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Abortion Laws

Task: Read the text and summarize...

- 1) which decision the Supreme Court has taken and
- 2) how the majority Justices have explained their decision.
- 3) what effects the Supreme Court decision will have.

Supreme Court overturns Roe v. Wade, ending right to abortion upheld for decades

Updated June 24, 2022 10:43 AM ET by Nina Totenberg

In a historic and far-reaching decision, the U.S. Supreme Court officially reversed Roe v. Wade on Friday, declaring that the constitutional right to abortion, upheld for nearly a half century, no longer exists.

Writing for the court majority, Justice Samuel Alito said that the 1973 Roe ruling and repeated subsequent high court decisions reaffirming Roe "must be overruled" because they were "egregiously wrong," the arguments "exceptionally weak" and so "damaging" that they amounted to "an abuse of judicial authority."

The decision, most of which was leaked in early May, means that abortion rights will be rolled back in nearly half of the states immediately, with more restrictions likely to follow. For all practical purposes, abortion will not be available in large swaths¹ of the country. [...]

Joining the Alito opinion were Justice Clarence Thomas, appointed by the first President Bush, and the three Trump appointees — Justices Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett. Chief Justice John Roberts, appointed by President George W. Bush, concurred in the judgment only, and would have limited the decision to upholding the Mississippi law at issue in the case, which banned abortions after 15 weeks. Calling the decision "a serious jolt² to the legal system," he said that both the majority and dissent displayed "a relentless freedom from doubt on the legal issue that I cannot share."

Dissenting were Justices Stephen Breyer, appointed by President Clinton, and Justices Sonia Sotomayor and Elena Kagan, appointed by President Obama. The[y] said that the court decision means that "young women today will come of age with fewer rights than their mothers and grandmothers." Indeed, they said the court's opinion means that "from the very

moment of fertilization, a woman has no rights to speak of. A state can force her to bring a pregnancy to term even at the steepest personal and familial costs." "With sorrow — for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection — we dissent," they wrote.

Alito's opinion is a tour de force of the various criticisms of Roe that have long existed in academia

Alito's 78-page opinion, which has a 30-page appendix, seemingly leaves no authority uncited as support for the proposition that there is no inherent right to privacy or personal autonomy in various provisions of the Constitution — and similarly, no evidence that peoples' reliance on the court's abortion precedents over the past half century should matter. [...]

In the end, though, Alito's opinion has a larger objective, perhaps multiple objectives. Writing for the majority, he said forthrightly that abortion is a matter to be decided by states and the voters in the states. "We hold," he wrote, that "the Constitution does not confer a right to abortion." As to what standard the courts should apply in the event that a state regulation is challenged, Alito said any state regulation of abortion is presumptively valid and "must be sustained if there is a rational basis on which the legislature could have thought" it was serving "legitimate state interests," including "respect for and preservation of prenatal life at all stages of development." In addition, he noted, states are entitled to regulate abortion to eliminate "gruesome and barbaric" medical procedures; to "preserve the integrity of the medical profession"; and to prevent discrimination on the basis of race, sex, or disability, including barring abortion in cases of fetal abnormality. Ultimately, the translation of all

¹ swaths = here: parts

² jolt = Stoß/ Schock

that is that states appear to be completely free to ban abortions for any reason.

Near the end of Friday's decision, Alito sought to allay³ fears about the wide-ranging nature of his opinion. "To ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion." But in his concurring opinion, Justice Thomas said the legal rationale for Friday's decision could be applied to overturn other major cases, including those that legalized gay marriage, barred the criminalization of consensual homosexual conduct, and protected the rights of married people to have access to contraception. "For that reason, in future cases, we should reconsider all" of those precedents. because they are "demonstrably erroneous." The court's liberals noted that Thomas's language cast doubt on Alito's assurances at the end of his opinion, that this opinion was really only about abortion. [...]

