

Respect

WINTER 2023 VOL 22 NO. 2

A DIVERSITY NEWSLETTER PUBLISHED BY NEW JERSEY STATE BAR FOUNDATION

Legality of Abortion Up to the States by Robin Roenker

In June 2022, through its ruling in *Dobbs v. Jackson Women's Health Organization*, the U.S. Supreme Court determined that abortion—a medical procedure to intentionally end a pregnancy—is not a right protected by the U.S. Constitution. As a result, access to abortion is no longer legally protected on a federal level. Now, states can determine to what extent abortion will be legal or banned within its own borders.

The ruling **overturned** the U.S. Supreme Court's landmark 1973 decision in *Roe v. Wade*, which made abortion legal across all states in the U.S. for nearly 50 years. The Court's recent ruling also overturned its 1992 decision in *Planned Parenthood of Southeastern Pa. v. Casey*, which also **upheld** the view that the U.S. Constitution protects the right to an abortion.

"The *Dobbs* decision did something very unusual, which was that it took away a federal constitutional right—and you don't often see that from the U.S. Supreme Court," says Kimberly Mutcherson, a professor and co-dean at Rutgers Law School in Camden who has devoted her career to reproductive justice, bioethics and health law.

Understanding the Court's decision

In *Roe v. Wade*, the Court ruled, in part, that the right to abortion was protected under the Due

Process Clause of the Fourteenth Amendment, which says no state may "deprive any person of life, liberty or property without due process of law." Specifically, in the *Roe* ruling—and again in the *Casey* ruling—the Court determined the U.S. Constitution legally protects an individual's right to an abortion as a component of their right to privacy, stemming from the Fourteenth Amendment's protection of liberty, or individual freedom.

However, with the *Dobbs* ruling, the Court **reversed** these earlier decisions, arguing now that abortion is not protected by the Fourteenth Amendment. In presenting the majority opinion, Justice Samuel Alito wrote: "We hold that *Roe* and *Casey* must be **overruled**. The Constitution makes no reference to abortion, and no such right is implicitly protected by any

constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment."

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Does Banning Books Violate the First Amendment? by Sylvia Mendoza

At the start of every school year, there are renewed efforts to ban books in school libraries and public libraries. According to the American Library Association (ALA), the 2021-2022 school year had a record number of book ban requests and the present school year is on track to break that record.



"I've never seen anything like this," Deborah Caldwell-Stone, director of ALA's Office for Intellectual Freedom told the

Associated Press. "It's both the number of challenges and the kinds of challenges. It used to be a parent had learned about a given book and had an issue with it. Now we see campaigns where organizations are compiling lists of books, without necessarily reading or even looking at them."

According to the ALA, in 2022, there were attempts to ban, challenge, or restrict access to 1,651 different book titles in the United States—the highest number of complaints since the group began documenting book challenges more than 20 years ago. The Index of School Book Bans, compiled

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Using Rap Lyrics as Evidence in Court *by Emily Pecot*

In his song, *Folsom Prison Blues*, Johnny Cash wrote: “I shot a man in Reno just to watch him die.” Should that line be taken literally? Did Johnny Cash really shoot someone?

Artistic freedom is a right afforded under the U.S. Constitution’s First Amendment; however, many rap artists that run afoul of the law have had their lyrics held against them in a court of law.

In Georgia, for example, the high-profile criminal prosecution of popular rapper Young Thug (real name Jeffery Lamar Williams) and 27 associates at his record label on charges that include **racketeering**, drug and illegal firearms possession, as well as attempted murder, has brought the controversial practice to light. The 88-page indictment of Williams

and his associates cited the rapper’s lyrics, music videos, as well as his social media posts as evidence of a certain lifestyle often depicted in rap songs, which usually involve drugs, guns and violence.



Opponents of allowing rap lyrics as evidence in court say it is

prejudicial to a jury. Jury selection in Williams’ case began in January 2023.

