

#1501 Navigating Post-Roe America

Intro 7-12-22

[00:00:00] **JAY TOMLINSON - HOST, BEST OF THE LEFT:** Welcome to this episode of the award-winning *Best of the Left Podcast*, in which we shall take a look at how the Supreme court stripped abortion rights for half the country, what life will look like for those seeking abortions, and what we can do both personally and politically to fight back.

Clips today are from *Burn It All Down*, *There Are No Girls on the Internet*, *Boom! Lawyered*, *This Is Hell!*, *Democracy Now!*, *Amicus*, and *The Late Show* with Steven Colbert, with an additional members-only clip from *LegalEagle*.

Hot Take: Aimee Arrambide, of Avow Texas, with Abortion Resources and Why Sports Teams Need to Stand Up for the Right to Abortion - Burn It All Down - Air Date 6-29-22

[00:00:30] **JESSICA LUTHER - HOST, BURN IT ALL DOWN:** What should someone do right now if they want or need an abortion? Like, what are the recommendations at this point?

[00:00:39] **AIMEE ARRAMBIDE:** At this point, there are a lot of websites that people can access to try to get as up-to-date as possible information. So, ineedana.com is one of them, needabortion.org is one that we host with the Lilith Fund that we're currently updating to be as accurate as possible. Abortion Finder is another one. And those should have as up-to-date information as possible, basically dependent on us and how quickly we can gather it and update it. So we're working on that right now. They can still contact the National Network of Abortion Funds to talk to abortion funds who can help provide financial services and financial assistance for people needing to pay for their procedure, and they can also be connected to practical support funds across the country to get access to funding for logistical needs – so, travel, accommodations. Currently in Texas, a lot of the funds are kind of taking a pause while they figure out what exactly the laws mean in regard to their work. But there are funds across the country that will pay for Texans to access the

care. For example, some Colorado funds – the National Abortion Federation fund will pay for people from Texas. So, it's still possible. It's just, it's kind of an upheaval right now, the information, and we're trying to update it as fast as possible.

[00:02:01] **JESSICA LUTHER - HOST, BURN IT ALL DOWN:** Man. My heart goes out to people who are in this moment trying to seek this care. It just breaks my heart.

What can our listeners do who want to support people in the reproductive health field, in the reproductive justice movement at large, in this moment? I've heard all kinds of things, certainly. I assume you're gonna tell us to donate. I mean, how important is it to get out into the streets and protest? Like, what should people... What makes the most sense for their energy right now? Where should they direct it?

[00:02:32] **AIMEE ARRAMBIDE:** Sure. So, I have a lot of ideas.

[00:02:35] **JESSICA LUTHER - HOST, BURN IT ALL DOWN:** Okay, awesome.

[00:02:36] **AIMEE ARRAMBIDE:** I think first and foremost, talking about abortion within your communities, using the word “abortion,” talking about why you support it, kind of normalizing and humanizing the fact that abortion is necessary healthcare that anyone should be able to access within their communities is such an easy lift, but sometimes is difficult for people. We have a resource at Avow called Let's Talk About Abortion. We've got a little toolkit and we can also do trainings, but it helps people get comfortable talking about abortion. Because I think one of the things that has led to the situation is the stigma surrounding abortion care. Despite the fact that the majority of Americans and the majority of Texans support care, it's still so highly stigmatized. Sometimes we even have a hard time convincing candidates to say the word “abortion,” because there's just so much stigma. So, that's one of the easiest lifts I think to ask of people, is just to talk about why you support abortion care.

The second thing would be to donate or volunteer for organizations at the local or state level. That includes abortion funds. That includes abortion clinics. If you have the means, donating to abortion funds, donating to independent clinics. There's a great organization called Abortion Care Network that is basically a network of all the independent clinics. And while many people think that Planned Parenthood provides the majority of the abortions, that's actually

not the case. It's small, independent abortion providers with not a lot of revenue that provide the care. So, donating to them is really helpful. There's a website called Keep Our Clinics, which will disseminate the money to independent abortion clinics. Donating to abortion funds, you can do it for your local abortion funds or the National Network of Abortion Funds. Those are the organizations that try to fill the gap financially for people accessing the care.

Then I want people to get involved politically. I think that it is imperative that we demand of our candidates running for office and any elected official that they are unapologetic abortion advocates. Because I think that abortion gets thrown under the bus, session after session, election cycle after election cycle. And we know that the majority support abortion care, and they can't throw it under the bus. And that when abortion rights are decimated at the Supreme Court level, a lot of other human rights are gonna follow. So like, we need to demand of candidates running, of people already elected, what are you gonna do to secure my rights? And like, prove it. Do it. And we need to hold them accountable. So, one of the things we do at Avow is we work on the political side and we try to elect champions. And, you know, it's hard, but it's really important. Voting, getting out the vote, taking people to go vote. Those are other things that I would suggest doing.

Looking for an abortion online? Listen to this first. - There Are No Girls on the Internet - Air Date 6-28-22

[00:05:35] **DR. JEN GOLBECK:** You can get an abortion in a lot of the... a lot of the cases where women need them, you can do it with medication, you can do it safely. That is easily accessible online. You can go online, you can buy it, and they will send it to your house, no problem. No matter what state you're in, they'll ship it to you from another country. You can get it. And so then the concern becomes how are they gonna track this? We all know to be worried about that now, but not exactly how it's working.

[00:05:58] **BRIDGET TODD:** How do you balance making sure that the tips that you give are actually going to be accessible for the folks who need them?

[00:06:03] **DR. JEN GOLBECK:** There is a nearly perfect way that you could buy abortion medication and not be tracked. You take a whole bunch of cash, you go buy a burner phone, you use it on public Wi-Fi you use the TOR browser. You use cash to buy gift cards that you use to pay for the medication.

You have it shipped to, this is kind of the big question mark, someplace that's not you and pick it up from there. And there's no digital trace of you.

So, great. One, that's super hard. Two, it's very expensive. That's not accessible. I think if I were 17, and needed an abortion and didn't wanna tell my parents about it, I think that's part of the audience I'm reaching on TikTok, they're not gonna use a bunch of cash to go buy a burner phone and use public [Wi-Fi] and use the TOR browser. That's not what they're gonna do.

