

We May End Up Living in Three Americas if Roe v. Wade Is Decimated

Mary Ziegler 2/17/2022

In 2019 a wave of anti-abortion laws swept this country — a common enough event in the United States, where hundreds of such laws have passed during the last decade. But these grabbed the public’s attention in a way many others hadn’t. Georgia banned abortion after about six weeks of pregnancy, or about two weeks after a missed menstrual period. Ohio, Mississippi, Louisiana and Kentucky did the same, while Missouri banned the procedure at eight weeks. Alabama went the furthest, banning virtually all abortions in the state.

Though most of these laws were quickly blocked by the courts — they were obviously unconstitutional under Roe v. Wade — the backlash to their passing was intense, especially in Georgia, a major hub of film and television production. [Boycotts were threatened](#). [Netflix and Disney spoke out](#). The actress Alyssa Milano even tried to get a “[Lysistrata](#)”-style [sex strike](#) off the ground.

Three years later, American reproductive rights are on an even bleaker trajectory. A Supreme Court decision that’s expected to come down this summer is likely to strike down Roe v. Wade, either in deed or in word, making it possible for states with anti-abortion leadership to ban the procedure altogether.

It might seem curious, then, that legislators in some conservative-leaning states are spending these months before the likely downfall of Roe working to pass *less* extreme abortion measures than they did in 2019. Now seems like the time for anti-abortion legislators to go for broke. The fact that some of them are pursuing a different strategy offers clues about what a post-Roe America could look like, and how that landscape could be more complex — and less predetermined — than some Americans had assumed.

One of this year’s unmistakable trends in anti-abortion legislation is the 15-week ban. Legislators in [Arizona](#), [Florida](#) and [West Virginia](#) are now considering bills — which, as the name suggests, would ban abortion after 15 weeks of pregnancy, in violation of Roe. At first blush, it might seem these states are simply copying the Mississippi law that the Supreme Court seems likely to uphold this summer, in [Dobbs v. Jackson Women’s Health Organization](#). But why would they hold back now, rather than try to get more draconian legislation through their legislatures? Florida even considered a six-week ban in recent months but did [not end up acting on it](#). What is going on?

The answer is that 15-week bans are a way for Republicans to test public reaction in states that are still somewhat politically contested. Arizona has two [Democratic senators](#) and went for Joe Biden [in 2020](#). Elections in Florida have been decided by a [handful of votes](#). Their Republican

governors might worry that if they go too far, they might trigger a backlash that could threaten their hold on power. Among the political realities at play: Some battleground states have constitutions that have been interpreted to [protect abortion](#), while in others a majority of people likely [oppose criminalizing the procedure](#).

Fifteen-week bans are a trial balloon to see what voters will tolerate — and they may end up being a step toward more bans on abortion from the moment of fertilization. You can bet these lawmakers will be watching the public reaction to the Dobbs decision this summer. If the reaction is relatively muted — as it has been, in much of the country, to Texas’s six-week abortion ban, which has now been in effect for nearly six months — they likely will keep pushing more sweeping laws, until, perhaps, they reach an absolute ban. Conversely, if enough people revolt at the destruction of abortion rights, lawmakers in states like Florida may not feel as comfortable pushing further.

This raises the possibility that, at least for a time after Roe is decimated, there could be not two Americas when it comes to abortion, but three: one in which almost any abortion is a crime, one in which abortion is broadly available and one in which abortion is heavily restricted but not altogether unavailable.

At some point that third America, if it comes to be, also will be threatened. Because after Roe is gone, leaders in the national anti-abortion movement will push for abortion to be banned from the moment of fertilization. The movement’s ultimate goal has always been the legal recognition of [fetal personhood](#), which would functionally ban abortion across the nation. That would never be possible through the democratic process, but the anti-abortion movement is now betting that it might be through the Supreme Court, with its new conservative supermajority. For decades, anti-abortion leaders have downplayed the fetal personhood goal because doing so made it easier to win public support for their cause, help Republicans get elected and reassure Supreme Court justices anxious about [public backlash](#). But with the makeup of this court — which will not shift once President Biden replaces the retiring Justice Stephen Breyer — they could well get their wish.

In the meantime, the anti-abortion movement will want to score as many wins as possible in red and purple states, hoping that 15-week bans will eventually lead to outlawing virtually all abortions.

The recent rash of anti-abortion laws reflects the uncertainty of America’s future. The writing may be on the wall for Roe v. Wade, but when it comes to what happens next, the public might still have a say.

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