹⁸⁹ The Illinois shield law provides: "Location information related to lawful health care and health records related to lawful health care are confidential and exempt from disclosure under the Freedom of Information Act."¹⁹⁰ Location information is defined as:

[P]recise location information that could be reasonably used to identify a person's attempt to acquire or receive lawful health care, including, but not limited to, records of the location of a person's license plate, records of the location of a cell phone or other device that tracks location, or records of observations of a person's location when the location is near a provider of lawful health care.¹⁹¹

Illinois further adopted prohibitions against using ALPR data to search for people exercising the right to health care lawful in the state, or for investigation or detention of people based on immigration status.¹⁹² The law provides that:

An ALPR user shall not sell, share, allow access to, or transfer ALPR information to any state or local jurisdiction for the purpose of investigating or enforcing a law that: (1) denies or interferes with a person's right to choose or obtain reproductive health care services or any lawful health care services as defined by the Lawful Health Care Activity Act; or (2) permits the

187. *Who's Watching Washington: Dangers of Automated License Plate Readers to Immigrant and Reproductive Rights in Washington State*, UNIV. WASH. (Dec. 7, 2022), <https://jsis.washington.edu/humanrights/2022/12/07/whos-watching-washington/> [<https://perma.cc/UJP4-D5BF>]; Bhuiyan, *supra* note 185.

188. *See* Giannoulas, *supra* note 23.

189. H.B. 5239, 103d Gen. Assem. § 28-11 (Il. 2024) (codified at 735 ILL. COMP. STAT. 40/28-11 (2025)); H.B. 3326, 103d Gen. Assem., § 2-13011 2024 (codified at 625 ILL. COMP. STAT. 5/2-130 (2025)); *see also* Giannoulas, *supra* note 23 (explaining that the location information protection was "first-in-the-nation legislation").

190. H.B. 5239, 103d Gen. Assem., § 28-11 (Il. 2024 (codified at 735 ILL. COMP. STAT. 40/28-11 (2025))).

191. *Id.*

192. H.B. 3326, 103d Gen. Assem., § 2-13011 (Il. 2024) (codified at 625 ILL. COMP. STAT. 5/2-130 (2025)).

detention or investigation of a person based on the person's immigration status.¹⁹³

The Illinois law also prohibits sharing ALPR information with an out-of-state agency unless that agency expressly affirms that the information will not be used to deny or interfere with the right to obtain care nor to conduct immigration investigations or detentions.¹⁹⁴

The Illinois protections for ALPR data empowered the state to order that Flock Safety “immediately shut off access for the out-of-state authorities illegally using the system.”¹⁹⁵ The Illinois Secretary of State also asked the state Attorney General to investigate the illegal release of the state's data to Texas law enforcement investigating the self-administered abortion.¹⁹⁶ The state's investigation into the potential violation of its ALPR laws revealed that a local Illinois jurisdiction, Mount Prospect, illegally shared data with Texas authorities despite notice that the investigation pertained to abortion.¹⁹⁷ The investigation also uncovered that Mount Prospect permitted data access for 262 immigration-related investigations in just the first few months of 2025.¹⁹⁸

The legal protections surrounding ALPR data—backed by potential sanctions, including shutoff of data access, cancelled contracts, and denial of grants to localities like Mount Prospect that share data—can force reason-giving and reforms.¹⁹⁹ Flock claimed that it allowed Texas law enforcement to use its ALPR database to search for the woman who self-administered abortion because her family asked for help saying she ran away.²⁰⁰ Despite the rationalization for tracking the woman, the company ended access to the Illinois network of ALPR data for at least forty-six out-of-state agencies.²⁰¹ Mount Prospect claimed that its data-sharing was

193. *Id.* § 2-13011(b)(1)–(2) (codified at 625 ILL. COMP. STAT. 5/2-130(b)(1)–(2) (2025)).

194. H.B. 3326, 103d Gen. Assemb., § 2-13011(c) Ill. 2024 (codified at 625 ILL. COMP. STAT. 5/2-130(c) (2025)).

195. Giannoulis, *supra* note 23.

196. *Id.*

197. Mitchell Armentrout, *Mount Prospect Police Probed for Sharing Illinois License Plate Reader Data in Texas Abortion Case*, CHI. SUN-TIMES (June 12, 2025, at 6:05 PM PDT), <https://chicago.suntimes.com/abortion/2025/06/12/license-plate-readers-illinois-abortion-immigration> [<https://perma.cc/XD3X-S2YT>].

