

# Arizona Supreme Court revives primitive 1864 law to criminalize abortion

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In a ruling issued Tuesday, the Arizona Supreme Court revived a criminal law first enacted in 1864 that allows sending a doctor or other medical provider to state prison for two to five years for performing an abortion that is subsequently not deemed “necessary to save” a woman’s life. There are no time limits—the prohibition begins “the morning after”—and no other exceptions, such as for pregnancies that resulted from rape or incest.

This draconian law dates from when Arizona was a newly formed US territory, slavery still existed, women could not vote and were legally subordinate to their husbands. Their right to vote would not be realized for another half-century. The statute was re-enacted after Arizona achieved statehood in 1912 and remained in effect until a 1973 injunction following the United States Supreme Court’s recognition of the federal constitutional right to abortion in *Roe v. Wade*.

While bound by the Constitution’s Supremacy Clause, anti-abortion activists in the Arizona state government passed dozens of laws to restrict abortion access to the constitutional minimum and added onerous procedural requirements, pushing the envelope under the steadily eroding federal standards.

In 2022, the United States Supreme Court eliminated the federal constitutional right to abortion altogether in *Dobbs v. Jackson Women’s Health Organization*, which overruled *Roe v. Wade*, stripping all women in the United States of their constitutional right to access abortions. The *World Socialist Web Site* labeled *Dobbs* “the opening salvo in a historically unprecedented attack by the ruling class on all democratic rights.” Tuesday’s ruling underscores that perspective.

When *Dobbs* was decided, Arizona statutes had limited abortion access to the first 15 weeks following gestation, absent a “medical emergency.” By a 5-2 vote, the Arizona Supreme Court ruled that these subsequent enactments did not create a statutory right to abortion during the first 15

weeks, and that *Dobbs* effectively resurrected the 1864 felony prohibition. Not only does the ruling eliminate the brief 15-week window, it also narrows the exception from any “medical emergency” to abortions “necessary to save” the life of the mother.

The two dissenting justices would have enforced the more recent enactments, noting that following *Dobbs* in June 2022, “the Arizona Legislature stood pat,” rather than repealing the 15-week limit then in effect and reinstating the 1864 ban. The dissent did not, however, address the consequences of denying a pregnant person access to an abortion.

Protecting the individual decision whether to carry a pregnancy to term is a fundamental democratic question, recognized along with women’s suffrage by the Bolshevik Party after the 1917 Revolution. As Leon Trotsky wrote in *The Revolution Betrayed*, “whatever may be said upon this subject by the eunuchs and old maids of both sexes,” a woman’s access to abortion “is one of her most important civil, political and cultural rights.”

The Arizona decision applies going forward only, not retrospectively, and will not be implemented for at least two weeks. There may be further delays in the courts, or the Arizona State Legislature might supersede the ruling by rescinding the 1864 law. While the future of the law remains to be written, there is no question that the assault on abortion access, and other democratic rights, will continue to accelerate.

With this decision, Arizona joins 14 other states that have denied abortion access under almost all circumstances since the *Dobbs* decision: Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas and West Virginia.

Georgia and South Carolina limit access to the absurdly short period of six weeks—before many realize they are

pregnant—and Nebraska and North Carolina impose a 12-week deadline that is almost as unrealistic.

On April 1 the Florida Supreme Court overruled state privacy laws that had protected abortion access for decades, clearing the way for the six-week limit promoted by right-wing governor Ron DeSantis. That ruling will take effect on May 1.

*Dobbs* has had other consequences. Texas, for example, enacted a “vigilante” statute that allows private citizens to sue anyone who assists in an abortion that takes place more than six weeks after gestation. In one well-publicized incident, the state’s fascistic attorney general, Ken Paxton, threatened emergency room doctors with felony prosecution if they treated a pregnant patient, forcing her to leave the state to obtain necessary medical care.

Depending on how the questions are phrased, opinion polls document that around 70 percent of the United States population supports abortion access under the *Roe v. Wade* guidelines. Whenever the issue has appeared in recent years on a state ballot as the result of an initiative or referendum, abortion access prevailed, even where anti-abortion forces control the state government, including Ohio, Kansas and Kentucky.

After Kansas voters defeated an anti-abortion referendum by almost 20 percent, the Kansas legislature passed a bill to criminalize so-called “abortion coercion,” which could result in a boyfriend or family member being jailed for suggesting that a pregnancy be terminated. That measure has not yet been signed into law.

Seeking short-term partisan advantage, US President Joe Biden denounced the Arizona ruling as “the extreme agenda of Republican elected officials who are committed to ripping away women’s freedom.” Biden claims he stands “with the vast majority of Americans who support a woman’s right to choose.”

At the same time, Biden has paid advertisements appealing to supporters of former Republican candidate Nikki Haley, who once co-sponsored a bill in South Carolina to codify that “life begins at fertilization.” Moreover, congressional Democrats are openly supporting Republican House Speaker Mike Johnson, a religious fanatic who recently compared abortion access under *Roe v. Wade* to the Holocaust. House Democrats need his assistance to fund the US-NATO war against Russia in Ukraine.

The Arizona Supreme Court’s attack on abortion access coincides with deepening attacks on democratic rights, such as freedom of speech and assembly, especially on

the part of students protesting the genocide in Gaza, the right to marriage choice and sexual privacy, and ultimately the right to hold meaningful elections, including independent candidates such as 2024 presidential and vice-presidential candidates Joseph Kishore and Jerry White of the Socialist Equality Party.

The denial of access to abortions is inseparable from a broader attack on democratic rights necessitated by the insatiable US oligarchy’s drive to muzzle and pauperize the working class to finance its imperialist wars, presently focused on the carving up of Russia in anticipation of global war against China.

The Arizona Supreme Court’s decision coincides with the sixth-month anniversary of the US-backed Israeli genocide of Palestinians trapped in Gaza. While Biden sheds crocodile tears over “women’s freedom” in Arizona, he unconditionally funds the Zionist massacre of thousands of women and children in Gaza, who have no freedom of choice when it comes to accessing food and any kind of medical care, not only abortions.

The Arizona decision is yet another exposure of the true character of the American judiciary, whose far-right judges like Supreme Court Justice Clarence Thomas flaunt their corruption in full public view, knowing that their nominal opposition among the Democrats will do nothing.

Events such as the Arizona ruling compel workers and youth to confront the hostility of both capitalist political parties and the capitalist courts to basic democratic rights, reflecting their fundamental trajectory to dictatorship and war.

The defense of basic democratic rights today requires a mass movement of the working class independent of the rotten two-party system to abolish the capitalist system and to bring about the socialist transformation of the world economic system to meet the needs and guarantee the democratic rights of the international working class.



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