

# WHAT WOULD HAPPEN IN WISCONSIN IF ROE V. WADE FALLS?

Consequences of the Upcoming Dobbs v. Jackson Women's Health Organization Supreme Court Decision

May 3, 2022



This summer, the U.S. Supreme Court will decide whether a Mississippi law that bans abortion at 15 weeks' gestation is legal. This case is called *Dobbs v. Jackson Women's Health*. While the case focuses on a 15-week ban in one state, the decision could overturn *Roe v. Wade*. There are two likely outcomes:

1. The Court could overturn *Roe* all together, which would mean laws in each individual state would determine if abortion is legal.
2. The Court could leave *Roe* in place but allow Mississippi's ban to go into effect, which would weaken *Roe* and permit states to further restrict access to abortion.

A third, but unlikely, outcome is that the Court could block Mississippi's 15-week ban, preserving *Roe* and the status quo.

What would these outcomes mean for Wisconsin?

## Current Wisconsin Law and Potential Consequences of the Court's Decision

Abortion restrictions in Wisconsin started with an [1849 law](#) that made performing an abortion a crime. Under this law, anyone who performed an abortion, even in the case of rape, incest, or health of the pregnant person, could face felony charges.

Abortion provision remained illegal in Wisconsin until 1973, when the U.S. Supreme Court case *Roe v. Wade* established that pregnant people have a right to abortion before fetal viability (now around 24 weeks). This decision meant that Wisconsin could no longer enforce the 1849 criminal law.

**If *Roe* is overturned** this summer, abortion access will be determined at the state level, potentially putting Wisconsin's 1849 law back into effect. It is very likely that lawsuits will arise to determine whether the 1849 ban is enforceable. But in the meantime, Wisconsin's four clinics will no longer provide services.

*Consequences:* Having no abortion services in the state would have serious repercussions for Wisconsinites. National research studies, including those conducted with Wisconsin residents, have found profound negative outcomes for people unable to obtain desired abortion care.<sup>1</sup> People who are denied an abortion and go on to give birth are more likely to stay in abusive relationships, less likely to achieve aspirational life goals, less likely to complete postsecondary education, and more likely to experience persistent adverse economic consequences compared to people who receive a desired abortion.<sup>1</sup> Abortion bans would also lead to an increase in pregnancy-related mortality, especially among Black people and other marginalized communities.<sup>2</sup>

**If *Roe* remains intact but Mississippi's 15-week ban is allowed to go into effect**, Wisconsin's abortion clinics will probably continue to provide abortion services. Wisconsin legislators will very likely propose bills to ban abortion earlier in pregnancy, and these bans and other laws could be passed to further restrict abortion access.

*Consequences:* Early gestational bans and other new abortion restrictions would significantly decrease Wisconsinites' ability to access desired abortion care. Some people are unable to recognize that they are pregnant until after 15 weeks' gestation, including those who either do not experience pregnancy symptoms or who have health conditions with similar symptoms to pregnancy.<sup>3,4</sup> People who experience delays in pregnancy recognition would be forced to travel to states with later gestational limits to obtain abortion care, or be unable to obtain abortion care and be forced to carry their pregnancy to term.<sup>3</sup> Further, gestational age bans disproportionately affect people of color and people living on low incomes, who encounter structural barriers that reduce their ability to access necessary funds, transportation, and childcare to obtain abortion care.<sup>3,4</sup> Finally, any new abortion restrictions in Wisconsin would work in tandem with many other current restrictions (for example, unnecessary mandatory waiting periods<sup>5</sup>), which would make abortion care even more difficult to access.

Even when abortion is not completely outlawed, many residents may *believe* it is unavailable due to confusing media messaging, poor information sources, or lack of legal clarity.<sup>6,7</sup> Thus, even if abortion services remain available after the *Dobbs* Supreme Court decision, at least some Wisconsinites might not know that they can obtain desired abortion services.

**If the *Roe* and the status quo remains in place**, Wisconsin's abortion clinics will continue to provide abortion care to patients.

