

1. Mark your confusion.
2. Show evidence of a close reading.
3. Write a 1+ page reflection.

### **Where Abortion Could Be Banned Without Roe v. Wade**

Source: Allison McCann and Taylor Johnston, *New York Times*, May 3, 2020

A leaked draft opinion by the Supreme Court indicates that it is prepared to overturn the landmark ruling in *Roe v. Wade* that established the right to an abortion in the U.S., leaving it to states to determine the procedure's legality. In the aftermath of a *Roe* reversal, about half of states would be likely to ban abortion or limit it heavily.

Thirteen states would ban abortion immediately or very quickly: North Dakota, Idaho, South Dakota, Wyoming, Utah, Missouri, Kentucky, Tennessee, Oklahoma, Arkansas, Mississippi, Texas, and Louisiana.

Thirteen states have so-called trigger laws, which were passed in the years since the *Roe* decision in 1973 and explicitly note they would outlaw abortion within their borders if the Supreme Court allowed it.

In a few states — Kentucky, Louisiana, Oklahoma, South Dakota — the bans would take effect immediately. In others, like Idaho, the ban would go into effect 30 days after the Supreme Court struck down *Roe*. Other states may require certification from the state attorney general or a legislative council for the ban to become law, a process that could take weeks.

All of these states make exceptions to the ban if the life or health of the woman is in danger, but many do not make exceptions for pregnancies that are the result of rape or incest.

Five states have a pre-*Roe* abortion ban that could be enforced again: Wisconsin, Michigan, West Virginia, Arizona, and Alabama.

Five states have decades-old abortion laws on the books that were invalidated by the *Roe* decision but could be brought to life again, though enforcement in each state remains unclear.

The Democratic governors of Michigan and Wisconsin have publicly stated their support for abortion rights and have vetoed anti-abortion bills. In April, Gov. Gretchen Whitmer of Michigan went so far as to file a lawsuit asking the state's Supreme Court to immediately resolve whether Michigan's Constitution protects the right to abortion.

In West Virginia, the pre-*Roe* ban on abortion would be likely to take effect. But in Arizona, the governor, Doug Ducey, has said that a recent ban on abortion after 15 weeks would take precedence. And Alabama would probably seek to enforce a total ban on abortion, passed in 2019, instead.

North Carolina had a pre-*Roe* ban that was modified in the late 1960s, and legal experts in the state said that a 20-week ban, passed in 2015 but currently unenforceable, would take precedence.

Fourteen states could ban abortions occurring even before fetal viability: Montana, Wisconsin, Iowa, Nebraska, Ohio, Indiana, West Virginia, Kansas, North Carolina, Arizona, South Carolina, Georgia, Alabama, and Florida.

Fourteen states could restrict abortion to 22 weeks or earlier, and many of these may move to ban the procedure entirely in the months ahead.

States' ability to set limits on abortion past the point of fetal viability — typically about 24 weeks of pregnancy — was affirmed in a 1992 ruling, *Planned Parenthood v. Casey*, that the Supreme Court also appears set to overturn. Without *Roe* or *Casey*, state laws restricting abortion to 20 weeks, 15 weeks or six weeks could take effect.

Many of the early gestational limits are currently enjoined in state courts, but some like Indiana and West Virginia's 22-week bans, for example, are in effect. The attorneys general in some states would be expected to ask judges to dismiss or uphold their gestational bans if *Roe* and *Casey* were overturned, said Elizabeth Nash, a state policy analyst for the Guttmacher Institute. "That may take a few days or a couple of months," she said. "It doesn't feel like judges are bound by any timeframe for ruling."

In some states — including Montana and Florida — the highest courts have previously recognized the right to abortion under each state's constitution. Despite this, Florida recently approved a 15-week ban on abortion, which would take effect on July 1, and Montana approved a 20-week ban in 2019, currently not in effect. In Kansas, residents will vote in August on whether the right to an abortion should remain in the state constitution.

Altogether, abortion may be banned or tightly restricted in as many as 28 states in the weeks and months ahead. Twenty-two states are likely to remain unchanged, retaining broad access to abortion. Some are also working to expand abortion protections, especially for medical providers. The Supreme Court's final decision is expected in June.

### **Possible Response Questions**

- What are your thoughts about the Supreme Court's possible overturn of *Roe v. Wade*? Explain.
- Did something in the article surprise you? Discuss.
- Pick a word/line/passage from the article and respond to it.
- Discuss a "move" made by the writer in this piece that you think is good/interesting. Explain.