

ABORTIONS, LOCATION DATA, AND THE FOURTH AMENDMENT: GEOFENCE WARRANTS IN A POST-ROE WORLD

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Advancements in technology have empowered law enforcement with new investigative tools, yet they have also increased their ability to invade citizens' privacy similar to the general warrants of the eighteenth century. The Fourth Amendment was in part written to prevent an unfettered police state, with the Founders of the opinion that some criminals evading punishment would be a more favorable outcome. Following the Supreme Court's decision to revoke the constitutional right to abortion in Dobbs v. Jackson Women's Health Organization, states took diverging paths in declaring their own policies on abortion, with some states banning and restricting abortion access and other states bolstering the right to abortion. This note explores how the Court's decision and the states' subsequent actions led to a hyper-focus on how law enforcement would use technology-based searches to prosecute citizens for obtaining an abortion. Particularly, this note focuses on the fear of using geofence warrants—a search warrant that requests user data for all devices found in a specific location at a specific time—to bring charges against those seeking abortions, whether geofence warrants are constitutional searches, and the attempts at state legislation made to assuage fears around these search devices. Ultimately, none of the proposed bills going as far as full bans on geofence warrants have successfully passed to date.

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INTRODUCTION

In 1761, James Otis, Jr., the most important American in the 1760s according to John Adams,¹ proclaimed that writs of assistance appear to be “the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book. . . It is a power that places the liberty of every man in the hands of every petty

1. *James Otis*, BILL OF RTS. INST., <https://billofrightsintstitute.org/founders/james-otis> (last visited Nov. 28, 2023) [<https://perma.cc/3SNP-2828>].

officer.”² Today, geofence warrants³, which require companies to hand over location data for all individuals in a specific place at a specific time, are unnervingly reminiscent of the writs of assistance denounced by Otis and precluded by the Fourth Amendment’s protection against unreasonable search and seizures. According to a poll conducted by Morning Consult, sixty-seven percent of American adults in 2020 said they were not okay with the government using location data to track them.⁴ However, law enforcement’s use of location data and geofence warrants has only increased year after year.⁵

The criminalization of abortions in roughly a quarter of states following the reversal of *Roe v. Wade* has opened the door for law enforcement to use these widely adopted search devices in identifying and prosecuting those seeking an abortion. After the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*⁶, a spotlight was placed on technology companies’ collection of location data, sparking fear that this data could and would be used to prosecute abortions—a concern that did not exist the last time abortions were illegal.⁷ The distress comes when law enforcement requests for location data from Google increase, with one privacy advocate describing Google as

2. James Otis, Argument Against Writs of Assistance in the *Writs of Assistance* case (Feb. 1761), <http://www.nhinet.org/ccs/docs/writs.html>.

3. Geofence warrants are also known as reverse-location warrants and reverse-location demands. These terms are used interchangeably in this note and are intended to have the same meaning.

4. Sam Sabin, *People Uncomfortable with Government Tracking, but Less So if It’s to Fight Virus*, MORNING CONSULT (Mar. 23, 2020, 4:48 PM), <https://morningconsult.com/2020/03/23/coronavirus-location-data-tracking/> [https://perma.cc/4DZP-6ERH].

5. *Global Requests for User Information*, GOOGLE, https://transparencyreport.google.com/user-data/overview?user_requests_report_period=series:requests,accounts;authority:US;time:&lu=user_requests_report_period (last visited Nov. 28, 2023) [https://perma.cc/QJ8J-X2QB].

6. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

7. Bobby Allyn, *Privacy Advocates Fear Google Will Be Used to Prosecute Abortion Seekers*, NPR (July 11, 2022, 5:00 AM), <https://www.npr.org/2022/07/11/1110391316/google-data-abortion-prosecutions> [https://perma.cc/QXP3-U88L].

“increasingly the cornerstone of American policing.”⁸ With this concern in mind, state legislative action is starting to pick up with four states—New York, Missouri, Utah, and California—introducing bills after the *Dobbs* decision to curb the use of geofence warrants.⁹

This article will explore the legality of geofence warrants under the Fourth Amendment and how the Supreme Court’s decision to prohibit abortions has sparked state legislatures to propose regulations or bans on the use of the investigation tactic. Although geofence warrants may be invasive and lead to inappropriate use by law enforcement, a closer look at the states’ proposed bills is necessary, as their ramifications will go far beyond prosecution in the reproductive landscape. Part II explores the development of the Fourth Amendment, analyzes the legality of geofence warrants under this constitutional provision, and discusses the problems the Third-Party Doctrine presents as technology advances. Part III provides a brief overview of the Supreme Court’s abortion jurisprudence. Part IV assesses the two diverging categories of state reactions to the Supreme Court’s holding in *Dobbs* and how the overturning of the right to abortion has resulted in increased fear of anti-abortion states using invasive geofence warrants to prosecute patients who travel out-of-state to obtain an abortion. Part V describes the state bills proposed in response to this concern. Part VI states a brief conclusion.

I. GENERAL WARRANTS, GEOFENCE WARRANTS, AND THE ORIGINS OF THE FOURTH AMENDMENT

The Fourth Amendment protects the people from unreasonable searches and seizures, a concern that stems from the time of British control over the colonies.¹⁰ The

8. *Id.*

9. S.B. S8183, 2019–2020 Leg., Reg. Sess. (N.Y. 2020); H.B. 762, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023); H.B. 57, 65th Leg., 2023 Gen. Sess. (Utah 2023); A.B. 793, 2023–2024 Leg., Reg. Sess. (Cal. 2023).

10. See Nelson B. Lasson, *THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION* 13 (The Johns Hopkins Press 1937).

Framers designed this amendment to prevent omnipresent police surveillance, indicating their belief that a too-pervasive law enforcement is a greater danger to society than some criminals evading punishment.¹¹ With law enforcement's use of geofence warrants rising, whether this belief still stands over two hundred years later is questionable.

A. *General Warrants and the Fourth Amendment*

In the 18th century, Parliament issued writs of assistance—a general search warrant—to perform at-will searches for contraband in the American colonies, despite their illegality under British law.¹² In order to restrict smuggling and tax evasion, British officials were authorized to perform arbitrary searches at any time, in any place, and with no justification for the invasion.¹³ These writs endured throughout the lifetime of the sovereign who issued them and were generally used to enforce England's customs laws.¹⁴ Additionally, customs officers could require any ordinary citizen to aid in the search and seizure.¹⁵

In 1760, King George II died, terminating the current writ of assistance, so a customs official applied for a new writ from the Massachusetts court.¹⁶ During the case that decided whether to grant this new writ of assistance, James Otis, Jr. gave his infamous speech, which argued against granting the writ of assistance and, some say, inspired the idea of American independence.¹⁷ These writs

11. *United States v. Di Re*, 332 U.S. 581, 595 (1948).

