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# **Right to abortion, (United States): Supreme Court Has Made It “Worse Than Before Roe”**

Monday 4 July 2022, by [SHEPPARD Barry](#) (Date first published: 3 July 2022).

**The full implications of the overthrow of *Roe vs Wade* are just beginning to be understood.**

A long article in the *New York Times* explained how it has upended women’s lives who have lived with the right to abortion, especially for those who grew up in the last 50 years after *Roe* was enacted.

It was always there in women’s consciousness if it was needed, and shaped their lives.

Some technical advances since, such as the “morning after” pill and medicine for chemical abortions have become widely used. These are now being targeted by anti-abortion activists and politicians in Republican controlled legislators.

Medicines for chemical abortions can be sent by mail to women, who will be criminalized for just ordering them. Missouri recently proposed classifying the delivery or shipment of these pills as drug trafficking.

Louisiana just passed a law that makes mailing abortion pills from anywhere to a resident of Louisiana a criminal offense, punishable by six month’s imprisonment.

An article in the current *New Yorker* magazine by staff writer Jia Tolentino is titled “We’re Not Going Back to the Time Before Roe. We’re Going Somewhere Worse”.

The subtitle is: “We are entering an era not just of unsafe abortions but of the widespread criminalization of pregnancy.”

“We have entered an era ... of widespread state surveillance and criminalization — of pregnant women, but also of doctors and pharmacists and clinic staffers and volunteers and family members, of anyone who comes into meaningful contact with a pregnancy that does not end in a healthy birth...” she writes.

“In the states where abortion has been or will soon be banned, any pregnancy lost past an early cutoff can now be potentially investigated as a crime.

“Search histories, browsing histories, text messages, location data [of anyone who visited Planned Parenthood for example], payment date, information from [menstrual] period tracking apps — prosecutors can examine all of it if they believe that the loss of a pregnancy may have been deliberate.

“Even if prosecutors fail to prove that an abortion took place, those who are investigated will be punished by the process, liable for whatever might be found.”

This is a result of the scientific and technical changes that have developed since *Roe* that makes this (and other mass surveillance) possible.

“Some states have already laid the groundwork for establishing government data bases of pregnant women likely to seek abortions. Last year Arkansas passed a law called ‘Every Mom Matters Act’, which requires women considering abortion to call a state hotline and requires abortion providers to register all patients in a database with a unique I.D.

Since then, six other states have implemented or proposed similar laws.

“The hotlines are provided by crisis pregnancy centers: typically Christian organizations, many of which masquerade as abortion clinics in the U.S., provide no health care and passionately counsel women against abortion.”

Unlike hospitals these centers are not required to protect the privacy of those who come to them. “The data that crisis pregnancy centers are capable of collecting — names, locations, family details, sexual and medical histories, non-diagnostic ultrasound images — can now be deployed against those who seek help.”

She writes, “A reporter for Vice magazine recently spent a mere hundred and sixty dollars to purchase a data set on visits to more than six hundred Planned Parenthood clinics. Brokers sell data that make it possible to track journeys to and from any location — say and abortion clinic in another state.

The abortion issue, like others, is tied into systematic, institutional racism. The states that ban abortions or soon will are also controlled by the openly racist Republicans.

Tolentino looks at how Black women have been treated for years and decades.

An example she cites: “Five years ago, Latice Fisher, Black mother of three from Mississippi, who made eleven dollars an hour as a police-radio dispatcher, experienced a stillbirth, at roughly thirty-six weeks, at home.

“When questioned, she acknowledged that she didn’t want more kids. She surrendered her phone to an investigator, who scraped it for search data and found such terms regarding mifepristone and misoprostol, i.e. abortion pills....

“There was no evidence that Latice Fisher took an abortion pill. She maintained that she had experienced a stillbirth .... Nonetheless, she was charged with second-degree murder and held for several weeks on a hundred-thousand-dollar bond.”

In this case, a progressive district attorney provided a new grand jury with proof that a discredited, antiquated test was used to “prove that her baby was born alive” and charges were dropped.

The ordeal took more than three years.