The next steps on abortion across the country will play out in a variety of ways, almost all of them resulting in abortion bans. Several states — among them Mississippi, North Carolina, and Wisconsin — still have decades-old abortion bans on their books; with Roe overturned, those states could revert to a pre-Roe environment. Officials in such states could seek to enforce old laws, or ask the courts to reinstate them. For example, a Michigan law dating back to 1931 would make abortion a felony⁴. [...]

A cascade of newly active state laws

Another path to banning abortion involves "trigger bans," newer laws pushed through by anti-abortion rights legislators in many states in anticipation of the Supreme Court's action. Some 15 states — in the South, West and Midwest — have such laws in place [...] but they fall into different categories. Some states will act quickly to ban abortion. According to a new analysis by the Guttmacher Institute, South Dakota, Kentucky and Louisiana have laws in place that lawmakers designed explicitly to take effect immediately upon the fall of the Roe precedent. Idaho, Tennessee, and Texas — where most abortions are already illegal after

about six weeks of pregnancy — have similar laws, which would take effect after 30 days. Guttmacher says seven other "trigger ban" states have laws that would require state officials such as governors or attorneys general to take action to implement them. [...]

In recent years, many states also have passed gestational bans⁵ prohibiting abortion at various stages of pregnancy. Courts have blocked many of those laws in response to legal challenges, including laws in Georgia, Ohio, and Idaho that ban abortions after six weeks of pregnancy. Now those laws may take effect immediately. So too, could a law recently enacted in Oklahoma, that makes performing abortion a felony punishable by time in prison. [...]

A host of other restrictions could limit where, by whom, and under what conditions abortion can be provided. Some examples include laws requiring parental notification or consent for abortions involving patients who are minors; and other health regulations for doctors and clinics that many medical groups say are unnecessary, expensive, and difficult to comply with. [...] Rikelman, the Center for Reproductive rights attorney, predicts "legal chaos" in states across the country in the immediate aftermath of the decision. "I think what we will see is far more litigation in the federal courts — not less litigation⁶," Rikelman said. [...]

Battles in state courts are also likely. Some state constitutions may offer protections for abortion rights notwithstanding the U.S. Supreme Court's interpretation of the U.S. Constitution. In Florida, for example, the American Civil Liberties Union and other reproductive rights groups are challenging a 15-week abortion ban modeled on Mississippi's law, on the grounds that it violates privacy rights protections guaranteed in Florida's state constitution.

Even without overturning Roe, Rikelman points to the Texas law known as S.B. 8, which took effect in September. The law, which has spawned several copycat proposals in other states, including Oklahoma, relies on individuals filing civil lawsuits to enforce an abortion ban.

³ to allay = to calm

⁴ a felony = a crime

⁵ Gestational ban = ban of abortions after a certain time after conception

⁶ Litigation = Rechtsstreit

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Interstate enforcement battles

200 Abortion bans in restrictive states will likely
bleed over⁷ to states that protect abortion
rights as well, Rikelman said. She notes that
some state lawmakers are trying to prohibit
people in other states from providing abortions
to their residents. "What we are seeing already
205 are states and state legislators impacting even
people's ability to access abortion in places
where it would remain legal," she said. For ex-
ample, an omnibus abortion law passed by a
Republican supermajority in Kentucky earlier
210 this year includes a host of new requirements
for dispensing medication abortion pills, and a
provision for extraditing people from other
states who illegally provide abortion pills to
Kentuckians. It's unclear how enforceable
those types of laws would be.

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Meanwhile, some states are trying to expand
access to abortion in preparation for more pa-
tients traveling from restrictive states for proce-
dures. Connecticut lawmakers passed legisla-
220 tion this year designed to protect abortion pro-
viders from out-of-state lawsuits. "This just
raises a whole host of issues," Rikelman said.
"All of those different disputes will have to be
worked out in the courts" including, potentially,
225 in the U.S. Supreme Court. What's more, the
anti-abortion movement will not be satisfied
with this win, observes University of Michigan
law professor Leah Litman. "The next time the
Republicans win control of the Senate and
230 White House and the House of Representa-
tives a national abortion ban is going to be on
the table," she said in an interview. [...]

Source: <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn>

⁷ to bleed over = *here*: to spread over