

## [Transcript] The News Agents / Abortion in America: Illegal by stealth?

This is a Global Player Original Podcast.

Florida is on the verge of one of the most restrictive abortion bans in the country.

Good evening.

I'm Jennifer Lee.

And I'm Keith Kate.

Thank you for joining us tonight.

Once signed by the governor, this legislation will make almost all abortions in the state illegal after six weeks instead of the current 15-week ban.

On Thursday, in the dead of night, in Tallahassee, Florida's state capital, Republican governor and presidential aspirant, Ron DeSantis, signed a bill banning abortion in his state six weeks after conception.

A state of over 21.5 million people, a state half the size of the United Kingdom, the last island of abortion access anywhere in the South, has itself removed abortion rights.

And this week, in Texas, there was this.

And Laura, we're also watching some breaking news about a high stakes lawsuit in Texas over the abortion pill.

What do you know?

Yeah, that's right, Lester.

This is just coming down.

Minutes ago, this decision, a partial victory for a group of anti-abortion advocates and doctors that had asked a federal judge to block access to the drug most widely used to induce abortions.

A Texas judge, a Trump appointee, ruled that a drug used in over 50% of abortion cases in the United States is effectively illegal, that it should never have been licensed in the first place.

It's thrown what's left of abortion provision across the United States into chaos.

These aren't the US stories you probably heard about much this week.

We heard about President Biden cloaking himself in green, returning to the land of his forefathers.

But in his real home back in the United States, the politics of how you deal with mothers and fathers who don't want to be, and even some that do, was getting sharper still.

On this episode of The News Agents, we are asking a question increasingly on the lips of Americans.

Is the United States of America the leader of the West, the land of the free, heading to an outright abortion ban?

If not in law, but by stealth?

It's Lewis here.

Welcome to The News Agents.

Oklahoma now home to the strictest abortion law in the country, the state's governor signing a bill into law that allows an abortion only when the life of a pregnant woman is at risk or when a pregnancy is the result of rape or incest that has been reported to law enforcement.

Idaho, Tennessee and Texas have now officially banned abortion services as trigger laws take effect today.

Breaking news just moments ago, Alabama governor Kay Ivey a short time ago, signing the most

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restrictive abortion law in the nation, essentially making abortion a crime. Ever since Roe v Wade, the 1970s judicial decision which said that the right to an abortion was implicit in the US Constitution was overturned by the now Trump era dominated Supreme Court in 2022.

State after state in the Republic and South, but also beyond, have introduced bans or extreme limits on what had been the law of the land for five decades.

From the Sanctis's Florida had been something of an exception, a big more purple state with a big and complicated politics as the third largest state in the union.

It is less homogenous than many of the smaller agrarian states which surround it in the deep south.

But he had pushed through a 15 week ban last year, still early by many Western standards after Roe was overturned, but most thought that he'd just leave it at that.

On Thursday, that changed, Caroline Kitchener covers abortion for the Washington Post.

Yeah, late in the night he announced it on Twitter, you know, and it was really different from last year.

So when he signed the 15 week ban, there was a huge press conference.

We are here today to defend those who can't defend themselves.

And in just a minute, I will be signing House Bill 5, which protects the rights of unborn children starting at 15 weeks.

This is a time where these babies have beating hearts.

They can move, they can taste, they can see, they can feel pain, they can suck their thumbs, and they have brainwaves.

And so this will represent the most significant protections for life that have been enacted in this state and the generation.

Everybody involved was there, and there was a big kind of general audience, and he made a really big show of it.

It was in the middle of the day, everybody covered it.

And that was very different from what happened last night.

It was very quiet last night.

DeSantis knows what he's doing isn't popular, even in his own state, but we'll return to that and the politics shortly.

For now, the impact on women and girls across the South will be enormous.

It's really impossible to overstate the impact that that piece of legislation is going to have across the entire United States, especially with abortion bans across so much of the South.

It's going to be really hard for people to find other states to go to.

You did see a lot of people going into Florida because you look at the other states around Mississippi, Alabama, Georgia, they've all banned all or most abortions.

So you really saw Florida become a destination for people.

And it can't be overstated just how many people also live there.