Studies on rap lyrics

Several studies have weighed in on the negative perceptions of rap lyrics and rap music in general. One of the first was published in 1999. Dr. Stuart P. Fischeff from California State University in Los Angeles, conducted a study concerning people’s perceptions and biases related to rap lyrics written by a defendant in a murder trial. Participants in the experiment were given a hypothetical biographical description of an 18-year-old Black male accused of murder—only some were shown violent rap lyrics written by an actual murder defendant. Dr. Fischeff’s results, which were published in the *Journal of Applied Social Psychology*, indicated that those who were shown the lyrics were more likely to think the person had committed the murder.

In the study’s opening summary, Dr. Fischeff wrote, “Surprisingly, results also show that the writing of such rap lyrics was more damning in terms of adjudged personality characteristics than was the fact of being charged with murder.”

Carrie Fried, a psychology professor at Winona State University in Minnesota told National Public Radio (NPR) about an informal study she conducted. Professor Fried typed out the lyrics to a 1960s folk song, *Bad Man Blunder*, which starts out: “Well,

early one evening I was rollin’ around/I was feelin’ kind of mean/I shot a deputy down.” On some sheets Professor Fried indicated it was a rap song and on others she indicated it was a country song.

“When subjects thought the song was a rap song or when they associated it with a Black artist, they were significantly more likely to say this poses a danger,” Professor Fried told NPR.

Legacy of artistic expression in court cases

Andrea Dennis is a professor at the University of Georgia School of Law, and co-author of the book *Rap on Trial: Race, Lyrics and Guilt in America*. According to an article on her university’s website, Professor Dennis’ research found 500 documented cases where rap lyrics were admitted as evidence in a criminal trial. One such case involved McKinley “Mac” Phipps Jr., a 22-year-old rapper.

In 2001, Phipps faced murder charges in Louisiana for the death of a 19-year-old man killed at a club where he was performing. Despite overwhelming evidence ruling out Phipps’ involvement, including a confession by a security staff member at the venue, Phipps was convicted and sentenced to 30 years in prison. His lyrics, particularly his controversial song, “Murder, Murder, Kill, Kill,” which depicts gang violence, was presented as evidence to the jury of his lifestyle, contributing to his conviction. After 21 years, Louisiana Governor John Bel Edwards granted Phipps **clemency**.

“What most rappers say is either straight fiction or highly exaggerated,” Phipps said in an interview with *The Guardian* following his release. “We’re artists. Art gives us an opportunity to escape from reality. And when that escape mechanism is criminalized, that’s an atrocity.”

Prosecutors argue evidence is fair game

While artists and music industry stakeholders press lawmakers to take action against allowing rap



This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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lyrics as evidence, proponents cite increasing street violence as justification for the practice.

Erik Neilson, a professor at the University of Richmond and co-author with Professor Dennis of the book *Rap on Trial*, told *The Guardian* that using rap lyrics in criminal trials began in the 2000s when investigators started combing social media to monitor the activities of emerging rappers in a search for criminal evidence.

Fulton County District Attorney Fani Willis, who is the prosecutor in the Georgia case against Young Thug, defended the use of rap lyrics as criminal evidence.

In a press conference after the **indictment**, she said, “I think if you decide to admit your crimes over a beat, I’m going to use it. I’m going to continue to do that. People can continue to be angry about it. I have some legal advice: Don’t confess to crimes on rap lyrics if you do not want them used.”

Issue prompts legislation

In New York State, “Rap Music on Trial” **legislation** passed the New York State Senate. A companion bill in the New York Assembly is awaiting a vote. If it becomes law, the legislation will force prosecutors to prove rap lyrics are “literal, rather than figurative or fictional” when admitted as evidence. The legislation does not outright ban the admittance of song lyrics as evidence in a trial but puts the burden on prosecutors to justify the admission.

While a star-studded list of artists including Jay-Z and Meek Mill support the New York bill, they argue rap lyrics should be completely inadmissible rather than relying on subjectivity in individual cases since the use of lyrics could expose racial biases among jurists leading to more convictions.

