

Supreme Court hears Mississippi abortion case with major implications for Roe v. Wade

Mississippi case, along with recent Texas law, come before decidedly conservative U.S. Supreme Court

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Abortion rights are on the line at the U.S. Supreme Court in historic arguments over the landmark ruling nearly 50 years ago that declared a nationwide right to end a pregnancy.

The justices on Wednesday will weigh whether to uphold a Mississippi law that bans abortion after 15 weeks and overrule the 1973 Roe v. Wade decision.

Mississippi is also asking the court to overrule the 1992 ruling in Planned Parenthood v. Casey, which reaffirmed Roe. In the 1992 Casey ruling, the court said Roe's "central holding" was that viability, at around 24 weeks of a pregnancy, was the earliest point at which states could ban abortion.

The case comes to a court with a 6-3 conservative majority that has been transformed by three appointees of President Donald Trump, who had pledged to appoint justices he said would oppose abortion rights. The court had never agreed to hear a case over an abortion ban so early in pregnancy until all three Trump appointees — Justices Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett — were on board.

A month ago, the justices also heard arguments over a uniquely designed Texas law that has succeeded in getting around the Roe and Casey decisions and banning abortions in the nation's second-largest state after about six weeks of pregnancy. The dispute over the Texas law revolves around whether the law can be challenged in federal court, rather than the right to an abortion.

Despite its unusually quick consideration of the issue, the court has yet to rule on the Texas law, and the justices have refused to put the law on hold while the matter is under legal review.

The Mississippi case poses questions central to the abortion right. Some of the debate Wednesday is likely to be over whether the court should abandon its long-held rule that states cannot ban abortion before the point of viability.

More than 90 per cent of abortions are performed in the first 13 weeks of pregnancy, well before viability, according to the federal Centers for Disease Control and Prevention.

Mississippi argues that viability is an arbitrary standard that doesn't take sufficient account of the state's interest in regulating abortion. It also contends that scientific advances have allowed some babies who were born earlier than 24 weeks to survive, though it does not argue that the line is anywhere near 15 weeks.

Lone Mississippi clinic performs procedure

Only about 100 patients per year get abortions after 15 weeks at Mississippi's lone abortion clinic, the Jackson Women's Health Organization. The facility does not provide abortions after 16 weeks.

But the clinic argues that the court doesn't normally assess constitutional rights based on how few people are affected, and that the justices shouldn't do so in this case.

Joined by the Biden administration, the clinic also says that since Roe, the Supreme Court has consistently held that the "Constitution guarantees 'the right of the woman to choose to have an abortion before viability.'"

Erasing viability as the line between when abortions may and may not be banned would effectively overrule Roe and Casey, even if the justices do not explicitly do that, the clinic says.

Justice Clarence Thomas is the only member of the court who has openly called for Roe and Casey to be overruled.

Among the questions justices ask when they consider jettisoning a previous ruling is not just whether it is wrong, but whether it is egregiously so.

That's a formulation Kavanaugh has used in a recent opinion, and Mississippi and many of its allies have devoted considerable space in their court filings to argue that Roe and Casey fit the description of being egregiously wrong.

"The conclusion that abortion is a constitutional right has no basis in text, structure, history, or tradition," Mississippi says.

The clinic responds by arguing that the very same arguments were considered and rejected by the court nearly 30 years ago in Casey. Only the membership of the court has changed since then, the clinic and its allies argue.

In its earlier rulings, the court has rooted the right to abortion in the section of the 14th Amendment that says states cannot "deprive any person of life, liberty, or property, without due process of law."

A decision on the Mississippi case is expected by late June.

More countries liberalizing abortion laws

If Roe were overturned or limited, large swathes of America could return to an era in which women who want to end a pregnancy face the choice of undergoing a potentially dangerous illegal abortion, traveling long distances to a state where the procedure remains legal and available or buying abortion pills online. The procedure would remain legal in liberal-leaning states, 15 of which have laws protecting abortion rights.

Such a decision would go against global trends and public opinion. A 2019 report from the Council of Foreign Relations indicated that since 2000, 29 countries had changed their abortion laws, expanding the legal grounds on which women can access abortion services in all but one case.

While the subject is contentious, a June Reuters/Ipsos poll of U.S. adults found that 52 per cent of respondents said abortion should be legal in all or most cases, while 36 per cent said it should be illegal in most or all cases. A 2019 Pew Research survey of U.S. Catholics found that 56 per cent believed abortion should be legal in all or most cases, with 42 per cent responding it should be illegal in all or most cases.

A 2019 report from the Guttmacher Institute, a research group, indicated that the number and rates of abortion had declined to their lowest levels since 1973, paced by a declining birth rate and the fact the

Affordable Care Act requires most private health insurance plans to cover contraceptives without out-of-pocket costs.

The group found that medication abortion, through the so-called abortion pill, accounted for 36 per cent of all abortions in 2017, up from 24 per cent in 2014.

With files from CBC News and Reuters