THE PERSONAL (JURISDICTION) IS POLITICAL: THE REACH AND OVERREACH OF ABORTION BOUNTY-HUNTER LAWS

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Abstract

Extraterritorial laws between states have long been debated, but less discussed are the implications of these extraterritorial theories on personal jurisdiction. As anti-abortion states continue to pass extraterritorial laws targeting abortion—bounty-hunter abortion laws—it becomes increasingly important to address the role personal jurisdiction will play in attempts to enforce these laws. Personal jurisdiction may serve as a useful roadblock to stop bounty-hunter lawsuits. This Note seeks to fill this gap in the literature by examining both the role personal jurisdiction will play in extraterritorial anti-abortion lawsuits and the fit between theories underlying personal jurisdiction and extraterritoriality. In this context, the governing state and federal precedents and the values underlying personal jurisdiction do not support exercise of personal jurisdiction over out-of-state defendants. Part I details states that have currently enacted bounty-hunter laws, the ongoing lawsuits related to these laws, and the issues these suits have presented for the basic requirements of personal jurisdiction. Part II lays out the menu of ways these cases might be handled, specifically by addressing the likely types of defendants and exploring how personal jurisdiction would—or, more aptly, would not—apply. Part III concludes by discussing theories underlying personal jurisdiction and how they support judges finding that bounty-hunter lawsuits against out-of-state defendants should not proceed. I argue that both Supreme Court precedent and personal jurisdiction's underlying normative values indicate that courts should not have personal jurisdiction over out-of-state abortion-suit defendants. Personal jurisdiction is one of the many procedural roadblocks—in addition to questions of substantive law—that will arise in civil enforcement mechanism lawsuits.

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INTRODUCTION

Skye Torres was living in Texas when she discovered that she was pregnant by her now ex-fiancé.[1] Unfortunately, Texas is one of the twenty-six states and three United States territories that have heavily restricted or almost completely banned abortion[2] in the aftermath of *Dobbs v. Jackson Women's Health Organization*.[3] After Torres informed her partner that she would be seeking an abortion because of the financial and mental burden of caring for a child, Torres' mother, Amanda Trevino, assisted her in obtaining an abortion on April 18, 2023.[4] Torres refused to provide her partner with additional details regarding the procedure.[5] Now, Torres' ex-fiancé is suing both Torres and Trevino using Texas's Heartbeat Ban's ("SB8") bounty-hunter law,[6] which is a part of a larger bill restricting abortion access and creating civil penalties for abortion in Texas.[7] The bounty-hunter law includes a civil enforcement mechanism that incentivizes private citizens to sue individuals who helped someone obtain an abortion, rather than using the typical criminal penalties in which state officials commence the action.[8] Civil enforcement mechanisms were initially implemented in anti-abortion legislation to avoid state action, [9] which would have violated *Roe v. Wade*'s

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1 *See* Petition at 1–2, Lummus v. Torres, No. 23-CV-1461 (Tex. Dist. Ct. Galveston Cnty. Sept. 5, 2023).

2 *See, e.g.*, *After* Roe *Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS. (2022), https://reproductiverights.org/maps/abortion-laws-by-state/ [https://perma.cc/MN5X-7682] [hereinafter *After* Roe *Fell*, CTR. FOR REPROD. RTS.].

3 Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231 (2022).

4 *See* Petition at 2–3, *Lummus*, No. 23-CV-1461.

5 *See id.*

6 *See id.*

7 *See* S. 8, 87th Sess., 2021 Tex. Gen. Laws 125.

8 *See* Alan Feuer, *The Texas Abortion Law Creates a Kind of Bounty Hunter. Here's How it Works.*, N.Y. TIMES (Sept. 10, 2021), https://www.nytimes.com/2021/09/10/us/politics/texas-abortion-law-facts.html [https://perma.cc/K8NE-JYJH] ("It removes enforcement entirely from state jurisdiction, and vastly expands who can sue, and who can be sued, over abortions. The statute, for example, permits anyone—even people who live outside Texas—to file a complaint in any court in the state if they believe an abortion has been performed.").

9 *See* Erin Douglas & Carla Astudillo, *We Annotated Texas' Near-Total Abortion Ban. Here's What the Law Says About Enforcement.*, TEX. TRIB. (Sept. 10, 2021), https://www.texastribune.org/2021/09/10/texas-abortion-law-ban-enforcement/ [https://perma.cc/F7P3-EYDN] ("[T]he law dramatically expands the concept of a civil lawsuit and is aimed at keeping providers from using the constitutional right to an abortion under Roe v. Wade as a legal defense.").

protection of the right to abortion.[10] In the aftermath of *Dobbs*, this legal workaround is no longer necessary.[11] However, states continue to include civil enforcement mechanisms in their anti-abortion legislation to provide additional opportunities for restricting abortions.[12]

Texas state courts will clearly have personal jurisdiction over Skye Torres and Amanda Trevino. Personal jurisdiction is a constitutional requirement derived from the Due Process Clause[13] and mandates that a forum state where the court sits must possess "minimum contacts" with a defendant to hear a case.[14] Torres and Trevino's Texas residencies and in-state presence create the requisite minimum contacts with Texas.[15] But unnamed parties who helped Torres may also be at risk, and it remains unclear where or how Torres received her abortion. As the lawsuit continues and more parties are potentially named as defendants, issues of personal jurisdiction may arise for out-of-state defendants. Such defendants may use lack of personal jurisdiction as a defense against activist anti-abortion lawsuits.[16] Accordingly, it is imperative to understand when a court can exercise personal jurisdiction over out-of-state individuals who provide or facilitate abortions.

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10 *See* Roe. v. Wade, 410 U.S. 113 (1973).

11 *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231 (2022) ("*Roe* and *Casey* must be overruled.").

12 *See* Emma Bowman, *As States Ban Abortion, the Texas Bounty Law Offers a Way to Survive Legal Challenges*, NPR (July 11, 2022), https://www.npr.org/2022/07/11/1107741175/texas-abortion-bounty-law [https://perma.cc/8BTP-6CCM] ("The anti-abortion advocates who developed the Texas law . . . thought criminal laws in comparison offered fewer ways to survive court challenges and too much discretion to the more progressive prosecutors who might fail to enforce the law.").

13 The Due Process Clause can be found in both the Fifth and Fourteenth Amendments of the United States Constitution. U.S. CONST. amends. V, XIV. The Fifth Amendment states that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. The Fourteenth Amendment states, "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

14 *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[D]ue process requires only that in order to subject a defendant to a judgment in personam . . . he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (citation omitted)).

15 Residence, often referred to as presence in a state, and the intent to stay there are the two determiners of domicile. *See* Lea Brilmayer, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 728–29 (1988) [hereinafter Brilmayer, *General Jurisdiction*]. Domicile is a traditional basis of personal jurisdiction and establishes sufficient minimum contacts for a court to exercise jurisdiction. *See id.* at 730.

16 Anti-abortion is used throughout this Note to describe states with laws that ban or severely limit abortion and policies that support denying or limiting abortion access. Additionally, this Note will use the term pro-

Franz Theard, a New Mexico doctor and abortion provider, is being sued in Texas for providing medical abortions to Texas residents.[17] Theard opened his New Mexico clinic in 2010 because of his fear that *Roe* would be overturned and his frustration with the increasingly difficult conditions he faced as an abortion provider in Texas.[18] After SB8 passed in Texas, Theard "made it his mission to persuade the women of East Texas to come west instead of going to Oklahoma, Louisiana, Kansas or Arkansas" to help provide easily accessible abortions.[19] Now, Theard faces an SB8 lawsuit from a Texas resident who alleges that some of Theard's patients have taken misoprostol—the abortion drug taken after mifepristone—in their home state of Texas, violating Texas law.[20] As the lawsuit continues, Theard's New Mexico residence could block personal jurisdiction in Texas state court.[21]

While Skye Torres is only one woman, and Franz Theard one provider, many women[22] from anti-abortion states with bounty-hunter laws[23] or other anti-abortion laws have crossed state borders to receive an abortion and received help from out-of-state individuals.[24] Any

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choice. Pro-choice generally refers to policies that promote abortion access and reproductive rights, leaving the decision of whether to get an abortion up to the individual.

17 *See* Petition at 1, Byrn v. Theard, No. 51499-A (Tex. Dist. Ct. Taylor Cnty. Dec. 5, 2022).

18 *See* Jada Yuan, *The New Mexico Provider Trying to Save Abortion for Texas Women*, WASH. POST MAG. (May 10, 2022), https://www.washingtonpost.com/magazine/2022/05/10/new-mexico-border-provider/ [https://perma.cc/9LB3-349L].

19 *Id.*

20 *See* Petition at 2–5, *Byrn*, No. 51499-A.

21 *See infra* Part II.A.3.

22 For the sake of linguistic clarity, this Note will typically refer to the people seeking and obtaining abortions as women. I acknowledge that some individuals who get abortions and are affected by these laws are not women, and their experiences are important to include in the narratives surrounding abortion.

23 Bounty-hunter laws refer to state laws that seek to penalize, either civilly or criminally, actions that happen *out of state*. The laws analyzed in this Note target abortions that occur out of state, whether by targeting the individual who received the abortion or by targeting individuals or organizations who helped that person receive an abortion. *See* Bowman, *supra* note 12.

24 *See* Claire Cain Miller & Margot Sanger-Katz, *Despite State Bans, Legal Abortions Didn't Fall Nationwide in Year After* Dobbs, N.Y. TIMES (Oct. 24, 2023), https://www.nytimes.com/2023/10/24/upshot/abortion-numbers-dobbs.html [https://perma.cc/PPD9-J25W] ("The biggest increases in legal abortions occurred in states that border those with bans, suggesting that many patients traveled across state lines."); *see also* Zolan Kanno-Youngs & Edrya Espriella, *A New Border Crossing: Americans Turn to Mexico for Abortions*, N.Y. TIMES (Sept. 25, 2023), https://www.nytimes.com/2023/09/25/world/americas /mexico-abortion-women-

combination of the two cases described above (and detailed in Part I) will likely occur in states with bounty-hunter laws in place.[25] As women continue seeking abortions out of state, lawsuits will inevitably arise between citizens of different states. All fifty states have their own "long-arm statute," which allows them to assert personal jurisdiction over out-of-state defendants.[26] But, in addition to complying with these statutes, assertions of personal jurisdiction must always satisfy constitutional due process.[27]

This Note serves to highlight and chronicle the personal jurisdiction issues that civil lawsuits over interstate abortions may raise. I argue that both Supreme Court precedent and personal jurisdiction's underlying normative values indicate that courts should not have personal jurisdiction over out-of-state abortion-suit defendants. Personal jurisdiction is one of the many procedural roadblocks—in addition to substantive law questions—that will arise in civil enforcement mechanism lawsuits.[28] Since personal jurisdiction for civil cases differs from jurisdiction in criminal cases, this Note will focus on states that have enacted anti-abortion laws with a civil enforcement mechanism, specifically bounty-hunter laws targeting out-of-state defendants. This Note discusses cases that have been brought in both federal and state courts. As of now, most cases have been in state court, likely because

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border.html [https://perma.cc/6NB5-G22E] (explaining that some women have traveled to Mexico to get an abortion, raising additional questions about jurisdiction over international citizens).

25 *See* Jill Filipovic, *Abortion Bans Are Empowering Abusive Men—and Prominent "Pro-Life" Activists Are Representing Them*, MS. MAG. (May 8, 2024), https://msmagazine.com/2024/05/08/abortion-bans-violence-against-women-ex-boyfriend-husband-abuse/ [https://perma.cc/K2MJ-GPEH] ("[S]everal men have indeed taken advantage of these [anti-abortion] laws in an effort to control their ex partners [sic]. And it's also not particularly surprising—although it is appalling—that they've found support and legal representation from some of the most powerful people in the U.S. anti-abortion movement.").

26 *See* LONG-ARM STATUTES: A FIFTY-STATE SURVEY (Vedder, Price, Kaufman & Kammholz, P.C., 2003).

27 *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[D]ue process requires . . . if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"); *see also* Pennoyer v. Neff, 95 U.S. 714, 733 (1877) ("[P]roceedings in a court of justice to deter mine [sic] the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.").

