

THE OHIO ABORTION LANDSCAPE AFTER DOBBS V. JACKSON WOMEN'S HEALTH ORGANIZATION

OVERVIEW

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This document answers some important questions about how the Supreme Court of the United States' (SCOTUS) decision in the *Dobbs v. Jackson Women's Health Organization* case will impact Ohio. This analysis assumes that the SCOTUS decision will closely resemble the leaked draft of the court's opinion, which overrules *Roe v. Wade* and *Planned Parenthood v. Casey*.

WHAT HAPPENS IN OHIO ON THE DAY THE OPINION IS RELEASED?

The opinion will probably have no immediate, "day-one" impact in Ohio. Ohio neither has a "trigger ban" law that would ban abortion as soon SCOTUS overturns *Roe* nor has a pre-*Roe* ban on the books. In addition, no new abortion bans should pass through the legislature before SCOTUS hands down a decision in the *Dobbs* case.

WHAT IS THE LIKELY LONG-TERM IMPACT ON ABORTION ACCESS IN OHIO?

Ultimately, Ohio will most likely severely restrict abortion access. Barring any successful legal or political efforts to prevent it from doing so, Ohio will probably pass a total abortion ban. However, before that ban passes, the state will probably try to enforce a ban on abortion after six weeks of pregnancy. This so-called "heartbeat bill" was enacted in 2019 but never enforced because it was immediately challenged. The law remains pending in court.

The current proposed version of a total abortion ban in Ohio prohibits abortion beginning at fertilization. The bill has no exceptions for situations like rape or incest. The bill does contain an "affirmative defense" for abortions necessary "in the physician's reasonable medical judgment...to prevent the death of the pregnant woman or a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman." However, the bill also explicitly excludes risks related to the pregnant person's mental health or potential suicide/self-harm. There are also additional requirements for the affirmative defense to apply, including that the abortion takes place in a hospital.

WHAT IS THE TIMELINE FOR THE IMPACT OF THE SUPREME COURT DECISION IN OHIO?

Because litigation is still pending on the six-week ban, the State of Ohio will likely ask the court, in that case, to rule in its favor immediately after the Supreme Court decision. The court could then rule on that request within approximately three to four weeks. As a result, abortion access in Ohio could be limited to six weeks of pregnancy less than a month after the Supreme Court hands down its ruling in the *Dobbs* case. If additional legal challenges are successful, abortion access could be preserved for a longer time - or even permanently. However, there will likely be a period of reduced access to abortion while those challenges play out.

ARE THERE ALTERNATE LEGAL OR POLITICAL ACTIONS THAT COULD PRESERVE ABORTION ACCESS BEYOND SIX WEEKS IN OHIO?

Yes! In the absence of *Roe*, each state will have relatively free rein to set its abortion policy. This autonomy means Ohio could adopt laws that maintain or increase access to abortion in Ohio. In addition, Ohio has a state Constitution, which courts may interpret as protecting abortion rights, separate and apart from the U.S. Constitution. Therefore, the Ohio state courts could rule under the Ohio Constitution that Ohioans must have access to legal abortion.

ARE THERE OTHER ABORTION RESTRICTIONS THAT MIGHT BE AFFECTED BY THE DECISION?

Yes. Ohio also passed a ban on the most common second-trimester abortion method, known as dilation and extraction (D&E). Healthcare facilities use this method for abortions after roughly 15 weeks of gestation. Courts blocked most of the D&E ban from going into effect. However, even if the courts block the total ban and six-week ban in a post-*Roe* world, the D&E ban might still take effect.

Several other abortion restrictions are currently in litigation. For instance, there are federal-court challenges to several laws that affect abortion clinic licensing. These rules, also called targeted regulation of abortion providers (TRAP) laws, make it difficult and burdensome for abortion clinics to remain in operation. In addition, challenges are pending in state court to laws that 1) require cremation or burial of tissue from surgical abortions, 2) ban telemedicine for abortions performed with medication, and 3) make it difficult for clinics to operate. The SCOTUS decision will not immediately affect these laws.

WILL EMERGENCY CONTRACEPTION (EC) AND IUDS BE AFFECTED IF OHIO BANS ABORTION? WHAT ABOUT IN VITRO FERTILIZATION (IVF)?

These forms of health care would not be immediately affected because they do not qualify as “abortion” under current Ohio law. Ohio defines abortion as “the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo.” Since EC, IUDs, and IVF do not involve the purposeful termination of an existing pregnancy, they do not fall under this definition. However, the Ohio legislature is currently considering bills that would go further and explicitly state that “personhood” status begins at fertilization.

WHAT IS SENATE JOINT RESOLUTION 7, OR THE OHIO CONSTITUTIONAL AMENDMENT TO GUARANTEE REPRODUCTIVE FREEDOM? IS IT LIKELY TO PASS?

Senate Joint Resolution 7 (SJR 7) is a proposition to amend the Ohio Constitution to guarantee reproductive freedoms. Those freedoms would include “the right to make and effectuate decisions about all pregnancy matters, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.” The resolution would need approval from 3/5 of the Ohio House of Representatives and Senate to pass, which is unlikely, and would not occur before the end of this year. If the resolution does pass, Ohioans would get to vote for or against the amendment on a general election ballot.

