

# The State of Legal Abortion: States Poised to Ban Abortion If Roe Falls

The anti-choice movement has spent decades working to stack the courts with judges hostile to reproductive freedom. Thanks to Donald Trump and Senate Republicans, they succeeded in solidifying an anti-choice supermajority on our country's highest court with the illegitimate and rushed confirmations of Justices Gorsuch, Kavanaugh, and Barrett. This supermajority is unmistakably opposed to the legal right to abortion—and with the U.S. Supreme Court deliberating over *Dobbs v. Jackson Women's Health Organization*, a case that directly challenges *Roe v. Wade*, it's clear that our fundamental freedom to make our own decisions about pregnancy faces an existential crisis. There is no path for the Court to uphold the abortion ban at the center of *Jackson Women's Health Organization* without overturning *Roe*.

Should *Roe* fall, the consequences will be swift and devastating: **28 states** would likely take action to prohibit abortion outright. Of those, 13 states already have “trigger bans” in place, which would ban abortion automatically.

Even as *Roe* stands, the punishment and interrogation of people who are pregnant is already happening. People across the country are arrested or charged for pregnancy outcomes—including experiencing pregnancy loss; struggling with substance use; self-managing abortion care, or even suspicion of it. With *Roe* on the line at the Supreme Court, the threat of criminalization is as dire as ever. As Black, Indigenous, and other people of color; LGBTQ people; immigrants; and those with low incomes are disproportionately the targets of surveillance and criminalization, the criminalization of abortion care would only compound these injustices.

**BREAKING NEWS:** On May 2, 2022, a draft majority opinion in the *Dobbs v. Jackson Women's Health Organization* was leaked to the press, suggesting that there are 5 votes to overturn *Roe v. Wade* and end the constitutional right to abortion. While abortion is still legal and this is a draft opinion, the Supreme Court appears poised to overturn *Roe v. Wade*, ending the constitutional right to abortion as we know it and allowing states to ban abortion.

## STATE MEASURES **RESTRICTING** REPRODUCTIVE FREEDOM

28 STATES could ban abortion if *Roe v. Wade* falls: AL, AK, AZ, AR, FL, GA, ID, IN, IA, KY, LA, MI, MS, MO, MT, NE, NH, ND, OH, OK, SC, SD, TN, TX, UT, WV, WI, WY.

- 13 STATES have enacted trigger bans that would automatically impose a total criminal ban on abortion if *Roe* is overturned: AR, ID, KY, LA, MS, MO, ND, OK, SD, TN, TX, UT, WY.
- 4 STATES have passed total abortion bans since *Roe* was decided: AL, AR, LA, OK.
- 9 STATES still have total criminal bans on abortion that were enacted before *Roe*: AL, AZ, AR, MI, MS, OK, TX, WV, WI.
- 4 STATES have amended their constitutions to make clear that they do not protect the right to abortion: **AL, LA, TN, WV**.
  - In addition to these four states, three more states are in the process of considering similar constitutional language: Iowa, Kansas, and Kentucky. The Iowa legislature is in the midst of a multi-session process to amend its constitution that wouldn't be complete until at least 2024. Meanwhile, Kansas and Kentucky will vote on ballot initiatives in 2022 to amend their constitutions.
- 25 STATES have governments that oppose reproductive freedom (both the governor and majority of the legislature oppose reproductive freedom): AL, AK, AZ, AR, FL, GA, ID, IN, IA, LA, MS, MO, MT, NE, NH, ND, OH, OK, SC, SD, TN, TX, UT, WV, WY.

## STATE MEASURES **EXPANDING** REPRODUCTIVE FREEDOM

22 STATES and the DISTRICT OF COLUMBIA protect the right to abortion: **AK, CA, CO, CT, DE, DC, FL, HI, IA, IL, KS, ME, MD, MA, MN, MT, NV, NJ, NY, OR, RI, VT, WA**.