In September 2022, California governor Gavin Newsom signed the Decriminalizing Artistic Freedom Act into law. Unanimously passed by the California Senate and Assembly, the law requires prosecutors who want to admit rap

lyrics and other forms of artistic expression in court to hold a separate hearing away from the jury to prove the relevance of the evidence. The law went into effect on January 1, 2023.

On the federal level, the Restoring Artistic Protection Act or RAP Act, was introduced in July 2022 by U.S. Congressmen Hank Johnson of Georgia and Jamaal Bowman of New York. The legislation would, according to a press statement, “add a presumption to the Federal Rules of Evidence that would limit the admissibility of evidence of an artist’s creative or artistic expression against that artist in court.”

A New Jersey case

While the Garden State does not have a law or legislation pending regarding using rap lyrics in criminal trials, it does have a 2014 unanimous opinion from the New Jersey State Supreme Court.

The case involved aspiring rapper Vonte Skinner, who was found guilty in 2008 of attempted murder related to the 2005 shooting of Lamont Peterson in Willingboro Township. In front of the jury, prosecutors had a police officer read 13 pages of handwritten rap lyrics taken from a notebook seized as evidence from Skinner’s car. The lyrics had nothing to do with the crime and were in fact written several years before the incident happened. Skinner was convicted on two counts of aggravated assault and attempted murder. He was sentenced to 30 years in prison.

A New Jersey appeals court found that the admission of the lyrics was improper and ordered

a retrial. The state appealed to the New Jersey State Supreme Court,

which affirmed the appellate court’s findings.

Writing for the Court, Justice Jaynee LaVecchia said, “The admission of defendant’s inflammatory rap verses, a genre that certain members of society view as art

and others view as distasteful and descriptive of a mean-spirited culture, risked poisoning the jury against defendant.”

The Court said it detected “little to no **probative** value” to the lyrics. In other words, the lyrics should have had no bearing on the facts in the case.

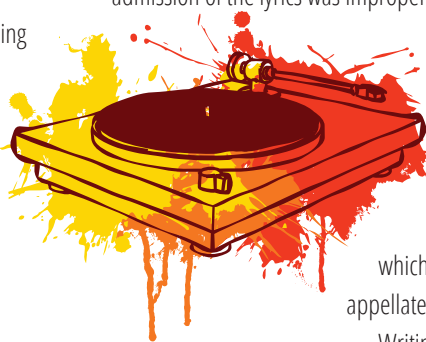
“The difficulty in identifying probative value in fictional or other forms of artistic self-expressive endeavors is that one cannot presume that, simply because an author has chosen to write about certain topics, he or she has acted in accordance with those views,” Justice LaVecchia wrote. “One would not presume that Bob Marley, who wrote the well-known song ‘I Shot the Sheriff,’ actually shot a sheriff, or that Edgar Allan Poe buried a man beneath his floorboards, as depicted in his short story ‘The Tell-Tale Heart,’ simply because of their respective artistic endeavors on those subjects.”

Skinner was re-tried in 2015 and convicted on two counts of aggravated assault. The jury did not convict him on the attempted murder charge. He received a 16-year sentence.

Protecting creative expression and free speech

In November 2022, artists and industry stakeholders published an open letter titled “Art on Trial: Protect Black Art” in *The New York Times* and *The Atlanta Journal-Constitution* pressuring lawmakers to enact limits on how lyrics can be used in court. Noted signatories on the letter included artists Drake, Megan Thee Stallion, John Legend and the members of Coldplay, along with the American Civil Liberties Union, the National Academy of Recording Arts and Sciences, several popular music streaming platforms, and the nation’s largest concert promoter, Live Nation Entertainment.

The letter reads: “Rappers are storytellers, creating entire worlds populated with complex characters who can play both hero and villain. But more than any other art form, rap lyrics are essentially being used as confessions in an attempt to criminalize Black creativity and artistry.”



