

## Trump Probably Can't Get Roe v. Wade Overturned

**But expect more abortion restrictions under the new administration.**

By [Amelia Thomson-DeVeaux](#)

Filed under [Abortion](#)



Over the years, Donald Trump has held [just about every imaginable position on abortion](#), from declaring in 1999 that he was in favor of abortion rights — even supportive of a controversial form of late-term abortion — to saying this year that women who have abortions should face “punishment.” Although this ideological murkiness [has sometimes caused consternation among anti-abortion advocates](#), he affirmed [in an interview with “60 Minutes” on Sunday](#) that it is the latter hard-line view that will accompany him into the White House in January. Pledging to appoint Supreme Court justices committed to overturning the landmark abortion decision in [Roe v. Wade](#), he said the power to legalize abortion would revert back to the states. Some women, he added, would “have to go to a different state” for an abortion.

In some ways, Trump was merely describing the status quo: Today, [five states have only one abortion clinic](#), and more than [one-third of U.S. women of reproductive age live in a county](#) that doesn't have an abortion provider. There's reason to believe, though, that once he's in office, Trump may prioritize outlawing abortion — or at least making it much more difficult to obtain. While Vice President-elect Mike Pence was governor of Indiana, he signed some of the nation's most restrictive anti-abortion laws, including a ban on abortions performed because the fetus has genetic abnormalities such as Down syndrome. Meanwhile, although prominent evangelical Christian leaders [criticized Trump during his campaign](#), he swept into office on [a wave of evangelical support](#) that may lead him to focus on social issues.

All of this raises questions about what a Trump presidency could mean for abortion rights in particular — and women's health more generally. Obtaining an abortion has never been easy or cheap in the United States, especially for the

women who are most likely to need one. Although the Supreme Court's decision in *Whole Woman's Health v. Hellerstedt* delivered a victory to abortion-rights advocates in June by striking down a set of Texas restrictions on abortion providers that had [closed 21 clinics there](#), there are [hundreds of new laws](#) limiting abortion on the books in a number of states. Many abortion clinics have shuttered in red states thanks to these restrictions, but [providers in blue states are closing as well](#), thanks to the near-impossibility of running a financially viable abortion clinic.

Trump's victory is good news for anti-abortion advocates, some of whom [were initially reluctant](#) to support him but [were encouraged](#) by his choice of Pence as his running mate. And Trump's election is disturbing for abortion-rights advocates who worry that with Republicans in control of both houses of Congress and the presidency for the first time in 10 years, the United States could be poised to return to the pre-Roe era. In the late 1960s and early 1970s, before the 1973 *Roe v. Wade* decision, abortion was legal in only a handful of states and [was available mostly to women](#) who had the means to travel. [According to the Guttmacher Institute](#), a research organization that advocates for abortion rights, 19 states have laws on the books that could be used to restrict abortion if Roe were overturned, and seven have laws that explicitly protect the right to abortion.

Once he takes office, Trump is expected to appoint a justice to fill the late Antonin Scalia's Supreme Court seat. Legal experts, however, say that even if Trump replaces Scalia with a justice who shares the late conservative's [belief that there is no constitutional right to abortion](#) — and if Trump goes on to fill future vacancies, shifting the court's balance of power — the precedent in Roe would still probably remain secure. "It would be very extreme to overturn a 43-year-old precedent so soon after *Whole Woman's Health*," said Jessie Hill, a professor at Case Western Reserve University School of Law. She pointed out that even with Trump's appointee, the five-vote majority that upheld abortion rights in the *Whole Woman's Health* decision would remain intact. "You would need two or really even three vacancies to change that math, because I think John Roberts in particular doesn't want to overturn Roe. Part of it is a concern about public legitimacy, but he's also just not the type of jurist who likes wholesale overturning precedent." It's likelier, she predicted, that if Trump did change the court's composition, a future ruling would narrow the scope of the decision in *Whole Woman's Health* rather than scrapping Roe completely.

A federal measure limiting abortion is also a possibility, Hill said. Over the past few years, Republicans in Congress have introduced but ultimately failed to pass bills [banning sex-selective abortion](#) and [second-trimester abortion](#). Congress did succeed in banning one type of controversial abortion procedure — dubbed "[partial-birth abortion](#)" — in 2003. But Hill said a new federal ban would be immediately endangered by a legal challenge that would likely reach the Supreme Court. "The primary advantage of a federal ban is that it's a deterrent for providers who don't want to test the law," she said. "But in this political climate, I don't think that would be the case" — litigators who wanted to challenge any such law would be likely to find volunteers to help test its constitutionality.