So now that they are not going to have access, it's going to be the closest states are North Carolina, Illinois, I mean, you're talking about hundreds of miles, especially for people in the Southern.

And, you know, right at the tip and in the South of Florida.

Will there be, I mean, is there the capacity in the remaining states, the kind of blue

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estates to take the people, take the women from the red states, and now that will presumably include Florida, even if they can afford them?

Well, they've already been really struggling, they've been maxing out capacity.

I mean, I spoke recently with some clinic directors in Southern Illinois, which has been a real haven for people coming from across the Southeast.

And they are really struggling, they're maxed out already.

And you know, you add Florida into the mix.

And it's just hard for them to comprehend how they are possibly going to be able to serve all of those women.

The reaction in Florida and elsewhere was immediate.

Planned Parenthood, the abortion provider and campaign group took to the steps of the Florida State Capitol building.

In California, pro-choice students started their own rally.

And they have just caused to be worried.

Roe was an earthquake, but the tremors haven't stopped.

For years, the argument from their opponents, the pro-life groups, was that this was just about state's rights.

The Supreme Court couldn't tell the state what to do about abortion.

Let's get rid of that and let the people's representatives in all 50 state houses make up their own minds.

You may be amazed to hear that that lasted for about as long as it took for the ink on that Supreme Court decision to dry.

Almost immediately, new legal cases sprung up, new battles fought, arguing against all sorts of different ways to conduct abortions, even in blue, Democrat-dominated states like California and New York, where access to abortion is as much political shibboleth as its abolition had been in the red.

And this week, something extraordinary happened.

In Texas, a judge, Judge Kashmarik, appointed by Donald Trump in 2019, ruled that the drug Mifepriosto, used in over 50% of abortions in the United States, should never have been regulated by the FDA, the Food and Drug Administration, in the first place, that it didn't have the legal right.

Among other things, the judge employed an obscure 19th century law, the Cornstack Act, to justify it.

The drug was a drug licensed since the year 2000 without issue, without problem.

The political reaction from Democrats was immediate from the president and vice president down.

It's completely out of bounds what the judge did.

There is no question that the president and I are going to stand with the women of America and do everything we can to ensure that women have the ability to make decisions about their health care, their reproductive health care, in a manner that is what they need, and they decide that not their government.

The case, though, shows their impotence.

In order to stop this, they have to find a resolution in the courts, and anti-abortion groups have been tremendously successful in using the federal justice system, appointed

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judges by Republican presidents, to get what they want.

This is all part of a project, a movement, going back a long way, and arguably, the judge himself was part of that very movement.

Eleanor Klibenov is a reporter for the Texas Tribune and has been following the case.

So Judge Kesmerick has been criticized because he, before becoming a judge in 2019, was very active in anti-abortion movements.

He worked for a conservative Christian law firm here in Texas.

He was appointed by President Donald Trump, and the language in his ruling reflects that.

I mean, the ruling uses terms that are really popular among the anti-abortion movement and are not widely used.

Just one example, he says in the ruling that the term fetus is not a scientific term.

So he instead uses the term unborn child, and talks about how an abortion is murdering an unborn child, these drugs starve an unborn child to death.

That's all very loaded language that is not based in science.

So his justification is just siding with this group and saying that, you know, they are correct that this medication, you know, endangers the safety of women and girls despite two decades worth of not just studies showing the safety and efficacy of this drug, but also, you know, real-world usage of it.

It's the most common way Americans at least terminate their pregnancies.

The case also exposes and reminds us that America in so many ways is two nations, perhaps with two competing parallel justice systems increasingly contingent on geography.

Democrats have their judges too.

And later in the week, a Democrat appointed judge in Washington state said the Texas judge had overreached and ordered that the pill continue to be available.

Confusion reigns.

Yeah, so how is that going to work?

So the Texas ruling has had a week to come into effect.

But as we've already said, in another state, it's not directly related, but has said that Texas basically doesn't have the power to do that.

Practically, will people still be able to, and abortion providers across the country still be able to obtain this drug?

We don't know.

It's the long and short of it.

I mean, I've been talking to abortion providers, I've been talking to doctors.

