

# Preface

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## Reproductive Rights and the Right to Privacy

The landmark cases of *Roe v. Wade* and *Griswold v. Connecticut* prohibited states and the federal government from passing laws that prohibited abortion or barred access to contraception, respectively. In both cases, supporters of safe, legal abortion services and of contraception laid out evidence from physicians and public health experts providing that access to abortion and access to contraception improved women's health and children's health. This was one of the cornerstones of the issue in both cases, but lawyers and those giving testimony also based their arguments on the idea that women had a right to bodily autonomy and privacy in making decisions about their health care. Increasingly, members of the Republican Party, beholden to the views of a small but powerful minority, views of a small but powerful minority are asking to courts to eliminate this right for American women.

## Freedom from the Government

There is no explicitly stated "right to privacy" in the American Constitution, but generations of legal and constitutional scholars have interpreted various parts of the Constitution as indirectly demanding this right for citizens of the United States. It was actually in the case of *Griswold v. Connecticut* (1965), which guaranteed Americans the right to access contraception, that the court formally established the idea that a general right to privacy could be *inferred* from various sections of the Constitution.

In the *Griswold* case, a law in Connecticut, known as the General Statutes (established in 1958) stated,

Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned.

And then stated, so that the state would also have the power to threaten physicians who might help patients to obtain contraception, further stated:

Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.

In the court, critics of the law argued that the law gave the government the power to regulate private behavior among married people, interfering in decisions that were personal, intimate, and consensual. The question was, essentially, whether the US government had the right to declare that all sexual acts must be reproductive, or

whether decisions about how and when to utilize sexuality were private decisions that belonged to the individual.

In this landmark decision, the majority stated,

The First Amendment has a penumbra where privacy is protected from governmental intrusion. While it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful.<sup>1</sup>

A “penumbra” is the area that is partially illuminated when light passes over a solid object. A hazy section of partially lit space that surrounds the darker shadow. What the justices in the *Griswold* case meant, is that laws can be found in the shadows of the Constitution, and in the way that their overlapping meanings cast illumination on implied or suggested rights that are not specifically stated. This is an important aspect of constitutional law, as many of the rights and protections that Americans enjoy are extracted from the penumbra rather than explicitly stated. There have been legal scholars who argue against such reasoning, and who believe that the only rights protected by the Constitution are those explicitly stated, but most Americans, right or left wing, have benefitted from the freedom of the courts to interpolate meaning from what are otherwise largely the statements made by men at a time when American life and American society bore little resemblance to the modern world.<sup>2</sup>

The court’s ruling in the *Griswold* case became the basis for their ruling in *Roe v. Wade*, in which the justices decided that the decision about whether to have an abortion was a private decision, involving a pregnant woman, her family, and her physician, and not a matter that should be dictated by the government. Many different aspects of reproductive health care depend on the idea that women have a right to privacy in making health-care decisions, because there is a dedicated group of ultraconservatives who believe that the proper role for a government is to enforce moral guidelines as they see them.

What’s more, the constitutional right to privacy inferred from the penumbra is what protects American sexual and romantic liberties. There were, not long ago in American society, laws to made it illegal to have any nonreproductive sex, classified as “sodomy” in US legal terminology, which is a direct reference to Biblical mythology. These laws allowed the government to prohibit private, consensual sexual intimacy between adults and they were justified by the argument that only certain kinds of sex, between certain classes of people, was morally acceptable. Likewise, laws once prohibited people of different races from having sex, living together, having children, or getting married. Laws until *very* recently, criminalized same-sex sexual relationships. The protection of sexual autonomy and privacy is dependent on the idea that free adult Americans have a right to privacy in their personal lives and a right to be free from governmental interference in matters that concern only them and those with whom they are intimately related. The penumbra of privacy rights also therefore guarantees a right to privacy in the home, it establishes a legal sanctity for a family to be autonomous so long as their lives do not interfere in the

## Access to Reproductive Care

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The United States Supreme Court ruling in the case of *Dobbs v. Jackson Women's Health Organization* overruled the case of *Roe v. Wade*, which had, for fifty years, prohibited states from outright prohibitions on abortion. In the ruling, Justice Samuel Alito quoted Justice Byron R. White, who filed a dissent in the original *Roe* case, in which White accused the court of using “raw judicial power” to strike down a state’s ban on abortion (in that case the state of Texas). White essentially accused his associates on the court of engaging in “judicial activism,” which occurs when jurists utilize the law to pursue a political goal, rather than merely acting as interpreters of the law bound to recognize precedent. Alito argued, in the *Dobbs* case, that “it is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.” In other words, states were now free to prohibit abortion, and many did so. Some states, in fact, had “trigger laws” in place just in case a moment like this came. As soon as *Roe* verdict was overturned, these laws went into effect, prohibiting or restricting access to abortion in those states.

