



BRIEF

United States' Foreign Policy Implications of Overturning *Roe v. Wade*

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INTRODUCTION

On June 24, 2022 the United States Supreme Court ruling on the case *Dobbs v. Jackson Women's Health Organization*¹ overturned the ruling from *Roe v. Wade* that the U.S. "constitution protected a woman's right to an abortion prior to the viability of the fetus."² Not only does this ruling enable restrictions on bodily autonomy and access to comprehensive healthcare — especially for people of color who can get pregnant — it may also embolden anti-abortion and anti-rights movements abroad, contribute to the global stigmatization of abortion, and cause confusion in foreign policy and international development spaces. To be clear, the ruling itself does not change U.S. foreign policy in terms of abortion; however, it has created global uncertainty over what this means for U.S. foreign policy, where and when abortion services can legally be provided, and what U.S. government partners are able to do, which can have serious consequences.

The aim of this brief is to provide some clarity on the global and foreign policy implications of the Supreme Court ruling, and present a few key recommendations on how to support bodily autonomy and access to comprehensive healthcare, including abortions for people who can get pregnant. For information focused on the U.S. domestic implications we recommend the following resources in Textbox 1.

TEXTBOX 1

Resources

- ➔ **U.S. Government Overall Information:** <https://reproductiverights.gov/>
- ➔ **Power to Decide- State by State Guide:**
<https://www.abortionfinder.org/abortion-guides-by-state>
- ➔ **Planned Parenthood- Bans off Our Bodies:**
<https://www.plannedparenthoodaction.org/rightfully-ours/bans-off-our-bodies>
- ➔ **Center for Reproductive Rights- After Roe Fell:**
<https://reproductiverights.org/after-roe-fell-abortion-laws-by-state/>

BACKGROUND

Roe v. Wade and Dobbs v. Jackson Women's Health Organization

It is important to first understand what *Roe v. Wade* was and what it was not. The January 22, 1973 *Roe v. Wade* ruling decided that the right to abortion falls under the purview of a constitutionally protected right, and made it so that state laws prohibiting abortions in the first trimester were no longer allowed.³ However, it was not a law that codified the right to access abortions in federal or state law. This means the overturning of the *Roe v. Wade* decision does not result in federal law making abortions illegal. What the *Dobbs* decision does is allow states to make and implement laws to ban abortion and criminalize it without any exceptions for rape, incest, or the life of the mother.⁴

Dobbs v. Jackson Women's Health Organization Decision states:

“The Constitution does not confer a right to abortions; *Roe* and *Casey* are overruled; and the authority to regulate abortions is returned to the people and their elected representatives.”



It is important to note that prior to *Dobbs* and currently, there are existing federal laws that restrict government funding for abortion,⁵ such as the 1973 Helms Amendment which remains in effect. The Helms Amendment is a legislative restriction that prohibits the use of U.S. foreign assistance funds to pay for abortions as a method of family planning.⁶ The Global Gag Rule, which blocked U.S. global health funding to organizations that provide, counsel, refer, or advocate for abortion, is not in effect since President Biden rescinded the policy through an Executive Order in January 2021 and the *Dobbs* decision has no bearing on that action. However, since the Global Gag Rule is still in the Foreign Assistance Act of 1961, it requires a permanent legislative repeal to ensure it does not continue to exist in statute. The *Dobbs* decision will not result in an expansion of global abortion restrictions; however, the decision opens the door for laws and policies to be written in the future which could further restrict abortions.

TEXTBOX 2:

Helms Amendment & Global Gag Rule

Helms Amendment:

(1): "None of the funds made available... may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions."⁷

This policy prohibits the use of U.S. foreign assistance funding supporting abortion around the world. Despite congressionally-permitted exceptions to Helms, in practice, the Helms Amendment essentially bans any U.S. funds for being used for anything related to abortion, including services, training, equipment, and sharing information about abortion.

Global Gag language

(not in effect):

The Global Gag Rule prevented foreign non-governmental organizations from using their own, non-U.S. government funds, to provide abortion services, information, counseling, or referrals.⁸

As the *Dobbs* ruling does not change federal law, it does not change current U.S. foreign policy positions, and U.S. foreign policy can continue to be implemented as it was before the *Dobbs* decision.^{9,10,11} It does not prohibit the Biden-Harris administration or Congress from making additional policy or funding changes to improve sexual and reproductive health and rights around the world through U.S. foreign policy and assistance. In actuality, the *Dobbs* decision underscores the need for U.S. government action to increase access to reproductive health services, including abortion. Because this decision may have a ripple effect around the world and increase the stigma and confusion about what is allowable under existing abortion restrictions, the U.S. government must do all that it can to mitigate the harm.

IMPACTS

The Lack of Access to Abortion and Sexual and Reproductive Health Care

While the Supreme Court decision does not change U.S. foreign policy on abortion, it does serve as a reminder that decades-old U.S. foreign policy funding restrictions are not aligned with best health care practices nor consistent with human rights and bodily autonomy principles. The World Health Organization (WHO) designates access to comprehensive abortion care as an essential health service¹² and affirms that, “abortion is a safe and non-complex healthcare intervention.”¹³ It defines unsafe abortion as “abortion when it is carried out by a person lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.”¹⁴ The 2022 WHO Abortion Care Guideline states that 45 percent of abortions globally are unsafe with 97 percent of all unsafe abortions taking place in lower income countries.¹⁵ As a result, every year about “4.7 - 13.2 percent of maternal deaths are from unsafe abortions”¹⁶ and about “7 million women per year receive hospital care due to complications from unsafe abortions.”¹⁷ Without access to safe abortions, maternal mortality rates may increase, especially for young girls who have not physically developed enough to safely carry a pregnancy to term or for women with underlying medical conditions.

