

# News From The States

## REPRODUCTIVE RIGHTS TODAY

Thanks for being here and [supporting our work](#).



By [Elisha Brown](#)



*Pennsylvania Medicaid only covers certain abortions, but providers sued over the ban in 2019.  
(Peter Dazeley/Getty Images)*

Pennsylvania's Supreme Court issued a ruling Monday that overturned a 1985 decision upholding a ban on most Medicaid-funded abortions.

The case will return to an appellate court, where the commonwealth's Department of Human Services has to prove it has a compelling interest in limiting publicly-funded abortion care, [Pennsylvania Capital-Star](#) reports. Abortion is only covered by the Pennsylvania Medicaid program if pregnancies stem from rape or incest, or if the mother's life is at risk.

**In a 3-2 ruling, the majority said the Medicaid ban is discriminatory and presumptively unconstitutional based on the state's Equal Rights Amendment.** (Justice Kevin

Dougherty concurred with the majority but said now wasn't the time to decide whether abortion is a fundamental right.)

Chief Justice Debra Todd and Justice Sallie Mundy, who dissented, said there wasn't a good reason to overturn precedent, according to the Capital-Star. Two other justices weren't involved in the case, because they joined the court after abortion providers sued Pennsylvania officials over the ban in 2019.

In the lead opinion, Justice Christine Donohue [wrote](#) that "the right to reproductive autonomy, like other privacy rights, is fundamental."

"Donohue found the exclusion of coverage for abortions discriminates against women who chose to exercise their fundamental right to reproductive autonomy and violates the Pennsylvania Constitution's protection against discrimination by the government," the Capital-Star reported. "In order to justify the exclusion, the state must show that it has a compelling government interest and that it is using the least restrictive means available to advance that interest, Donohue said."

But Donohue also wrote: "The government does not bear a constitutional obligation to provide medical care to the indigent, nor is the government required to financially support the exercise of a fundamental right, including a woman's exercise of her right to reproductive autonomy."

Yet choosing to provide such medical care obligates the state to "maintain neutrality so as not to intrude upon the constitutional right to full reproductive autonomy, which includes the right to terminate a pregnancy," the opinion reads.

**THE BEAT** *States Newsroom coverage*

## **U.S. Supreme Court to hear arguments in abortion pill case in March**



*The nation's highest court will consider a lawsuit challenging FDA approval of mifepristone, a key abortion pill.  
(Al Drago/Getty Images)*

U.S. Supreme Court justices are set to hear oral arguments March 26 in a case that could limit medication abortion access across the nation, [States Newsroom](#) reports.

Mifepristone and misoprostol are used in tandem to terminate first-trimester pregnancies and treat miscarriages up to 10 weeks' gestation. At issue is mifepristone, a drug approved by the federal government in 2000.

**Alliance for Hippocratic Medicine**, a group of anti-abortion doctors, sued the U.S. Food and Drug Administration in November 2022 over the medication. Plaintiffs asked U.S. District Judge Matthew Kacsmaryk to either revoke federal approval of the drug or reinstate its pre-2016 regulations.

Kacsmaryk ruled in favor of the plaintiffs' larger request in April 2023, a decision that was put on hold by the Supreme Court within a week so the appeals process could play out. In August, a three-judge panel on the **U.S. 5th Circuit Court of Appeals** determined that mifepristone's access should revert to older regulations. The Biden administration quickly appealed that ruling to the high court, which agreed to take up the case last month.

**If the conservative-leaning bench affirms the appellate court's ruling, mifepristone could only be used up to seven weeks' gestation. The pill would only be available in-person — patients would have to visit doctors' offices three times for medication abortions, among other changes.**

Top medical groups are asking the court to let mifepristone's current regulations stand. "For already vulnerable populations (particularly those living in areas with limited access to

OB/GYN care) the rollback approved by the Fifth Circuit promises to be especially devastating and to further perpetuate racial and socioeconomic inequalities,” several organizations wrote in a [brief](#).

**Alliance Defending Freedom**, the group representing the plaintiffs, is urging the court to “hold the FDA accountable and require the agency to reinstate its safety standards,” senior counsel Erin Hawley said in a statement released last week. ADF is also involved in a Supreme Court case over whether Idaho should allow emergency room doctors to provide life-saving abortions with protection from prosecution under the state’s abortion ban. The U.S. Department of Health and Human Services argues such emergency care is required by federal law.

---

## Montana high court asked to overturn AG’s rejection of abortion initiative



*The Montana Supreme Court in 1999 ruled that abortion is protected by state privacy tenets.  
(Eric Seidle/Daily Montanan)*

Montanans Securing Reproductive Rights, which is pushing to explicitly protect abortion access in the state, asked the state Supreme Court to overturn the attorney general’s office rejection of an abortion rights ballot initiative, [Daily Montanan](#) reports.