Writing for the *American Constitution Society*, Alan B. Morrison, the Lerner Family Associate Dean for Public Interest and Public Service Law at George Washington University Law School, argues that it is the Roberts’s court that has been “activist” in its interpretations of constitutional precedent. In a review of all of the high-profile cases in the Roberts’s Court’s history, and found that “The Roberts Court has failed to follow the premises of *Dobbs* and has been an activist court when it suits the goals of the Republican Party, but not otherwise.”<sup>1</sup> In his book *Supermajority*, Brennan Center President Michael Waldman argued that “The *Dobbs* ruling on abortion overturned a fundamental right for the first time in this country’s history, a protection for women over a half century. It puts at risk all other privacy rights as well.”<sup>2</sup>

### Abortion Rates and Pregnancy Rates

Abortion rates in the United States have been in decline since the 1980s. Anti-abortion activists have argued that this is because states have fought against *Roe*, instituting restrictions and withdrawing federal support from clinics that provide abortion services, thus making it more difficult for women to have abortions. According to these activists, the decline in abortion rates since 1980 shows that this campaign against abortion access, which includes protests outside abortion clinics and, for some, threats and attacks against women seeking abortion or physicians providing abortion, has been a success, but the data does not support this perception. Abortion declined also in states with liberal reproductive laws, where abortion access has remained strong despite conservative activism. Data indicates that

access to contraception is the key to understanding much of the decline from 1980 through the 2010s. The availability of long-term contraception, like intrauterine devices (IUDs) and implants, likely played a role as well as the shift in public attitudes about oral contraceptives. Women had been empowered to take a more active role in managing their reproductive lives, and this resulted in fewer unplanned pregnancies.<sup>3</sup>

The continued decline, between 2010 and 2020 is more difficult to explain, but is likely cultural. Pregnancy rates dropped by 9 percent between 2010 and 2019, while unintended pregnancy rates declined by more than 15 percent during this same period. Pregnancies ending in abortion fell by 17 percent during this same period. Pregnancy rates for teens (under age nineteen) declined by 52 percent over this period.<sup>4</sup> Fewer pregnancies, fewer unplanned pregnancies, and fewer teen pregnancies all reflect the continuing normalization of contraception, the influence of cultural pressures promoting the idea of postponing pregnancy and childbirth, increasing affluence among some subsets of the population, and a higher level of agency among American women to engage in family planning, despite ongoing conservative efforts to limit access to family planning information, knowledge about sex and anatomy, and contraception.

Prior to the end of *Roe*, conservative activists had successfully restricted abortion access in many states. Studies show that the number of abortion providers, nationwide, had declined by nearly half from the 1980s to the 2020s, in part because of state laws that placed extreme limitations on abortion services. In 2020, one in ten women seeking an abortion needed to travel across state lines to receive care.<sup>5</sup> Antiabortion activists believe that the *Dobbs* decision will lead to a further decline in abortion, and early evidence suggested that, in fact, that abortion rates have remained steady and increased slightly across the country. While it is still estimated that 5 percent of women who would seek abortion care were unable to receive that care because of state laws following *Dobbs*.<sup>6</sup>

It is worth noting, as well, that this refers only to abortions in the formal medical system, that is, those that are recorded by health-care organizations. In 2023, medical authorities recorded the highest number of abortions in a decade, and an increase of more than 11 percent from 2020, which already saw a major rise in abortion rates, in part linked to COVID-19. Data also showed that self-managed abortions rose sharply after *Dobbs*, and many of these are not recorded and so do not figure into estimates on abortion.<sup>7</sup> Fortunately, thanks to the availability of effective medication, self-managed abortion in the 2020s is not as often life-threatening as it was in the years pre-*Roe*, but the rise in the population of women without access to medical guidance or who fear legal reprisal if their self-managed abortions become public, is believed by abortion rights activists to represent a significant threat to women's health across the country.

