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USA

After Roe, the Anti-Abortion Deluge

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Anti-abortion forces find abortion under any circumstance abhorrent. Since the U.S. Supreme Court issued the Roe v. Wade 1973 decision, however, the pragmatic wing worked to limit its access. This included passage of laws that deny poor women Medicaid coverage, require a waiting period and dissemination of inaccurate information, demand written consent from parents to curtail teenage access, set up unnecessary requirements for medical personnel and clinics, and deny U.S. foreign aid to any health care facility that discusses the procedure.

Along with the legislation, anti-abortion activists have mobilized at clinics where most abortions are performed. They have attempted to shut them down, intimidating clinic personnel, and even murdering doctors.

But the most important institution the right wing set up are 2000 crisis pregnancy centers that attract the unsuspecting by offering free services including pregnancy testing and ultrasounds.

This year 16 states are slated to provide $250 million in taxpayer dollars to these largely unregulated centers, often sponsored by churches where religious staff seek to persuade women to continue their pregnancy. They claim that abortion leads to depression or breast cancer, suggest adoption as an alternative and offer free diapers.

After the stunning 2022 U.S. Supreme Court ruling that those wanting to terminate their pregnancies had no right to do so under the U.S. Constitution, the expectation was that the struggle would move to the various states. Subsequently 15 states have banned abortion and seven more have placed restrictions on the procedure — for example, banning abortions after six weeks — that would have been illegal under Roe v. Wade.

The latest ruling is the Arizona Supreme Court decision, reinstating a strict anti-abortion law passed well before statehood! Interestingly enough, both the state’s governor and attorney general oppose the law.

At least 60 clinics providing abortions have closed since June 2022. In some states, where clinics have remained open to provide other pregnancy-related services, laws forbid staff from providing so much as a reference to those seeking abortion.

The truth is that the fight for reproductive justice continues at both federal and state levels. What the right wing desires is a federal Life at Conception Act that would confer personhood on fertilized eggs. Two years ago, there were 167 Republicans in the House of Representatives who co-sponsored the bill. However, given that in vitro fertilization (IVF), a widely-supported procedure, involves fertilized eggs, the bill’s passage is a problem for hardline anti-abortionists. Witness how fast the Alabama legislature rushed through a bill insuring that IVF clinics would not be affected by their strict anti-abortion measures!

A more pragmatic bill would be a federal ban on abortions after 15 weeks. Although Donld Trump stepped back from supporting further federal anti-abortion legislation, should he be elected president once again these forces hope he might sign such a bill.

This article will deal with federal legislation that currently hinders the right to bodily autonomy, which is a central issue for LGBTQ+ rights as well. A separate article, “Abortion Rights After Dobbs: The State of the Struggle” by Johanna Brenner, on the ATC website, concentrates on state-level legislation and court rulings.

Hypocritical “Hippocratic Medicine”

Shortly after the Dobbs v. Jackson Women’s Health Organization decision, a group of anti- abortion doctors belonging to the Alliance for Hippocratic Medicine, looked for a judge they considered sympathetic to their cause. The well-known anti-abortion federal judge, U.S. District Judge Matthew Kacsmaryk, was their choice. They asked the court to ban mifepristone, one of the two drugs used in at least 63% of all U.S. abortions.

Their case maintained mifepristone was unsafe and led to incomplete pregnancies, submitting several studies to back up their claim. This then condemned them to complete a procedure they found morally wrong.

Judge Kacsmaryk dutifully ruled in their favor. He accepted as valid both the cited studies, which have subsequently been found invalid, and the argument that they had standing in the case because they would be the ones to complete the procedure.

When the outrageous and far-reaching decision was brought to the conservative Fifth U.S. Circuit Court of Appeals, the Justices accepted the doctors’ arguments as well. However they did not rule that the drug should be banned, merely rolled back to its initial 2000 approval. Then the FDA required that the drugs be prescribed in person. (The motto of the right wing is if you can’t stop the procedure, at least try to make it more expensive, and therefore harder to access.)

