



# Policy Backgrounder: Abortion

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## National Debate

The U.S. Supreme Court in June of 2022 ruled that the federal constitution doesn't confer any right to abortion and that whether to allow the procedure or not should therefore be left up to each state. The decision overturned the landmark 1973 Roe v. Wade decision that had prevented abortion bans for decades. [The ruling](#) in a case called Dobbs v. Jackson from Mississippi, which had banned abortions after 15 weeks of pregnancy, led to adoption of abortion restrictions in several states including Florida. The ruling also overturned the 1992 decision in Planned Parenthood v. Casey, which upheld Roe. Writing for the majority, Justice Samuel Alito, called the Roe decision "egregiously wrong and on a collision course with the Constitution from the day it was decided." The vote to uphold the Mississippi ban was 6-3, but the vote to overturn Roe was actually 5-4, with Justices Clarence Thomas, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett joining Alito's opinion. Chief Justice John Roberts wrote a separate opinion, agreeing to uphold the Mississippi law, but arguing the court shouldn't have made a decision on the broader issue of Roe v. Wade. The three liberal justices on the court, Stephen Breyer, Sonia Sotomayor, and Elena Kagan, dissented.

## State Laws

In 2022, before the Dobbs ruling, Florida lawmakers passed and Gov. Ron DeSantis signed into law legislation that outlaws abortions in Florida after 15 weeks of pregnancy, with no exceptions for rape, incest, or human trafficking. Prior to the 15-week ban, the state prohibited abortions at 24 weeks. The measure, passed as [HB 5](#), offered two exceptions, allowing for abortions in extreme cases of serious medical emergencies affecting the mother or in the presence of fatal fetal abnormalities. The exceptions required two separate physicians to certify in writing that a termination of a pregnancy was necessary to save the pregnant woman's life. The law also included other pregnancy initiatives, such as requiring a tobacco use prevention program and providing \$1.6 million in funding for fetal and infant mortality review committees. Democrats and reproductive rights groups [opposed the measure](#), calling the provisions dangerous and another roadblock to the medical procedure. Meanwhile, many [religious groups expressed their support](#). The law took effect on July 1, 2022.

In 2023, following the U.S. Supreme Court's decision in the Dobbs case, the Legislature and governor agreed to a new ban that prohibits doctors from performing most abortions beyond six weeks of pregnancy in Florida. Passed as [SB 300](#), supporters called the new law the "Heartbeat Protection Act." The law makes exceptions in cases of rape, incest, human trafficking, fatal fetal abnormalities, and if the mother is at risk of severe injury or death. To



qualify for the exception, the measure requires pregnant women to prove they're a victim of rape, incest, or human trafficking by producing a police report or other evidence, in which case it would allow abortions up to 15 weeks. It passed easily in the House and Senate, in which the Republican party held supermajorities in both chambers. The bill also included a \$25 million annual appropriation to expand services provided by state-supported, faith-based pregnancy centers, including clothing, car seats, diapers, and counseling, but the requirement that the centers be run by faith-based organizations drew criticism. Democrats voted in opposition, along with seven Republican members, while protests took place inside and outside the Capitol. The six-week ban, however, was put on hold pending the outcome of a legal challenge to the previously-passed 15-week ban (see below).

Advocates for abortion rights in Florida also launched a campaign seeking to get protections for the procedure into the state constitution. If successful, the [proposed constitutional amendment](#) would be on the 2024 ballot for Florida voters to decide. Constitutional amendments must be approved with a 60% majority vote in the General Election to be added to the constitution. The Florida Supreme Court must also OK the ballot language.

## Legal Challenges



Since 1989, the Florida Supreme Court has held that Article 1, Section 23 of the Florida Constitution protects access to abortion.

In January of 2023, the [Florida Supreme Court agreed to take up a lawsuit](#)

challenging the state's 15-week abortion ban but denied a motion to temporarily block the law while litigation continues. The [lawsuit](#), filed by the American Civil Liberties Union of Florida, Planned Parenthood, multiple abortion providers, and a physician, argues [in the case](#) that the 2022 law violates the state Constitution's right to privacy clause.

Other state lawsuits have also challenged the 15-week abortion ban, including [one filed in circuit court in Miami](#) by several faith leaders [alleging the new restriction violates the constitution](#) by infringing on the right to free speech and arguing the ban violates the [Florida Religious Freedom Restoration Act of 1998](#), which protects against laws that "substantially burden a person's exercise of religion." Another [legal challenge was filed in Leon County by a Palm Beach County synagogue](#), claiming the state law prohibiting most abortions after 15 weeks of pregnancy violates the rights of followers of Jewish religious teachings, which say abortion is required if necessary to protect a woman's health, among other reasons. The lawsuit was brought by Congregation L'Dor Va-Dor of Boynton Beach.