28 Other likely legal issues include choice of law, justiciability, standing, and venue. Beyond procedural roadblocks, many scholars have also raised questions about the right to travel and whether states can criminalize activity outside of their borders. *See, e.g.*, David S. Cohen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 22–23 (2023).

the cases do not meet diversity[29] or federal question[30] requirements for standing in federal court.[31] However, personal jurisdiction analyses will remain the same for both federal and state court cases, and this Note discusses both.[32] In analyzing jurisdiction, this Note focuses on adjudicative rather than prescriptive jurisdiction; in other words, this Note discusses a court's power over an individual rather than the creation of substantive extraterritorial rules (which would be better analyzed as a choice of laws issue).[33] Prescriptive jurisdiction remains another topic ripe for exploration, but this Note explores the often less-addressed issue of adjudicative jurisdiction.[34] Additionally, this Note focuses on defendants who *aid* abortions in some way, as most bounty-hunter laws do not target women who receive

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29 *See* 28 U.S.C. § 1332 (explaining that federal courts have original jurisdiction when the amount in controversy exceeds $75,000 and the parties are from different states or places). It is likely these cases would not meet the amount in controversy requirements given that the statute allows for "not less than $10,000 for each abortion." S. 8, 87th Sess., 2021 Tex. Gen. Laws 127–28. Therefore, cases would need to allege at least eight abortions in order to meet the amount in controversy required. Additionally, joinder of Texas defendants who aided or abetted in any way would destroy diversity. *See* 28 U.S.C. § 1332 (requiring complete diversity among defendants in a diversity jurisdiction suit).

30 *See* 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

31 Additionally, the civil enforcement nature of the suit means that defendants would likely not meet Article III standing requirements for federal courts, creating another barrier to these suits being raised in federal courts. *See* Lea Brilmayer, *Abortion, Full Faith and Credit, and the "Judicial Power" Under Article III: Does Article IV of the U.S. Constitution Require Sister-State Enforcement of Anti-Abortion Damages Awards?*, 44 COLUM. J. OF GENDER & L. 3 (2024) [hereinafter Brilmayer, *Abortion Full Faith and Credit*]; *see also* TransUnion LLC v. Ramirez, 594 U.S. 413, 417 (2021) ("To have Article III standing to sue in federal court, plaintiffs must demonstrate, among other things, that they suffered a concrete harm . . . Central to assessing concreteness is whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts." (quoting Spokeo, Inc. v. Robins, 578 U.S. 330, 340–41 (2016))).

32 The requirement of personal jurisdiction in state courts is rooted in the Fourteenth Amendment's Due Process Clause. *See Int'l Shoe*, 326 U.S. at 316 (1945). The Supreme Court has yet to determine whether the Fifth Amendment extends this same requirement to federal courts. *See* Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 582 U.S. 255, 257 (2017) ("[T]he question remains open whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court."). But the Federal Rules of Civil Procedure base a federal court's jurisdiction on the state court's ability to exercise jurisdiction in that same forum. *See* FED. R. CIV. P. 4I(1). Additionally, "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." Daimler AG v. Bauman, 571 U.S. 117, 125 (2014) (citing FED. R. CIV. P. 4(k)(1)(A)).

33 For a discussion of choice of law in the context of abortion, see Brilmayer, *Abortion Full Faith and Credit*, *supra* note 31.

34 *See infra* Part II.

abortions, and abortion recipients are less likely to raise a successful personal jurisdiction defense.[35]

Extraterritorial laws between states have long been debated,[36] but less discussed are the implications of these extraterritorial theories on personal jurisdiction.[37] As anti-abortion states continue to pass extraterritorial laws targeting abortion, it becomes increasingly important to address the role personal jurisdiction will play in attempts to enforce these laws. This Note seeks to fill this gap in the literature by examining both the role personal jurisdiction will play in extraterritorial anti-abortion lawsuits and the fit between theories underlying personal jurisdiction and extraterritoriality. In this context, the governing state and federal precedents and the values underlying personal jurisdiction do not support exercise of personal jurisdiction over out-of-state defendants. Part I details states that have currently enacted bounty-hunter laws, the ongoing lawsuits related to these laws, and the issues these suits have presented for the basic requirements of personal jurisdiction. Part II lays out the menu of ways these cases might be handled, specifically by addressing the likely types of defendants and exploring how personal jurisdiction would—or, more aptly, would *not*—apply. Part III concludes by discussing theories underlying personal jurisdiction and how they support judges finding that bounty-hunter lawsuits against out-of-state defendants should not proceed.

I. The Current Landscape

In 2022, the Supreme Court decided *Dobbs v. Jackson Women's Health Organization*, a watershed case that overturned *Roe v. Wade* and held that there is no federal constitutionally-

35 An individual is subject to general jurisdiction in a state where it is found that the individual has domiciled. *See* Brilmayer, *General Jurisdiction*, *supra* note 15, at 728–29 ("A state has a special relationship with its domiciliaries that justifies the state's exercise of judicial and regulatory authority over these residents. Indeed, most courts treat as self-evident the state's right to subject domiciliaries to the jurisdiction of its courts."). A person has domicile in a state if they have both "physical presence in a new location and an intent to make the place home." *Id.* at 729. Additionally, the bounty-hunter laws examined in this Note do not target the women who received an abortion. *See, e.g.*, S. 8, 87th Sess., 2021 Tex. Gen. Laws 125.

36 *See generally* Seth F. Kreimer, *The Law of Choice and Choice of Law: Abortion, the Right to Travel, and Extraterritorial Regulation in American Federalism*, 67 N.Y.U. L. REV. 451 (1992); Mark D. Rosen, *Extraterritoriality and Political Heterogeneity in American Federalism*, 150 U. PA. L. REV. 855 (2002).

37 *See generally* Arthur M. Weisburd, *Territorial Authority and Personal Jurisdiction*, 63 WASH. UNIV. L. Q. 377 (1985) (explaining that states can only assert extraterritorial jurisdiction over out-of-state defendants in situations of liability-related contact with the state); Jeffrey M. Schmitt, *Rethinking the State Sovereignty Interest in Personal Jurisdiction*, 66 CASE W. RSRV. L. REV. 769 (2016) (arguing for the importance of considering sovereignty in personal jurisdiction opinions).

recognized right to abortion in the United States.[38] In response to *Dobbs*, many states passed laws banning or restricting abortion within their borders.[39] Beyond the question of how far such restrictions can go, many were left wondering about the right to travel for an abortion.[40] In his *Dobbs* concurrence, Justice Kavanaugh wrote about this concern: "For example, may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel."[41] Such unenforceable promises do not guarantee that those who travel or help someone travel are protected; it remains unclear how state governments define providing abortions or traveling to get them.[42] Using the state laws discussed below, many state and local government officials may try to limit travel for abortions by punishing engaging in or aiding such behavior.[43] In such lawsuits, personal jurisdiction will be a useful barrier for pro-choice individuals and organizations to deploy against states' attempts to extraterritorially impose their anti-abortion beliefs on bordering states.

A. State Laws

In the lead-up to—and in the wake of—*Dobbs*, many states passed restrictions or bans on abortion.[44] As discussed, one method of implementing these laws has been the civil

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38 Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231 (2022) ("The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.").

39 *See* Mabel Felix & Laurie Sobel, *A Year After* Dobbs*: Policies Restricting Access to Abortion in States Even Where It's Not Banned*, KFF (June 22, 2023), https://www.kff.org/policy-watch/year-after-dobbs-policies-restricting-access-to-abortion/ [https://perma.cc/C9LQ-FK2S] ("Almost one year after the Supreme Court overturned Roe v. Wade . . . abortion laws and access to abortion are uneven across the country.").

40 *See* Cohen et al., *supra* note 28, at 22–23 ("Until there is a national ban, the movement will use state powers to stop as many abortions as possible, including outside state borders.").

41 *Dobbs*, 597 U.S. at 346 (Kavanaugh, J., concurring).

42 *See* Thor Benson, *Interstate Travel Post-*Roe *Isn't as Secure as You May Think*, WIRED (July 25, 2022), https://www.wired.com/story/insterstate-travel-abortion-post-roe/ [https://perma.cc/J739-2GK6]; *see also* Rachel M. Cohen, *The Coming Legal Battles of Post-*Roe *America*, VOX (June 27, 2022), https://www.vox.com/2022/6/27/23183835/roe-wade-abortion-pregnant-criminalize [https://perma.cc/MR9H-RY8K] ("[T]he questions around what it means to both provide and obtain an abortion have evolved considerably since the pre-*Roe* days, as have questions about what it means to 'cross state lines' to get one.").

43 *See infra* Part I.A.

44 *See* Felix & Sobel, *supra* note 39.

enforcement mechanism.[45] The civil enforcement mechanism is part of a larger piece of anti-abortion legislation that allows private citizens to sue those who have aided someone in receiving an abortion.[46] Such laws, often called bounty-hunter laws or trafficking laws, are a method for anti-abortion states to police behavior outside their borders.[47] They are essentially extraterritorial laws that try to force the state's own viewpoint onto other states and expand the reach of who they can punish. Other states have attempted to combat these laws by passing "interstate shield laws" with the aim of protecting their citizens who help someone in an anti-abortion state obtain an abortion.[48] Catalogued below is information about states with enacted or attempted civil enforcement mechanisms in their anti-abortion laws.[49]

Idaho's Fetal Heartbeat Preborn Child Protection Act creates a private right of action to sue another for abortion-related conduct: "Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child" is able to sue any medical professional who has performed or attempted to perform an abortion.[50] Thus, people who were not even the recipient of an abortion can also sue doctors using these statutes. Pro-choice advocates attempted to challenge this law in state court under a variety of state and federal constitutional arguments, but the court denied their claims.[51] The Idaho bounty-hunter law remains active.[52]

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45 *See* Bowman, *supra* note 12 ("[SB 8] allows private citizens to file a civil lawsuit against anyone who knowingly 'aids or abets' an abortion.").

46 *See id.*

47 *See id.*

48 *After* Roe *Fell*, CTR. FOR REPROD. RTS., *supra* note 2 (chronicling states with interstate shield laws: California, Oregon, Washington, Nevada, Colorado, New Mexico, Minnesota, Illinois, New York, Vermont, Maryland, Delaware, Hawaii, New Jersey, Connecticut, Massachusetts, and Maine).

49 This Note focuses on laws with civil enforcement mechanisms, not criminal laws, as jurisdiction needed for criminal cases differs from the personal jurisdiction needed for civil cases.

50 S. 1358, 66th Leg., Reg. Sess. (Idaho 2022).

51 *See* Planned Parenthood Great Northwest v. Idaho, 522 P.3d 1132, 1148 (Idaho Sup. Ct. 2023).

52 S. 1358, 66th Leg., Reg. Sess. (Idaho 2022).

Texas has passed the most restrictive, widest reaching, and most notorious bounty-hunter law.[53] The statute allows for "[a]ny person, other than an officer or employee of a state or local governmental entity in this state" to bring a civil action lawsuit against anyone who "performs," "aids[,] or abets" an abortion.[54] Such language seemingly allows *any* individual, with no connection whatsoever to the aborted fetus, to sue over *any* abortion, including out-of-state abortions.[55]

Some courts may adopt statutory constructions that narrow the range of suits permitted. For example, in *Van Stean v. Texas Right to Life*, a multidistrict litigation suit in the District Court of Travis County, Texas, the court held that SB8's grant of a cause of action to "any person" violated both Texas and federal standing requirements.[56] As this case demonstrates, courts may choose to interpret "any person" more narrowly to limit the number of suits possible.[57] Even so, the district court's opinion in *Van Stean* is non-precedential, and thus other Texas courts may interpret "any person" using broader understandings. Even with narrowed understandings, SB8 remains broad enough to put many people and their actions at risk for civil lawsuits.

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53 *See, e.g.*, *Texas' Radical Abortion Ban Could Lead to Copycat Bills. Here's What to Know.*, ACLU (Oct. 6, 2021), https://www.aclu.org/news/reproductive-freedom/heres-what-to-know-about-texas-radical-new-abortion-ban [https://perma.cc/L4MP-5RPS] ("While SB 8 is uniquely egregious, it's a stark example of what's at stake in the nationwide fight for reproductive freedom. Its impact could spread to millions more nationwide if other states follow suit with copycat bills.").

