Morgan Lewis



## Legal Compliance Issues in a Post-Dobbs World: Employer,

Fiduciary, and Other Nonprofit Considerations in an Evolving Legal Landscape

E. Pierce Blue - Morgan Lewis Christina N. Cahill - Polsinelli

UT Law/Philanthropy Southwest Nonprofit Organizations Institute

January 19, 2023

## Agenda

- Post-Dobbs Legal Landscape
- Anti-Discrimination and Other Employment Issues
- Board Considerations
- Impact on Federal and Local Tax Exemption
- Indemnification

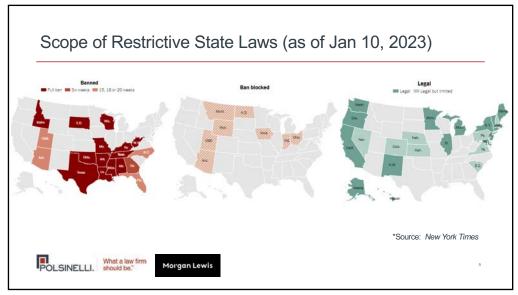




## Overview of the Dobbs Decision

- Dobbs v. Jackson Women's Health Organization challenged 2018 Mississippi law that banned virtually all abortion after 15<sup>th</sup> week of pregnancy
- **-HOLDING:** The Constitution does not expressly or implicitly protect the right to choose abortion and leaves it to the states to regulate
- •Laws regulating abortion are entitled to a "strong presumption of validity" and will be upheld unless there is no "rational basis on which the legislature could have thought [the law] would serve legitimate state
- •Roe v. Wade; Planned Parenthood of Southeastern Pennsylvania, etc. overturned
- PRACTICAL RESULT: States allowed to ban abortion, trigger laws and pre-Roe statutes in effect, <u>rapidly shifting legal landscape</u>





## Scope of Restrictive State Laws (as of Jan 10, 2023), con't

- Access Restrictions:
  - 25 states have laws that restrict access to abortion prior to viability
- 16 states have criminal laws that prohibit nearly all abortion (4 currently subject to injunctions)
- 3 states have criminal laws that prohibit abortion after the detection of a fetal heartbeat (6 weeks) (2 currently subject to injunctions)
- 2 states prohibit abortion after 15 weeks
- 4 states prohibit abortion after 20 weeks, one of which is currently subject to an injunction.
- · Several states have multiple prohibitions (e.g., a trigger law that prohibits all abortions and a higher threshold based on the gestational age of the fetus)
- Civil Laws: Oklahoma and Texas allow a range of private citizens to file suits to enforce violations and recover civil penalties







Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

Title search: Legal Compliance Issues in a Post-Dobbs World: Employer, Fiduciary, and other Nonprofit Considerations in an Evolving Legal Landscape

First appeared as part of the conference materials for the  $40^{\rm th}$  Annual Nonprofit Organizations Institute session "MASTER CLASS: Legal Compliance Issues in a Post-Dobbs World"