

SCOTUS v. reproductive health in United States

The US Supreme Court's majority decision to overturn the constitutional protection of the right to seek an abortion threatens the health of all Americans.

On 24 June 2022, the Supreme Court of the United States (SCOTUS) ruled in *Dobbs v. Jackson Women's Health Organization* that the right to abortion is not a federally protected liberty under the due process clause of the 14th Amendment to the US Constitution, revoking SCOTUS's 1973 decision on *Roe v. Wade* and upending more than 40 years of federal protection of the right to seek an abortion. The decision, which allows states to independently decide the legality of abortion, will have far-reaching effects beyond the immediate curtailment of abortion services in states that have now enacted or will enact abortion bans, including further entrenchment of healthcare inequities and loss of the right to bodily autonomy.

Taken at face value, SCOTUS's decision might presage a reduction in abortions in the United States. But we know from existing research by the Guttmacher Institute, a non-governmental organization devoted to sexual and reproductive rights, that restrictions to access do not substantially mitigate the incidences of abortions, in comparisons of countries with the least-restrictive laws versus those with the most-restrictive laws. Instead, restrictions increase the rate of least-safe abortions and the risk of adverse outcomes. This may be through the procurement of abortions from unqualified providers or with unsafe methods, incorrect use of abortion medication (mifepristone and misoprostol, commonly known as the 'abortion pill'), and inadequate post-abortion care. Globally, poor and rural women are most at risk of adverse outcomes due to inferior access to qualified care and the cost of procedures and complications, which can lead to healthcare avoidance. Research shows that in the United States, unintended pregnancy is highest among lower socio-economic groups, with 75% of abortion patients being poor or having low income, and a lack of birth control accounts for more than half of unintended pregnancies. Black women have the highest abortion rate in the United States, 3.6 times higher than that of non-Hispanic white women, and have a maternal mortality rate that is 2.9 times higher. Hispanic women have a 1.8-fold higher abortion rate than that of white women, and a larger percentage of Black and Hispanic women lack healthcare insurance and have unmet health needs. With the closure of family-planning facilities that also

provide contraception in those states enacting abortion bans, the dual impact of restricted access to birth control and to abortion services will be disproportionately felt by economically deprived groups and racial and ethnic minority populations, which will further exacerbate health risks and inequities.

Viewing abortion through the lens of numbers alone ignores the broader long-term health and societal impacts of the SCOTUS decision. The University of California, San Francisco, conducted the *Turnaway Study* to assess the health and socioeconomic effects of receiving versus being denied an abortion. Although the study concluded that receiving an abortion does not impair the health of women, it found that abortion denial was associated with an increase in a woman's household poverty, food insecurity and financial instability, lasting years. Moreover, women denied an abortion were more likely to experience persistent violence in an unsafe relationship, to raise children alone, and to experience poorer bonding with their baby. Unsurprisingly, children of women denied an abortion had worse socioeconomic outcomes than those of children of women who received an abortion. Thus, the family unit as a whole is negatively affected by the restriction of safe access to abortion.

Were the consequences of SCOTUS's decision restricted to the right to abortion, safe-haven states, such as California, New York and others that are strengthening their laws that protect abortion and increasing funding for reproductive healthcare services, might be able to partly mitigate the depth of its impact by ensuring the provision of safe and qualified services to some out-of-state women. But as expressed by Justice Thomas in his concurring opinion, SCOTUS's ruling that the due process clause in the 14th Amendment does not protect the right to abortion is because it does "not secure any substantive rights" (his emphasis). Justice Thomas went further to single out three cases whose decisions were based on the due process clause and that he felt SCOTUS should revisit; these involve the right of married people to contraception, the right to same-sex marriage, and the right to consensual sex between people of the same sex. And there are many others. The due process clause was also invoked to protect the right to interracial marriage in a precedent-setting 1967 civil rights case, which

was cited by SCOTUS in their 2015 ruling on same-sex marriage. Justice Thomas' implicit invitation to SCOTUS challenges of settled cases puts at risk a broad spectrum of human rights affecting health that Americans have assumed are immutable as protected by law.

In his concurring opinion on the *Dobbs* case, Justice Kavanaugh claimed that SCOTUS's decision is neutral: neither pro-life nor pro-choice. Yet Justice Thomas clearly undermines that view by framing the decision to overrule *Roe v. Wade* as coming "after more than 63 million abortions have been performed" and stating that the "harm" of SCOTUS's decisions involving substantive due process "remains immeasurable." Yet no consideration is given by the majority opinion to the immeasurable potential long-term impacts of overturning *Roe v. Wade* on both health and personal freedoms. Not to the 25% of women in the United States who will have an abortion in their lives, as well as of transgender men and non-binary people who may also seek abortions, or to the consequent impacts on their physical and mental health and economic wellbeing of being denied an abortion in their home state. Not to the almost 50 million people who use contraception and risk its loss in those states intent on restricting reproductive autonomy further. Not to the disproportionate impact that curtailing access to health and reproductive services will have on women of color and on LGBTQ+ people. Not to the potential long-term erosion of LGBTQ+ rights and personal freedoms previously protected by SCOTUS rulings via the 14th Amendment that the *Dobbs* decision now unsettles.

The right of all Americans to bodily autonomy and to personal health has never been so threatened. It is not enough for companies to offer employees in affected states resources to access abortions and coverage of travel expenses. Industries that claim to stand up for personal privacy and freedoms, that support diversity and equity, that are involved in healthcare in any form have the responsibility now to stand up, speak out and put their financial power to work to support legislative changes that ensure the reproductive rights and bodily autonomy of all American are legally and durably protected. □

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