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Roe falls and Wisconsin responds to the fateful Supreme Court ruling

WASHINGTON — The U.S. Supreme Court on Friday overturned the 1973 Roe v. Wade ruling that established abortion as a constitutional right.

The decision by five of the Court's nine justices will allow each state to set its own abortion laws, leading to a patchwork of access throughout the country. The result is expected to be an uptick in the number of women traveling out of state for abortions, as well as unsafe abortions in states where the medical procedure will now be banned or heavily restricted.

"We hold that Roe and Casey must be overruled," Justice Samuel Alito wrote in his opinion, joined by Justices Clarence Thomas, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett.

Chief Justice John Roberts filed a separate opinion concurring in the judgment about the Mississippi law at the center of the case, making that a 6-3 ruling, but not about overturning the constitutional right to an abortion, making that a 5-4 ruling.

"The Constitution makes no reference to abortion, and no such right is implicitly protected by

any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely — the Due Process Clause of the Fourteenth Amendment," Alito continued.

"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.'"

Justice Stephen Breyer wrote the dissent in the case for himself, Elena Kagan and Sonia Sotomayor.

"With sorrow — for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection — we dissent," he wrote.



The new status of abortion access on a state-by-state basis, Breyer wrote , "says that from the very moment of fertilization, a woman has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs."

Breyer later added, “Whatever the exact scope of the coming laws, one result of today’s decision is certain: the curtailment of women’s rights, and of their status as free and equal citizens.”

Twenty-two states have laws that would restrict when and how a patient can terminate a pregnancy, according to the Guttmacher Institute , a reproductive health and rights organization.

Arizona, Michigan and Wisconsin are among the 10 states that have pre-Roe abortion bans that are now expected to take effect. Thirteen states — including Idaho, Louisiana, Missouri and Tennessee — have laws enacted since Roe that will be “triggered” by the court’s decision.

A dozen states, including Maine, Maryland, Nevada and Washington, have laws that would protect abortion access up to the point of viability, usually 22 to 24 weeks into a pregnancy.

Colorado, the District of Columbia, New Jersey, Oregon and Vermont have laws that protect abortion access throughout a pregnancy, according to the Guttmacher Institute.

Thomas targets birth control, same-sex marriage

Justice Thomas wrote his own concurring opinion, arguing that since the court has overturned the constitutional right to an abortion, which was grounded in the 14th Amendment and the due process clause, other cases that have been rooted in the same right to privacy could all be reconsidered.

Those include:

- The Griswold v. Connecticut case from 1965 that said states couldn’t bar married couples from making private decisions about birth control use.
- The Lawrence v. Texas case from 2003 that said states couldn’t criminalize consensual sexual relations between same-sex partners.
- The Obergefell v. Hodges case from 2015 that legalized same-sex marriage.

“For that reason, in future cases, we should reconsider all of this Court’s substantive due process precedents, including Griswold, Lawrence, and Obergefell,” Thomas wrote.

Thomas also wrote of the Dobbs case that “The resolution of this case is thus straightforward. Because the Due Process Clause does not secure *any* substantive rights, it does not secure a right to abortion.”

President Joe Biden rebuked Thomas’ opinion, saying during a brief speech at the White House that “This is an extreme and dangerous path the court is now taking us on.”

Democrats in Congress were outraged by the court’s decision while most Republicans were jubilant with the outcome.

Reaction pours in

The Center for Reproductive Rights, which brought the case to the Supreme Court, rebuked the Republican-nominated justices for ending the right to an abortion.

“The Court’s opinion delivers a wrecking ball to the constitutional right to abortion, destroying the protections of Roe v. Wade, and utterly disregarding the one in four women in America who make the decision to end a pregnancy,” said Nancy Northup, president and CEO of the Center for Reproductive Rights.

“Utter chaos lies ahead, as some states race to the bottom with criminal abortion bans, forcing people to travel across multiple state lines and, for those without means to travel, carry their pregnancies to term — dictating their health, lives, and futures. Today’s decision will ignite a public health emergency,” Northup continued.

Susan B. Anthony Pro-Life America, an anti-abortion group, celebrated the decision, while its president called for “an entirely new pro-life movement” to begin.

“Today’s outcome raises the stakes of the midterm elections. Voters will debate and decide this issue and they deserve to know where every candidate in America stands,” Marjorie Dannenfelser said in a statement. “Federal as well as state lawmakers must commit to being consensus builders who advocate for the most ambitious protections possible.”

Mississippi ban

The court heard two hours of arguments in December in Dobbs v. Jackson Women’s Health Organization, which arose after Mississippi enacted a law that banned the vast majority of abortions after 15 weeks of pregnancy.

U.S. Solicitor General Elizabeth B. Prelogar, who argued on behalf of the federal government as a “friend of the Court,” said that the “real-world effects of overruling Roe” and the 1992 Planned Parenthood v. Casey decision that affirmed the right to an abortion “would be severe and swift.”

“Nearly half of the states already have or are expected to enact bans on abortion at all stages of pregnancy, many without exceptions for rape or incest,” Prelogar said. “Women who are unable to travel hundreds of miles to gain access to legal abortion will be required to continue with their pregnancies and give birth, with profound effects on their bodies, their health and the course of their lives.”