Among the most controversial issues in the abortion debate has been the availability of medication abortion and specifically the pill mifepristone, commonly called "the abortion pill." Access to this medication has been challenged at the state level but has not resulted in absolute bans. The Supreme Court ruled that there

was no constitutional basis for challenging Food and Drug Administration (FDA) approval of the medication and subsequent FDA actions that increased access to mifepristone. However, antiabortion activists continue to challenge the availability of the drug in separate state cases. Studies have shown a marked increase in use of mifepristone since the *Dobbs* decision, as part of either physician-managed or self-managed abortion care, and this is why medication abortion is considered, by antiabortion activists, a primary political issue, but public opinion remains strongly aligned with the perspective that access to the drug should remain legal.

### **Abortion and Public Opinion**

The legal battle over abortion access, at the level of the Supreme Court, featured frequent mentions to individual and state liberties. In other words, the justices who ruled in favor of overturning *Roe* argued that the people should decide this issue within their own more limited communities, the artificial conglomerations of populations united into “states.” However, turning the issue over to populist influence does not, on the broader level, serve the interests of antiabortion activists. Public opinion on abortion has fluctuated over the decades, but has remained relatively stable for some time. Around 63 percent of Americans believe that abortion should be legal in all or most cases, while around 36 percent believe that abortion should be illegal in all or most cases. Support for legal abortion is unsurprisingly higher among women than men, higher among those with higher levels of educational achievement. The proportion of people who feel that abortion should be illegal in most cases falls by more than 10 percent among those who achieve a college education, and 6 percent for those who obtain “some college” education.<sup>8</sup>

Overall, studies show that almost no Americans have an absolutist view on abortion. Most Americans are against very late-stage abortions and few Americans oppose very early stage abortions, or abortions of pregnancies resulting from rape, incest, or child abuse, or in cases where a woman’s life is threatened by abortion complications. Even among the 36 percent who believe that abortion should be illegal in all or most cases, only about 10 percent of Americans support total abortion bans, of the type that have been enacted in some cases following the *Dobbs* decision. This holds true even when pollsters speak to people in states where severe abortion restrictions have been enacted. Even in these states, therefore, the severe abortion restrictions are not a reflection of public opinion or the people’s will.<sup>9</sup>

If the American people were to hold a public referendum asking if abortion should be legal, across the board, or illegal, across the board, abortion would remain legal in the United States. The antiabortion movement does not have and is unlikely to gain majority support. The shift, in the abortion rights debate, from the federal to the state level, has proven this. In 2022, six states had ballot measures regarding abortion. Following the *Dobbs* decision, twenty-five states have enacted extreme bans on abortion. Since *Dobbs*, abortion has been on the ballot in seven states. Each time that voters have been given the freedom to vote on abortion directly, voters have chosen to protect access to legal abortion. Opponents of abortion access are aware that they do not have majority support and have resorted to trying to block

# For Both Sides: Abortion Policy 2 Years After *Dobbs* Decision Hinges on November

By Jennifer Shutt  
*Missouri Independent*, June 24, 2024

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WASHINGTON—Exactly two years after the U.S. Supreme Court overturned the constitutional right to an abortion, the battles rage among both advocates and lawmakers over the future of reproductive rights at the state and federal levels.

Anti-abortion groups that have achieved considerable success in deep-red parts of the country are working to sway voters away from approving ballot questions in more than a dozen states this November that could bolster protections for abortion. Several will be decided in states that will have an outsized role in determining control of Congress and the White House.

Abortion opponents are also preparing a game plan to implement if former President Donald Trump regains the Oval Office, a prospect that could lead to sweeping executive actions on abortion access as well as at least one more conservative Supreme Court justice.

Reproductive rights organizations are honing in on the numerous ballot questions as a crucial way to remove decisions from the hands of lawmakers, especially in purple or conservative-leaning states.

Abortion rights supporters are also trying to shore up support for Democrats in key races for the U.S. House and Senate as well as hoping to keep President Joe Biden in office for another four years.

## **\$100 Million to Be Spent by Abortion Rights Advocates**

Both sides plan to spend millions to win over voters.

