



EXPLAINER

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Dobbs v. Jackson Women's Health Organization: **Analysis of a Post-Roe America** **July 23, 2022**

On June 24, 2022, in the *Dobbs v. Jackson Women's Health Organization* decision, the U.S. Supreme Court determined that the right to abortion is not constitutionally protected. Without this federal constitutional protection, states can outlaw abortion entirely.

Following the Court's ruling, almost all abortions will become illegal in 13 states whose state legislatures have enacted "trigger laws," which are bans on abortion that were written to take effect immediately if *Roe* was overturned, either by state official certification or 30 days after the *Roe* decision. At the time of this publication, [eight states](#) have moved to enforce such bans, leaving access to abortion in these states unavailable in most circumstances. **Ultimately, 26 states are expected to ban or severely restrict access to abortion, eliminating or severely restricting access to health care for more than [36 million](#) individuals of reproductive age.**

With this decision, the United States joins just three other countries— Poland, Nicaragua, and El Salvador— that have removed legal protections to access abortion in the past three decades.

This explainer outlines the impact of the *Dobbs v. Jackson* decision and its underlying implications, as well as policy recommendations for policymakers in the legislative and executive branches in a new post-*Roe* reality.

Dobbs v. Jackson Women's Health Organization

The Case

Dobbs v. Jackson Women's Health Organization concerns House Bill (HB) 1510, the Gestational Age Act, a 2018 Mississippi law prohibiting abortions after 15 weeks of pregnancy. The law was blocked immediately by a Federal District Judge, and the United States Court of Appeals for the Fifth Circuit affirmed that the ban was unconstitutional. In his ruling on HB 1510, [District Judge Carlton W. Reeves](#) called the law "a facially unconstitutional ban on abortions prior to viability" and wrote that it "disregards the Fourteenth Amendment guarantee of autonomy for women desiring to control their own reproductive health."

Mississippi appealed the decision striking down its 15-week ban up to the Supreme Court, which, on May 17, 2021, [agreed to hear the case](#) and consider [the question](#) of “whether all pre-viability prohibitions on elective abortions are unconstitutional.” Since the Supreme Court had determined pre-viability bans on abortion to be unconstitutional in its 1973 [Roe v. Wade](#) ruling, the decision to hear the case at all signaled its willingness to reconsider nearly half a century of precedent. [The Court had not agreed to hear a case](#) on a pre-viability abortion ban since *Roe*.

The Decision

On June 24, 2022, [the Supreme Court revoked the constitutional right to abortion](#), deciding 6-3 to uphold Mississippi’s 15-week ban. Justice Samuel Alito authored the majority opinion, which held that “the Constitution does not confer a right to abortion; *Roe* and *Casey*¹ are overruled.” The implications of this decision will be described in depth later in this explainer.

Associate Justices Clarence Thomas, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett joined the majority opinion authored by Justice Alito. While Chief Justice John Roberts voted to uphold the Mississippi law, he did not join the majority opinion that expressly overturned *Roe v. Wade*. The Chief Justice authored his own opinion that concurred “in judgment” with the majority, but argued that the majority’s “dramatic and consequential ruling is unnecessary to decide the case before us.” It is important to note, however, that a hypothetical majority opinion upholding Mississippi’s 15-week ban without explicitly striking down *Roe* would still have the practical effect of allowing states to enact pre-viability abortion bans. This would have *nominally* retained the constitutional right to abortion, while permitting that right to be restricted to the point of meaninglessness.

The Majority Opinion and Its Implications

To parse every argument included in the majority opinion is beyond the scope of this explainer. However, it is important to note a select few of these arguments for the purposes of understanding the decision’s implications.

