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Red States Aren't Waiting for the Supreme Court's Roe Decision to Push New Abortion Bans



Anti-abortion activists counter-demonstrate as abortion rights activists participate in a "flash-mob" demonstration outside of the U.S. Supreme Court on Jan. 22, 2022 in Washington, D.C.

Alex Edelman—AFP/Getty Images

BY [ABIGAIL ABRAMS](#)

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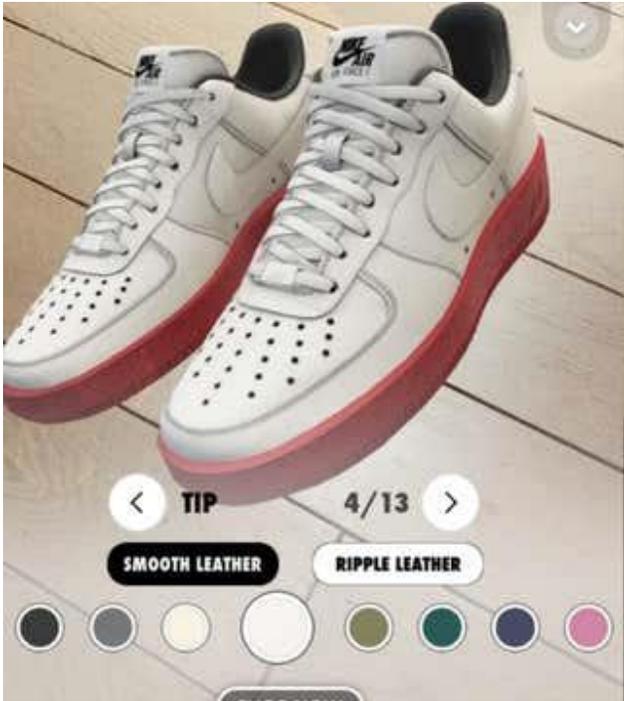
s the Supreme Court weighs the high-profile case that [could unwind *Roe v. Wade*](#)—and, with it, the Constitutional right to abortion—conservative state lawmakers are introducing a wave of new bills aimed at limiting abortion at the state level. While several states have introduced bills mimicking Texas’ [controversial six-week abortion ban](#), at least three more—Florida, Arizona and West Virginia—are considering laws that would ban abortion after 15 weeks of pregnancy, modeled on the Mississippi law [at the center of the Supreme Court case](#).

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These bills directly violate the so-called viability standard set by *Roe v. Wade*, which states that women have the constitutional right to end pregnancies until the fetus is viable. But [proponents are betting](#) that the Supreme Court’s decision, which is expected before the end of June, will allow Mississippi’s 15-week ban to stand. They are arguing that the 15-week ban is a more reasonable alternative to the extreme, Texas-style laws that curtail access to abortion after about just six weeks.

“I believe that we have a unique opportunity in the fact that the Supreme Court is considering 15 weeks right now, and this would allow Florida to save as many babies as possible as soon as possible after that decision is made,” Florida state Rep. Erin Grall, the lead sponsor of her state’s 15-week ban, said during a House subcommittee [hearing](#) on Jan. 19.

If state lawmakers in Florida, Arizona and West Virginia pass these 15-week abortion bans, they will likely face immediate court challenges. But if the Supreme Court decision allows Mississippi's law to stand, the laws would likely then be enforceable.



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Abortion rights advocates say the push to pass 15-week abortion bans is a political move to enact significant restrictions while the public is distracted by Texas and the Supreme Court's coming decision.

“The goal of the anti-abortion politicians who are passing these laws is not to ban abortion at 15 weeks,” says Julie Rikelman, litigation director at the Center for Reproductive Rights, who argued the Mississippi case before the Supreme Court in December. “The goal is to eliminate access to abortion entirely, to make it completely illegal—criminal—for people to be able to make this decision for themselves.”

A Supreme Court-inspired strategy

State lawmakers generally consider multiple bills aimed at curtailing abortion during every legislative session. And while it's been relatively common for legislators to introduce measures banning abortion both early in pregnancy and later in pregnancy such as at 20 weeks, few states had previously focused on 15 weeks as a cut-off point. Before this year, Mississippi and Louisiana were outliers for their laws prohibiting abortion after the point of 15 weeks.

Republican lawmakers introducing the 15-week bills this term say they are doing so specifically in light of the pending Supreme Court decision. The idea is that if the justices decide to allow the Mississippi law to stand, then these states' 15-week abortion bans would already be in place.

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In West Virginia, the bill's lead sponsor Republican Del. Ruth Rowan, told [West Virginia Public Broadcasting](#), "we need to start somewhere, and in saying that, Mississippi's done it and we can do it too." Another Republican Del. Kayla Kessinger, said that the bill was a direct preparation for the coming Supreme Court ruling. "States have a vested interest in determining what abortion should look like, when abortion should be available," she told [West Virginia MetroNews](#). "So why are we doing it now? We want the Supreme Court to know Mississippi isn't the only state that wants to tackle this issue."

