



Health organizations fear effects of US abortion ruling

Health and human rights groups are concerned about women's health and rights as many states would outlaw abortion if the Supreme Court topples *Roe v Wade*. Susan Jaffe reports.

For the draft ruling in full see <https://www.documentcloud.org/documents/21835435-scotus-initial-draft>

Protests and celebrations erupted across the USA following the unprecedented leak of a draft Supreme Court decision that would overturn the court's 1973 landmark *Roe v Wade* ruling establishing a woman's right to a safe and legal abortion.

Guttmacher Institute's president, Herminia Palacio, criticised the opinion's "sweeping reach, its complete disregard for the rights, bodily autonomy and dignity of millions of people, and the chaos and uncertainty it will unleash on those seeking an abortion in many parts of the country".

But Arkansas Attorney General, Leslie Rutledge, blamed *Roe* for the "loss of millions of lives" and told reporters she is "hopeful and prayerful" that the final opinion will reverse it. She would certify the change, and then Arkansas "can immediately ban abortions," she said. "It will be my honor and privilege to do just that".

Arkansas would be among at least 26 states that are certain or likely to ban abortion, according to the Guttmacher Institute. "States are already working together to create enormous abortion deserts that many people will not be able to cross", said Nancy Northup, president and CEO of the Center for Reproductive Rights.

"Some state legislators who were not quite sure will be empowered by this decision", said Georges Benjamin, executive director of the American Public Health Association. They will be emboldened to pass laws or regulations to further restrict abortions. "And I think the lack of an exemption for the life of the mother is the most egregious part of this".

"We hear every day the extraordinary obstacles that our patients are having to go through to be able to access care", said Eve Espey, Professor and Chair of the Department of Obstetrics

and Gynecology at the University of New Mexico. "The stories are heartbreaking." She said the number of procedures provided at three New Mexico clinics has doubled because of the influx of women from neighbouring Texas, which bans abortion after about 6 weeks of pregnancy, with exceptions only for medical emergencies. Oklahoma approved a similar law just 2 days after the draft decision was leaked to *Politico* and published on May 2, 2022. The patients who arrive at New Mexico's clinics from out of state, can afford to travel, get time off from work, get childcare if necessary, and gather other resources to make the trip, Espey said. But even that option might be in jeopardy as anti-abortion states consider travel restrictions.

"Can they pick people up at the border?" Benjamin asked. "If you get the morning after pill from New York and take it in Oklahoma, can you be prosecuted? And if you need a surgical procedure to totally empty your uterus, can that happen in Oklahoma? Will a physician do it? Can a physician do it if you're almost about to die? It puts healthcare providers in a very tough spot."

When women need abortion services, Espey said "there isn't a lot of barriers they won't overcome to get it." And women unable to access this care could face dire consequences. "We will see women who will die from illegal abortions," Benjamin said. "Women will bleed to death." Others who survive botched abortions might be unable to have healthy pregnancies in the future.

The main issue in the lawsuit before the court, known as *Dobbs v Jackson Women's Health Organization*, was whether Mississippi lawmakers can ban abortion after 15 weeks of pregnancy. The 2018 law allows exceptions for a medical emergency or severe fetal

abnormality but not for cases of incest or rape. Rather than confine its scrutiny to that law, the draft decision goes beyond it to declare that the rights enshrined in the Constitution do not protect abortion access.

In an unrestrained 98-page repudiation, Associate Justice Samuel Alito wrote that "*Roe* was egregiously wrong from the start...was exceptionally weak and has had damaging consequences." The decision would also sweep away the 1992 ruling in *Planned Parenthood of Southeastern Pennsylvania v Casey* that allowed state abortion restrictions that do not put an "undue burden" in the way of women seeking abortions.

Alito's argument is based on the view that the Constitution can only be interpreted through the lens of what was happening at the time it was written, said Mary Ziegler, a visiting professor at Harvard Law School who has written extensively about the legal history of abortion. *Roe v Wade* relies on the rights to privacy and due process in the 14th Amendment, ratified in 1868, which Alito argues was never intended to protect abortion. "We therefore hold that the Constitution does not confer a right to abortion," Alito wrote. "*Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives."

All five of the court's nine justices who supported the draft decision, were appointed by Republican presidents, including three named by former President Donald Trump, who promised that *Roe v Wade* would be overturned if he was elected. His conservative nominees have apparently fulfilled that pledge, providing a solid majority against *Roe v Wade* that Ziegler said is unlikely to change.

Susan Jaffe