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USA

Supreme Court May End Federal Abortion Protection—What's To Be Done?

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The U.S. Supreme Court appears to be poised to severely weaken or to overturn completely the Roe v. Wade decision that has given federal protection to abortion since 1973. The justices' decision may not be announced until June. Overturning Roe means state legislatures would determine abortion laws. Facing a historic defeat, the women's movement, progressives, and the left are asking: How did this happen and what can be done now?

The case before the court, Dobbs v. Jackson Women's Health, is a Mississippi state law that bans abortion after 15 weeks of pregnancy. For decades in most states, women had the right, set by another Supreme Court decision (Casey v. Planned Parenthood), that permitted abortion until the fetus became viable, usually defined at 24 to 28 weeks, so as not to impose on women an "undue burden" in getting an abortion. If the Supreme Court upholds the Mississippi law, that would overturn Casey and would encourage other states to pass even more restrictive laws. Or the court could simply overturn Roe completely, since there is no clear rationale for choosing 15 weeks.

How did we get here? First, Republicans who are overwhelmingly opposed to abortion rights, dominate the majority of state governments. In 23 of the 50 states, they are in complete control and in 12 states there are divided governments. Working with the anti-abortion organizations, Republicans introduce dozens of anti-abortion laws every year, so today more than one-third of states already have 20-week abortion bans.

Second, when former president Donald Trump ran for office in 2016, he promised to appoint justices who would overturn Roe. Once in office, he did so, appointing three anti-abortion judges giving the conservatives a 6 to 3 majority on the court. Liberal Justice Sonia Sotomayor asked, "Will this institution survive the stench that this creates in the public perception that the constitution and its reading are just political acts?" A recent poll finds 61 percent of Americans believe the court is motivated by politics, not law.

What mistakes did the abortion rights movement make that led to this situation? The biggest mistake was the failure of the leading organizations, particularly Planned Parenthood, to take on the Hyde Amendment. In 1976, Henry Hyde, a Republican congressman, succeeded in getting the U.S. Congress to pass a law banning federal funding for abortions. That effectively made it impossible for many poor women and women of color who depended on Medicaid to pay for abortion.

The white women who led the national groups failed to make a fight over Hyde, which would have entailed organizing poor and working-class women and women of color at the grassroots. As journalist Amy Littlefield writes, "Over the next several years, the Supreme Court upheld restrictions on public funding of abortion that effectively made abortion access in America a two-tiered system: Those with resources could get one, and many of those without could not."

What can be done now? Many progressives want President Joseph Biden and the Democrats to change the Supreme Court. The Supreme Court is now made up of nine justices who serve for life and can only be removed by impeachment. Since the founding of the court there have been 115 justices and only one has been impeached. The court has no set number of justices and has varied from 5 to 10, but since 1869 has had 9, so some advocate that Biden should expand the court and appoint more justices. President Franklin D. Roosevelt attempted such a move in 1937, but it failed in Congress. An expanded court is not likely to be adopted.

Many women on the left argue that we need a new women's movement to fight for abortion rights, a movement made up of not only white middle class women, but including and led by working women and the poor. Polls indicate that about two-thirds of Americans support abortion rights, so building such a movement is doable.

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