

Conservative Justices Stir Trouble for Republican Politicians on Abortion

Republicans legislators and candidates struggle to maintain support among anti-abortion voters while not damaging their electoral prospects.

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Abortion opponents have maneuvered in courthouses for years to end access to reproductive health care. In Arizona last week, a win for the anti-abortion camp caused political blowback for Republican candidates in the state and beyond.

The reaction echoed the response to an Alabama Supreme Court decision over in vitro fertilization just two months before.

The election-year ruling by the Arizona Supreme Court allowing enforcement of a law from 1864 banning nearly all abortions startled Republican politicians, some of whom quickly turned to social media to denounce it.

The court decision was yet another development forcing many Republicans legislators and candidates to thread the needle: Maintain support among anti-abortion voters while not damaging their electoral prospects this fall. This shifting power dynamic between state judges and state lawmakers has turned into a high-stakes political gamble, at times causing daunting problems, on a range of reproductive health issues, for Republican candidates up and down the ballot.

“When the U.S. Supreme Court said give it back to the states, OK, well now the microscope is on the states,” said Jennifer Piatt, co-director of the Center for Public Health Law and Policy at Arizona State University’s Sandra Day O’Connor College of Law. “We saw this in Alabama with the IVF decision,” she said, “and now we’re seeing it in Arizona.”

Multiple Republicans have criticized the Arizona high court’s decision on the 1864 law, which allows abortion only to save a pregnant woman’s life. “This decision cannot stand. I categorically reject rolling back the clock to a time when slavery was still legal and where we could lock up women and doctors because of an abortion,” state Rep. Matt Gress [said in a video](#) April 9. All four Arizona Supreme Court justices who said the long-dormant Arizona abortion ban could be enforced were appointed by former Gov. Doug Ducey, a Republican who in 2016 expanded the number of state Supreme Court justices from five to seven and cemented the bench’s conservative majority.

Yet in a post the day of the ruling on the social platform X, [Ducey said](#) the decision “is not the

outcome I would have preferred.”

The irony is that the decision came after years of efforts by Arizona Republicans “to lock in a conservative majority on the court at the same time that the state’s politics were shifting more towards the middle,” said Douglas Keith, senior counsel at the left-leaning Brennan Center for Justice.

All the while, anti-abortion groups have been pressuring Republicans to clearly define where they stand.

“Whether running for office at the state or federal level, Arizona Republicans cannot adopt the losing ostrich strategy of burying their heads in the sand on the issue of abortion and allowing Democrats to define them,” Kelsey Pritchard, a spokesperson for Susan B. Anthony Pro-Life America, said in an emailed statement. “To win, Republicans must be clear on the pro-life protections they support, express compassion for women and unborn children, and contrast their position with the Democrat agenda.”

Two months before the Arizona decision, the Alabama Supreme Court said frozen embryos from in vitro fertilization can be considered children under state law. The decision prompted clinics across the state to halt fertility treatments and caused a nationwide uproar over reproductive health rights. With Republicans feeling the heat, Alabama lawmakers scrambled to [pass a law](#) to shield IVF providers from prosecution and civil lawsuits “for the damage to or death of an embryo” during treatment.

But when it comes to courts, Arizona lawmakers are doubling down: state Supreme Court justices are appointed by the governor but generally face voters every six years in retention elections. That could soon change. A constitutional amendment referred by the Arizona Legislature that could appear on the November ballot [would eliminate](#) those regular elections — triggering them only under limited circumstances — and allow the justices to serve as long as they exhibit “good behavior.” Effectively it would grant justices lifetime appointments until age 70, when they must retire.

Even with the backlash against the Arizona court’s abortion decision, Keith said, “I suspect there aren’t Republicans in the state right now who are lamenting all these changes to entrench a conservative majority on the Supreme Court.”

Meanwhile, abortion rights groups are trying to get a voter-led state constitutional amendment on the ballot that would protect abortion access until fetal viability and allow abortions afterward to protect the life or health of the pregnant person.

State court decisions are causing headaches even at the very top of the Republican ticket. In an announcement in which he declined to endorse a national abortion ban, presumptive Republican presidential nominee Donald Trump on April 8 said he was “proudly the person responsible” for ending *Roe v. Wade*, which recognized a federal constitutional right to abortion before being

overturned by the U.S. Supreme Court in 2022, and said the issue should be left to states. “The states will determine by vote or legislation, or perhaps both, and whatever they decide must be the law of the land,” he said. But just two days later he sought to distance himself from the Arizona decision. Trump also praised the Alabama Legislature for enacting the law aiming to preserve access to fertility treatments. “The Republican Party should always be on the side of the miracle of life,” he said.

Recent court decisions on reproductive health issues in Alabama, Arizona, and Florida will hardly be the last. The Iowa Supreme Court, which underwent a conservative overhaul in recent years, on April 11 heard arguments on the state’s near-total abortion ban. Republican Gov. Kim Reynolds [signed it into law](#) in 2023 but it has been blocked in court.

In Florida, there was disappointment all around after dueling state Supreme Court decisions this month that simultaneously paved the way for a near-total abortion ban and also allowed a ballot measure that would enshrine abortion rights in the state constitution to proceed.

The Florida high court’s decisions were “simply unacceptable when five of the current seven sitting justices on the court were appointed by Republican Governor Ron DeSantis,” Andrew Shirvell, executive director of the anti-abortion group Florida Voice for the Unborn, said in a statement. “Clearly, grassroots pro-life advocates have been misled by elements within the ‘pro-life, pro-family establishment’ because Florida’s highest court has now revealed itself to be a paper tiger when it comes to standing-up to the murderous abortion industry.”

Tension between state judicial systems and conservative legislators seems destined to continue given judges’ growing power over reproductive health access, Piatt said, with people on both sides of the political aisle asking: “Is this a court that is potentially going to give me politically what I’m looking for?”

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