- 16 STATES and the DISTRICT OF COLUMBIA have codified the right to abortion in state law: **CA, CO, CT, DE, DC, HI, IL, ME, MD, MA, NV, NJ, NY, OR, RI, VT, WA**.
  - 12 STATES have laws that explicitly permit abortion prior to viability and/or when necessary to protect the life or health of the pregnant person: **CA, CT, DE, HI, IL, ME, MD, MA, NV, NY, RI, WA**.
  - 4 STATES and the DISTRICT OF COLUMBIA prohibit government interference throughout pregnancy, thus, expanding protections for reproductive freedom beyond those provided in *Roe*: **CO, DC, NJ, OR, VT**.
- 9 STATES protect the right to abortion within their state constitutions: **AK, CA, FL, IA, KS, MA, MN, MT, NJ**.

It is important to note that while state courts have found the state constitutions of Florida, Iowa, and Kansas protect the right to abortion, anti-choice politicians in those states are determined to roll back access to abortion.

**2022 ENACTED STATE MEASURES RESTRICTING REPRODUCTIVE FREEDOM**

1 STATE enacted a trigger ban to criminalize abortion if *Roe* is overturned: **WY**.

1 STATE enacted a measure clarifying that its trigger ban could go into effect should the U.S. Supreme Court overturn *Roe*, even in part: **OK**.

1 STATE enacted a total ban on abortion: **OK**.

**2022 ENACTED STATE MEASURES EXPANDING REPRODUCTIVE FREEDOM**

2 STATES enacted measures to protect the right to abortion in state law: **CO, NJ**.

1 STATE enacted a measure to improve its existing protections for the right to abortion in state law: **WA**.

**2021 ENACTED STATE MEASURES RESTRICTING REPRODUCTIVE FREEDOM**

2 STATES enacted total bans on abortion: **AR, OK**.

2 STATES enacted trigger bans to criminalize abortion if *Roe* is overturned: **OK, TX**.

- The Texas trigger ban also clarified that the state views its pre-*Roe* ban as still being on the books.

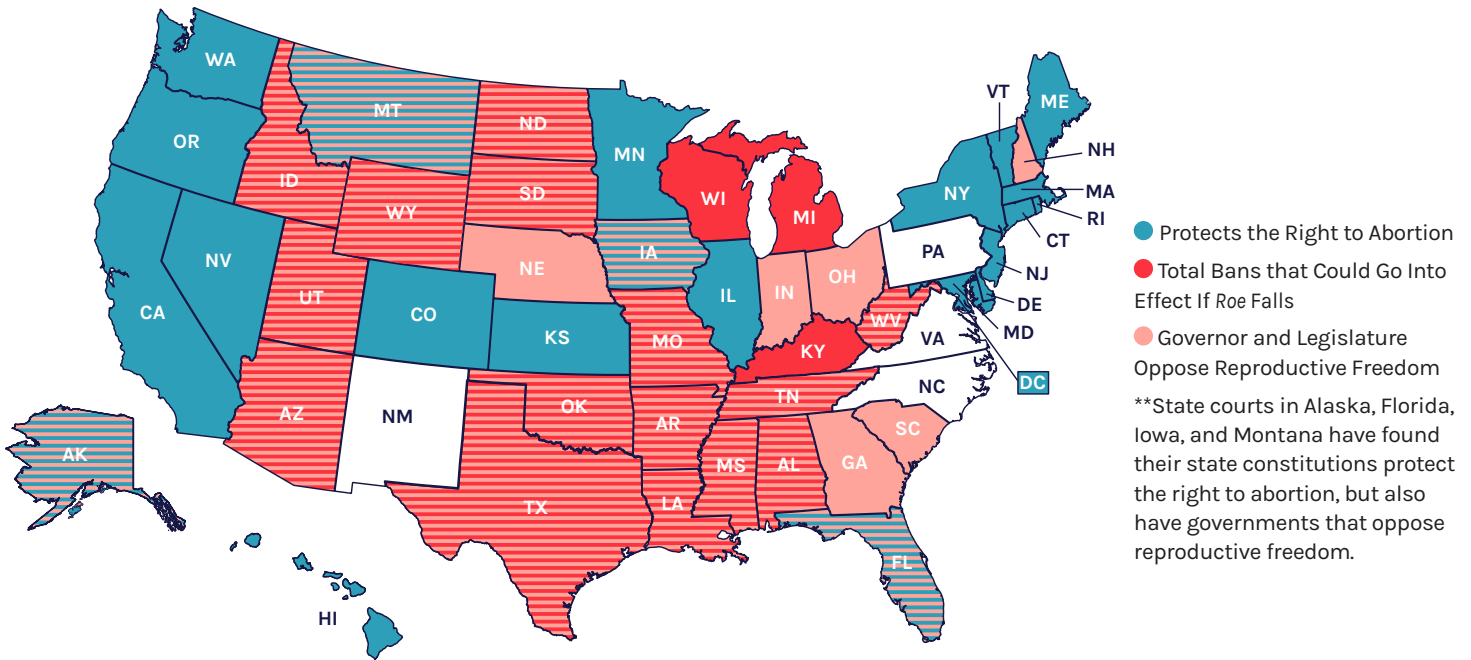
3 STATES enacted measures to set up future anti-choice ballot initiatives that would amend their state constitutions to undermine abortion rights: **IA, KS, KY**.