54 "Any person, other than an officer or employee of a state or local governmental entity in this state" may sue "any person who: (1) performs or induces an abortion in violation of this subchapter; (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or (3) intends to engage in the conduct described by Subdivision (1) or (2)." S. 8, 87th Sess., 2021 Tex. Gen. Laws 127.

55 *See id.*

56 Van Stean v. Texas Right to Life, No. D-1-GN-21-004179, slip op. at 36 (Tex. Dist. Ct. Travis Cnty. Dec. 9, 2021) ("Applying these principles, this court holds that SB 8's grant of standing for persons who have not been harmed to sue persons who have not harmed them, mandating a large award without proof of harm, is unconstitutional."), *aff'd*, 2023 WL 3687408 (Tex. Ct. App., Austin May 26, 2023).

57 *See, e.g.*, *id.*

Additionally, counties within Texas have proposed their own ordinances that would use similar civil enforcement mechanisms to punish those helping people obtain abortions.[58] In one city, Llano, the proposed (and currently tabled) ordinance "make[s] it illegal to transport anyone to get an abortion on roads within the city or county limits. The laws allow any private citizen to sue a person or organization they suspect of violating the ordinance."[59] Lubbock County, a Texas county bordering New Mexico, passed such an ordinance "to make it illegal for anyone to transport a pregnant woman through the county, or pay for her travel, for the purpose of seeking an abortion."[60] As of August 2023, two counties in Texas had passed such civil enforcement anti-abortion trafficking ordinances, and twenty others have showed interest in similar measures.[61]

Eleven states have introduced or proposed a variation of their own bounty-hunter anti-abortion laws, mainly following the same wording of SB8, but these laws have stalled or failed for various reasons.[62] These states include Alabama,[63] Arizona,[64] Arkansas,[65] Florida,[66]

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58 *See* Caroline Kitchener, *Highways Are the Next Antiabortion Target. One Texas Town is Resisting.*, WASH. POST (Sept. 1, 2023), https://www.washingtonpost.com/politics/2023/09/01/texas-abortion-highways/ [https://perma.cc/48JK-VW7Y]; J. David Goodman, *In Texas, Local Laws to Prevent Travel for Abortions Gain Momentum*, N.Y. TIMES (Oct. 24, 2023), https://www.nytimes.com/2023/10/24/us/texas-abortion-travel-bans.html [https://perma.cc/987C-X5ZZ] ("The ordinances . . . rely on the same enforcement mechanism as the abortion ban: lawsuits by private citizens.").

59 *See* Kitchener, *supra* note 58.

60 *See* Goodman, *supra* note 58.

61 *See* Kitchener, *supra* note 58.

62 *See* Susan Rinkunas, *We're Tracking All the Texas-Style Abortion Bills*, JEZEBEL (Jan. 4, 2022), https://jezebel.com/were-tracking-all-the-texas-style-abortion-bills [https://perma.cc/27DT-HC7X].

63 *See* H.R. 23, 2022 Leg., Reg. Sess. (Ala. 2022). This bill was not passed.

64 *See* H.R. 2483, 55th Leg., 2d Reg. Sess. (Ariz. 2022). This bill was not passed.

65 *See* S. 13, 93d Gen. Assemb., 2d Spec. Sess. (Ark. 2021). This bill was not passed.

66 *See* H.R. 167, 2022 Leg., Reg. Sess. (Fla. 2022). This bill was not passed.

Iowa,[67] Louisiana,[68] Minnesota,[69] Missouri,[70] Ohio,[71] Oklahoma,[72] and Wisconsin.[73] More states and counties may try to pass similar civil enforcement mechanism laws, especially if lawsuits based on these civil enforcement mechanisms succeed.[74] If one state succeeds in its mission to enact its extraterritorial policies on non-residents, it could signal to other anti-abortion states that they could do the same and revitalize proposed bills in anti-abortion states. Thus, it is especially important that such lawsuits not only fail, but that they fail quickly.

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67 *See* H.R. 510, 90th Gen. Assemb., Reg. Sess. (Iowa 2023). This bill has stalled after introduction to the House Judiciary.

68 *See* H.R. 800, 2022 Leg., Reg. Sess. (La. 2022). This bill was not passed.

69 *See* H.R. 2898, 92d Leg., Reg. Sess. (Minn. 2022). This bill was not passed.

70 Representative Mary Elizabeth Coleman proposed a bounty-hunter law, targeted mainly at residents of the neighboring state Illinois, but the proposal never made it into the final bill. *See* H.B. 2012, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); *see also* Tessa Weinberg, *Missouri House Blocks Effort to Limit Access to Out-of-State Abortions*, MO. INDEP. (Mar. 29, 2022), https://missouriindependent.com/2022/03/29/missouri-house-blocks-effort-to-limit-access-to-out-of-state-abortions/ [https://perma.cc/7KNL-4WN6]; Caroline Kitchener, *Missouri Lawmaker Seeks to Stop Residents from Obtaining Abortions Out of State*, WASH. POST (Mar. 8, 2022), https://www.washingtonpost.com/politics/2022/03/08/missouri-abortion-ban-texas-supreme-court/ [https://perma.cc/8CJ7-CY3K].

71 *See* H.R. 480, 134th Gen. Assemb., Reg. Sess. (Ohio 2021). This bill was not passed.

72 *See* S. 1503, 2022 Leg., Reg. Sess. (Okla. 2022). The Oklahoma laws were passed but then struck down by the Oklahoma Supreme Court in 2023, as they did not provide exceptions for situations where a mother's life was in danger. *See* Oklahoma Call for Reprod. Just. v. State, 531 P.3d 117, 123 (Okla. Sup. Ct. 2023). The Oklahoma Supreme Court had previously found that the state Constitution provides a "right to abortion in life-threatening situations," which is the precedent the court relied on in this decision. *Oklahoma Supreme Court Ruling Affirms Right to Life-Saving Abortion Care*, CTR. FOR REPROD. RTS. (June 2023), https://reproductiverights.org/oklahoma-supreme-court-overturns-abortion-bans/ [https://perma.cc/QXP5-EN49]; *accord* Oklahoma Call for Reprod. Just. v. Drummond, 543 P.3d 110, 115 (Okla. Sup. Ct. 2023). This decision was based on the lack of life in danger exception, and it is very possible, and likely, that the legislature in Oklahoma could pass new legislation similar to the one struck down, this time adding in a provision for emergencies.

73 *See* S. 923, 2021–2022 Leg., Reg. Sess. (Wis. 2022). This bill was not passed.

74 *See* Kitchener, *supra* note 58. For the idea that more states will pass similar bounty-hunter laws based on model legislation, see Memorandum from James Bopp, Jr., Nat'l Right to Life Comm. General Counsel, Courtney Turner Milbank, & Joseph D. Maughon to Nat'l Right to Life Comm. (June 15, 2022), https://www.nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-FINAL-1.pdf [https://perma.cc/Q8KP-4D47].

B. Bounty-Hunter Lawsuits

As of the writing of this Note, Texas state court dockets include suits grounded in Texas's SB8 bounty-hunter law.[75] Some lawsuits are between Texas resident defendants and Texas resident plaintiffs, meaning personal jurisdiction will not be at issue.[76] However, these cases still provide insight into what the new battle over abortion will look like in court. As more women continue to travel out of state for abortions, these lawsuits will likely continue to proliferate.[77]

One way for defendants in bounty-hunter cases to avoid a trial on the merits, and thus liability, is to challenge the personal jurisdiction of the court by asserting state civil procedure defenses and their rights under constitutional due process.[78] Lack of personal jurisdiction acts as a strong defense, as it prevents the case from being heard *before* the merits are even considered;[79] this is especially important in courts where judges might themselves be anti-abortion and in states where harsh anti-abortion laws and sentiment exist. In Texas, the state equivalent of a Federal Rules of Civil Procedure 12(b)(2) lack of personal jurisdiction defense is Rule 120 of the Texas Rules of Civil Procedure. Rule 120 allows a defendant to file for appearance to contest the court's jurisdiction over the defendant.[80] Since SB8 is a Texas law, if the defendants could beat personal jurisdiction in Texas courts, then they would have won the proverbial boxing match, as there would be no arena left to stage this fight. The following discussion of ongoing cases assesses what this fight looks like now and how it will continue to develop.

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75 *See generally* Petition for Review at 12, De Mino v. Gomez, No. 22-0517 (Tex. Sup. Ct. Aug. 22, 2022); Petition, Lummus v. Torres, No. 23-CV-1461 (Tex. Dist. Ct. Galveston Cnty. Sept. 5, 2023); Petition, Byrn v. Theard, No. 51499-A (Tex. Dist. Ct. Taylor Cnty. Dec. 5, 2022).

76 In these cases, domicile will provide a clear basis of personal jurisdiction over the defendants. *See* Brilmayer, *General Jurisdiction*, *supra* note 15, at 728–29.

77 *See* Filipovic, *supra* note 25 (reporting that "[a]nother Texas man murdered his girlfriend after she traveled to Colorado for an abortion . . . [and] a third Texas man found out his ex-girlfriend was planning to travel out of state to end her pregnancy, and he also hired [anti-abortion lawyer] Jonathan Mitchell to help stop her.").

78 U.S. CONST. amend. X; U.S. CONST. amend. XIV, §1.

79 *See* Fed. R. Civ. P. 12(b)(2).

80 The other states that have passed bounty-hunter laws also have their own equivalents of FRCP 12(b)(2). Most states have such an equivalent. For example, Oklahoma has Section 2012(B)(2) of Title 12 of Oklahoma Statutes, and Idaho has Rule 12(b)(2) of the Idaho Rules of Civil Procedure.

One sweeping lawsuit targets numerous non-Texas residents.[81] In *Byrn v. Theard*, a Texas citizen has requested the deposition of Franz Theard, a New Mexico doctor at a clinic that provides mifepristone.[82] In this suit, Byrn is asserting both a civil right of action—using SB8 as his basis—and a criminal right of action, claiming criminal jurisdiction for Texas under Texas Penal Code §1.04(a).[83] Yet Byrn never asserts a basis for personal jurisdiction for the civil aspect of the lawsuit.[84] The petition describes a woman with the pseudonym of Kayleigh who took the mifepristone she received at Theard's clinic once she was already back in Texas.[85] Byrn is not only attempting to attack Theard with this lawsuit, but also other potential defendants, as "[l]iability under SB 8 would also extend to anyone who paid for Kayleigh's abortion, anyone who referred Kayleigh to Theard's clinic, and anyone who knowingly provided Kayleigh with transportation to or from the Women's Reproductive Clinic of New Mexico."[86] As this case develops, Theard, and any other soon-to-be-named parties, should assert a Texas Rule 120 defense, arguing that the Texas court lacks personal jurisdiction to hear the case.

As of the publication of this Note, *Lummus v. Torres* has been transferred from the District Court of Galveston County, Texas, to the newly-created Texas Fifteenth District Court of Appeals.[87] The case involves civil and criminal claims by a man suing his ex-partner and her mother for his ex-partner's abortion.[88] Both of the defendants currently named are Texas residents, so personal jurisdiction is not yet an issue.[89] However, Lummus, the plaintiff, explicitly stated in his petition that he is considering suing others involved

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81 *See* Petition at 5, *Byrn*, No. 51499-A ("Any person who was complicit in this illegal abortion—including every employee, volunteer, and donor of the Women's Reproductive Clinic of New Mexico, and anyone who aided or abetted this illegal abortion in any manner . . . is equally liable under the Texas Heartbeat Act.").

82 *See id.* at 1.

83 *See id.* at 4–6.

84 *See id.*

85 *See id.* at 4.

86 *Id.* at 5.

87 *See* Adolfo Pesquera, *Texas Supreme Court Sends 6 Cases to the New Court of Appeals*, LAW.COM: TEX. LAW. (Sept. 6, 2024), https://www.law.com/texaslawyer/2024/09/06/texas-supreme-court-sends-6-cases-to-the-new-court-of-appeals/ [https://perma.cc/D8SL-SA6C].

