

UNITED STATES

## For Orthodox Jewish groups, it's wait and see on the reversal of abortion rights

BY RON KAMPEAS MAY 4, 2022



People protest in reaction to the leak of the Supreme Court draft abortion ruling, in New York City, May 3, 2022. (Bryan R. Smith/AFP via Getty Images)

WASHINGTON (JTA) — Orthodox Jewish advocacy groups are getting ready for a deep dive into state abortion laws — and a potentially delicate political balancing act.

Laws severely restricting abortion in 26 states would no longer be subject to challenge if the Supreme Court overturns *Roe v. Wade*, as it is now expected to do after a draft majority ruling was leaked late Monday to Politico. The landmark 1973 decision enshrined a woman's right to an abortion.

“The Orthodox Union is unable to either mourn or celebrate the news reports of the U.S. Supreme Court's likely overturning of *Roe v. Wade*,” read

the statement from the group representing Modern Orthodox congregations.

Indeed, the putative end of *Roe v. Wade* could pose a challenge for Orthodox groups that have increasingly found allies within conservative politics. On the one hand, many have aligned themselves with the so-called “religious right” on issues such as education, LGBTQ+ rights and Israel.

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On the other, halacha, the body of Jewish law that Orthodox Jews abide by, holds that a mother’s life is paramount in considering whether a pregnancy should be seen through to term. That approach conflicts with Christian ideas about abortion that have animated lawmakers in the 26 states with abortion bans and severe restrictions.

All of the states’ laws have exemptions for a threat to the mother’s life, but there are variations that do not necessarily comport with how Orthodox Jews assess what constitutes a threat. Georgia’s law, for example, bans abortion six weeks after fertilization and includes a “medical emergency” exemption, but explicitly excludes mental health diagnoses, which many rabbinic authorities would say constitute medical need. Alabama’s law, on the other hand, explicitly includes mental health diagnoses in the exception for people who face “serious health risk” if their pregnancy continues.

A balancing act was evident as Orthodox groups responded Tuesday to the Supreme Court news.

The Orthodox Union’s lengthy statement emphasized that its stance toward *Dobbs v. Jackson Women’s Health Organization*, the case before the Supreme Court, is mixed, because the group opposes what it called “abortion on demand” as much as it does restrictive bans on abortion.

“Jewish law prioritizes the life of the pregnant mother over the life of the fetus such that where the pregnancy critically endangers the physical health or mental health of the mother, an abortion may be authorized, if not mandated, by halacha and should be available to all women irrespective of their economic status,” it said in a statement.

“Legislation and court rulings — federally or in any state — that absolutely ban abortion without regard for the health of the mother would literally

limit our ability to live our lives in accordance with our responsibility to preserve life,” the statement added.

The more liberal Jewish religious streams have for decades defended *Roe v. Wade*, and they spent Tuesday expressing outrage at its apparent imminent repeal.

But many Orthodox Jewish advocacy groups, as well as politically conservative Jewish groups, offered only guarded reactions to the leaked ruling, in part because they are likely to agree with it to some degree. A number of Orthodox groups have in the past said some states are too liberal in their allowances.

Matt Brooks, the executive director of the Republican Jewish Coalition, had previously argued that American Jews worried about a conservative Supreme Court because of its potential abortion rulings held misplaced concerns because *Roe* was considered settled law. He declined to comment on the leaked ruling, saying it was not a finalized opinion.

Brooks said he did not regret his counsel in presidential elections that *Roe v. Wade* was not in danger. “I was repeating what every justice had said during their confirmations, that *Roe v. Wade* was settled law,” Brooks said told the Jewish Telegraphic Agency.

Abba Cohen, the Washington director of the haredi Orthodox umbrella body Agudath Israel, noted that the draft ruling, authored by Samuel Alito, was not the final decision, and could be tweaked by the time the ruling comes down. Draft rulings may be subject to considerable revision, based on negotiations among the justices.

“While Agudath Israel is closely monitoring this important — if irregular — development, the Jewish perspective on abortion is nuanced,” Cohen wrote in an email.

“Thus, we would have to review the precise nuances of the final decision itself — how, for example, it treats abortion rights when the ‘mother’s life or health is endangered,’ or when the ‘mother’s sincerely-held religious beliefs allow or require’ her to seek an abortion,” Cohen said. “We would also have to carefully examine state statutes and prospective legislation on these matters. Only then can we responsibly determine the true impact of the *Dobbs* decision and future steps we might deem necessary.”

The Coalition for Jewish Values, an Orthodox advocacy group that joined a friend of the court brief defending restrictive abortion laws in the current Supreme Court case, said on Tuesday a number of liberal Jews were overstating halachic allowances for abortion.

“The Jewish Bible identifies human life as a soul placed (breathed) within a body by G-d Himself, with inestimable sanctity and value,” the group said in a statement Tuesday. “That is the authentic Jewish view, as determined by rabbinic texts and legal codes stretching back to Sinai. We support Heartbeat Laws and other efforts to distinguish between tragic cases of abortion due to medical necessity, as compared to disregard for fetal life as simply the mother’s ‘choice.’”

The OU statement decried what it called “extreme polarization” around the issue, which it said “does not bode well for a much-needed nuanced result. Human life — the value of everyone created in the Divine Image — is far too important to be treated as a political football.”

There was a lot for Orthodox groups to absorb about a ruling no one knew would be revealed this soon — the final ruling will likely come down in June — or that would be as far-reaching as the leaked opinion appears to be. A number of court watchers believed there would be a partial rollback of Roe v. Wade’s protections, but that the court would fundamentally preserve the decision.

Ultimately, if the draft decision stands, the Orthodox groups will have to reconcile not only the differences among the states’ laws, but also among rabbinical authorities.

In a 2018 analysis in The Forward, Rabbi Elli Fischer, a historian of Jewish law, outlined nuanced differences among religious authorities regarding whether a diseased or deformed fetus could be aborted to spare a mother mental anguish, with some opposing it except in the most extreme circumstances, while others allowed it more broadly.

A number of states have exemptions from certain abortion bans for rape and incest; others do not. There are also differences among halachic authorities over whether rape constitutes a reason to carry out an abortion. The late British chief rabbi, Immanuel Jakobovits, a Jewish legal scholar, said rape was not a reason for abortion. Rabbi Asher Lopatin, a Detroit area

Orthodox rabbi, told JTA that the late Rabbi Ahron Soloveichik, another halachic authority, ruled that rape in some cases would allow abortion.

Lopatin, the founding rabbi of Kehillat Etz Chayim who is affiliated with politically liberal Orthodox movements, said an end to Roe v. Wade might shake more politically conservative Orthodox Jewish groups out of their complacency on the topic.

He noted for instance that some Orthodox rabbinical authorities have held that a diagnosis of the degenerative infantile disease Tay-Sachs in the fetus, coming with the likelihood of death by 5 years old, would justify an abortion — but that one would be banned under most of the state laws restricting abortion.

“It’s hard to imagine that we’re living in a country where you cannot terminate that pregnancy and I think that there’s going to have to be a period where [Orthodox Jews] realize what this means,” he said.

Many Jews live in Democratic-led states, Lopatin said, but substantial communities reside in conservative states, and would soon have to contemplate the necessity of an ailing pregnant woman having to travel long distances to a state that allows abortion.

“Not all Jews are wealthy, and not all Jews really have the resources to go spend a week in New York,” he said. “People in the Orthodox world may not realize how this can really affect their lives.”