12. Cong. Rsch. Serv., *Amdt 4.2 Historical Background on Fourth Amendment*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt4-2/ALDE_00013706/ (last visited Dec. 12, 2023) [<https://perma.cc/R2EB-JLH3>].

13. Lewis R. Katz et al., *Origins of the Fourth Amendment*, Baldwin's Oh. Prac. Crim. L. § 2:2 (3d ed. 2023).

14. *Id.*

15. Hon. M. Blane Michael, *Reading the Fourth Amendment: Guidance from the Mischief That Gave It Birth*, 85 N.Y.U. L. REV. 905, 907–08 (2010).

16. America and the Courts, *The History and Legacy of the Writs of Assistance*, C-SPAN, at 14:20 (Feb. 7, 1993), <https://www.c-span.org/video/?49559-1/writs-assistance> [<https://perma.cc/S6BX-N28X>].

17. *Id.* at 16:25, 18:42.

of assistance and the rebellion against them are also credited by many as the genesis of the Fourth Amendment,¹⁸ which protects the people from unreasonable search and seizures and states that courts may only issue warrants when there is “probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹⁹

B. Geofence Warrants

Today, geofence warrants are often analogized to the writs of assistance denounced by Otis and barred by the Fourth Amendment.²⁰ With the invention of cell phones, collecting user location data has become a universal practice for technology companies like Google and Apple. Google has a colossal database of cellphone users’ locations called Sensorvault, which makes it a go-to company for law enforcement to request reverse-location data.²¹

Geofence warrants work in reverse of traditional warrants—instead of starting with a suspect and then issuing a search warrant, law enforcement starts “with a time and location, then request[s] data from . . . [a] tech company about any devices in the area at the time.”²² Reliance on these types of search warrants has become pervasive; Google, one of the main tech companies law enforcement requests this type of data from, reported an increase in requests from less than 1,000 in 2018 to over

18. Cong. Rsch. Serv., *supra* note 12.

19. U.S. CONST. amend. IV.

20. NACDL Fourth Amendment Center, *Geofence Primer*, NAT’L ASSOC. CRIM. DEF. LAWS., <https://www.nacdl.org/getattachment/816437c7-8943-425c-9b3b-4faf7da24bba/nacdl-geofence-primer.pdf> (last visited Dec. 12, 2023) [<https://perma.cc/V569-NNKN>].

21. Jennifer Valentino-DeVries, *Tracking Phones, Google Is a Dragnet for the Police*, N.Y. TIMES (Apr. 13, 2019), <https://www.nytimes.com/interactive/2019/04/13/us/google-location-tracking-police.html?searchResultPosition=1>.

22. Sidney Fussell, *Creepy ‘Geofence’ Finds Anyone Who Went Near a Crime Scene*, WIRED (Sept. 4, 2020, 7:00 AM), <https://www.wired.com/story/creepy-geofence-finds-anyone-near-crime-scene/> [<https://perma.cc/4Z6C-SBUY>].

11,000 in 2020.²³ Typically, geofence warrants follow a three-step process.²⁴

First, law enforcement obtains a warrant compelling Google to provide an anonymous list of Google user accounts that were in a defined location during a specified timeframe.²⁵ Google then queries the location history data to identify records that match the time and location parameters set forth in the warrant, strips the records of any account-identifying information, and produces an anonymized version of the data.²⁶ Second, the government can request additional location information on a subset of users beyond the original warrant's scope after its initial review of the data.²⁷ The purpose of this step is to aid the government in eliminating devices irrelevant to the investigation.²⁸ Finally, in the third step, the government asks Google to unmask the anonymized devices that it deems germane to the investigation.²⁹

Despite the attempt to narrow the scope of a request, the Eastern District of Virginia, in *United States v. Chatrie*, deemed this three-step process inadequate to overcome the particular probable cause required by the Fourth Amendment.³⁰ Law enforcement in *Chatrie* investigated an armed bank robbery and obtained a geofence warrant after initial leads did not uncover the

23. Jon Schuppe, *Cellphone Dagnet Used to Find Bank Robbery Suspect Was Unconstitutional, Judge Says*, NBC NEWS (Mar. 7, 2022, 6:27 PM), <https://www.nbcnews.com/news/us-news/geofence-warrants-help-police-find-suspects-using-google-ruling-could-n1291098> (citing to Google's Transparency Report).

24. Jennifer Lynch, *First Appellate Court Finds Geofence Warrant Unconstitutional*, EFF (Apr. 24, 2023), <https://www.eff.org/deeplinks/2023/04/first-us-appellate-court-decide-finds-geofence-warrant-unconstitutional#:~:text=The%20California%20Court%20of%20Appeal,The%20case%20is%20People%20v> [<https://perma.cc/42TU-WWDF>].

25. Brief of Amicus Curiae Google LLC in Support of Neither Party Concerning Defendant's Motion to Suppress Evidence from a "Geofence" General Warrant at 12, *United States v. Chatrie*, 590 F. Supp. 3d 901 (E.D. Va. 2022) (No. 3:19-cr-00130-MHL), 2019 WL 8227162 [hereinafter Brief of Amicus Curiae Google LLC].

26. *Id.* at 12–13.

27. *Id.* at 13–14.

28. *Id.* at 14.

29. *Id.*

30. *United States v. Chatrie*, 590 F. Supp. 3d 901, 933–35 (E.D. Va. 2022).

robber.³¹ The geofence warrant in *Chatrie* was found unconstitutional since law enforcement did not have particular probable cause to search all of the users discovered in step one.³² The court noted that without judicial oversight on steps two and three, the search gave officers “unbridled” and “unchecked” discretion to obtain invasive data, seemingly with no limits.³³ The judge found the police’s rationale that their warrant was valid based on “probable cause that some unknown person committed an offense” was too broad and invasive and, therefore, violated the Fourth Amendment.³⁴ But despite the geofence warrant’s invalidity, the novelty and lack of judicial guidance on the investigative technique implicated the good-faith exception and saved the evidence from suppression.³⁵

While courts have found geofence warrants invalid in particular instances, like in *Chatrie*, no court has ruled generally that geofence warrants are unconstitutional.³⁶ As such, a debate has sparked over whether they are a lawful and useful tool to enhance public safety or an illegal invasion of privacy.

1. Benefits of Geofence Warrants

Proponents of geofence warrants see many benefits in their use, including more efficient investigations and evidence collection, fostering balanced individual privacy rights and law enforcement pursuits through anonymized data protection, increasing accuracy in missing persons or persons in distress cases, and generally enhancing public

31. *Id.* at 905, 917.

32. *Id.* at 927.

33. *Id.*

34. *See id.* at 933.

