

The Harshest Abortion Restrictions Are Yet to Come

The pro-life movement is now focused on three major strategies at the state level.

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The *Dobbs* decision will forever change many people's lives. But it also sparked a legal revolution that is just beginning. State by state, the movement that fought to overturn *Roe v. Wade* is now fighting for even more extreme measures.

This means that the harshest restrictions on abortion are yet to come. As the anti-abortion movement works toward its goal of a nationwide abortion ban, we can expect it to pursue three major legal strategies now that *Roe* has been overruled.

First, states will stretch the reach of their abortion penalties outside their borders. For instance, recent model legislation from the National Right to Life Committee extends application of state laws to minors who cross state lines to get an abortion, and legislators in states including [Missouri](#), [South Dakota](#), and [Arkansas](#) are debating potential bills that would make traveling to get an abortion difficult.

This strategy is legally suspect; a variety of constitutional provisions should curb states' extraterritorial reach. In fact, [Justice Brett Kavanaugh recognized a right to travel](#) in his *Dobbs* concurrence, albeit just for the patient seeking services. But as the dissent in *Dobbs* points out, [and as we have previously argued](#), it is not at all clear that federal courts would agree that cross-border laws are unconstitutional in this very undeveloped area of law. And even if it were clearer that states could not punish interstate abortion travel or target providers offering care to out-of-state residents, attempts to do so, even if stopped by the courts, might have a chilling effect. We are already seeing [providers in some states](#) limiting their offerings for out-of-state patients.

Second, people seeking abortions and the people assisting them, not just providers, will be targets of civil and criminal punishment. The same model legislation mentioned above recommends [criminalizing anyone who aids or abets an abortion](#), a clause possibly broad enough to include someone who provides funds, offers a ride to the clinic, or helps with child care while a person receives abortion care, wherever it occurs. The grandmother who drives a minor to New Mexico from Texas could face legal repercussions when she returns home. Already, in Texas, prosecutors have [threatened abortion funds with liability, causing some to stop offering help](#).

Relatedly, up until now, abortion bans have typically excluded the pregnant person from criminal liability. But that could change too. [Medication abortion](#) ends a pregnancy through 10 or so weeks with two drugs taken sequentially. Because abortion pills cross borders in ways states will find hard to police, legislators and prosecutors [could turn their attention to punishing the people who take them](#). Even if the state law does not allow this prosecution, arrests that create media attention will likely scare patients.

Third, legislation will seek to confer the rights of personhood at conception and thus redefine abortion as well as pregnancy. For example, [Louisiana recently considered](#) a bill that would confer legal rights "from the moment of fertilization." Alabama passed a statute in 2019, which soon should take effect now that *Dobbs* has been decided, that [defines life as beginning at conception](#). Such measures provide prosecutors with a new arsenal of ordinary criminal laws because abortion could be murder, and anyone who helps with an abortion could be liable as a conspirator. Further, defining life at

conception means anything that endangers a fertilized egg could be an abortion, even if the embryo has not yet implanted. This change, at the level of state legislation, [could sweep into a ban on certain forms of birth control and fertility services](#) and [cause risk-averse providers to refuse to prescribe women drugs](#) that could cause miscarriage.

These strategies are so extreme that some might not succeed. States and cities will resist enforcing abortion bans, using their powers to control funding and to decide whether to prosecute or investigate abortion crimes. [City officials in Austin; New Orleans; Fairfax County, Virginia; and others](#) have announced that they will use their enforcement discretion and power over funding to deprioritize abortion-related crimes.

And even more powerful, states can legislate to protect providers and patients. Connecticut, New York, Delaware, and New Jersey, for instance, recently passed “shield laws,” which would protect in-state providers from being extradited for the legal abortions they perform should any other state try to do so; ban cooperation with out-of-state investigations; and bar disciplinary actions against providers for treating out-of-state patients. Governors of California, Massachusetts, Minnesota, New Mexico, and Nevada have issued executive orders since *Dobbs* that will have a similar effect. [Oregon and New York](#) have allotted tens of millions of dollars to abortion provision, and Massachusetts is considering expanding its providers’ scope of services beyond state borders.

The interstate conflicts that are just emerging will test values grounded in our federalist structure that many people have long taken for granted. With states supporting abortion and states banning abortion moving in such dramatically different directions, the stakes are high not only for people who deeply care about this issue but also for those who seek to heal the deep divisions in this country.