The Center for Reproductive Rights, National Women’s Law Center, American Civil Liberties Union and several other organizations announced Monday they’re putting at least \$100 million toward building “a long-term federal strategy to codify the right to abortion, including lobbying efforts, grassroots organizing, public education, and comprehensive communication strategies to mobilize support and enact change.”

“Anti-abortion lawmakers have already banned or severely restricted abortion in 21 states with devastating consequences, and they won’t stop until they can force a nationwide ban on abortion and push care out of reach entirely, even in states that have protected abortion access,” they wrote.

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## State details

More details on the current status of abortion in each state are below.

STATE	STATUS OF ABORTION	LEGAL UNTIL	MORE DETAILS
<b>Alabama</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Arkansas</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Idaho</b>	Banned	—	Abortion is banned in almost all circumstances, and the Idaho Supreme Court ruled in 2023 that there is no constitutional right to an abortion in the state. A U.S. Supreme Court ruling will allow access to emergency abortions while lower courts decide if the state's ban violates a federal law requiring emergency care for any patient.
<b>Indiana</b>	Banned	—	Abortion is banned in almost all circumstances. In 2023, the Indiana Supreme Court ruled that the state Constitution does not include a right to abortion except in dire situations. A separate challenge to the ban by residents who argue that it violates their religious rights is ongoing.
<b>Kentucky</b>	Banned	—	Abortion is banned in almost all circumstances. In 2022, voters rejected a ballot measure that would have amended the state Constitution to say it did not contain the right to an abortion.
<b>Louisiana</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Mississippi</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Missouri</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>North Dakota</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Oklahoma</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>South Dakota</b>	Banned	—	Abortion is banned in almost all circumstances. Voters will decide in November whether to enact a constitutional amendment that prohibits regulation of abortion in the first trimester.
<b>Tennessee</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Texas</b>	Banned	—	Abortion is banned in almost all circumstances. Private citizens can sue abortion providers and those who assist patients who are seeking an abortion after about six weeks of pregnancy.
<b>West Virginia</b>	Banned	—	Abortion is banned in almost all circumstances.
<b>Florida</b>	Gestational limit	6 weeks	Abortion is banned after about six weeks of pregnancy. The Florida Supreme Court ruled in 2024 that the state Constitution's privacy protections do not extend to abortion. Voters will decide in November whether to enshrine a right to abortion in the state Constitution.

## Health Care and the Government

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The American political system is, in many ways, deeply flawed and Americans know that this is the case. In a 2023 study by Pew Research, only 4 percent of Americans said that the political system works extremely or very well. A majority, 63 percent, claimed to have little or no confidence in the future of the US political system. Views of Congress, the US Supreme Court, and the political parties are in many ways historically negative. Around 27 percent of Americans believe that the system have little faith at all in American politics.<sup>1</sup>

One of the reasons that Americans are so broadly dissatisfied with their political system is that few Americans actually feel represented at the highest levels of the system. Much of the focus in politics is placed on the federal level, which Americans have been trained to believe is the acme of the American political system, the most important elections that have the most direct influence. The presidential race is the biggest political contest in American political culture, receiving international coverage, and even then, only around an average of 37 percent of Americans of voting age participate in elections. The 2020 election, the largest political contest in many years, coming amidst an international pandemic and after the presidency of one of the lowest-rated and most reviled politicians in American history, still only attracted 66 percent of eligible voters. More than three in ten Americans did not vote, even in an election that was perhaps the most famous in the world at that time.<sup>2</sup>

At the state and municipal levels turnout can be extremely low. In 2019, the city of Philadelphia elected a mayor with just 27 percent eligible voters casting a vote. In Chicago, that same year, just 35 percent of eligible voters voted in the election.<sup>3</sup> Local and state elections are, in many very specific ways, more important than federal elections in terms of how the laws directly shape people's lives. The Supreme Court's *Dobbs* decision, for instance, now means that it is voters in states that decide whether or not abortion will be legal in their state. Local elections also determine the level of state support for issues like contraception, sex education, family planning, maternity care, and policies on sexual and domestic abuse. Yet, few Americans make local elections a priority, in part because they have been conditioned to see these races as relatively unimportant.

