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s 47E(d)

Title: United States: Supreme Court overturns abortion rights
MRN: s 47E(d) 24/06/2022 11:57:42 PM EDT
To: Canberra
Cc: RR : Africa Posts, Americas Posts, Europe Posts, Indo-Pacific Posts
Ministers: Minister for International Development and the Pacific
From: Washington
From File:
EDRMS
Files:
References: s 47E(d)
Response: Routine, Information Only

Summary

In making its decision today to uphold a Mississippi abortion law, the Supreme Court went one step further and decided to strike down the landmark ruling of Roe v. Wade that had set precedent for access to abortion for almost 50 years. Around the country the decision was met with jubilation on one side, outrage and grief on the other. The Courts decision will likely lead to all but total bans on abortion in about half of the US states. Civil-rights advocates called the decision a potential assault on any fundamental rights not explicitly enumerated in the Constitution. Some like-minded embassies have told us capitals were considering statements on the Court's decision.

In a 7-to-2 vote in 1973, the Supreme Court in Roe v Wade established a constitutional right to abortion, striking down laws in many states that had banned the procedure before foetal viability. While the decision was widely criticised, including by people who supported access to abortion, its "essential holding" that women had a constitutional right to privacy, including in making the decision to terminate a pregnancy, was broadly supported. Conservative states have for many years asked the Supreme Court to rule on abortion laws in the hope of overturning Roe. In its current session the Court was asked to consider a Mississippi law that would ban almost all abortions after 15 weeks of pregnancy (Dobbs v. Jackson Women's Health Organization). The law had not taken effect because lower courts said it was at odds with the national right to abortion established in Roe v Wade.

2. In a 6-3 decision today, the Court agreed to uphold the Mississippi law and went one step further to overturn Roe v Wade. The decision eliminated almost 50 years of legal precedence that provided US women with the right to an abortion. The final decision was similar, but considerably longer, than the draft leaked in May (s 47E(d)).

3. Chief Justice Roberts concurred in the judgment only (the Mississippi law at issue in the case) and criticised his colleagues for taking the additional step of overturning Roe. Calling the decision "a serious jolt to the legal system", he said the Court should have adhered to principles of judicial restraint and not "repudiated a constitutional right we have not only previously recognized, but also expressly reaffirmed". The three dissenting Justices said the decision meant that "young women today will come of age with fewer rights than their mothers and grandmothers". They said the decision meant "from the very moment of fertilization, a woman

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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".

4. In the majority opinion, written by Justice Alito, the Court said nothing in its decision "should be understood to cast doubt on precedents that do not concern abortion". However, in a concurring opinion, Justice Thomas said the same rationale the Court used to declare there was no right to abortion should also be used to overturn cases establishing rights to contraception, same-sex consensual relations and same-sex marriage. In the dissenting opinion, the Justices wrote that "not until Roe did people think abortion fell within the Constitution's guarantee of liberty" and the same could be said for many civil rights now taken for granted.

5. The Court called abortion "a profound moral issue on which Americans hold sharply conflicting views". A recent study by [Pew reported](#) that 61 per cent of Americans believe abortion should be legal in all or most circumstances while 37 per cent believe it should be illegal in all or most circumstances. A [May Gallup Poll](#) indicated more than eight in 10 Americans believe abortion should be legal to some degree, and a majority don't want Roe v Wade overturned. Support for abortion is higher than it was a decade ago, but the partisan divide is growing wider.

6. The immediate response to the ruling highlighted polarised views. Around the country the decision was met with jubilation on one side, outrage and grief on the other. It was a worst-case scenario for abortion rights supporters, who had taken comfort in the notion that while abortion might be increasingly restricted, the fundamental right would never be removed.

7. Many civil rights advocates, especially women's, reproductive rights, and LGBTQI groups, sounded the alarm over the Court's decision and Justice Thomas' concurring opinion. Many called it a potential assault on any fundamental rights not explicitly enumerated in the Constitution, including protections for contraception, interracial marriage and how parents raise their children.