88 *See* Petition at 1–3, Lummus v. Torres, No. 23-CV-1461 (Tex. Dist. Ct. Galveston Cnty. Sept. 5, 2023).

89 *See id.* at 1. For a discussion of why personal jurisdiction is not an issue for in-state residents, see Brilmayer, *General Jurisdiction*, *supra* note 15.

in the abortion.[90] As SB8 cases develop and additional defendants are joined, issues of personal jurisdiction will inevitably arise.

In *De Mino v. Gomez*, the Texas Supreme Court was confronted with the question of who can sue using SB8 when a Chicago resident sued a Texas citizen using Texas's SB8 civil enforcement mechanism.[91] One personal jurisdiction issue raised in the petition for review, as part of the question about standing, is whether "the trial court err[ed] by failing to dismiss the lawsuit filed by Felipe Gomez for lack of standing based on Gomez's status as an out-of-state plaintiff who is unaffected by Texas state law in general and would not be subject to long-arm jurisdiction for lack of contacts with Texas?"[92] While the main issue in this case is not personal jurisdiction, questions of personal jurisdiction will play an important role in determining whether this suit can continue. Since Gomez is the plaintiff, not the defendant, his out-of-state residency will be less relevant to personal jurisdiction, as courts typically focus on the defendant's contact with the state rather than the plaintiff's.[93] Even still, this case serves as an example of how, in many instances, procedural grounds can dictate the outcome before substantive questions are even addressed.

C. Personal Jurisdiction in Civil Suits

As bounty-hunter lawsuits proliferate, the issue of personal jurisdiction will only become more critical. By asserting a defense based on a lack of personal jurisdiction, defendants can avoid going to trial on the merits of the claims against them. This defense is available to *all* potential defendants, as the Supreme Court has consistently interpreted the Due Process Clause of the Fourteenth Amendment to require courts to gain personal jurisdiction over defendants haled into their courtrooms.[94] Thus, personal jurisdiction can act as a counterbalance against anti-abortion states' extraterritorial assertions of power.

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90 Petition at 6, *Lummus*, No. 23-CV-1461 ("Mr. Lummus is considering whether to sue individuals and organizations that participated in the killing of his unborn child.").

91 *See* Petition for Review, De Mino v. Gomez, No. 22-0517 (Tex. Dec. 2, 2022).

92 *Id.* at 8.

93 *See* Keeton v. Hustler Mag., Inc., 465 U.S. 770, 779 (1984) (finding "we have not to date required a plaintiff to have 'minimum contacts' with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking.").

94 *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[D]ue process requires . . . if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"); *see also* Pennoyer v. Neff, 95

It has long been debated whether the personal jurisdiction requirement is rooted in fairness to defendants, as guaranteed by the Due Process Clause, or in federalism concerns regarding state sovereignty and power.[95] One's preferred theoretical basis often determines how they believe personal jurisdiction should apply. As Part III will discuss, applying both theories to bounty-hunter lawsuits supports the conclusion that courts lack personal jurisdiction in these cases of out-of-state defendants. In addition to drawing on theoretical frameworks of personal jurisdiction, courts will rely on precedent to assess whether they have personal jurisdiction over bounty-hunter lawsuit defendants.

In both federal and state courts, defendants can assert a "lack of personal jurisdiction" by invoking Federal Rules of Civil Procedure Rule 12(b)(2) or the equivalent state rules when responding to a pleading.[96] The remaining sections of this Note explore how different theories of personal jurisdiction interact with bounty-hunter laws and, ultimately, why courts should not find personal jurisdiction in these cases.

II. How Much Contact Is Enough Contact?

This Note structures Part II by the type of defendant. Courts structure their determination of jurisdiction by "focus[ing] on 'the relationship among the defendant, the forum, and the litigation.'"[97] In line with that principle, this Note examines how courts would analyze these issues. Part II.A covers individuals who may be subject to lawsuits and the various bases of personal jurisdiction that may apply to them. These individuals are divided into two main groups: personal acquaintances and medical personnel. Part II.B discusses entity defendants, such as corporations, and the types of personal jurisdiction applied to them in bounty-hunter lawsuits. Each theory of personal jurisdiction affects the likelihood of defendants being brought before an out-of-state court, but the application of personal jurisdiction remains debatable based solely on precedent, warranting a deeper look at the underlying theories. Part III will explore these underlying theories of personal jurisdiction, considering who might be subjected to it and why they should or should not be.

U.S. 714, 733 (1877) ("[P]roceedings in a court of justice to deter mine [sic] the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.").

95 *See* Schmitt, *supra* note 37, at 769 ("While some opinions state that the law is based on state sovereignty, others hold that it is instead derived exclusively from the Due Process Clause's concern for fairness.").

96 FED. R. CIV. P. 12(b)(2); *see, e.g.*, TEX. R. CIV. P. 120(a); OKLA. STAT. tit. 12, § 2012(B)(2) (effective Nov. 1, 2004); IDAHO R. CIV. P. 12(b)(2).

97 *Keeton*, 465 U.S. at 775 (citing Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).

A. Individual Defendants

1. Recipients of Abortions

This Note does not focus on how recipients of abortions could be subject to personal jurisdiction. This is partly because bounty-hunter laws focus on *aiding* abortions rather than *receiving* them.[98] Some bounty-hunter laws even explicitly exclude suits against women who received an abortion.[99] Nonetheless, women who obtain an out-of-state abortion would generally be subject to personal jurisdiction in their home state because domicile satisfies personal jurisdiction requirements, specifically general jurisdiction.[100] Such women would have domicile in their home state because of their "physical presence" and "intent to make the place home."[101] As such, personal jurisdiction raises difficulties for women trying to obtain out-of-state abortions because their home states can hold them accountable in court using general jurisdiction.[102]

2. Personal Acquaintances

Individuals who help someone obtain an out-of-state abortion may be targeted by bounty-hunter laws.[103] This may include friends who provide a car ride to an abortion clinic, family members who provide a place to stay, or like-minded individuals who help fund an abortion.[104] Beyond personal acquaintances, even strangers can be sued under bounty-hunter laws; an Uber driver who knows a rider's drop-off location is an abortion

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98 *See, e.g.*, S. 8, 87th Sess., 2021 Tex. Gen. Laws 127 (creating civil liability for "any person who . . . knowingly engages in conduct that aids or abets the performance or inducement of an abortion . . .").

99 *See, e.g.*, S. 1503, 2022 Leg., Reg. Sess. (Okla. 2022) ("[A] civil action under this section shall not be brought: 1. Against the woman upon whom an abortion was performed . . . or against a pregnant woman who intends or seeks to abort her unborn child in violation of this act.").

100 *See* Brilmayer, *General Jurisdiction*, *supra* note 15, at 730 ("Domicile is traditionally the strongest basis supporting general jurisdiction . . . Domicile provides such a strong foundation for the imposition of general personal jurisdiction because it typically satisfies four of the major theoretical justifications for the assertion of jurisdiction: convenience for the defendant, convenience for the plaintiff, power, and reciprocal benefits.").

101 *Id.* at 728–29.

102 *See id.*

103 *See* S. 8, 87th Sess., 2021 Tex. Gen. Laws 127 ("[A]ny person who . . . knowingly engages in conduct that aids or abets the performance or inducement of an abortion . . . .").

104 *See id.*

clinic could arguably meet the mens rea requirement of "knowingly" engaging in conduct that aids an abortion.[105] Since bounty-hunter laws are so broad, there is no clear set of actions that would subject a person to a lawsuit. As such, any actions connected to someone from a bounty-hunter state receiving an abortion could potentially put another at risk for being sued.[106]

a. Tag Jurisdiction

The most straightforward method for establishing personal jurisdiction over individuals is transient jurisdiction—also known as "tag" jurisdiction—or physical presence in the state for notice and service.[107] The United States has a long history of considering physical presence in a state upon being served with a lawsuit sufficient to establish personal jurisdiction in that state.[108] In *Burnham v. Superior Court of California*, the Supreme Court determined that "jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.'"[109] Thus, it is firmly established that physical presence is enough for personal jurisdiction over individuals.[110]

"Tag" jurisdiction could cause issues for potential defendants in bounty-hunter suits, as it could restrict their ability to travel to states with bounty-hunter laws. While there may seem to be a simple solution—do not travel to a bounty-hunter law state if you have aided an abortion—this is easier said than done. Potential defendants may be unaware that their travel puts them at risk and could then be served with notice of a lawsuit. This is especially risky when it remains unclear what actions constitute aiding and abetting an abortion and

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105 *See id.*

106 *See, e.g.*, *id.*

107 *See Transient Jurisdiction*, LEXROLL (2023), https://encyclopedia.lexroll.com/encyclopedia/transient-jurisdiction [https://perma.cc/53DY-N2RQ].

108 *See* Burnham v. Superior Ct. of Cal., 495 U.S. 604, 610 (1990) ("Among the most firmly established principles of personal jurisdiction in American tradition is that the courts of a State have jurisdiction over nonresidents who are physically present in the State.").

109 *Id.* at 619.

110 *See, e.g.*, THOMAS D. ROWE, SUZANNA SHERRY & JERRY TIDMARSH, CIVIL PROCEDURE 477 (5th ed. 2020) ("Most courts hold that *Burnham* does not apply to corporations: one cannot obtain jurisdiction over a corporation by serving one of its officers in the forum state.").

when individuals lack the legal knowledge to avoid liability.[111] Not only is it important for those aiding abortions to be aware of the risks in their own state, they may also need to be educated on what consequences they could face in the home states of people who received abortions. Overall, "tag" jurisdiction is the most straightforward method of establishing personal jurisdiction, and bounty-hunter suit defendants would have little room to contest it.[112]

b. Specific Jurisdiction: Minimum Contacts

The most common form of personal jurisdiction that courts claim over out-of-state defendants is specific jurisdiction, or jurisdiction where the defendant's activity in the court's state gives rise to the lawsuit.[113] In determining whether there is specific jurisdiction, a court will look at the defendant's contacts with the state.[114] Courts focus their analysis of jurisdictional contacts on the defendant.[115] Courts do not have a singular bright-line rule for how much contact is enough to establish specific jurisdiction.[116] As such, courts faced

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111 *See* Benson, *supra* note 42; Terry Gross, *The U.S. Faces "Unprecedented Uncertainty" Regarding Abortion Law, Legal Scholar Says*, NPR (Jan. 18, 2023), https://www.npr.org/sections/health-shots/2023/01/17/1149509246/the-u-s-faces-unprecedented-uncertainty-regarding-abortion-law-legal-scholar-say [https://perma.cc/33S7-5CXL] ("We don't know any of the answers to that . . . which is why state legislators are willing to try things out that are unprecedented in recent history and potentially constitutionally questionable as well.").

112 *See* ROWE, SHERRY & TIDMARSH, *supra* note 110 ("Although the validity of transient or 'tag' jurisdiction is well established, its use is fairly rare. The availability of specific personal jurisdiction where a natural person has minimum contacts, and general jurisdiction where the person lives, usually suffices for plaintiffs' needs.").

113 *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) ("The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can . . . hardly be said to be undue.").

114 *See id.* at 316 ("[D]ue process requires only that . . . if [a defendant] be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'") (citation omitted).

115 *See* Keeton v. Hustler Mag., Inc., 465 U.S. 770, 780 (1984) ("The plaintiff's residence is not, of course, completely irrelevant to the jurisdictional inquiry. As noted, that inquiry focuses on the relations among the defendant, the forum and the litigation . . . lack of [plaintiff's] residence will not defeat jurisdiction established on the basis of defendant's contacts.").

116 *See* Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 77–78 (1980) [hereinafter Brilmayer, *How Contacts Count*] ("And the majority's conclusory characterizations supplied no analysis of how and why some contacts count toward personal jurisdiction and others do not.").

with these bounty-hunter cases must choose their own path on what constitutes sufficient "minimum contacts," thereby determining who can be sued.[117]

Courts will likely analogize to a variety of precedents to decide whether defendants in bounty-hunter cases would be subject to specific jurisdiction. The Supreme Court has previously looked toward whether a defendant "purposefully avails" themselves of a forum state in determining jurisdiction over the defendant.[118] In determining what behavior constitutes purposeful availment, the Court found that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant" was not enough for personal jurisdiction on its own.[119] Personal acquaintances' actions likely constitute "unilateral activity,"[120] as their contact with the forum state occurs through their relationship with the defendant, whom they help to obtain an abortion. What mattered more to the Court was that the defendant had "purposefully avail[ed] itself of the privilege of conducting activity within the forum State, thus invoking the benefits and protections of its laws."[121] Potential defendants in bounty-hunter suits do not benefit from the protection of these states' laws in the same way as, for instance, a company that provides services to customers in a state, as personal acquaintances largely keep to themselves in their respective states.

