

Can Roe vs Wade Be Reinstated After Being Overturned by Supreme Court?

https://news.yahoo.com/roe-v-wade-reinstated-being-224033622.html?fr=sycsrp_catchall

When five US Supreme Court justices voted to overturn *Roe v Wade* and the constitutional right to an abortion after 50 years, it has led many to ask if the landmark ruling could one day just be reinstated. The answer is yes, technically, but the path would be difficult.

- The first way is for there to be a liberal majority on the Supreme Court that could reinstate constitutional protections for abortion rights. But in order to reach that majority Democrats in Congress would need to confirm enough liberal justices on the conservative majority bench, which voted in a bloc to throw out *Roe* by a vote of 5-1-3.

It took Republicans five decades to line up the exact scenario required to achieve their goal of overturning *Roe*. Democrats would need to hold both the White House and US Senate at the same time as seats became open, presumably through death, as right-wing justices are unlikely to retire under those circumstances.

Justice Antonin Scalia died in 2016, allowing Donald Trump to nominate Neil Gorsuch; Justice Anthony Kennedy retired, being succeeded by Brett Kavanaugh in 2018; and Ruth Bader Ginsberg's death allowed the one-term president to replace her with Amy Coney Barrett in 2020.

When Justice Stephen Breyer retires this summer, to be replaced by Ketanji Brown Jackson, there will no longer be anyone in their 80s on the bench of the high court. Its oldest justices will be Clarence Thomas, 73, and Samuel Alito, 72, and they could well be replaced by younger conservatives the next time the GOP controls the White House and Senate, making the path even harder for Democrats.

Only when there were enough justices on the court willing to take on a case would it then be able to rule on a challenge that brought up abortion rights, such as the case of *Dobbs v Jackson Women's Health Organization* at the centre of the court's latest decision, to determine whether the constitution protects the right to abortion.

- A second way to reinstate *Roe v Wade* runs through Congress, with a Democratic-controlled Senate and House of Representatives passing a law that codifies the protections that existed within *Roe*. This law would have to be able to survive any close inspection by the Supreme Court.

An alternative strategy would be for Congress to expand or "pack" the Supreme Court with additional liberal justices, as progressives have called for Joe Biden to do since he entered the Oval Office. However, Senator Joe Manchin, a Democrat from West Virginia, and Krysten Sinema, a Democrat from Arizona, have said they will not get rid of the Senate's filibuster rule. That would mean that any abortion bill would require Democrats to regain a 60-vote Senate majority to overcome the filibuster. The Senate is currently split 50-50 with the 2022 midterm elections on the horizon with difficult tailwinds for the party.

Democrats could change the rules of the Senate and throw out the filibuster and vote on the bill with their 50 senators and the vice-president to break any tie. But with Mr Manchin and Ms Sinema seemingly unwilling to go along with that plan, they would likely need to find two other votes to allow Kamala Harris to make the difference.