The two-drug procedure, which is FDA approved for the first trimester of pregnancy, consists of mifepristone (that blocks the progesterone hormone necessary for a pregnancy to continue) followed by misoprostol (that causes the uterus to empty).

Clinics — 760 of whom exclusively provide medication abortions — have reported more than four million have used medication abortion to terminate their pregnancies. Since these drugs are also safe when individually ordered over a website and self-administered, their usage is undoubtedly much higher. Clearly hospitals have not been inundated with incomplete abortions.

Scientific studies concluded that more than 99% of all medication abortions have did not require hospitalization. On that basis, the FDA updated its procedures in 2016 and 2021, allowing patients to receive the drugs through telemedicine or mail.

The U.S. Supreme Court stayed the District Court’s order and accepted the case. On March 26 it heard the oral arguments; a decision is expected in June. At the hearing the majority of the Justices were skeptical of the anti-abortion doctors’ standing, so the question remains: Why did they bother taking up the case? Even a ruling that opened a middle path — between forbidding the use of mifepristone and the current FDA ruling that allows proscribed pills to be sent by mail — would mean that courts were challenging the FDA’s authority.

Ignoring scientific studies and rolling back the FDA’s protocols to 2000 would swamp the judicial system with cases challenging the FDA’s decisions not just on mifepristone but on other food and drug safety regulations. Certainly, the right wing might welcome a move to weaken regulations, but the Court may shrink from unleashing such chaos.

The target in this case is mifepristone, not the second drug, misoprostol. Mifepristone is also used for medical management of miscarriages while misoprostol is used to treat gastric ulcers and post-partum bleeding.

If the FDA were forced to withdraw mifepristone, misoprostol taken by itself will result in a safe abortion, especially

during the earliest stages of pregnancy. In fact, many countries use misoprostol alone, which makes the abortion a bit more painful but is only slightly less effective.

During Judge Kacsmaryk's hearing, he repeatedly raised the Comstock Act, passed in 1873, as a possible avenue for stopping the mail distribution of mifepristone. The act was originally passed to prevent the mailing of "obscene" material. It was also used to prosceute those who ran abortion ads in 19th century newspapers.

But it also functioned to prevent doctors and nurses from learning about distributing birth control information. The act was repeatedly contested by the birth control movement in early 20th century America.

In 1936 the U.S. Circuit Court of Appeals for the Second Circuit ruled that the law did not apply to physicians; it fell into disuse but was never repealed. (See the "Strange Career of the Comstock Law").

The reality is that laws banning or blocking access to abortion do not stamp out the practice. In fact, last year the U.S. health care system reported slightly more than one million abortions. Despite all the restrictions passed since the Dobbs decision, 2023 had the highest number of abortions recorded since 2011 — a full 10% increase over 2020.

Now the right wing dreams of taking the Comstock Act out of mothballs and adding it to the arsenal of federal anti-abortion measures used to block the fight for bodily autonomy. But of all those laws probably the most important is the Hyde Amendment. First passed in 1977, it prevents the use of federal Medicaid money for abortion services. Whether a Republican- or Democratic-dominated Congress, the amendment is renewed annually. Only 16 states and currently allot Medicaid funds for abortion.

Sadly, even after reproductive freedom was added to the Michigan Constitution, the legislature failed to restore state Medicaid for abortion. Seemingly a neutral law, it discriminates against poor women and disproportionately targets women of color. It is justified as being fiscally prudent, papering over the reality that we need quality and universal health care. The fact that the overarching Hyde Amendment is a federal provision provides state legislators with cover.

Another federal law prohibits a particular procedure for terminating late-stage pregnancies. Passed in 2003, the so-called "Partial Birth Abortion Ban Act" prohibits doctors from intentionally using "intact dilatation and extraction" surgery.

Five years later the U.S. Supreme Court ruled the law constitutional. Although this procedure was used in less than one percent of all abortions, the ban was a triumph for the right wing because it focused on the possibility of a live fetus being extracted.

