Since January 2020 Elsevier has created a COVID-19 resource centre with free information in English and Mandarin on the novel coronavirus COVID-19. The COVID-19 resource centre is hosted on Elsevier Connect, the company's public news and information website.

My body, whose choice?

As the COVID-19 pandemic ravaged health care systems across the country, many individuals protested vaccine mandates by brandishing signs that read "My Body, My Choice." Borrowing rhetoric that has long been associated with defending reproductive freedom, people fiercely argued for their rights as individuals to decide what happens to their bodies, regardless of the public health consequences. Conservative politicians joined in co-opting pro-choice language to defend individual liberty and protect their constituents from what they believed was an overreach of government authority. The fight for bodily autonomy as it pertained to COVID-19 vaccination ran parallel to some of the greatest attacks to date on reproductive health care. Paradoxically, the arguments for individual liberty and against reproductive autonomy were often spoken from the same mouth.

In May 2021, Texas Governor Greg Abbott signed into law the nation's strictest abortion ban and then took a moment to raise his hands to his chest and form them into the shape of a heart, commemorating the passage of the "Texas Heartbeat Bill" (also known as SB 8.) A few months later, the law went into effect and immediately placed abortion providers and patients in danger.

Sadly, SB 8 is not an aberration, but rather the culmination of years of work. Since the legalization of abortion in 1973 via *Roe v. Wade*, >1,300 abortion restrictions have been passed by state legislatures, with over half of those restrictions emerging in the past decade. These restrictions have come in various forms, from abortion bans to medication limitations to targeted regulation of abortion providers. All were designed with the same goal—to limit abortion access by any means necessary. Reports from the Guttmacher Institute have shown that >80% of abortion restrictions were adopted in states considered hostile toward abortion rights (1). Notably, these reports also demonstrated that the degree of hostility toward abortion strongly correlated with the partisan composition of state legislatures, with Republican majorities in the State Senate and the State House being associated with "hostile" or "very hostile" environments toward abortion rights. Under President Trump, this harrowing dynamic played out on the national stage, as policies immediately threatening reproductive freedom were instituted, and an antichoice legacy was solidified.

In November 2016, 100 judgeships were open across the country. By the end of 2020, Trump had appointed 226 federal judges. This means that nearly one-third of all sitting federal appeals court judges in the United States were Trump nominees. Among these nominees were 3 Supreme Court justices: Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. The gravity of this cannot be overstated, especially given the pivotal role that the Supreme Court has historically had in shaping our country's landscape of reproductive rights (2).

Griswold v. Connecticut (1965) is widely considered one of the early landmark Supreme Court cases that addressed reproductive freedom. The Supreme Court struck down a law that prohibited the prescription, sale, or use of contraceptives for married couples, citing that the Constitution guarantees a "right to privacy" regarding personal matters such as childbearing. Soon after, the Supreme Court heard *Eisenstadt v. Baird* (1972) and further expanded reproductive freedoms by establishing the right of unmarried individuals to also obtain contraceptives. Just 1 year later, in *Roe v. Wade*, the Supreme Court ruled that a constitutional right to privacy additionally includes the right to an abortion before fetal viability. For all these decisions, the Supreme Court comprised primarily liberal judges, although conservative judges also played key roles in crafting the majority opinions for each case. This seems almost impossible to envision today given the current hyperpolarized and partisan political environment.

In 1988 and 1989, the Commonwealth of Pennsylvania enacted new abortion laws that placed undue burden on women seeking abortion care. Planned Parenthood brought suit *(Planned Parenthood vs. Casey)* to protest the constitutionality of these statutes. In 1992, the Supreme Court decision reaffirmed the essential holding of *Roe* that women have a constitutional right to abortion before fetal viability. Fifteen justices over the past 30 years since *Casey* have continued to uphold these basic tenets. To radically overturn this precedent because of new appointees to the Court undermines the basic fabric of what the Supreme Court has historically represented.

Today, the divide between "liberal" and "conservative" judges appears increasingly unbridgeable, particularly when considering the context in which the 3 newest judges were nominated. During Trump's election campaign, he promised to select "pro-life judges" who would automatically overturn *Roe* (3). Although Justices Gorsuch, Kavanaugh, and Barrett have not themselves explicitly stated this goal, the religious-right celebrated widely as each of their nominations became lifetime appointments. Those who protest the unprecedented influence of a single president on the makeup of the Supreme Court are often met with arguments that the Supreme Court is an institution above politics. However, these arguments lack major credibility when a single president of a single political party appointed most of the sitting judges, and those judges are codifying into federal law the principles of that party's platform. The legal underpinnings of *Roe* have not changed, but the political leanings of the appointed justices have. The highest court in the land has a conservative supermajority in a time when there has never been more pressure to make decisions along ideological lines. Given that "conservative" has become synonymous with "antichoice," the concerns being raised are indeed justified. Justice Sotomayor said it best during oral arguments in *Dobbs*, when she questioned, "will this institution [the Supreme Court] survive the stench that this creates in the public perception that the Constitution and its reading are just political acts?"

