



## “Chaos” for patients and providers after US abortion ruling

A patchwork of state laws replace abortion rights once guaranteed by *Roe v Wade*. Susan Jaffe reports from Washington, DC.

The US Supreme Court’s bombshell decision overturning *Roe v Wade* on June 24, 2022, assures Americans that each state can choose whether and under what conditions its residents have a right to a safe and legal abortion. So far, the result is an incoherent and volatile jumble: 16 states have severely restricted or banned the procedure and bans in ten more states are likely to take effect in a matter of weeks. Providers who violate the laws can face as much as 10 years in prison. However, in 22 Democrat-led states and the District of Columbia, abortion access is protected. Several claim to be abortion sanctuaries as they prepare for an influx of health-care refugees who can afford to travel for an abortion no longer available at home.

“The future we are looking at is going to involve a lot of chaos”, said Greer Donley, an Associate Professor at the University of Pittsburgh School of Law, specialising in abortion law. “Three quarters of abortion patients are poor or low income, and it is going to be extremely hard for many of them to find the funds to travel”, said Donley. “In the coming months and years, there will be collateral consequences that are felt by everyone throughout the country.”

Adversaries are already facing off within states. On June 28, 2022, the Texas abortion ban was put on hold until a court ruling partially restored it—temporarily—3 days later. But not in Bexar County, where the county sheriff has refused to enforce it. “I will defend my daughters’ ability to do what they feel is right with their own bodies and to love whomever they choose”, Sheriff Javier Salazar said in a statement. “As their dad, I have no control over their adult bodies. As their Sheriff, it is absolutely none of

my business. I will not persecute Texas women or anyone else pursuing those same rights.”

If a state court allows Michigan’s 1931 abortion ban to take effect, Democratic Governor Gretchen Whitmer said her daughters will “have fewer rights than I have had my whole life. And I am incensed about this”, she told reporters shortly after *Roe v Wade* was overturned. Whitmer has promised to veto the law, which punishes violators with up to 4 years in prison, and Republican lawmakers want to raise that to 10 years. The state’s attorney general and seven county prosecutors have pledged not to enforce the law.

Some clinics in states that ban or restrict abortion are moving to more hospitable areas. The clinic at the centre of the Supreme Court case that abolished a federal right to abortion is relocating from Jackson, Mississippi, to Las Cruces, New Mexico. A provider in Memphis, Tennessee, is opening a second clinic in abortion-friendly Carbondale, Illinois, a 3-hour drive away, and the Red River Women’s Clinic in Fargo, North Dakota, is putting the finishing touches on its new clinic that will open this summer just down the road in Moorhead, Minnesota, less than a 10-minute drive away. “We do not want to leave North Dakota”, said Tammi Kromenaker, owner and director of the clinic, which has been operating for 24 years. “We hope to have little to no disruption in care.”

The state prohibitions all contain some type of exception if the patient’s health is at risk or their life is endangered. Some bans allow abortions in medical emergencies. Health-care providers have found such exemptions perplexing.

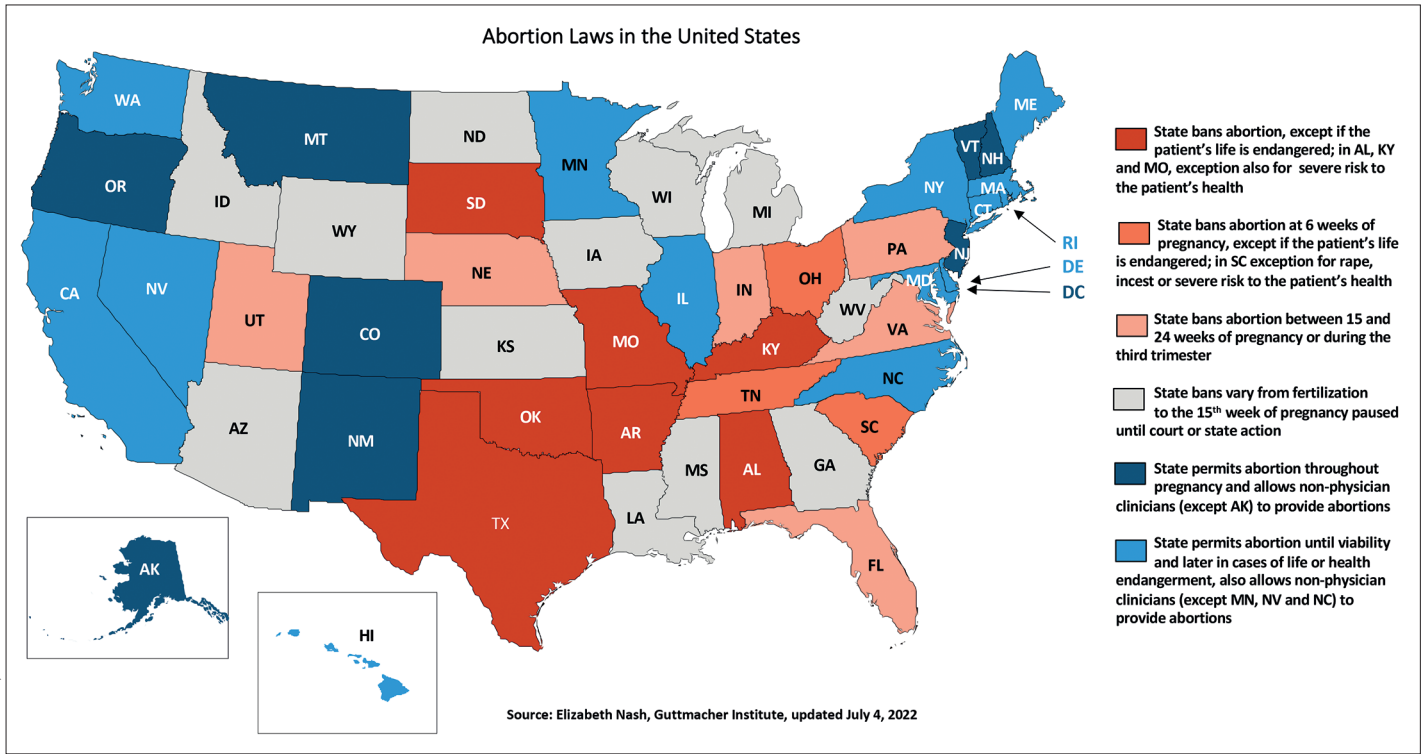
“How sick is sick enough to intervene?” asked Dr Nisha Verma, Darney-Landy Fellow at the American College

