

# REPRODUCTIVE RIGHTS ON CAMPUS

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## ABSTRACT

Limited access to abortion care diminishes students' health, autonomy, and freedom, values that universities claim as foundational. Yet universities are not without legal agency to buffer the internal impact of these laws. This Article presents data on how universities are responding to *Dobbs* in nine states, some supportive of abortion access and some restrictive. In asserting their power of interpretation and legal design, this Article conceives of universities as private legal systems that may contest law at the juncture of federal and state law. Specifically, the Article explores how universities interpret the breadth of abortion bans, legislative claims regarding contraception as an abortifacient, and Title IX's pregnancy-related protections. The Article then contemplates universities' design of student and employee health insurance plans to extend coverage to abortion care; it also examines how universities manage the privacy of student reproductive health information given that FERPA and HIPAA leave much exposed. The data reveals that universities in the same states, laboring under the same laws, internalize abortion restrictions in very different ways. Law alone is not dispositive, but the extent to which universities recognize and assert their role as a legal actor may determine the extent to which they push against state abortion bans.

## INTRODUCTION

On February 14, 2025, the Trump administration's Department of Education sent all universities a "Dear Colleague" letter, arguing that the Supreme Court's 2023 decision dismantling race-based preferences in college admissions extends to all DEI-related initiatives on campuses, including "administrative support," "graduation ceremonies," "training" and "all other aspects of student, academic, and campus life."<sup>1</sup> Neither the "Dear Colleague" letter, nor the executive order upon which it rests, alters decades of federal civil rights law to the

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1. Letter from Craig Trainor, Acting Assistant Sec'y for Civ. Rts., U.S. Dep't of Educ., to Colleagues (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf> (on file with the Syracuse Law Review). Since February 2025, the Trump administration's attacks on universities have become increasingly targeted and fierce, threatening specific universities in truncating billions in federal research dollars and other forms of support. *See e.g.*, Press Release, U.S. Gen. Serv. Admin., DOJ, HHS, ED and GSA announce initial cancellation of grants and contracts to Columbia University worth \$400 million (Mar. 7, 2025), <https://www.gsa.gov/about-us/newsroom/news-releases/doj-hhs-ed-and-gsa-announce-initial-cancellation-of-grants-and-contracts-03072025> (on file with the Syracuse Law Review).

contrary,<sup>2</sup> but pre-emptive obedience would contravene the core mission of many universities.<sup>3</sup> Universities can resist.

Resistance need not be in broad strokes—university resistance is often located in the micro-decisions at the intersection of federal regulation, state law or both. In analyzing two years of data chronicling universities' responses to *Dobbs*,<sup>4</sup> this Article explores how universities exercise their legal autonomy to contest and push back upon law that conflicts with community values. Universities interpret federal, state and local laws and regulations, shaping and refining law's contours and reach. Universities also have significant latitude to design systems and policies to implement law, and, in so doing, they become legal design engineers that harness ambiguity, loopholes, and any other openings that the law presents. The general counsel becomes the key protagonist.

While most universities market themselves as safe and healthy environments for students,<sup>5</sup> abortion bans constrain universities' ability to deliver on this promise. Women populate a disproportionately high percentage of university seats,<sup>6</sup> and the majority of students at

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2. See generally Memorandum from Samuel Bagenstos et al., to Colleagues, University Offices of General Counsel and University Leaders (Feb. 20, 2025), [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2025\\_docs/ogc\\_memo\\_re\\_trump\\_dei\\_and\\_sf.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2025_docs/ogc_memo_re_trump_dei_and_sf.pdf) (on file with the Syracuse Law Review).

3. See e.g., *About TU*, UNIV. OF TULSA, <https://utulsa.edu/about/#:~:text=Our%20Mission,our%20community%2C%20and%20our%20world> (last visited on Feb. 26, 2025) (“Guided by our commitment to diversity, equity, and service, we prepare individuals to make meaningful contributions to our campus, our community, and our world”) (on file with the Syracuse Law Review); *About the UW*, UNIV. OF WASH. <https://www.washington.edu/about/visionvalues/> (last visited on Feb. 26, 2025) (“[T]he University of Washington educates a diverse student body to become responsible global citizens and future leaders through a challenging learning environment informed by cutting-edge scholarship”) (on file with the Syracuse Law Review).

4. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

5. See generally Vimal Patel, *The New ‘In Loco Parentis’*, THE CHRON. OF HIGHER EDUC. (Feb. 17, 2019), <https://www.chronicle.com/article/why-colleges-are-keeping-a-closer-eye-on-their-students-lives/> (on file with the Syracuse Law Review); see also Peter F. Lake, *Rise of Duty and Fall of In Loco Parentis and Other Protective Tort Doctrines in Higher Education Law*, 64 MO. L. REV. 1 (1999) (on file with the Syracuse Law Review) (discussing universities marketing themselves as safe and healthy environments).

6. Approximately fifty-six percent of students enrolled in four year higher education institutions identify as female. See *Current Term Enrollment Estimates: Spring 2024*, NAT’L STUDENT CLEARINGHOUSE RSCH. CTR. (Jan. 23, 2025), <https://public.tableau.com/app/profile/researchcenter/viz/CTEESpring2024Report/CTEES24> (on file with the Syracuse Law Review).

residential universities are sexually active.<sup>7</sup> Given the numbers, unintended pregnancy on campus will inevitably happen with some regularity.<sup>8</sup> Yet pregnancy has become an increasingly dangerous proposition in states that have restricted access to abortion care.<sup>9</sup> These states have among the worst maternal health outcomes in the country.<sup>10</sup> And the health crisis will only grow as doctors flee ban states—and as newly-minted doctors opt out of ban state residencies—on account of vague criminal abortion bans that target “providers.”<sup>11</sup>

Since *Dobbs*,<sup>12</sup> universities have had time to exert their power as legal actors. This Article examines how private universities have reacted in states that have protected abortion access and in states that have strict bans on abortion care. Part I locates this Article within the legal pluralism tradition and explains why it is a useful lens to conceive of the post-*Roe* university. Part II describes the parameters and methodology of data collection and presents an overview of the data, which reveals that official law—in this case, state abortion legislation—does not alone determine the university’s reproductive health posture and profile. How the university refracts and internalizes law is the heart of this Article. Part III looks deeply at discreet touchpoints with state abortion bans and federal regulations to see whether and how the university: 1) interprets ambiguity not merely within abortion bans but also within federal regulations, such as Title IX’s prohibition of discrimination against women; and 2) structures systems and policies to

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7. See AM. COLL. HEALTH ASS’N, UNDERGRADUATE STUDENT REFERENCE GROUP EXECUTIVE SUMMARY (2024).

8. See *id.*

9. See generally Lizzie Presser et al., *Texas Banned Abortion. Then Sepsis Rates Soared*, PROPUBLICA (Feb. 20, 2025, 5:00 AM), <https://www.propublica.org/article/texas-abortion-ban-sepsis-maternal-mortality-analysis> (on file with the Syracuse Law Review).

10. See generally MARCH OF DIMES, 2024 MARCH OF DIMES REPORT CARD: THE STATE OF MATERNAL HEALTH AND INFANT HEALTH FOR AMERICAN FAMILIES (Feb. 5, 2025), [https://www.marchofdimes.org/sites/default/files/2024-11/2024\\_MOD\\_Report\\_Card\\_and\\_Policy\\_Actions\\_Booklet\\_V1.pdf](https://www.marchofdimes.org/sites/default/files/2024-11/2024_MOD_Report_Card_and_Policy_Actions_Booklet_V1.pdf) (on file with the Syracuse Law Review); see also Sarah R. Collins et al., *2024 State Scorecard on Women’s Health and Reproductive Care*, COMMONWEALTH FUND (July 18, 2024), <https://www.commonwealthfund.org/publications/scorecard/2024/jul/2024-state-scorecard-womens-health-and-reproductive-care> (on file with the Syracuse Law Review).

11. See COLLINS ET AL., *supra* note 10. See also Kendal Orgera & Atul Grover, *States With Abortion Bans See Continued Decrease in U.S. MD Senior Residency Applicants*, ASS’N OF AM. MED. COLL. RSCH. & ACTION INST. (May 9, 2024), <https://www.aamc.org/about-us/mission-areas/health-care/post-dobbs-2024> (on file with the Syracuse Law Review).

12. See *Dobbs*, 597 U.S. at 215.

circumvent state insurance law and to protect privacy of student health records that federal and state law otherwise leave exposed.

This Article concludes that even in the face of state abortion bans that appear to be unyielding, resistance is possible, yet highly dependent on the university's self-awareness of the lawmaking tools at its disposal. Universities are far from powerless to push against law that clashes with important university values, such as health, autonomy and freedom. Those universities that embrace their role as legal actor—that view the intersections of legal systems as ripe opportunities to contest law, to exert pressure on law that conflicts with community values and to amplify law that reinforces them—create environments that best support their community's reproductive health.

### I. THE LEGAL PLURALISM LENS

Universities wield power to contest law that conflicts with community values, to maneuver within discretionary windows, and to create private law that co-exists with other legal systems. These insights find conceptual roots in legal pluralism, although legal pluralists have not yet turned to the university as a locus of descriptive and normative work. This Article importantly adds to the literature and beckons study of the university within a legal pluralism framework.

Legal pluralism fundamentally celebrates multiplicity. At its core, legal pluralism is “a situation in which two or more legal systems coexist”,<sup>13</sup> creating a patchwork of autonomous or semi-autonomous lawmaking communities that interact in *juris* generative ways.<sup>14</sup> In the United States, federalism is one familiar form of legal pluralism, as state law and federal law co-exist in any state. Legal pluralists also focus on sub-state actors, particularly on municipalities that deploy tools within their arsenal to develop local law and norms that push against federal and state law.<sup>15</sup> Yet this nesting of different levels of

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13. Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC'Y REV. 869, 870 (1988).

14. See Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 L. & SOC'Y. REV. 719 (1973).

15. Judith Resnik importantly conceptualized sub-state actors as important “points of entry” for women's rights norms and policy that had either languished or been rejected at the federal level. See Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1639–47 (2006) (discussing municipal efforts to import norms from the Convention on the Elimination of Discrimination Against Women and commit to international conventions' greenhouse gas reduction targets in spite of the failure to ratify the former and the US government's rejection of the later). In recent years, sanctuary cities implemented a cocktail of *de jure* policies and *de facto* practices to mitigate the harsh bite of federal law: 1) interpretation of federal immigration law

government—of official legal systems—represents only a subset of what legal pluralists study.

For legal pluralists, “law” does not have a singular meaning, and neither the state nor state actors have a monopoly on “law.”<sup>16</sup> Legal pluralists define law—and thus a legal system—broadly, focusing not merely on government as a source of law but also on the norms, rules, and practices of discrete legal systems that shape behavior and often create tension with state-based law.<sup>17</sup> Thus, non-state actors can play a lead role in legal pluralism’s narratives. Civil society, advocacy organizations, and non-governmental organizations drive shifts—some large and some small—in the law.<sup>18</sup> The private sector—corporations, trade associations and standard-setting bodies—also shape, and even make, law.<sup>19</sup>

The interplay between overlapping legal systems, and the attendant tension between state-based law and more localized, often informal, norms are of particular interest to legal pluralists because the contested boundaries can be powerfully generative of legal norms.<sup>20</sup> Consequently, legal pluralists tell thick stories at the intersection of legal systems. Historically, legal pluralists drew heavily from

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as *permitting* but not *requiring* cooperation with federal authorities; 2) municipal ordinances that effectively separate local law enforcement activity from federal immigration law enforcement; 3) systemic challenge to legality of federal law; and 4) soft policies that enhanced immigrant communities’ day-to-day sense of safety and belonging. See Christopher N. Lasch et al., *Understanding “Sanctuary Cities”*, 59 BOS. COLL. L. REV. 1703, 1736–52 (2018). See also *Sanctuary Policies: An Overview*, AM. IMMIGR. COUNS. (Feb. 21, 2025), <https://www.americanimmigrationcouncil.org/fact-sheet/sanctuary-policies-overview/> (on file with the Syracuse Law Review).

16. See PAUL SCHIFF BERMAN, *Understanding Global Legal Pluralism: From Local to Global, from Descriptive to Normative*, in THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM 11 (Paul Schiff Berman ed., 2020).

17. See John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLURALISM 1, 5 (1986).

18. In the context of reproductive rights and justice, there are many non-governmental organizations that have shaped the law through litigation, policy work, public education, and limited lobbying. See, e.g., CTR. FOR REPROD. RTS., <https://reproductiverights.org> (on file with Syracuse Law Review) (last visited Aug. 30, 2025); PLANNED PARENTHOOD, <https://www.plannedparenthood.org> (on file with Syracuse Law Review) (last visited Aug. 30, 2025); AM. CIV. LIBERTIES UNION, <https://www.aclu.org> (on file with Syracuse Law Review) (last visited Aug. 30, 2025).

19. See, e.g., Janet Koven Levit, *A Bottom-Up Approach to International Law-making: The Tale of Three Trade Finance Instruments*, 30 YALE J. INT’L L. 125 (2005).

20. See generally BERMAN, *supra* note 16; see also Paul Schiff Berman, *The New Legal Pluralism*, 5 ANN. REV. L. & SOC. SCI. 225 (2009) (a review of legal pluralism literature).

anthropology and focused on the ways that “indigenous” law and norms withstand pressure from the onslaught of colonial law.<sup>21</sup> Subsequently, legal pluralists shifted their scholarly gaze from colonialism to industrialization, focusing on the relationship between dominant groups, often those who hold a monopoly on government, and subordinate groups, for instance religious, ethnic and cultural minorities.<sup>22</sup>

More recently, a growing cadre of “global legal pluralists” analyzes the international legal landscape as a dynamic, multidimensional patchwork of vertical, horizontal, and even diagonal relationships between and among disparate legal communities.<sup>23</sup> Legal pluralism offers a particularly attractive lens for transnationalists because it dodges the otherwise vexing threshold question—is international law actually law,<sup>24</sup> which historically presented a distracting roadblock to conceptualizing on-the-ground behavior.<sup>25</sup> Those who study cyberspace and the internet have also found legal pluralism to be a useful descriptive lens.<sup>26</sup>

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21. See, e.g., Sally Engle Merry, *An Anthropological Perspective on Legal Pluralism*, in THE OXFORD HANDBOOK OF GLOB. LEGAL PLURALISM 169, 172–73 (Paul Schiff Berman ed. 2020); SALLY ENGLE MERRY, COLONIZING HAWAII: THE CULTURAL POWER OF LAW 18 (2000); Leopold Pospisil, *Modern and Traditional Administration of Justice in New Guinea*, 19 J. LEGAL PLURALISM 93, 98 (1981); Walter Otto Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the “Gypsies”*, 103 YALE L.J. 323, 333 (1993) (noting persistence of “Roma” gypsy law within official “host” societies).

22. See e.g., Robert M. Cover, *The Supreme Court 1982 Term*, 97 HARV. L. REV. 4 (1983); Gunther Teubner, *The Two Faces of Janus: Rethinking Legal Pluralism*, 13 CARDOZO L. REV. 1443 (1992); Jaclyn L. Neo, *State Legal Pluralism and Religious Courts: Semi-Autonomy and Jurisdictional Allocations in Pluri-Legal Arrangements*, in THE OXFORD HANDBOOK OF GLOBAL LEGAL PLURALISM (Paul Schiff Berman ed. 2020); Peter J. Spiro, *Membership and Global Legal Pluralism*, in THE OXFORD HANDBOOK OF GLOB. LEGAL PLURALISM (Paul Schiff Berman ed. 2020).

23. See generally BERMAN, *supra* note 16. See also Paul Schiff Berman, *From International Law to Law and Globalization*, 43 COLUM. J. TRANSNAT’L L. 485, 487 (2005); Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002); Sally Engle Merry, *International Law and Sociolegal Scholarship: Toward a Spatial Global Legal Pluralism*, 41 STUD. L. POL. & SOC’Y 149, 161 (2008).

24. For a discussion of legal theory pertaining to the meaning of “law” on an international plane, see Janet Koven Levit, *Bottom-Up International Lawmaking: Reflections on the New Haven School of International Law*, 32 YALE J. INT’L L. 393, 396–98 (2007).

25. See BERMAN, *supra* note 16, at 13.

26. See Jennifer Daskal, *The Overlapping Web of Data, Territoriality, and Sovereignty*, in THE OXFORD HANDBOOK OF GLOB. LEGAL PLURALISM 954, 958 (Paul Schiff Berman ed. 2020).

Much post-*Dobbs* scholarship borrows from the legal pluralism tradition,<sup>27</sup> although often in the cloak of conflicts-of-law scholarship.<sup>28</sup> Whether examining the tension between federal law and state or local law;<sup>29</sup> the jurisdictional autonomy that Tribal Nations may exercise in the wake of *Dobbs*;<sup>30</sup> the clash of state laws that purportedly apply extraterritorially in other states;<sup>31</sup> the power of non-state actors—such as hospitals,<sup>32</sup> doctors,<sup>33</sup> employers,<sup>34</sup> data brokers,<sup>35</sup> websites supporting self-managed abortion,<sup>36</sup> private vigilantes<sup>37</sup>—in resisting or amplifying state law, these scholars deploy legal pluralism. They recognize that law will be made and shaped at the intersection of competing and reinforcing legal systems.

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27. See, e.g., Paul Schiff Berman et al., *Conflicts of Law and the Abortion War Between the States*, 172 U. PA. L. REV. 399 (2024).