Improving access to contraception is urgently needed but it does not solve the abortion access crisis. Contraception can reduce unintended pregnancies and therefore potentially unsafe abortions, and enable health systems to save hundreds of millions of dollars per year in post-abortion treatment costs. Those funds and resources could go towards comprehensive sexual and reproductive health services — including maternal and newborn health — investments that yield positive impacts across the board.¹⁸ However, all sexual and reproductive health services (abortion, maternal health care, and more) need to be protected, and access to medication abortion and telemedicine must be expanded.

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The lack of access to abortion has ripple effects throughout the lives of women who are forced to carry an unintended pregnancy — including economic consequences.¹⁹ Pregnant youth may be forced to get married or leave school with no options to continue their education, which could lead to a lifelong deficit in earnings. Access to abortion affects education, earnings, careers, and the subsequent life outcomes for their children.²⁰ Women may be more likely to experience poverty if they are forced to carry an unintended pregnancy to term and must stretch already scarce finances and household resources.²¹

Impacts of the Decision Globally

As the largest donor, the United States plays a significant role globally in family planning and reproductive health foreign aid. Confusion or shifts in U.S. policies can have considerable ripple effects on reproductive health and family planning programs in low income countries.²² According to a May 2022 Government Accountability Office report, family planning and reproductive health services were reduced as a result of the expansion of the Global Gag Rule, through the Trump-Pence administration's policy Protecting Life in Global Health Assistance (PLGHA).²³ Furthermore, the report found that "owing to confusion about the policy and fear of its reinstatement, some implementing partners that had accepted the PLGHA terms and conditions reduced their collaboration with partners that had declined them."²⁴ In an effort to not inadvertently lose U.S. funding, additional sexual and reproductive health services, such as emergency contraception and referrals for other types of family planning, were reduced even though they were not prohibited by law or policy.²⁵ These service cuts and delays decreased global access to sexual and reproductive health services and created a chilling effect. The *Dobbs* decision may create a similar chilling effect which may deter implementing partners from offering comprehensive family planning and reproductive health services and information as a result of the lack of clarity on U.S. policy.



Photo: Gayatri Malhotra/Unsplash

The *Roe* decision was an important legal landmark for abortion rights, bodily autonomy, and family planning around the world, and it had a domino effect. Various countries initially looked to the *Roe* decision when liberalizing their own policies and legislation expanding access to abortion care, such as Tunisia in 1973 and Cape Verde in 1986.²⁶ The overturning of *Roe* has the possibility of reverberations across the world and may embolden anti-abortion and anti-SRHR groups, policymakers, and courts abroad.

Long term, it is unclear how the ruling could enable federal laws or actions that further limit access to comprehensive SRHR in U.S. foreign assistance and foreign policy. However, it is important to acknowledge that the Supreme Court's ruling does not legally change the current global landscape and should not impact global programming on abortion. Organizations that receive U.S. assistance should still be able to operate per the status quo.

RECOMMENDATIONS

Although the *Dobbs* decision does not change U.S. foreign policy directly, steps can be taken to ensure that the decision does not exacerbate a chilling effect, and instead that U.S. foreign policy supports best healthcare practices.

BIDEN- HARRIS ADMINISTRATION

- The Biden-Harris administration and U.S. Agency for International Development (USAID) should immediately provide clear guidance to countries, implementing partners, and organizations that receive U.S. foreign assistance about what is permissible under the Helms Amendment and clarify that U.S. funding may support abortions performed when a person is pregnant as the result of rape, incest, or the life of the pregnant person is in danger.^{27,28}
 - ▶ The Biden-Harris administration and USAID should begin a proactive campaign to inform all foreign assistance recipients and subgrantees about their ability to provide counseling and information about abortion, where legal under local law, and to strengthen grantees' capacity to do so.
- The administration should continue to reiterate to partners that the *Dobbs* decision does not change U.S. foreign policy at this time and that the Global Gag Rule is not in effect.
- The Fiscal Year (FY) 24 and subsequent President's budget requests should call for the repeal of the Helms Amendment and other restrictions that undermine sexual and reproductive health care information, services, and rights. Additionally, budget requests should increase the amounts allotted for family planning and reproductive health accounts to meet the U.S.' fair share of funding.²⁹
- The U.S. should work in partnership across global spaces and forums to firmly push back against actions and rhetoric that restrict bodily autonomy.
- The U.S. should ensure that it is in compliance with international human rights laws and international treaty obligations as it relates to abortion.

U.S. CONGRESS

- Support \$1.74 billion for family planning and reproductive health to meet the U.S.' fair share of addressing the unmet need for family planning through the Congressional State, Foreign Operations, and Related Programs Appropriations bill.³⁰
- The final FY 23 Appropriations bill and future funding bills should remove the reiteration of the Helms Amendment and other restrictions which undermine sexual and reproductive health access and rights and include a permanent repeal of the Global Gag Rule.
- Pass the Abortion is Health Care Everywhere Act (AHCE) to repeal the Helms Amendment.
- Permanently repeal the Global Gag Rule, either through appropriations, as noted above or by passing the Global Health, Empowerment and Rights (HER) Act.

INTERNATIONAL DIPLOMATS

- Diplomats should continue supporting comprehensive SRHR services in bilateral and multilateral spaces, including abortion care, and discourage rhetoric that mirrors what is happening in the U.S or stigmatizes abortion.
- Diplomats should meet with civil society organizations to understand impacts and restrictions they are facing, and work to push back against restrictions to bodily autonomy and increases to push back against restrictions of abortion and bodily autonomy.

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ENDNOTES

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