So I like to give solutions - what's gonna get you 50% more protection. Delete that search history, it's gonna help. Is it perfect? No. But if you do that and you use a gift card to buy it, and you don't take your phone if you're going to Planned Parenthoods so you can't get tracked, we know people are tracking that. These are all really simple steps that anybody can do. They don't cost you a lot of money. It's just kind of changing your habits and being aware. And I think having that, one, people are more likely to do it, it's accessible to more people, and it's gonna give a good amount of protection, even if it's not perfect. The perfect solution's stupid and hard and nobody wants it. Otherwise we'd be doing it already with everything.

[00:07:29] **BRIDGET TODD:** In the wake of the Supreme Court striking down Roe, I heard lots of well meeting people say things like, "well, don't worry because we've been here before," but that's not actually true because the last time abortion was illegal in the United States, in the days before Roe became the law of the land in 1973, we did not have the vast infrastructure of digital surveillance, tracking and data sharing and selling like we do now. We didn't all carry GPS devices in our pockets. We did not all create digital paper trails of all the information we've ever accessed. And we certainly didn't have companies selling and sharing that information with third parties, including law enforcement.

We did not create digital logs of the most sensitive information about our bodies, like our periods, onto apps who then go on to share it with God knows who. For instance, the popular period tracking app Flow faced a lawsuit last year for sharing people's personal information, including "intimate details about sexual health and menstrual cycles," with third parties like Facebook and Google, despite public assurances, that it would not. And they did this because data is "vital to their business," according to the lawsuit. Add in laws like SB8 in Texas, that deputize ordinary citizens to turn in anyone they suspect of having an abortion or aiding an abetting an abortion for a \$10,000 reward, and you can serve to see the scope of the situation that we're currently facing.

Maybe this is too black and white of a question, but would you say that people, in the wake of Roe V. Wade being struck down, should folks be thinking about deleting period tracker apps? Is that too black and white or simplistic of a way to even be framing it, or what do you think?

[00:09:09] **DR. JEN GOLBECK:** If I were in a rural, bible belty, anti-abortion place, and I'm a younger woman without a lot of financial resources so I couldn't travel by myself to a state that could do an abortion for me - maybe I'm too young, I don't have the money for it, my parents would catch me, that kind of thing - and you know that people around you are really excited about bounty hunting people who get abortions, then, yeah, maybe start tracking that on paper like I did in high school. I had little red dots in my planner.

I don't think it's gonna be the main place people go to. You always can lie. Like, "oh yes. I did have my period last month," and you just find however many days and you plunk it in there and you've got a record that makes it look like you weren't pregnant even if you were, but, if you're worried about people checking in on that - somebody gets a hold of your phone, are they gonna go look at it to see when you had your last period? - I don't think it's a bad idea. And look, generally, I think everyone should be wary about logging any kind of personal information like this in any app, even if there's not a law that would get in the way of your healthcare. Because it's almost always gonna be monetized and sold to advertisers.

We know, for example, that there's anti-abortion groups that we're setting up geofenced advertising. So basically you can draw a little map and say, anytime anybody walks into this space, I wanna start sending them ads, and they would draw it in a one block radius around Planned Parenthoods or abortion providers, and then if you crossed into that space, you would start being targeted for months with anti-abortion advertising. We know that they're doing that and they can collect data from our phones if we engage with any of that content, and so your privacy or anonymity goes away. So as you think about the convenience that you get from bringing your phone to your doctor's office, a thing you should totally be able to do, you wanna think about if you should.

That said, the onus should not be on individuals for this. It's a thing that should make us push really hard for better privacy protections. They have it in Europe. None of this stuff would be legal in Europe in the way that it is here. They have it in California to a certain extent. We really need much better federal privacy laws, and that will resolve a lot of these issues. And it's a thing that people should be pushing for. The Electronic Frontier Foundation is a great place to go look. It's eff.org. They have a whole legislative section, so you can see on the

local, state, federal level, what legislation's being in place and write some letters if you care about it.

[00:11:32] **BRIDGET TODD:** You've mentioned a couple of really great tips for folks if you're looking for abortion pills and you wanna do it in a way that you're going to be less likely to be tracked. Using a TOR browser, using incognito mode when you search, using public Wi-Fi, are there other tips that you wanna shout out for folks if they might need this information?

[00:11:48] **DR. JEN GOLBECK:** That's all important stuff. I would say for sure, the most important one is that you are not paying with a credit card or a debit card connected to your name. So figure out how much your medication is gonna cost, use cash, by a Visa vanilla gift card, which you can get anywhere for that amount, and then pay with the Visa vanilla gift card. So much of how we're tracked is through credit card number, so definitely do that. And the other way that we're really easily tracked is through email address. Set up a fresh email address that you are only using to buy this abortion medication. Proton Mail is the one site that I've recommended for this. It's free, it's encrypted, it's really good and secure. You can just set up a email address, use it to buy your medicine. Don't use it for anything else.

If you do that, gift card, fresh email address on something like Proton Mail. I love Gmail, I use it, but they track the hell out of you on Gmail. So Proton Mail email address, vanilla gift card, you get 80% of the protection from tracking just from those two measures. That's easy and accessible to anybody. Definitely do that.

The Day 'Roe' Died - Boom! Lawyered - Air Date 6-24-22

[00:12:48] **JESSICA MASON PIEKLO - HOST, BOOM! LAWYERED:** What we didn't get was the cowards compromise that we were all braced for. Right? The gas lighting decision that said, We're gonna uphold a Mississippi 15 week ban, but not call it overruling Roe vs. Wade. No, what we got was basically a word for word verbatim of the Alito leaked memo from last month, explicitly overruling Roe vs. Wade, explicitly overruling Planned Parenthood vs. Casey, and it's got a tell, because it doesn't even say we're explicitly overruling these cases to send it back to the states. It says we're explicitly overruling these cases to send the issue back to the electeds in Congress in the states. So, for everybody who is out there immediately saying, Abortion's protected in X, Y, and Z places, it is for right now. But what I want to make

very clear at the start of this podcast is even before they got to the nuts and bolts of the analysis, right in the table of freaking contents, Alito shows the full hand. This isn't sending abortion back to the states. It's the first time in this country's history that an unelected majority of Supreme Court justices have taken away a fundamental constitutional right.