The majority opinion maintains that *Roe* and *Casey* must be overturned because the right to abortion is not explicitly stated in the Constitution, and it rejects the argument that the Constitution protects that right implicitly via the right to privacy. The majority contends that the Constitution can only be understood to provide this kind of implicit protection if there is evidence that the right in question is “deeply

¹ “Casey” refers to [Planned Parenthood of Southeastern Pa. v. Casey](#), a 1992 Supreme Court case that reaffirmed the constitutional right to abortion. For a more in-depth analysis of the implications of *Casey*, see the prior CPC Center explainer, [If Roe Falls, Congress Can Protect Abortion Access](#).

rooted in this Nation’s history and tradition”—and, according to the majority opinion, such evidence does not exist for the right to abortion.

The dissent authored by Justices Stephen Breyer, Elena Kagan, and Sonia Sotomayor points out that this is factually incorrect. The dissent notes, “early law in fact does provide some support for abortion rights” and cites a number of examples.² In addition, the dissent argues that the Court’s method of identifying rights protected implicitly—examining whether said right is “deeply rooted in this Nation’s history and tradition”—is highly problematic.

The logic the majority uses to defend its decision in *Dobbs* is inconsistent with the logic it outlined *just one day prior* to the *Dobbs* decision in [New York State Rifle & Pistol Association Inc. v. Bruen](#). In *Bruen*, the Court overturned a New York law requiring a permit to carry a handgun in public. In that case, the same justices who joined the majority opinion in *Dobbs*—with the addition of Chief Justice Roberts—dismissed evidence that gun regulations comparable to New York’s have long-standing historical precedent, contending that historical evidence concerning a constitutional right cannot be considered compelling if it “long predates or postdates” the point at which that provision of the Constitution was written. The majority opinion in *Dobbs*, nonetheless, cites evidence dating back to the 13th century to defend its decision revoking the right to abortion.

The majority’s inconsistency is problematic not just because it is hypocritical: the majority is asserting, as the *Dobbs* dissent explains, that “if the ratifiers did not understand something as central to freedom, then neither can we.” **This sets the stage for the Court to revoke other constitutional rights that, in its view, the authors of the Constitution—all of whom were white men and several of whom owned slaves—did not believe the Constitution should protect.** The dissent states this plainly with respect to women: “When the majority says that we must read our foundational charter as viewed at the time of ratification (except that we may also check it against the Dark Ages), it consigns women to second-class citizenship.”

The majority opinion states, “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.” However, the concurring opinion authored by Justice Thomas offers considerable cause for concern in spite of this assertion.

² The dissent states, “Common-law authorities did not treat abortion as a crime before ‘quickening’—the point when the fetus moved in the womb. And early American law followed the common-law rule.” For examples of such laws, [see page 13 of the dissent](#).

The Concurring Opinions and Their Implications

In addition to Chief Justice Roberts, Justices Kavanaugh and Thomas wrote concurring opinions. Justice Kavanaugh explores a number of the legal questions that are raised by the majority opinion, seemingly to underscore what are, in his view, the limits of the *Dobbs* decision. He writes, for example, “may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel.” Efforts to protect the right of interstate travel to access an abortion in the aftermath of *Dobbs* is explored later in this explainer.

Perhaps the most-discussed concurrence, however, comes from Justice Thomas. **Justice Thomas writes, “in future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold [v. Connecticut]*, *Lawrence [v. Texas]*, and *Obergefell [v. Hodges]*,” referencing the Supreme Court cases that protect the constitutional rights to contraception in marriage, same-sex relationships, and same-sex marriage, respectively.** Justice Thomas goes so far as to call [“substantive due process”](#)—the principle that the Constitution’s Fifth and Fourteenth Amendments safeguard certain fundamental rights against government interference—“an oxymoron that ‘lack[s] any basis in the Constitution’” and a “legal fiction.”

Justice Thomas’s concurrence suggests that he—and, potentially, other justices—might find an argument persuasive enough to revoke the rights to contraception, same-sex relationships, and same-sex marriage. [Laurie Sobel of the Kaiser Family Foundation](#) explains that Justice Thomas “has more or less set a road map for future litigation.” There is ample evidence that such litigation could arise in the near future: for example, [some Republican lawmakers have speculated openly that they may move to outlaw contraception](#).