One argument that bounty-hunter plaintiffs may make is that the effects of the abortion aider's actions are enough to confer jurisdiction.[122] To support this argument, they will likely turn toward *Calder v. Jones*.[123] In that case, the intentional tort by the out-of-state plaintiff had such a large and targeted effect on the forum state that the Supreme Court found jurisdiction proper.[124] Forum states may argue that the loss of their potential future residents' lives has such an effect. However, this argument ignores that the effect is not targeted at the state itself, unlike in *Calder*. Individuals who help someone obtain an abortion are not doing so to specifically influence happenings in Texas or Idaho, but

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117 *See Int'l Shoe Co.*, 326 U.S. at 319.

118 *See* Hanson v. Denckla, 357 U.S. 235, 253 (1958).

119 *Id.*

120 *See id.*

121 *Id.*

122 *See* Calder v. Jones, 465 U.S. 783, 789 (1984).

123 *See id.*

124 *See id.* ("In sum, California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the 'effects' of their Florida conduct in California.").

rather because they have an interest in helping a friend or family member choose their own reproductive path.[125]

The Supreme Court's treatment of intentional torts and personal jurisdiction illustrates this principle. *Walden v. Fiore* involved an intentional tort inflicted by an out-of-state resident against forum state residents.[126] In denying personal jurisdiction over the defendant, the Supreme Court clarified that "our 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there."[127] When an individual helps another person receive an abortion, their contact is with the *person*, not the person's home state.

In contrasting the two intentional tort cases, the Supreme Court clarified that part of what distinguished *Calder* from *Walden* is that the tort of libel in *Calder* definitionally occurs in the state in which the false and damaging information is spread.[128] In contrast, abortions are more similar to the tort in *Walden* because the "damage" of the abortion—the loss of potential life—does not occur in the forum state, but wherever the abortion takes place. While this loss of potential life could affect residents of the forum state, its effects are not "expressly aimed" at the forum state in the same way as libel.[129] Individuals who help others obtain an abortion are likely the safest under this logic, as their actions target an individual person obtaining an abortion rather than the forum state.

c. Reasonableness

In determining personal jurisdiction, courts will also consider whether it is *reasonable* to subject a defendant to personal jurisdiction in that court.[130] The reasonableness

125 *See* Christina Maxouris, *Some Americans Are Offering to Help Others Travel Out of State for an Abortion. But in a Post-*Roe *Era, Experts Urge Caution.*, CNN (July 3, 2022), https://www.cnn.com/2022/07/03/us/abortion-help-travel-out-of-state-online-offers/index.html [https://perma.cc/ACK6-CVGZ] ("'We have to support each other, [let] people know that they're not alone.'").

126 *See* Walden v. Fiore, 571 U.S. 277, 279–81 (2014).

127 *See id.* at 285.

128 *See id.* at 287–88.

129 *See Calder*, 465 U.S. at 789.

130 *See* Asahi Metal Indus. Co. v. Super. Ct. of Cal., 480 U.S. 102, 114 (1987) ("A consideration of these factors in the present case clearly reveals the unreasonableness of the assertion of jurisdiction over Asahi, even apart from the question of the placement of goods in the stream of commerce."). But in recent years, the Roberts Court has turned away from emphasizing reasonableness to focus more on minimum contacts,

considerations for personal jurisdiction are generally malleable and act as a vague, multi-factored test geared toward mediating a relationship between states. Thus, the reasonableness test may be very important in the bounty-hunter context, as courts may be more apt to turn toward squishy standards when faced with gray areas like this one. In considering reasonableness, courts look to "the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief," as well as "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" and "the shared interest of the several States in furthering fundamental substantive social policies."[131] These factors are not new considerations for the personal jurisdiction realm, however, as courts consider many of these same elements in their minimum contacts tests.[132]

On balance, the reasonableness factors cut against finding personal jurisdiction over out-of-state abortion bounty-hunter defendants. In terms of burden, traveling to a state with which these defendants have very little relationship beyond their relationship with the abortion recipient is a substantial burden. The plaintiff's interest in obtaining relief, at first glance, seems to weigh in favor of finding jurisdiction, as plaintiffs likely could not sue in states where these civil enforcement mechanism laws did not exist.[133] Yet, the lack of cause of action elsewhere suggests that, in allowing personal jurisdiction in bounty-hunter

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so reasonableness arguments may be less persuasive to the current Supreme Court. *See, e.g.*, Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351 (2021); Mallory v. Norfolk S. Ry. Co., 600 U.S. 122 (2023); J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 883 (2011) ("Justice Brennan's concurrence, advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power. This Court's precedents make clear that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment.").

131 *Asahi*, 480 U.S. at 113.

132 For example, in analyzing minimum contacts in *McGee v. International Life Insurance*, the Supreme Court not only considered the defendant's contacts with the state, but also the state's interest in providing a remedy for its resident, the burden of the plaintiff suing elsewhere, and the nature and ease of the defendant's travel to the forum state. *See* McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223–24 (1957) ("It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims."). *See also* Linda J. Silberman, *Judicial Jurisdiction in the Conflict of Laws Course: Adding a Comparative Dimension*, 28 VAND. J. TRANSNAT'L L. 389, 399 (1995) ("Asahi's constitutional reasonableness check on assertions of jurisdiction in the United States seems redundant; the minimum contacts test itself invokes a consideration of the relationships among the defendant, the state, and the nature of the litigation.").

133 *See* Allstate Ins. Co. v. Hague, 449 U.S. 302, 308 (1981) ("In order to ensure that the choice of law is neither arbitrary nor fundamentally unfair, . . . the Court has invalidated the choice of law of a State which has had no significant contact or significant aggregation of contacts, creating state interests, with the parties and the occurrence or transaction.").

matters, a court would essentially allow an anti-abortion state to impose its own views on surrounding states. A state's interest in providing a remedy is not an excuse for that state's laws to cross borders. By design, these bounty-hunter laws are meant to be invoked not by people who have been injured, but rather individuals that have been delegated massive law enforcement authority on behalf of the state to avoid constitutional challenges.[134] This lack of a concrete injury requirement undermines the state's asserted interest in providing redress for its citizens. Part III discusses these underlying concerns and their applications further.[135]

A forum state, like Texas, may assert that it has a strong interest in providing a remedy for injuries to potential life.[136] Bounty-hunter laws may be a way for states to provide such a remedy. But this rationale declines in strength as the connection between the individual suing and the aborted fetus becomes more attenuated. In considering the fairness of personal jurisdiction, a court could consider the state resident's relationship to the fetus as a relevant factor.[137] A biological father suing someone for aiding in an abortion seems to have a stronger claim of injury than a random Texas citizen, but the law authorizes both to sue. How much the protection of potential life matters depends on a person's views on abortion, viability, and when life begins. But, regardless of what one believes about potential life, in considering underlying concerns about fairness, the nature of the plaintiff's injury and that injury's relation to the state are relevant.

The remaining two reasonableness factors also likely weigh in favor of courts finding that there is not personal jurisdiction over individuals in bounty-hunter cases. Since bounty-hunter laws are extraterritorial, they are, by nature, not agreed upon by a collection of states. Instead, they allow one state to force its laws on others. Interstate interest in an efficient solution is lacking for bounty-hunter laws because there is no interstate agreement that abortions require a "solution" in the first place. Anti-abortion states would hope to expand their prohibitions, whereas pro-choice states would attempt to limit any prohibitions. As for limiting controversy and promoting efficiency, courts would best attain these goals by

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134 *See* Douglas & Astudillo, *supra* note 9 ("Not only are private individuals allowed to enforce the law by suing others, but the state is prevented from enforcing or attempting to enforce the law. Experts say this is a legal maneuver designed to withstand a court challenge on the law's constitutionality.").

135 *See infra* Part III.A.

136 *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 301 (2022) ("These legitimate interests include respect for and preservation of prenatal life at all stages of development . . . .").

137 *See* Asahi Metal Ind. Co. v. Superior Ct. of Cali., 480 U.S. 102, 113 (1987) ("A court must consider . . . the interests of the forum State.").

refusing to entangle themselves in extraterritorial policies. Finally, this same logic would apply to any "shared interest of the several States in furthering fundamental substantial social policies."[138] No such shared interest exists in this case, and if it did, that shared interest seems to belong to the number of states that have passed interstate shield laws, which outweighs the number of states with currently enacted bounty-hunter laws.[139] In the situation of bounty-hunter abortion cases as applied to individuals, reasonableness considerations weigh in favor of courts not finding personal jurisdiction.

3. Medical Personnel

One of the main categories of individuals who could be subject to bounty-hunter lawsuits are medical personnel, including doctors, abortion providers, nurses, pharmacists, and others involved in work at abortion clinics or similar service providers.[140] Because of their status as individual defendants, many of the ways courts might analyze personal jurisdiction with regards to personal acquaintances could also apply to medical personnel. These include applying "tag" jurisdiction, a similar minimum contacts analysis, and the reasonableness factors. There are some ways in which medical personnel's status or unique behavior may alter a court's analysis of their potential for personal jurisdiction, detailed below.

a. Specific Jurisdiction: Minimum Contacts

Medical personnel are likely more in danger than personal acquaintances, especially if they are engaging in advertising or other types of activities to recruit patients. The Supreme Court has previously found that a single contract between a life insurance company and a resident of the forum state was enough to establish personal jurisdiction.[141] While this ruling may seem like it would automatically create personal jurisdiction for medical personnel, this may not be the case. The contract in *McGee* included the sending and receipt of multiple

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138 *Id.*

139 *Compare After* Roe *Fell*, CTR. FOR REPROD. RTS., *supra* note 2, *with* S. 8, 87th Sess., 2021 Tex. Gen. Laws 125 *and* S. 1358, 66th Leg., Reg. Sess. (Idaho 2022).

140 *See, e.g.*, S. 8, 87th Sess., 2021 Tex. Gen. Laws 127 ("Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who . . . performs or induces an abortion in violation of this subchapter[.]").

141 *See* McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) ("It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State.").

payments during a person's lifetime,[142] which is in sharp contrast with the limited, discrete, temporal nature of performing an abortion. It is then likely relevant whether a clinic sent communications into Texas or targeted Texas residents with advertising or if the person receiving the abortion simply drove to this clinic in a neighboring state.

Additionally, in determining that there was personal jurisdiction for the party with the singular contract, the Court acknowledged that the modernization of the American economy has led to increasing circumstances in which there would be personal jurisdiction over out-of-state defendants.[143] It is then relevant whether a court would view abortion as a commercial industry within a national economy—this would be most relevant to medical personnel and clinic employees. Abortions likely are part of the national economy,[144] but whether they are commercial likely depends on personal definitions and opinions on the subject.[145]

In achieving the purposes of personal jurisdiction, judges should look to the sensitive nature of abortion to categorize it beyond a typical economic or commercial activity. Beyond this, states have a large police power that could potentially be used to justify more sweeping jurisdiction over behaviors that affect their state. Yet, a state's police power would not justify regulation outside its borders. The Supreme Court has also been careful in the years since its recognition of the modernization of the American economy to ensure that modernization does not constitute justification for finding personal jurisdiction in all commercial situations.[146]

Anti-abortion proponents often argue that doctors and health centers benefit financially from abortions, which could weigh towards viewing their activities as a commercial

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142 *See id.* at 221–22.

143 *See id.* at 222–23 ("Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years.").

144 ASHA BANERJEE, THE ECONOMICS OF ABORTION BANS (2023), https://www.epi.org/publication/economics-of-abortion-bans/ [https://perma.cc/W83G-LQQD].