[00:14:08] **IMANI GANDY - HOST, BOOM! LAWYERED:** And what's disturbing about the fact that they did so, is the way in which they completely discounted the importance and the significance of that right. It's almost as if they either don't have an understanding or, probably more accurately, they just don't care...

[00:14:27] **JESSICA MASON PIEKLO - HOST, BOOM! LAWYERED:** They don't care.

[00:14:28] **IMANI GANDY - HOST, BOOM! LAWYERED:** ..what pregnancy does to a person, what it does to their body, what it does to their lives, what it means for their futures.

[00:14:35] **JESSICA MASON PIEKLO - HOST, BOOM! LAWYERED:** And, you know, I was chatting with Mark, our producer, before we started recording the podcast about the fact that, you know, I've been in the court for a lot of oral arguments, so much so that I am haunted by the fact that I have auditory recall of Sam Alito's voice on my own. Like I can close my eyes and I can hear his voice from sitting through oral arguments where he's asking questions.

And so I can hear him reading this opinion. And let me tell you it's mean. This is a mean spirited opinion that doesn't just disregard the law, that doesn't just disregard the very real health risks that continuing a pregnancy can cause people, that just doesn't disregard the constitutional interests at stake here to uphold precedent, that doesn't just disregard the will of the people who believe that abortion should be legal. It does it in a way that also somehow gives us the middle finger through the whole thing. And I can walk through a couple points, right?

[00:15:37] **IMANI GANDY - HOST, BOOM! LAWYERED:** Please do.

[00:15:39] **JESSICA MASON PIEKLO - HOST, BOOM! LAWYERED:** First of all. Did you know that the decisions in Roe vs. Wade and Planned Parenthood vs. Casey were as egregiously and wrongly decided and as thinly

resourced in terms of analysis as Plessy vs. Ferguson. Did you know that, Imani?

[00:15:56] **IMANI GANDY - HOST, BOOM! LAWYERED:** I mean, obviously. I mean, that's, that's, that just seems like it makes sense to me, or at least it does if you're someone like Sam Alito. I mean, I've been yelling about this connection between abortion and slavery pretty much since the day I started working at Rewire News Group. It was one of my very first articles I wrote in 2013 or something like that, that said stop comparing abortion to slavery.

And the reason why it makes me so angry is because I don't think White people, at least the majority of White people in this country, either don't have an understanding or haven't bothered to learn or don't care what slavery was like for Black women. Like, nightmare doesn't even describe it.

I cannot watch movies about slavery because I am so traumatized by what I see on screen that I'm unable to watch it. Right? And so, and so listening to these people compare abortion to slavery when women who were enslaved had to murder their own children so that they wouldn't become property of White people, property of the state, women who had to watch their children stand on auction blocks and be sold away to plantations, far flung plantations, where they would never see them again.

So, for Sam Alito or any of these Federalist Society captured judges to compare abortion to slavery, it's just, it's disgusting. It strips Black women up our agency. It ignores the horror show that this country inflicted on Black women and continues to inflict - continues to inflict - on Black women, particularly Black women in Mississippi, for example, where it's 75 times less safe to give birth than it is to have an abortion, right? Having an abortion in Mississippi is going to kill you, if you're a Black woman, essentially. And so how can we continue to have these conversations with these, with these White people who don't give a shit about me? Who don't give a shit about us. But who have been spending decades passing abortion laws on our backs, and then calling us participators in a genocide of our own people, and comparing, you know, Roe vs. Wade, which gave women, Black women, Black, pregnant people, autonomy, comparing that to a time period when we were raped and brutalized so that we could continue to produce children that would spark the engine of this economy of the global economy quite frankly. I just, I can't do it. Like, I can't do it.

[00:18:29] **JESSICA MASON PIEKLO - HOST, BOOM! LAWYERED:** First of all, thank you for all of that, because, I mean, people need to hear that.

This is, this is real, and what Sam Alito and the majority do by starting off with that comparison is to just show how bad faith the rest of this opinion is going to be, to your point exactly. They don't care about mothers, by the way, who are the majority of people who have abortions in this country, right? This is the pro-life, family party there. They don't care about that. And of course, you know, just yesterday, the New York guns case came out and let's see how that works out for Black mothers across this country as well. Right? Like it is all a big flaming pile of crap. He's also just a really bad writer. So to hear and read this mean decision that disregards the humanity of people, let alone the constitutional issues at... and he's just gleeful about it. He gets off on it. He enjoys the misery that he knows this opinion will inflict. And it is also, let's be very clear about it, the beginning of the end of our right to privacy rights, as we know them in this country. They are not shy about it. Sam Alito is gleeful about it. We are really in a dark place.

When Pregnancy becomes Crime - This Is Hell! - Air Date 7-5-22

[00:19:53] **CHUCK MERTZ - HOST, THIS IS HELL!:** I wanna read a little excerpt from your article at Substack to start off. You write that the Supreme Court's disastrous abortion decision is going to affect many, many women, White, cishet, middle class women like me, like yourself and our children very much included, but we are still free from some of the most nightmarish intersections constituted by racism, classism, ableism, homophobia, and transphobia, together with gender. You then quote a past guest on our show, the legal theorist Kimberly Crenshaw, writing in a 1989 paper on this nightmarish intersection, suggesting that we think of a traffic intersection. She wrote, "The point is that Black women can experience discrimination in any number of ways... Consider an analogy to traffic, an intersection coming and going in all four directions. Discrimination like traffic through an intersection may flow in one direction and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and sometimes from all of them."

So, you also add, "Similarly, if a Black woman is harmed her injury could result from sex discrimination, race discrimination, or a combination of the two, as in the phenomenon of misogynoir. More broadly, the intersections between gender and other oppressive systems work against pregnant people of color in general and Black and Indigenous ones, as well as poor folks in particular. It's worth remembering this as some are bemoaning a return to the pre-Roe era and others fear an even worse future. Both of these views, while capturing something

important, also miss another vital fact to bear in mind here: criminalizing pregnancy has long been a reality for the most marginalized pregnant people in this country".

How is overturning Roe criminalizing pregnancy generally? And how, prior to overturning Roe were the most marginalized, already criminalized with their pregnancies?

[00:21:49] **KATE MANNE:** Hmm, that's a great question. So here I'm relying on some really wonderful work on a grim topic by the legal scholars and advocates, Lynn Paltrow and Jeanne Flavin. So what they've done is developed this concept of reproductive oppression and they're theorizing cases where pregnancy was a necessary condition for someone being physically restricted in their liberty by the legal system.