In Arizona and Florida, lawmakers have introduced both a 15-week ban and copycat bill of Texas' SB 8, which bans abortion around six weeks and

financially incentivizes private citizens to enforce it by suing anyone who they think has helped someone get an abortion after that point. In Florida, the 15-week bill has momentum in the state legislature.

Advocates on both sides of the abortion issue have noted that the bills seem opportunistic rather than driven by ideology.

“They’re trying to take the safest route politically possible instead of going and doing the right thing, which I believe is eliminating abortion as much as possible as early as possible in pregnancy, and hopefully, really from the moment of conception on,” says Andrew Shirvell, founder and executive director of Florida Voice for the Unborn.

Shirvell strongly prefers the Texas copycat bill that he hoped would “cripple the abortion industry” in Florida, but that legislation does not have a companion bill in the Florida Senate, so will not likely pass this term. In recent years, Shirvell says he has been disappointed that Florida has not adopted more restrictions on abortion. But the Supreme Court “gave Florida legislators some more momentum in terms of trying to ban later term abortions here in Florida,” he says.

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On that point, abortion rights advocates agree. “I think it is politically motivated,” says Laura Goodhue, executive director of the Florida Alliance of Planned Parenthood Affiliates. Florida currently allows abortion up to 24 weeks, and she noted that one reason the state has enacted fewer restrictions than others around it is that Florida has a strict right to privacy in its state constitution.

“However, the Florida State Supreme Court has also seen a turnover in judges that may not necessarily uphold that strong right to privacy. So I believe that politicians in Florida are trying to push that limit,” Goodhue says.

A stepping stone

Proponents of the 15-week bans are presenting them as a middle ground between more extreme measures and the current state of access.

In Florida, conservative lawmakers noted that people would still be able to get abortions until 15 weeks or past 15 weeks if the pregnant person’s life is at risk or the fetus has a fatal abnormality. None of the 15-week bills that have been introduced make exceptions for pregnancies resulting from rape or incest.

Shirvell says the Florida bill would “save up to 5,000 unborn babies every year from being aborted and that’s a very positive thing.” But, he said, the bill won’t have as significant an impact as he would like because the majority of abortions take place during the first trimester. “The 15-week abortion ban bill will not save the vast majority of unborn children in Florida,” he says.

Gov. Ron DeSantis told reporters earlier this month that a 15-week ban “makes a lot of sense” and that while he had not yet looked at this particular bill, he would likely sign it. “Obviously I’m supportive of 15 weeks. I mean, I think that’s very reasonable and I think that’s very consistent with, you know, being supportive of protecting life,” he [told reporters](#) on Jan. 12.

This rang alarm bells for abortion rights supporters. In December, Rikelman told the Supreme Court that if the justices eliminated the viability standard and allowed Mississippi's 15-week law to stand it would open the door to states trying to ban abortion at many other stages too. Rikelman says this recent wave of new 15-week bans is in line with what she predicted.

"It's really not a compromise," she says. "It would just be devastating to the people who need access to abortion after 15 weeks."

'A domino effect'

Prohibiting abortion at 15 weeks would fundamentally reshape abortion access in any state, but in Florida, Arizona and West Virginia, where many people live in rural communities, it could have especially significant consequences.

"We know that whenever bans like the 15-week ban are enacted, they fall hardest on people of color, low income people, people living in rural areas, and young people—folks who are already marginalized by our health care system," says Katie Quinonez, executive director of Women's Health Center of West Virginia, the state's only abortion clinic.

West Virginia currently prohibits abortions after 20 weeks and requires patients to receive state-directed counseling and wait 24 hours before their abortion. For minors, their parents must be notified if they are getting an abortion.

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Many people who want an abortion have to delay their care because they need to raise or borrow the money, take time off work, arrange transportation, find child care and figure out other logistics before they can make it to a clinic, Quinonez says. Others might not know they are pregnant right away or experience a change in their circumstances and then need to overcome those hurdles.

Florida currently offers more access to abortion than most of the states surrounding it in the South. About 30% of patients at Planned Parenthood's Tallahassee and Jacksonville locations have been from out of state in the last few years, according to Goodhue, and Florida clinics have seen a large influx of patients from Texas following the Lone Star state's passage of SB 8 last fall.

"The space in between has so many restrictions with very few providers. So it really does impact the entire country," Goodhue says.

If West Virginia implements its ban, the [Guttmacher Institute](#), a research center that supports abortion rights, estimates the average one-way driving distance for someone seeking an abortion after 15 weeks would increase 59 miles or 90%. In Arizona, the driving distance would increase 282 miles or 2,459%, and in Florida, the distance would increase 570 miles or 4,443%.

"It's the people that have the means to travel to another state who get care, but then those states will also be inundated with appointments," Goodhue says.

This can create a "domino effect," Rikelman adds. When one state passes new restrictions, that often forces patients to wait longer to get an abortion, meaning they may need to travel to another state. And if

neighboring states see longer waiting lists, then residents there may also have to delay their abortions if appointments aren't available immediately. "The more states curtail access to abortion, the harder it becomes for people in the entire region to access it," Rikelman says. "Fifteen weeks is not the stopping point."

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