

# [***What to know about abortion in Arizona under the near-total 1864 ban***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BS4-2R11-DYMD-64GR-00000-00&context=1516831)

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**Body**

PHOENIX — The [*Arizona Supreme Court*](https://apnews.com/article/arizona-abortion-restrictions-1864-9c68866d69dca38c728dd27b80592e8f) gave the go-ahead Tuesday to prepare to enforce a long-dormant law that bans nearly all abortions, drastically altering the legal landscape for terminating pregnancies in a state likely to have a key role in the presidential election.

The law predating Arizona’s statehood provides no exceptions for rape or incest and allows abortions only if the mother's life is in jeopardy. Arizona’s highest court suggested doctors can be prosecuted under the 1864 law, though the opinion written by the court’s majority didn’t explicitly say that.

The Tuesday decision threw out an earlier lower-court decision that concluded doctors couldn’t be charged for performing abortions in the first 15 weeks of pregnancy.

**HOW WE GOT HERE**

The Civil War-era law, enacted long before Arizona became a state on Feb. 14, 1912, had been blocked since the U.S. Supreme Court's 1973 Roe v. Wade decision guaranteeing the constitutional right to an abortion nationwide.

After Roe v. Wade was overturned in June 2022, Arizona Attorney General Mark Brnovich, a Republican, persuaded a state judge lift an injunction that blocked enforcement of the 1864 ban. Then the state Court of Appeals suspended the law as Brnovich’s Democratic successor, Attorney General Kris Mayes, urged the state’s high court to uphold the appellate court's decision.

The court itself was expanded in 2016 from five justices to seven, all appointed by Republican governors.

The high court said enforcement won’t begin for at least two weeks. However, plaintiffs say it could be up to two months, based on an agreement in a related case to delay enforcement if the justices upheld the pre-statehood ban.

**WHO CAN BE PROSECUTED UNDER THE 1864 LAW?**

The law orders prosecution for “a person who provides, supplies or administers to a pregnant woman, or procures such woman to take any medicine, drugs or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless it is necessary to save her life.”

The Arizona Supreme Court suggested in its ruling Tuesday that physicians can be prosecuted, though justices didn't say that outright.

“In light of this Opinion, physicians are now on notice that all abortions, except those necessary to save a woman’s life, are illegal,” and additional criminal and regulatory sanctions may apply to abortions performed after 15 weeks of pregnancy, the ruling said.

The law carries a sentence of two to five years in prison upon conviction. Lawyers for Planned Parenthood Arizona said they believe criminal penalties will apply only to doctors. But the penalties also apply to providing abortion pills — the most common method in the United States.

In other places with abortion bans, some women have obtained pills both through underground networks and from telehealth from medical providers in states that have laws intended to protect prescribers from out-of-state prosecutions. This was already illegal in Arizona, the attorney general's office said.

Dr. Maria Phillis, an Ohio OB-GYN with a law degree, said she believes women who obtain pills through those means could be prosecuted under the 1864 law. Across the country, new abortion bans have not been used to prosecute women in similar cases, and measures that have been introduced to punish those who obtain abortions have not been adopted.

Fourteen other states are now enforcing bans on abortion in all stages of pregnancy.

***POLITICS* OF THE PRESIDENTIAL RACE**

The ruling puts the issue of abortion access front and center in a [*state key to this year's elections to decide the presidency*](https://apnews.com/article/abortion-arizona-supreme-court-ruling-biden-democrats-361cff78974e6038e532e73e261ae8a4) and partisan control of the U.S. Senate.

[*Democrats immediately pounced*](https://apnews.com/article/democrats-abortion-ivf-reproductive-rights-roe-40a80fbe83a99f37d15699c47579636d), blaming former President Donald Trump for the loss of abortion access because he appointed the justices who formed the majority that ended the national right to abortion.

President Joe Biden and his allies are emphasizing efforts to restore abortion rights, while Trump [*has avoided endorsing a national abortion ban*](https://apnews.com/article/abortion-trump-republican-presidential-election-2024-585faf025a1416d13d2fbc23da8d8637), saying states should decide and warning that the issue could lead to Republican losses. The court decision gives Arizona the strictest abortion law of the top-tier battleground states.

Staunch Trump ally and abortion opponent Kari Lake is challenging Democratic Rep. Ruben Gallego for the U.S. Senate seat being vacated by independent Sen. [*Kyrsten Sinema*](https://apnews.com/article/kyrsten-sinema-arizona-8043c3333e6d87da2404f58339f1e1e6#:~:text=PHOENIX%20(AP)%20%E2%80%94%20Independent%20Sen,a%20clear%20path%20to%20reelection.).

**WHAT’S NEXT? LEGAL, LEGISLATIVE AND POLITICAL BATTLES**

The court gave the parties two weeks to decide whether to file legal claims.

Gov. Katie Hobbs called on the state Legislature to act immediately to undo the law before it took effect.

“They could gavel in today and make a motion to repeal this ban,” Hobbs said Wednesday on “CBS Mornings.” "And they should do that. I’m hopeful that they will because this will have devastating consequences for Arizona.”

But GOP lawmakers shut down an effort to force a vote on such a measure Wednesday.

A near-total ban could drastically reduce abortions in Arizona, from about 1,100 monthly as estimated by a survey for the Society of Family Planning.

And voters could get a say in November. Abortion rights advocates said they already have more than enough signatures to add a [*ballot question asking voters*](https://apnews.com/article/abortion-arizona-ballot-voters-2024-a7ea711840cbe2103a9c75c4c4dd4ef3) to approve a constitutional amendment protecting the right to abortion until viability, [*when a fetus could survive outside the womb*](https://apnews.com/article/abortion-technology-science-health-birmingham-7fc806f3c06aeae94c5d6ed1b06a6461). Later abortions would be allowed to save the woman's life or protect her physical or mental health.

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Lee reported from Santa Fe, New Mexico. Associated Press reporters Laura Ungar in Louisville, Kentucky, and Geoff Mulvihill in Chicago contributed to this article.

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