And that can involve things like incarceration, arrests, increases in jail and prison time, but also things like being detained in hospital, mental institutions, and forced into treatment programs, as well as forced medical interventions. So what these researchers found was that there is a vastly disproportionate number of women of color, especially Black women and Indigenous women and poor women who have been subject to this form of reproductive oppression by the state where they are, you know, sometimes held captive by the state because of their pregnancy and the state's perception that they're not a "fit mother".

So we have cases of people being perceived rightly or, in some cases, wrongly as a drug user and that being used as a pretext for holding that there is a huge risk to the fetus. In many cases, there wasn't a huge risk. For example, for cocaine use that was involved in many of these cases, that's been shown not to be more risky than something that is perfectly legal in pregnancy, enabling nicotine use.

And yet we have poor and Black women being arrested and in some cases incarcerated for years for, effectively, perceptions that they were endangering their fetus during pregnancy. And in reality, in these cases these people had undergone tragedies like a stillbirth for a wanted pregnancy in some cases. In other cases, they had had a miscarriage. In some cases, an infection that led to miscarriage and the result of which was a pregnant person being incarcerated, or at least [inaudible] trusted in ways that restrain their physical liberty. So the criminalization of poor and Black pregnant bodies has been ongoing in this country for decades and decades.

[00:24:25] **CHUCK MERTZ - HOST, THIS IS HELL!:** And the paper that you cite is from 2013 by, uh, Paltrow and Flavin. And we all know that from 2013 up until the overturning of *Roe v. Wade*, there have been, uh, more state laws passed and in particular in, uh, Mississippi, places like Mississippi, where there are more and more restrictions had been put on. So, do we know, were pregnancies being more criminalized during that period of time from the date of this paper in 2013, up until, uh, just a few weeks ago when, uh, Supreme court overturned *Roe v. Wade*, was that criminalization continuing and on a trajectory that was just getting worse and worse for women of color?

[00:25:03] **KATE MANNE:** Yes, absolutely. So, I mean, there are two things worth drawing attention to here. So, for decades, and particularly since that period, since, you know, roughly 2010, I would say, there has been a ramping up of restrictions on clinics that perform abortion. So that's one thing worth throwing attention to, things like demanding that clinics have admitting privileges to hospitals, even though that's just not medically necessary. These are known to be incredibly safe procedures. Other spurious regulations like requiring that the corridors be a certain width such that you can fit two gurneys side by side in them; again, not medically or materially necessary restrictions. And so clinics have been shut down using these kinds of pretexts even long before we had the overturning of *Roe v. Wade* and *Casey*. The other thing worth really drawing attention to is you've had a rise in the weaponizing of laws against feticide and fetal homicides against pregnant women and other pregnant persons, including of course trans men, non-binary people and some intersex people who get pregnant.

But these laws were originally designed to protect women and their fetuses from domestic and other forms of violence. But what has happened in some states is that they have been repurposed in order to criminalize the pregnant person themselves. So, for example, in Mike Pence's Indiana, you had two Asian American women, Bei Bei Shua and Purvi Patel, who were both the first arrested women under these fetal homicide laws and also happened to be women of color, which is no accident. Um, so in Purvi Patel's case, which was the one to make headlines, the basic chain of events was that she had ordered pills to self-induce an abortion at 23 or 24 weeks and that is still legal in many states to this day, and was certainly protected under *Roe v. Wade*. 24 weeks is considered general, uh, the point of viability. So she self-induced an abortion using abortifacients procured online and was ultimately sentenced, via the repurposing of these laws, to 20 years in prison. So an extraordinary penalty for this Asian American woman under this punitive weaponization of Indiana's feticide laws.

So she ended up serving one year and four months and ultimately her appeal to Indiana's Supreme Court was successful. But, you know, she was still subject to these enormously draconian penalties. And I would argue that her being a woman of color in this scenario was in no way accidental.

[00:28:01] **CHUCK MERTZ - HOST, THIS IS HELL!:** How do you think we view pregnancy differently when we understand it as something that courts can intervene in, something that where, uh, pregnancy has been criminalized? How do you think we view abortion differently when we understand it as something that's already been, uh, that the actual act of being pregnant has been criminalized?

[00:28:21] **KATE MANNE:** Hmm. Well, I think it is a pretext for the state to disproportionately target as I said, poor women, Black women, Indigenous women, and other women who are marginalized as well as other people who can get pregnant, who are marginalized, including trans men, for example. But I also think this is a general expression of misogyny. So, as you know, in my work, I have been defining misogyny as, metaphorically, the law enforcement branch of patriarchy, so that which serves to police and enforce patriarchal norms and expectations. And, in a way, the most patriarchal norm and expectation which also intersects with racist expectations, with classist and ableist and transphobic expectations is that cis White women should get pregnant and have White men's babies to uphold White supremacy.

And this expectation is now being very effectively enforced and policed by legal means, as well as social means, by not only the legal penalties that are going to ensue for pregnant people who obtain abortions in states where they're banned, but also for those who are perceived rightly or wrongly as aiding and abetting this now-crime in many states.

And it's also just worth noticing the ways in which this supports a public discourse that represents a woman's getting pregnant as something morally expected and as, kind of, natural and even as holy in some religious contexts. So the idea of her then obtaining an abortion is perceived not as her right, as I would argue it absolutely is, but rather as something that violates a kind of natural and moral order. So I think the way that laws are constructing and also reflecting a public discourse that moralizes someone exercising their basic right to terminate a pregnancy and not to have their body used in this way against their will, that's also something to which we should be paying attention.

“A Devastating Ruling”: Law Prof. Michele Goodwin & SCOTUS Attorney Kitty Kolbert on Overturning Roe - Democracy Now! - Air Date 7-4-22

[00:30:41] **MICHELE GOODWIN:** The decision itself, just as we saw with the leaked draft, has many errors, omissions. It has a selective, if not opportunistic, reading of American history. It does not center — in all of its claimed originalism, in all of its claimed textualism, interestingly enough, it avoids the 13th Amendment. It even avoids the first sentence of the 14th Amendment.