8. The Court's decision will likely lead to all but total bans on abortion in about half of the US states. Several states like Oklahoma and other strongly Republican states have trigger laws in place that will now "snap" in to effect – completely or at least significantly cutting access to abortion services over the next 30 days. Democratic-leaning states, like Colorado, Washington state, New York, and others will likely face an influx of out-of-state patients seeking access to abortion services, creating challenges in supporting this demand. The Governors of California, Oregon and Washington announced a "West Coast firewall for reproductive rights" in a joint commitment to maintain access to abortion and contraception and to protect providers and patients from the legal reach of other states. New York's Mayor made a similar commitment.

9. President Biden [called](#) the court's action the "realization of extreme ideology" and said the only way to secure a woman's right to choose is for Congress to restore the protections of Roe as federal law. He [announced](#) two actions the Administration would take to protect women. The first, outlined in a statement by [Attorney General Garland](#), was that women must remain free to travel safely to another state to seek the care they need. The President also directed the Secretary of Health and Human Services to identify all ways to ensure that mifepristone (the morning after pill) was as widely accessible as possible, including when prescribed through telehealth and sent by mail. These are not permanent solutions to the problem as states regulate medicine and so can include medicine induced abortion within their definition of abortion in legislation. They could also take away the non-profit status of civil society groups who provide travel funds for women seeking abortion.

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text ends

Sent by: s 22(1)

Prepared s 22(1)

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Topics: GENDER EQUALITY AND WOMENS EMPOWERMENT/General, HUMAN RIGHTS/General, POLITICAL-ECONOMIC/Domestic Political

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Title: United States: Midwest: an abortion desert forms in the wake of Supreme Court ruling
MRN: s 47E(d) 30/06/2022 06:30:46 PM CDT
To: Canberra
Cc: RR : Ottawa, USA Posts
From: Chicago
From File:
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Summary

The Supreme Court's decision in *Dobbs v Jackson* has consequentially created an abortion desert in the Midwest. Illinois is surrounded by states that either have trigger laws or whose legislatures are expected to enact similar laws in short order. While the judgment triggered a wave of progressive outrage in the Midwest, its effect is slightly moderated by years of conservative-controlled state legislatures creating and enforcing laws limiting the scope of abortion. Regardless, ripple effects of the decision will be an issue in the 2022 midterm elections.

State abortion policies vary widely across the Midwest. As a result of the overturning of *Roe v Wade*, seven out of the 11 states in Chicago Post's jurisdiction will strictly regulate or outright ban abortion. A further two have Democratic Governors (with Republican legislatures) who have put in temporary measures to protect abortion rights, which may not last beyond the November 2022 midterm elections. This leaves two Midwest states, Minnesota and Illinois, with relatively liberal reproductive health policies, and subsequently facing a likely influx of interstate travellers seeking abortion care. Abortion data in each state is sourced from the [Guttmacher Institute](#).

The Abortion Desert

- Following the Supreme court decision, **trigger bans took effect in North Dakota** (population of 760,394; 1,170 abortions obtained in 2020), **South Dakota** (population of 760,394; 130 abortions obtained in 2020) and **Missouri** (population of 6.1 million; 170 abortions obtained in 2020), making abortion illegal immediately in Missouri and South Dakota, and from 28 July in North Dakota. However, **abortion was already practicably impossible in all three states for years before Roe was overturned**. Each state had only one abortion clinic as well as highly restrictive laws. Realistically, most women seeking an abortion already travelled out of state.
- A combination of executive and legislative action is expected to change abortion laws imminently in **Indiana** (population of 6.7 million; 7,880 abortions obtained in 2020), **Iowa** (population of 3.15 million; 3,510 abortions obtained in 2020), **Kansas** (population of 2.9 million; 8,190 abortions obtained in 2020), and **Nebraska** (population of 1.9 million; 2,200 abortions obtained in 2020).

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4. Both Indiana Governor Eric Holcomb (R) and Nebraska Governor Pete Ricketts (R) made public statements following the Supreme Court's decision affirming their pro-life beliefs. Holcomb has called a special legislative session to pass abortion restrictions in Indiana and Ricketts has stated his intention to do the same in Nebraska. **Highly restrictive bans are expected to be summarily created and enforced by the Republican-controlled legislatures in both states.**

5. While abortion is protected under the State Constitution in both Iowa and Kansas, **Republican-controlled legislatures are expected to enact further restrictions:** Kansas will be the first US state to vote (2 August) on whether to amend its Constitution, and Iowa Governor Kim Reynolds (R) announced she would request Iowa courts lift an injunction against the enforcement of the law making abortions illegal after six weeks.