The rights to contraception, same-sex relationships, and same-sex marriage would not be the only ones implicated if the Court were to “eliminate” substantive due process, as Justice Thomas suggests it should. One case that has been [discussed frequently by legal experts is *Loving v. Virginia*](#), which declared laws banning interracial marriage unconstitutional and depended, in part, on the principle of substantive due process. **Justice Thomas’s concurring opinion, therefore, portends a future in which the rights to contraception, same-sex relationships, same-sex marriage, interracial marriage, and more could be taken away or limited on a state-by-state basis.**

The Dissent

The dissent underscores the gravity of the *Dobbs* decision. It states:

Rescinding an individual right in its entirety and conferring it on the State, an action the Court takes today for the first time in history, affects all who have relied on our constitutional system of government and its structure of individual liberties protected from state oversight.

The dissent also emphasizes the alarming implications of the decision. In the dissent's words, "as of today, this Court holds, a State can always force a woman to give birth... A State can thus transform what, when freely undertaken, is a wonder into what, when forced, may be a nightmare." It continues:

Today's decision strips women of agency over what even the majority agrees is a contested and contestable moral issue. It forces her to carry out the State's will, whatever the circumstances and whatever the harm it will wreak on her and her family...it takes away her liberty.

The dissent additionally notes that the *Dobbs* decision will have adverse effects on the ability to access health care services beyond abortion, explaining, "most medical treatments for miscarriage are identical to those used in abortions." Pharmacies and health care providers in states that have banned or severely restricted access to abortion are [denying patients access to live-saving medications](#) that can be used in abortion care. Indeed, abortion bans have already complicated treatment for medical emergencies. The [New Yorker](#) reports a number of examples:

Physicians in prohibition states have already begun declining to treat women who are in the midst of miscarriages, for fear that the treatment could be classied as abortion. One woman in Texas was told that she had to drive fifteen hours to New Mexico to have her ectopic pregnancy—which is nonviable, by definition, and always dangerous to the mother—removed.

Recognizing the severity of the Court's decision on tens of millions of Americans of reproductive age, the dissent concludes by stating, "with sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent."

Current Landscape of Reproductive Rights

State Abortion Access

According to [analysis](#) from the Center for Reproductive Rights, **abortion is currently protected by state law in 21 states and the District of Columbia, and is at risk of being severely limited or prohibited in 26 states and three territories.** The remaining three states (New Hampshire, New Mexico, and Virginia) and territories (Puerto Rico and the US Virgin Island) have yet to codify the right to abortion, leaving access to abortion care tenuous post-*Roe*.

“Trigger laws” meant to take effect immediately after the overturn of *Roe* are the most immediate threat to abortion access. But in addition to trigger laws, there are other types of abortion bans that states looking to restrict or prohibit abortions can—and likely will—seek to implement.

These restrictions include pre-*Roe* bans that were never repealed; near-total bans enacted after *Roe* that never took effect; pre-viability gestational bans; fetal personhood bills; and state constitution bans that explicitly bar a right to abortion.³ It is likely that lower courts will need to reexamine cases of the pre-*Roe* and pre-viability bans that were blocked under *Roe* as states move to resurrect such laws.

There are 13 states in the U.S. with trigger laws that will effectively ban statewide abortion access: Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming. Of these 13 states, only five include exceptions for rape or incest. As more states seek to enact near-total bans, it has become more common to omit these exceptions. Within states that allow for such exceptions, accessing abortion could still be difficult as these exceptions are [extremely narrow and difficult to comply with](#), and sometimes require the individual or provider to report the rape or incest to police.