Book Banning CONTINUED FROM PAGE ONE

by PEN America, a nonprofit organization that advocates for free speech, goes even deeper. In its account, published in September 2022, PEN reported that from July 2021 through June 2022 there were 2,532 instances of individual book ban requests, which affected 1,648 unique titles by 1,261 authors. Those bans, according to PEN, occurred in 138 school districts in 32 states, representing more than 5,000 schools that have a combined enrollment of nearly four million students.

“Book bans violate the First Amendment because they deprive children or students of the right to receive information and ideas,” explained David L. Hudson Jr., a professor at Belmont University College of Law and a First Amendment law expert.

Both the ALA and PEN agree that the majority of the books being banned are in the young adult category and contain storylines featuring LGBTQ+ issues (674 titles), protagonists or secondary characters of color (659 titles), or directly address issues of race or racism (338 titles).

History of banning books

Book banning has been around as long as there have been books. In colonial America, for example, religious groups often led the charge to ban written content they deemed immoral. In the 1800s, many states in the South had outlawed anti-slavery sentiments, including anti-slavery books. So, the anti-slavery book *Uncle Tom's Cabin*, by Harriet Beecher Stowe, started an uproar. Historian and American History professor Claire Parfait told *National Geographic* that Stowe's book was publicly burned. Parfait also shared a story about a free Black minister who was sentenced to 10 years for owning a copy of the book.

According to the ALA and PEN, the most banned book of the past year was *Gender Queer: A Memoir*, by Maia Kobabe, which chronicles the author's journey of self-identity and the adolescent confusion of coming out to her family and friends.

So, what is the difference between a book challenge and a ban? According to the ALA, a challenge “is an attempt to remove or restrict materials, based upon the objections of a person or group. A banning is the removal of those materials.” The National Coalition Against Censorship (NCAC) and the ALA have outlined a best practice process for the removal of a book from library bookshelves. Challenges, they say, should follow these steps: filing a written, formal challenge by parents or local residents; forming a review committee, comprised of librarians, teachers, administrators, and community members; and keeping books in circulation during the reconsideration process until a final decision is made. PEN found that 98% of the bans outlined in its report did not follow the best practice guidelines for removal as outlined by the NCAC and the ALA.

U.S. Supreme Court weighs in

The U.S. Supreme Court has only weighed in on the subject of banning books once and the ruling wasn't definitive because no opinion commanded a majority.

“The U.S. Supreme Court ruled in *Island Trees School District v. Pico* (1982) that books may not be removed from library shelves just because school officials find ideas in the books offensive,” says Professor Hudson, who is also the author of *The Constitution Explained*. “However, the ruling is quite narrow and technically only applies to the removal of books from library shelves.” In other words, the ruling did not address banning books in school curriculum.

The Court's ruling came in 1982, but the case began in 1975 when a community group in Levittown, NY wanted to remove nine books from library shelves in the Island Trees School District, including Kurt Vonnegut's *Slaughterhouse-Five* and Langston Hughes's *Best Short Stories by Negro Writers*. Their justification for removal was that the books were “anti-American, anti-Christian, anti-Semitic and just plain filthy.” The school district removed the books.

Steven Pico, a high school senior, and four other students challenged the decision claiming the books were removed because “passages in the books

offended [the group's] social, political, and moral tastes and not because the books, taken as a whole, were lacking in educational value.” The U.S. Supreme Court ruled in the students' favor, but the decision is complicated.

Writing for a three-justice **plurality** of the Court and not a majority, Justice William J. Brennan said, “We hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”

Two other justices concurred with Justice Brennan in varying degrees in favor of the students; however, it was not a clearcut decision and many legal scholars still argue about the degree of legal guidance the decision provides.

In one of four dissents in the case, Justice Warren E. Burger wrote, “If the school can set curriculum, select teachers, and determine what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library.”

Banning books in the Garden State

New Jersey is no stranger to banning books. There have been recent efforts to ban books in Wayne, Ramsey, Westfield, as well as the North Hunterdon-Voorhees School District. Martha Hickson, librarian for North Hunterdon-Voorhees



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Regional High School, pushed back on efforts to remove five LGBTQ+-themed books from library shelves. Those titles included *Gender Queer* by Maia Kobabe, *Lawn Boy* by Jonathan Evison, *All Boys Aren't Blue* by George M. Johnson, *Fun Home* by Alison Bechdel, and *This Book Is Gay* by Juno Dawson. Hickson was determined not to let the books be removed.