6. Because abortion services were provided more frequently in these four states, the potential abortion bans by state legislators will have a much greater effect on nearby abortion refuge states (Illinois and Minnesota).

Midwest States with Permissive Abortion Laws

7. **Illinois** (population of 12.7 million; 52,780 abortions obtained in 2020) was already recognised as an abortion haven before the Dobbs v Jackson decision. In 2019, Illinois Governor JB Pritzker (D) signed the *Reproductive Health Act*, enshrining the "fundamental right" to terminate a pregnancy in the state. **Planned Parenthood of Illinois anticipates an additional 20,000 to 30,000 patients crossing state lines for abortions**, on top of the already increasing numbers of patients travelling to the state in recent years. In 2020, nearly 10,000 patients crossed state lines to have an abortion in Illinois: a 29 per cent increase from 2019. In recent years, new abortion clinics have opened near Illinois' state borders with Wisconsin, Indiana and Missouri.

8. In contrast, while **Minnesota** (population of 5.6 million; 11,060 abortions obtained in 2020) has relatively permissive abortion laws, it lacks abortion infrastructure and has not seen a consistent increase in demand in recent years in its eight clinics. North Dakota's sole abortion clinic promised to move just across the border into Minnesota in May after the Dobbs draft was leaked. Minnesota's current policy stipulates that (1) abortion is banned at foetal viability, (2) patients must wait 24 hours after counselling to obtain an abortion, and (3) parental consent is required for minors seeking an abortion. However, the polarising decision by states surrounding Minnesota will likely pressure the state to change its laws to either be more permissive or restrictive.

9. In both Illinois and Minnesota, minority pro-life constituents have publicly expressed horror that their states will be known as abortion havens and attract interstate travellers for this reason.

Midterms as a deciding factor

10. **Wisconsin** (population of 5.8 million; 6,960 abortions obtained in 2020) never repealed its 1849 abortion ban after Roe v Wade was decided, meaning abortion is now illegal. However, Governor Tony Evers (D) and Attorney General Josh Kaul have both publicly stated they would not enforce the ban, and Evers filed a lawsuit to make the law unenforceable. Evers and Kaul's intentions are only guaranteed until the November midterms, as both are up for re-election.

11. While **Michigan** (population of 9.8 million; 31,510 abortions obtained in 2020) also had a pre-Roe ban still in effect, in May 2022 Governor Gretchen Whitmer (D) used a special

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Michigan executive power to ask the state's Supreme Court to rule on the constitutionality of its 1931 abortion law, temporarily preventing the abortion ban from going into effect immediately. While the Republican-dominated legislature had already introduced bills to further restrict abortion access, Whitmer promised to veto any legislation put forth. Therefore, the fate of abortion will be a central issue in the upcoming election where Michigan voters will have two opportunities to ban abortion: (1) Republicans take control of the Governor's seat, or (2) the petition to amend the constitution gets enough signatures to put the question to voters.

text ends

Sent by: s 22(1)**Prepared** s 22(1)**by:****Approved** s 22(1)**by:****Topics:** GENDER EQUALITY AND WOMENS EMPOWERMENT/General, HUMAN RIGHTS/General, POLITICAL-ECONOMIC/Domestic Political**OFFICIAL**

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**Australian Government****Department of Foreign Affairs and Trade****MEDIA TALKING
POINTS
DISTRIBUTION:
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Topic: HUMAN RIGHTS

Subject: Access to Safe Abortion: Roe v Wade

Originating Division: DPD

Version Date: 29/6/2022

Version: 0.12

Reason for Update:

Consultation

Expiry: 27/09/2022

Talking Points

- Australia is a long-standing supporter of sexual and reproductive health and rights for everyone, everywhere
 - Around the world, millions of women and girls are not able to enjoy these rights, undermining their autonomy, health, safety, education and economic wellbeing.
- Restricting safe and legal abortion does not reduce incidence of abortion
 - instead it often means those facing unwanted pregnancies are forced to seek unsafe abortion, with increased risk of death, serious injury and poverty
 - and it is the poorest and most marginalised who are likely to face these risks.
- Australia's health system provides for safe and legal abortion in all states and territories.
- We will continue to fight for the rights of women and girls to make decisions about their own bodies and to access sexual and reproductive health services
 - this includes access to safe and legal abortion.