### **A Destructive Pattern**

Low levels of citizen engagement with politics is a self-perpetuating cycle. Year after year, Americans perceive their country as getting worse and perceive their politicians as unable or unwilling to do anything about this perceived decline. Whether or not America is actually in a state of decline is a complex question related to many different issues in American culture, but whether or not this perception is reality,



# How IVF Is Complicating Republicans Abortion Messaging

By Lexie Shapitl  
*NPR*, March 16, 2024

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In-vitro fertilization has become the latest front in the political battle over reproductive rights, and it's left some Republicans grappling with how to square their support for IVF with their past stances on reproductive rights.

In the weeks since the Alabama Supreme Court ruled that embryos are children under the law, threatening access to IVF in the state, Congressional Republicans have lined up to voice their support for the procedure.

Republicans have tried to send a clear and unified message. The Senate GOP campaign arm advised those running for office to “clearly state [their] support for IVF” and “publicly oppose any efforts to restrict access” to the treatment in a memo to candidates obtained by *NPR*. In her Republican response to President Biden's State of the Union, Alabama Sen. Katie Britt said “we strongly support continued nationwide access to in-vitro fertilization.”

But many GOP lawmakers have spent years arguing that life begins at conception—the same basic premise that upheld the Alabama decision, which threw fertility clinics and patients in the state into limbo.

Since the Alabama ruling, Republicans have struggled to articulate what distinguishes their views from the court's.

Kansas Sen. Roger Marshall, a practicing obstetrician, said he welcomes “every day 200 babies that are born because of in-vitro fertilization in this country.

“There's nothing more pro-family than supporting the birth of babies.”

He's also one of the senators who co-sponsored the Life at Conception Act, a bill that would have granted constitutional protection to embryos at “the moment of fertilization.” If enacted, that legislation could have threatened access to IVF, during which embryos are often discarded or stored for years.

Asked if he saw any tension between those two stances, Marshall said: “I've wrestled with this for over 25 years as a practicing obstetrician. And when I talked to the spiritual experts, they can't agree on this particular issue. But I am absolutely certain that in vitro fertilization is a great thing, that God has given us this technology and we should use it.”

Many Republicans have rallied around the message that IVF is “pro-life.”

“As a pro-life guy, I think that IVF is pro-life,” said Sen. Josh Hawley, R-Mo. “It helps people start their family or add to their family if they want to.”

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# What Overturning *Roe v. Wade* Means Psychologically for Teens Who Could Get Pregnant

By Kimberly Zapata  
*Parents*, July 21, 2022

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On Friday, June 24, the Supreme Court made a landmark decision. With a vote of 6–3, the nation’s highest court overturned *Roe v. Wade*, ending nearly 50 years of federally protected abortion rights. And while this decision will have far-reaching effects—in many states, for example, pregnant people will not have access to fair, safe, or reasonable reproductive health—there are mental health implications, too. Frank C. Worrell, Ph.D., president of the American Psychological Association (APA), worries we are on the brink of a “psychological crisis.”

“We are setting up a situation where we are deliberately pushing people into a psychological crisis,” Dr. Worrell told *Fortune*, emphasizing that the decision will disproportionately hurt low-income individuals and people of color. “If you live in a state with a law that [has gotten rid of or] will get rid of abortion, your level of anxiety will go up.”

“This ruling ignores not only precedent but science, and will exacerbate the mental health crisis America is already experiencing,” Dr. Worrell added in a statement. “We are alarmed that the justices would nullify *Roe* despite decades of scientific research demonstrating that people who are denied abortions are more likely to experience higher levels of anxiety, lower life satisfaction, and lower self-esteem compared with those who are able to obtain abortions.”

## Why Teens Are Especially Impacted by the Court’s Decision

Of course, pregnant people across the country will feel the effects of this decision. *Roe v. Wade* impacts individuals of all ages. But teens, particularly marginalized youths, are at-risk. Why? Because teens, tweens, and young adults already face many barriers. It is hard for youths to access and afford reproductive health. If they have to travel for said health care, they will face additional hurdles. Many teens don’t have access to transportation, for example. This will make it extremely difficult to find and access care. They are also “vulnerable” to mental health issues—and mental health concerns.

“We know that self-harm and suicidal behavior in teens is associated with stress, uncertainty, and social pressures,” says Sarah Gupta, M.D., a board-certified

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