198. *Id.*

199. *Id.*

200. Tom Ackerman, *CEO of Law Enforcement Tech Speaks Up after Alleged Data Grab in Illinois*, STATE JOURNAL-REGISTER (July 7, 2025, at 8:10 AM CT), <https://www.sj-r.com/story/news/state/2025/07/07/flock-safety-ceo-speaks-up-after-alleged-data-grab-in-illinois/84384357007/> [<https://perma.cc/TJ3J-D6ZF>].

201. Armentrout, *supra* note 197.

“inadvertent,” and it remedied the error by opting out of Flock’s “national lookup” program that apparently opened the door to data access.²⁰²

In contrast to the remedies that Illinois pursued for the violations of its protections surrounding ALPR data, Washington state, like many other shield states, lacks such a protection. As a leader in data privacy and rights protections, Washington state can enact similar protections against the use of ALPR data to hunt people travelling to the state to pursue reproductive rights or gender-affirming care, or for immigration investigations. The first-in-nation Illinois legislation can offer an adaptable template for other states.²⁰³ This protection would complement the array of safeguards in Washington’s Shield Law and the state’s Keep Washington Working Act and Courts Open to All Act, which prohibit local collaboration with federal immigration investigations.²⁰⁴ Revelations that federal agencies are accessing local ALPR data amid pressure to ramp up mass deportations of undocumented immigrants make such reforms timely and important.²⁰⁵

CONCLUSION

In a nation increasingly divided over even the baseline question of what is a crime or a protected freedom, shield laws challenge the notion of interstate comity and cooperation as a normative good.²⁰⁶ Disrupting the tidy advance toward interstate cooperation and comity in obtaining evidence and people across borders, shield laws seek to safeguard freedoms recognized within the state but sanctioned in others.²⁰⁷ This Article offers a taxonomy of the three most prevalent clusters of protections in state shield laws and advances the normative case for

202. *Id.*

203. *See supra* notes 187–192.

204. S.B. 5497, 66th Leg., Reg. Sess. (Wash. 2019) (codified at WASH. REV. CODE §§ 10.93.160, 43.17.425 (2025)); H.B. 2567, 67th Leg., Reg. Sess. (Wash. 2020) (codified at WASH. REV. CODE §§ 2.28.300–340 (2025)).

205. *See, e.g.,* Sabrina Moreno, *Richmond Police Ban Feds from Tracking Immigrants’ License Plate Data*, AXIOS RICHMOND (July 9, 2025), <https://www.axios.com/local/richmond/2025/07/09/immigrant-license-plate-tracking-richmond-police> (discussing revelations of federal agency access of local police data for immigration investigations) (last visited Oct. 15, 2025); Kunle Falayi, *The Feds’ Hidden Immigration Weapon: Virginia’s Surveillance Network*, WCVB NEWS (VA. PUB. MEDIA & NAT’L PUB. RADIO) (July 7, 2025), <https://www.vpm.org/news/2025-07-07/vcij-immigration-enforcement-flock-safety-license-plate-readers-poggenklass> (last visited Nov. 29, 2025) (discussing at least five Virginia counties sharing Flock data for immigration enforcement).

206. *See supra* notes 19–28, Part II.

207. *See supra* Part I.

resistance by shield law.²⁰⁸ Drawing on historical examples, the Article shows that comity is neither a rigid straitjacket nor always a normative good, as illustrated by comity claims brought by jurisdictions seeking to protect the institution of enslavement.²⁰⁹

States and localities have a vital role to play in advancing a higher vision of protections in times of national turmoil and erosion in prior levels of constitutional rights.²¹⁰ Especially in a time of increasingly aggressive hunts for humans and state resistance to overreaching by other states and the federal government, shield laws are an important strategy to protect imperiled freedoms.²¹¹ The Article also proposes expanding protections to new challenges, such as the use of aggregated automated license plate reader (ALPR) data to hunt for people pursuing reproductive rights or health care in freedom-protecting jurisdictions or in immigration investigations.²¹² In an era of extreme jurisdictional divides in rights and punishment, the workaday operation of evidence-gathering rules, norms, and databases can become sites of battles for freedoms and the terrain of resistance to overly aggressive crackdowns.²¹³

208. *See supra* Part I.

209. *See supra* section II.B.

210. *See supra* section II.B, Part III.

211. *See supra* Part III.

212. *See supra* Part III.

213. *See supra* Parts I, III.