If asked about the US Supreme Court's decision (Dobbs v Jackson) to overturn Roe v Wade?

- It wouldn't be helpful to comment on US constitutional law
 - Australia's support for universal sexual and reproductive health and rights is clear.
 - Access to sexual and reproductive health services saves lives, supports better health, enhances quality of life, and improves educational, social, psychological and economic outcomes for all.
 - Equitable access to sexual and reproductive health services is particularly critical for people in vulnerable situations

If asked: will you discuss this decision with the Biden Administration?

- President Biden has stated his Administration's support for reproductive rights very clearly, and we will continue to work with the United States to promote these rights globally.

If asked: does the aid program fund abortion?

- The Australian aid program supports the same range of sexual and reproductive health services in developing countries that are available in Australia, subject to the laws of those countries
 - investments in sexual and reproductive health are guided by DFAT's *Family Planning and the Aid Program: Guiding Principles* (2009) and include information, education, family planning and maternal health services, abortion (where legal) and prevention and treatment of sexually transmitted infections and HIV.

Any use or disclosure of personal information about individuals and the incidents contained in this background should not be made public. To do so may constitute a breach of the Privacy Act 1988 (Cth).

Background

On 24 June the United States Supreme Court overturned *Roe v Wade* in a 6-3 decision (*Dobbs v Jackson Women's Health Organization*). The 1973 *Roe v Wade* decision had established a constitutional right to abortion in the United States. Abortion will now be regulated at the state level. A number of states have moved swiftly to enforce abortion bans already passed through their legislatures. More are expected to follow. President Biden noted that most states still recognise a women's right to choose whether to continue, or not, with a pregnancy. On Twitter, he described the *Dobbs v Jackson* decision as "the realization of an extreme ideology and a tragic error". He committed to safeguard the rights of women to cross state borders to seek an abortion, and to expand access to contraception and the medical abortion drug Mifepristone (RU 486).

Australia's domestic and international position on access to safe abortion

Australia has long advocated for universal sexual and reproductive health and rights, including the right to access safe abortion. We consistently work with like-minded states to advance this agenda in multilateral forums, including in the UN. DFAT '*Family Planning and the Aid Program: Guiding Principles*' enable advocacy and the provision of safe abortion information and services. Direct support for this work includes funding for the International Planned Parenthood Federation and MSI Reproductive Choice (formerly Marie Stopes International).

Responses in Australia and internationally

Prime Minister Albanese said (doorstep interview 25 June) "...globally, is that this is a setback for women's health, and for the issue of women's safety as well. And this is a decision which goes to the heart of a woman's right to control her own body. And these are issues which aren't the subject of partisan political debate in Australia. And that's a good

thing. It's good here that we don't deal with it in the same way that has seen the division in the United States."

Minister for Women, Sen. Katy Gallagher tweeted (25 June): "The decision by the US Supreme Court is a really disappointing one & one that women will feel right around the world. Today is a really difficult day for all who have fought long & hard to ensure that women have the right to make decisions about their own bodies. #RoeOverturned".

Minister for the Environment, Tanya Plibersek, tweeted 'Women's reproductive choice is a fundamental human right' (25 June).

On 27 June, Prime Minister Albanese said to media "people are entitled to their own views, but not to impose their views on women for whom this is a deeply personal decision. That is, in my view, one for an individual woman to make based upon their own circumstances, including the health implications. This decision has caused enormous distress. And it is a setback for women and their right to control their own bodies and their lives in the United States. It is a good thing that in Australia, this is not a matter for partisan political debate".

On 27 June, Minister for Women, Senator Katy Gallagher told media the decision was a "major setback on women's rights to access healthcare". "I would also say this hasn't been front and centre of Australian politics and that's a good thing. This matter has been dealt with at states and territories and there's laws in place to protect women going through this very difficult process".