145 *See* Katherine Florey, Dobbs *and the Civil Dimension of Extraterritorial Abortion Regulation*, 98 N.Y.U. L. REV. 485, 529 (2023) (explaining that in *Pennoyer*, the court made "an exception to territorial principles for questions of personal status" and implying that courts do the same for abortion). Ideas such as Florey's underscore that whether courts view abortion as commercial or more personal could have lasting effects on how the cases are adjudicated.

146 *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295 (1980).

relationship constituting availment of the patient's home state.[147] However, this argument seems weak at best, as any so-called benefit would come from the woman herself and not the forum state, as explored in the earlier discussion of *Walden*. Using the Supreme Court's articulation of purposeful availment,[148] many, if not most, abortion providers would likely not be subject to personal jurisdiction because it would be unfair to subject them to the laws of a state from which they are not reaping benefits.

However, there are some abortion providers who actively reach out to potential patients in the forum state. Franz Theard, a New Mexico doctor and abortion provider, has run his clinic in new ways since SB8 went into effect.[149] Theard has even gone as far as offering incentives to women traveling to his clinic from other states, "like rolling the tax New Mexico charges for the procedure into a flat $700 fee, or the free abortions he offered on International Women's Day in March and on Armed Forces Day in May."[150] He goes so far as acknowledging that many people may even be traveling long distances to see him and addresses that directly as well by "offer[ing] $100 to $150 back as a fuel rebate, on a discretionary basis and if the journey seems like a financial hardship."[151] Theard is just one of many doctors and providers who remain at risk for lawsuits based on their active help to women in anti-abortion states.[152]

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147 *See generally* Debbie Lesko, *The Abortion Industry Doesn't Want You to Hear These Facts*, FOX NEWS (May 20, 2022), https://www.foxnews.com/opinion/abortion-industry-facts [https://perma.cc/BHT6-C59E] ("Abortion providers make money off abortions and the sale of baby body parts for research."); Melanie Israel, *Abortion Is Planned Parenthood's "Essential" Billion-Dollar Business*, HERITAGE FOUNDATION (Apr. 21, 2020), https://www.heritage.org/life/commentary/abortion-planned-parenthoods-essential-billion-dollar-business [https://perma.cc/L667-P8BX] ("A recent Heritage Foundation report analyzing many years of Planned Parenthood's medical and financial data found that the organization is a billion-dollar abortion business with an increasing market share of total annual abortions in the United States.").

148 *See* Hanson v. Denckla, 357 U.S. 235, 253 (1958).

149 *See* Yuan, *supra* note 18 ("Theard opened his office on weekends to make it easier for patients to come from East Texas and got his staff on board with the cause.").

150 *Id.*

151 *Id.*

152 *See generally* Emily Bazelon, *Risking Everything to Offer Abortions Across State Lines*, N.Y. TIMES (Oct. 4, 2022), https://www.nytimes.com/2022/10/04/magazine/abortion-interstate-travel-post-roe.html [https://perma.cc/2UJU-YGL4].

Abortion providers like Theard may be at greater risk if they gear their behavior to help provide abortions to people of a certain state.[153] Even so, such activities seem distinct from trying to cause harm or have effects occur in the forum state.[154] For instance, a Texan plaintiff, and subsequently a Texan judge, could certainly argue that Theard's incentives constitute purposeful availment of Texas's residents, thereby conferring personal jurisdiction in Texas. Yet this argument fails to get at what, if any, benefits Theard would be receiving *from Texas* by providing abortions to Texan women. One underlying idea behind purposeful availment is that a defendant can be subject to personal jurisdiction when they structure their activities to ingrain themselves in the forum state.[155] Here, Theard is not availing himself of the privileges of the forum state. Instead, he is incentivizing women of the anti-abortion state to *leave* Texas. Perhaps judges could make a distinction between reaching out to *enter* a state's market and reaching out in order to persuade women to leave a state.[156] Even with such a distinction, it is likely relevant whether providers like Theard are actively advertising to a specific state, like Texas, or whether they are broadly trying to attract business. Situations such as Theard's remain the most precarious, as when there is such clear advertising—perhaps indicating purposeful availment—courts could have the strongest argument for having personal jurisdiction. Other abortion providers and clinics could potentially take this lesson to keep their advertising, if they choose to have any, broadly aimed rather than aimed at women in specific states.

Additionally, the Court in *Walden* states that "physical entry into the State—either by the defendant in person or through an agent, goods, mail, or some other means—is certainly a relevant contact."[157] However, relevance is not determinative. The entry of a

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153 *See, e.g.*, Yuan, *supra* note 18.

154 Personal jurisdiction precedent asserts that the general rule is one of purposeful availment and the exception to that rule may include situations such as intentional torts. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 877–78 (2011) ("There may be exceptions, say, for instance, in cases involving an intentional tort. But the general rule is applicable in this products-liability case, and the so-called 'stream-of-commerce' doctrine cannot displace it.").

155 *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985) ("[T]his 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum . . . and the litigation results from alleged injuries that 'arise out of or relate to' those activities . . . .") (citation omitted).

156 For a separate, but related, argument about First Amendment issues raised by advertising by abortion providers and related organizations, see Jeremy W. Peters, *First Amendment Confrontation May Loom in Post-*Roe *Fight*, N.Y. TIMES (June 29, 2022), https://www.nytimes.com/2022/06/29/business/media/first-amendment-roe-abortion-rights.html [https://perma.cc/U7XX-P9QV].

157 Walden v. Fiore, 571 U.S. 277, 285 (2014).

singular mifepristone pill into a forum state prescribed by a doctor on one occasion seems vastly different from the entry of thousands of mifepristone pills prescribed by a doctor to many women over the period of several months. The Supreme Court's amorphous standards on the extent of physical entry necessary to establish minimum contacts provide little guidance. Certainly, though, contact with the person who reenters the forum state does not seem to be enough given *Walden*'s holding.[158] Thus, abortion providers would likely be safe if the person who returns to the forum state does so *after* having already completed the abortion; this would confine the potential defendant's contacts to the forum *resident* rather than the forum *state*.

The Supreme Court has indicated protection against personal jurisdiction in situations where the contacts remain too tenuous, which would likely include those who prescribe or sell mifepristone. In describing tenuousness, the Supreme Court has eschewed the "stream of commerce" argument and instead focused on the defendant's broader expectation of entering a market.[159] The Court found that selling a product in one state with the foresight that it might end up in another state would not be enough contact to establish personal jurisdiction.[160] Any bounty-hunter argument that doctors or pharmacists selling and prescribing mifepristone in a state bordering forum states are subject to personal jurisdiction because of their knowledge that there was a *possibility* of their medicine ending up in these anti-abortion states likely fails.[161]

But this argument becomes more difficult to make when providers reach out to patients in forum states.[162] While it may not be enough that these abortion providers have entered the "stream of commerce," it could be enough that they have engaged in sufficient contact

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158 *See id.* ("But the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.").

159 World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297–99 (1980) ("The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.").

160 *Id.* at 297 ("This is not to say, of course, that foreseeability is not wholly irrelevant . . . Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.").

161 For an example of one such doctor who may provide a basis for a case like this, *see, e.g.*, Petition, Byrn v. Theard, No. 51499-A (Tex. Dist. Ct. Taylor Cnty. Dec. 5, 2022).

162 *See id.*

with the forum state that they could "reasonably anticipate being haled into court there."[163] Generally, assessing how much contact is enough to anticipate being haled into court would bring judges back to the purposeful availment discussion above. Providers may want to be careful to avoid specific advertising or publicity about their tactics to avoid liability, but for most run-of-the-mill medical personnel, courts would find that there is not personal jurisdiction because of a lack of contacts.

B. Corporate and Entity Defendants

Also potentially at risk under bounty-hunter laws are corporate and entity defendants, including abortion funds, hospitals and health systems, insurance companies, online retailers, and pharmacies.[164] This Note focuses on individuals rather than corporate defendants because these corporate entities will have greater legal capacity to defend themselves from bounty-hunter lawsuits than individuals likely would. Additionally, existing lawsuits at the time of this Note have so far targeted individuals,[165] perhaps because individuals are more vulnerable. Also outside the scope of this Note are online mifepristone retailers, in part because the same personal jurisdiction tests as applied to other corporations could also be applied to online mifepristone retailers. The main analysis of corporate defendants here takes place under general jurisdiction; this is the area of personal jurisdiction where these defendants differ most from individuals. There also may be slight changes in the reasonableness analysis for entities.

1. General Jurisdiction

One manner in which courts can assert jurisdiction is where an organization's contacts with a state are so extreme or continuous that the court would have jurisdiction regardless of whether the claims are related to the defendant's contacts with the state.[166] General jurisdiction is based on the idea that it is fair to "regulat[e] the activities of insiders,

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163 *World-Wide Volkswagen Corp.*, 444 U.S. at 297–98.

164 *See, e.g.*, S. 8, 87th Sess., 2021 Tex. Gen. Laws 127 (creating civil liability for "any person who . . . knowingly engages in conduct that aids or abets the performance or inducement of an abortion, *including paying for or reimbursing the costs of an abortion through insurance or otherwise*[.]" (emphasis added)).

165 *See generally* Petition for Review, De Mino v. Gomez, No. 22-0517 (Tex. Aug. 22, 2022); Petition, Lummus v. Torres, No. 23-CV-1461 (Tex. Dist. Ct. Galveston Cnty. Sept. 5, 2023); Petition, *Byrn*, No. 51499-A.

166 *See* Daimler AG v. Bauman, 571 U.S. 117, 118 (2014) ("'[G]eneral jurisdiction' [is] exercisable when a foreign corporation's 'continuous corporate operations within a state [are] so substantial and of such a nature

regardless of where the activities occur."[167] Courts will need to determine which abortion-related corporations could be considered "insiders" in a forum state. Even though general jurisdiction remains a less commonly used tool of jurisdiction, it still has possibly powerful ramifications given the importance of choice of law in these bounty-hunter suits.[168]

There is a relatively high bar of conduct required for a court to find general jurisdiction over a defendant corporation. In order to render itself subject to general jurisdiction, a corporation must be "at home" through "continuous and systematic contact."[169] The Court has confirmed and expanded upon this test, elaborating that "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business."[170] Generally, abortion funds and other large abortion-focused organizations can attempt to avoid jurisdiction by incorporating only in states without bounty-hunter laws in place. Some localized abortion funds, like the Lilith Fund in Texas,[171] might be subject to general jurisdiction even if they are not incorporated in that state, as their principal place of business likely could still be the forum state.

Business contacts and activities in the forum state alone would not be enough to establish general jurisdiction for abortion funds and other corporations, even if they were engaging in many activities in the forum state. In one case, a Colombian helicopter corporation was sued in Texas state court because of a helicopter crash in Peru where four United States citizens died.[172] The Supreme Court held that the business's contacts of "sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to

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as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" (citation omitted)).

167 Brilmayer, *General Jurisdiction*, *supra* note 15, at 782.

168 *See id.* at 725 ("[A] plaintiff may seek the application of a distant forum's law because it is more favorable than the law of the state where the cause of action arose. Such forum shopping is a persistent problem in general jurisdiction cases, given current minimal restraints of a state's choice of law.").

169 Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011).

170 *Daimler AG*, 571 U.S. at 118.

171 *See* Oscar Hartzog, *Where to Donate to Abortion Funds Right Now*, ROLLING STONE (May 11, 2022), https://www.rollingstone.com/culture/culture-news/abortion-funds-to-donate-to-how-to-help-1351451/ [https://perma.cc/S9YP-RXTN].

172 *See* Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 409–10 (1984).