And here’s what my New York Times piece was about. It was that when Congress abolished, through the ratification of the 13th Amendment, abolished slavery and involuntary servitude, they were not abolishing that just for Black men. They very well understood that involuntary servitude for Black women in the United States meant involuntary sexual assaults, rapes and then the reproduction after that, as Black women were forced to labor not only in the fields, but also labor under the weight, a different kind of shackling of slavery, which was sexual subordination and reproduction.

This was very well known. The abolitionist in Congress who led the way for the 13th Amendment spoke and wrote about this. Massachusetts Senator Charles Sumner was nearly beaten to death in the halls of Congress two days after giving a speech about the raping of Black women. Sojourner Truth spoke to it. I mean, it was clear. The New York Times, there were articles about it. So the very idea that there was no one thinking about involuntary servitude as being consistent with involuntary reproduction is just absurd. It was written about everywhere. Everyone knew this as being one of the devastating effects of American slavery. And it was abolished with the 13th Amendment. And then, later on, with the 14th Amendment, it was still recognized that Black women were psychologically, physically and reproductively still being harmed in Southern states. Their children were being denied citizenship. Their children were being snatched and taken away from them. And the 14th Amendment was therefore then ratified.

The piece goes into depth in all of these categories to give an education to the Supreme Court and to our country to remember this, because, otherwise, Black women have been essentially erased from the Constitution. And by erasing Black women from the Constitution, we ultimately erase all women from the

Constitution, because the 13th Amendment and 14th Amendment not only freed Black women from these bondages, but it also freed white women from these bondages.

None of this is given any kind of reading by the originalists and textualists on the Supreme Court, who seem to ignore all of that and have now rendered us to a country where there are free states, where individuals can be free in their bodies, and also those where it is nonfree. And one can't help but understand this as being so consistent with the patterns of slavery and Jim Crow in the United States.

[00:33:50] **AMY GOODMAN:** Let's talk about the trajectory right through to now. People of color are most affected by the lack of healthcare that will be available when abortion is outlawed in state after state. Can you talk about the Duke study, about Black maternal mortality, and how much higher it is than for white people who are pregnant?

[00:34:18] **MICHELE GOODWIN:** Well, I'm glad that you mentioned that, because what is also alarming in this opinion, and also in the draft opinion, is how it gives no regard to facts, concurrent facts. The United States ranks 55th in the world in terms of maternal mortality. It is not in league with Germany, France, its peer nations. Instead, it's in peer company with nations that still publicly lash and stone women.

In 2016, the Supreme Court's own record showed that women were 14 times more likely to die by carrying a pregnancy to term than by having an abortion. Once we flash what this looks like in terms of race, then we really get a sense of the horror that's behind all of this, and again with the Supreme Court deciding that it would pay no attention to it. So, in Mississippi, we're looking at 118 times — Black women more likely to die 118 times by carrying a pregnancy to term than by having an abortion. According to Mississippi's own data from their Department of Health, a Black woman — 80% of the cardiac deaths in that state occur to Black women. Black women don't make up 80% of the female population in the state but are 80% of the cardiac deaths during pregnancy. And nationally, they're three-and-a-half times more likely than white counterparts to die due to maternal mortality.

But, Amy, that's not all. If you actually look at certain counties within these anti-abortion states, then you see that Black women may be five or 10 or 15 times more likely to die by being forced to carry a pregnancy to term than by being able to have the medical care of an abortion. And it's just that glaring and

alarming. And what's so stunning about it is that the Supreme Court gives no consideration to this data.

[00:36:15] **AMY GOODMAN:** Kitty Kolbert, you argued *Planned Parenthood v. Casey* before the Supreme Court 30 years ago, in 1992. Roe was reaffirmed in that case. This was about what? Spousal consent, men having to give women their consent for an abortion?

[00:36:34] **KATHRYN KOLBERT:** Right, it was that and a number of other restrictions in Pennsylvania law that were upheld. But I think, strikingly, in '92, we expected the court to do exactly what they did here. And they didn't, because Justice Kennedy changed his vote at the last minute.

But as a result of *Casey*, while it preserved legal abortion in most — in all states across the country, it meant that many women, particularly Black and Brown women, women who are poor, women who lived in rural areas, women who were young, had very, very difficult times obtaining abortions because of the restrictions that it permitted.

Now, unfortunately, today, as a result of this ruling, those same women will suffer much, much more, because their ability to obtain abortion will be totally circumscribed. It's a really devastating opinion, one in which all of us need to be as angry as we can be and to channel that anger to making a difference and changing what the court has done through the legislative process.

[00:37:45] **AMY GOODMAN:** And how do you do that, I mean, through the legislative process? Now the former vice president, Mike Pence, is calling for Congress, the legislative process, to pass a nationwide abortion ban.

[00:38:00] **KATHRYN KOLBERT:** And they could do that. They could do that. If they take control of the House of Representatives and the Senate with a Republican president after 2024, they could easily do that. And Mitch McConnell has said it's on the table, it's something that they will consider, which is just McConnell speak for "We're going to do that."

Our response has to be to take — to keep control of the House, to win a majority in the Senate that includes two additional senators who are willing to bypass the filibuster rule, and pass statutory protection for women.

But the reality is that states are also a huge impediment on this issue. As you said earlier, 26 states are expected to ban abortion within the next couple of weeks or months. That means that 40% of women of childbearing age or more

will be affected. We're talking about hundreds of thousands of women who will be seeking abortions for their unintended pregnancies having to travel hundreds and hundreds of miles to safe states.

And this is no way to provide healthcare. This is no way to live in a democracy. And it's because the ultraconservative justices have taken back the Supreme Court and, frankly, have imposed their own ideological biases against all the rest of us. It's a devastating ruling, and one in which our anger is appropriate and certainly should be heeded to make sure that we can switch this around.

[00:39:45] **AMY GOODMAN:** Now, let's talk about this moving pregnant people from one state to another to have an abortion. The concerns of a number of, what, abortion funds, like one in Texas — corporations who said they'll do this, they'll pay for this — not clear that their workers would want to make it known to the corporation that they were pregnant. But abortion funds, for example, going inactive now, right at the time where they could get a lot of money, a lot of support all over the country, because they're terrified that it means aiding and abetting. Can you clarify this? Or is the lack of clarity what will — is the plan that people will be afraid to do this, organizations will be afraid to do this, but it's not actually codified in law, the ban, on that?

