

TABLE 2: TOTAL PRENATAL TORTS RECOGNIZED BY POLITICAL LEANINGS AND ABORTION LAWS¹⁵⁵

POLITICAL LEANINGS OR POSITION ON ABORTION ¹⁵⁶	TOTAL STATES	STATES RECOGNIZING 0 PRENATAL TORTS	STATES RECOGNIZING 1	STATES RECOGNIZING 2	STATES RECOGNIZING 3	AVERAGE NUMBER RECOGNIZED
Democratic States	18	1 ¹⁵⁷	5 ¹⁵⁸	9 ¹⁵⁹	3 ¹⁶⁰	1.78
“Split” States	12	2 ¹⁶¹	7 ¹⁶²	3 ¹⁶³	0	1.08
Republican States	21	7 ¹⁶⁴	8 ¹⁶⁵	6 ¹⁶⁶	0	.95

155. Last updated July 2023. I designated each state as Democratic, Republican, or “Split” depending on the makeup of its state legislature as of the November 2022 election, its governor’s political party as of the November 2022 election, and the state’s 2020 presidential election results. For the designation of the District of Columbia, which has no governor or state legislature, I relied on its 2020 presidential election results alone. In addition, Nebraska’s legislature is labeled as nonpartisan, so I relied on its governor and presidential election results. See *State Partisan Composition*, NAT’L CONF. OF STATE LEGISLATURES (May 23, 2023), <https://www.ncsl.org/about-state-legislatures/state-partisan-composition> [perma.cc/F64N-LB8K]; NAT’L CONF. OF STATE LEGISLATURES, 2023 STATE AND LEGISLATIVE PARTISAN COMPOSITION (2023), <https://documents.ncsl.org/wwwncsl/About-State-Legislatures/2023-State-Legislative-Partisan-Composition-2.28.23.pdf> [perma.cc/RQ95-G85D]; *Live Election Results: Top Races to Watch*, N.Y. TIMES (Jan. 9, 2023), <https://www.nytimes.com/interactive/2022/11/08/us/elections/results-key-races.html> [perma.cc/S4FP-A6EW]; *Presidential Election Results: Biden Wins*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/11/03/us/elections/results-president.html> [perma.cc/KHC9-XQYA].

156. The five positions on abortion—Legal Abortion with New Protections, Legal Abortion, Gestational Limit, Ban Blocked, and Abortion Ban—are based on information contained in *Tracking the States*, *supra* note 2. The calculation of each number was performed by comparing the states in each of these five categories with the number of such states recognizing prenatal torts as established by Table 1.

157. See *supra* Table 1 (Hawaii).

158. See *supra* Table 1 (Delaware, District of Columbia, Michigan, Minnesota, and New Mexico).

159. See *supra* Table 1 (California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, and Oregon).

160. See *supra* Table 1 (New Jersey, Rhode Island, and Washington).

161. See *supra* Table 1 (Arizona and Kentucky).

162. See *supra* Table 1 (Georgia, Kansas, Louisiana, Nevada, North Carolina, Pennsylvania, and Vermont).

163. See *supra* Table 1 (New Hampshire, Virginia, and Wisconsin).

164. See *supra* Table 1 (Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, and South Dakota).

165. See *supra* Table 1 (Alaska, Arkansas, Idaho, Iowa, Missouri, Tennessee, Utah, and Wyoming).

166. See *supra* Table 1 (Alabama, Florida, Indiana, Ohio, Texas, and West Virginia).

POLITICAL LEANINGS OR POSITION ON ABORTION	TOTAL STATES	STATES RECOGNIZING 0 PRENATAL TORTS	STATES RECOGNIZING 1	STATES RECOGNIZING 2	STATES RECOGNIZING 3	AVERAGE NUMBER RECOGNIZED
Legal Abortion with New Protections	20	1 ¹⁶⁷	7 ¹⁶⁸	9 ¹⁶⁹	3 ¹⁷⁰	1.7
Legal Abortion	5	0	3 ¹⁷¹	2 ¹⁷²	0	1.8
Gestational Limit	5	2 ¹⁷³	2 ¹⁷⁴	1 ¹⁷⁵	0	.8
Ban Blocked	6	2 ¹⁷⁶	2 ¹⁷⁷	2 ¹⁷⁸	0	1
Abortion Ban ¹⁷⁹	15	5 ¹⁸⁰	6 ¹⁸¹	4 ¹⁸²	0	.8

The correlation between political leanings, positions on abortion, and the tendency to recognize prenatal tort claims makes sense, as abortion is highly

167. See *supra* Table 1 (Hawaii); *Tracking the States, supra* note 2 (same).

168. See *supra* Table 1 (Delaware, Michigan, Minnesota, Nevada, New Mexico, Pennsylvania, and Vermont); *Tracking the States, supra* note 2 (same).

169. See *supra* Table 1 (California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, and Oregon); *Tracking the States, supra* note 2 (same).

170. See *supra* Table 1 (Washington, New Jersey, and Rhode Island); *Tracking the States, supra* note 2 (same).

171. See *supra* Table 1 (Alaska, District of Columbia, and Kansas); *Tracking the States, supra* note 2 (same).

172. See *supra* Table 1 (New Hampshire and Virginia); *Tracking the States, supra* note 2 (same).

173. See *supra* Table 1 (Arizona and Nebraska); *Tracking the States, supra* note 2 (same).

174. See *supra* Table 1 (North Carolina and Utah); *Tracking the States, supra* note 2 (same).

175. See *supra* Table 1 (Florida); *Tracking the States, supra* note 2 (same).

176. See *supra* Table 1 (Montana and South Carolina); *Tracking the States, supra* note 2 (same).

177. See *supra* Table 1 (Iowa and Wyoming); *Tracking the States, supra* note 2 (same).

178. See *supra* Table 1 (Indiana and Ohio); *Tracking the States, supra* note 2 (same).

179. This includes Georgia, a state with a six-week gestational limit. *Tracking the States, supra* note 2.

180. See *supra* Table 1 (Kentucky, Mississippi, North Dakota, Oklahoma, and South Dakota); N.Y. TIMES, *Tracking the States, supra* note 2 (same).

181. See *supra* Table 1 (Arkansas, Georgia, Idaho, Louisiana, Missouri, and Tennessee); N.Y. TIMES, *Tracking the States, supra* note 2 (same).

182. See *supra* Table 1 (Alabama, Texas, West Virginia, and Wisconsin); *Tracking the States, supra* note 2 (same).