"These were highly reviewed books, had won awards, and there was no basis for them to be banned," Hickson says. "I had worked for 17 years to make this a safe space, fighting for First Amendment rights, for the rights of students to have a safe space."

Hickson contacted the ALA and other organizations. As a result, a community of alumni, parents, students, and other supporters came to the school board meetings to speak against banning the books. Even as they were subjected to taunts by adults, the students played a critical role in citing the importance of keeping the titles available, says Hickson.

"Their voices were the most powerful," she says.

Ultimately, the decision was made to keep the five books on the school's library shelves. Hickson says when parents push to remove books from school libraries, they trample on the rights of other parents and supporters who want the books to be available.

"Students have a right to access a diverse range of stories and perspectives," Hickson says, and a decision to ban or restrict access to a book can hurt young people who see themselves reflected in those books.

Banning books can also have a harmful impact on educators and librarians who are under constant surveillance, which can negatively affect teaching and learning. The ALA cited 27 instances of police reports filed against library staff. In her case, Hickson says she felt ambushed when she was trolled on social media, received hate mail and physical threats, and her tenure at the school was at risk.

Still, Hickson believes fighting censorship is worth it so other librarians and students know they're not alone. In recognition of her efforts to fight against banning books, Hickson received the Lemony Snicket Prize for Noble Librarians Faced with Adversity from the ALA in June 2022.

In another school district, the South Orange-Maplewood Board of Education has made significant changes to its policies regarding banning books. The new policy states that only a student or parent/guardian of a student in the school district can lodge a book challenge.

Elissa Malespina, a board member, as well as a librarian, told nj.com, "We don't want some random community member that doesn't have a kid in the school...We want a stakeholder."

The school district's new policy also stipulates that anyone challenging a book must prove that it violates the state's education standards. In addition, challenged books will not be removed while being reviewed.

A new strategy

In Texas, a new legal argument has emerged. While most book bans are challenged on First Amendment grounds, the American Civil Liberties Union of Texas has filed a complaint with the U.S. Education Department's Office for Civil Rights, claiming that a Texas school district violated Title IX's prohibition of discrimination on the basis of sex when it removed 130 books from library shelves—at least three-quarters of which featured LGBTQ+ themes or characters. The Biden Administration has interpreted Title IX to include discrimination based on sexual orientation and gender identity.

ACLU attorney Chloe Kempf told *The Washington Post* that the removals "send a message to the entire community that LGBTQ+ identities are inherently obscene, worthy of stigmatization, and uniquely deprive LGBTQ+ students of the opportunity to read books that reflect their own experiences."

Professor Hudson is not sure the strategy will be successful even though he says it's a tangible argument. "There does appear to be continuing discrimination against books with LGBTQ+ themes and topics," he says.

What students can do

Censorship silences voices and erases life experiences, but Hickson says students can be vigilant to protect their right to read books of their choice. She suggests joining school clubs that protect the right to read; volunteering to attend library, school board, and First Amendment events; and contacting local, state, and federal representatives to urge them to stand against book banning. •



1. To what degree should parents have a say in what books their children have access to? Should a parent, community or school board member be allowed to make those decisions for all students in a district? Does the age of the student make a difference? Explain your answer.
2. What do you think of the new policy passed by the South Orange-Maplewood Board of Education? Is it a valid expectation that whoever challenges a book is a "stakeholder?" Why or why not?

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As Professor Mutcherson explains, “When the U.S. Supreme Court makes decisions, they basically create a floor, and they are essentially saying states cannot give anything less [in terms of rights] than [the threshold] we have created here,” she says. “But *Dobbs* has taken away that ‘floor’ [of protection] for abortion, so it basically means that each state can now do essentially whatever it wants in the context of abortion.”