[00:40:32] **KATHRYN KOLBERT:** Depend state by state, because some states, like Texas, prohibit aiding persons to self-manage their care. It's not clear whether it also would prohibit women from traveling and aiding the travel. But the point is, you're absolutely right, Amy, is the vagueness really scares people from taking action.

And let's remember there's like three things that are likely to happen. First, it's women who could travel. And frankly, it is women with means who are most likely to travel, women who have the resources to be able to get on a plane or to drive 250 miles.

Other women will self-manage their abortion by taking abortion pills. And they will get them in a variety of ways, either through the internet or through prescriptions from foreign countries and, you know, mailing them from India or other pharmacies, or going to Mexico or going to Canada or, frankly, going to their friend who lives in Missouri and asking them — or, I mean, not Missouri, but going to California to their friend and asking for the pills there. I mean, there's all kinds of ways to self-manage your care. But the problem — and I think Michele can talk about this even more graphically than I — is that many of those women will subject themselves to the potential of criminal prosecution,

either for self-managing their care and getting the drugs illegally, or the people who are aiding or helping her to get information and to get the appropriate care.

You know, I think that we need to stand up and say this is not all right, make lots and lots of noise, a real — you know, make sure that these prosecutors who are adamantly opposed to abortion are taken out of office and defeated at the next election. And, you know, all of this will take time and will take effort and will take many, many millions of Americans standing up for our liberties. It's possible. We have to start now.

Just Doing The Job They Were Put On The Court To Do - Amicus With Dahlia Lithwick | Law, justice, and the courts - Air Date 6-25-22

[00:42:50] **DAHLIA LITHWICK - HOST, AMICUS:** I think one of the things that we can say for certain about the pre-Roe era is that more likely than not, the person who was targeted in jurisdictions where abortion was prohibited was the physician. We're in a different world now, right, where it can be somebody who puts medication abortion pills in the mail. It can be somebody who -- you know, the famous case from SB8 is the Uber driver who takes somebody to a clinic or somebody who does something across state lines. So I think one of the things that I see is materially different in Dobbs that maybe we haven't fully wrapped our heads around is that the pregnant people themselves are going to be the targets, as you say, of surveillance and of sort of some of these vigilante schemes that are being put into effect in ways that really don't map on to the reality pre-Roe.

[00:43:46] **MARY ZEIGLER:** Absolutely. The availability of medication even puts in play punishment for pregnant people. That's not happening now. And there is I think a decent amount should be said about the fact that the mainstream anti-abortion movement does not at this moment want to punish pregnant people. They've actually been fighting state legislators who want to do that, saying, no, no, don't do that. The people who do want to punish pregnant people, though, have more influence in the anti-abortion movement than they have historically. And I chalk much of that up to self-managed abortion. Because those people are saying essentially, okay, you don't want to punish pregnant people. You don't think you should; granted. But what are you going to do when someone in Oklahoma gets abortion medication from a doctor in Europe and a pharmacist in India? Are you going to just let that go? And I think

that's going to be a difficult answer for many people, Republican lawmakers, and people in the anti-abortion movement.

So I think it's not only the case that we're seeing surveillance of a kind that was impossible in the pre-Roe era, although it's worth emphasizing that pregnant people were surveyed then, too, and forced to testify. But we're also, I think, going to see at least more of a push to punish pregnant people. I don't know if that's going to work yet. I think that's a conflict that is very unpredictable. But it's going to happen. Conversations about punishing pregnant people directly are not over.

It's also worth emphasizing that the folks who are being defined as "aiders and abettors" by many in the anti-abortion movement is a much larger group of people than we would have seen in the pre-Roe era. The National Right to Life Committee, for example, recently put out a model bill that would define lots of things as criminal aiding and abetting: abortion doula's, websites encouraging people to use abortion medications. You know, lots of things that come close to free speech or advocacy being defined as aiding or abetting. So the stakes of this are going to be high for a broader group of people, I think.

[00:45:44] **DAHLIA LITHWICK - HOST, AMICUS:** Mary, you noted up top that Justice Kavanaugh did this kind of soothing concurrence. Justice Alito, much less soothing, as you said. Clarence Thomas, not soothing at all, certainly putting in his concurrence that the next things to go are Obergefell, or Lawrence v Texas, Griswold -- just the entire basket of substantive due process unenumerated privacy rights. He's gunning for them. And I wonder how seriously you take that, or is that just Clarence Thomas speaking for Clarence Thomas?

[00:46:25] **MARY ZEIGLER:** Well, it's a little bit of both. I think Clarence Thomas, I think, is sort of saying the quiet part out loud. He's admitting that if the court is being intellectually consistent about what it means by its approach to constitutional rights, this very specific idea of tradition and history, there's no reason that any of those other cases would be safe. I think anyone reading the court's opinion, except for maybe the disclaimer about other rights, or maybe someone who read Justice Kavanaugh's concurrence in isolation, would probably take away that same conclusion.

So I think it's quite likely that there aren't the votes to move that way yet, but I think there probably are several, probably significant number of votes to move in that direction. And we know from past history that when the court issues disclaimers about what it's not going to do, it's usually because there is some

serious thought that that's precisely what it's going to do. And often those disclaimers don't last very long. They often have an expiration date.

So I think back to marriage equality, when in *Lawrence versus Texas*, the court was talking about same-sex intimacy, there was essentially a disclaimer that this was not about marriage. Justice Scalia at the time said this is not about marriage, only to the extent this opinion has nothing to do with logic or something, I'm paraphrasing. And of course, Justice Scalia was right about his prediction that that decision would lead to a decision on marriage equality. And I think those predicting that this will eventually lead to other decisions, whether on marriage equality or birth control or something else, will be proven right too, although I doubt immediately, right? I think this is a time horizon question in terms of when Justice Thomas is able to get up to five, in terms of reconsidering some of these other decisions.

[00:48:11] **DAHLIA LITHWICK - HOST, AMICUS:** And I always ask you this when we talk, but I'm going to ask it again for folks who are trying to figure out where best to put energies, who are feeling I think that lethal combination of numb and hair on fire that you started with. What are you telling folks to do in terms of thinking through what the next couple of, as I said, days, months, years are going to look like, and where to put energy and where to put time?