Although abortion has only reached the steps of the Supreme Court a handful of times, lower courts have been routinely hearing cases regarding abortion due to state legislatures' deluge of restrictions and bans. In the *Roe* majority opinion, the Court specifically declined to answer the

question of when life begins, given that "those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus"(4). *Dobbs v. Jackson Women's Health Organization* directly challenges the viability clause put forth in *Roe* and seeks to uphold a Mississippi law that prevents abortion beyond 15 weeks. The emergence of SB 8 seeks to further undermine the viability clause by declaring that life begins with fetal cardiac activity.

If viability fails to become a defining point, there will be nothing to stop states from working backward from 15 weeks to 6 weeks to fertilization. Embryo and fetal personhood laws have long been seen as an attempt by politicians to undermine *Roe* by declaring that human life begins at fertilization. As *Dobbs* tries to set the standard to move away from viability, this allows for earlier setpoints and can ultimately grant embryos and fetuses the same legal protections as full persons. This clearly has implications beyond abortion care and is a threat to the modern-day practice of in vitro fertilization.

It is alarming to consider how ascribing personhood status to embryos will translate to litigation in response to embryonic loss, whether through laboratory error, cryogenic storage tank failure, warming embryos for frozen embryo transfer cycles, damage during trophectoderm biopsy, or attrition during routine embryo culture. Couples who created embryos and subsequently divorce may have protracted custody battles as embryos would no longer be considered property, but people. Child support may be awarded for frozen embryos. Should *Roe* not be upheld and personhood laws gain legitimacy, assisted reproductive technologies would likely suffer the same fate as abortion services in that they would be critically regulated and have government-imposed restrictions. Embryo cryopreservation may become illegal because of the potential for loss associated with the vitrification and warming process. Preimplantation genetic testing for single gene disorders, especially adult-onset diseases like Huntington's, may be restricted because affected embryos still have potential to become healthy fetuses.

At the time of this writing, we are awaiting the Supreme Court decision on *Dobbs v. Jackson Women's Health Organization*. Will *Roe* fall? Will a woman's right to privacy and equality no longer be considered a fundamental human right and will this instead be decided state by state? How will overturning *Roe* impact other rulings such as contraception and marriage equality? Will 50 years of progress be undone? To what extent will abortion access be limited? If so, how many patients and families will suffer? What consequences will the reverberations carry for infertile couples trying to have an infant through in vitro fertilization? Will access to preimplantation genetic testing be restricted in certain states? Will embryo abandonment become punishable by law? Among all these frightening uncertainties, one thing is clear: a threat to reproductive autonomy anywhere is a threat to reproductive autonomy everywhere. As the battle over abortion continues to be waged in the political arena, it is important to remember that reproductive health care exists on a spectrum of which family planning and infertility treatment bookend, but do not oppose. Abortion care is a vital equipoise to assisted reproductive technology and vice versa. Both are essential for the full realization of our bodily autonomy and should be fiercely protected.

At a time when reproductive autonomy has never been more threatened, arguments for individual liberty have never been louder. Shortly after Governor Abbott signed SB 8, he issued an executive order that prohibited COVID-19 vaccine mandates by any entity. It was painfully clear that "My Body, My Choice" only applies to certain bodies and certain choices. Physician advocacy is a fundamental and invaluable weapon to combat these inequities and to defend reproductive freedoms for *every*body. For our patients and ourselves, there is no other choice.

Melissa N. Montoya, M.D., M.A.[a]
Eve C. Feinberg, M.D.[b]
[a]Department of Obstetrics & Gynecology, Duke University School of Medicine, Durham, North Carolina; and [b]Division of Reproductive Endocrinology and Infertility, Department of Obstetrics and Gynecology, Northwestern University Feinberg School of Medicine, Chicago, Illinois

https://doi.org/10.1016/j.fertnstert.2021.12.018

DIALOG: You can discuss this article with its authors and other readers at https://www.fertstertdialog.com/posts/34430

REFERENCES

1. Nash E, Cross L. Is on track to become the most devastating antiabortion state legislative session in decades. Available at: https://www.guttmacher.org/article/2021/04/2021-track-become-most-devastating-antiabortion-state-legislative-session-decades. Accessed October 21, 2021.
2. Niederberger C, Feinberg E, Pellicer A. For the Supreme Court: choose another. Fertil Steril 2020;114:941–2.
3. Bloomberg Politics. Trump says he'll appoint justices who will overturn Roe v. Wade. Available at: https://www.youtube.com/watch?v=qb6da7ZPegE. Accessed November 1, 2021.
4. Chemerinsky E. Constitutional law: principles and policies. 6th ed. New York: Wolters Kluwer; 2019.