Bell's facilities in Fort Worth for training" were not enough to establish general jurisdiction in Texas.[173] Even general business involvement in a state would likely not be enough for courts to find general jurisdiction for abortion funds and similarly situated organizations. Instead, courts would look for the presence of the leaders of the corporations in the forum state.[174] It is easy to imagine how national abortion funds—like the Women's Reproductive Rights Assistance Project or the National Abortion Federation—or multi-state funds—like Access Reproductive Care-Southeast or Midwest Access Coalition—could have their executives scattered in many states, including forum states.[175] Yet, there may not be enough leaders to make the forum state that organization's "principal place of business."[176]

Issues for corporations remain especially relevant, as in the recent Supreme Court case *Mallory v. Norfolk Southern Railway*, the Court ruled that states may validly enact consent laws requiring *all* companies to consent to general personal jurisdiction in order to conduct business in that state.[177] In *Mallory*, the plaintiff was not a resident of the forum state and the cause of action had not occurred there.[178] Still, the Court allowed general jurisdiction because of Pennsylvania's consent law, confirming that the railroad company had consented to the exercise of general jurisdiction by doing business there.[179] Mifepristone producers, abortion funds, and other incorporations would need to carefully avoid anti-abortion states who have such consent laws in place to avoid liability, especially as such laws might increase. Justice Barrett's dissent in *Mallory* may act as a warning as well—if states can tie consent to doing business there, what is to stop them from tying consent to other acts?[180]

As the personal jurisdiction landscape and consent laws change in the aftermath of *Mallory*, corporations engaging in abortion-related activities will need to take special notice to avoid liability going forward. Even more worrisome is the huge array of corporations

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173 *Id.* at 416.

174 *See* Perkins v. Benguet Consol. Min. Co., 342 U.S. 437, 447–48 (1952).

175 *See* Hartzog, *supra* note 171.

176 *Daimler AG*, 571 U.S. at 118.

177 *See* Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 127 (2023).

178 *See id.* at 135.

179 *See id.*

180 *See id.* at 168 (Barrett, J., dissenting) ("So on the Court's reasoning, corporations that choose to do business in the State impliedly consent to general jurisdiction. The result: A State could defeat the Due Process Clause by adopting a law at odds with the Due Process Clause.").

with a more attenuated relationship to abortion, like insurance companies that cover abortion procedures and costs. These corporations do business in a vast number of states and could be sued using bounty-hunter laws. The expansion of general jurisdiction in *Mallory* puts such companies at risk and they have limited ability to predict lawsuits because of the breadth of bounty-hunter laws. Courts may hope to avoid such a large extension of personal jurisdiction to these uninvolved entities and may look to the underlying values of personal jurisdiction to stop this. In his concurrence, Justice Alito offers one potential way to stop this expansion of state extraterritoriality: the dormant Commerce Clause.[181] States may face a separate constitutional obstacle if they choose to enact *Mallory*-type laws.[182] If courts fail to rein in personal jurisdiction, corporations may look to other legal arguments to limit a state's extraterritorial reach and strike down such laws.

2. Reasonableness

Courts will likely engage in similar reasonableness inquiries for entity defendants as they did for individuals. One of the potential differences in this analysis is that plaintiffs might have a marginally improved reasonableness argument for personal jurisdiction for corporate entities. This is because it is likely easier for entity defendants to defend themselves in another state due to increased legal and financial capabilities and resources.

III. Theories Behind Personal Jurisdiction and Where They Lead Us

Stuck in the twilight zone of personal jurisdiction confusion, judges will need a light to guide their path forward. Personal jurisdiction precedent offers a hazy glow at best, so another source is necessary. Judges can and should turn toward the theoretical, values-based underpinnings of personal jurisdiction to decide these cases. The theories behind personal jurisdiction can help judges parse how best to decide these bounty-hunter cases to fit with the aims of procedure. This inquiry into underlying theories of personal jurisdiction reinforces the analysis from Part II by allowing judges to apply personal jurisdiction precedent and policy in a way that is most faithful to its underlying goals. There are two main categories that most views of personal jurisdiction can be sorted into—state

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181 *See id.* at 158–59 (Alito, J., concurring) ("It is especially appropriate to look to the dormant Commerce Clause . . . Because the right of an out-of-state corporation to do business in another State is based on the dormant Commerce Clause, it stands to reason that this doctrine may also limit a State's authority to condition that right.").

182 *See id.* at 150 (Alito, J., concurring) (explaining that "the Pennsylvania Supreme Court did not address" the dormant Commerce Clause issue and the Supreme Court should "remand the case for further proceedings.").

sovereignty and fairness to the individual defendant.[183] Each supports the idea that judges should not find personal jurisdiction over most out-of-state defendants in the abortion and bounty-hunter-laws context.

Much of the decision-making for personal jurisdiction hinges on how judges choose to apply precedent to the facts in front of them. In a gray area of law, such as personal jurisdiction, decisions often seem largely unpredictable, and judges may employ motivated reasoning given this latitude. This may be especially alarming to pro-choice activists, as both the federal courts and Supreme Court have become more conservative in recent years.[184] Additionally, in state courts where judges will decide these bounty-hunter lawsuits, judges may be chosen via partisan elections.[185] While personal jurisdiction cases do not typically fall along party lines,[186] this could change in the context of abortion, where there seems to be more of a partisan split in the decision-making of some judges.[187] Justice Alito accused the dissent in *Dobbs* of allowing substantive policy goals to affect their procedural

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183 *See generally* Weisburd, *supra* note 37; Harold S. Lewis, *Three Deaths of State Sovereignty and the Curse of Abstraction in the Jurisprudence of Personal Jurisdiction*, 58 NOTRE DAME L. REV. 699 (1983); Wendy Collins Perdue, *Personal Jurisdiction and the Beetle in the Box*, 32 B.C. L. REV. 529 (1991); Schmitt, *supra* note 37. *See also* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980) ("It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.").

184 *See generally* John Gramlich, *How Trump Compares with Other Recent Presidents in Appointing Federal Judges*, PEW RSCH. CTR. (Jan. 13, 2021), https://www.pewresearch.org/short-reads/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/ [https://perma.cc/K3WK-PRRB]; *see also* Nina Totenberg, *Supreme Court to Hear Abortion Pill Case*, NPR (Dec. 12, 2023), https://www.npr.org/2023/12/13/1218332935/mifepristone-abortion-pill-supreme-court [https://perma.cc/C8SW-QVCE] ("The U.S. Supreme Court reentered the abortion debate Wednesday, agreeing to review a lower court decision that would make mifepristone, the commonly used abortion pill, less accessible.").

185 *See* Ross Ramsey, *Analysis: Voters Elect Texas' Judges. The State Might Take That Power—But It's Risky.*, TEX. TRIB. (Jan. 20, 2020), https://www.texastribune.org/2020/01/20/voters-elect-texas-judges-state-might-take-that-power-but-its-risky/ [https://perma.cc/7G8K-RM2F]; *see also* Douglas Keith, *The Politics of Judicial Elections, 2021–2022*, BRENNAN CTR. (Jan. 29, 2024), https://www.brennancenter.org/our-work/research-reports/politics-judicial-elections-2021-2022 [https://perma.cc/9WAT-6D5E].

186 *See, e.g.*, *Mallory*, 600 U.S. at 122.

187 *See, e.g.*, Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).

decision-making in other decisions.[188] Whether anti-abortion judges will do the same is yet to be seen but remains a pressing worry.[189]

Personal jurisdiction precedent can offer some hope that judges may stop themselves from overreaching in out-of-state abortion contexts. But the Supreme Court's recent willingness to overturn precedent[190] and the malleability of personal jurisdiction precedent make this limiting principle more of a weak hope than a firm promise. It is important to explore the ideological and traditional underpinnings of personal jurisdiction going forward to create a sounder basis for constraining extraterritorial anti-abortion policies.

A. State Sovereignty

In asserting personal jurisdiction, a state subjects a person to its own laws and standards.[191] Many scholars—and the Supreme Court, at times—have pointed to the idea that personal jurisdiction is based on a state's sovereignty, or its right to assert its control and power over a person that is in some way affecting or interacting with the forum state. Personal jurisdiction debates "implicate[] more than just selecting a courthouse; [they are] dispute[s] about how to determine when a particular state government may demand obedience from a particular person."[192] In the bounty-hunter cases, this "demand[ed] obedience"[193] would reach a new level. Beyond forcing the laws of the state onto the possible defendant, these anti-abortion states would effectively subject defendants to that state's opinions on abortion. Additionally, the breadth of the law also impacts matters of state sovereignty as bounty-hunter legislation attempts to rope in extraterritorial residents of other states with essentially zero contact.

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188 *See id.* at 286–87 ("[The Court's abortion cases] have ignored the Court's third-party standing doctrine. They have disregarded standard *res judicata* principles. They have flouted the ordinary rules on the severability of unconstitutional provisions, as well as the rule that statutes should be read where possible to avoid unconstitutionality. And they have distorted First Amendment doctrines.").

189 Scholars often debate whether judges' substantive policies influence their decisions in procedural cases that may otherwise not have outcomes they agree with. *See generally* Duncan Kennedy, *Freedom and Constraint in Adjudication: A Critical Phenomenology*, 36 J. LEGAL EDUC. 518 (1986); Sidney A. Shapiro & Richard E. Levy, *Judicial Incentives and Indeterminacy in Substantive Review of Administrative Decisions*, 44 DUKE L.J. 1051 (1995).

190 *See, e.g.*, *Dobbs*, 597 U.S. at 231.

191 *See* Weisburd, *supra* note 37, at 378.

192 *Id.*

193 *Id.*

The Supreme Court has pointed to state sovereignty as a theory for asserting personal jurisdiction.[194] Yet, in asserting that basis, the Court has recognized that state sovereignty is limited because multiple states will hold this power and restrain one another.[195] State sovereignty may actually cut *against* granting states expansive personal jurisdiction.[196] Courts may adopt a narrower view of personal jurisdiction because of such state sovereignty concerns.[197] States' authority would then be kept within their borders and confined to only the most clear-cut situations of personal jurisdiction.

In her *Mallory* dissent, Justice Barrett expressed concern about how state sovereignty may be misunderstood in the Court's most recent ruling. Justice Barrett described personal jurisdiction as protecting "an individual right."[198] But the right extends beyond just individual protections "when a State announces a blanket rule that ignores the territorial boundaries on its power, [because] federalism interests are implicated too."[199] The Supreme Court has a long tradition of enforcing state sovereignty as a *limiting* principle on personal jurisdiction rather than an expansive one.[200] While Justice Barrett remained in the dissent in *Mallory*, her point that state sovereignty is a well-respected principle in personal jurisdiction precedent is accepted among the Court.[201]

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194 *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

195 *See id.* at 293 ("The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.").

196 *See* Schmitt, *supra* note 37, at 782 ("Just as Virginia lacks the authority to regulate the rest of the country, it also lacks the power to force the people of the United States to submit to its courts.").

197 *See id.* ("[T]he source of the sovereign power of the states[] unquestionably limits the power of a state to regulate extraterritorial conduct. This same reasoning dictates that the scope of state sovereignty must limit a state's assertion of personal jurisdiction over out-of-state defendants.").

198 Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 169 (2023) (Barrett, J., dissenting).

199 *Id.*

200 *See id.* ("The Due Process Clause protects more than the rights of defendants—it also protects interstate federalism. We have emphasized this principle in case after case.").

201 *See, e.g.*, Hanson v. Denckla, 357 U.S. 235, 251 (1958) ("Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."); Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 582 U.S. 255, 263 (2017) ("And at times, this federalism interest may be decisive.").

In asserting their power over an out-of-state bounty-hunter-law defendant, state courts would be taking the position that their own state's laws and influence win out over the defendant's home state. For example, if a Texas court were to find personal jurisdiction over a New Mexico doctor, that court is essentially allowing Texas's anti-abortion policies to trump New Mexico's pro-choice policies. State sovereignty does not boil down to one singular state's ability to enforce its laws. Bounty-hunter lawsuits are battles between states, with anti-abortion states seeing how far they can possibly extend their influence.

Courts will inevitably face "practical problems" in attempting to balance and weigh "the several state interests the concept [of state sovereignty] appears to embrace."[202] If courts were to side only with the bounty-hunter states, they would infringe on the sovereignty of the pro-choice states that allow their citizens to freely perform and aid abortions. Anti-abortion states may argue that their laws are not as impactful in protecting potential life if they cannot stop women from leaving their borders to go receive abortions elsewhere. Yet pro-choice states can make similar, if not stronger arguments, that their laws would be meaningless if their citizens could be sued elsewhere for engaging in perfectly legal behavior in their home state. This may be especially true in states that have passed interstate shield laws attempting to protect their citizens.[203]

Personal jurisdiction is the first test of this conflict between states sovereignties, since it determines whether a lawsuit can proceed at all. Other potential barriers to bounty-hunter lawsuits may succeed, like courts' ultimate choice of law, but they would do so on substantive grounds, which would not bar the lawsuit from the start the way personal jurisdiction would.[204] Thus, it is essential to incorporate substantive legal concerns like state sovereignty into the personal jurisdiction analysis.