28. See, e.g., David S. Cohen et al., *The New Abortion Battleground*, 123 COLUM. L. REV. 1 (2023).

29. See, e.g., David S. Cohen et al., *Abortion Pills*, 76 STAN. L. REV. 317, 376 (2024); Natasha Rappazzo, *Emergency Room to the Courtroom: Providing Abortion Care Under EMTALA and State Abortion Bans*, 128 DICK. L. REV. 325, 343 (2023); Kaitlin Ainsworth Caruso, *Abortion Localism and Preemption in a Post-Roe Era*, 27 LEWIS & CLARK L. REV. 585, 637 (2023); Patricia J. Zettler et al., *Mifepristone, preemption, and public health federalism*, 9 J.L. & BIOSCIENCES 1, 5 (2022).

30. See Lauren van Schilfgaarde et al., *Tribal Nations and Abortion Access: A Path Forward*, 46 HARV. J.L. & GENDER 1, 6 (2023).

31. See Katherine Florey, *The New Landscape of State Extraterritoriality*, 102 TEX. L. REV. 1, 10, 12–13 (2024); see generally Sara Geller, *The Personal (Jurisdiction) Is Political: The Reach and Overreach of Abortion Bounty-Hunter Laws*, 45 COLUM. J. GENDER & L. 81 (2024).

32. See Teneille R. Brown, *When Doctors Become Cops*, 97 S. CAL. L. REV. 675, 679–80, 731–32 (2024).

33. See Katie Corwin, *Telehealth in Reproductive Health Care: A New Frontier in the Fight for Abortion Access*, 27 CUNY L. REV. 304, 305, 322 (2024); see also Sara Cline & Geoff Mulvihill, *Arrest warrant issued for New York doctor indicted in Louisiana for prescribing abortion pill*, ASSOCIATED PRESS (Jan. 31, 2025), <https://apnews.com/article/abortion-indictment-louisiana-new-york-doctor-63ff4d9da8a9b592a7ca4ec7ba538cd3> (on file with the Syracuse Law Review); ABORTION COALITION FOR TELEMEDICINE, <https://www.theactgroup.org/> (on file with Syracuse Law Review) (last visited Feb. 12, 2025).

34. See Valarie K. Blake & Elizabeth Y. McCuskey, *Employer-Sponsored Reproduction*, 124 COLUM. L. REV. 273, 278–81 (2024); Brendan S. Maher, *Pro-Choice Plans*, 91 GEO. WASH. L. REV. 446, 448 (2023).

35. See Aziz Z. Huq & Rebecca Wexler, *Digital Privacy for Reproductive Choice in the Post-Roe Era*, 98 N.Y.U. L. REV. 555, 566 (2023); see also Anya E.R. Prince, *Reproductive Health Surveillance*, 64 B.C. L. REV. 1077, 1082, 1085 (2023).

36. See Dana M. Johnson, *The Promise of Abortion Pills: Evidence on the Safety and Effectiveness of Self-Managed Medication Abortion and Opportunities to Expand Access*, 76 SMU L. REV. 135, 138–39, 161 (2023).

37. See Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 108 CORNELL L. REV. 1187, 1188, 1194 (2023).



Interestingly, neither self-professed legal pluralists nor post-*Dobbs* scholarship has to date focused on the university itself as a type of semi-autonomous legal system with the ability to shape and invent law. Yet, universities have been and will continue to be places where law is contested and molded, as university presidents are aware in just the first few weeks of Trump's second term.<sup>38</sup> Thus, this Article adds to both the legal pluralism literature in conceiving of the university as a legal system and to the post-*Dobbs* scholarly conversation by offering an alternative front of legal conflict, resistance, and ingenuity.

## II. UNIVERSITY ACTION IN SUPPORT OF REPRODUCTIVE RIGHTS: SURVEY METHODOLOGY AND DATA

This Article offers an empirical snapshot of university behavior at the intersection of federal regulation, state abortion bans, and university policy and practice. In examining how universities deploy the legal levers at their disposal, this Article speculates on why similarly situated universities act in disparate ways. This Article's study of university behavior post-*Dobbs* is not comprehensive by design, as there are approximately 4000 degree-granting colleges and universities in this country.<sup>39</sup> I limited this Article's scope in terms of geography, university characteristics, and the sources of information used to gather data.

### A. Geographic Scope

This research focuses on private universities within nine states, four that are *access states*, where abortion care is available and protected and five from states that have restricted abortion, some of these states are *hostile*, offering short gestational windows for abortion care, and others that have *banned* abortion all together.<sup>40</sup>

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38. See, e.g., Sara Weissman, *Campuses No Longer Off-Limits to ICE*, INSIDE HIGHER EDUC. (Feb. 5, 2025), <https://www.insidehighered.com/news/government/politics-elections/2025/02/05/campuses-no-longer-limits-ice> (on file with the Syracuse Law Review); Maya Stahl, *What Some Colleges Say They'll Do if Immigration Authorities Come to Campus*, CHRON. HIGHER EDUC. (Jan. 27, 2025), <https://www.chronicle.com/article/what-some-colleges-say-theyll-do-if-immigration-authorities-come-to-campus> (on file with the Syracuse Law Review).

39. See *Fast Facts: Educational Institutions*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=1122> (on file with the Syracuse Law Review) (last visited Feb. 9, 2025).

40. This builds off the Center for Reproductive Rights' interactive tool tracking the post-*Roe* landscape of abortion access by state. See *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state> (on file with the Syracuse Law Review) (last visited May 31, 2023).

The first group of states—California, Massachusetts, Colorado, and Minnesota—are abortion access states [hereinafter, *access states*]. In these states, the rights guaranteed in *Roe*, the right to a pre-viability abortion without undue burden from the state, are a floor.<sup>41</sup> In Minnesota, Colorado, and California, legislatures have expanded rights and access beyond this floor.<sup>42</sup> Citizen ballot initiatives have enshrined the right to abortion care in Colorado’s and California’s constitution.<sup>43</sup> And, California, Colorado, Massachusetts, and Minnesota have all passed “shield laws” to protect patients and providers who may face the long-arm of ban states.<sup>44</sup>

The remaining states in this study use criminal law to limit and punish abortion care. These states fall into two categories. In *hostile states*—Florida, North Carolina, and Georgia—abortion care is not yet banned all together, although care is only available during a short gestational window (6 weeks or 12 weeks), a window that is significantly

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41. See generally *Roe v. Wade*, 410 U.S. 113 (1973); see also *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

42. The Minnesota legislature created a broad statutory right to reproductive freedom independent of viability: “Every individual who becomes pregnant has a fundamental right to . . . obtain an abortion, and to make autonomous decisions about how to exercise this fundamental right.” H.F. 1, 2023 Leg., 93d Sess. (Minn. 2023); Colorado statutorily protects abortion: “A pregnant individual has a fundamental right to continue a pregnancy and give birth or to have an abortion and to make decisions about how to exercise that right.” COLO. REVISED STATUTES tit. 25, §§ 25-6-403, 18-9-122 (West 2022); “Every pregnant individual . . . has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article.” CAL. HEALTH & SAFETY CODE §§ 123462, 123466 (West 2023); “A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 1.1 to Article I thereof, relating to fundamental rights.” S.B. SCA-10, 2022 Leg., Reg. Sess. (Cal. 2022).

43. See Initiative 89, Colo. Sec’y of State (2023).

44. Through “shield laws,” access states legislatively protect providers and patients from the “long arm” of ban states, including laws that prevent prosecution of those who travel from ban to access states, protect providers from disciplinary action, and/or prevent extradition or arrest of providers or patients. See, e.g., H.F. 366, 2023 Leg., 93d Sess. (Minn. 2023); COLO. REVISED STATUTES tit. 12, §12-30-121 (West 2023); H.B. 5090, 2022 Leg., 192d Gen. Ct. (Mass. 2022). California has enacted multiple shield laws that cover not only the specter of interstate prosecutions but also data privacy, security of medical data, and protections for pregnancy outcomes (miscarriages, stillbirths and abortion). See CAL. HEALTH & SAFETY CODE §123467.5 (2022); A.B. 1242, 2022 Leg., Reg. Sess. (Cal. 2022); S.B. 345, 2023 Leg., Reg. Sess. (Cal. 2023) *to be codified at* CAL. PENAL CODE § 847.5; A.B. 2223, 2022 Leg., Reg. Sess. (Cal. 2022); S.B. 345, 2023 Leg., Reg. Sess. (Cal. 2023) *to be codified at* CAL. PENAL CODE § 187; S.B. 345, 2023 Leg., Reg. Sess. (Cal. 2023) *to be codified at* CAL. CIV. CODE §1798.99.90; A.B. 352, 2023 Leg., Reg. Sess. (Cal. 2023) *to be codified at* CAL. CIV. CODE §56.101; A.B. 254, 2023 Leg., Reg. Sess. (Cal. 2023) *to be codified at* CAL. CIV. CODE §56.05.

shorter than *Roe* and *Casey*'s viability demarcation.<sup>45</sup> Even within this window, these states also have "TRAP" laws in place, whereby providers are tightly-regulated and access is very limited and expensive.<sup>46</sup>

Oklahoma and Texas are two of twelve states that have banned abortion all together except in the narrowest of circumstances [hereinafter, *ban states*].<sup>47</sup> These states are concentrated in the south, and, in many cases, pregnant students would have to travel out of state—

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45. Georgia currently has a six-week ban in effect. See GA. CODE ANN. tit. 16, § 16-12-141 (West 2024); North Carolina legislators banned abortion after twelve weeks. See S.B. 20, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023); Florida bans abortion at six weeks after a woman's last menstrual period. See S.B. 300, 2023 Leg., Reg. Sess. (Fla. 2023). Voters recently failed to overturn this ban with a constitutional amendment. See *After Roe Fell: Abortion Laws by State*, CTR. REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state/?state=FL> (on file with the Syracuse Law Review) (last visited Feb. 12, 2025).

46. TRAP laws stand for "targeted regulation of abortion providers." Kimya Forouzan, *Targeted Regulation of Abortion Providers*, GUTTMACHER INST. (Aug. 13, 2025), <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers> (on file with the Syracuse Law Review). These laws long predated *Dobbs* and were designed to frustrate abortion access by tightly regulating abortion clinics' location, facilities, providers and procedures. Post-*Dobbs*, many TRAP laws are currently superfluous, as they are most common in ban and hostile states and states where abortion clinics have either closed or ceased performing abortions. See *id.* Nonetheless, TRAP laws remain on the books in these states. Should state courts or ballot initiatives overturn bans or should clinics open to serve women who seek an abortion under a narrow state exception? See, e.g., Anna Spoerre, *Missouri judge strikes down abortion ban, but clinics say access remains blocked*, MO. INDEP., (Dec. 20, 2024, 5:39 PM), <https://missouriindependent.com/2024/12/20/missouri-amendment-3-abortion-regulations-trap-laws/> (on file with the Syracuse Law Review). Examples of TRAP laws include: Florida—24-hour waiting period and biased counseling. FLA. STAT. ANN. tit. XXIX, § 390.0111(3)(a) (West 2023). Structural requirements on abortion clinics, physician performing the abortion have admitting privileges at a nearby hospital in the absence of a transfer agreement. FLA. ADMIN. CODE ANN. R 59A-9.022 (West 2017). And, stringent record-keeping requirements. FLA. STAT. ANN. tit. XXIX, § 390.01112 (West 2023); Georgia—24-hour waiting period and biased counseling. GA. CODE ANN. tit. 31, § 31-9A-3 (West 2022). Abortion providers required to be licensed physicians. GA. CODE ANN. tit. 16, § 16-12-141.1 (West 2022); North Carolina—72-hour waiting period and biased counseling. N.C. GEN. STAT. ANN. § 90-21.82 (West 2023); And, restrictions around medication abortion. See S.B. 20, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023).

47. See, e.g., CODE OF ALA. Tit. 26, §§ 26-23H-4, 26-23H-6 (West 2023); ARK. CODE ANN. tit. 5, § 5-61-304; ARK. CODE ANN. tit. 20, 20-16-2004 (West 2023); IDAHO CODE tit. 18, §§ 18-622, 18-8804, 18-8805 (West 2023); ANN. IND. CODE tit. 16, §§ 16-34-2-1, 16-34-2-1.1 (West 2023); KY. REV. STAT. ANN., tit. XXVI, §§ 311.772, 311.774 (West 2023); LA. STAT. ANN., tit. 40, § 40:1061 (West 2023); MISS. CODE ANN., tit. 41 § 41-41-45 (West 2023); MO. ANN. STAT., tit. XII, §§ 188.017, 188.030 (West 2023); N.D. CENT. CODE § 12.1-31-12 (West 2023) (repealed 2023); OKLA. STAT. ANN. tit. 21, § 861 (West 2023); S.D. CODIFIED LAWS § 22-17-5.1 (2023); TENN. CODE ANN. tit. 39, §§ 39-15-213, 39-15-216 (West 2023).

hundreds of miles—to legally access abortion procedures.<sup>48</sup> Texas carves a sliver of an exception when the pregnant person’s life is in imminent jeopardy.<sup>49</sup> Oklahoma’s exception is marginally broader, protecting abortion care in order to “preserve” the life of the pregnant person.<sup>50</sup> In Texas, criminal bans work in tandem with civil bans that empower any non-state actor to sue providers and certain third parties for civil damages.<sup>51</sup>

Abortion bans—whether criminal or civil—target providers (doctors, clinicians, etc.) rather than pregnant people. Also, these bans often explicitly target third parties, including those who “aid and abet” an abortion<sup>52</sup> or those who “advise” an abortion.<sup>53</sup> If the abortion ban itself does not explicitly address third-party culpability, the state’s

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48. For the purposes of this Article, *ban states* refer to states with absolute bans with the narrowest of exceptions. Oklahomans seeking an abortion must travel to Wichita, Kansas, which is 162 miles from Oklahoma City, to visit the nearest abortion provider. See *Driving Directions from Oklahoma City to Wichita, KS.*, GOOGLE MAPS, <http://maps.google.com> (on file at Syracuse Law Review) (last visited Oct. 22, 2025) (follow “Directions” hyperlink; then search starting point field for “Oklahoma City, OK” and search destination field for “Wichita, KS”). For many Texans, the nearest abortion provider is Las Cruces Health Center in New Mexico, located 618 miles from Austin. See *Driving Directions from Austin, TX to Las Cruces, NM.*, GOOGLE MAPS, <http://maps.google.com> (on file at Syracuse Law Review) (last visited Oct. 22, 2025) (follow “Directions” hyperlink; then search starting point field for “Austin, TX” and search destination field for “Las Cruces Health Center in New Mexico”).

49. Texas abortion law provides a limited exception to its criminalization of abortion under the following conditions: (1) the procedure is performed by a licensed physician, and (2) the pregnant mother has a life-threatening physical condition that places her at risk of death or may substantially impair a major bodily function if the abortion is not performed. See TEX. HEALTH & SAFETY CODE ANN. § 170A.002 (West 2022).

50. See *Okla. Call for Reprod. Just. v. Drummond*, 526 P.3d 1123, 1130–31 (Okla. 2023). See also OKLA. STAT. tit. 21, § 861 (West 2025).

51. The Texas legislature introduced civil bans, known as “bounty-hunting” statutes or “vigilante” statutes, in the summer of 2021 as a way to circumvent *Roe*, and Oklahoma and Idaho followed on its heels. See S.B. 8, 87th Leg., Reg. Sess. (Tex. 2021). In 2022, Oklahoma legislators enacted two laws establishing a civil enforcement mechanism for abortion. See H.B. 4327, 58th Leg., 2d Reg. Sess. (Okla. 2021); see also S.B. 1503, 58th Leg., 2d Reg. Sess. (Okla. 2021). However, the Oklahoma Supreme Court held the bills unconstitutional under the Oklahoma Constitution. See *Okla. Call for Reprod. Just. v. State*, 531 P.3d 117, 123 (Okla. 2023). Idaho legislators, on the other hand, established a valid civil enforcement mechanism which provides immediate family members of the fetus a cause of action against the doctor who performed the abortion. See S.B. 1309, 66th Leg., 2d Reg. Sess. (Idaho 2022).

52. See, e.g., OKLA. STAT. ANN. tit. 63, § 1-745.55 (West 2022), *invalidated by Okla. Call for Reprod. Just. v. State*, 531 P.3d 117 (Okla. 2023).

53. See, e.g., OKLA. STAT. ANN. tit. 21, § 861 (West 2023) (amended 2025).

criminal code almost certainly has an applicable “aiding and abetting” criminal statute that overlays the ban.<sup>54</sup>

### *B. University Characteristics*

Within each state, this Article limits review to private universities. In hostile and ban states, public universities are at the financial mercy of the very legislatures that passed the criminal bans; and in access states, these universities are tied to the legislatures that have already decided to maintain and expand abortion care access. In other words, public universities are arms of the political branches that define the state’s overall abortion stance. This Article examines how universities are creating supportive environments in spite of the law—public universities are understandably hamstrung in decision-making latitude.

In order to narrow the scope further, this study examines *national* universities and *national* liberal arts colleges from the US News & World Report rankings and considers rank (tilting toward higher-ranked schools) in narrowing the sample.<sup>55</sup> The rationale was that higher-ranked colleges and universities are generally better resourced and therefore in a better position to fund and implement some of the programmatic and policy shifts necessary to buffer the impact of abortion bans. I recognize that by excluding lesser-known, and presumably lesser-resourced, schools, I exclude many schools that enroll students from historically underserved and under-resourced communities and realize how this may skew the findings. However, this Article seeks to uncover that which is in the realm of university leadership’s possibility and imagination. In the end, I believe that the sample provides a useful, although admittedly incomplete, overview.