“Many of those who support the right to abortion have tacitly accepted that poor and minority women in conservative states lost access to abortion long before this Supreme Court decision, and have quietly hoped that the thousands of women facing arrest after pregnancy, miscarriage, stillbirth, or even healthy deliveries were unfortunate outliers, and as the columnist Rebecca Traister noted last month, the chasm between the impervious class and everyone else is growing every day.”

Miscarriages and abortions often are not clinically distinguishable. Because of this, states where abortion is banned often charge women who have miscarriages with the crime of abortion.

“The Stream, a conservative Christian publication recently advocated mandatory psychiatric custody for women who get abortions....

“The theological concept of fetal personhood — the idea that, from the moment of conception, and embryo or fetus is a full human being ... is a foundational doctrine of the anti-abortion movement.

“The legal ramifications of this idea — including the possible classification of IVFs and IUDs ... as instruments of murder are unhinged and much harsher than what even the average anti-abortion American is currently willing to embrace....”

IVF refers in In Vitro Fertilization of a woman’s egg, that produces more fertilized eggs than can be implanted in the woman, and the others are destroyed.

IUDs are Intrauterine Devices that prevent a fertilized egg from implanting in the uterus, a form of birth control used well before Roe. All forms of contraception are being possibly targeted if cases are brought before the Court. Justices Thomas and Barrett have already proposed that.

“Fetal personhood laws have passed in Georgia and Alabama, and they are no longer likely to be found unconstitutional. Such laws justify a full-scale criminalization of pregnancy, whereby women can be arrested, detained, and otherwise placed under state intervention for taking actions perceived to be potentially harmful to a fetus.

“This approach has been slowly tested, on low-income minorities in particular, for the past four decades. National Advocates for Pregnant Women — the organization that has provided legal defense for for most cases mentioned in this article — has documented almost eighteen hundred cases, from 1973 to 2020, of prosecutions or forced interventions related to pregnancy; this is likely an undercount ....

“Most pregnancy-related prosecutions, so far, have revolved around drug use. Women who used drugs while pregnant, or sought treatment for drug use during pregnancy, have been charged with child abuse, child neglect, distribution of drugs to a minor, assault with a deadly weapon, manslaughter, and homicide.

“In 2020, law enforcement in Alabama investigated a woman named Kim Black for chemical endangerment of a child after she told delivery-room staff that she had been taking prescribed hydrocodine for pain management.”

Tolentino cites other cases and makes more arguments on how in Republican-controlled states they are driving to make things worse than before Roe.

She concludes: “Today the [anti-abortion] movement is conservative, evangelical, and absolutely single-minded, populated overwhelmingly by people who, although they may embrace foster care, adoption and various forms of private ministry, show no interest in pushing for public, structural support for human life once it’s left the womb.

“The scholar Mary Ziegler recently noted that today’s anti-abortion advocates see the ‘strategies of earlier decades as apologetic, cowardly and counter-productive.’ During the past four years, eleven states have passed abortion bans that contain no exceptions for rape or incest, a previously unthinkable extreme.

“In Texas already, children aged nine, ten and eleven, who don’t yet understand what sex and abuse are face forced pregnancy and childbirth after being raped.

“Women sitting in emergency rooms in the midst of miscarriages are being denied treatment for sepsis because their fetuses’ hearts haven’t yet stopped.

“People you will never hear of will spend the rest of their lives trying and failing, agonizingly, in this punitive country, to provide stability for a first or a fifth child they knew they were not equipped to care for.

“In the face of all this, there has been so much squeamishness, even in the pro-choice camp: a tone that casts abortion as an unfortunate necessity; an approach to messaging which values choice but devalues abortion care itself, which emphasizes reproductive rights rather than reproductive justice.

“That approach has landed us here. We are not going back to the pre-Roe era, and we should not want to go back to the era that succeeded it, which was less bitter than the present but never good enough.

“We should demand more, and we will have to. We will need to be full-throated and unconditional about abortion rights as a necessary precondition to justice and equal rights if we want to even have a chance of someday getting somewhere better.”

**Barry Sheppard**

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