Issues of legal precedent

The U.S. Supreme Court often defers to a doctrine called *stare decisis*, a Latin term that means “to stand by things decided” when it deliberates on its rulings. In other words, the Court uses previous rulings, or legal **precedent**, on matters of law when issuing its opinions. That is why the Court rarely reverses itself. While the overruling of precedent established in *Roe* and *Casey* is rare—*The Washington Post* estimates the U.S. Supreme Court reversed itself 145 times between 1789 and 2020—it does happen.

For example, with its landmark ruling in *Brown v. Board of Education* (1954) the U.S. Supreme Court famously overturned precedent set by *Plessy v. Ferguson* (1896), a case that upheld the constitutionality of **segregation** and the concept of “separate but equal” accommodations for African Americans. In *Brown*,

the U.S. Supreme Court required the **desegregation** of schools, declaring “the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal,” the Court said.

“What defenders of *Dobbs* would say is, there are other times that the Court has overturned precedent, and it’s been celebrated as a good thing, such as with *Brown v. Board of Education*,” explains Michael Coenen, a professor at Seton Hall University School of Law and a constitutional law expert. “But critics of *Dobbs* would argue that while segregation was obviously an **egregious** wrong, abortion is a much more morally complex issue—with reasonable views on each side—and that since people have charted their life plans on this precedent, it’s very disruptive and inappropriate to just set precedent aside in the way the Court did.”

What the ruling means for the states

Pro-life advocates—people who argue that life should be protected—have celebrated the *Dobbs* decision. Meanwhile, pro-choice advocates—people who believe a woman should have the right to choose whether to keep or terminate a pregnancy—feel the decision strips away fundamental personal rights.

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Technology and Privacy Post *Dobbs* Ruling

The U.S. Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* has brought up concerns about technology and the information that apps and big tech companies have stored on their users.

For example, period-tracking apps, which are used by millions of women to track their menstrual cycles, store personal health data, including when a pregnancy could be likely and when it might have been terminated. In addition, other apps, including many gaming apps, collect location data, and could reveal whether someone is at or near a facility that offers abortion services. Privacy experts point out that this data can be **subpoenaed** and is also sometimes sold to a third-party, which could be problematic for someone in a state that criminalizes abortion.

“We’re very concerned in a lot of advocacy spaces about what happens when private corporations or the government can gain access to deeply sensitive data about people’s lives and activities,” Lydia X.Z. Brown, policy counsel with the Privacy and Data Project at the Center for Democracy and Technology, told National Public Radio. “Especially when that data could put people in vulnerable and marginalized communities at risk for actual harm.”

Unlike doctors, period-tracking apps, such as Flo, Clue or Apple’s Health app, are not bound by patient privacy protection under the federal Health Insurance Portability and Accountability Act (HIPAA).



Data storage is key

Where your data is stored is key no matter what the situation. Evan Greer, director of Fight for the Future, a digital rights advocacy group, told *Newsweek* that data stored in the cloud can be subpoenaed, while data stored on a personal device would require a **search warrant**. “A warrant is a much higher legal bar than a subpoena,” Greer said.

The Washington Post reported that Google received more than 50,000 law enforcement subpoenas for data information in 2021. The tech company shared that information in 82% of those cases.

“Digital evidence has just revolutionized how criminal investigations are conducted in this country,” Catherine Crump, director of the Samuelson Law, Technology and Public Policy Clinic at UC-Berkeley Law School, told *The Washington Post*. “We live our lives online, we leave digital breadcrumbs of our prior activities, and of course those are going to be caught up in abortion investigations.”

Just deleting an app from your phone may not be enough, according to Leah Fowler, research director at the University of Houston’s Health Law and Policy Institute.

“Deleting your app from your phone does not always mean you’ve deleted your data anywhere other than your device,” Professor Fowler told *The Wall Street Journal*. “Sometimes you have to contact an app’s customer service support team directly to ensure that your historical data has been wiped on the developer’s end.” —Jodi L. Miller

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In his **concurring opinion** in the *Dobbs* decision, Justice Brett Kavanaugh shared his belief that the U.S. Constitution is neither pro-life nor pro-choice, because it, in fact, says nothing about abortion. As a result, the ruling is meant to “leave the issue for the people and their elected representatives to resolve through the democratic process,” Justice Kavanaugh wrote.