For many, their views on abortion track religious beliefs. Therefore, this study excludes schools clearly and deeply affiliated with a religious denomination. This involved a certain degree of subjective judgment because the roots of many private universities and colleges grow from religious institutions and affiliations. If the current mission of the university reflects primarily a secular one, I considered that school in the pool—if the current religious affiliation was stronger, I excluded it.

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54. See, e.g., OKLA. STAT. ANN. tit. 21, § 172 (West 2023).

55. See *Best National University Rankings*, U.S. NEWS & WORLD REP. (2024), [https://www.usnews.com/best-colleges/rankings/national-universities?\\_sort=rank&\\_sortDirection=asc](https://www.usnews.com/best-colleges/rankings/national-universities?_sort=rank&_sortDirection=asc) (on file with the Syracuse Law Review).

### *C. Sources of Information on Each University*

I reviewed *publicly* available information in the summer of 2023, a year after *Dobbs*; the data was refreshed again in the summer of 2024, at which point some universities had adjusted their policies and practices. I did not conduct interviews or access information that required university credentials. Some university websites were more opaque than others for those without community credentials, and I recognize that additional information only accessible to students or employees could reveal data that would shed additional light on these findings. However, at this stage of the research, reliance on publicly available information seemed justified. Students, particularly a student in crisis over an unintended pregnancy, will likely search on their phone for answers to questions like “what should I do?” and “where can I get help?” long before they will read small print or log in to a password-protected portal.

The information that this Article examines is directly related to the ways in which universities interact with other legal systems, in this case, state law and the federal regulatory state. In this vein, I looked at ten tools in six different categories that universities could deploy to enhance support of reproductive autonomy on campus: 1) *transparency of communication to campus*: post-*Dobbs* statement and roadmap to address pregnancy on campus; 2) *support in helping students access abortion care*: referrals to off-campus reproductive health clinics and emergency funds; 3) *contraception access on campus*: contraception and emergency contraception; 4) *Title IX as it pertains to pregnancy*; 5) *health insurance*: students and employees; and 6) *privacy of student health records*.

### *D. The Data and Some Initial Insights*

Table 1 is a summary of the research that underpins this Article. The universities in this table are grouped by state, and then states are grouped according to abortion care status—access, hostile, or ban states. The rows are built around the various tools that a university could use to build to a supportive reproductive health environment. In each cell, each university receives a “white,” “grey,” or “black” rating, which roughly corresponds to supportive (high), neutral/unclear (medium), or obstructive of reproductive health on campus (low). I assigned each university an overall score, with each white rating assigned one point, each black rating assigned a negative point, and no points for a grey rating.

This project began with a few hypotheses: first, that universities led by women would prioritize their community's reproductive health, including abortion care. However, the gender of leadership did not seem to be dispositive. Women were at the helm of the schools that were among the most supportive of their students' reproductive health—Pomona College and the University of Southern California. Rice University, a standout in many areas discussed in Part III,<sup>56</sup> has a strong female provost. However, Carleton College and Macalester College, two similar colleges in the same state, both led by women, diverged in their support of reproductive healthcare.

Another hypothesis at the root of the study was that university behavior would divide according to the state's abortion laws: in access states, universities would be most supportive of students' reproductive health, with diminishing support in hostile states and the weakest support in ban states. The findings were not so clear and simple, as Table 1 reveals. As a group, universities in access states were more supportive of their community's reproductive health than those in hostile and ban states, with an average score of 4.3 versus an average of -1.6 for schools in the hostile and ban states; there was only marginal difference between schools in hostile states and ban states (-1.3 versus -2.0). Yet, there were standouts in hostile and ban states, and some schools within this group outperformed several within the access group; likewise, there were underperformers among access state universities, and their profiles look similar to their hostile/ban state counterparts.

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56. See *infra* notes 77–78 and accompanying text.

Table 1. Overview of Data

SCHOOL	Pomona	Stanford	USC	Colorado Col.	Uni. of Denver
(STATE)	(CA)	(CA)	(CA)	(CO)	(CO)
Abortion Status in State	Access	Access	Access	Access	Access
Gender of School President at time of <i>Dobbs</i>	Female	Male	Female	Female	Male
Institutional Statement post- <i>Dobbs</i> ?	Yes	Yes	Yes	No	Yes
Roadmap for Campus Community re: Pregnancy	No	Yes	Yes	No	No
Off-Campus Referrals to Abortion Access	Yes	Yes	Yes	Maybe	Maybe
Abortion Covered by Emergency Fund Access	Yes	Maybe	Yes	Yes	Yes
Contraception Access on Campus	Yes	Yes	Yes	Some	Some
Emergency Contraception Access on Campus	Yes	Yes	Yes	Limited	Limited
Title IX and Pregnancy-Related Discrimination	Yes	No	Yes	Maybe	Yes
Employee Health Insurance	Yes	Yes	Yes	Yes	Unclear
Student Health Insurance	Yes	Yes	Yes	Unclear	Unclear
Transparency re: Privacy of Student Health Information	Unclear	Unclear	Unclear	Unclear	Unclear
	7	6	9	0	2



SCHOOL	Harvard	MIT	Northeastern	Carleton	Macalester
(STATE)	(MA)	(MA)	(MA)	(MN)	(MN)
Abortion Status in State	Access	Access	Access	Access	Access
Gender of School President at time of <i>Dobbs</i>	Male	Male	Male	Female	Female
Institutional Statement post- <i>Dobbs</i> ?	Hedge	Yes	No	Yes	Yes
Roadmap for Campus Community re: Pregnancy	Yes	Yes	Yes	No	No
Off-Campus Referrals to Abortion Access	Yes	Yes	Yes	Maybe	Yes
Abortion Covered by Emergency Fund Access	Yes	Yes	No	Maybe	Yes
Contraception Access on Campus	Yes	Some	Yes	Yes	Yes
Emergency Contraception Access on Campus	Yes	Limited	Yes	Yes	Yes
Title IX and Pregnancy-Related Discrimination	Maybe	Maybe	Yes	No	Maybe
Employee Health Insurance	Yes	Unclear	Unclear	Unclear	Unclear
Student Health Insurance	Yes	Unclear	Unclear	No	Unclear
Transparency re: Privacy of Student Health Information	Unclear	Yes	Unclear	Unclear	Unclear
	7	5	3	0	4

SCHOOL	Rollins	Stetson	Miami	Emory	Mercer
(STATE)	(FL)	(FL)	(FL)	(GA)	(GA)
Abortion Status in State	Hostile	Hostile	Hostile	Hostile	Hostile
Gender of School President at time of <i>Dobbs</i>	Male	Male	Male	Male	Male
Institutional Statement post- <i>Dobbs</i> ?	No	No	No	Yes	No
Roadmap for Campus Community re: Pregnancy	No	No	No	No	No
Off-Campus Referrals to Abortion Access	No	No	No	No	Maybe
Abortion Covered by Emergency Fund Access	Maybe	Maybe	No	Maybe	No
Contraception Access on Campus	Some	Some	Some	Yes	Some
Emergency Contraception Access on Campus	Limited	Silent	Limited	Limited	Silent
Title IX and Pregnancy-Related Discrimination	Maybe	Yes	Maybe	No	Yes
Employee Health Insurance	Unclear	Unclear	Unclear	Yes	No
Student Health Insurance	No	No	No	Yes	No
Transparency re: Privacy of Student Health Information	Unclear	Unclear	Unclear	Yes	Unclear
	-4	-4	-5	2	-5

SCHOOL	Spelman	Duke	Elon	Wake Forest
(STATE)	(GA)	(NC)	(NC)	(NC)
Abortion Status in State	Hostile	Hostile	Hostile	Hostile
Gender of School President at time of <i>Dobbs</i>	Female	Male	Female	Female
Institutional Statement post- <i>Dobbs</i> ?	Yes	Yes	No	Hedge
Roadmap for Campus Community re: Pregnancy	No	Yes; only for Title IX	No	No
Off-Campus Referrals to Abortion Access	No	Yes	No	Maybe
Abortion Covered by Emergency Fund Access	No	Maybe	Yes	Maybe
Contraception Access on Campus	Some	Yes	Yes	Some
Emergency Contraception Access on Campus	Silent	Limited	Limited	Yes
Title IX and Pregnancy-Related Discrimination	Yes	Maybe	No	Yes
Employee Health Insurance	Unclear	Yes	Yes	No
Student Health Insurance	Unclear	Unclear	Yes	Yes
Transparency re: Privacy of Student Health Information	Unclear	Yes	Unclear	Unclear
	-2	5	0	1

SCHOOL	Okla. City Uni.	Uni. of Tulsa	Rice	SMU	TCU
(STATE)	(OK)	(OK)	(TX)	(TX)	(TX)
Abortion Status in State	Ban	Ban	Ban	Ban	Ban
Gender of School President at time of <i>Dobbs</i>	Male	Male	Male	Male	Male
Institutional Statement post- <i>Dobbs</i> ?	No	No	Yes	No	No
Roadmap for Campus Community re: Pregnancy	No	No	Yes	No	No
Off-Campus Referrals to Abortion Access	Maybe	Maybe	Yes	No	Maybe
Abortion Covered by Emergency Fund Access	Yes	No	No	Maybe	Maybe
Contraception Access on Campus	Silent	Some	Yes	Silent	Yes
Emergency Contraception Access on Campus	Silent	Yes	Yes	Silent	Limited
Title IX and Pregnancy-Related Discrimination	Maybe	Yes	Yes	No	Maybe
Employee Health Insurance	Unclear	No	Unclear	Yes	Unclear
Student Health Insurance	No	No	No	No	No
Transparency re: Privacy of Student Health Information	Unclear	Unclear	Yes	Unclear	Unclear
	-4	-3	5	-6	-2

Notably, there were bright glimmers of ingenuity and creativity in universities in hostile and/or ban states, as will be highlighted in Part III. In looking at the columns of Table 1, with only two exceptions,<sup>57</sup> each university used at least one of the legal tools to support reproductive health on campus—in other words, each university received at least one high rating. Likewise, looking horizontally across each row in Table 1, there were schools in both access states and hostile/ban states that earned a high rating in furtherance of reproductive health.

One variable that appears relevant is university size and resources. The larger and more elite universities, generally those with more resources and power, the greater the ability and will to invest in on-campus health services and to design and implement more robust programs to support reproductive health as a counterweight to state law. Schools like Duke, Rice, and Emory in ban and hostile states outperformed the smaller colleges in access states. These schools were able to work within the confines of the law to offer students more reproductive healthcare services than smaller, largely tuition-dependent schools, even in access states. And, schools like Duke and Rice, with their wealth and concomitant power, were also more likely to assume legal risk in the face of abortion bans.

Overall, however, the research suggests that the state's law vis-à-vis abortion care is not necessarily determinative of university behavior. Resources, prestige, and leadership offer some, albeit limited, insight to explain the differences. Yet the fact that universities in the same states with the same legal constraints have sharply different profiles underscores that something else is at work. Part III looks in detail at how universities assert their legal autonomy at the boundaries of state and federal law for additional insight.

### III. UNIVERSITY AS SEMI-AUTONOMOUS LEGAL SYSTEM

The university is a type of semi-autonomous legal system that literally and metaphysically shares space with other legal systems, including the federal regulatory state, state lawmakers, and municipalities. The remainder of this Article explores how universities mold law at the juncture of state abortion bans and a federal regulatory apparatus that offers, at least in January 2025, some latitude to maneuver. This Part III will first explore how universities flex their interpretive muscle

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57. In Table 1, every school except Rollins and Miami have at least one “high” box, indicating a place where the universities are asserting themselves in support of reproductive healthcare on campus.

to refine and confine law. It will then look at the university as a legal design thinker— how it designs systems to implement law in a way that amplifies law, mutes law, elevates internal policy and practice above the legal floor, and/or takes advantage of legal loopholes. The data shows generally that universities in ban/hostile states are not using all, or even most, of the tools available to mitigate abortion bans. Yet, there are clear standouts and outliers, and with intentionality, it is possible for universities to insulate students from the harshest fallout of laws that curtail access to reproductive healthcare.

#### *A. University as Interpreter of Law*

Universities can and should recognize boundaries between federal, state, and local law as supple interpretive zones and choose to test the limits of the law within those zones rather than cower and retreat in reflexive deference. Universities can embrace legal ambiguity— ambiguity born of both tactical design and overlapping jurisdiction— in a way that is protective of their community. Universities *choose* whether to interpret abortion bans’ attendant aiding, abetting, and advising restrictions broadly or narrowly, the former casting a dark shadow over a wide swath of otherwise empathetic behavior. Universities *choose* whether to mute or amplify the cacophony of voices who would like to extend abortion bans in the name of “fetal personhood” to various forms of contraception and emergency contraception. And universities *choose* whether to breathe life into Title IX regulations and guidelines designed to protect not only pregnancy but also pregnancy-related conditions, including termination of pregnancy.

##### *1. Third-Party Liability Under Abortion Bans*

As noted above, abortion bans criminalize those who provide abortion care and those who “aid and abet” or “advise” abortions.<sup>58</sup> What does it mean to “aid and abet”? Provide financial support, transportation support, emotional support, information about accessing abortion out of state? Abortion bans are intentionally vague as a means of instilling fear; abortion opponents hope that fear will stop friends, family, and various types of institutions, including universities, from helping pregnant people access legal abortion care out-of-state. Courts have not yet clarified, in part because ambiguity has successfully chilled many supportive impulses and has sent others underground.<sup>59</sup>

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58. See *supra* notes 52–53 and accompanying text.

59. This clarity may be on the way. See, e.g., J. David Goodman & Pam Bel-luck, *Texas Attorney General Sues New York Doctor for Mailing Abortion Pills*,

Ambiguity regarding the breadth of abortion bans triggers uncertainty and anxiety on campuses in hostile and ban states. Faculty and staff who interface with students would like guidance on a variety of questions: what to do if a student approaches with an unintended pregnancy; what to do if a student asks for support in finding or affording abortion care, etc. The university itself will also need to contemplate whether certain internal policies or programs to support students' or employees' reproductive health could potentially expose the university to third-party liability. Whether affirmatively or by omission, university general counsel will be on the vanguard of clarifying this ambiguity. By offering guidance to the community—or by staying silent—university general counsel will be interpreting abortion bans and, in so doing, defining the contours of our new reproductive rights terrain.

In interpreting the breadth of abortion bans, universities, usually through their general counsel, make decisions on two axes—the first is risk and the second is transparency. A risk-taking university will take the position that, as long as the university does not encourage their students or employees to get abortions but instead acts as a neutral purveyor of information, the university steers comfortably clear of criminal liability. In other words, until a court or legislature clarifies the scope of bans, the university assumes that abortion bans only reach third parties who lean into or encourage a specific abortion decision. There is support for this interpretation in the legislative history of some of the pre-*Roe* abortion bans.<sup>60</sup> Furthermore, the First Amendment presumably protects those who provide publicly available information to pregnant women, or to those who choose to spend their own resources in support of those who live in ban states but wish to access abortion care in states where it remains legal.<sup>61</sup>

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N.Y. TIMES (Dec. 13, 2024), <https://www.nytimes.com/2024/12/13/us/texas-new-york-abortion-pills-lawsuit.html> (on file with the Syracuse Law Review).

60. Abortion bans have historically viewed the woman as “victim” and providers as the perpetrators of crimes. See 2023 OKLA. ATT’Y GEN. Op. No. 2023-12, 2023 WL 8174143; See also *id.* at \*2, citing *Wilson v. State*, 252 P.2d 1106, 1107–08 (Okla. Crim. App. 1927); *Cahill v. State*, 178 P.2d 657, 659–60 (Okla. Crim. App. 1947); *Reeves v. Territory*, 101 P. 1039, 1042 (Okla. Crim. App. 1909). Therefore, support of the pregnant woman is supporting a victim rather than the commission of a crime, and third-party liability, particularly aiding and abetting statutes, require an underlying crime. See generally *Greenwood v. State*, 105 P. 371 (Okla. Crim. App. 1909). See also *State v. Thompson*, 153 A.2d 364 (N.J. Super. Ct. App. Div. 1959), *rev’d on other grounds*, 158 A.2d 333 (1960); *Richmond v. Commonwealth*, 370 S.W.2d 399 (Ky. 1963); *Scott v. State*, 113 A.2d 880 (Del. 1955).

61. See *Bigelow v. Virginia*, 421 U.S. 809, 829 (1975); see also *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 at 1050, 1053 (D. Idaho 2023); *Planned Parenthood*

At the other end of the spectrum, the university may adopt a risk-averse position, embracing an expansive interpretation of “aiding and abetting” or “advising” and thereby imagining a wide swath of potential criminal liability. In this case, the risk-averse general counsel, with no legal clarity regarding third-party liability, assumes that bans cast a broad net that includes all those possibly within the pregnant person’s orbit of support—roommates, faculty, and even the university itself. In this universe, the university avoids any official action that could be interpreted as helping a pregnant person access abortion care, even in the most seemingly benign way—the risk-averse university may also advise its community members to steer clear as well.