[00:48:41] **MARY ZEIGLER:** I think one place, obviously, is the state level. This is something I think progressives have neglected for a long time. State constitutions matter. State judges matter. Governors matter. These are the people who are going to decide whether pregnant people get punished. These are the people who are going to decide if there's a state constitutional right to some kind of reproductive justice in your state. So pay attention to those, frankly, prosecutors, sheriffs, you know, the people who will be enforcing these laws. So at the local level, a lot can change. And so this is an area, I think, really for people to focus their energies.

And then I think the other thing, just historically to remember, is that the way this happened is because conservatives were smart and they were willing to play the long game. So ask yourself if you care about this and you're not happy today, are you willing to do the same, right? And this isn't going to necessarily be quick, especially if you're talking about meaningful federal protection. It may not work very well very soon.

And so I guess the question I would ask is, how much does it bother you? How much do you care? How long are you willing to be in this? Because we know

for conservatives the answer was half a century. So the question, I think, is whether people who are progressive are willing to match that.

Pres. Biden Should Forcefully Support Ending The Filibuster & Expanding SCOTUS - Rep. Ocasio-Cortez - The Late Show with Stephen Colbert - Air Date 6-29-22

[00:49:56] **STEPHEN COLBERT:** We don't have a chance to talk about the fact that the Supreme Court has thrown out a 109-year-old New York gun law that has stood among Democratic administrations, Republican administrations, but they've toss it out and ready to turn the city into a shooting gallery. We haven't even talked about that today, we haven't even talked about the fact that yesterday they brought prayer back into the schools. The fact that last week, they said if a county or city does not Mirandize you, you can't sue them about it. And of course on Friday they overturn both Casey and Roe v Wade. What is your reaction to what you're hearing from the Supreme Court?

[00:50:29] **REP. ALEXANDRA OCASIO-CORTEZ:** Well, I think one of the things that we're seeing here is the Supreme Court is actively de-legitimizing itself. And what we have --

[00:50:42] **STEPHEN COLBERT:** When you mean de-legitimize -- and I want to hear the rest of the answer -- but I hear that word "de-legitimized" and certainly in Casey, they actually were worried that they would lose legitimacy in the court or do irreparable damage to the court. What do you mean when you say delegitimize?

[00:50:53] **REP. ALEXANDRA OCASIO-CORTEZ:** So what that means is that the Supreme Court has a power. Its power is in whether its rulings are heeded and respected. And if so, how much, and to what extent? And when we have the the framing of our government, the presidency, Congress, the president, Congress and the Supreme Court are supposed to be three co-equal branches.

Co-equal. None with supremacy over the other. And when any one of those branches overreaches its authority, it is the responsibility of the other two to check the overreach of that authority.

The Supreme Court has engaged in the overreaching of its authority in denying the human and civil rights of any pregnant person or person that could become pregnant in the United States of America. They have engaged in overreach, and it is the responsibility of the president and Congress to put the Supreme Court in check because they have delegitimized themselves.

[00:52:00] **STEPHEN COLBERT:** What actions would you like to see from your fellow lawmakers? Because the court's response to that might be -- Alito specifically says we've turned this to the elected representatives of the people. He believes that's where legitimacy, at least the issues of Roe, of abortion, should be returned to the people. What action would you like to see the Congress take?

[00:52:18] **REP. ALEXANDRA OCASIO-CORTEZ:** Well, I think a history really informs a lot, and it gives us lessons here. Because this is not the first time that this has happened. In the 1800s, the Supreme Court was taken over by the Confederate south and was starting to rule in ways that limited Abraham Lincoln. For example, in the Dred Scott ruling, they ruled that Black Americans are not and can never be full citizens of the United States. And what did Abraham Lincoln do? He signed the Emancipation Proclamation. He ignored the gross overreach and abuse of power. During Franklin Delano Roosevelt's attempt to restore the country during the Great Depression with the Green New Deal -- I mean, not the Green New Deal, the New Deal, the New Deal. Anyway, with the New Deal, what we saw was an overreach from the Supreme Court attempting to prevent us from passing these laws, and Franklin Delano Roosevelt threatened to expand the court. And in his adoption of that position, despite the fact that Congress didn't do it at that time, although Lincoln did, the fear of the court's power being minimized caused them to back off their overreach and abuse of power. I believe that president Biden should entertain expansion of the Supreme Court. I believe that he should forcefully come out in ending the filibuster of the United States Senate. I believe that he should call on Congress to repeal the Hyde Amendment. And I also believe that Congress, we have the possibility, when we are strengthened by the repeal of the filibuster -- or even the change to a talking filibuster or a standing filibuster -- in doing so we can codify Roe, we can codify all of the other cases that the Supreme Court indicated that they would threaten: we can codify same sex marriage, we can codify the right to contraception, we can codify interracial marriage. We can do it.

But we can only do it, we can only do it if we're not fighting with one hand tied behind our back, let alone two. And so I think that right now we just need a fight. We need a fight. And we need to show and demonstrate to the American

people that when they vote to give Democrats power, we will use it to the fullest extent possible to defend everybody's civil, economic, and human rights.

How The Supreme Court Killed Roe v. Wade - LegalEagle - Air Date 6-29-22

[00:54:45] **DEVIN STONE - HOST, LEGAL EAGLE:** In 1973, Roe vs. Wade established a constitutional right to an abortion through the 5th Amendment, among others. Now the 5th Amendment says no person shall be deprived of life, liberty, or property without due process of law. Now, courts have interpreted two types of due process. One is procedural due process, which are the rules that the government must follow such as giving a person notice, uh, a hearing, and a fair tribunal. And then there's what's called substantive due process, which is the idea that allows courts to establish and protect certain fundamental rights from government interference even if procedural protections are present or the rights are unenumerated. Now the Roe opinion begins with the long review of the medical history of abortion. It reviews the history of abortion laws, finding that many prohibitions on abortion were relatively modern. The Court reviewed many religious and philosophical traditions, which contained many different views about when or if the unborn could be considered people during different stages of pregnancy. And the Court ruled that the word person as used in the Constitution did not include the unborn. The Court included that the 14th Amendment's concept of personal liberty includes a right of personal privacy over certain areas, which include whether a woman terminates a pregnancy or not.

And the Court also recognized that the government could not make a choice about whether the person continues a pregnancy. And the Court held that the state had valid interest that justified regulation of pregnancy and that the state's interest increased as the pregnancy progressed. Then almost 20 years later, the Supreme Court decided another abortion case that substantially revised Roe, that's Planned Parenthood vs. Casey. That case tested whether states had the right to restrict abortion, including during the first trimester.

