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## Overturing *Roe v Wade* would be an unprecedented attack on the bodily autonomy of women, girls, and pregnant people

Any erosion of *Roe v Wade* will have devastating health outcomes that are likely to widen existing healthcare inequalities, says Terry McGovern

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This year Americans' right to access abortion hangs in the balance, but the scales seem tipped against it. The statements put forward by the majority of the US Supreme Court in the *Dobbs v Mississippi* case, a direct challenge to *Roe v Wade*, indicate that they are likely to overturn or seriously curtail this almost 50 years' old legal precedent. In anticipation of this ruling, Oklahoma passed a near total ban of abortion earlier this month, making it a felony punishable by up to 10 years in prison and a fine of \$100 000. Despite the US having majority public support for preserving the rights of pregnant people to seek an abortion,<sup>1</sup> the Supreme Court looks likely to revoke this constitutional right in June.

Denying people legal access to abortion will have devastating health outcomes that are likely to widen existing healthcare inequalities. Researchers have estimated that a total ban could increase pregnancy related deaths by 21% overall and by 33% for black women,<sup>2</sup> as childbirth is markedly more dangerous than legal abortion in the US. The mortality rate associated with childbirth in the US is 14 times higher than that of legal induced abortion.<sup>3</sup> Maternal mortality rates in the state of Mississippi, which seeks to overturn *Roe*, are higher than the national average in the US,<sup>4</sup> which already has the highest rate of any wealthy nation.<sup>5</sup> Black women in Mississippi are almost three times more likely to die of pregnancy related causes than white women.<sup>4</sup> This does not even account for those who will be forced to seek out an unsafe abortion, which is a leading cause of maternal mortality and morbidity worldwide.<sup>6</sup>

At the time of publication, the US already has 22 states with restrictive abortion laws or constitutional amendments that prohibit abortion.<sup>7</sup> Abortion would likely be banned in these states if *Roe* is overturned. These abortion bans could be implemented in a few different ways. Pre-*Roe* abortion bans that are still on the books in nine states will be enforceable once again. Several states have post-*Roe* abortion bans that are currently blocked by court order. If *Roe* falls, these bans will go into effect. Thirteen states have "trigger bans"—laws that have been passed and which would take effect if *Roe* is dismantled—currently in place.

Several states also have bans on all abortions past six or eight weeks, effectively illegalising abortion for most people. In all of these states, except Texas, the bans are currently blocked by court order, but will go into effect if *Roe* falls. There are also four states with constitutional amendments that specifically bar a right to abortion. An additional four

states do not currently have abortion bans or trigger bans but are likely to ban abortion if *Roe* is overturned. Just this month, legislation mirroring Mississippi's ban on most abortions after 15 weeks took effect in Kentucky,<sup>8</sup> and was signed into law in Florida and Arizona.<sup>9 10</sup> West Virginia may soon follow suit.<sup>11</sup>

Medical abortions, which account for more than half of US abortions<sup>12</sup> and are a target of anti-abortion politicians, will likely be further restricted. The US Food and Drug Administration lifted restrictions on mail-order abortion pills in December, but access to these pills remains heavily dependent on where you live. Thirty two states require a physician to administer the medication, and 19 states require the physician to be physically present, eliminating the telehealth option.<sup>13</sup> Texas and Indiana already ban abortion pills at seven and 10 weeks, respectively, and eight states have total bans on abortion pills in the pipeline.<sup>14</sup>

There is a significant risk that in many states abortion will be criminalised for pregnant people and those who help them. Eighteen states have criminal laws on the books that open the door for prosecution of pregnant people and their healthcare providers.<sup>15</sup> These laws will be enforceable if *Roe* falls. There has also been a recent move in state law to redefine terms like "personhood" and "child" to include a fetus or "unborn child." The redefinition of personhood could lead to abortion-related prosecutions under homicide, feticide, assault, and child abuse laws. Missouri, which already criminalises abortion after eight weeks, now seeks to extend its control over reproductive autonomy beyond state lines by allowing private citizens to sue anyone who helps a Missouri resident get an abortion out of state.

There seems to be no limit to what anti-abortion policy makers will do to deny women and pregnant people's autonomy by restricting abortion rights. The criminalisation of abortion could manifest in the use of increased police powers of investigation and surveillance and mass incarceration. The criminalisation of abortion will not affect everyone equally: black Americans are currently incarcerated in state prisons at five times the rate of white Americans.<sup>16</sup> This will invariably spill over into abortion related prosecutions. Women from ethnic minority communities are significantly more likely to be reported to law enforcement when seeking medical care than white women. In a 2013 study, researchers found that black women were more likely to be arrested, reported to authorities, and subjected

to felony charges related to their pregnancies and pregnancy outcomes than white women.<sup>17</sup>

These existing structural inequalities will be compounded by the unequal distribution of who gets abortions. Rates of unintended pregnancy are highest among those below the poverty level.<sup>17</sup> There is also a disproportionate risk to immigrants in the US, who already have less access to sexual and reproductive health services,<sup>18</sup> putting them at greater risk of unwanted pregnancies. Some criminal penalties may be non-waivable and could prevent someone from obtaining permanent residence, citizenship, or a visa. Criminal convictions are likely to lead to the deportation of immigrants and the rejection of Deferred Action for Childhood Arrivals (DACA) applications and renewals.

Abortion is healthcare and any erosion of *Roe v Wade* will have grave repercussions for the health and wellbeing of Americans—with those who are already most aggrieved by the US's legal system and healthcare services at greatest risk of harm. If the US takes this shameful step backwards against the tide of progress, it will be an unprecedented attack on the dignity and rights of women, girls, and pregnant people. We will, undoubtedly, see an increase in deaths caused by unsafe abortion, risky and unwanted pregnancy, and children abused in foster care systems. This will occur in states that have long had horrendous records on maternal and child health, and tragically, this burden will be most borne by ethnic minority communities and low income Americans.

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