A number of world leaders have commented:

- UK Prime Minister Johnson: "I think it's a big step backwards... I've always believed in a woman's right to choose and I stick to that view and that is why the UK has the laws that it does."
- French President Macron: "Abortion is a fundamental right for all women. It must be protected. I wish to express my solidarity with the women whose liberties are being undermined by the Supreme Court of the United States."
- Canadian PM Trudeau: "The news coming out of the United States is horrific... No government, politician or man should tell a woman what she can or cannot do with her body. I want women in Canada to know that we will always stand up for your right to choose."
- NZ PM Ardern: "Watching the removal of a woman's fundamental right to make decisions over their own body is incredibly upsetting... To see that principle now lost in the United States feels like a loss for women everywhere." FM Mahuta: "The US Supreme Court's overturning Roe v Wade is draconian and does not support the right of women to choose. How can this happen?"
- Dutch FM Hoekstra: "Today is a reminder that the struggle for the rights of women is never over. The Netherlands stands firmly for the health and rights of all women and girls around the world, to be able to decide about their own bodies and lives."
- US Secretary of State Blinken: "As Secretary of State, I usually avoid commenting on Supreme Court rulings, but today's decision overturning Roe v. Wade has raised understandable questions and concerns across the world and within our workforce. So let me be clear: under this Administration, the State Department will remain fully committed to helping provide access to reproductive health services and advancing reproductive rights around the world. And this Department will do everything

possible to ensure that all our employees have access to reproductive health services, wherever they live.

Handling Notes

Nil

Media Interest

There has been widespread coverage in mainstream, online and print media. We anticipate long standing interest as ramifications emerge in the US and beyond. Articles include:

What overturning Roe v Wade means for Australia: Sydney Morning Herald, 25 June

Abortion decision deepens cultural divide between US and Australia: Sydney Morning Herald, 26 June

‘Cataclysmic and chaotic’: Abortion battle lines drawn as legal floodgates open: Sydney Morning Herald, 28 June

Roe v Wade has been overturned. Here’s what this will mean: The Guardian Australia, 25 June

Abortion rights were hard-won in Australia- the Roe v Wade ruling shows how easily they could be taken away 27 June

‘Devastating’: Australian politicians respond to US supreme court’s decision on abortion rights: The Guardian Australia 27 June

Monday briefing: How the end of Roe v Wade has already transformed America: The Guardian Australia, 27 June

Roe v Wade movement is ‘strong’ and ‘genuinely felt’: The Australian, 28 June

Statement from President Biden on his Administration's position: FACT SHEET: President Biden Announces Actions In Light of Today’s Supreme Court Decision on Dobbs v. Jackson Women’s Health Organization | The White House

Approval	
Consultation	Department of Health, Office for Women, DFAT HRI, GEB, USB
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Distribution

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Australian Government

Department of Foreign Affairs and Trade



DFAT – IPPF HLC 2022

Thursday, 23rd June 2022

Face-to-Face/ Virtual Hybrid Meeting: 9:00am – 11:30am GMT / 6:00pm – 8:30pm AEST

Record of Conversation

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Session 3: Global Dynamics (20 minutes)

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(IPPF):

Supreme Court of The United States Abortion Ruling:

- Roe v Wade legislation is U.S. domestic issue, which provides a constitutional right to abortion for all women in USA. If repealed, this protection is removed nationally, resulting in abortion being treated as a legal matter for each state to define.
- 26 states have already developed, or in are in the process of developing, trigger laws which will come into force automatically upon Roe's repeal. E.g., the state of Louisiana has now passed legislation which will prohibit abortion under any circumstances, criminalising abortion care and enforcing a potential fine for abortion providers and women seeking to obtain abortion care.
- States are already enforcing legislation which would criminalise the transportation of women across borders to receive abortion care, which may trigger further restrictions on shipping medical abortion pills across state lines. This will result in complete chaos.

Update on Planned Parenthood Federation of America (PPFA):

- PPFA has affiliates in every U.S. state, some already working under restrictions. Those in states with pending legislation have already begun scaling back services, due to the uncertainty of the Roe ruling.
- PPFA have begun providing services on the borders of restrictive states for women crossing state lines to receive abortion care. It is unclear whether these activities will be policed, this is playing out in real time.

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MEETING WITH UNFPA

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SCOTUS decision on Roe v Wade

- On 24 June 2022, the United States Supreme Court overturned Roe v Wade in a 6-3 decision (Dobbs v Jackson Women's Health Organization). The 1973 Roe v Wade decision had established a constitutional right to abortion in the United States. Abortion will now be regulated at the state level. A number of states have moved swiftly to enforce abortion bans already passed through their legislatures.
- Additional Talking Points on the SCOTUS decision to repeal Roe v Wade can be found on the DFAT taking points database.