I examined two proxies for risk aversion in this study: 1) comfort with referrals to off-campus reproductive health clinics; and 2) structuring emergency funds in a way that they are available to students to support out-of-state abortion care. The risk-averse university will avoid off campus referrals for reproductive health. Abortion remains legal in many states, and, without exception, every person in the United States has the right (versus ability) to freely travel across state lines to access abortion care.<sup>62</sup> Clinics, such as Planned Parenthood, in hostile and ban states operate under the specter of criminal bans, and determine for themselves whether options counseling,<sup>63</sup> with the possibility of follow-on referrals to clinics in states where abortion access is legal, poses a bearable risk for the clinic and its practitioners.<sup>64</sup> If university health services, or a faculty member, refers a pregnant student to an off-campus reproductive health clinic, this clinic could, in turn, refer the student to legal abortion care. So, technically, the

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S. Atl. v. Stein, 680 F. Supp. 3d 595, at 598 (M.D. N.C. 2023); Planned Parenthood of Kan. v. Nixon, 220 S.W.3d 732, 742–43 (Mo. 2007).

62. See Saenz v. Roe, 526 U.S. 489, 498, 502 (1999). Note that sometimes this travel need not be physical. Through the rise of telehealth options in supportive states, coupled with shield laws, a pregnant person in a ban state can legally access medication abortion virtually and via mail through a telehealth provider in a supportive state. See Margot Sanger-Katz & Claire Cain Miller, *Telehealth Abortions, Protected by Court for Now, Are Growing Rapidly*, N.Y. TIMES (June 13, 2024), <https://www.nytimes.com/2024/06/13/upshot/abortion-pills-supreme-court.html?searchResultPosition=1> (on file with the Syracuse Law Review).

63. Non-directive options counseling in the context of pregnancy means that a provider or counselor informs a pregnant person of all options—parenting, adoption, and abortion—in an accurate and unbiased way. Whether non-directive options counseling conflicts with abortion bans that criminalize “advising” or “aiding and abetting” an abortion is currently being litigated. See *Oklahoma v. U.S. Dep’t of Health and Hum. Serv.*, 107 F.4th 1209, 1231, 1235 (10th Cir., 2024).

64. See *Abortion Services*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/get-care/our-services/abortion-services> (on file with the Syracuse Law Review) (last visited Aug 29, 2025).



university assumes once-removed risk that a referral is the first step in a student accessing legal abortion care. The criminal liability risk is very small—bans would have to be interpreted to reach third parties who share publicly available information *and* stand once removed from a referral to a clinic that performs abortions. However, the referral decision is not risk-free.

This study also considered emergency funds because cost will likely be a formidable barrier for many students and staff in legally accessing out-of-state abortion care. During COVID, many universities created emergency funds to help dislocated students with technology and other pressing needs that emerged because of the initial economic shock;<sup>65</sup> and even prior to COVID, some universities rolled out funds to address mounting hunger and homelessness on campus.<sup>66</sup> Many universities have maintained these emergency funds to cover, among other events, unanticipated or emergency medical care.<sup>67</sup>

I examined whether universities maintained these types of emergency funds and whether the emergency fund, given the published qualifications, could arguably cover support for out-of-state abortion care. In an environment of uncertainty regarding the reach of abortion laws, it is unreasonable to expect even the cautious risk-taking university to explicitly publicize use of emergency funds in support of out-of-state access for abortion care, although at least two prominent universities outside of this study have done so.<sup>68</sup> A previous article sets forth a roadmap for universities who wish to create emergency funds in a way that would steer clear from criminal liability.<sup>69</sup> In this Article, I examined universities' existing emergency funds, focusing on the

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65. See, e.g., Jacquelyn Elias, *Colleges Gave Out Nearly \$8 Billion in Covid Aid in 2022. Here's Who Got the Money.*, CHRON. HIGHER EDUC. (Apr. 5, 2024), <https://www.chronicle.com/article/colleges-gave-out-nearly-8-billion-in-covid-aid-in-2022-heres-who-got-the-money> (on file with the Syracuse Law Review) (stating that colleges disbursed \$19 billion in emergency financial aid to students in 2021 and \$7.9 billion in 2022).

66. See *The Hope Center Student Basic Needs Survey*, THE HOPE CENTER, <https://hope.temple.edu/research/hope-center-basic-needs-survey> (on file with the Syracuse Law Review) (last visited Oct. 3, 2025).

67. See, e.g., *Chaplain's Discretionary Fund*, ELON UNIV., <https://www.elon.edu/u/truitt-center/support-the-truitt-center/chaplains-fund> (on file with the Syracuse Law Review) (last visited Aug. 29, 2025).

68. See *Reproductive Health Task Force*, VAND. UNIV., <https://www.vanderbilt.edu/about/reproductive-health-task-force/#faq> (on file with the Syracuse Law Review) (last visited Aug. 29, 2025); see also *Reproductive Health*, CASE W. RES. UNIV., <https://case.edu/postdoc/health-wellness/reproductive-health> (on file with the Syracuse Law Review) (last visited July 22, 2024).

69. See Janet Koven Levit, *The University's Choice in Post-Roe America*, 46 WOMEN'S RTS. L. REP. 48, 63–65 (2024).

parameters for accessing funds to determine whether they covered unanticipated out-of-state medical treatment and whether abortion care could constitute a “medical emergency” that would meet the qualifying threshold.

While the risk axis is built around questions of legality, the second axis, transparency, hinges on intentionality. Even if the university’s attorneys decide to assume a risk-averse position, there is no *legal* reason why it could not communicate to its community regarding the types of behavior the university deems risky. On this axis, I looked at the extent to which the university communicates with its community members about how it interprets the breadth of abortion bans or whether it is opaque and silent, avoiding questions that individual community members will have regarding the types of behaviors that could trigger criminal liability. This study examined where universities fell on the transparency axes by looking at: 1) leadership’s post-*Dobbs* public statements, if any; and 2) whether the university offered “what if” guidance to community members to address unintended pregnancy.

The opaque university is not necessarily one that declined to make an outward facing public statement post-*Dobbs*,<sup>70</sup> although this study tracked these statements as a rough proxy for universities’ willingness to push against abortion bans. Universities that did make a public statement generally were also most assertive in using the legal tools to build a supportive environment.<sup>71</sup> These were the universities that embraced opportunities for interpretation and legal design engineering to exploit the potential crevices that bans arguably left open.

The opaque university also fails to communicate internally with its community regarding its institutional interpretation of abortion bans as they pertain to students and employees. Will I be “aiding and abetting” in violation of Oklahoma criminal law if I lend my car or money to a student who needs it to get to Kansas for a legal abortion?

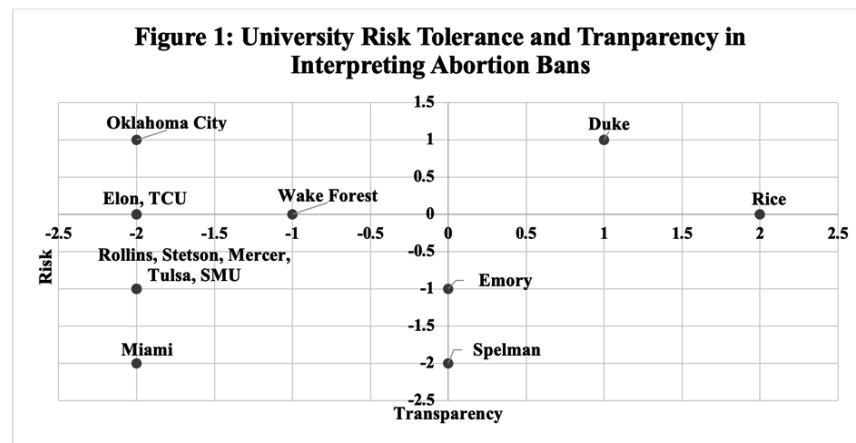
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70. Particularly following last year’s Israel-Gaza inspired campus protests, universities are adopting official “neutrality” policies, whereby university policy is not to make any official statements on social or political issues. See Press Release from Alan M. Garber et al., Harvard Office of the President, Institutional Voice (May 2024) <https://www.harvard.edu/president/news/2024/institutional-voice/> (on file with the Syracuse Law Review).

71. See Table 1, the average score of schools where leadership made a public statement was +3.7; the average score of schools where leadership did not make a statement was -2.7.

Can I help a student in Texas navigate the internet to find a legal abortion through sites like Plan C<sup>72</sup> or Abortion Finder<sup>73</sup>, or MayDay?<sup>74</sup>

On each axis, risk and transparency, the university received a score from -2 to 2 depending on the answer to the four yes (1), no (-1), maybe (0) questions: 1) transparency: did the university make a public statement post-*Dobbs*?; 2) transparency: does the university provide explicit guidance on “what to do” in the face of an unintended pregnancy?; 3) risk: does the university refer students to reproductive health clinics of campus?; 4) risk: are emergency funds arguably available for out-of-state abortion care?



The data reveals that most universities in ban and hostile states assume an opaque, risk-averse posture. They explicitly or implicitly interpret abortion bans broadly, building a large protective moat to insulate the university itself. This is a stance that the law does not (yet) demand. At the same time, most universities are not willing to level with their community members about how they calculate potential criminal exposure. Perhaps one reason is that they recognize that access to abortion care—or lack thereof—places some universities at a competitive disadvantage in attracting a dwindling pool of college-age

72. See generally *Abortion pills by mail in every state*, PLAN C, <https://www.plancpills.org> (on file with the Syracuse Law Review) (last visited Feb. 5, 2025).

73. See generally *Find a Verified Abortion Provider*, ABORTION FINDER, <https://www.abortionfinder.org> (on file with the Syracuse Law Review) (last visited Oct. 3, 2025).

74. See generally *What do you need?*, MAYDAY HEALTH, <https://www.mayday.health> (on file with the Syracuse Law Review) (last visited Feb. 5, 2025).

applicants and that drawing any attention to the issue at all will negatively impact the university's bottom line.<sup>75</sup>

The likely result of institutional silence on these matters is hyper-risk aversion. If the university does not provide its community members with any guideposts, it is essentially telling its faculty, staff, and students, "you are on your own" to make in-the-moment amateur judgments about the bounds of law if approached by a student or colleague with an unintended pregnancy. And for the student or faculty member or staff who is unintentionally pregnant, the cost is high: alienation, forced to navigate alone along the winding, confusing, and sometimes treacherous path to accessing abortion care, a path that is so riddled with misinformation and pitfalls that the pregnant woman may simply surrender.<sup>76</sup> In this way, abortion foes win. The university that abandons its students in this way is not neutral—through silence, the university implicitly cooperates with those who intentionally passed a cacophony of ambiguous law to disorient and suppress support for those who attempt to navigate the new reproductive healthcare landscape.

While most universities in this study operate in the opaque, risk-averse mode, there were standouts on the risk and transparency axes. In terms of transparency, Rice University, in the heart of arguably the most restrictive state in the country, was a laudable exception. Rice directly and explicitly confronts the question of how to navigate unintended pregnancy on campus from the vantage point of the pregnant student, as well as faculty and staff, those who the pregnant student may turn to for support.<sup>77</sup> It beautifully cuts through bureaucracy by

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75. See, e.g., Stephanie Marken & Zach Hrynowski, *State Reproductive Policies Important to Enrollment Decisions*, GALLUP (Mar. 13, 2024), <https://news.gallup.com/poll/611453/state-reproductive-policies-important-enrollment-decisions.aspx> (on file with the Syracuse Law Review); *State abortion bans could affect where Americans choose to go to college*, MSNBC (May 2, 2023, 8:16 AM EST), <https://www.msnbc.com/know-your-value/health-mindset/state-abortion-bans-could-affect-where-americans-choose-go-college-n1304765> (on file with the Syracuse Law Review); William Lutz, *For the Class of 2023 in the Northeast, State Abortion Laws Are a Key Factor in College Decisions, According to a New Institute for Women's Policy Research (IWPR) Poll*, INST. FOR WOMEN'S POL'Y RSCH. (May 9, 2023), <https://iwpr.org/for-the-class-of-2023-in-the-northeast-state-abortion-laws-are-a-key-factor-in-college-decisions-according-to-a-new-institute-for-womens-policy-research-iwpr-poll/> (on file with the Syracuse Law Review).

76. For an excellent video portrayal of how abortion bans are forcing thousands of women to travel alone, without family or support, to access abortion care, see *Abortion is Healthcare*, CTR. FOR REPROD. RTS. (Oct. 22, 2024), <https://athousandmiles.reproductiverights.org> (on file with the Syracuse Law Review).

77. See *Reproductive Health Frequently Asked Questions*, RICE UNIV., <https://reproductivehealth.rice.edu/frequently-asked-questions> (on file with the Syracuse Law Review) (last visited July 22, 2024). The Rice University webpage

mapping the important offices on campus for health (physical and mental), accommodation, and legal concerns; reminds that pregnant people on campus have Title IX rights and flags how to exercise these rights;<sup>78</sup> and nods to referrals to off-campus reproductive health clinics. Duke University takes advantage of its hospital system to facilitate referrals that ultimately may lead students to legal in-state and out-of-state abortion care.<sup>79</sup>

On whole, however, universities in hostile and ban states have been hesitant to take even a cautious, risk-taking stance and have been even more cagey about communicating clearly with their campuses. The naked specter of criminal liability is chilling, and most have succumbed to the chill. Without additional cover, like a federal statute or regulation, the university's willingness to use interpretive leeway is limited.

## 2. Contraception

The first interpretive question that universities will face is the one discussed above—who falls within the orbit of abortion bans' potential criminal liability. A second interpretive question is: what constitutes "abortion"? In our post-*Roe* landscape, state politicians have injected ambiguity and confusion into the conversation related to a mounting "fetal personhood" movement, which strives to endow the

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provides appropriate responses in situations where a student or employee confides in the reader about an unintended pregnancy. *See id.* For example, for students, the reader should "[t]hank the student for confiding in you and offer referrals for support. They can receive 24/7 guidance and support by calling [number] to speak with someone in the Wellbeing and Counseling Center or a navigator in the SAFE office. Students want [sic] a consultation with a medical provider can also schedule an appointment with Student Health Services by calling [number]. All of the offices can also provide the student with off-campus referrals, such as Planned Parenthood and Baylor Teen Clinic." *Id.* In response to an employee's confidence, the reader should "[t]hank the employee for confiding in you, share with them that you will keep their information private, and offer a referral for support. Employees can contact the Employee Assistance Program (EAP) to access free services on a variety of different topics. EAP also offers counseling sessions with a licensed mental health professional, WorkLife referrals, and more. EAP services are available 24/7 . . ." *Id.*

78. *See infra* Part III(A)(iii) for discussion of Title IX as it pertains to pregnancy and termination of pregnancy.

79. *See* Jazper Lu, *Duke Health policies on abortions, reproductive care to remain unchanged until implementation of 12-week abortion ban in July*, DUKE CHRON. (May 18, 2023, 4:32 PM), <https://www.dukechronicle.com/article/2023/05/duke-university-health-system-abortion-matthew-barber-duke-health-student-affairs> (on file with the Syracuse Law Review).

“unborn child” with all the rights that the law bestows on any person.<sup>80</sup> In hostile and ban states, the definition of “unborn child” is often tied to the “moment of conception”.<sup>81</sup> Anti-abortion activists and state legislators have started arguing that certain types of contraception—particularly emergency contraception and IUDs—are abortifacients because some prevent implantation of a fertilized egg rather than fertilization itself.<sup>82</sup> In their view, the use of these contraception methods terminates a pregnancy. These claims belie science,<sup>83</sup> and even the plain language of some bans themselves.<sup>84</sup> Nonetheless, legislators around the country continue to propose—to date without much success—legislation banning certain types of contraception under the specter of abortion bans.<sup>85</sup>

The right to contraception is unequivocally protected in the Constitution.<sup>86</sup> Unlike the question of the breadth of abortion bans, the right to contraception is legally unambiguous—the only ambiguity

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80. See Emily Bazelon, *Why ‘Fetal Personhood’ Is Roiling the Right*, N.Y. TIMES MAG. (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/magazine/fetal-personhood-alabama-ivf.html?smid=url-share> (on file with the Syracuse Law Review).

81. See, e.g., OKLA. STAT. ANN. tit. 63, § 1-730 (West 2023) (defining an “unborn child” from “moment of conception”); TEX. HEALTH & SAFETY CODE § 171.061 (West 2021) (defining “unborn child” as any “offspring of human beings from conception until birth”).

82. See *Another Look at Contraception*, U.S. CONF. CATH. BISHOPS, <https://www.usccb.org/prolife/another-look-contraception> (on file with the Syracuse Law Review) (last visited July 27, 2024); Lauren Weber, *Conservative attacks on birth control could threaten access*, WASH. POST (June 5, 2024), <https://www.washingtonpost.com/health/2024/06/05/birth-control-access-abortion-ban/> (on file with the Syracuse Law Review).

83. See Mabel Felix et al., *The Right to Contraception: State and Federal Actions, Misinformation, and the Courts*, KFF (May 23, 2024), <https://www.kff.org/womens-health-policy/issue-brief/the-right-to-contraception-state-and-federal-actions-misinformation-and-the-courts> (on file with the Syracuse Law Review); see also *Gynecology Data Definitions*, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/practice-management/health-it-and-clinical-informatics/revitalize-gynecology-data-definitions> (on file with the Syracuse Law Review) (last visited July 23, 2024); see also *Plan B One-Step (1.5 mg Levonorgestrel) Information*, FDA, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/plan-b-one-step-15-mg-levonorgestrel-information> (on file with the Syracuse Law Review) (last visited Oct. 2, 2025).