State sovereignty is not a one-way street solely helping the forum state, but rather a push-and-pull between the forum state and the state of the potential defendant.[205] In the

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202 Lewis, *supra* note 183, at 716.

203 *See After* Roe *Fell*, CTR. FOR REPROD. RTS., *supra* note 2 ("Interstate shield laws protect abortion providers and helpers in states where abortion is protected and accessible from civil and criminal consequences stemming from abortion care provided to an out-of-state resident.").

204 *See* Perdue, *supra* note 183, at 571 ("[P]ersonal jurisdiction can be treated as not merely related to choice of law, but a doctrine whose sole purpose is to keep cases out of states that would not be permitted to apply their own law.").

205 *See* Lewis, *supra* note 183, at 716 ("The interests of the forum state—interests themselves elusive of precise quantification—must presumably be weighed against the interests of other sovereign states in

likely impending cases involving state abortion laws, this push-and-pull seems to weigh heavily in favor of the states of the defendant, as much of the activities and events in question have likely occurred in that state. While personal jurisdiction can exist in multiple forums at once, in a situation where the state sovereignty underlying any assertion of personal jurisdiction would conflict, only one state's assertion of sovereignty can win out and apply over any conflicting claims.[206]

Some scholars have found that the due process value of protecting "individual liberty" through personal jurisdiction means that personal jurisdiction constraints on court power are a substantive due process right.[207] If personal jurisdiction is a substantive due process right, it may be subject to the history and tradition framework that other substantive due process rights now receive.[208] If that is true, then the underlying values of personal jurisdiction, essentially its historical basis, seem relevant now more than ever. If the Supreme Court takes its rhetoric from *Dobbs* about protecting federalism and states' rights seriously,[209] then it should also limit instances of states' ability to impose their own laws and policies on surrounding states.[210] Ultimately, it would be most in line with the underlying goal of state sovereignty for judges to find that there is no personal jurisdiction in the majority of

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vindicating their own substantive policies or affording local litigants a forum.") (footnote omitted).

206 *See* Kreimer, *supra* note 36, at 464 ("The Constitution was framed on the premise that each state's sovereignty over activities within its boundaries excluded the sovereignty of other states.").

207 *See* Perdue, *supra* note 183, at 535 ("This description of the relationship between the due process clause and personal jurisdiction suggests that personal jurisdiction is a substantive due process right."). Substantive due process is a legal concept rooted in the Fifth and Fourteenth Amendments' respective Due Process Clauses. It incorporates a vast swath of rights, largely not agreed upon, that up until recently included abortion. *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 292 (2022); *see also* Erwin Chemerinsky, *Substantive Due Process*, 15 TOURO L. REV. 1501, 1501–08 (1999) ("Substantive due process asks the question of whether the government's deprivation of a person's life, liberty or property is justified by a sufficient purpose.").

208 *See, e.g.*, *Dobbs*, 597 U.S. at 231 ("That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'") (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

209 *See id.* at 302 ("The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.").

210 *See* Kreimer, *supra* note 36, at 462 ("The tradition of American federalism stands squarely against efforts by states to punish their citizens for conduct that is protected in the sister state where it occurs.").

bounty-hunter cases, since extraterritoriality is inconsistent with the goals of federalism and state sovereignty.[211]

B. Fairness

In addition to infringing on state sovereignty, allowing personal jurisdiction in many of these bounty-hunter cases would be inherently unfair to defendants. The underlying theory of fairness in personal jurisdiction stems from the principle that it is only fair for a court to hale a defendant into court if they have in some way, through their contacts or presence, decidedly subjected themselves to the sovereignty of that state.[212] A defendant should be able to "structure his conduct in a way that makes him immune to suit there."[213] Personal jurisdiction then applies in situations where defendants have subjected themselves to the will of that state. The Court's analysis of fairness for personal jurisdiction has typically centered around the defendant's activities and contacts, not what would be "fair" to the state.[214]

Fairness is also intertwined with minimum contacts analysis. It is easy to see how fairness could become conflated with the minimum contacts analysis—personal jurisdiction is fair when the defendant had an extensive amount of contact with the forum state. However, it is important that courts have an independent conception of fairness to preserve the doctrine's due process underpinnings.

For bounty-hunter laws, the fairness concerns would likely weigh heavily in favor of finding no personal jurisdiction. As abortion access continues to change across geographic lines,[215] it raises the question of whether citizen-based personal jurisdiction is truly

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211 *See id.* at 519 ("The effort to prosecute a citizen at home for taking advantage of the options permitted by a sister state is at odds with this understanding of federalism.").

212 *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985) ("[T]his 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum, . . . and the litigation results from alleged injuries that 'arise out of or relate to' those activities.") (quoting Keeton v. Hustler Mag., Inc., 465 U.S. 770, 774 (1984)); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984).

213 Brilmayer, *How Contacts Count*, *supra* note 116, at 96.

214 *See* Lewis, *supra* note 183, at 706 ("[The personal jurisdiction analysis is] from the standpoint of the defendant, not the sovereign.").

215 *See* B. Jessie Hill, *The Geography of Abortion Rights*, 109 GEO. L.J. 1081, 1087 (2021) ("The Fourteenth Amendment's operation thus depends on geographical facts in its references to the location of birth and of residence, as well as to being within the "jurisdiction" of the United States.").

consensual in the way personal jurisdiction is meant to be. This is especially true when residents choose to live in a state with pro-choice policies, but under bounty-hunter laws would then be subjected to extraterritorial anti-abortion laws. In this way, "[r]egulation affecting borders is therefore not only a quintessential exercise of sovereignty but also one fraught with the possibility of creating and enforcing inequality."[216] It would be acutely unfair to subject residents to outside laws they did not intend or consent to live under. Personal jurisdiction analysis would need to consider such principles of fairness to prevent enforcing the inequality of extraterritorial laws. Much of the reasoning weighing against personal jurisdiction in these lawsuits stems from the fact that potential defendants—doctors, providers, and individuals helping someone receive an abortion—receive almost no benefits from the forum state. If anything, potential defendants are benefitting others more than they are receiving benefits themselves. Abortion clinics and doctors do receive financial compensation for their services,[217] which could arguably be a benefit. But this benefit is derived from the citizens of the state more than the benefits provided by a forum state itself. Benefits conferred by forum states are typically things like the "health and safety . . . guaranteed by the State's police, fire, and emergency medical services," "free[dom] to travel on the State's roads and waterways," and enjoyment of "the State's economy."[218] Any "benefits" potential defendants receive from the forum state stem indirectly from residents of the forum state. This link is too attenuated to establish fairness in finding personal jurisdiction over these defendants. The "asymmetry"[219] that Justice Brennan worries would occur between a potential defendant and the forum state if they could skirt personal jurisdiction while receiving benefits from the forum state is not at issue in situations where such benefits do not exist in the first place. It would thus be unfair to subject these potential defendants to personal jurisdiction from anti-abortion states' overreach through bounty-hunter laws.

C. A Path Forward

Pro-choice activists would likely prefer something more substantive than relying on personal jurisdiction defenses to stop bounty-hunter cases. One proposed option is federal

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216 *Id.*

217 *See generally* Lesko, *supra* note 147; Israel, *supra* note 147.

218 Burnham v. Superior Ct. of Cal., 495 U.S. 604, 637 (1990) (Brennan, J., concurring).

219 *See id.* at 638 ("Without transient jurisdiction, an asymmetry would arise: A transient would have the full benefit of the power of the forum State's courts as a plaintiff while retaining immunity from their authority as a defendant.").

pro-choice legislation.[220] But this remains unlikely, at least for the near future, as the constitutional power for Congress to enact such a law remains unclear[221] and Congress has failed to gain the requisite votes needed for such legislation to pass.[222] As a stopgap measure, some states have passed interstate shield laws.[223] In general, though, the pro-choice movement could use any help in the fight for abortion rights.[224] Personal jurisdiction acts as a possible check on the otherwise forceful anti-abortion movement. As the number of bounty-hunter lawsuits grows, pro-choice activists may turn to personal jurisdiction as a possible saving grace. It is therefore even more important to understand the underlying goals of personal jurisdiction and how these goals can be used to demonstrate a lack of personal jurisdiction in bounty-hunter lawsuits.

Beyond the issue of how to weigh different states' sovereignty against one another, courts must also grapple with how to balance state sovereignty and fairness against one another.[225] Scholars have long asked whether one outweighs the other.[226] Beyond this, the Supreme Court has also contradicted itself regarding which aim of personal jurisdiction

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220 *See Women's Health Protection Act (WHPA)*, CTR. FOR REPROD. RTS. (June 23, 2023), https://reproductiverights.org/the-womens-health-protection-act-federal-legislation-to-protect-the-right-to-access-abortion-care/ [https://perma.cc/8U2Z-CMXZ].

221 *See* Robert A. Levy, *No Constitutional Authority for a National Abortion Law*, THE HILL (July 11, 2022), https://thehill.com/opinion/congress-blog/3552965-no-constitutional-authority-for-a-national-abortion-law/ [https://perma.cc/29GG-YBUD]; *see also* William H. Hurd, *Does Congress Have the Constitutional Authority to Codify Roe?*, BLOOMBERG L. (May 17, 2022), https://www.bloomberglaw.com/bloomberglawnews/us-law-week/XE487L8O000000 [https://perma.cc/USX8-TBAF].

222 *See U.S. Senate Fails to Pass Abortion Rights Legislation*, CTR. FOR REPROD. RTS. (May 11, 2022), https://reproductiverights.org/us-senate-fails-to-pass-abortion-rights-bill/ [https://perma.cc/RYU9-4CD3].

223 *See After* Roe *Fell*, CTR. FOR REPROD. RTS., *supra* note 2.

224 *See* Alexandra Zayas, *"This Was Not a Surprise": How the Pro-Choice Movement Lost the Battle for* Roe, PROPUBLICA (May 3, 2022), https://www.propublica.org/article/this-was-not-a-surprise-how-the-pro-choice-movement-lost-the-battle-for-roe [https://perma.cc/UTR4-KYE8].

225 *See* Lewis, *supra* note 183, at 717 ("[The Court] offers no clue as to how strongly sovereignty concerns must tilt against the forum's jurisdiction in order to overcome the factors that demonstrate its fairness to the parties.").

226 *Compare* Lewis, *supra* note 183 (asserting that fairness is a more clearly articulated theory behind personal jurisdiction than any vaguely asserted ideas of state sovereignty), *with* Schmitt, *supra* note 37 (arguing for a revival in the importance of state sovereignty to personal jurisdiction and refuting scholarship abandoning the concept).

carries greater weight.[227] Regardless of such disagreement, in the context of bounty-hunter abortion cases, both theories weigh in favor of reduced applications of personal jurisdiction. This approach toward personal jurisdiction would help courts avoid the complicated tasks of weighing the two theories against one another or staking a claim of which theory matters more.

CONCLUSION

In the wake of *Dobbs*, state abortion policy will only continue to splinter across the United States. With this divergence, anti-abortion states will continue trying to enforce their views extraterritorially, as some states have already done using bounty-hunter laws. In this fight, it is more important than ever that pro-choice activists have tools for preventing harmful and frivolous lawsuits against abortion providers and medical personnel, the friends and family of people who have obtained abortions, and larger corporations like abortion funds. Personal jurisdiction should be one such tool. Under current personal jurisdiction precedent, potential defendants in bounty-hunter litigation would have strong arguments against personal jurisdiction. Questions remain about the personal jurisdiction doctrine in grayer areas where defendants reach out to forum states. But even on those debatable issues, returning to the fundamental values of state sovereignty and fairness reinforces the case for dismissal. When personal jurisdiction precedent remains unclear, judges should harness these underlying theories to help illuminate the path ahead. Above all, one truth remains abundantly clear—this fight is not ending any time soon, so every battle counts.

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227 *Compare* Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982) ("The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty."), *with* Hanson v. Denckla, 357 U.S. 235, 251 (1958) ("Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.").