They are as confused as we are and hoping that the Supreme Court clarifies.

I mean, I think the important thing is, you know, these abortion providers are saying, like, if you have an appointment, if you're curious, if you think you need an abortion, like call and ask for up to the minute information, and nothing about this legal back and forth changes the safety and efficacy of this drug.

It's just a lot of legal back and forth.

And the best thing to do is ask your provider about what the best thing to do is.

You can also terminate a pregnancy other ways, so it's not going to completely remove abortion as an option, but it is going to make it a lot harder, a lot more complicated.

It's extraordinary, isn't it?

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And the chaos of it is extraordinary.

Absolutely.

I think this is probably the beginning of what is going to be a lot of chaos around this issue, but around a lot of issues in the federal courts here in the United States.

There's only one place this is ending up in the Supreme Court, the same court that overturned Roe.

And whatever happens with that case, this won't be the end of it, not by a long way.

Some pro-abortion groups want to look at travel bans for pregnant women, travel bans which would effectively echo the infamous Dred Scott case in the 19th century, essentially forbidding a slave from seeking refuge in a free state.

Yes, travel bans.

And I'll repeat, this is supposed to be the land of the free.

More immediately, there is this.

Mary Ziegler is from UC Davis University in California and is an expert on the history of abortion in America.

What's between the lines there is that the Fifth Circuit thinks that essentially abortion is already a crime under federal law.

And so sooner or later, probably sooner, anti-abortion lawyers are going to be bringing cases to the federal courts saying the Comstock Act means it's a crime to send anything intended or adapted for abortion.

That essentially means abortion is a crime.

Why is that?

Because abortion providers in the U.S. always rely on things sent in the mail.

They don't make their own surgical devices at home.

They don't make their own drugs in-house.

They get them from pharmaceutical distributors and medical device manufacturers.

And so the next strategy I think you're going to see is anti-abortion groups saying the Comstock Act means abortion is already illegal in states like California and York.

Eventually, the goal of the movement is a U.S. Supreme Court decision or a constitutional amendment declaring that abortion itself is unconstitutional.

More on this in just a moment.

This is The News Agents Look, let's be clear.

This was always going to happen.

The idea that this would stop with Roe was always a sham.

You have to remember whether you disagree with it or not.

The anti-abortion groups in America vehemently believe abortion is murder and a sin.

In that case, they're not going to care if a murder is happening in a state which just happens to vote Democrat.

It's also a movement which plays a long, long game, effectively taking over Republican politics over the last 50 years or more.

Abortion is justified when done in self-defense.

A woman has the right, I believe, to protect her own life if it is endangered, even against her unborn child.

I believe also that just as she has the right to defend herself against rape, she should

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not be made to bear a child resulting from that violation of her person.

Not everyone agrees with this view, but I can find no evidence whatever that a fetus is not a living human being with human rights.

This is Ronald Reagan.

Thanks for listening.

The moral concern of humanity extends to those unborn children who are harmed or killed in crimes against their mothers, and now the protection of federal law extends to those children as well.

With this action, and we reaffirm that the United States of America is building a culture of life.

It is my profound honor to be the first president in history to attend the March 4 Life.

Over time, with each and every Republican president, Reagan, Bush, Trump, the politics has become more hard-line.

These groups have been breathtakingly successful in exploiting other constitutional frailties of the Republic, not just putting pressure on Republicans to get pro-life judges to achieve their ends, but other things as well.

Mary Ziegler again.

One thing I think from abroad, often people look at what's happening in the United States and think, well, what's really happening here is that the United States is just different.

There are people that are more conservative, there are more religious Christian conservatives there.

This movement is stronger.

In a way, that's true, but I think the biggest difference is simply just the way U.S. democracy works because the other theme we've seen since Dobbs is that any time voters anywhere in the United States have been asked what they want to do about abortion, they've sided with abortion rights.

That's true in obvious places like California and Vermont, but it's also been true of less obvious places like Michigan, Kansas, and Kentucky.

Part of the story here is about how weird and in some ways unhealthy American democracy is.

More than it's a story about how Americans are uniformly more conservative on abortion than people in the UK or in Europe more broadly.