84. Some abortion bans explicitly exclude contraceptives. See, e.g., H.B. 4327, 58th Leg., 2d Reg. Sess. (Okla. 2022), *invalidated by* Okla. Call for Reprod. Just. v. State, 531 P.3d 117, 122 (Okla. 2023); TEX. HEALTH & SAFETY CODE § 245.002(1) (West 2021); LA. STAT. ANN. tit. 40, § 40:1061(E) (West 2022).

85. See, e.g., H.B. 3216, 59th Leg., 2nd Reg. Sess. (Okla. 2024).

86. See *Griswold v. Connecticut*, 381 US 479, 485 (1965); see also *Eisenstadt v. Baird*, 405 U.S. 438, 453–55 (1972).

that exists is that injected into the conversation by the Christian nationalist abolitionist flank of the anti-abortion movement.<sup>87</sup> Universities should not take the bait—the *law* does not require any university self-restrain when it comes to providing their communities with contraception.

Table 2 assesses contraception access and emergency contraception access at the universities in this study. For contraception, the methodology awarded a university “white” status if it provided a wide range of contraception choice either on campus or through referrals to reproductive health clinics; “grey” status to those universities that generally limited contraception options to condoms and oral contraception and avoided long-lasting contraception, including IUDs which are frequently held out as abortifacients; and “black” status for those universities that were silent, not publicly indicating that they would provide students with any type of contraception.

Emergency contraception (or EC) is, as its name implies, designed to prevent pregnancy in an emergency, following unprotected sex and/or contraception failure, and it is only effective if taken within a short window.<sup>88</sup> Thus, a university received a “white” rating if it provides students easy access to EC at all times of day or night, irrespective of whether student health services is open; a university receives a “grey” rating if it makes EC available but not readily accessible or if the university only addresses EC in the context of sexual assault; those universities that are “black” are silent on whether students can access EC on campus.

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87. See e.g., Kristin Tolentino, *Overturning Roe is Just a Start. Here's What Christian Nationalists Have Planned for America Next*, AMS. UNITED FOR SEPARATION OF CHURCH AND STATE (July 21, 2022), <https://www.au.org/the-latest/articles/post-ro-attacks/> (on file with the Syracuse Law Review).

88. Plan B is most effective when taken within 72 hours of unprotected sex but most effective within 24 hours. See Annie Stuart & Kristin Mitchell, *Levonorgestrel Emergency Contraception: Plan B*, WEBMD (Feb. 20, 2025), <https://www.webmd.com/sex/birth-control/plan-b> (on file with the Syracuse Law Review).

**Table 2: Contraception Access on Campus**

<b>School (State)</b>	<b>Abortion Status in State</b>	<b>Contraception Access on Campus</b>	<b>Emergency Contraception (EC) Access on Campus</b>
<b>Pomona College (CA)</b>	<b>Access</b>	Free condoms; prescriptions for birth control pills or injections; referrals for IUDs or arm implant.	Yes; \$15, no appointment necessary (24/7 telehealth; 24/7 access to vending machine in academic year).
<b>Stanford Uni. (CA)</b>	<b>Access</b>	Condoms, prescription birth control. Implants, IUDs available via Stanford Hospital appointments, clinic referrals.	Yes; Vending machine \$26, credit card required); free Plan B to all undergraduates from Stanford Planned Parenthood; free EC from telehealth.
<b>Uni. of Southern California (CA)</b>	<b>Access</b>	Hormonal birth control, condoms, and long-acting reversible contraception available through student health center.	Yes; available at a 24-hour pharmacy vending machine on campus.
<b>Colorado College (CO)</b>	<b>Access</b>	Public information only mentions contraception in cases of sexual assault.	Public information only mentions EC in cases of sexual assault.
<b>University of Denver (CO)</b>	<b>Access</b>	Students can access contraception via appointments with the health center.	Yes; not easily accessible.
<b>Harvard University (MA)</b>	<b>Access</b>	Free condoms. Appointment required for other contraception. Referrals to local pharmacies, Planned Parenthood for LARC.	Yes; generic Plan B available 24/7 for \$15; free for students who come to the clinic presenting with trauma.



School (State)	Abortion Status in State	Contraception Access on Campus	Emergency Contraception (EC) Access on Campus
Massachusetts Institute of Technology (MA)	Access	“Limited amount of safer sex supplies” available in health center. Student volunteers are available to direct students to sources for free condoms. Prescription contraception available through student health center.	Yes; not easily accessible. EC is available without prescription for those 18 and over, “at any local pharmacy.” No instructions given for accessing on campus except for sexual assault survivors and underage people.
Northeastern Uni. (MA)	Access	Health center prescribes oral contraception, patch, ring, gel, and shots. Referrals to local clinics for IUDs and Nexplanons. Will deliver free condoms, oral dams, and water-based lubricant to students’ on-campus mailbox.	Yes; available through vending machine on campus, health center, and local pharmacies. Cost on campus is \$7.
Carleton College (MN)	Access	Free condoms available at designated “Condom Corner” on campus. Health center prescribes pill, patch, Nuvaring, Depo Provera, diaphragms, and internal condoms for pick up at local pharmacies or on campus for \$10. Referrals for IUDs.	Yes; EC available at student health center for free to all students.
Macalester College (MN)	Access	Yes, including all forms of long-lasting reversible contraception.	Yes; EC available at health center and in vending machines. No appointment necessary. No charge through student health insurance at student health center, but vending machine charges.

School (State)	Abortion Status in State	Contraception Access on Campus	Emergency Contraception (EC) Access on Campus
<b>Rollins College (FL)</b>	<b>Hostile</b>	Limited information. Condoms provided. Prescribes hormonal contraceptives after Well Woman consultation.	Yes; limited. No mention of emergency contraception being offered outside of sexual assault cases.
<b>Stetson Uni. (FL)</b>	<b>Hostile</b>	Little information; health center provides "birth control counseling."	<b>Not currently available.</b>
<b>Uni. of Miami (FL)</b>	<b>Hostile</b>	Hormonal contraception available at health center; visit free to students with university insurance. Safer sex supplies can be requested online and delivered. Condoms available across campus.	Yes; not easily accessible.
<b>Emory Uni. (GA)</b>	<b>Hostile</b>	Health center provides birth control pills, prescription contraceptive patch, contraceptive ring, depo-provera injection, IUDs Levonorgestrel.	Yes; not easily accessible. Must get through health center.
<b>Mercer Uni. (GA)</b>	<b>Hostile</b>	Very little information provided; LARC not available.	<b>Silent</b>
<b>Spelman College (GA)</b>	<b>Hostile</b>	Very little information provided. "Contraceptive counseling" available in health center, includes "contraceptive refills." No mention of LARC, condoms.	<b>Silent</b>
<b>Duke Uni. (NC)</b>	<b>Hostile</b>	Contraception, including LARC, available through student health center.	Yes; limited. Little information about EC access.

School (State)	Abortion Status in State	Contraception Access on Campus	Emergency Contraception (EC) Access on Campus
Elon Uni. (NC)	Hostile	Health center provides oral contraception for \$18, free external condoms. Referrals for IUDs. Condoms available through student group.	Yes; limited. Little information about EC access. Health center will provide EC at cost to students.
Wake Forest Uni. (NC)	Hostile	Safe sex supplies available on campus for delivery within one week. Hormonal contraception with appointment at health center. LARC not available.	Yes
Okla-homa City Uni. (OK)	Ban	Silent	Silent
University of Tulsa (OK)	Ban	Very limited and little information.	Yes; free 24/7 vending machine.
Rice Uni. (TX)	Ban	Free condoms available in health center. Oral contraceptives, NuvaRing available in health center by prescription. Will refer for implants, IUDs.	Yes
Southern Methodist Uni. (TX)	Ban	Silent	Silent
Texas Christian Uni. (TX)	Ban	Yes	Yes; not easily accessible.

In reviewing university/student health services websites, universities are strikingly reserved, almost prudish, when addressing reproductive health. It feels as though universities recognize that they should address it given their demographic, but there is a tentativeness, a skittishness, about admitting publicly that their student body is sexually active. Nonetheless, most universities, whether in ban, hostile, or access states, provide students, at a minimum, with some contraception options on campus. In the name of “safe sex,” universities distribute condoms free of charge and intentionally place condoms in bathrooms and dormitories.<sup>89</sup> Many universities will also prescribe, or make referrals to prescribe, oral contraception.<sup>90</sup>

Particularly in states that ban or are hostile toward abortion care, universities’ contraception access beyond condoms and oral contraception is quite limited. Many universities in these states (as depicted in grey and black) do not address long-lasting contraception options even though they have proven to be highly effective. Few of these universities offer students IUDs, either directly or indirectly through partner referrals.<sup>91</sup>

The divide between access states and hostile/ban states grows when focused on emergency contraception. While 70% of universities in access states provide students with around-the-clock accessible EC, only 21% of universities in ban and hostile states do the same, and these universities tend to be among the more resourced and prestigious in this study. Despite emergency contraception’s availability over the counter,<sup>92</sup> it was not uniformly available at universities in ban and

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89. For instance, the University of Miami and Wake Forest University, have implemented a “Safer Sex Express” program. *See, e.g., Safer Sex Supplies*, UNIV. OF MIA., <https://studenthealth.studentaffairs.miami.edu/health-education/health-ed-services/free-condoms/index.html> (on file with the Syracuse Law Review) (last visited Aug. 28, 2024); *Sexual Health*, WAKE FOREST UNIV., <https://deacon-health.wfu.edu/education/sexual-health> (on file with the Syracuse Law Review) (last visited Aug. 28, 2024).

90. *See, e.g., Services & Fees*, ELON UNIV., <https://www.elon.edu/u/health-wellness/health-services/services-and-fees> (on file with the Syracuse Law Review) (last visited July 27, 2024). It will be interesting to see how universities react to the FDA’s decision to approve over-the-counter oral contraception. *See* Press Release, Fed. Drug Admin., FDA Approves First Nonprescription Daily Oral Contraceptive (July 13, 2023), <https://www.fda.gov/news-events/press-announcements/fda-approves-first-nonprescription-daily-oral-contraceptive> (on file with the Syracuse Law Review).

91. In hostile/ban states, Emory, Duke, Elon and Rice are exceptions. *See* Table 2: Contraception Access on Campus.

92. *See Plan B One-Step (1.5 mg levonorgestrel) Information*, U.S. FOOD. & DRUG ADMIN. <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/plan-b-one-step-15-mg-levonorgestrel-information> (last

hostile states, with 36% of universities on the list making no mention of EC all together. Of the remaining 64%, close to half appear to limit its distribution to instances of sexual assault.<sup>93</sup> And those universities that dispense emergency contraception often ignore the situational imperative—frictionless access.<sup>94</sup> Only a few universities in the entire study nodded to the type of emergency contraception that is effective for all students.<sup>95</sup>

Post *Dobbs*, and with FDA approval of over-the-counter Plan B (otherwise known as the “morning after pill”), some universities have become more innovative and entrepreneurial, often with student groups leading.<sup>96</sup> Some universities subsidize the cost, and yet others partner with local non-profits who subsidize the costs.<sup>97</sup> Others have telehealth or a hotline available for 24/7 access.<sup>98</sup> Some installed reproductive health vending machines, often in places that are accessible 24/7, dispensing Plan B and other over-the-counter contraception.<sup>99</sup>

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visited Oct. 2, 2025) (on file with the Syracuse Law Review); Xenia Ellenbogen, *Students tackle emergency contraception access on college campuses*, PRISM (June 22, 2023), <https://prismreports.org/2023/06/22/students-emergency-contraception-access/> (on file with the Syracuse Law Review).

93. See, e.g., *Medical Care*, ELON UNIV., <https://www.elon.edu/u/violence-response/> (last visited July 27, 2024) (on file with the Syracuse Law Review).

94. See, e.g., *Brown-Lupton Health Center: Sexual Health*, TEX. CHRISTIAN UNIV., <https://healthcenter.tcu.edu/sexual-health/> (last visited July 27, 2024) (access only at health services).

95. Plan B is not effective for all students who weigh more than 165 pounds. See Attia, *What's the weight limit for Plan B*, PLANNED PARENTHOOD (Oct. 18, 2021), <https://www.plannedparenthood.org/blog/whats-the-weight-limit-for-plan-b> (on file with the Syracuse Law Review). For these students, emergency contraception choices include Ella (ulipristal acetate ED), available by prescription, or insertion of a copper IUD. *Efficacy of Emergency Contraception and Body Weight: Current Understanding and Recommendations*, AM. SOC'Y FOR EMERGENCY CONTRACEPTION (June 2022) [https://www.americansocietyforec.org/\\_files/ugd/0cdab4\\_12f4b1c5cdf64feab998bc561692137c.pdf](https://www.americansocietyforec.org/_files/ugd/0cdab4_12f4b1c5cdf64feab998bc561692137c.pdf) (on file with the Syracuse Law Review).

96. See Ed Komenda & Susan Haigh, *Morning-after pill vending machines gain popularity on college campuses post-Roe*, OKLAHOMAN (July 4, 2023, 11:24 AM), <https://www.oklahoman.com/story/news/state/2023/07/04/morning-after-pill-vending-machines-gain-popularity-on-college-campuses-post-roe/70381696007> (on file with the Syracuse Law Review).

97. See Table 2: Contraception Access on Campus (Carleton College partners with Advocates for Youth; University of Tulsa partners with Take Control Initiative; and Stanford University partners with Planned Parenthood).

98. See Table 2: Contraception Access on Campus (Pomona College offers 24/7 telehealth appointments for emergency contraception).

99. See Table 2: Contraception Access on Campus. The University of Tulsa was unique in that it is in a ban state. See Piper Prolago, *Reproductive Health Vending Machines in Tulsa*, HUMANITY IN ACTION, [https://humanityinaction.org/action\\_project/usa-piper-prolago-reproductive-health-vending-machines-in-tulsa/](https://humanityinaction.org/action_project/usa-piper-prolago-reproductive-health-vending-machines-in-tulsa/) (on

Granted, on-campus health care is expensive and could expose the university to some added liability.<sup>100</sup> Only those institutions that are well-resourced will be able to create a full-service, one-stop-shop on campus for all students' reproductive health care needs, including contraception and emergency contraception. However, expanding access through referrals and partnerships is a low-cost way to support students while minimizing financial and legal exposure. Yet many universities, particularly in hostile and ban states have not taken this step. There are legitimate reasons why universities may—or may not—decide to offer students a full range of contraception options. Yet, the highly politicized trope that certain types of safe and highly effective contraception and emergency contraception are abortifacients and fall under the cloud of abortion bans should not factor into the university's decision tree.

### 3. Title IX

Title IX prohibits discrimination and harassment “based on sex” in any “education program or activity receiving federal financial assistance.”<sup>101</sup> On our college campuses, Title IX has become synonymous with sexual assault on campus,<sup>102</sup> as well as women's participation in collegiate athletics.<sup>103</sup> Less visible on our college campuses is the relationship between Title IX and pregnancy.

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file with the Syracuse Law Review) (last visited Feb. 5, 2025); *see also* Itzel Luna, *As abortion bans grow, colleges find answer to easy contraceptive access: vending machines*, USA TODAY (July 22, 2023, 9:09 AM), <https://www.usatoday.com/story/news/nation/2023/07/22/emergency-contraception-vending-machines-on-college-campuses/70402459007/> (on file with the Syracuse Law Review).

100. *See* Brittany Lee, *Opportunities and Barriers to Contraception Access on College Campuses*, ASS'N OF STATE AND TERRITORIAL HEALTH OFF. (Apr. 3, 2023), <https://www.astho.org/communications/blog/opportunities-barriers-to-contraception-access-on-college-campuses/> (on file with the Syracuse Law Review).

101. 20 U.S.C. § 1681 (2018). As a recent source noted, about twenty-two colleges choose not to participate in federal financial aid programs, making instances where students do not receive federal financial aid exceedingly rare. *See A list of colleges that don't take federal money*, DEAN CLANCY (Dec. 2, 2017), <https://deanclancy.com/a-list-of-colleges-that-dont-take-federal-money/> (on file with the Syracuse Law Review).

102. *See* Katherine Knott, *New Title IX Rules Get 235,000 Comments*, INSIDE HIGHER EDUC. (Sept. 13, 2022), <https://www.inside-highered.com/news/2022/09/14/thousands-weigh-new-title-ix-rules> (on file with the Syracuse Law Review).

103. *See Title IX Frequently Asked Questions*, NCAA, <https://www.ncaa.org/sports/2014/1/27/title-ix-frequently-asked-questions.aspx> (on file with the Syracuse Law Review) (last visited June 2, 2024).

Under Title IX, discrimination and harassment based on sex includes pregnancy or pregnancy-related conditions, defined as “false pregnancy, *termination of pregnancy* or recovery therefrom.”<sup>104</sup> “Termination of pregnancy” is a technical term that includes stillbirth, abortion and miscarriage.<sup>105</sup> Title IX is federal law and thus pre-empts state law, including state abortion bans.<sup>106</sup> With universities expending much time and resources assuring compliance with Title IX’s ever-shifting sexual assault regulations, many universities pay little attention to Title IX’s pregnancy-related mandate.

