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# Ending the constitutional right to abortion in the United States

## New ruling threatens rights to health, bodily integrity, and equality

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On 24 June 2022, the US Supreme Court overturned *Roe v Wade*, a landmark decision that established a constitutional right to abortion before fetal viability. The court's regressive ruling stands in stark contrast to global trends expanding abortion rights. Half of Americans will no longer fully possess human rights to health and bodily integrity, and the ruling will exacerbate already unconscionable health and economic inequities.

Reversing a half century of precedent, the Supreme Court ruled in *Dobbs v Jackson Women's Health Organization* that there is no constitutional right to abortion, which is not "essential to ordered liberty."<sup>1</sup> Constitutional rights to contraception, same sex marriage, and same sex intimacy rely on similar reasoning so could be jeopardised in future rulings. For the first time since it was established in 1789, the court withdrew a fundamental human right. Public trust in the court has plummeted. Abortion will be banned or severely restricted in at least half the states, and access to essential health services will depend entirely on where a person lives.

### Global fallout

Since 1994, 59 countries have expanded abortion rights, with only three adding more restrictions—El Salvador, Nicaragua, and Poland.<sup>2</sup> Total abortion bans are growing rarer, with most countries permitting abortion up until a certain point in pregnancy or under broad exceptions.<sup>3</sup> The *Dobbs* ruling could have profound consequences for abortion access globally. High profile Supreme Court cases have the power to influence courts and legislatures in many countries—potentially stalling further expansion of abortion access or even reversing hard won gains.

The ruling may inspire similar rollbacks of human rights on politically charged issues such as LGBT+ rights, including marriage equality. The court's decision, however, may also embolden governments to enhance abortion rights. The European parliament condemned the ruling, demanding that the EU's fundamental rights charter enshrine abortion rights.<sup>4</sup>

### Human rights

International human rights law protects abortion rights in multiple ways. The right to health includes sexual and reproductive rights.<sup>5</sup> Abortion restrictions cannot jeopardise women's and girls' health and lives or subject them to physical or mental suffering that can amount to cruel, inhuman, or degrading treatment.<sup>6</sup> Denial or delay of safe abortion and forced continuation of pregnancy constitute both discrimination against women and gender based violence.<sup>7,8</sup>

In response to the decision, Michelle Bachelet, the UN High Commissioner for Human Rights, stressed that "abortion is at the core of women and girls' autonomy about their bodies and lives, free of discrimination, violence and coercion."<sup>9</sup> WHO's director general, Tedros Adhanom Ghebreyesus, characterised *Dobbs* as a "setback" that will cost lives.<sup>10</sup> Abortion restrictions drive "women and girls toward unsafe abortions resulting in complications, even death" and disproportionately affect the poorest and most marginalised communities.<sup>10</sup> The UN Population Fund stressed that 45% of all abortions globally are unsafe and that more women will die as restrictions by national governments increase.<sup>11</sup> World leaders expressed solidarity with American women whose human rights will be devalued.

Since the ruling, 21 states have adopted total or near total abortion bans, some offering no exception for rape, incest, or non-fatal health risks.<sup>12</sup> Many other states could adopt harsh abortion restrictions. Only 16 states explicitly protect abortion rights—four throughout pregnancy and 12 before fetal viability.<sup>13</sup>

The 40 million people who lost the right to abortion will have to travel to states that permit abortions or access abortion medication through the internet or other sources.<sup>13</sup> Many will be unable to access safe, legal abortion, owing to various hardships, and may resort to unsafe, clandestine abortions without expert medical oversight. Abortion bans will disproportionately affect underserved and marginalised groups, including those who are living in poverty or in rural areas, from ethnic and racial minorities, young, undocumented, and experiencing intimate partner violence.<sup>14</sup>

State abortion bans impose harsh penalties on abortion providers or anyone who "aids or abets" an abortion—including a maximum penalty in Texas of life imprisonment and 10-15 years in 11 other states.<sup>15</sup> Threats of prosecution will undermine health professionals' ability to provide safe, evidence based care and may even discourage them from treating pregnancy loss, with devastating consequences for public health.

The US, once a world leader in human rights, is now perpetrating violations of those rights. *Dobbs* poses a major threat to women's rights to health, bodily integrity, and equality.

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