Abortion-rights advocates are also considering the possibility of Trump-fueled momentum that favors the anti-abortion movement. On Election Day, [Republicans took control of Kentucky's House of Representatives](#), solidifying conservative control in what was one of the last remaining Southern states with a divided legislature. "We're expecting to see some new restrictions in Kentucky, certainly," said Elizabeth Nash, senior state issues manager at the Guttmacher Institute. In other states, she said, it's hard to know what to expect. But in the lead-up to and aftermath of the *Whole Woman's Health* decision, which did away with one category of limitations on abortion providers, anti-abortion legislators have introduced new restrictions: [requiring cremation or burial for aborted and miscarried fetuses](#), [banning the most common second-trimester abortion procedure](#), and [increasing waiting periods for abortions](#).

Meanwhile, some abortion-rights activists — and at least one physician who performs abortion procedures — say they are bracing for possible violence against clinics. According to [the National Abortion Federation](#), an abortion-rights advocacy group that tracks violence and threats of violence against clinics, the number of threats against abortion clinics surged after the summer of 2015, when an anti-abortion group [released videos purportedly showing](#) Planned Parenthood officials illegally selling fetal issue. (Numerous [investigations have found no evidence](#) that these accusations are true.) These threats culminated in November of that year, when [a gunman killed three people](#) at an abortion clinic in Colorado Springs, Colorado. [Some abortion-rights advocates also predict](#) that even if Congress doesn't outlaw or restrict abortion, anti-abortion legislators may try to intimidate physicians who continue to offer the procedure.

Regardless of how it is done, reducing access to abortion or cutting off funding to abortion providers will have an

adverse effect on women’s health, said Dan Grossman, a professor of obstetrics, gynecology and reproductive services at the University of California, San Francisco. Grossman is one of the researchers who studied the natural experiment produced by the restrictive Texas law that shuttered clinics by placing difficult-to-meet requirements on facilities and physicians and was later overturned by the Whole Woman’s Health decision. The impact, he said, was substantial. The abortion rate [decreased by 13 percent](#) in the year after the law was implemented, and the second-trimester abortion rate [rose by 27 percent](#). “It’s clear from this research and from interviews we did with women in Texas that many women were delayed in obtaining their abortion because of the law,” Grossman said. “From a public health perspective, an increase in second-trimester abortions is very concerning because it’s a procedure with more complications.”

More clinic closures and new barriers to access will only increase the gulf between women who can obtain a legal abortion and those who face a choice between carrying an unwanted pregnancy to term or turning to illegal means. Poor women account for a disproportionate share of abortion patients. [According to Guttmacher data](#), in 2014, three-quarters of abortion patients were low-income: Nearly half lived below the federal poverty line, and just over a quarter had incomes between 100 percent and 199 percent of the poverty threshold. Fifty-three percent of patients paid for their abortion procedure out-of-pocket.

An abortion is a significant expense for patients who pay out-of-pocket, particularly if they have to travel to a clinic or take time off work. [One study of 639 women at six geographically diverse health care facilities found](#) that, excluding women who had no out-of-pocket costs, the average cost for a first-trimester abortion was \$397, and the average cost for a second-trimester abortion was \$854. Two-thirds of patients in the study reported that they incurred additional costs for transportation, and more than one-quarter reported lost wages. To cover these expenses, some women reported that they had to forgo or delay paying bills (30 percent), buying food (16 percent) or paying rent (14 percent).

Previous studies on the impact of abortion restrictions show that many women go to great lengths to obtain abortions. [A study of Utah’s 72-hour waiting-period requirement found](#) that although the law resulted in additional costs and logistical problems for those seeking an abortion, few ultimately decided against the procedure. And although [it’s hard to quantitatively measure self-induced abortions](#), there is [some evidence](#) that Google searches related to self-induced abortion techniques have risen over the past few years.

As the states continue to grapple with abortion restrictions, President Obama will leave behind one potential barrier to additional limits on the procedure: [a federal judiciary full of Democratic appointees](#). “After the Supreme Court’s decision in June, the lower courts will be the ones deciding how that ruling is interpreted,” Hill said.

But for abortion-rights advocates who were hoping to gain momentum after the Supreme Court decision in June, Trump’s win is a definite loss. “It’s more and more difficult for women to access abortion services, especially rural women and low-income women,” Nash said, “and we certainly don’t have reason to believe it will get easier under this new administration.”

*Amelia Thomson-DeVeaux is a writer and reporter living in Washington, D.C. [@ameliatd](#)*

Filed under [Abortion](#), [Donald Trump](#), [Mike Pence](#), [Supreme Court](#)

## RECOMMENDED

- [The World’s Best Men’s Doubles Player Is American. Too Bad He Doesn’t Want To Play Doubles](#)
- [Dwight Howard Has Transformed The Hawks](#)
- [History Suggests The Democrats Won’t Stay In the Wilderness](#)

Get more FiveThirtyEight



Never miss the best of FiveThirtyEight.

[Subscribe to the FiveThirtyEight Newsletter](#)