Before its passage, testimony from women who had undergone this procedure spoke about the severe fetal abnormalities that led to their decision to abort so late in their pregnancy. Many spoke of the trauma they faced as they chose to terminate the pregnancy rather than suffer severe health problems or deliver a stillbirth.

The Discussion Since Dobbs

Hospital consolidation and lack of comprehensive medical care also blocks access to reproductive care. More than half of all rural hospitals have closed their maternity units, forcing people to travel longer distances for prenatal, childbirth, postnatal or abortion care. This may be an annoyance for a "typical" pregnancy, but when serious complications arise, it is a critical factor.

These maternity care deserts are unprepared for complications — yet maternity and infant mortality rates are high and getting higher. In 2018 the maternal mortality rate was 17.4 per 100,000 live births but rose to 32.9 deaths three years later.

Of course, Black and Indigenous women have rates two to four times higher than white women. Add to these figures the growing number of high-risk pregnancies, and it is clear that U.S. health is headed in the wrong direction.

While the Biden administration claims that the Emergency Medical Treatment and Labor Act should protect hospitals and doctors terminating a pregnancy under emergency circumstances, states such as Texas and Idaho are battling against that interpretation.

The recent actions of Texas Attorney General Ken Paxton show just how the state can use its power to try to stop an individual from obtaining the help they need when a pregnancy becomes complicated.

Knowing she was carrying a non-viable fetus, and returning to emergency care for cramping and fluid leakage, Texas resident Kate Cox requested the right to an abortion because of her health.

While Travis County District Judge Maya Guerra Gamble ruled in her favor, Paxton appealed the decision to the Texas Supreme Court. He also wrote to the hospitals where Cox's doctor had admitting privileges, claiming they could face prosecution if they allowed the abortion, Paxton dismissed Gamble's ruling, saying she was not medically qualified, as if any judge or lawyer is!

Cox, already more than 20 weeks pregnant, decided to seek an abortion in New Mexico rather than wait for the ruling. In the end the Texas Supreme Court overturned Gamble's ruling, citing that Cox's life was not threatened, only her health.

The struggle for bodily autonomy means removing restrictions that impede people's decisions and providing institutional support for them. Instead we have the horrendous stories of Kate Cox and Brittany Watts.

Brittany Watts was 21 weeks pregnant when her water broke and she went to a hospital in Warren, Ohio for help. The Catholic hospital was aware that the fetus was non-viable and convened its ethics committee — but failed to inform Watts about their process. Hospital records show that when first admitted she was bleeding, had a premature rupture of her membrane and an elevated white blood cell count.

After eight hours of waiting, and against medical advice, Watts decided to go home. Returning the following day, she waited 11 more hours for treatment, then checked herself out a second time. That night she miscarried in her bathroom, returning to the hospital for medical care the next day
.
The hospital called the police, who went to her home to locate the fetus. She was subsequently charged with abuse of a corpse — a felony dismissed only when the grand jury refused to indict her.

While the hospital staff, police and prosecutor believed they were doing their job, most people who learn about the case are shocked at the inhuman treatment of an African-American woman who sought help.

Fortunately, Watts didn't hemorrhage or develop sepsis and die but defended herself against their stupidity and brutality. All the institutions and people staffing them failed her. That includes the ethics committee, who was so afraid of misjudging the law and might face criminal charges themselves that they didn't even bother to talk to her.

Brittany Watts, who was humiliated and criminalized by the state for seeking medical care, asserted the right to control her own body. While the right wing seeks to outlaw all abortion by telling lies about how dangerous and immoral the procedure is, the stories of Kate Cox and Brittany Watts reveal the need to end the practice of judging medical decisions other people make.

These stories illustrate how the fight for abortion isn't disconnected from a whole range of issues that connect human beings to one another. There is no need to create hundreds of laws governing abortion — just access to good medical care. As the slogan reminds us: "Our bodies, our lives, our right to decide."

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