Mississippi Solicitor General Scott G. Stewart argued the nine justices should not only uphold Mississippi’s 2018 law, which had yet to go into effect, but overturn the two cases that have kept abortion access legal for nearly 50 years.

“Roe versus Wade and Planned Parenthood versus Casey haunt our country,” he said. “They’ve poisoned the law.”

Justice Roberts wrote in his opinion that he agreed the court should uphold the Mississippi law and disregard the viability standard, but disagreed that the justices should go any further and overturn Roe and Casey.

“Surely we should adhere closely to principles of judicial restraint here, where the broader path the Court chooses entails repudiating a constitutional right we have not only previously recognized, but also expressly reaffirmed applying the doctrine of stare decisis,” he wrote

Abortion rights history

The Supreme Court first ruled that a pregnant person has a constitutional right to abortion in the 1973 Roe v. Wade case that stemmed from a Texas woman being unable to access an abortion in her home state. The decision was 7-2.

Justice Harry Blackmun wrote that the right to an abortion stemmed from the right to privacy under the 14th Amendment. But the court ruled that a person’s fundamental right to terminate their pregnancy must be weighed against the government’s interest in protecting the person’s health and potential life.

The court established a trimester framework that determined when and how governments could impose regulations on abortion access.

In the 1992 Planned Parenthood v. Casey case, a 5-4 ruling, the court upheld a constitutional right to an abortion. But the decision overturned the trimester framework, instead setting viability, about 22 to 24 weeks into a pregnancy, as the line for government regulation.

The court said a person had a right to an abortion before viability without undue interference from the government. After reaching a point of viability, states can regulate abortion as long as it doesn’t affect a person’s health or life.

In the plurality opinion, Justice Sandra Day O’Connor wrote that “Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code.”

In a dissenting opinion, Justice Thomas wrote for himself, Antonin Scalia and two others that they would have overturned Roe v. Wade, saying the issue in the case was “not whether the power of a woman to abort her unborn child is a ‘liberty’ in the absolute sense; or even whether

it is a liberty of great importance to many women. Of course it is both."

"The issue is whether it is a liberty protected by the Constitution of the United States. I am sure it is not," he wrote.

Will court survive a 'stench'?

During oral arguments in December in the Mississippi case the justices ruled on Friday, Justice Sotomayor expressed concern over how the court overturning cases that established abortion access as a constitutional right would impact its reputation.

"Now, the sponsors of this bill, the House bill in Mississippi, said we're doing it because we have new justices. The newest ban that Mississippi has put in place, the six-week ban, the Senate sponsor said we're doing it because we have new justices on the Supreme Court," Sotomayor said.

"Will this institution survive the stench that this creates in the public perception that the Constitution and its reading are just political acts?"

Justice Kagan questioned whether the court overruling Roe and Casey would lead Americans to view the court as "a political institution that will go back and forth, depending on what part of the public yells the loudest or changes to the court's membership."

And Justice Breyer read from a decision the entire Supreme Court issued in Casey about when and how justices should overturn watershed cases to avoid a situation that "would subvert the Court's legitimacy."

"They say overruling unnecessarily and under pressure would lead to condemnation, the Court's loss of confidence in the judiciary, the ability of the Court to exercise the judicial power and to function as the Supreme Court of a nation dedicated to the rule of law," Breyer read.

The Mississippi law at the center of the argument allowed abortions after 15 weeks in cases of "severe fetal abnormality" or medical emergency, but it did not include exceptions for rape or incest.

At the time Mississippi Gov. Phil Bryant signed the bill in March 2018, the 15-week threshold was the earliest abortion ban in the nation.

That has since changed, with several states enacting laws restricting abortion below that benchmark, including an Oklahoma law that makes abortion a felony punishable by up to 10 years in state prison, a maximum fine of $10,000, or both.

Abortion rights organizations have filed lawsuits to stop many of those new laws from going into effect on the basis that they violated the constitutional right to an abortion that the court undid this week.

Politico leak

The Supreme Court majority opinion released Friday is similar to a draft version, led by Justice Alito, that was leaked to Politico in early May.

The leak was broadly criticized by Republicans, who at the time didn't want to talk about the implications of the court overturning Roe, while Democrats rebuked the conservative justices for the expected decision.

Senate Majority Leader Chuck Schumer, a New York Democrat, held a floor vote in May on a bill that would have codified a nationwide right to an abortion.

That legislation couldn't get past the chamber's 60-vote legislative filibuster.

Maine Sen. Susan Collins and Alaska Sen. Lisa Murkowski, both Republicans who expressed frustration with how the Trump-nominated justices portrayed their view of Roe as a settled

precedent during their confirmation processes, voted against the bill.

West Virginia Democratic Sen. Joe Manchin did as well.

Manchin said in a statement Friday that he was “deeply disappointed that the Supreme Court has voted to overturn Roe v. Wade.”

“I trusted Justice Gorsuch and Justice Kavanaugh when they testified under oath that they also believed Roe v. Wade was settled legal precedent and I am alarmed they chose to reject the stability the ruling has provided for two generations of Americans,” Manchin continued.

by Jennifer Shutt, Wisconsin Examiner
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