However, following *Dobbs*, the Department of Education’s Office of Civil Rights reminded universities of their Title IX pregnancy-related obligations and emphasized that sex-based discrimination includes discrimination on account of termination of pregnancy [OCR Guidance].<sup>107</sup> Essentially, the OCR Guidance interpreted Title IX broadly, as a tool that universities in ban and hostile states could use to support pregnant students who may choose to terminate a pregnancy

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104. 34 C.F.R. § 106.40(b)(1) (2020) (emphasis added); see 34 C.F.R. § 106.2 (2020); 34 C.F.R. § 106.57(b) (2020).

105. See *Abortion and Miscarriage*, PREGNANT SCHOLAR, <https://thepregnantscholar.org/abortion-and-miscarriage/> (on file with the Syracuse Law Review) (last visited Feb. 5, 2025).

106. Federal pre-emption in the context of abortion bans is an issue that the Supreme Court recently avoided. See *Moyle v. United States*, 603 U.S. 324, 325 (2024) (dismissed as improvidently granted). It is likely that the Court will revisit the pre-emption question on the merits in the not-so-distant future. See Laurie Sobel et al., *Emergency Abortion Care to Preserve the Health of Pregnant People: SCOTUS, EMTALA, and Beyond*, KFF (June 27, 2024), <https://www.kff.org/womens-health-policy/emergency-abortion-care-scotus-entala/> (on file with the Syracuse Law Review).

107. See U.S. DEP’T EDUC. OFF. FOR CIV. RTS., DISCRIMINATION BASED ON PREGNANCY AND RELATED CONDITIONS: A RESOURCE FOR STUDENTS AND SCHOOLS (Oct. 2022), <https://equity.nmsu.edu/accom-access/Pregnancy-Fact-Resource-PDF.pdf> (on file with Syracuse Law Review). The Office for Civil Rights is responsible for enforcing civil rights statutes, and policy guidance documents are an important tool it uses to fulfill this role. See Taylor Ross et al., *Does Subregulatory Guidance Protect Students’ Civil Rights?*, REGUL. REV. (Apr. 9, 2022), <https://www.theregreview.org/2022/04/09/saturday-seminar-does-subregulatory-guidance-protect-students-civil-rights/> (on file with the Syracuse Law Review). Although OCR Guidance, standing alone, is not binding law, the documents help ensure compliance with civil rights regulations. Conservative faculty, prodded by conservative anti-abortion groups, are starting to rumble that they will not comply with Title IX requirements as they pertain to termination of pregnancy. See Jessica Valenti, *Texas Professors Want to Punish Students Who Get Abortions*, SUBSTACK (May 29, 2024), <https://jessica.substack.com/p/texas-professors-want-to-punish-students> (on file with the Syracuse Law Review).

in an access state.<sup>108</sup> OCR Guidance reiterated that universities must treat pregnancy-related conditions, including termination of pregnancy, the same as they would treat any other temporary disability.<sup>109</sup> OCR Guidance further explains that universities: 1) must grant students excused absences for termination of pregnancy, presumably encompassing travel for out-of-state for abortion care;<sup>110</sup> and 2) assure that faculty's classroom policies—including penalties for absences and rules about turning in late work—do not contravene Title IX.<sup>111</sup> Recent Title IX regulations codified this guidance, although these regulations are now on hold while several lawsuits challenge their validity.<sup>112</sup>

Regardless of the fate of the newest Title IX regulations, the OCR Guidance offers universities an interpretive path through the extant regulatory regime to assure that no student—or employee—is penalized for terminating a pregnancy. The interpretive choice that universities face is whether to fully embrace Title IX's pregnancy-related mandate as the OCR Guidance sets forth, to adjust internal policy (such as nondiscrimination policies) to explicitly comply with it, or to ignore the OCR Guidance until the new regulations are either validated or invalidated.

Title IX requires that universities transparently communicate with campus communities regarding Title IX's rights, policies, and

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108. See U.S. DEP'T EDUC. OFF. FOR CIV. RTS., DISCRIMINATION BASED ON PREGNANCY AND RELATED CONDITIONS: A RESOURCE FOR STUDENTS AND SCHOOLS (Oct. 2022), <https://equity.nmsu.edu/accom-access/Pregnancy-Fact-Resource-PDF.pdf> (on file with Syracuse Law Review).

109. See *id.*

110. See U.S. DEP'T EDUC. OFF. FOR CIV. RTS. SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS (June 2013), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/pregnancy.pdf> (on file with the Syracuse Law Review).

111. See, e.g., *id.*; *U.S. Department of Education's Title IX Final Rule Overview*, U.S. DEP'T OF EDUC., <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/titleix-overview.pdf> (on file with the Syracuse Law review) (last visited Aug. 30, 2025); *Brief Overview of Key Provisions of the Department of Education's 2024 Title IX Final Rule*, U.S. DEP'T OF EDUC. <https://www.ed.gov/media/document/title-ix-final-rule-summary-33970.pdf> (on file with Syracuse Law Review) (last visited Aug. 30, 2025).

112. While the legal challenges center on the regulations' explicit applicability to transgender students, they are nonetheless enjoined in their entirety, including the codification of the OCR Guidance on "termination of pregnancy." See Kate Hidalgo Bellows, *Biden's Title IX Rule is Now Blocked Nationwide. Here's What That Means*, CHRON. HIGHER EDUC. (Jan. 9, 2025), <https://www.chronicle.com/article/bidens-title-ix-rule-is-now-blocked-nationwide-heres-what-that-means> (on file with Syracuse Law Review).



processes.<sup>113</sup> Consequently, I could view whether universities had signaled to their communities that Title IX encompasses pregnancy and, specifically, termination of pregnancy. In this study, universities that explicitly recognized that Title IX applies to termination of pregnancy in nondiscrimination, sexual harassment and/or Title IX policies earned a “white” rating. Universities that explicitly linked Title IX protections to “pregnancy” and/or “pregnancy-related conditions” but did not call out “termination of pregnancy” earned a “grey” rating. And universities that did not recognize Title IX’s applicability to pregnancy at all earned a “black” rating.

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113. *See* 34 C.F.R. § 106.8(b) (2020).

**Table 3: Title IX and Pregnancy-Related Discrimination**

School	Abortion Status in State	Title IX and Pregnancy-Related Discrimination and Accommodations
Pomona College (CA)	Access	Nondiscrimination policy includes pregnancy and pregnancy-related conditions and reproductive-health decision making, does not explicitly mention pregnancy termination but decision making encompasses.
Stanford Uni. (CA)	Access	Nondiscrimination policy does not mention pregnancy; graduate policy makes accommodations for childbirth.
Uni. of Southern California (CA)	Access	Notice of nondiscrimination for pregnant and parenting students, includes termination of pregnancy and explicitly addresses accommodations.
Colorado College (CO)	Access	Nondiscrimination policy includes pregnancy, not pregnancy-related conditions.
University of Denver (CO)	Access	Notice of nondiscrimination for pregnant and parenting students, includes termination of pregnancy and explicitly addresses accommodations.
Harvard University (MA)	Access	Student Policies do not explicitly address pregnancy-related conditions but recent interview with leader clarified that pregnancy-related conditions are included.
Massachusetts Institute of Technology (MA)	Access	Nondiscrimination policy includes pregnancy, not pregnancy-related conditions.
Northeastern University (MA)	Access	Nondiscrimination policy includes pregnancy and pregnancy-related conditions, "termination of pregnancy" is included; clear list of accommodations.
Carleton College (MN)	Access	Nondiscrimination policy does not reference pregnancy; Title IX information focuses on sexual assault.
Macalester College (MN)	Access	Nondiscrimination policy includes pregnancy, not pregnancy-related conditions.

School	Abortion Status in State	Title IX and Pregnancy-Related Discrimination and Accommodations
Rollins College (FL)	Hostile	Explicit reference to pregnancy and pregnancy-related conditions on Title IX page but no reference to termination of pregnancy.
Stetson University (FL)	Hostile	Includes abortion in pregnancy and parenting nondiscrimination statement and clear accommodation policy.
University of Miami (FL)	Hostile	Resource for pregnant and parenting students under Title IX policies but does not mention termination of pregnancy
Emory University (GA)	Hostile	Nondiscrimination policy does not reference pregnancy; no mention of pregnancy on Title IX page.
Mercer University (GA)	Hostile	Title IX pregnancy-related information page references “termination of pregnancy” and delineates accommodation process.
Spelman College (GA)	Hostile	On Title IX page, pregnancy-related information explicitly references “termination of pregnancy” and delineates accommodation process.
Duke University (NC)	Hostile	Nondiscrimination policy includes pregnancy and pregnancy-related conditions.
Elon University (NC)	Hostile	Nondiscrimination policy does not reference pregnancy; Title IX information focuses on sexual assault.
Wake Forest University (NC)	Hostile	Title IX pregnancy-related information page explicitly references “termination of pregnancy” and delineates accommodation process.
Oklahoma City University (OK)	Ban	Nondiscrimination statement covers pregnancy but not pregnancy-related conditions or termination of pregnancy. Title IX harassment policy refers to a pregnancy and parenting policy.

School	Abortion Status in State	Title IX and Pregnancy-Related Discrimination and Accommodations
University of Tulsa (OK)	Ban	Pregnancy and Parenting nondiscrimination policy for students includes pregnancy related conditions and termination of pregnancy.
Rice University (TX)	Ban	Nondiscrimination policy and accommodations regarding pregnancy and pregnancy-related conditions and FAQs clarify that this includes termination of pregnancy.
Southern Methodist University (TX)	Ban	Nondiscrimination policy does not reference pregnancy; Title IX information focuses on sexual assault.
Texas Christian University (TX)	Ban	Nondiscrimination statement covers pregnancy but not pregnancy-related conditions or termination of pregnancy, some reference to accommodations.

Many universities did not indicate in their Title IX compliance policies and processes that Title IX is protective of both pregnancy and termination of pregnancy. Of those universities that did, some were slow post-*Dobbs* to adjust their public-facing pages to mirror the OCR Guidance,<sup>114</sup> perhaps because of a history of a whiplash-like-volley from administration to administration, or perhaps because of the sluggishness of the modern university's bureaucracy.<sup>115</sup>

Surprisingly, there was little distinction between schools in access states and those in hostile and ban states.

	Access States	Hostile/Ban States
<b>High</b>	40%	43%
<b>Medium</b>	40%	36%
<b>Low</b>	20%	21%

114. Some schools that did not embrace the full scope of Title IX in the summer of 2023 had done so by 2024. For instance, Wake Forest University's Office of Institutional Equity, located in North Carolina, a hostile state, just recently added a Pregnancy & Lactation page to its site, emphasizing that Title IX covers pregnancy and termination of pregnancy and setting forth students' and employees' accommodation rights as delineated in the OCR memorandum. *See Pregnancy & Lactation*, WAKE FOREST UNIV., <https://oie.wfu.edu/pregnancy-lactation> (on file with the Syracuse Law Review) (last visited Aug. 29, 2025). This page had not been posted in the summer of 2023.

115. *See supra* note 112 regarding recent challenges to Title IX regulations.

Some universities in hostile/ban states publish pregnancy-specific nondiscrimination policies that mirror the OCR Guidance.<sup>116</sup> Unlike the analysis of contraception, where the larger, better-resourced schools stood out, some of the smaller, less-resourced schools distinguished themselves in their interpretation and implementation of Title IX.<sup>117</sup>

OCR's interpretive cover appeared to embolden universities to push back against state law via Title IX. In reviewing universities in the data set, one senses that many schools in hostile and ban states were grasping for relatively costless, "low hanging fruit" to support students post-*Dobbs*. And given the outsized role that Title IX plays in athletics and in dictating how universities manage, report and adjudicate sexual assault on campus, most universities have an extant compliance and/or Title IX office and apparatus that can react relatively nimbly to changes in the law, or, in this case, interpretations of the law.

The OCR Guidance, even though non-binding law, apparently created a comfortable opening for universities to mount limited resistance to state abortion bans, assuring that students who legally terminate a pregnancy will be granted at a minimum the same accommodations as those who face other health-related issues. In this instance, universities utilized federal regulations to justify a more aggressive interpretive posture than many were willing to adopt in interpreting abortion bans themselves. From a legal pluralism lens, the juncture of three legal systems—the university, the federal regulatory state, and

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116. See e.g., *Pregnancy and Parenting Non-Discrimination Policy for Students*, UNIV. OF TULSA, [https://utulsa.policystat.com/policy/token\\_access/3654a82b-93cc-46a3-b7de-3ec2d8e943c7](https://utulsa.policystat.com/policy/token_access/3654a82b-93cc-46a3-b7de-3ec2d8e943c7) (on file with the Syracuse Law Review) (last visited Oct. 3, 2025).

117. For instance, Stetson University's Pregnancy and Parenting Student Policy clearly states, "[Title IX's] prohibition of sex-based discrimination includes discrimination or harassment on the basis of pregnancy, childbirth, false pregnancy, miscarriage, abortion, or related conditions, including recovery. Title IX also ensures the right to take medically necessary leave and to be free of harassment, intimidation, or other discrimination because of pregnancy-related conditions." *Policies and Procedures: Title IX*, STETSON UNIV., <https://www.stetson.edu/other/title-ix/policy-procedure.php> (on file with the Syracuse Law Review) (last visited Aug. 30, 2025). In addition to the policies posted on Spelman College's site, the Title IX & Compliance Office published an easily accessible, jargon-free "Pregnant & Parenting" pamphlet for students. See *Title IX Office: Pregnancy Rights and Support*, SPELMAN COLL., <https://www.spelman.edu/title-ix/policies-and-procedures/pregnancy-rights-and-support.html> (last visited Aug. 30, 2025) (on file with the Syracuse Law Review); See also *Pregnant & Parenting Students*, SPELMAN COLL., <https://www.spelman.edu/1-Docs-and-Files/title-ix/pregnant-and-parenting-pamphlet.pdf> (on file with the Syracuse Law Review) (last visited Oct. 3, 2025).

state law—ostensibly created fertile and malleable space for assertive university behavior.

### *B. University as Legal Design Engineer*

Very little in the law is “airtight,” and most regulation leaves room to maneuver. Within this space, universities exercise both agency and autonomy in implementing local, state and federal law. The university’s systems, policies, practices, and norms filter state and federal law and thus can have great consequences for community members’ safety and well-being, particularly in a post-*Roe* environment. This section first explores universities’ choices in designing health insurance plans. Then this Article explores how universities structure systems to protect students’ reproductive health information. In both cases, universities have the power to design systems to exploit certain quirks, loopholes, or omissions in the law in favor of reproductive health; and, in both cases, some universities are embracing this lawmaking power in stronger ways than others.

#### *1. Student and Employee Health Insurance*

Abortion care can be expensive. Medication abortion costs up to \$800 and procedural abortion costs anywhere from \$700 to \$2500 depending on gestation.<sup>118</sup> And these expenses do not include travel-related expenses, which can add thousands in cost, particularly for those living in ban states.<sup>119</sup> For many on our campuses, including most of our students, these costs are barriers to accessing abortion care.<sup>120</sup>

At the same time, universities generally require that all students and employees carry health insurance and offer health insurance options as part of the employee benefit plan and for students to purchase.<sup>121</sup> State law governs most questions related to health insurance. Twelve states currently demand that health insurance cover abortion

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118. See *How much does an abortion cost?*, PLANNED PARENTHOOD (Apr. 13, 2025), <https://www.plannedparenthood.org/blog/how-much-does-an-abortion-cost> (on file with the Syracuse Law Review).

119. See Allison McCann, *What It Costs to Get an Abortion Now*, N.Y. TIMES (Sept. 28, 2022), <https://www.nytimes.com/interactive/2022/09/28/us/abortion-costs-funds.html> (on file with the Syracuse Law Review).

120. See *Cost Should Never Be A Barrier To Abortion Care*, REPROD. EQUITY NOW (Oct. 5, 2022), <https://reproequitynow.org/blog/abortion-costs-massachusetts> (on file with the Syracuse Law Review).

121. See Ann Carrns, *What You Need to Know About Campus Health Insurance*, N.Y. TIMES (July 16, 2021), <https://www.nytimes.com/2021/07/16/your-money/college-health-insurance-plans.html> (on file with the Syracuse Law Review).

care.<sup>122</sup> This affirmative insurance requirement has become a standard part of “shield law” packages, and, as more access states pass shield laws, many states that had been neutral or silent have shifted to require coverage of abortion care.<sup>123</sup>

In this study’s access states—California, Massachusetts, and, as of the past few months, Minnesota and Colorado, state law requires all private insurance plans, Affordable Care Act (ACA) exchanges, and Medicaid to cover abortion care.<sup>124</sup> Because health insurance plans are negotiated well ahead of the calendar year and are valid for at least one year, the most recent changes in state law requiring coverage of abortion care will not yet be reflected in the health insurance plans I pulled from university websites. Nonetheless, I assume that by the next calendar year, student and employee insurance plans in the access states will cover abortion care as law now demands. Thus, Table 4: Student and Employee Health Insurance Coverage of Abortion Care does not include access states.

Unsurprisingly, states that restrict abortion care also restrict insurance coverage of abortion.<sup>125</sup> For the states in this study, Oklahoma and Texas prohibit private insurance companies, ACA exchanges, and Medicaid from covering abortion care; Florida, Georgia and North Carolina are slightly more permissive, restricting coverage only in ACA exchanges and Medicaid.<sup>126</sup>

If universities self-insure, rather than use a fully insured plan, the Employee Retirement Income Security Act (ERISA) pre-empts state insurance law.<sup>127</sup> A self-insured plan is one in which the university

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122. See *Interactive: How State Policies Shape Access to Abortion Coverage*, KFF (Jan. 8, 2025), <https://www.kff.org/womens-health-policy/interactive-how-state-policies-shape-access-to-abortion-coverage/> (on file with the Syracuse Law Review).