35. *Id.* at 937–38.

36. Isha Marathe, *Despite Rulings, 4th Amendment Battles over GeoFence Warrants Are Far from Over*, LAW.COM (May 26, 2022, 4:45 PM), <https://www.law.com/legaltechnews/2022/05/26/despite-rulings-fourth-amendment-battles-over-geofence-warrants-are-far-from-over/?slreturn=20230921204744> [https://perma.cc/VX9G-VZNE].

safety and crime control.³⁷ The warrants help crack cases that the police and prosecution believe would otherwise go unsolved.³⁸ Advocates additionally analogize the data collected from geofence warrants to traditional police tracking and surveillance, given the anonymized nature of the location information.³⁹ Defending this way of narrowing down suspects, one geofence warrant backer said, “It’s not until [district attorneys have] gone through several steps, and convinced the judge at each step of probable cause, that we can maybe get identifying information and names.”⁴⁰

Additionally, supporters argue that the tool sufficiently protects the privacy interests of those whose digital data is accessed as the Fourth Amendment requires.⁴¹ In the *Matter of the Search of Information Stored at Premises Controlled by Google*, Southern District of Texas Magistrate Judge Mitchel Neurock granted a geofence warrant, finding the application was sufficiently particular and stated enough information for it to conclude that there was probable cause.⁴² In that case, federal law enforcement agents sought a geofence warrant pursuant to its investigation into suspected aggravated identity theft, wire fraud, and bank fraud.⁴³ The agents’ request did not follow the three-step process but instead requested authorization to obtain an obfuscated identifier along with relevant location information for users in a 1.21-acre area

37. *Google Geofence Warrant: Enhancing Law Enforcement*, BLUEFORCE LEARNING (May 15, 2023), <https://www.blueforcelearning.com/blog/google-geofence-warrant-enhancing-law-enforcement> [<https://perma.cc/72XR-EBMN>].

38. Queenie Wong, *Police Like Using Google Data to Solve Crimes. Does That Put Your Privacy at Risk?*, L.A. TIMES (July 24, 2023, 5:00 AM), <https://www.latimes.com/politics/story/2023-07-24/police-google-data-geofence-warrants-california-lawmakers-abortion-legislation> [<https://perma.cc/9ZEF-YUV9>].

39. Jane Bambauer, *Letting Police Access Google Location Data Can Help Solve Crimes*, WASH. POST (Mar. 28, 2022, 10:21 AM), <https://www.washingtonpost.com/outlook/2022/03/28/geofence-warrant-constitution-fourth-amendment/> [<https://perma.cc/URD2-MXXT>].

40. Wong, *supra* note 38.

41. *See id.*

42. *Matter of Search of Info. Stored at Premises Controlled by Google* at 11–12, No. 2:22-MJ-01325, 2023 WL 2236493, at *9–11 (S.D. Tex. Feb. 14, 2023).

43. *Id.* at *1.

during eleven timeframes ranging from five to seventeen minutes.⁴⁴ Only after further investigation would the federal agents subsequently request that the court order Google to reveal specific user information, at which time they would be required to provide probable cause for each individual user.⁴⁵

2. Drawbacks of Geofence Warrants and Invasive Use Cases

Although these warrants may provide the police with leads in an otherwise suspectless case, they also come with troubling privacy concerns. As mentioned above, geofence warrants encompass all devices recorded in the area without any reason to believe they are potential suspects.⁴⁶

In one example, Arizona police obtained a search warrant in 2018, requiring Google to provide device location information in connection with a murder investigation.⁴⁷ Based on the user location data received, the police made an arrest and gained information that cleared the suspect of the murder charge, but not before he spent a week in jail.⁴⁸ On the other side of the country, Florida police investigating a 2019 burglary similarly issued a geofence warrant to aid them in finding potential suspects.⁴⁹ The data again swept up innocent individuals, causing one man to incur the costs of retaining an attorney because he was taking a bike ride at an unfortunate time and place.⁵⁰ Most recently, the FBI's investigation into the January 6 U.S. Capitol riots "included the biggest-ever

44. *Id.* at *6.

45. *Id.*

46. Wong, *supra* note 38; see also Fussell, *supra* note 22.

47. Valentino-DeVries, *supra* note 21.

48. *Id.*

49. See Jon Schuppe, *Google Tracked His Bike Ride Past a Burglarized Home. That Made Him a Suspect.*, NBC NEWS (Mar. 7, 2020, 4:22 AM), <https://www.nbcnews.com/news/us-news/google-tracked-his-bike-ride-past-burglarized-home-made-him-n1151761> [<https://perma.cc/Z9S3-UPMX>].

50. *Id.*

haul of phones from controversial geofence warrants,” with Google identifying 5,723 devices.⁵¹

3. The Third-Party Doctrine

Based on a series of Supreme Court cases, it is unclear whether law enforcement is required to seek a warrant from a court to elicit Google users’ location information. Under the Court-established third-party doctrine, a person generally has no reasonable expectation of privacy in information they voluntarily turn over to a third party.⁵² However, there is an exception for cell site location information (CSLI).⁵³

In the modern lineage of determining whether a search has occurred under the Fourth Amendment, the Supreme Court developed the Katz “reasonable expectation of privacy” test.⁵⁴ The test involves two questions: 1) whether a person has “an actual (subjective) expectation of privacy” and 2) whether the expectation is “one that society is prepared to recognize as ‘reasonable.’”⁵⁵ After establishing the Katz test, the Court further defined when a person has a reasonable expectation of privacy in *United States v. Miller* and *Smith v. Maryland*.⁵⁶ In *Miller*, the Court found that a person has no legitimate expectation of privacy as it relates to banking records.⁵⁷ In *Smith*, the Court held that a person does not have a reasonable expectation of privacy regarding the phone numbers one dials.⁵⁸ Together, the cases form the basis for the third-party doctrine—the notion that a person assumes

51. Mark Harris, *A Peek Inside the FBI’s Unprecedented January 6 Geofence Dragnet*, WIRED (Nov. 28, 2022, 7:00 AM), <https://www.wired.com/story/fbi-google-geofence-warrant-january-6/> [<https://perma.cc/6LRH-TBYX>].

52. Matter of Search of Info. Stored at Premises Controlled by Google, No. 2:22-MJ-01325, 2023 WL 2236493, at *7 (S.D. Tex. Feb. 14, 2023).

53. *Carpenter v. United States*, 138 S. Ct. 2206, 2220 (2018).

54. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., Concurring).

55. *Id.*

56. *United States v. Miller*, 425 U.S. 435 (1976); *Smith v. Maryland*, 442 U.S. 735 (1979).

57. *Miller*, 425 U.S. 435.