- Kansas and Kentucky passed bills setting up ballot measures in 2022.
- In Iowa, the legislature must pass a bill again in the 2023-2024 session before it could appear on the ballot.

**2021 ENACTED STATE MEASURES EXPANDING REPRODUCTIVE FREEDOM**

1 STATE repealed its pre-*Roe* total abortion ban: **NM**.

- In February 2021, Governor Michelle Lujan Grisham (D-NM) signed into law SB 10, which repealed the state's total abortion ban enacted before *Roe*. This was critical to protecting the right to abortion in the state given that a case directly challenging *Roe* is pending before the Supreme Court.



STATE	Protects the Right to Abortion	Total Bans that Could Go Into Effect If Roe Falls	State Constitutional Restrictions	Anti-Choice Trifecta
Alabama		T, P	<b>X</b>	X
Alaska	<b>C</b>			X
Arizona		P		X
Arkansas		TR, T, P		X
California	<b>C, S</b>			
Colorado	<b>S</b>			
Connecticut	<b>S</b>			
Delaware	<b>S</b>			
D.C.	<b>S</b>			
Florida	<b>C</b>			X
Georgia				X
Hawaii	<b>S</b>			
Idaho		TR		X
Illinois	<b>S</b>			
Indiana				X
Iowa	<b>C</b>			X
Kansas	<b>C</b>			
Kentucky		TR		
Louisiana		TR, T	<b>X</b>	X
Maine	<b>S</b>			
Maryland	<b>S</b>			
Massachusetts	<b>C, S</b>			
Michigan		P		
Minnesota	<b>C</b>			
Mississippi		TR, P		X
Missouri		TR		X
Montana	<b>C</b>			X

STATE	Protects the Right to Abortion	Total Bans that Could Go Into Effect If Roe Falls	State Constitutional Restrictions	Anti-Choice Trifecta
Nebraska				X
Nevada	<b>S</b>			
New Hampshire				X
New Jersey	<b>C, S</b>			
New Mexico				
New York	<b>S</b>			
North Carolina				
North Dakota		TR		X
Ohio				X
Oklahoma		TR, T, P		X
Oregon	<b>S</b>			
Pennsylvania				
Rhode Island	<b>S</b>			
South Carolina				X
South Dakota		TR		X
Tennessee		TR	<b>X</b>	X
Texas		TR, P		X
Utah		TR		X
Vermont	<b>S</b>			
Virginia				
Washington	<b>S</b>			
West Virginia		P	<b>X</b>	X
Wisconsin		P		
Wyoming		TR		X
<b>TOTAL</b>	<b>22 + DC</b>	<b>18</b>	<b>4</b>	<b>25</b>

► **KEY:** C = Constitutional Protections, S = Statutory Protections, TR = Trigger Ban, T = Total Ban Enacted After Roe, P = Pre-Roe Ban