There are also five additional states—Alabama, Arizona, Michigan, West Virginia, and Wisconsin—that have abortion bans still on the books that were invalidated by the landmark *Roe v. Wade* decision. Now that the constitutional right to abortion has been overturned, however, some states have moved to enforce these bans once again. State Attorneys General must certify the Court’s decision for those bans to be enforced. In Michigan and Wisconsin, where both Attorneys General are pro-choice, the officials have pledged not to enforce existing pre-*Roe* abortion bans.

While abortion bans in some states were enforced immediately following the reversal of *Roe*, others have taken effect more recently or will go into effect this summer. In a handful of states—Arizona, Kentucky, West Virginia, Louisiana, and

³ For further details on these bans and their respective implications, see the following glossary <https://reproductiverights.org/glossary-abortion-terms-bans/>.

Utah—current court orders have temporarily blocked the states’ abortion bans. These injunctions have allowed abortions to continue in these states until their respective court cases are considered.

At the time of publication, the following 12 states have abortion laws in effect that vary from near-total to 15-week gestational bans, with additional states expected to follow: Alabama, Arkansas, Florida, Mississippi, Missouri, Ohio, Oklahoma, South Dakota, South Carolina, Tennessee, Texas, and Wisconsin.

International Comparisons and Reactions to *Dobbs*

The Supreme Court’s decision in *Dobbs* is strikingly at odds to the global trend of liberalizing access to abortion amidst broader reproductive rights advances.

Over the past 25 years, [more than 50 countries](#) have changed their laws to allow for greater access to abortion. International [analysis](#) indicates a global trend towards the expansion of reproductive freedom, particularly amongst advanced democracies. **This makes the U.S. Supreme Court’s decision to overturn *Roe v. Wade* not only a deeply polarizing and unpopular ruling—as nearly [two-thirds of Americans](#) support abortion rights—but a decision that designates the United States as a comparative outlier.**

Though a small handful of countries have tightened existing abortion restrictions, only four, including the United States, have *reversed* previous law on abortion during this same time period, according to the [Center for Reproductive Rights](#).⁴

Country	Year	Previous law	Current law
 El Salvador	1998	To save the woman's life	Prohibited altogether
 Nicaragua	2006	To preserve health	Prohibited altogether
 Poland	2021	To preserve health*	To preserve health
 United States (at least nine states)	2022	On request	To save the woman's life

Source: [New Statesman](#)

The experiences of individuals seeking abortions in these nations may offer a potential glimpse of the threat that abortion bans in the U.S. can pose to a person’s health and wellbeing.

⁴ Poland previously allowed abortion in cases of fetal defects.

In 1993, following three decades of liberalized access to abortion, Poland implemented a strict anti-abortion law that limited abortion access to extreme cases where the life of the mother is at risk, irreversible damage to the fetus, or cases of rape or incest. In 2020, Poland's constitutional court declared that one of those statutory exceptions—abortions in cases of fetal impairment—was also unconstitutional, a ban that only 1 in 10 Poles support. This equated to a near-total prohibition on abortion, as more than [90% of the previously limited abortions](#) in Poland fell under this exception.

As a result, the number of Poles traveling abroad to get abortions has swelled in the thousands. Doctors and abortion rights activists have been threatened with prison for administering or handing out abortion pills, leading to the emergence of a black market for both illegal abortions and abortion pills. [Two women have died](#) after being refused abortions, and dozens more have been denied access to life-saving cancer treatments due to doctors' fear of harming the fetus and consequently being punished under Poland's draconian abortion law.

Similarly, in Nicaragua, a bill passed in 2006 that removed the only statutory exception that permitted abortions—when the mother's health was at risk—resulting in a total abortion ban. In El Salvador, laws that previously permitted abortion under the limited circumstances of risk to the mother's life, rape, and fatal congenital anomalies were also reversed. In 1998, the Salvadoran government passed legislation prohibiting all forms of abortion. In these two countries, abortion is prohibited in all instances, even for the life or health of the mother. Since these stricter laws went into effect, women have been prosecuted under the law for abortion-related crimes, [including miscarriages](#), and experienced [serious mental health concerns](#) resulting from pregnancy complications and a loss of freedom to make decisions about their own bodies.