58. *Smith*, 442 U.S. 735.

the risk that information voluntarily disclosed to a third party could be revealed to the police.⁵⁹ Thus, said person has no reasonable expectation of privacy in the information divulged, and Fourth Amendment protections do not cover these instances.⁶⁰ In such cases, law enforcement is not required to secure a warrant and instead can merely subpoena the information it wants from the third party.⁶¹

In *United States v. Knotts*, the Supreme Court invoked the third-party doctrine, holding that a person traveling on public roads has no reasonable expectation of privacy, including the stops made or the final destination.⁶² The police in *Knotts* placed a beeper in a drum of chloroform to track a suspect without obtaining a warrant.⁶³ The Court reasoned that a police car following the drum could have observed where the car turned off the road to establish the ultimate endpoint, making the information obtained with the use of technology no different than what could have been ascertained by the naked eye.⁶⁴ This meant the location information was effectively disclosed to the public.⁶⁵ The Court additionally dismissed *Knotts*' argument that this holding would grant the government unfettered access to the twenty-four-hour surveillance of U.S. citizens, asserting "if such dragnet-type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable."⁶⁶ The dragnet-type law enforcement practices pushed aside in *Knotts* are in full force today, leaving many uncertain whether they have Fourth Amendment protections.

59. See *Smith*, 442 U.S. at 743–44.

60. *Id.* at 745.

61. *Miller*, 425 U.S. at 444.

62. See *United States v. Knotts*, 460 U.S. 276, 281–82 (1983).

63. *Id.* at 277–79.

64. *Id.* at 285.

65. *Id.*

66. *Id.* at 284.

Additionally, the Supreme Court confronted whether a person has a reasonable expectation of privacy when their location data is captured by a group of radio antennas called “cell sites” in *Carpenter v. United States*.⁶⁷ The CSLI collected by the government spanned over 127 days for 12,898 location data points.⁶⁸ The Court created a limited exception to the third-party doctrine by holding that “an individual maintains a legitimate expectation of privacy in the record of his physical movements captured by CSLI.”⁶⁹ In *Carpenter*, the collection of CSLI violated the Fourth Amendment because the government performed a search but did not obtain a warrant.⁷⁰ The Court found that CSLI was more revealing than the documents at issue in *Smith* and *Miller*, that cell phone location information is not truly “shared” since a user could not affirmatively consent to the sharing, and that cell phones are “indispensable to participation in modern society.”⁷¹ However, the scope of the decision was narrow, leaving unanswered questions about what it meant for real-time location tracking.⁷²

In applying the rationale from *Carpenter* to today’s geofence warrants, the analysis is not straightforward. Unlike the cell sites at issue in *Carpenter*, geofence warrants typically do not require data over long timeframes. Rather, they involve a quick snapshot of users at a specified destination during a limited timeframe.⁷³ In *Matter of Search of Information Stored at Premises Controlled by Google*, Judge Neurock pointed out this distinction and insinuated that the short-term nature of the request he was presiding over would likely fall in favor

67. 138 S. Ct. 2206, 2208 (2018).

68. *Id.* at 2209 (Cell site location information (CSLI) refers to a time-stamped record that is generated each time a cell phone connects to a cell site).

69. *Id.* at 2217.

70. *Id.* at 2221.

71. *Id.* at 2210.

72. *Id.* at 2220.

73. *See United States v. Chatrrie*, 590 F. Supp. 3d 901, 935 (E.D. Va. 2022) (law enforcement’s request specified a two-hour time window).

of not requiring a warrant.⁷⁴ Ultimately, he did not determine whether the third-party doctrine applied as he found that the principles of the Fourth Amendment must be applied because the government pursued a warrant.⁷⁵ Additionally, Google’s data is more granular than CSLI, leading Google to believe that the privacy concerns are greater now than they were when the Court decided *Carpenter*.⁷⁶ Today, even a short period of time raises severe privacy concerns because smart phone location tracking is more precise—down to about twenty meters—and relays location data more frequently—every two to six minutes.⁷⁷

Besides Judge Neurock, Judge Lauck also declined in *Chatrie* to address whether the third-party doctrine applied.⁷⁸ After determining the search warrant was invalid, Judge Lauck reasoned the record was too “murky” to resolve whether Chatrie voluntarily agreed to disclose his location history data.⁷⁹ There is much debate as to whether informed consent in our digital world is possible, and if so, what that consent looks like.⁸⁰ In discussing the consent approaches considered for the Health Insurance Portability and Accountability Act (HIPAA), HHS noted in its rejection of a “global consent” that would enable uses and disclosures of data at the time of insurance enrollment.⁸¹ HHS reasoned that such global consent during sign up was “not really an informed [consent] or a voluntary one” and the move to check off boxes provided

74. Matter of Search of Info. Stored at Premises Controlled by Google, No. 2:22-MJ-01325, 2023 WL 2236493, at *8 (S.D. Tex. Feb. 14, 2023).

75. *Id.* at *7.

76. Brief of Amicus Curiae Google LLC, *supra* note 25, at 10.

77. *Chatrie*, 590 F. Supp. 3d at 936.

78. *Id.* at 935.

79. *Id.*

80. See Golden Data Law, *Mobile Privacy in the US*, MEDIUM (May 14, 2019), <https://medium.com/golden-data/mobile-privacy-in-the-us-c4a619e07e2b> [<https://perma.cc/588Y-JZMH>]; see also Susan Landau, *Why Cellphone Privacy Matters in a Post-Roe World*, PBS (May 26, 2022, 12:21 PM), <https://www.pbs.org/newshour/health/why-cellphone-privacy-matters-in-a-post-roe-world> [<https://perma.cc/UV7Y-KWZH>].

81. Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462, 82474 (Dec. 28, 2000).

only a slight opportunity for any meaningful consideration.⁸² Furthermore, the one-time opt-in of location history at the time of setting up a phone or app does not provide a meaningful opportunity for users to contemplate the ways they are relinquishing their privacy rights.

More recent cases involving technological advances have brought the third-party doctrine under fire. Courts have shown concern for law enforcement usurping ordinary checks that constrain abusive investigative practices.⁸³ Justices Alito and Sotomayor each wrote concurring opinions in *United States v. Jones* noting that privacy expectations change when there are advancements in technology such as those implicated in geofence warrants.⁸⁴ Justice Sotomayor predicted that the availability of aggregated data by third parties would give law enforcement an astounding record of private aspects of a person's life, including GPS data identifying trips to the abortion clinic.⁸⁵ As such, she questioned the wisdom and practicality of the third-party doctrine in today's society.⁸⁶

Justice Alito pointed out that this mosaic of location data now demands fewer police resources in the form of both manpower and finances.⁸⁷ Such non-legal constraints on law enforcement have historically kept unwanted behavior in check,⁸⁸ but the emergence of new technology has slowly eroded their effectiveness. These points raise serious questions as to the soundness of the third-party doctrine's absolute declaration that a person has no

82. *Id.*

83. See *United States v. Jones*, 565 U.S. 400, 415–16 (2012) (Sotomayor, J., concurring).

84. *Jones*, 565 U.S. at 429 (Alito, J., concurring) (“The availability and use of these and other new devices will continue to shape the average person’s expectations about the privacy of his or her daily movements.”); see also *Jones*, 565 U.S. at 418 (Sotomayor, J., concurring) (“I for one doubt that people would accept without complaint the warrantless disclosure to the government of a list of every Web site they had visited in the last week, or month, or year.”).