In other words, since the issuing of the *Dobbs* decision last summer, each individual state is now charged with determining its own laws to legalize or restrict abortion, which has led to a patchwork of differing policies across the country.

Under *Roe*, women could obtain an abortion at approved clinics without fear of legal consequence typically up to week 24 of their pregnancy. In a post-*Roe* America, according to the Center for Reproductive Rights, 12 states have made abortion illegal. Another dozen states are proposing legislation to ban or restrict access to abortion. Prior to the *Dobbs* decision, some states had already passed so-called “trigger laws” that would immediately or promptly restrict access to abortion in the event of *Roe* being overturned.

The state of Kansas asked its citizens to vote on a proposed amendment to their state constitution that would prohibit the right to abortion. In the first state decision on abortion rights following the *Dobbs* decision, the majority of Kansas voters voted “no” on such an amendment, so abortion there remains legal.

Meanwhile, at least 15 states, including New Jersey, California and New York, have pledged to be so-called abortion safe havens. In July 2022, Governor Phil Murphy signed two bills into law that provide additional legal protections for women who seek abortions in New Jersey and for healthcare professionals who provide them. These laws ensure that out-of-state residents can access confidential care and that healthcare providers are insulated from disciplinary action.

“Some states have proposed laws that restrict the ability of their own residents to travel somewhere else to receive an abortion,” Professor Coenen says. “But that brings about separate questions regarding whether or not those laws are even constitutionally permitted.”

Professor Mutcherson says, “It’s incredibly complicated for both women seeking an abortion and healthcare providers, because there’s so much litigation happening that the rules in some states are changing day to day.”

Recent court decisions

There have been several lower court decisions on abortion since the *Dobbs* ruling. In December 2022, the Arizona Court of Appeals ruled that doctors could not be prosecuted under an 1864 law—passed when Arizona was still a territory—that banned abortion. The same Arizona court upheld a law passed in May 2022 that allows abortions up until the 15th week of pregnancy. The state appeals court ruling could be **appealed** to the Arizona Supreme Court.

Meanwhile, in January 2023, the South Carolina Supreme Court ruled that its state constitution provides a right to privacy, stating in its ruling, “the decision to terminate a pregnancy rests upon the utmost personal and private consideration imaginable.” South Carolina’s ruling overturned the state’s six-week abortion ban. While the South Carolina Supreme Court said the right to abortion “was not absolute,” the ruling held that the law violated a provision in its state constitution that says: “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated.”

The Idaho Supreme Court saw things differently, ruling that its state constitution does not include a right to abortion. In January 2023, the Court upheld three separate abortion bans—one outright ban, a six-week ban in the case of a threat to the life of the mother, and one that allows family members to sue abortion providers in civil court. Another Idaho law that allows for criminal charges against abortion providers is being challenged in federal court by the U.S. Justice Department.

Impact on other privacy issues

Some worry the *Dobbs* decision may signal a threat to other current federal constitutional rights, including the right to use birth control and the right to marry someone of the same sex. In ruling on these issues previously, the U.S. Supreme Court—in the cases of *Griswold v. Connecticut* (1965) and *Obergefell v. Hodges* (2015), respectively—had also linked these rights to issues of privacy, as protected by the Fourteenth Amendment.

In the Court’s *Dobbs* opinion, Justice Alito specifically stated that the U.S. Constitution does not mention a right to privacy. Future court cases, therefore, could seek to challenge federal constitutional protection for birth control, same-sex marriage, interracial marriage and other rights previously linked to privacy. In fact, Justice Clarence Thomas wrote in his concurring opinion that the U.S. Supreme Court “should reconsider” its past rulings on these issues.

