

# Opinion 2 questions that would expose Trump's lies about abortion



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## CORRECTION

An earlier version of this column misspelled the name of Mark Lee Dickson. This version has been corrected.

There's nothing inherently wrong with [Donald Trump's](#) newly announced position on [abortion](#), except for the obvious — and provable — fact that he doesn't mean it.

Let me explain. After *Dobbs*, with the constitutional right to abortion gone, the most that abortion rights supporters can reasonably hope for from abortion opponents is the kind of leave-it-to-the-states stance that Trump just embraced. Trump outlined his views in a [video released Monday](#), asserting that whatever states decide “must be the law of the land, and in this case, the law of the state.” States “will be different, many will have a different number of weeks or some will have more conservative than others, and that's what they will be,” Trump said.

That approach is a terrible outcome for women in antiabortion jurisdictions, but it's far better than an alternative nationwide rule that Trump had reportedly toyed with. Although a nationwide ban — some reports had Trump endorsing a measure that would prohibit abortion everywhere after 16 weeks — might sound reasonable, it's anything but. At least as outlined by advocates such as Sen. Lindsey Graham (R-S.C.), it would impose a ceiling on abortion access but not a floor.

Under the Graham approach, conservative states that want to impose more draconian limits would remain free to do so; the real impact would be to *limit* abortion access in states that prefer more permissive rules. And while the vast majority of abortions are performed before 15 or 16 weeks, cutting off abortion access at that point would affect women in many situations where fetal anomalies are not detected until later in pregnancy.



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So, leaving the decision to individual states is the best we can expect under these terrible circumstances. Except that Trump's new paean to states' rights is utter hogwash.

First, look at his record. This man has been all over the lot on abortion, as politically convenient — from proclaiming himself “very pro-choice” in 1999 to asserting, briefly, in 2016 that “there has to be some form of punishment” for women who have abortions. Trump might have core convictions on some issues. But abortion is not one of them.

Second, look at his words. He told us straight out that his new commitment to states' rights is driven by politics; we should believe him. “Great love and compassion must be shown when even thinking about the subject of LIFE, but at the same time we must use common sense in realizing that we have an obligation to the salvation of our Nation, which is currently in serious DECLINE, TO WIN ELECTIONS,” Trump said in a social media post on Sunday. In short, this is politics, pure and simple.

Third, and most important, consider the questions Trump can't, or won't, answer about his newly evolved position: Would a second Trump administration enforce the Comstock Act, the 1873 law that makes it a felony to mail any “article or thing designed, adapted, or intended for producing abortion”? And would the Food and Drug Administration, in a second Trump term, restrict or eliminate access to the abortion drug mifepristone?

The Comstock Act is antiabortion advocates' trump card. This antiquated law was a dead letter during the half-century that *Roe v. Wade* was in place because the constitutional right to abortion would have superseded any attempt to enforce its provisions.

In the aftermath of *Dobbs v. Jackson Women's Health Organization*, the Biden Justice Department said it interpreted the Comstock Act to cover only *illegal* abortions. The department's Office of Legal Counsel, in a memo dated Dec. 23, 2022, concluded that the law doesn't bar the mailing, delivery or receipt of abortion medications “where the sender lacks the intent that the recipient will use them unlawfully.”

Despite the law's broad language, the memo said, "over the course of the last century, the Judiciary, Congress, and USPS [the Postal Service] have all settled upon an understanding ... that is narrower than a literal reading might suggest."

Indeed, the memo said, abortion medication could legally be sent even to states where abortion is prohibited because some women in those jurisdictions might be able to use the medication (for instance, if their lives are in danger), and the senders wouldn't know whether the intended use is unlawful.

Which raises a critical question: Would a Trump administration hew to this narrow interpretation of the law? Of course not. And reviving the Comstock Act wouldn't end only medication abortions — it could end all of them. Because the law covers any "article or thing ... intended for producing abortion," it would also include medical instruments and material.

"We don't need a federal ban when we have Comstock on the books," Jonathan F. Mitchell, the architect of Texas's Senate Bill 8, a near-total ban on abortion, told the New York Times in February. His ally, pastor Mark Lee Dickson, told me the same. "I do believe that every single abortion facility in America is in violation of these statutes," Dixon said, referring to Comstock.

And then there is the FDA, which approved mifepristone in 2000 and expanded access to it in 2016 and 2021. The Biden administration is defending that expansion in a case before the Supreme Court. It's a safe bet to assume a Trump administration would not take the same position.

Indeed, it's a safe bet that a Trump FDA would reverse itself on mifepristone and yank the drug's approval. That would be catastrophic for abortion access; the Guttmacher Institute reported last month that medication accounted for 63 percent of abortions, and that number is on the low side because it doesn't include self-administered abortions or those by women who receive the medications in states where abortion is prohibited.

Trump should be pressed on these two matters: whether a Trump administration would revive Comstock and whether it would ban mifepristone. He won't answer because it's not in his political interest to do so. He wants to look reasonable — or what passes for it.

But don't let Trump's leave-it-to-the-states rhetoric fool you. A Trump administration would be a grave threat to abortion rights, wherever you live. Women would have only as much reproductive freedom as Donald Trump and his allies would allow them, and we know how little that is.