85. *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring).

86. *Id.* at 417.

87. *Jones*, 565 U.S. at 429 (Alito, J., concurring).

88. *Id.* at 429–30.

reasonable expectation of privacy in information “voluntarily” given to third parties. When looking at this doctrine through a twentieth-century lens, it’s hard to imagine that the Framers would not see this as a “too permeating police surveillance” technique. But to date, the courts have not been willing to follow through on their concerns by formally abrogating the third-party doctrine.

Although courts have performed thought exercises over the legality of geofence warrants and the third-party doctrine, they repeatedly pass the responsibility of curbing law enforcement use to the legislature. In his concurrence in *Jones*, Justice Alito considered the legislature well suited to harmonize the privacy and public safety concerns that accompany “dramatic technological change.”⁸⁹ Six years later, Justice Alito advanced this argument in *Carpenter*, writing in his dissent that “[l]egislation is much preferable to the development of an entirely new body of Fourth Amendment caselaw.”⁹⁰ The *Chatrie* court is of the same opinion; it urged legislative action, stating “[t]houghtful legislation could not only protect the privacy of citizens, but also could relieve companies of the burden to police law enforcement requests for the data they lawfully have.”⁹¹

II. SUPREME COURT ABORTION RULINGS

While the Supreme Court’s abortion jurisprudence is not particularly robust, the cases have become seminal moments in the Court’s history. In order to understand the magnitude of the nation’s reactions to the Court’s rulings in these cases, this section provides a brief overview of the Court’s abortion jurisprudence.

89. *Id.*

90. *Carpenter v. United States*, 138 S. Ct. 2206, 2261 (2018) (Alito, J., dissenting).

91. *United States v. Chatrie*, 590 F. Supp. 3d 901, 926 (E.D. Va. 2022).

A. *Establishing the Constitutional Right to Abortion*

In *Roe v. Wade*, arguably the Supreme Court's most notorious confrontation with abortion, Justice Blackmun stated in the controversial 7-2 decision that the "right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."⁹² The Court based its decision on the long-standing element of personal liberty encompassed in the Due Process Clause of the Fourteenth Amendment.⁹³ The decision also established a trimester approach for determining the constitutionality of abortions, rather than applying the traditional strict scrutiny test.⁹⁴ In the first trimester, a pregnant person, in consultation with their doctor, may decide whether to terminate the pregnancy or not.⁹⁵ During the second trimester, a state could enact abortion restrictions that are "reasonably related to maternal health."⁹⁶ Finally, the Court recognized that after fetal "viability," the point when the fetus could survive outside of the womb, the state's interest in protecting prenatal life becomes legally compelling.⁹⁷ At that point, generally correlated with the third trimester, the Court's decision permitted a state to prohibit abortion as long as there are exceptions for the life or health of the mother.⁹⁸ While there were issues with the opinion, such as the shifting interpretation of "fetal viability" as medical advancements are made, the decision was nonetheless historic: the

92. *Roe v. Wade*, 410 U.S. 113, 153 (1973), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

93. Jared H. Jones, Annotation, *Women's Reproductive Rights Concerning Abortion, and Governmental Regulation Thereof—Supreme Court Cases*, 20 A.L.R. Fed. 2d Art. 1 (2007).

94. Linda L. Schlueter, *40th Anniversary of Roe v. Wade: Reflections Past, Present and Future*, 40 OHIO N.U. L. REV. 105, 127 (2013).

95. *Roe*, 410 U.S. at 164.

96. *Id.*

97. Randy Beck, *Self-Conscious Dicta: The Origins of Roe v. Wade's Trimester Framework*, 51 AM. J. LEGAL HIST. 505, 505 (2011).

98. *Id.*

Supreme Court gave “a woman a legitimate voice in deciding whether to continue or end a pregnancy.”⁹⁹

In a continued effort to balance a woman’s bodily autonomy and the valid interests the government has in protecting the health of its citizens, the Supreme Court granted certiorari to hear *Planned Parenthood of Southeastern Pennsylvania v. Casey* in 1992.¹⁰⁰ Contrary to popular perception, up until the *Dobbs* decision in 2022, the “[Court’s] abortion-related jurisprudence [was] largely bounded and underpinned by the 1992 case,” rather than *Roe*.¹⁰¹ In *Casey*, the Supreme Court felt bound by the doctrine of *stare decisis* to uphold its central holding in *Roe*: women had a constitutional right to have an abortion.¹⁰² While recognizing that *Roe*’s trimester framework was established “to ensure that the woman’s right to choose not become so subordinate to the State’s interest in promoting fetal life that her choice exists in theory but not in fact,” the Court rejected the trimester framework, finding it too rigid and unnecessary to accomplish this goal.¹⁰³

Rather than follow *Roe*’s problematic trimester structure, the court adopted a viability framework.¹⁰⁴ Under this new design, the government was still prohibited from banning abortions prior to fetal viability, but it was permitted to regulate them and a court would evaluate any such regulation under a less severe standard than the previously defined strict scrutiny standard.¹⁰⁵ Subsequently, the Court deemed the “undue burden” standard, rather than strict scrutiny, as the “appropriate means of reconciling the State’s interest with the woman’s constitutionally protected liberty.”¹⁰⁶ Until 2022, litigation

99. Carol Gilligan, *Revisiting In a Different Voice*, 39 HARBINGER 19, 20 (2015).

100. Jones, *supra* note 93.

101. *Id.*

102. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 845–46 (1992), *overruled by Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

103. *Casey*, 505 U.S. at 872.

104. Kate L. Fetrow, *Taking Abortion Rights Seriously: Toward a Holistic Undue Burden Jurisprudence*, 70 STAN. L. REV. 319, 324 (2018).

