

Montana, an island of abortion access, prepares for consequential elections and court decisions

March 18 2024, by Arielle Zionts, KFF Health News



Credit: CC0 Public Domain

A years-long battle over abortion access in a sprawling and sparsely populated region of the U.S. may come to a head this year in the courts

and at the ballot box.

Challenges to several [state laws](#) designed to chip away at abortion access are pending in Montana courts. Meanwhile, abortion rights advocates are pushing a ballot initiative that would add extra protections to the state constitution. And two open state Supreme Court seats could shape whether the high court upholds past decisions that protected abortion rights in the state.

Abortion remains legal in the conservative stronghold because of a 25-year-old state Supreme Court ruling that protected it under the right to privacy included in the state's constitution.

So far, most efforts by Montana's Republican governor and GOP-led legislature to overcome that obstacle have gone nowhere. Montana courts have blocked multiple laws that would have restricted abortion.

It's "a very daunting hurdle for those who would seek to undermine abortion access," said Kal Munis, an assistant professor of political science at Utah Valley University and expert on politics in Montana, his home state.

Munis said to outlaw abortion, voters would need to amend the state constitution or elect Supreme Court justices willing to reverse precedent.

But it is abortion rights advocates who have jumped on the chance to amend the state constitution. A [legal fight](#) is brewing over a ballot initiative proposed for the November election that would add abortion protections to the constitution.

Meanwhile, two open state Supreme Court seats are up for election, and some of the candidates are signaling that abortion access will be a campaign issue.

Voters have to be thinking about the future of abortion from "multiple fronts," said Martha Fuller, CEO of Planned Parenthood Advocates of Montana, which is suing to block several anti-abortion laws, backing the proposed constitutional amendment, and monitoring the Supreme Court races.

Montana anti-abortion advocates celebrated when Republican Gov. Greg Gianforte was elected in 2020 after 16 years of Democratic governors and, since 2011, vetoes of anti-abortion laws passed by the Republican-controlled legislature.

From their opponents' perspective, that change left the courts as the last line of defense of abortion rights, one they are focused on protecting.

Munis and Jessi Bennion, who teaches political science at Montana State University, said abortion rights groups in Montana have momentum after the U.S. Supreme Court's 2022 reversal of *Roe v. Wade*.

That decision resulted in voters becoming motivated by the issue and a wave of ballot questions. Montanans, for example, rejected a measure that would have required doctors to provide medical care after premature births and failed abortions, which opponents said was already the law.

For now, Montanans may have abortions any time before fetal viability, which under Montana code is "presumed" to be about 24 weeks into a pregnancy. Patients can go to one of six providers in the state or make a telehealth appointment and receive pills in the mail.

That makes Montana the most abortion-friendly state in the largely conservative and rural region between Minnesota and the Pacific Northwest.

Montana is sandwiched between Idaho and the Dakotas, which severely restrict abortion. To the south is Wyoming, where abortion pills are available through telehealth, but lawmakers there have passed a bill that could temporarily shutter the only clinic in the state that provides in-person abortions, depending on what action Republican Gov. Mark Gordon takes. Abortion is legal in Canada, Montana's northern neighbor, but Americans need a passport to travel there.

An attempt to further cement abortion rights in Montana is facing an obstacle. Republican Attorney General Austin Knudsen has rejected the proposed abortion rights constitutional amendment as being legally insufficient, which prompted the campaign behind the initiative to file a lawsuit. The State Supreme Court will now decide if initiative organizers may proceed with gathering signatures.

Analysts and Montana leaders—including some Republicans—think there's a good chance voters will approve the constitutional amendment if it appears on the ballot.

"We're a Republican state, but there's always historically been a kind of a libertarian streak in it," said Steve Fitzpatrick, an attorney and the majority leader in the Montana Senate. "It's not unusual to see Republicans winning up and down the ballot and then seeing something like marijuana be legalized at the same time."

Abortion will also be an undercurrent in two state Supreme Court races. Chief Justice Mike McGrath and Justice Dirk Sandefur, who both ruled against efforts to unravel the state's abortion protections, decided not to seek reelection.

Judges don't run as Democrats or Republicans, but Supreme Court elections have taken a distinct partisan tone in recent years.

Given the recent election wins by abortion rights advocates after Roe v. Wade was overturned, conservatives may choose not to make abortion a campaign issue for these judicial races, according to Munis.

Focusing on abortion "would be a strategic blunder given that they have so many other things that they could talk about instead," he said.

But the candidates who are viewed as more liberal have strongly signaled their desire to protect [abortion rights](#).

State judges Katherine Bidegaray and Dan Wilson are running for Sandefur's seat on the high court.

During a campaign event, Bidegaray said she would defend Montanans' constitutional right to privacy and stand up to "unprecedented attacks" on women's rights, the Flathead Beacon reported.

Wilson and his campaign did not respond to phone and email messages from KFF Health News.

In the race for chief justice, former federal magistrate judge Jerry Lynch, who is running against Cory Swanson, a county prosecutor backed by Republicans, has been more direct than Bidegaray.

Montanans must be "free from government interference, especially when it comes to reproductive rights," Lynch said at a campaign event, according to the Montana Free Press.

Lynch's candidacy has triggered some early opposition spending. Montanans for Fair Judiciary, a conservative group, sent mailers calling Lynch a "liberal trial lawyer," the outlet reported.

Swanson told KFF Health News that judges shouldn't decide how they

would rule on abortion or any other topic until a case is before the court.

Fuller said Planned Parenthood Advocates of Montana has not yet decided how it will get involved in the Supreme Court races but that it likely will.

"If people are not paying attention to who is making these decisions and who is winning these judicial races, we could lose that ability to have that backstop," she said.

Regardless of whom voters choose to seat on the court, any change in this election is unlikely to immediately swing a majority of the seven-member court to overturn the 1999 ruling protecting abortion access, according to Bennion.

In Iowa, conservatives were able to reverse a state Supreme Court precedent similar to Montana's after more Republican-appointed justices joined the bench.

In Montana, the abortion issue is playing out more quickly in the state's lower courts.

In February, a state court overturned three laws that would have restricted abortion, including a ban on the procedure after 20 weeks of pregnancy. Last year, another state judge temporarily blocked several anti-abortion measures including a ban on the most common abortion procedure used in the second trimester of pregnancy.

Frustrated by the courts, Republican officials have also used the executive branch to try to restrict abortions. The Gianforte administration implemented a rule to reduce Medicaid-funded abortions by defining when an abortion is medically necessary, limiting who can perform them, and requiring preauthorization for most cases.

But that rule and a new state law that mirrors it have also been temporarily blocked by a judge. Knudsen has appealed those injunctions, as well as the judge's ruling from February, to the Montana Supreme Court.

And this month, the high court heard oral arguments as the state attempts to overturn a judicial block of a 2013 law requiring parental consent before a minor may have an abortion.

2024 KFF Health News. Distributed by Tribune Content Agency, LLC.

Citation: Montana, an island of abortion access, prepares for consequential elections and court decisions (2024, March 18) retrieved 9 May 2024 from <https://medicalxpress.com/news/2024-03-montana-island-abortion-access-consequential.html>

<p>This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.</p>
--