The reversal of *Roe* in the United States has been met with sharp criticism from both protestors and international leaders. Leaders and lawmakers in several countries [condemned the Supreme Court's ruling](#), along with global health organizations. Soon after the Supreme Court's decision in *Dobbs* was announced, protestors in several countries in Europe, Canada, and New Zealand [gathered to demonstrate their opposition](#) to the decision. Abortion activists from around the world recently met with Congressional and Administration officials to [express concerns](#) about the potential ripple effect of the Court's decision to strike down *Roe*, and the potential for this decision to fuel anti-abortion movements in other countries and shift momentum to roll back access. At the meeting, advocates urged support for the Abortion is Health Care Everywhere Act ([H.R. 1670](#)) that would repeal the [Helms Amendment](#), which prohibits the use of U.S. foreign aid funds from being used for

abortion care, including in cases of rape, incest, or danger to the health of the mother.

Looking Ahead: Federal Responses to Roe

Executive Action Protecting Abortion Access

Democratic lawmakers and reproductive rights organizations have urged the Biden Administration to take steps to protect access to abortion. Some proposed initiatives include protecting access to medication abortion, reviewing the Administration's authority to [set up abortion clinics of federal land](#), and funding travel vouchers for those seeking care from out-of-state.

On July 8, President Biden partially addressed some of these concerns by signing an Executive Order entitled "[Protecting Access to Reproductive Health Care Services](#)." The order directs several agencies to take steps to protect abortion access, including:

- Directing the Department of Health and Human Services (HHS) to identify ways to preserve access to medication abortion, which [accounts more than half of abortions](#), and protect access to contraception;
- Providing resources about abortion access across state lines; and
- Directing the Federal Trade Commission (FTC) to examine ways to protect the data of individuals seeking an abortion.

While abortion rights supporters have largely applauded this Executive Order as a first step, advocates have also urged the Administration to take bolder actions to protect abortion access. Shortly following the issuance of President Biden's Executive Order, HHS responded to requests to issue new guidance on July 11 to clarify physician responsibilities and protections under the Emergency Medical Treatment and Labor Act (EMTALA). In a [letter to providers](#), HHS Secretary Xavier Becerra reaffirmed that federal law protects providers when offering life-or health-saving abortion services in emergency situations. **The clarification could be vital in states with abortion bans because it requires that patients experiencing a medical emergency be provided with "stabilizing treatment," including abortion if necessary, regardless of state laws.** Given the potential that doctors may refuse medical treatment for fear of legal ramifications, this guidance provides potentially life-saving clarity.

As states attempt to restrict access to medication abortion, the Department of Justice (DOJ) could also commit to [legally challenging any state](#) that attempts to limit access to these drugs beyond what has been deemed safe by the FDA. On July 12, 2022, the DOJ took a major step towards this by announcing the establishment of a reproductive rights task force. The task force will monitor and

evaluate state and local enforcement of abortion laws that infringe upon federal legal protections concerning reproductive care. The DOJ charged the task force with coordinating “appropriate federal government responses, including proactive and defensive legal action where appropriate,” according to the DOJ’s [press release](#), though the extent to which the Department will pursue legal action has yet to be seen. Furthermore, the DOJ clarified that states cannot ban access to federally approved drugs, mifepristone and misoprostol, that induce abortion. [According to the Guttmacher institute](#), 19 states have laws restricting access to abortion pills via telemedicine and two have laws restricting access to lower gestational limits than what is approved by the FDA (10 weeks). The question of whether a state possesses the authority to place additional regulations on medication abortion beyond that of a federal agency (known as federal preemption) is [currently being challenged](#) in court.