105. Schlueter, *supra* note 94, at 185.

106. *Casey*, 505 U.S. at 876.

primarily focused on assessing whether the constraints imposed prior to fetal viability placed an undue burden on a woman seeking an abortion.¹⁰⁷

B. Overturning the Constitutional Right to Abortion

After almost 50 years of precedent and as many years of fighting for women’s rights, on June 24, 2022, the Supreme Court overruled *Roe* and *Casey* in *Dobbs v. Jackson Women’s Health Organization*, upholding a Mississippi law that prohibits abortions after the fifteenth week of pregnancy—several weeks before what is considered the viability point.¹⁰⁸ In its unabashed contempt for prior abortion decisions, the Court describes *Roe* as an “abuse of judicial authority” and “egregiously wrong from the start.”¹⁰⁹ In order to deny recognition of a constitutional right to abortion, the Court relied on the “established method of substantive due process analysis” which requires an unenumerated right to be “deeply rooted in this Nation’s history and tradition” to be considered a “liberty” protected under the Due Process Clause.¹¹⁰ After an exhaustive evaluation of historical abortion legislation, the Court ruled that abortion was not an unenumerated right deeply rooted in the Nation’s history and tradition.¹¹¹ The Court opined that “[i]t is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”¹¹² Thus, the Court left matter of reproductive rights to the individual states.

III. STATE REACTIONS TO THE *DOBBS* DECISION

State reactions to the loss of the constitutional right to abortion have vastly diverged. Generally, the states have

107. Fetrow, *supra* note 104, at 324.

108. 142 S. Ct. 2228, 2284 (2022).

109. *Id.* at 2243.

110. *Id.* at 2260 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

111. *Id.* at 2253.

112. *Id.* at 2243.

reacted in one of two ways: 1) they bolstered abortion rights through codifying a state right to abortion and enacting “shield laws” or 2) they were quick to ban or restrict access to abortion services.¹¹³

A. Protecting Abortion Rights and Shield Laws

Seventeen states enacted laws to codify a right to abortion.¹¹⁴ At least as many states have enacted “shield laws” or their governor has issued an executive order which shelters those seeking or providing abortion care in their state from laws in other states.¹¹⁵ These shield laws commonly include provisions prohibiting the state’s courts and law enforcement from issuing or enforcing an out-of-state subpoena related to abortion investigations and stating that they will not comply with extradition requests.¹¹⁶ Some states, such as California, Washington, and New York, include a provision prohibiting electronic communication service providers incorporated or headquartered in their respective states from providing user records or information in response to warrants issued in another state arising from an investigation or prosecution of abortions.¹¹⁷

States of both parties have implemented laws protecting user data from law enforcement; though for

113. Ctr. Pub. Health L. Rsch., *Sharp Divide in State Legislative Abortion Response to Dobbs Decision During First Two Months*, TEMP. UNIV. BEASLEY SCH. OF L. (Nov. 3, 2022), <https://phlr.org/news/2022/11/sharp-divide-state-legislative-abortion-response-dobbs-decision-during-first-two-months> [https://perma.cc/ZK5P-G9DD].

114. *Id.*

115. *Tracking Abortion Bans Across the Country*, N.Y. TIMES, https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html?mkt_tok=MTMxLUFRTy0yMjUAAAGGIitf_XQRMn98o5ImXnakKeu7v1M9OVvnOh6cXIMrRBpNaLLdlLmxZwViXO6ob-91o_o0-SEUOx6nqrQ1YrMG (Dec. 8, 2023, 2:30 PM) [https://perma.cc/GVH4-TH6Q].

116. Moira Donegan, *GOP-run States Are Eyeing Abortion Beyond Their Borders. Blue States Are Fighting Back.*, THE GUARDIAN (June 25, 2023, 7:00 AM), <https://www.theguardian.com/us-news/2023/jun/25/shield-laws-abortion-rights-roe-washington-idaho> [https://perma.cc/Y6K4-LYVZ].

117. Jake Laperruque, *Momentum Builds Against Abortion Surveillance as New States Enact Shield Laws*, CTR. FOR DEMOCRACY & TECH. (May 10, 2023), <https://cdt.org/insights/momentum-builds-against-abortion-surveillance-as-new-states-enact-shield-laws/> [https://perma.cc/5MYG-G2KW].

politically different motivations, the states are pushing back on practices like geofence warrants.¹¹⁸ In fact, California heavily credits worry about geofence warrants in the wake of the Court's *Dobbs* decision as leading to the introduction of the state's bill to ban this type of digital tracking.¹¹⁹

B. Bans and Restrictions on Abortion Access

As of the date of this article, fourteen states have embraced the Court's ruling in *Dobbs*, passing laws banning and criminalizing most abortions.¹²⁰ Another seven states criminalized abortions after a certain gestational limit ranging from six to eighteen weeks of pregnancy.¹²¹ Many of these states have multiple statutes with abortion bans or limitations in effect; these statutes often contain conflicting exception provisions and vague language, which creates confusion for both patients and physicians and makes these statutes unworkable in practice.¹²²

States like Alabama and Idaho not only ban abortions in their states but have also shared intentions of prosecuting those who aid others in traveling out-of-state to get abortions.¹²³ During a radio interview, Alabama's

118. Albert Fox Cahn & Nina Loshkajian, *The Police Surveillance Tool Too Dangerous to Ignore*, SLATE (June 5, 2023, 3:57 PM), <https://slate.com/technology/2023/06/geofence-keyword-warrant-police-surveillance-new-york-law.html> [https://perma.cc/WAL8-V8QE].

119. Brian Joseph, *Bonta Bill Would Bar "Geofence" Warrants*, CAPITOL WKLY. (Feb. 27, 2023), <https://capitolweekly.net/bonta-bill-would-bar-geofence-warrants/> [https://perma.cc/28M5-GDNF].

120. *Tracking Abortion Bans Across the Country*, *supra* note 115.

121. *Id.*

122. Mabel Felix et al., *A Review of Exceptions in State Abortion Bans: Implications for the Provision of Abortion Services*, KFF (May 19, 2023), <https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortion-bans-implications-for-the-provision-of-abortion-services/> [https://perma.cc/8FJF-2B8E].

123. Brendan Pierson, *Abortion Providers Sue Alabama to Block Prosecution over Out-of-State Travel*, REUTERS (July 31, 2023, 1:26 PM), <https://www.reuters.com/legal/abortion-providers-sue-alabama-block-prosecution-over-out-of-state-travel-2023-07-31/> [https://perma.cc/C3BT-XJZ9]; Daniel Trotta, *Judge Blocks Idaho Prosecution of Out-of-State Abortion Referrals*, REUTERS (Aug. 1, 2023, 12:58 PM), <https://www.reuters.com/legal/judge-blocks-idaho-prosecution-out-of-state-abortion-referrals-2023-08-01/> [https://perma.cc/THL4-97D9].