123. See *id.*

124. Colorado and Minnesota recently changed their laws to allow for this coverage. See COLO. CONST. art. II, § 32 (West 2024); MINN. STAT. ANN. § 62Q.524(2) (West 2025).

125. See KFF, *supra* note 122.

126. See *id.*

127. See Paul Schiff Berman et al., *Conflicts of Law and the Abortion War Between the States*, 172 U. PA. L. REV. 399, 500 (2024); see also Michelle Long et al., *Employer Coverage of Travel Costs for Out-of-State Abortion*, KFF (May 16, 2022), <https://www.kff.org/private-insurance/employer-coverage-travel-costs-out-of-state-abortion/> (on file with the Syracuse Law Review); René Thorne et al., *Novel ERISA Preemption Questions Presented by Supreme Court’s Dobbs Decision*, AM. BAR ASS’N (Nov. 28, 2022),

assumes the risk and pays claims to employees but typically hires an insurance company to be the administrator; in fully insured plans, the insurance company itself bears the risk.<sup>128</sup> Currently, ERISA permits private insurance coverage of abortion care. So, from a legal design vantage point, self-insurance via ERISA preserves a university's right to cover the cost of abortion care for those employee health plans.

Table 4 examines whether universities in hostile and ban states cover abortion care through their student and employee health plans. Universities receive a "white" rating for explicitly covering abortion care under the respective health insurance plan; a "grey" rating if it is unclear if health insurance plans cover abortion care or if the web site is opaque; and a "black" rating if the plans explicitly exclude abortion care. Table 4 also delineates whether state law permits any abortion care coverage and whether the university self-insures.

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[https://www.americanbar.org/groups/labor\\_law/resources/committee-articles/archive/novel-erisa-preemption-questions-dobbs-decision/](https://www.americanbar.org/groups/labor_law/resources/committee-articles/archive/novel-erisa-preemption-questions-dobbs-decision/) (on file with the Syracuse Law Review).

128. See Conor Quinn, *Fully Insured vs. Self-Insured Health Plans: What Employers Need to Know*, CRITERION (Mar. 13, 2025), <https://www.criterionhcm.com/white-papers/fully-insured-vs-self-insured> (on file with the Syracuse Law Review).



**Table 4: Student and Employee Health Insurance Coverage of Abortion Care**

University (State)	State Insurance Law	Self-Insured?	Employee Health Insurance	Student Health Insurance
<b>Rollins College (FL)</b>	Prohibits coverage of abortion in state ACA exchanges and Medicaid only.	<b>Unclear</b>	Detailed benefits not viewable.	No longer provides student health insurance in 2022-23. “Elective abortion” excluded.
<b>Stetson Univ. (FL)</b>		<b>Unclear</b>	Silent.	No longer provides student health insurance. Excludes abortion drugs except in cases of rape, incest. Otherwise, silent on abortion.
<b>Univ. of Miami (FL)</b>		<b>Yes</b>	Silent; Only accessible with sign in.	
<b>Emory Univ. (GA)</b>	Prohibits coverage of abortion in state ACA exchanges and Medicaid only.	<b>Yes</b>	Covers “voluntary abortion” and travel in some instances.	Plan explicitly self-insured. Yes, up to \$500 in coverage.
<b>Mercer Univ. (GA)</b>		<b>Unclear</b>	No, excludes “voluntary or elective abortions”.	Excludes “voluntary or elective abortions”.
<b>Spelman College (GA)</b>		<b>Unclear</b>	Silent.	Silent. Does not reference abortion, excludes elective surgery, treatment.

University (State)	State Insurance Law	Self- Insured?	Employee Health Insurance	Student Health Insurance
<b>Duke Univ. (NC)</b>	Prohibits coverage of abortion in state ACA exchanges and Medicaid only.	<b>Yes</b>	Yes, to extent permitted by state law.	Information only accessible with student login.
<b>Elon Univ. (NC)</b>		<b>Yes</b>	Abortion covered for members to extent permitted by state law.	Benefits allowable up to limit of state law.
<b>Wake Forest Univ. (NC)</b>		<b>Yes</b>	Excluded except in case of rape, incest or if woman's life is in serious danger.	Benefits allowable to the limit of state law.
<b>Oklahoma City Univ. (OK)</b>	Prohibits coverage of abortion in ACA exchanges, Medicaid and Private Insurance.	<b>Unclear</b>	Silent. No detail on coverage of plan.	Excludes "elective abortion".
<b>Univ. of Tulsa (OK)</b>		<b>Yes</b>	Self-Insured: Only covers abortion when medically necessary.	Excludes "elective abortion".

University (State)	State Insurance Law	Self-Insured?	Employee Health Insurance	Student Health Insurance
Rice Univ. (TX)	Prohibits coverage of abortion in ACA exchanges, Medicaid and Private Insurance.	Yes	Silent.	Excludes abortion except to save life of pregnant person (Texas law); excludes abortion drugs.
Southern Methodist Univ. (TX)		Yes	Yes. Elective Abortion Covered in 2023 plan, no detail on later plans.	Abortion excluded except when life of woman is at risk (Texas law); excludes “abortion drugs.”
Texas Christian Univ. (TX)		Unclear	Silent.	Excludes “elective abortion”; coverage for ectopic pregnancy, spontaneous pregnancy termination.

In hostile states, the legislatures have not yet prohibited *private* health insurance from covering abortion care. In these states, abortion care is only legal in the narrowest of gestational windows and barely accessible during those brief periods. Private health insurance coverage would not sanction or enable local abortion care when state law restricts it—it would simply provide coverage for legal out-of-state care and the cost of travel. Several schools in hostile states extend abortion care coverage through private health insurance to students.<sup>129</sup> What is striking, however, is that some schools in hostile states are making an explicit choice *not* to provide private health insurance coverage of abortion care even though the law permits it.<sup>130</sup>

129. See Table 4: Student and Employee Health Insurance Coverage of Abortion Care (Emory Univ., Elon Univ., and Wake Forest Univ.).

130. See e.g., *Mercer University Student Health Insurance Program: Schedule of Benefits Summary*, MERCER UNIV. (2025–26), <https://studentplan.corehealthbenefits.com/PlanInformation/sobs> (on file with the Syracuse Law Review); *University of Miami Student Health Insurance Plan*, UNIV. MIA. (2024–25),

Self-insured employee health plans allow universities to engineer around the strictures of state law, as federal law—ERISA—pre-empts it. Indeed, several schools in hostile states are self-insured and cover employee abortion care,<sup>131</sup> and one university in a ban state does so as well.<sup>132</sup> Granted, self-insurance is only financially viable for the largest universities, and the decision of whether to self-insure is complex and multifaceted.<sup>133</sup> However, there are several universities in the data set that self-insure their employee health insurance plans but nonetheless explicitly *exclude* coverage of abortion care even though ERISA would permit them to do so.<sup>134</sup>

ERISA is a law focused on *employee* benefits and does not address *student* health plans, and there is no federal analog that explicitly pre-empts state law. Whether self-insured student health plans are exempt from state insurance law is ambiguous.<sup>135</sup> One university in the study, Emory University, explicitly self-insures its student health plan and appears to lean on a self-insurance theory in response to restrictive state insurance law.<sup>136</sup>

Health insurance offers universities clear design choices. Via federal pre-emption and ERISA, self-insurance opens the legal option of extending abortion care coverage to employees regardless of state law. Yet many universities decide not to self-insure. The data also shows that some universities are not covering abortion care even though state or federal law would permit it: among universities that self-insure, some nonetheless decide not to cover abortion care; and in hostile states where state law permits private insurance coverage of abortion care, several universities decline to cover it. In some cases, universities assert themselves by using federal law as a shield against state

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<https://www.aetnastudenthealth.com/schools/um/pdbs2425.pdf> (on file with the Syracuse Law Review).

131. See *supra* Table 4 (Emory Univ., Elon Univ., and Duke Univ.).

132. See *supra* Table 4 (S. Methodist Univ.).

133. See Justin Zackal, *Why Institutions Self-Insure Their Health Care Coverage*, HIGHEREDJOBS (Apr. 8, 2014), <https://www.higheredjobs.com/articles/articleDisplay.cfm?ID=498> (on file with the Syracuse Law Review).

134. See *supra* Table 4 (Wake Forest Univ., Univ. of Tulsa).

135. See *Is Self-Funding Right for Your Student Health Insurance Plan?*, ACAD. HEALTHPLANS, <https://www.ahpcare.com/is-self-funding-right-for-your-student-health-insurance-plan/> (on file with the Syracuse Law Review) (last visited Feb. 26, 2025).

136. See *Emory University Student Health Insurance Plan Design and Benefits Summary*, EMORY UNIV. (2024–2025), [https://studenthealth.emory.edu/includes/documents/Emory\\_University\\_SI\\_PDBS\\_2425\\_FINAL.pdf](https://studenthealth.emory.edu/includes/documents/Emory_University_SI_PDBS_2425_FINAL.pdf) (on file with the Syracuse Law Review) (explicitly stating that Aetna Student Health provides administrative services but that Emory University underwrites the plan).

insurance law—and in some cases they do not. Law is not the barrier to protective action—intentionality is.

## 2. *Privacy of Students' Personally Identifiable Health Information*

Post-*Dobbs*, reproductive healthcare surveillance is a mounting reality.<sup>137</sup> When we seek and receive medical care outside of universities, the federal Health Insurance Portability and Accountability Act (hereinafter “HIPAA”) governs the privacy and confidentiality of our personally identifiable healthcare information, and in general, HIPAA is viewed as offering strong privacy protections.<sup>138</sup> HIPAA’s privacy rule states that covered entities<sup>139</sup> must protect patients’ health records and other personally identifiable information from disclosure except in very limited circumstances or with the express written agreement of the patient.<sup>140</sup> The Biden administration’s amendments to HIPAA’s regulations tightened further the circumstances in which reproductive

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137. See e.g., Jessica Valenti, *Missouri Bill Would Create Registry of Pregnant Women “At Risk” of Having an Abortion*, SUBSTACK (Feb. 18, 2025), <https://jessica.substack.com/p/missouri-bill-would-create-registry> (on file with the Syracuse Law Review); Jessica Valenti, *Indiana May Make Abortion Reports Public Record*, SUBSTACK (Jan. 24, 2025), <https://jessica.substack.com/p/indiana-may-make-abortion-reports> (on file with the Syracuse Law Review); Holly Ramer, *Lawsuit alleges Vermont tracks pregnant women deemed unsuitable for parenthood*, AP NEWS (Jan. 17, 2025, 7:23 PM), <https://apnews.com/article/pregnancy-child-welfare-lawsuit-vermont-2fb1e1b3f89883ecb86b090ac22bf54c> (on file with the Syracuse Law Review); Léonie Chao-Fong, *Katie Britt proposes federal database to collect data on pregnant people*, GUARDIAN (May 11, 2024, 5:28 PM), <https://www.theguardian.com/us-news/article/2024/may/11/katie-britt-proposes-federal-database-to-collect-data-on-pregnant-people> (on file with the Syracuse Law Review); Jolynn Dellinger & Stephanie K. Pell, *The criminalization of abortion and surveillance of women in a post-Dobbs world*, BROOKINGS INST. (Apr. 18, 2024), <https://www.brookings.edu/articles/the-criminalization-of-abortion-and-surveillance-of-women-in-a-post-dobbs-world/> (on file with the Syracuse Law Review).

138. See Health Insurance Portability and Accountability Act § 130d-6, 42 U.S.C.A..

139. See 45 C.F.R. § 160.103 (2013). Covered entities are health plans, health care clearinghouses, and certain health care providers who conduct electronic transactions governed by the U.S. Department of Health and Human Services. See *Who must comply with HIPAA privacy standards?*, U.S. DEP’T HEALTH & HUM. SERVS. (Aug. 21, 2024), <https://www.hhs.gov/hipaa/for-professionals/faq/190/who-must-comply-with-hipaa-privacy-standards/index.html> (on file with the Syracuse Law Review).

140. Section 164.502 outlines various circumstances where disclosure of protected health information is permitted, such as for payment, treatment, and health care operations or when required by law. See 45 C.F.R. § 164.502(a)(1)(ii) (2013). Notably, the disclosures for law enforcement purposes are permissive and not mandatory and require that law enforcement produce an order, subpoena or official administrative request. See 45 C.F.R. § 164.512(f)(1)(ii) (2013).

health information can be shared without patient consent, although a Texas District Court vacated the rules nationwide, and the Trump administration did not appeal the ruling.<sup>141</sup>

University health clinics must abide by HIPAA's privacy protections for *employee* patients. Yet, HIPAA explicitly *exempts* student health records from its jurisdiction.<sup>142</sup> Instead, the Family Educational Rights and Privacy Act (FERPA) governs matters related to student privacy.<sup>143</sup> FERPA prevents universities from disclosing "education records"<sup>144</sup> without the student's prior written consent.<sup>145</sup> FERPA's privacy protections are generally regarded as porous because universities *can* disclose information without student consent if the disclosure falls into one of *many* exceptions, including to those who have "legitimate educational interests" in such records;<sup>146</sup> to comply with a judicial order or subpoena;<sup>147</sup> in an emergency impacting the health or

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141. See *HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet*, U.S. DEP'T HEALTH & HUM. SERVS. (July 1, 2025), <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html> (on file with the Syracuse Law Review); see also *Purl v. U.S. Dep't of Health & Hum. Servs.*, 787 F. Supp. 3d 284, 296 (N.D. Tex. 2025).

142. See Stacey A. Tovino, *Confidentiality Over Privacy*, 44 CARDOZO L. REV. 1243, 1252 n.52 (2023); see also 45 C.F.R. § 160.103 (2013).

143. See 45 C.F.R. § 160.103(2)(i), (2)(ii) (2024) (contains the definition of "protected health information").

144. "Education records" generally refers to records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. 20 U.S.C. § 1232g(a)(4)(A) (1974); 34 C.F.R. § 99.3 (2011).

145. See 20 U.S.C. § 1232g(b)(1) (1974); see also 34 C.F.R. § 99.30 (2004).

146. See 20 U.S.C. § 1232g(b)(1)(A) (1974); see also 34 C.F.R. §§ 99.7(a)(3)(iii) (2025), 99.31(a)(1)(i)(A) (2012). Generally, universities interpret this exception as a "need to know" standard. See e.g., Office of the Registrar, *FERPA: What You as Faculty and Staff Need to Know*, IOWA ST. UNIV., <https://www.registrar.iastate.edu/faculty-staff/ferpa> (on file with the Syracuse Law Review) (last visited Nov. 13, 2024). To take advantage of this exception, universities must delineate procedures, which it must distribute to students and employees on an annual basis. See *Notification of Rights Under the Family Educational Rights and Privacy Act (FERPA)*, UNIV. TULSA, <https://utulsa.policystat.com/policy/18282674/latest/> (on file with the Syracuse Law Review) (last visited Sept. 8, 2025); see also *Family Educational Rights & Privacy Act (FERPA)*, RICE UNIV., <https://registrar.rice.edu/ferpa> (on file with the Syracuse Law Review) (last visited June 16, 2024); see also *Release of Information*, UNIV. OKLA., <https://www.ou.edu/registrar/academic-records/ferpa/release-of-information> (on file with the Syracuse Law Review) (last visited June 16, 2024).

147. See 34 C.F.R. § 99.31(a)(9)(i) (2012).

safety of the student or of other individuals;<sup>148</sup> and to parents if they claim the student as a dependent on tax returns.<sup>149</sup>

Beyond these exceptions, FERPA excludes students' medical and psychological treatment records from "education records". Instead, students' health information is segregated in "treatment records" which stand apart from "education records" as long as the university *only* shares "treatment records" with those university-affiliated health care providers who actually treat the student.<sup>150</sup> If the university disseminates information in treatment records to non-treating university employees—perhaps to document an excused absence or accommodations, that information becomes part of the student education record, and, at that point, and falls under FERPA.

Federal law—intentional or not—creates a student health care privacy gap, whereby HIPAA cedes regulatory oversight of student health information in favor of FERPA, and FERPA, the admittedly less protective of the two regulatory regimes, excludes student treatment records from its orbit. State law then becomes students' only privacy backstop. In abortion access states, a recent flurry of shield laws protect personally identifiable reproductive healthcare information from state surveillance.<sup>151</sup> Hostile and ban states do not shield information related to reproductive healthcare, and their privacy laws are

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148. See 20 U.S.C. § 1232g(b)(1)(I) (1974); see also 34 C.F.R. § 99.31(a)(10) (2012).

149. See *A Parent Guide to the Family Educational Rights and Privacy Act (FERPA)*, U.S. DEP'T EDUC. (July 9, 2021), [https://studentprivacy.ed.gov/default/files/resource\\_document/file/A%20parent%20guide%20to%20ferpa\\_508.pdf](https://studentprivacy.ed.gov/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf) (on file with the Syracuse Law Review).

150. See 34 C.F.R. § 99.3 (2011); see also *Does FERPA or HIPAA apply to records on students at health clinics run by postsecondary institutions?*, U.S. DEP'T HEALTH & HUM. SERVS. (July 26, 2013), <https://www.hhs.gov/hipaa/for-professionals/faq/518/does-ferpa-or-hipaa-apply-to-records-on-students-at-health-clinics/index.html> (on file with the Syracuse Law Review).