Due to the extreme provisions of some state abortion bans, patients have [reported having trouble accessing prescription medication](#) that could also be used to terminate a pregnancy. One key drug of concern is methotrexate—which is used to treat a number of serious conditions including rheumatoid arthritis, cancer, and lupus—but can also be used to terminate a pregnancy and treat patients after an early pregnancy loss. At least one state—Texas—[allows pharmacists to refuse to fill prescriptions for methotrexate](#). In response, HHS [released guidance](#) around Affordable Care Act (ACA) nondiscrimination provisions to make clear that a pharmacy would be in violation of sex and disability discrimination laws to refuse to fill a prescription because it may be used to terminate a pregnancy.

Legislative Proposals Further Restricting Abortion Access

The Supreme Court’s ruling on *Dobbs* has emboldened Republican anti-choice legislators in their effort to further restrict abortion access at the federal level. One notable effort from Republican lawmakers is the Pain-Capable Unborn Child Protection Act ([H.R. 1080](#)) or Micah’s Law, sponsored by Rep. Chris Smith (R-NJ-04), which would ban abortions after the 20th week of pregnancy nationwide. Similar legislation has passed the House chamber under a Republican majority three times. Rep. Smith plans to introduce the measure again, with one major change—a [ban beginning at the 15th week of pregnancy](#). House Minority Leader Kevin McCarthy (R-CA-23), who in the past voted for the legislation, recently indicated that he would again support the measure, which currently has 168 Republican cosponsors. Should Republicans regain control of the House in 2023, Rep. McCarthy could have the power to determine which bills receive a vote in the chamber. Approximately [12% of Americans](#) support a nationwide ban of this kind.

In 2012, a Republican-led House of Representatives passed a similar measure, entitled the [District of Columbia Pain-Capable Unborn Child Protection Act](#), which would have prohibited abortions after 20 weeks for District of Columbia residents. Given the Supreme Court decision giving jurisdiction over abortion access to states, questions remain regarding what this ruling could mean for residents of DC. The District of Columbia is bound by the [Home Rule Act](#), which subjects all legislation passed by the DC Council to review by Congress. This authority has been used in a number of instances to restrict DC's local autonomy through riders—policies that “ride” into law as part of an appropriations bill. Members might seek to attach a rider to an appropriations bill because these bills are considered “must-pass,” as the government shuts down if they are not approved. DC-related riders have included the [Dornan Amendment](#) to prevent Medicaid dollars from being used to fund abortions, and the [Harris Amendment](#), which prohibits the District from implementing a legal cannabis system.

The *Dobbs* decision could result in a unique challenge to District residents' ability to access abortion. If, hypothetically, Republicans in Congress were to successfully add a rider banning abortions in DC to an appropriations bill, the President would be forced to choose between signing that appropriations bill taking away DC residents' access to abortion, or vetoing the bill, which would result in a government shutdown. Both Minority Leader McCarthy and Rep. James Comer (R-KY-01), the ranking member of the House Committee on Oversight and Reform—which has jurisdiction over DC—have [expressed interest](#) in limiting DC's self-governance authority. Another lawmaker, Rep. Andrew Clyde (R-GA-09) has called for eliminating the Home Rule Act in its entirety and giving Congress total control over DC's affairs.

Legislative Proposals Protecting Abortion Access

While some anti-choice lawmakers are pushing for a nationwide ban on abortion, pro-choice lawmakers are seeking ways to expand and protect reproductive access.

Democrats in Congress have called for protecting the right to access an abortion. In the wake of the *Dobbs* decision, House Speaker Nancy Pelosi (D-CA-12) [responded by vowing](#) to “explore” legislation that would protect personal data stored on reproductive apps, ensure the right to interstate travel, and codify *Roe v. Wade* into federal law. On July 15, 2022 the House voted on Rep. Judy Chu's (D-CA-24) Women's Health Protection Act ([H.R. 8296](#)) for the second time to codify *Roe v. Wade* into law. The measure passed the House by a vote of 219-210 but lacks the sufficient number of votes to withstand the Senate filibuster.