Attorney General said that any Alabama resident who assists in an out-of-state abortion could face conspiracy and accessory charges.¹²⁴ However, her statement is being challenged as a violation of the right to free speech and association, the right of a citizen to move freely between states, due process, and state sovereignty rights where abortions are legal.¹²⁵

Idaho's Attorney General also intended to broadly interpret the state's abortion ban as criminalizing any referral to a legal abortion service in another state.¹²⁶ However, in July 2023, a U.S. District Court judge ruled that such interpretation would violate a physician's First Amendment right to free speech and enjoined the Attorney General from prosecuting in such situations.¹²⁷ In an effort to restrict out-of-state abortion access, the state became the first to criminalize "abortion trafficking" by passing a law that makes it illegal to help a pregnant person under the age of eighteen travel across state lines to obtain an abortion without parental permission.¹²⁸

IV. AN INCREASED FOCUS ON PRIVACY LAWS SPARKS GEOFENCE WARRANT LEGISLATION

The denial of a fundamental right, combined with aggressive prosecutorial language from states like the above, amplified privacy concerns across the United States in myriad ways, including suspicion over law enforcement use of keyword warrants, geofence warrants, and warrants for chat and messaging app data in order to prosecute

124. Molly Bohannon, *Alabama AG Sued for Threatening Charges If Groups Arrange Out-of-State Abortion Travel*, FORBES (July 31, 2023, 2:33 PM), <https://www.forbes.com/sites/mollybohannon/2023/07/31/alabama-ag-sued-for-threatening-charges-if-groups-arrange-out-of-state-abortion-travel/?sh=5345332f7423> [https://perma.cc/ZN24-HTUQ].

125. *Id.*

126. Trotta, *supra* note 123.

127. *Id.*

128. IDAHO CODE ANN. § 18-623 (West 2023).

abortion seekers and those who aid them.¹²⁹ Although these technology-based search warrants are not novel or particular to abortion prosecution, they have been especially concerning in this context since such warrants did not exist in the pre-*Roe* era of anti-abortion laws. Lawyer and founder of the Surveillance Technology Oversight Project, Albert Fox Cahn, stated: “[W]e’re not afraid of something unprecedented. We’re afraid of something that is already happening, simply accelerated.”¹³⁰

The slow nature of the courts, their reticence to act, and their nudges to legislative action have caused state legislatures to pick up the mantle. In pursuit of digital privacy protections, states are individually setting guidelines on the appropriate use of geofence warrants by law enforcement.¹³¹ Although the abortion debate is divided among party lines, states on both sides of the aisle are concerned enough with the invasiveness of geofence warrants to introduce bills protecting privacy rights. As of the time of this article, four states (i.e., New York, Missouri, Utah, and California) have proposed or passed legislation related to law enforcement use of geofence warrants *in general* (rather than specific use of these warrants for abortion cases).¹³² New York and Missouri sought categorical bans on geofence warrants, while Utah passed a law requiring state law enforcement agencies to report statistics on geofence warrant use and restricting law enforcement access to reverse-location information.¹³³ The California legislature proposed a broad ban on the use

129. Mike Sexton, *The New Front in the Battle for Digital Privacy Post-Dobbs*, THIRD WAY (Jan. 22, 2023), <https://www.thirdway.org/memo/the-new-front-in-the-battle-for-digital-privacy-post-dobbs> [https://perma.cc/HTV4-TNTV].

130. Zachary B. Wolf, *Your Phone Could be Used Against You in an Abortion Case*, CNN (July 16, 2022, 8:05 AM), <https://www.cnn.com/2022/07/16/politics/abortion-data-what-matters/index.html> [https://perma.cc/WB39-DK6K].

131. See S.B. S8183, 2019 Leg., Reg. Sess. (N.Y. 2020); H.B. 762, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023); A.B. 1242, 2022 Leg., Reg. Sess. (Cal. 2022); A.B. 793, 2023 Leg., Reg. Sess. (Cal. 2023); H.B. 57, 65th Leg., Gen. Sess. (Utah 2023).

132. See N.Y. S.B. S8183; Mo. H.B. 762; Cal. A.B. 793; Utah H.B. 57.

133. N.Y. S.B. S8183; Mo. H.B. 762; Utah H.B. 57.

of reverse location demands, building on its shield law passed in 2022 which prohibits California corporations from cooperating with out-of-state law enforcement geofence warrants in abortion-prosecution cases.¹³⁴

A. New York – Reverse Location Search Prohibition Act

In April 2020, New York Senator Zellnor Myrie proposed S. 8183, also known as the Reverse Location Search Prohibition Act.¹³⁵ The proposed bill aims to categorically ban the use of geofence warrants by amending the criminal procedure law in New York to “prohibit[] the search, with or without a warrant, of geolocation data of a group of people who are under no individual suspicion of having committed a crime, but rather are defined by having been at a given location at a given time.”¹³⁶ S. 8183 directs a ban at both ends of the warrant process, dictating that “no law enforcement officer shall seek, from any court, a reverse location court order” and that “no court shall issue a reverse location court order.”¹³⁷ The bill’s initial failure to survive Committee in 2020 did not deter Senator Myrie. The senator presented subsequent versions in 2021 and 2023.¹³⁸ These proposed bills have garnered support from a coalition of major players in the tech industry, such as Google, Microsoft, and Yahoo.¹³⁹

134. See Cal. A.B. 793; A.B. 1242, 2022 Leg., Reg. Sess. (Cal. 2022).

135. N.Y. S.B. S8183.

136. *Id.*

137. *Id.*

138. S.B. S296A, 2021 Leg., Reg. Sess. (N.Y. 2021); S.B. S217, 2023 Leg., Reg. Sess. (N.Y. 2023) (proposed as part of a legislative package to rein in police surveillance).

139. Zack Whittaker, *Google, Microsoft and Yahoo Back New York Ban on Controversial Search Warrants*, TECHCRUNCH (May 10, 2022, 6:07 AM), <https://techcrunch.com/2022/05/10/google-new-york-geofence-keyword-warrant/> [<https://perma.cc/6WVD-FUB8>].

