



# Beyond Roe: Trigger Provisions



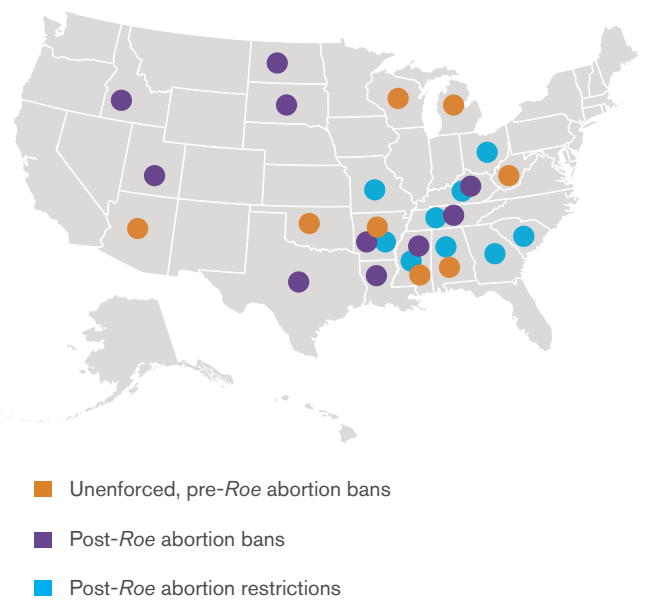
In the absence of *Roe v. Wade*, the legality of abortion in the United States would be turned over to individual states. Some states have enacted anti-abortion bans known as “trigger provisions.” While these laws are not currently in effect, they would be “triggered” by *Roe* being overturned and would take immediate effect.<sup>1</sup> With recent shifts in the makeup of the U.S. Supreme Court toward a larger conservative majority, additional states may seek to enact trigger provisions.

## PRE- AND POST-ROE BANS

In some states, anti-abortion laws have been on the books since before the *Roe* decision in 1973. While those laws are currently not in effect, they could be enforced if *Roe* is overturned by the Supreme Court. Similarly, some states passed abortion-related restrictions in the years that followed the 1973 Supreme Court decision that are currently blocked by courts, but they, too, could go into effect if *Roe* is no longer the law of the land.<sup>2</sup>

- 8 States retain unenforced, pre-*Roe* abortion bans
- 11 States have post-*Roe* trigger provisions that would ban nearly all abortions if *Roe* were to be overturned
- 9 States have unenforced, post-*Roe* restrictions that are currently blocked by courts

States with Trigger Provisions



## A Harmful Impact

While trigger provisions are obviously dangerous in the event of *Roe* being overturned, they are also harmful even with *Roe* still in effect. Individuals living in states with these laws who are not familiar with the legislative details can easily misinterpret them as outright and enforced abortion bans, potentially causing fear around seeking abortion care. Additionally, the threat of these bans alone contributes to the further stigmatization of abortions and those who have them.

The Supreme Court sent a strong message when it allowed an unconstitutional Texas’ abortion ban to take effect: *Roe*’s days may be numbered. The existence of trigger provisions poses a real threat to abortion access in a number of states across the country. There are approximately 36 million women and girls of reproductive age living in 26 states with trigger provisions who could lose abortion access entirely in the event of *Roe* being overturned, putting abortion care out of reach for nearly half of the women in the U.S. between the ages of 18-49.<sup>3</sup> Of those, over 12 million are women of color who already face racist and systemic barriers to healthcare.<sup>4\*</sup>

## TRIGGER PROVISIONS: STATES HOSTILE TO ABORTION RIGHTS

Even while these trigger provisions have yet to go into effect, states that have trigger provisions on the books are typically already hostile to abortion rights. Anti-abortion policymakers in Oklahoma, for example, passed a trigger ban and enacted a near-total abortion ban in 2021, in addition to enacting a bill that would take away the medical licenses of medical professionals who provide abortion care.<sup>5</sup> Furthermore, Oklahoma — having received an “E” in Population Institute’s 2020 *The State of Reproductive Health and Rights: 50-State Report Card* — has some of the most restrictive abortion bans on the books. Some of them include:

**Mandatory, state-directed counseling** that inaccurately asserts a link between breast cancer and abortion

**Mandatory 72 hours** waiting period between the state-directed counseling and abortion

**Private and public insurance policies** cover abortion only in cases of life endangerment, unless individuals purchase an optional rider at an additional cost

**Method bans**, including the use of telemedicine to administer medication abortion

**Parental involvement laws** where the parent of a minor must consent and be notified before an abortion is provided

**Mandatory ultrasound** requirement

**Unnecessary and burdensome standards** for abortion clinics related to their physical space, equipment, and staffing.<sup>6</sup>

## Legislative Solutions

In order to protect abortion access in the absence of *Roe*, individual states must codify the right to abortion. So far, two states and the District of Columbia have done this, protecting the right to abortion throughout pregnancy without state

interference, and 12 other states permit abortion prior to viability or when necessary to protect the life or health of the pregnant person.<sup>7</sup> Expanding these laws to more states will protect abortion access for all, whether *Roe* is in place or not, because *Roe* has never been enough.

**Trigger provisions alone are harmful; but when working in tandem with other restrictive policies, the barriers to accessing abortion can become insurmountable and deepen existing inequalities — even under *Roe*.**

### Endnotes

- 1 Guttmacher Institute. (2021, September 1). *Abortion Policy in the Absence of Roe*. <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>
- 2 Guttmacher Institute. (2021, September 1). *Abortion Policy in the Absence of Roe*. <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>
- 3 National Partnership for Women & Families and In Our Own Voice: National Black Women’s Reproductive Justice Agenda, & Planned Parenthood. (2021). (issue brief). *Red Alert: Abortion Access is at Stake for Nearly Half of U.S. Women and People Who Can Become Pregnant*. Washington, DC.
- 4 ibid
- 5 Spitzer, E., & Ellmann, N. (2021, September 21). *State Abortion Legislation in 2021*. Center for American Progress. <https://www.americanprogress.org/issues/women/reports/2021/09/21/503999/state-abortion-legislation-2021/>
- 6 Guttmacher Institute. (2021, January). *State facts About ABORTION: Oklahoma*. <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-oklahoma>.
- 7 Guttmacher Institute. (2021, September 1). *Abortion Policy in the Absence of Roe*. <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>

\*Population Institute (PI) is intentionally using women in statements where the data do not include the nonbinary people or trans men in the research. Otherwise, PI uses gender-inclusive language to include all individuals who may seek abortion services.