151. Access states have passed "shield laws" to protect patient medical records, providers and third-party helpers from the long arm of ban states. See, e.g., *Interstate Shield Laws*, CTR. FOR REPROD. RTS. (June 26, 2024), <https://reproductiverights.org/interstate-shield-laws/> (on file with the Syracuse Law Review); Irene Kim et al., *Two Years After Dobbs: Analysis of State Laws to Protect Reproductive Healthcare Info from Interstate Investigations and Prosecutions*, CTR. FOR DEMOCRACY AND TECH., <https://cdt.org/wp-content/uploads/2024/06/2024-06-26-CDT-SS-Two-Years-After-Dobbs-Analysis-of-State-Laws-rep.pdf> (on file with the Syracuse Law Review) (last visited Sept. 30, 2025); Grace Panetta & Orion Rummeler, *Blue states' "shield laws" for abortion and trans health care, explained*, VOX (June 13, 2023, 7:30 AM), <https://www.vox.com/policy/23758444/abortion-trans-health-care-legal-shield-laws> (on file with the Syracuse Law Review).

generally less protective than HIPAA.<sup>152</sup> State analogs to FERPA are particularly weak as well.<sup>153</sup>

Universities are not adequately communicating with students about this void in privacy protections. In Table 1, in the row pertaining to privacy of student health data, I document this information gap. A university receives a white rating if it is transparent, accurately sharing with students the extent to which the university will maintain privacy of their health records; grey or “unclear” means one or more of the following: (1) the information is available but is misleadingly scattered; (2) the university buries information in fine print and/or legalese; (3) the university’s explanation of the legal status of student health records is incomplete; 4) the university misstates some of the law; and/or 5) the web site is opaque, providing little or no information about privacy of student health records. Because information is often diffuse, some may be clear and accurate and some confusing and inaccurate. My ultimate classification is based on a holistic review of all available information as well some inevitable subjectivity.

Universities were uniformly weak in explaining to students about the extent to which the university could—or would—share their healthcare information without consent. I did not find any correlation between the state (access, hostile or ban) and the extent to which the university clearly shared information regarding student privacy. In

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152. Among ban states, Texas has enacted relatively strong healthcare privacy protections, although Texas explicitly excludes university health centers and student records from its privacy laws. See Stacey A. Tovino, *Privacy for Student-Patients: A Call to Action*, 73 EMORY L.J. 83, 121 (2023). Tovino also argues that the laws that tend to apply directly to student health records are state professional practice acts that are antiquated, not enforced, completely opaque to students. See *id.* See also C Kibby, *US State Privacy Legislation Tracker*, INT’L ASS’N PRIV. PROS. (July 7, 2025), <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/> (on file with the Syracuse Law Review); see also Jesse M. Coleman & Leon Rodriguez, *50-State Survey of Health Care Information Privacy Laws*, SEYFARTH SHAW LLP (2023), <https://www.seyfarth.com/a/web/bhRXWBk-Mif111KfVwiQN6V/50-state-survey-of-health-care-information-privacy-laws-2023-2024-edition.pdf> (on file with the Syracuse Law Review). Furthermore, while the exceptions to non-disclosure in HIPAA and FERPA are *permissive*, the state privacy laws in ban state often carve *mandatory* exceptions to the underlying non-disclosure rule. See, e.g., N.C. GEN. STATUTE § 8-53 (2019).

153. See Rachael Stickland & Leonie Haimson, *The State Student Privacy Report Card*, PARENT COAL. FOR STUDENT PRIV. & THE NETWORK FOR PUB. EDUC. (Jan. 2019), <https://studentprivacymatters.org/wp-content/uploads/2019/01/The-2019-State-Student-Privacy-Report-Card.pdf> (on file with the Syracuse Law Review).



fact, one of the most transparent universities in the study is Rice University in Texas, arguably in the most hostile and restrictive state in the country. So, it can be done ... even in the most difficult environment.

Most universities in ban and hostile states, the states where disclosure could have criminal and civil consequences, either misinformed or underinformed their students about the privacy of health data. The three universities that earned a “transparent” rating were demonstratively stronger than others in the cohort—yet, from the vantage point of a student, there remains room for improvement.<sup>154</sup>

Some universities blatantly misstate the law. Despite HIPAA’s explicit exclusion of student health data, some universities nonetheless claim that HIPAA protects students’ health data.<sup>155</sup> One university stated that student health information cannot be released absent the student’s written permission—not true under either HIPAA (which does not apply) or FERPA (which applies if the information finds its way into an “education record”), as each have exceptions to the non-disclosure rule.<sup>156</sup> Another university answered a FAQ on the health services web page about parental access to student health records with: “At age 18, your medical records cannot be released to anyone without your permission, including your parents[.]”<sup>157</sup> a statement that is

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154. For example, Rice University’s FERPA page explains the student privacy gap in plain legal terms, although skirts the most relevant question—to what extent will the university protect a student’s personally identifiable health information? *See Family Educational Rights & Privacy Act (FERPA)*, RICE UNIV., <https://registrar.rice.edu/ferpa> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024). For further information, the student must then go to the health center’s site where the health center rather circuitously promises confidentiality unless “required by law.” *Health, Counseling, Wellbeing, and Safety*, RICE UNIV., <https://ga.rice.edu/undergraduate-students/student-services-organizations/health-counseling-wellbeing> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

155. *See, e.g., Hurricane Health Center*, UNIV. OF TULSA, <https://utulsa.edu/about/facilities/health-center> (last visited Nov. 16, 2024) (on file with the Syracuse Law Review); *Stetson Health Service*, STETSON UNIV., <https://www.stetson.edu/administration/health-service/> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024) (note that Adventhealth is the third-party contractor for Stetson Health Services).

156. *See Hurricane Health Center*, UNIV. OF TULSA, <https://utulsa.edu/about/facilities/health-center/> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

157. *See Frequently Asked Questions*, TEX. CHRISTIAN UNIV., <https://healthcenter.tcu.edu/faqs/> (on file with the Syracuse Law Review) (last

patently untrue both for education records (parents who claim a student as a dependent have access) and for treatment records (without HIPAA or FERPA protections). Another school represented to students that “[t]he relationship between a student and the Wellness Center is confidential.”<sup>158</sup>

Other universities presented students with technically accurate yet fractured or murky information that is disorienting, particularly if a student is already panicked about an unintended pregnancy or health crisis. Based on this survey, universities present most information regarding the privacy of health information in legalese rather than language accessible to the typical 18–22-year-old.<sup>159</sup> Few directly answer the question that will be of most concern to students—can law enforcement—or my parents—access my personal reproductive health data?<sup>160</sup> Other schools make statements like, “we will keep all of your health information confidential to the full extent of the law” or “in compliance with applicable law” without giving students any idea that the law is spotty, with large gaps and potentially expansive exceptions that allow for disclosure without the student’s consent.<sup>161</sup> Many schools imply that HIPAA applies to student health data because students sign forms that feel eerily similar to HIPAA notices outside of the university setting.<sup>162</sup>

The location of privacy-related information exacerbates confusion. Because registrars, guardians of grades, transcripts, and student

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visited Aug. 31, 2025); *see also* *Texas Christian University Health Center Notice of Privacy Practices*, TEX. CHRISTIAN UNIV., <https://healthcenter.tcu.edu/wp-content/uploads/2016/02/CompletePrivacyPolicy.pdf> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

158. *See Common Questions*, ROLLINS COLL., <https://www.rollins.edu/parents-families/wellness-center/questions> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

159. *See, e.g., Right to Know and Other Legal Disclosures*, S. METHODIST UNIV., <https://www.smu.edu/legaldisclosures/ferpa/edurecords> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

160. *See, e.g., Help guide: Understanding FERPA*, DUKE UNIV., <https://registrar.duke.edu/help-guides/understanding-ferpa/> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

161. *See, e.g., Deacon Health, Patient Rights & Responsibilities*, WAKE FOREST UNIV., <https://deaconhealth.wfu.edu/make-an-appointment/patient-bill-rights-responsibilities/> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

162. *See* Tovino, *supra* note 152 at 87–89 (Professor Tovino discussing this insight at length); *see also* *Notice of Privacy Practices*, CONE HEALTH, <https://www.conehealth.com/patients-visitors/privacy/notice-of-privacy-practices> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024) (Elon outsources university health services to Cone Health).

directories field the most common FERPA-related questions, the intricacies of all privacy protections are often addressed on the registrar's page rather than health services, or splintered between locations. The practical impact is that students must engage in a virtual scavenger hunt to piece together a complete picture of university privacy protections.<sup>163</sup>

Universities with intention—the will, focus, and resources—can readily close the information gap through tightening or re-designing operational systems, policies and protocols. Universities' information gap is likely the result of an internal misunderstanding of the law; the increasingly bureaucratized and siloed university with units vying for influence and control; lack of clarity around the role of university websites—are they marketing vehicles or information-sharing vehicles?; perennial website management and content issues; and inadequate and ineffective FERPA-related training. Thus, the university's operational decisions—decisions fully independent of whether (or not) the university labors under an abortion ban—will delimit students' understanding of FERPA and HIPAA and, in turn, help them make decisions about whether to disclose personal information—like a decision to access legal abortion care out of state—to anyone within the university.

Yet closing the information gap does not remedy the privacy gap itself—the lacuna of federal and state privacy law. Here, too, universities have agency and could engineer around legal shortcomings to enhance protection of students' health information,<sup>164</sup> although the study does not indicate that many universities are proactively correcting for the law, in part because many do not recognize that the gap even exists. Universities could divert students' reproductive health matters to university-affiliated hospitals—or other non-university health care providers—in a way that preserves HIPAA protections,<sup>165</sup>

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163. For instance, at the University of Miami, the Registrar's site indicates correctly that that FERPA does not protect treatment records. *See generally, Family Education Rights and Privacy Act*, UNIV. MIAMI, <https://ua.miami.edu/student-consumer-information/FERPA> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024). However, a student would then have to go to the health services site to determine how, if at all, the University will protect student health records (claiming that students should “expect that medical records be kept ‘confidential’ and released only with your written consent or in response to court-ordered subpoenas.”) *See Patient's Rights & Responsibilities*, UNIV. MIA., <https://studenthealth.studentaffairs.miami.edu/general-information/patient-rights-and-responsibilities/index.html> (on file with the Syracuse Law Review) (last visited Nov. 16, 2024).

164. *See* Janet Koven Levit, *Exposed! Students' Personal Reproductive Healthcare Information*, 78 OKLA. L. REV. 129, 131 (2025).

165. *See generally*, Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and

including the recently enacted HIPAA amendments that tightly guard reproductive health information.<sup>166</sup>

From a legal perspective, a university could also raise the floor and be as protective as possible of student health care records. While neither FERPA nor HIPAA applies to student “treatment records,” the university could set higher standards than the law demands, essentially creating its own internal “private” law that approximates HIPAA’s privacy protections through policy and institutional commitments.<sup>167</sup> Extending HIPAA-like protections to students’ health records should be relatively seamless for many university health centers because HIPAA applies to their non-student patients,<sup>168</sup> and they have already developed systems to comply with HIPAA for their non-student populations.<sup>169</sup> Indeed, a few universities seem to have committed to privacy standards above and beyond that which the law demands.<sup>170</sup>

FERPA *does* apply to students’ health information if shared with anyone other than the student’s treating provider. And while FERPA is better than no privacy protection, FERPA is leaky at best, with broad

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Accountability Act of 1996 (HIPAA) to Student Records, U.S. DEP’T OF HEALTH & HUM. SERVS. & U.S. DEP’T OF EDUC. (Dec. 2019), <https://rem.s.ed.gov/docs/2019%20HIPAA%20FERPA%20Joint%20Guidance.pdf> (on file with the Syracuse Law Review); see also Katie Johnson, HIPAA v. FERPA: High Level Guidance for Higher Ed, CAMPUSGUARD (Oct. 1, 2019), <https://campusguard.com/post/hipaa-vs-ferpa-high-level-guidance-for-higher-ed/> (on file with the Syracuse Law Review).

166. See U.S. DEP’T HEALTH & HUM. SERVS., *supra* note 141 and accompanying text.

167. For example, Emory University Student Health Services seems to bind itself to HIPAA-like protections while acknowledging that HIPAA does not apply to student treatment records or education records. See, e.g., *Emory University Self-Funded Health Insurance Plan (EUSHIP) Notice of Privacy Practices for Plan Enrollees: FERPA and HIPAA*, EMORY UNIV. (Mar. 2025), [https://studenthealth.emory.edu/\\_includes/documents/EUSHIP-NPP-March2025.pdf](https://studenthealth.emory.edu/_includes/documents/EUSHIP-NPP-March2025.pdf) (on file with the Syracuse Law Review).

168. See Stacey A. Tovino, *Confidentiality Over Privacy*, 44 CARDOZO L. REV. 1243, 1276–77 (2023); see also 45 C.F.R. § 160.103 (2013).

169. For instance, Duke University seems to be holding themselves to HIPAA-like standards for their students personally identifiable health information. See *Student Health (Protecting Your Privacy)*, DUKE UNIV., <https://students.duke.edu/wellness/studenthealth/> (on file with the Syracuse Law Review) (last visited on Nov. 17, 2024) (without explicitly stating that HIPAA applies to student PRHI, adopting HIPAA’s protections for patient records).

170. For instance, Duke informs students that it “is taking steps to provide you, our patient, with these patient rights,” and the rights mirror many HIPAA rights. See *Student Health (Protecting Your Privacy)*, DUKE UNIV., <https://students.duke.edu/wellness/studenthealth/> (on file with the Syracuse Law Review) (last visited on Feb. 26, 2025); see also CONE HEALTH, *supra* note 162 (Elon seems to be holding itself to HIPAA-like protections via its relationship with Cone Health).

exceptions that greatly diminish the general non-disclosure rule. Universities would benefit their students if they periodically interrogated their practices and systems, asking “why” they collect certain health-related information. For instance, why is a “doctor’s note” necessary to document an absence? How detailed does the doctor’s documentation need to be? Can it just state the date of treatment? Why must the documentation also state the reason for treatment? Universities should be more intentional about designing processes for excused absences or accommodations, recognizing that submission of medical documentation, including information regarding reproductive healthcare, to the registrar or student services offices will be relatively easy for the surveillance state to access.

Students in hostile and ban states who use university health services for contraception or a pregnancy test or mental health issues related to an unintended pregnancy will likely be surprised to learn that their records stand exposed to increasingly voracious politicians and lawmakers emboldened not only by *Dobbs* but also by the sharp shift in political winds. As federal law does not protect student treatment records, and as state abortion bans threaten to encroach upon student privacy, universities play a critical mediating role: it starts by explaining clearly to students what their privacy rights are, and what they are not. Yet, there is so much more that universities could do, from creating internal private law that exceeds the state and/or federal floor to restructuring on-campus delivery of reproductive healthcare. In that way, the university becomes a filter that reshapes and remakes law.

#### CONCLUSION

Universities operate within a multi-faceted web of law, including FERPA, HIPAA, Title IX, and, yes, in many states, abortion bans. Yet, law—at least formal law—was not dispositive of universities’ response in the wake of *Dobbs*. Universities in access states did not uniformly embrace all the legal tools at their disposal to support their students; and most universities in hostile and ban states found avenues—some very narrow and some wider—to neutralize the impact of abortion bans on their communities. No legal regime chokes all channels of discretion and interpretation, leaving paths for universities to maneuver. It is a matter of choice—not necessarily law—as to which direction the university will steer. In the legal pluralism tradition, universities operate as semi-autonomous legal systems that mediate and refract and, at times, invent law.

The university’s choices often present as the mundane work of mid-level administrators. This Article illustrates that micro-decisions

can be a form of resistance, particularly when they implicate a touchpoint between the university's norms and official law. The people who are making these decisions—not just those in the leadership limelight but also those in the thankless trenches—clearly matter and undoubtedly emerge as an important variable in explaining why similarly situated universities diverge in their reproductive health approaches.

A key protagonist within the university is the general counsel. It is the general counsel who is the leader of the university as legal system, and it is the general counsel who decides whether the university will be a passive subject of law or assert the legal agency that this Article demonstrates universities possess. Will the university assume a defensive posture in the face of official law? Or will it play offense, creatively and strategically pushing back against law that is in tension with core community values such as health and safety?

The touchpoints between the university's private law—its policies, rules, and practices—and government law—state abortion bans and federal regulations—are the strategic pressure points. This Article's analysis suggests that when the university was able to leverage federal law—either by lending credibility to a circumscribed view of abortion bans, as with Title IX, or by lending its pre-emptive weight, as with ERISA and health insurance, it was most aggressive in pushing against the state. In the parlance of legal pluralism, when the university as legal system operates on a plane with both the federal and state legal systems, the university may borrow legal tools from one to aid in its resistance to the other.

Unfortunately, the Trump administration is dismantling federal regulatory tools that universities deployed to contest the breadth of abortion bans, and, as a result, some universities may re-examine and retreat. Nonetheless, for the initial post-*Dobbs* window, this Article underscores the realm of possibility when universities embrace their role as legal actor within a plane occupied by more than one legal system. And beyond reproductive healthcare, this Article offers a playbook for university micro-resistance to repugnant law, a playbook that universities may soon need to take off the shelf as ICE and the DEI police knock loudly on the university's door.