

# Mississippi asks US Supreme Court to overturn *Roe v. Wade*

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Mississippi's attorney general filed a brief with the US Supreme Court on Thursday arguing that the high court's 1973 ruling in *Roe v. Wade* was "egregiously wrong" and should be overturned. Attorney General Lynn Fitch urged the justices to not only reverse lower court rulings blocking a Mississippi law that bans most abortions after 15 weeks, but to use the case to overturn the landmark ruling that established the legal right to abortion.

"Under the Constitution, may a State prohibit elective abortions before viability? Yes. Why? Because nothing in constitutional text, structure, history, or tradition supports a right to abortion," Fitch wrote in the brief. "The conclusion that abortion is a constitutional right has no basis in text, structure, history, or tradition," she added.

*Roe v. Wade* and subsequent rulings, particularly *Planned Parenthood v. Casey* (1992), established that states may not impose an "undue burden" on the right to abortion before fetal viability, the point at which fetuses can sustain life outside the womb, about 23 or 24 weeks. The Mississippi brief states, "Roe and Casey are unprincipled decisions that have damaged the democratic process, poisoned our national discourse, plagued the law—and, in doing so, harmed this court."

Fitch's challenge comes months before the Supreme Court is set to hear oral arguments in a case involving Mississippi's Gestational Age Act, passed in 2018 but blocked by two federal courts. The law allows abortion after 15 weeks "only in medical emergencies or for severe fetal abnormality," and has no exception for rape or incest. Doctors who perform abortions outside of the law's parameters would have their medical licenses suspended or revoked and could face additional penalties and fines.

The case has caused alarm among abortion rights

organizations, as states across the US, emboldened by the addition to the right-wing majority on the Supreme Court of Justice Amy Coney Barrett, a vocal opponent of abortion rights, pass increasingly restrictive regulations.

The high court justices deliberated for months whether to accept the Mississippi dispute before announcing last spring their decision to hear the case. There is a very real possibility that the court, bolstered by three Trump appointees, will shred what remains of long-established constitutional protections for access to abortion.

The court will likely hear oral arguments in the late fall or early winter, with a decision expected by next June, ahead of the 2022 midterm elections.

Nancy Northup, president and CEO of the Center for Reproductive Rights, said in a statement that half of the states are poised to ban abortion altogether if *Roe v. Wade* is overturned.

"Today's brief reveals the extreme and regressive strategy, not just of this law, but of the avalanche of abortion bans and restrictions that are being passed across the country," Northup said. "Their goal is for the Supreme Court to take away our right to control our own bodies and our own futures—not just in Mississippi, but everywhere."

Republican lawmakers in several states have enacted laws designed to challenge *Roe v. Wade*. A federal district judge blocked an Arkansas law on Tuesday that would ban most abortions. The judge ruled that the law was "categorically unconstitutional" because it would ban the procedure before the fetus is considered viable.

In Texas, Governor Greg Abbott signed a "trigger law" Tuesday that would make abortion illegal upon a reversal of *Roe v. Wade*. The bill's main provisions

would be implemented 30 days after a repeal decision or if Congress adopted an amendment to the US Constitution that allowed states to ban abortions.

Last month, Abbott signed a law that bans abortions after a fetal heartbeat is detected, around six weeks. A person found in violation of the bill would face a civil penalty up to \$100,000 for each violation. In addition to paying the fine, health professionals involved in an abortion procedure could have their licenses and permits revoked.

The *Texas Tribune* reported the bill does not make exceptions for women at risk of suicide or self-harm, pregnant because of rape or incest, or in cases of severe or potentially lethal fetal abnormalities. Only women who face death or a “substantial impairment of major bodily function” if an abortion is not performed are excluded from the measure.

Most cynically, the law leaves private enforcement as the only mechanism for implementing the broad restrictions on abortions after the sixth week of pregnancy, encouraging a form of vigilante justice. The law specifically bans any state official from initiating enforcement of the bill. Instead, private citizens may sue anyone they suspect of being involved in an abortion. The stipulation is designed to make the abortion ban more difficult to challenge in court.



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