*Consequences:* In Wisconsin, current laws make abortion difficult if not impossible to obtain for many people, especially for people living on low incomes and in rural communities. Current obstacles include mandated waiting periods, medically unnecessary multiple visits to a clinic, telehealth bans, and the need to raise significant out-of-pocket funds due to insurance-coverage prohibitions.<sup>5</sup> In the past decade, as the Wisconsin legislature has implemented an array of laws aimed at restricting abortion access, 40% of our state's abortion clinics have closed,<sup>8</sup> which has further limited abortion access. Researchers documented significant increases in birth rates in those Wisconsin counties which experienced the biggest increases in distance to an abortion clinic, suggesting that people in our state are already being forced to carry unwanted pregnancies to term.<sup>8</sup>

## **If Abortion Access Is Eliminated or Further Reduced, What Will Wisconsinites Do?**

### **Some Wisconsinites will travel out of state.**

Wisconsin borders at least two "haven" states—Illinois and Minnesota—where, due to state law, abortion will continue to be legal even if *Roe* is overturned. A considerable number of Wisconsin residents already travel to Chicago, IL, Minneapolis/Saint Paul, MN, and Duluth, MN for desired abortion care.<sup>9</sup> In fact, almost one in five (18%) Wisconsin residents who obtain abortion care travel out of state for services.<sup>9</sup> For some of these people, out-of-state clinics are simply closer to where they live, particularly because there are so few abortion healthcare facilities in Wisconsin. For others, out-of-state travel is due to the restrictions that already make abortions in Wisconsin difficult to obtain.<sup>9</sup>

However, some people are unable to travel for care due to lack of funds, transportation, and/or childcare.<sup>10</sup> Even within Wisconsin, increases in distance to abortion healthcare facilities due to clinic closures have been associated with more births.<sup>8</sup>

### **Some Wisconsinites will manage their own abortions at home.**

Self-managed abortion refers to when a person performs their own abortion outside of the formal healthcare system. People have been managing their own abortions for millennia. While many self-managed abortions before *Roe* could be unsafe, there are now safe and effective FDA-approved medication abortion methods (using misoprostol and mifepristone).<sup>11</sup> These medications are currently dispensed by licensed abortion healthcare providers nationally, including in Wisconsin. Research suggests that people are also turning to sources outside of the formal healthcare system to obtain these medications.<sup>12,13</sup> For example, organizations like Aid Access (<https://aidaccess.org/en/>)<sup>14</sup> provide access to medication abortion by mail. More people will do so if abortion is further restricted or criminalized.<sup>14</sup>

While receiving and using medication abortion by mail can be highly effective, safe,<sup>15</sup> and affordable,<sup>16</sup> it is not legally sanctioned in Wisconsin. While the 1849 state law does not make a person who self-manages their abortion a criminal, the organization or person providing self-managed abortion products may be at risk for criminal or legal retribution. Moreover, due to lack of knowledge, funds, and other factors, some people will attempt to terminate their pregnancies using methods that are not clinically proven and are potentially harmful, including plants and herbs, toxic substances, intrauterine trauma, or physical trauma.<sup>14</sup> Thus, while safe self-managed techniques are available, both current and pending abortion restrictions in Wisconsin could lead pregnant people to consider use of illegal or potentially dangerous ways to terminate their pregnancies.

## **Summary**

Current state-based restrictions already make it difficult for Wisconsinites to obtain desired abortion care. Evidence indicates that by overturning or weakening *Roe v. Wade*, the upcoming *Dobbs* Supreme Court decision could make accessing wanted abortion care even more difficult if not impossible—especially for rural Wisconsinites, Wisconsinites of color, and those living on low incomes.

## **Suggested Citation**

UW CORE. What would happen in Wisconsin if *Roe v. Wade* falls? Consequences of the upcoming *Dobbs vs. Jackson Women's Health Organization* Supreme Court decision. Madison, WI: University of Wisconsin Collaborative for Reproductive Equity. 2022.

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