B. Missouri – Reverse Location and Reverse Keyword Search Prohibition Act

Following in New York’s footsteps, Missouri similarly introduced legislation in 2023 that would ban any government entity from engaging in “massive fishing expeditions” through geofencing.¹⁴⁰ Missouri House Bill 762, otherwise known as the Reverse Location and Reverse Keyword Search Prohibition Act, goes even further than New York’s laws by not only prohibiting government entities from seeking a geofence warrant from a court, but also from seeking or purchasing a “voluntary reverse location request,” and from using a third party to obtain such a request.¹⁴¹ Moreover, the proposed bill’s definition of “government entity” includes only state departments and agencies, not federal government agencies.¹⁴² Should a government entity violate the Reverse Location and Reverse Keyword Search Prohibition Act, a defendant may file a motion to suppress the information or evidence that was illegitimately obtained by the government.¹⁴³ Additionally, the bill provides a private right of action: if a government entity obtains an individual’s location records in a manner that violates the bill, the individual can bring a civil suit against that entity.¹⁴⁴ The Reverse Location and Reverse Keyword Search Prohibition Act, however, did not survive the 2023 legislative session.¹⁴⁵

C. Utah – Electronic Information Privacy Act

Taking a more conservative approach, Utah passed House Bill 57, also known as the Electronic Information

140. Mike Maharrey, *Missouri Bill Would Ban Reverse Keyword and Reverse Location Tracking*, TENTH AMEND. CTR. (Feb. 3, 2023), <https://blog.tenthamentendmentcenter.com/2023/02/missouri-bill-would-ban-reverse-keyword-and-reverse-location-tracking/>; H.B. 762, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023) [<https://perma.cc/4J2X-F5QA>].

141. Mo. H.B. 762.

142. *Id.* at § 542.603(1).

143. *Id.* at § 542.612.

144. *Id.* at § 542.615.

145. *State Representative Ben Baker*, BILL TRACK 50, <https://www.billtrack50.com/legislator/detail/24161> [<https://perma.cc/6CPD-4FEK>].

Privacy Act, which establishes procedures for law enforcement access to reverse-location information and creates a warrant requirement for any reverse-location information to be used in criminal court.¹⁴⁶ Governor Spencer Cox signed the bill after it unanimously passed the House and the Senate earlier in the year.¹⁴⁷ The Electronic Information Privacy Act was originally passed in 2014, and the most recently amended version took effect on May 3, 2023.¹⁴⁸

Pursuant to House Bill 57, starting January 1, 2024, each law enforcement agency in the state will be required to report yearly statistics on the following data: the number of reverse-location warrants requested by the agency; the number of reverse-location warrants granted after a request; the number of investigations that used information gathered from a reverse-location warrant; and the number of times reverse-location information was obtained under an exception provided in the bill.¹⁴⁹ Additionally, the state may only grant state funds to law enforcement agencies that comply with the reporting requirement.¹⁵⁰

D. California – Privacy: Reverse Demands

In February 2023, California Senator Mia Bonta presented Assembly Bill 793.¹⁵¹ Senator Bonta explicitly acknowledges that the Supreme Court’s decision to strike down *Roe* was a central component that led to her proposed bill.¹⁵² The California bill has similar provisions to the

146. H.B. 57, 65th Leg., Gen. Sess. (Utah 2023).

147. Mike Maharrey, *Signed as Law: Utah Restricts Geofence Location Tracking*, TENTH AMEND. CTR. (Mar. 22, 2023), <https://blog.tenthamentendmentcenter.com/2023/03/signed-as-law-utah-restricts-geofence-location-tracking/#:~:text=Spencer%20Cox%20signed%20a%20bill,of%20the%20federal%20surveillance%20state> [https://perma.cc/3R29-ETJB].

148. *Id.*

149. *Id.*

150. Utah H.B. 57.

151. A.B. 793, 2023 Leg., Reg. Sess. (Cal. 2023).

152. Joseph, *supra* note 119.

previously mentioned bills. For instance, under A.B. 793, neither a court nor a California government entity may “support, assist, or enforce a reverse-location demand.”¹⁵³ It is also similar to the Missouri bill that contains a private right of action against a government entity that unlawfully obtains an individual’s information, not just the ability for a defendant to file a motion to suppress any information obtained in violation of the bill.¹⁵⁴ In addition to these provisions, a person or California entity is not obligated to comply with a reverse-location demand from the state of California or any other state.¹⁵⁵ This provision differs from the language in the shield law passed in 2022 in that it is not specifically limited to crimes related to reproductive care, but would disallow all geofence warrants.¹⁵⁶

The bill faced stark opposition from California prosecutors and law enforcement who claimed the bill would prohibit “essential methods that investigators use to solve some of the most serious crimes.”¹⁵⁷ Despite the bill’s initial bi-partisan support, law enforcement’s steadfast resistance caused many lawmakers to change their votes, and A.B. 793 did not pass in 2023.¹⁵⁸ It is classified as a “two-year bill,” so A.B. 793 may be re-introduced in 2024.¹⁵⁹ Even if the bill passes, however, it will likely face litigation challenges from other states, as is anticipated for California’s shield law.¹⁶⁰

153. Cal. A.B. 793 § 2.

154. *Id.*

155. *Id.*

156. Compare A.B. 1242, 2022 Leg., Reg. Sess. (Cal. 2022) § 8, with Cal. A.B. 793 § 2.

157. Thomas Germain, *One Year After Dobbs, a California Abortion Privacy Bill Is Under Attack from Law Enforcement*, GIZMODO (June 23, 2023), <https://gizmodo.com/california-cops-abortion-digital-privacy-bill-ab-793-1850567285> [<https://perma.cc/8BKM-58K8>].

158. *Id.*; *Geofence Warrants and AB 793: The Balance of Public Safety and Privacy Rights*, CIVICA L. GRP., APC (Aug. 31, 2023), <https://civicalaw.com/2023/08/31/geofence-warrants-and-ab-793-the-balance-of-public-safety-and-privacy-rights#:~:text=AB%20793%20proposed%20adding%20four,rights%20organizations%2C%20and%20tech%20giants> [<https://perma.cc/45SP-AFFQ>].

159. *Id.*

160. Linn Freedman, *California Law Prohibits Cooperation with Out-of-State Entities Regarding Lawful Abortion*, JD SUPRA (Sept. 29, 2022), <https://www.jdsupra.com/legalnews/california-law-prohibits-cooperation-2561993/> [<https://perma.cc/J7WN-EGCJ>].

CONCLUSION

In 2022 the Supreme Court overturned the decision in *Roe v. Wade* and *Planned Parenthood v. Casey*, establishing that there is no Constitutional right to an abortion.¹⁶¹ In response to the Court's decision, states generally reacted by banning or restricting access to abortion or passing shield laws to protect out-of-state reproductive health patients from prosecution. The quick action taken by anti-abortion states raised questions about whether they would use geofence warrants, a search warrant that requests user data for all devices found in a specific location at a specific time, to prosecute pregnant women seeking abortions.¹⁶²

Since 2012, Justice Alito has urged the legislature to act in accordance with changes in public attitude toward privacy concerns as technology advances.¹⁶³ However, it has taken the loss of a constitutional right for many lawmakers to heed this advice. Though four states—New York, Missouri, Utah, and California—have attempted to reign in overuse of this general warrant, none have been able to pass broad protection against law enforcement use of geofence warrants.

161. See *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

162. Allyn, *supra* note 7.

163. *United States v. Jones*, 565 U.S. 400, 429 (2012) (Alito, J., concurring).