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US Supreme Court ends constitutional right to abortion

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The US Supreme Court has overturned the 1973 *Roe v Wade* decision, ending women's 50 year old constitutional right to abortion and leaving the issue for individual states to decide.¹

The decision on 24 June in the Mississippi case, *Dobbs v Jackson Women's Health Organization*, closely followed the draft written by associate justice Samuel Alito that was leaked in May.²

Alito was joined in the decision to overturn *Roe v Wade* and the related decision known as *Casey* by four associate justices: Clarence Thomas, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. The last three justices were appointed by former president Donald Trump, who promised to appoint justices who would overturn *Roe v Wade*.

Chief justice John Roberts voted only to uphold Mississippi's ban on abortions after 15 weeks. The three liberal justices—Stephen Breyer, Elena Kagan, and Sonia Sotomayor—disagreed with the majority on several grounds.

Thomas, in his opinion, called for the court in future to reconsider other rights that are based on the same reasoning as *Roe v Wade*: the right to use contraception, the right to same sex sexual relations, and same sex marriage. *Roe v Wade* was based on the 14th amendment to the US Constitution, which says that people may not be deprived of “life, liberty, or property without due process of law.” Since 1956 the Supreme Court has interpreted “liberty” to include the right to privacy in intimate matters.

The Supreme Court issued its decision just after 10 am, and by the end of the day nine of the 50 states had prohibited abortions. Another 12 states will soon ban or severely limit them, and in nine others the status of abortion rights is uncertain. Nearly 27 million women of reproductive age live in the states that prohibit or severely limit abortions. Most do not allow abortions in cases of rape or incest.³

The west coast states of California, Oregon, and Washington joined to ensure women's right to abortion. The nearby state of Nevada and the island state of Hawaii also protect abortion rights. On the east coast, 10 states (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Maryland) and the District of Columbia have laws protecting the right to abortion.

In the vast area in between, only Colorado and Illinois protect abortion rights. In much of the nation abortion will be unavailable unless a woman has the money and time to travel.

President Joe Biden called the decision the “realisation of extreme ideology and a tragic error by the Supreme Court” that would have “devastating consequences in the lives of women around the

country.” He said the only way to secure a woman's right to choose was for Congress to enshrine in national law the abortion protections in *Roe v Wade*.⁴ Given the current partisan divisions in Congress, that is unlikely.

Biden said that the attorney general, Merrick Garland, had made it clear that women must remain free to travel across state lines for abortion or for any other reason. He said that if a state or local official tried to prevent a woman from travelling the Biden administration would fight “that deeply un-American attack.”

The president directed Xavier Becerra, secretary of health and human services, “to protect women's access to critical medications for reproductive health care that are approved by the Food and Drug Administration—including essential preventive health care like contraception and medication abortion.”

Nancy Pelosi, speaker of the House of Representatives, said, “I am personally overwhelmed by this decision” but said she would not give up. Pelosi said, “Clearly, we hope that the Supreme Court would open its eyes.”

Both Pelosi and Biden emphasised that reproductive rights would be on the ballot in the November midterm elections. Most Democrats favour abortion rights; most Republicans do not.

Marjorie Daniels, head of Susan B Anthony Pro-Life America, a leader in the effort to overturn *Roe v Wade*, called the Supreme Court decision the “culmination of almost 50 years of work.” She said the next step would be working with governors and state legislatures to ban abortion more widely and finally to ban it nationwide.⁵

Herminia Palacio, head of the pro-choice Guttmacher Institute, said, “Abortion bans and restrictions . . . impose significant hurdles to obtaining care, causing stress for people in need of abortion and leading some to experience forced pregnancy and all its troubling consequences.” She said that bans disproportionately affected “people who are already marginalised and oppressed—including black and brown communities, other people of colour, people with low incomes, young people, LGBTQ communities, immigrants, and people with disabilities.”⁶

The Supreme Court's decision to revoke a constitutional right by overturning *Roe v Wade* is rare, because the court often relies on “stare decisis” or letting a previous decision stand. Alito argued that the right to abortion was not mentioned in the Constitution (adopted in 1788), nor was it deeply rooted in US history and tradition.

Peggy Cooper Davis, a professor at New York University Law School, told the *Economist*, “It is nearly impossible to find any right of personal or

family freedom guaranteed by the original constitution.” She said this is explained in part by the founders’ choice to protect slavery, as they could not have protected personal and familial freedoms while preserving the rights of some to ownership of the lives and labour of others. This lack of personal freedoms, Davis said, was rectified with constitutional amendments passed after the US civil war ended in 1865.⁷

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- 3 Tracking the states where abortion is now banned. *New York Times*. Jun 2022. <https://www.ny-times.com/interactive/2022/us/abortion-laws-roe-v-wade.html>
- 4 White House.gov. Fact sheet: President Biden announces actions in light of today’s Supreme Court Decision on *Dobbs v Jackson Women’s Health Organization*. Jun 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/24/fact-sheet-president-biden-announces-actions-in-light-of-todays-supreme-court-decision-on-dobbs-v-jackson-womens-health-organization>.
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