

The Impotence of the Fourth Amendment in a Post-Roe World | Lawfare

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The year is 2023. It's been one year since the Supreme Court handed down its decision in *Dobbs v. Jackson Women's Health Organization*, in which the court overturned [Roe v. Wade](#).

The state in which Jessica lives prohibits and criminalizes abortion for any reason, defining a fertilized egg as a person. Jessica tells her friends and family that she had a miscarriage at 11 weeks of pregnancy. One of her roommates doesn't believe her and reports her to the local police for having had an abortion.

The local police investigate Jessica for what they believe is a possible violation of the state's law criminalizing abortion. Based on the initial investigation, police officers determine that Jessica wanted to terminate her pregnancy and was trying to find the "abortion drug." They obtain a warrant to search her phone. On her phone, they discover evidence that she searched for information about abortion and purchased mifepristone and misoprostol. These drugs can cause an abortion, but they are also used to help women complete the process of miscarriage. They also find evidence of when she had her last period on a period-tracking app, which further substantiates that she was pregnant for 11 weeks. The evidence obtained from Jessica's phone is used to prosecute her for violating the state's law criminalizing abortion.

This is the type of surveillance and investigation of women's private health and reproductive decisions we can expect if *Roe* is, in fact, overturned.

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