Unhealthy in what way?

What is it about American democracy that enables this to thrive?

Well, I mean, there are any number of things.

I think some of it is the deep polarization of the United States that you have voters who are willing to pick Republicans who take positions on abortion they despise because they're just simply unwilling to vote for the other political party.

Some of it is gerrymandering.

We've seen legislatures that don't represent majorities of their populations that have been where district lines have been drawn in artificial ways that disenfranchise people. We've seen anti-abortion groups work pretty carefully on laws, making it harder to vote in part because they're doing this.

We've seen, I think, most clearly to circle back to them if the Pristone decisions.

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We've seen anti-abortion groups relying on federal courts for outcomes they know would be impossible through democratic politics.

So is there any chance that the US Congress would cast a law like the Comstock Act today banning all abortions without exception?

No.

I mean, zero.

No chance.

The Republicans in the House who are the most extreme have not even embraced a ban on abortion at 20 weeks, much less throughout pregnancy.

So part of what you're seeing is the anti-abortion movement realizing that after the death of Roe, they may be able to get the federal courts to essentially impose things on American voters that American voters don't want, according both to polls and to ballot initiatives and to the results of Senate races.

Any evidence we have would suggest would be unpopular and untenable outcomes.

It now leaves Republicans still in the political frame with a dilemma.

If banning abortion nationally or even significantly limiting it is unpopular or very unpopular within the electorate as a whole, but very popular with Republican primary voters, what do you do?

That's why DeSantis was missing in action at the signing ceremony, performing a delicate dance.

He and other Republicans know that in the 2022 midterms, the abortion issue backfired on Republicans galvanizing Democrats with many moderate voters turning out to support abortion rights.

Here's Senator Lindsey Graham.

But for every Graham urging at least some moderation, there is a Steve Erdman, Nebraska state senator.

We have killed 2,000 babies since abortion became legal.

Those are 2,000 people in the state of Nebraska that could be working in filling some of those positions and we have vacancies.

They're not here.

Our state population has not grown except by those foreigners who have moved here or refugees who have been placed here.

Why is that?

It's because we've killed 200,000 people.

These are people we've killed.

It sets the stage for abortion, of all things, to be a central issue of the 2024 presidential campaign.

Caroline Kitchener, and how much of an issue do you think, given what's happened in Florida but also why the developments we've seen over the last week in terms of the courts as well?

How much of an issue do you think abortion could be in 2024 in the presidential election?

I think it could be everything.

I'm biased because this is what I cover, but I really think that it's going to be incredibly central.

The stakes couldn't be higher if an anti-abortion Republican gets into the White House.

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We could see some kind of national ban.

I think a lot of people in blue states, in coastal states, in New York, California, they feel like they're totally safe from these kinds of restrictions, but if you have an anti-abortion Republican in the White House, they could be affected too.

These agencies, particularly the U.S. Food and Drug Administration, they have an incredible amount of power separately from Congress to make rules around what is acceptable for the abortion pill, which accounts for more than 50% of abortions right now.

I do think that certainly the abortion rights folks are going to make it very crystal clear how much is on the line in 2024.

And Mary Ziegler.

Finally, Mary, how likely do you think it is?

Is there a world in the next five to 10 years, say, where abortion nationally in America is not necessarily banned, but the success of these groups and the utilization of obscure law and the federal judicial bench and the ability of a kind of small minority to continue to exert such influence through the kind of democratic structure, as you described, is a world where abortion becomes extremely difficult to obtain, even in blue states?

I think so.

I mean, I think longer term, that's not likely to be tenable simply because that's so out of step with what American voters want.

But I think we've seen that anti-abortion groups are brilliant at strategy and powerful in the courts, which means for a time, if you're talking about a short enough window, anything is possible.

And I think it just underscores how sophisticated the movement against abortion is in the United States, even when it has, I think, failed pretty clearly to convince American voters that its positions are right.

But whatever happens with the politics of the ballot box and the judicial bench over the long term, we need to remember, post-row abolition, abortion across much of the United States is already painfully difficult, and we're already seeing its effects.

Eleanor again, talking about what's already happened in the state of Texas.