Another bill, from Rep. Lizzie Fletcher (D-TX-7) the Ensuring Access to Abortion Act ([H.R. 8297](#)), which would prohibit blocking any person seeking an abortion from

traveling for reproductive care, passed the House by a vote of 223-205. It awaits consideration in the Senate, where it is likely to stall due to the filibuster. Protecting the right of interstate travel to preserve abortion access is a priority given the goals of lawmakers in Missouri and other other states. In Missouri, lawmakers attempted (and ultimately failed) to enforce abortion restrictions that include civil lawsuits should a Missouri resident seek an abortion outside of the state. Plans to revive such efforts in multiple states [have resurfaced](#) since the fall of *Roe*. In a concurring opinion in *Dobbs*, Justice Brett Kavanaugh suggested that the Constitution does not allow states to stop individuals from traveling to get abortions. Nonetheless, at least one legal expert has [cautioned against](#) relying on this determination, pointing out: **“Justice Kavanaugh votes to overrule abortion protections because [sic] not specifically mentioned in the Constitution — and then his concurrence relies on an unwritten ‘constitutional right to interstate travel.’”**

Other legislative efforts have focused on the need to improve the security of abortion clinics and providers in states where abortion will be legal or permitted in limited circumstances.

Disruptions and violent acts towards abortion clinics have [steadily increased](#), and may worsen in the aftermath of the *Dobbs* decision. Representative Veronica Escobar (D-TX-16) introduced the Health Care Providers Safety Act ([H.R. 7814](#)) to establish a grant program for abortion facilities to enhance the physical and cybersecurity of facilities and personnel to protect patients and providers. This legislation could be crucial in offering additional protections to fill the federal void from the [Freedom of Access to Clinical Entrances \(FACE\) Act](#), which was enacted in 1994, and empowers the DOJ to sue individuals who commit acts of “force,” “threat of force,” or “physical obstruction,” against patients and providers entering abortion clinics. Nevertheless, what qualifies as harassment varies by state and the law in its current form remains ill-equipped to address much of the non-physical intimidation that is seen today as anti-abortion activists use more [elusive tactics](#).

Senators Elizabeth Warren (D-MA) and Tina Smith (D-MN) also called on President Biden [to declare an emergency](#) to protect abortion access for all Americans in order to unlock “critical resources and authority that states and the federal government can use.” Several women lawmakers of the Congressional Black Caucus called for the same declaration in a [letter to the Administration](#), noting the disparate challenges Black women face accessing sexual and reproductive health care services, in turn contributing to higher rates of maternal mortality. Though the Administration has [questioned the usefulness](#) of invoking such a declaration, in doing so, [the Administration could give HHS the power](#) to enable out-of-state prescribing and

dispensing of medication abortion and shield providers, pharmacists, patients, and others from liability in hostile states.

Conclusion

The historic setback of the *Dobbs* decision runs counter to decades of reproductive access in the United States and the global trend of liberalization of abortion laws in democracies. With large swaths of the Midwest, South, and Western regions of the United States expected to severely limit or ban abortions, it is imperative to ensure that people seeking abortions are able to exercise their right to make deeply personal decisions about their bodies, their health, and their futures.

Although the Supreme Court has overturned constitutional protections for abortion, Congress and the Biden Administration can make use of existing federal authorities to help individuals in states with abortion bans access legal and reproductive health resources and medication abortion. As this decision will have a number of dire health and financial ramifications for people of reproductive age and exploited communities in particular, it will be critical to address disparate rates of pregnancy-related health concerns and maternal mortality among these groups. These challenges are [likely to worsen given this decision](#). Federal leaders can also take steps to address barriers to interstate travel, clinic and provider security, and challenge current abortion restrictions by bolstering existing federal protections.