“If you have an opinion that says, ‘Well, actually, we feel that whole right to privacy thing is rather **specious** and should have never been decided in the first place, then it’s possible to imagine peeling away these other layers [of rights based on privacy] as well,” Professor Mutcherson says.

While Professor Mutcherson believes legal challenges to federal birth control protections could be forthcoming, she feels stripping away federal legal protection for same-sex marriage would be much more complicated, and less likely. Professor Coenen agrees.

“With respect to same-sex marriage, the issue is a bit more complicated since, in explaining its ruling, the Court talked about both the Fourteenth Amendment right to privacy as well as a separate provision of the Fourteenth Amendment called the Equal Protection Clause,” Professor Coenen says. “So even

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if the right to privacy aspect falls away, [same-sex marriage] is still well-supported by the Equal Protection Clause.”

Still, Professor Coenen understands some citizens’ worry that “if the Court is attacking the roots of these cases, then the cases themselves could fall later.” The full impact of the *Dobbs* decision on other privacy issues is “not yet clear,” he says, and will only become so over time.

While same-sex marriage is still legal in all 50 states because of the Court’s *Obergefell* decision, the U.S. Congress took steps to **codify** it into law. In November 2022, the House of Representatives and U.S. Senate passed the Respect for Marriage Act. President Joseph Biden signed the legislation into law on December 13, 2022. The law requires that all 50 states recognize same-sex and interracial marriages performed in any other state; however, the law doesn’t require that individual states must perform these marriages. •



1. Professor Kimberly Mutcherson points out in the article that with the decision in *Dobbs* the Court took away a federal constitutional right, which is rare. How do you feel about the Court taking away a right that Americans had for nearly 50 years.
2. What do you think of the *stare decisis* doctrine? Should the Court look to previous rulings when deciding new cases? Explain your answer.
3. In the article, Professor Michael Coenen mentioned that some are critical of the *Dobbs* decision because they “charted their life plans on this precedent,” calling it “disruptive and inappropriate” to just set it aside. Do you agree or disagree with that position? Explain your answer.
4. Read the sidebar: Technology and Privacy Post *Dobbs* Ruling on page 6. How important to you is protecting your personal data? Should law enforcement or the government be allowed to force tech companies to turn over their users’ personal information? Explain your answer.

Rap CONTINUED FROM PAGE THREE

Prior to the letter, a change.org petition, created by top hip-hop executive Kevin Liles of 300 Entertainment, garnered more than 65,000 signatures launching the #ProtectBlackArt movement.

In the petition, Liles wrote: “This practice isn’t just a violation of First Amendment protections for speech and creative expression. It punishes already marginalized communities and silences their stories of family, struggle, survival, and triumph.” •



1. What do you think of using rap lyrics as evidence in a criminal trial? Should it be off limits or is it fair game as DA Fani Willis says in the article? Explain your answer.
2. What is your reaction to the rap lyric studies mentioned in the article? Can you think of other songs containing violent imagery that if portrayed as a rap song would generate negative opinions? Explain your answer.

Glossary

appealed — when a decision from a lower court is reviewed by a higher court. **clemency** — leniency or mercy.

codify — organize as laws. **concurring opinion** — a separate opinion delivered by one or more justices or judges that agrees with the decision of the court but not for the same reasons. **desegregation** — the elimination of racial segregation.

egregious — unusually or obviously bad. **indictment** — an official, written accusation charging someone with a crime. An indictment is handed down by a grand jury. **legislation** — laws made by a legislative body. **overrule** — in this case, to void a prior legal precedent. **overturned** — in the law, to void a prior legal precedent. **plurality** — having a greater number (as in votes), but not a majority. **precedent** — a legal case that will serve as a model for any future case dealing with the same issues.

prejudicial — based on or causing prejudice or bias. **probative** — affording proof or evidence. **racketeering** — fraudulent business dealings. **reverse** — to void or change a decision by a lower court. **search warrant** — document issued by a judge that allows the police to search a particular area or person. **segregation** — the policy of separating people from society by race or social class. **specious** — misleading in appearance. **subpoenaed** — to summon. **upheld** — supported; kept the same.