I mean, Texas has been sort of on the front lines of undoing row for a long time, but I think it's been really surprising to see what the difference has been between, say, a six-week ban, which is what we had before, which is extremely restrictive.

That's what they're now about to put into effect in Florida, which is being really criticized as so extreme.

But the difference between that and a basically near total ban has been really significant.

I mean, the main thing we're seeing is a lot of confusion and complication and really heartbreaking cases for people who are needing to terminate wanted pregnancies.

So women who are experiencing miscarriages, women who are experiencing lethal fetal abnormalities,

women who are saying, you know, I wanted this pregnancy, I wish I could carry it to term.

Keeping this fetus in my body is killing me, and there's no hope for life on the other end.

I'm not going to have a child at the end of this.

And some women, due to confusion and fear on the part of doctors, are continuing to carry



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those pregnancies, or in some cases, having to flee the state to terminate their pregnancies. Quite really great, you know, obviously financial costs, but also emotional costs. And I think the big fear is, you know, what does this mean for our healthcare systems in Texas?

You know, will OBGYNs want to practice here?

Will you be able to get specialty care?

If you have a pregnancy complication, will you feel safe talking to your doctor?

That to me is really the difference between a six-week ban or some restrictions and a near total ban that's really been created a lot of fear.

And presumably, if it hasn't happened yet, it probably has.

Some women are dying as a result of this, for the reasons you've just said.

Yeah.

I mean, I think that, as we've seen in other countries that have banned abortions, I mean, Ireland being a great example, I mean, the thing that often galvanizes people more than anything is a woman dying from these restrictions.

I think it feels pretty grim to say, you know, that's what everyone is sort of waiting for and looking for.

But I think realistically, Texas has staggeringly high maternal mortality rates.

So women are already dying from pregnancy and childbirth in this state, even without the abortion bans in place.

And they are predominantly black women, poor women, you know, Hispanic women.

And that's just statistically, mathematically, just going to get worse.

And if you're in Texas now, if you're a woman in Texas, if you're in Austin or in Dallas or wherever, and assuming you have the means, which many women won't, but assuming you have the means and you're willing and able to travel for an abortion, where's the closest that you would have to go?

How far would you have to travel right now?

So assuming you can get an appointment, which these, you know, clinics are super backed up.

But let's say you can get an appointment, I mean, Texas is a vast state, but from the main population centers, you can go to Wichita, Kansas, which is like six plus hours driving. We go to Albuquerque, New Mexico all the way across the state, which is 13 hours, or you can get on an airplane.

Texas also has the border with Mexico.

So a lot of women do travel into Mexico, which in some ways can be closer and cheaper than trying to get an appointment at a clinic in the United States.

Health tourism from the United States to Mexico.

Yes, that's becoming very common and, you know, raises a lot of concerns and questions.

But it is one place where, you know, you know, the US authorities don't really have grounds to be asking questions.

American citizens going to Mexico, a country previously still, to some extent, deeply Catholic for their healthcare in the year 2023, the early 21st century, continues to amaze.

There is much speculation that the Supreme Court, already unpopular, already perceived as highly partisan, will now want to leave this issue alone.

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But then some said that about Roe itself, and we do know for sure that whether the August Justices want to leave alone or not, so many of those, the campaigners, those with a zeal in their bellies who helped put some of them there, certainly don't.

We'll be back just after this.

This is The Newsagents.

Well we will, of course, be monitoring all of these cases very closely, and if you're listening in America and want to send us your thoughts or experiences, remember you can always contact us on the Newsagents social channels, and our email address is [newsagents.global.com](mailto:newsagents.global.com).

That is it from all of us for this week, though.

Remember you can catch up with all of our shows this week on Global Player, thanks to our production team on the Newsagents as ever, Gabriel Radis, Laura Fitzpatrick, Ellie Clifford, Georgia Foxwell, Will Gibson-Smith, Alex Barnett, and Rory Simon, our editor.

It's Tom Hughes, and our executive producer is Dino Sophos.

It's presented by Emily Maitlis, John Sobel, and me, Lewis Goodall.

We'll see you on Monday.

Have a lovely weekend.