of Obstetricians and Gynecologists who has worked at clinics in Delaware and Georgia. “Most people, when they go into the hospital, want their doctors to take care of them, instead of having to think about whether they’re sick enough to be treated”, she said. “These laws are written by non-medical people to regulate the practice of medicine, and they do not actually make sense for the people that are practising medicine.”

Government restraints on abortions are unique in medicine, said Dr Nancy Stanwood, Chief Medical Officer at Planned Parenthood of Southern New England. “In other areas of medicine, there is respect for the medical science and when doctors say we are going to do it this way because the science tells us this is how we care for our patients best, that is respected.”

### Widening chasm

While some states roll back abortion rights, a group of Democrat-led states are moving just as quickly in the opposite direction. In addition to passing laws preserving the right to an abortion, there is a new trend in these states to defray the costs of the procedure, said Elizabeth Nash, the Guttmacher Institute’s Principal Policy Associate for State Issues. The National Network of Abortion Funds, a coalition of 80 local independent organisations, has been providing financial assistance to patients nationwide since 1993, but a handful of states have also recognised the need, explained Nash. “The first one we have seen this year was Oregon, where the legislature allocated \$15 million and California recently allocated \$100 million.” Connecticut has also enacted strong abortion protections and New York and New Jersey are likely to follow, said Nash.



Elizabeth Nash, Guttmacher Institute.

Connecticut is the latest of several states to allow certified nurse midwives, physician assistants, and advanced practice nurses to provide abortions. The change is part of the state's Reproductive Freedom Defense Act, which took effect on July 1, 2022. The law also shields patients from lawsuits in their home states after receiving an abortion in Connecticut. Their health-care providers in Connecticut have similar legal protection.

Stanwood said a team of advanced practice clinicians at Planned Parenthood of Southern New England, which operates 15 clinics in Connecticut and Rhode Island, will begin abortion services training in August, 2022. "We are really grateful to the Connecticut legislature and the Governor for signing that bill into law because this is going to allow us to expand access and to ensure timely access to care", she said.

**Federal response**

The Biden administration has pledged to defend people who travel from

states in which abortion is banned to get the procedure in another part of the country. Officials have also said states cannot interfere with patients who use mifepristone and misoprostol, medications approved by the FDA to induce abortions. But Donley said the claim has not yet been upheld in court.

An increasing number of Democrats in Congress along with abortion advocates claim that promises are too vague and fall far short of what is quickly needed as patients scramble for appointments many miles from home. "Now is the time for bold action to protect the right to an abortion", 33 Democratic senators told President Biden in a letter on June 25, 2022. Some have suggested the administration open abortion clinics on federal property in states that ban the procedure. Senators have also asked the President to issue an executive order or declare a public health emergency to increase access to medication abortions.

In 2020, medication abortion accounted for 54% of abortions in

the USA according to the Guttmacher Institute. In a carefully worded warning, US Attorney General Merrick Garland said "states may not ban mifepristone based on disagreement with the FDA's expert judgment about its safety and efficacy". But anti-abortion states have targeted the drug precisely because it is effective in terminating a pregnancy.

President Biden supports a federal law to ensure abortion rights, but it would need a supermajority of 60 votes to pass in the Senate. He supports exempting the proposal from the 60-vote rule, but that change itself would require 60 votes. Unless Democrats increase their representation in the Senate in the upcoming November, 2022, election, abortion battles will continue to erupt between the states. If Republicans increase their Senate membership, they are likely to pursue a nationwide abortion ban, as former Vice President and possible presidential candidate Mike Pence has urged.

Susan Jaffe