In a [memo](#) released Jan. 16, Deputy Solicitor General Brent Mead wrote that the initiative attempted to logroll multiple issues into one measure and limits the state’s ability to regulate abortion. **The proposal would halt government involvement in abortion before fetal viability and later if necessary to save a pregnant patient’s life.**

Raph Graybill, the lawyer representing the abortion rights group, [petitioned](#) the court last week, urging the justices to reverse the decision. “In any event, the A.G.’s role is to determine whether there is a single constitutional amendment in play, not to index its potential policy effects,” Graybill argued. **The attorney general's office has until Feb. 5 to respond.**

---

## Nebraska governor rallies abortion opponents against ballot petition



*Nebraska Gov. Jim Pillen speaks at the annual Walk for Life rally on Saturday, Jan. 27, 2024.  
(Aaron Sanderford/Nebraska Examiner)*

Republican Gov. Jim Pillen encouraged a crowd to organize against an abortion rights ballot measure during the annual Walk for Life, [Nebraska Examiner](#) reports. “Not all of us agree on everything,” Pillen said during the rally outside the State Capitol. “But we have to be together ... to win the ballot ... to make sure that we save as many babies growing in mothers’ wombs as possible,” he said.

**Sandy Danek, president of the state’s Right to Life group, said the proposed constitutional amendment could undo all the anti-abortion movement’s work in the state.** “We have to form a coalition like we have never done before,” Danek said. Nebraska passed a **12-week abortion ban** last year. Protect Our Rights, the group behind the abortion

rights petition, wants to restore access up to fetal viability. Supporters need roughly 120,000 signatures by July.

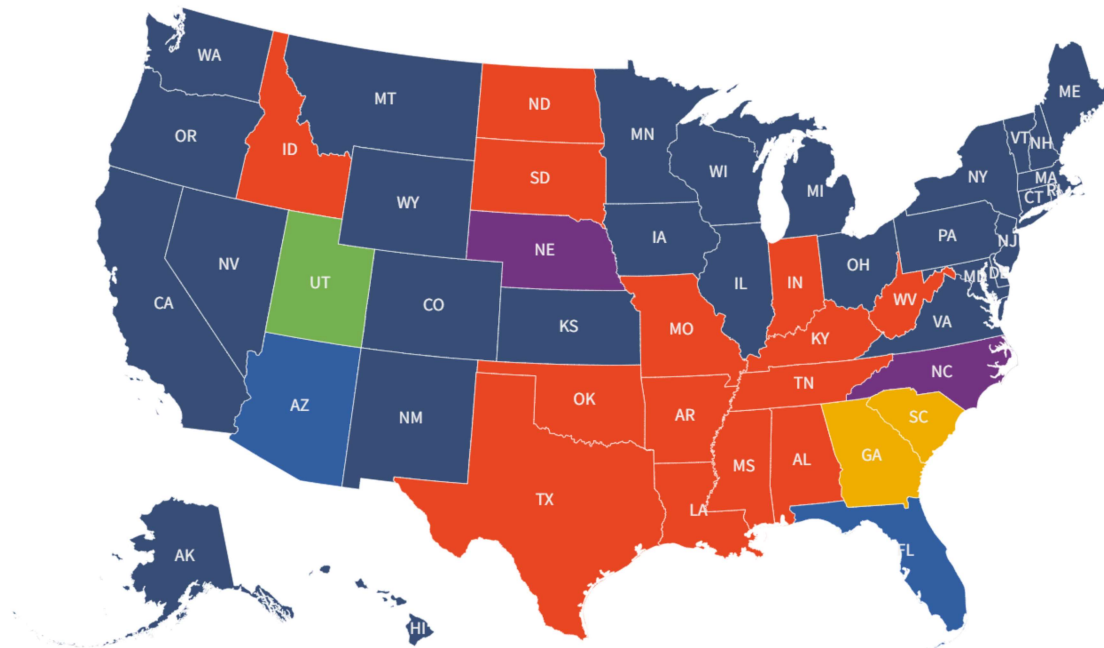
### **THE PULL** *Commentary from Pennsylvania*

“Expanding Medicaid coverage of abortion care in Pennsylvania would lift many of the financial limitations my patients face in obtaining safe abortion care in our state.” — **Dr. Allie Hecht**, Lancaster-based family physician, [Pennsylvania Capital-Star](#)

### **THE PULSE** *Reproductive rights news across the country*

- Vice President Kamala Harris campaigned in Las Vegas, honing in on former President Donald Trump's nomination of three U.S. Supreme Court justices who voted to overturn Roe v. Wade. ([Nevada Current](#))
- The Mississippi Medicaid advisory committee hasn't recommended presumptive eligibility for pregnant mothers, which maternal health advocates say leads to timelier prenatal care. ([Mississippi Today](#))
- A Nevada judge approved an abortion rights ballot petition last week. ([Associated Press](#))

### **STATE BY STATE** *Abortion access in the U.S.*



Open this interactive map in your browser

Track state-level developments on reproductive rights anytime at [News From The States](#). Send tips and thoughts to [ebrown@statesnewsroom.com](mailto:ebrown@statesnewsroom.com), and follow her on X [@elishabrown](#).

---

©News From The States, all rights reserved.

[www.newsfromthestates.com](http://www.newsfromthestates.com) | [info@newsfromthestates.com](mailto:info@newsfromthestates.com)

Manage your donation and subscription preferences [here](#).

Add [info@newsfromthestates.com](mailto:info@newsfromthestates.com) to your [address book](#) to ensure delivery.

Did someone forward you this newsletter? [Click here](#) to get it delivered to your inbox.

States Newsroom – News From The States

1414 Raleigh Rd #127

Chapel Hill, NC 27517

United States

You are receiving this email because you opted in via our website or States Newsroom. If you believe you received this message in error or wish to change your subscription, please (Unsubscribing is not supported in previews).