The Pennsylvania regulations included a mandatory waiting period, spousal notification and parental consent. In the Casey decision, the Supreme Court overturned Roe's trimester rule in favor of a viability analysis and lowered the standard of review for abortion restrictions from strict scrutiny to an undue burden test. And under Casey's undue burden test, abortion restrictions were unconstitutional if they had the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a non-viable fetus. The

Court held that states could require parental consent for a minor's abortion, require waiting period between seeking and obtaining an abortion, and required detailed, informed consent, including medical information about the abortion.

But the state couldn't require a woman to sign a form stating that she had given notice to her husband, that she was having an abortion. And again, following in these cases, in 2003, the Supreme Court cited *Loving*, *Griswold*, *Eisenstat*, *Casey*, and *Roe* in striking down a Texas law that criminalized sexual intimacy by same-sex couples, but not identical conduct by straight couples.

The Court held that the law violated the 14th Amendment's due process clause, as adults are free to engage in private conduct in the exercise of their liberty under the due process clause: "Their right to liberty under the due process clause gives them the full right to engage in their conduct without intervention of the government". And, notably, Justice Scalia dissented in this case, stating that the logic of the decision would of course permit same-sex marriage. And in 2012, following in that case, the Court proved him right by legalizing same-sex marriage citing the same string of cases that established the right to choose one's intimate relationships and whether to have children.

And when the Court decided that case, *Obergefell vs. Hodges*, it observed that if a person has the right to choose whether to have an abortion, then they have the right to marry the person of their choice. Now, in the aftermath of *Planned Parenthood vs. Casey*, states enacted more and more restrictions on the right to an abortion.

Over the years, federal courts have analyzed nearly every kind of abortion restriction imaginable, invalidating some of them and upholding others. But one thing never changed: the Court's original ruling that the right to privacy included the right to illegal abortion. But the recent case of *Dobbs vs. Jackson Women's Health Organization* changed all of that.

The Jackson Women's Health Organization brought this lawsuit to challenge the constitutionality of Mississippi's Gestational Age Act, which states "Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than 15 weeks". Jackson Women's Health was the only remaining abortion clinic in the state. The Organization won at the federal district court level and the district court decision was upheld by the Fifth Circuit Court of Appeals. Mississippi appealed to the Supreme Court.

Now some legal commentators expected the Supreme Court to simply overturn Casey's viability analysis and replace it with a right to an abortion that stops at 15 weeks. And in fact, this is what Justice Roberts advocated in his concurring opinion. However, a majority of the Supreme Court decided to overrule Roe and Casey from the roots and allow each state to decide whether there is a right to an abortion or not.

The majority opinion was written by Justice Alito and the vote to overturn Roe was five to four. Justice's Thomas, Gorsuch, Kavanaugh, and Barrett joined Alito's opinion. Chief Justice John Roberts did not join in the opinion in overturning Roe, but filed a separate concurring opinion, which he agreed with the result. Which is why you'll see some people call this a six to three decision. Justices Kagan, Sotomayor, and Breyer dissented.

Now Justice Alito's opinion begins by stating that "Abortion presents a profound, moral issue on which Americans hold sharply conflicting views". The Constitution's text does not refer to abortion. Alito concedes that not all rights recognized by the Court have to be mentioned in the Constitution's text.

As I explained earlier, the Court has held the due process guarantees of the 5th and 14th Amendments protect certain substantive rights that are not listed in the Constitution. The general idea is that certain liberties are so important that the state cannot infringe on them without a compelling reason, no matter how much procedural due process is given. And Justice Alito states that the due process clause protects the right to interracial marriage, the right to use contraception, and the right to same-sex marriage, but it does not guarantee the right to abortion. Why? Well, according to the majority, the test for unenumerated rights is whether the right is deeply rooted in the nation's history and tradition and implicit in the concept of ordered liberty. And according to Justice Alito, abortion doesn't qualify under that standard.

And in setting forth this test for which unenumerated rights are permissible, Alito cites *Washington vs. Glucksberg*, the case which found that there was no constitutional right to a physician-assisted suicide. Abortion is like assisted suicide because, according to the majority, neither can trace their roots to the founding of America.

The Alito opinion goes on at great length about the history of abortion in America. He states that until the latter part of the 20th century, such a right was entirely unknown in American law. And indeed when the 14th Amendment was adopted, three quarters of the states made abortion a crime at all stages of pregnancy.

And the majority opinion says that the 50 years between Roe and the present day do not carry any weight in establishing that that right is deeply rooted or that women relied on it in organizing their lives. The majority opinion concludes that Roe's holding that abortion was a liberty interest protected by due process was incorrect.

The Roe decision said, " The right of privacy, whether it be founded in the 14th Amendment's concept of personal liberty and restrictions upon state action, as we feel it, is, or as the district court determined in the 9th Amendment's preservation of rights to the people, is broad enough to encompass a woman's decision, whether or not to terminate her pregnancy".

Now Alito criticized the justices who wrote this, saying that they couldn't really put their finger on the nature of the right and it was decided on feelings. And there's always been controversy about that. In fact, many commentators have argued the Court made a mistake in grounding the right to an abortion in the substance of due process clause. Justice Ginsburg, argued that the Court should have decided Roe based on the equal protection clause or the privileges and immunities clause, which would've provided more durable protection of the right. And in Dobbs, several constitutional law professors filed amicus briefs, arguing that the right to an abortion is rooted in the equal protection clause. But Justice Alito said that the equal protection clause is inapplicable because the Court had already ruled that abortion is not a sex-based classification. Justice Alito, rejected calls to preserve Roe and Casey because of stare decisis.

He said that the concept is not a straightjacket, uh, when a ruling is grievously incorrect and listed other landmark decisions which upended precedent like Brown vs. Board of Education, which overruled Plessy vs. Ferguson's separate but equal doctrine. And then there is stare decisis, the idea that the Court should follow precedent to foster predictability, unless it has a very good reason not to.

And in assessing whether stare decisis applied, the Court looked to several factors, the nature of the Court's error, the quality of the reasoning, the workability of the standard, its effect on other parts of the law, and reliance interests. Justice Alito said stare decisis was not applicable because the original Roe decision as modified by Casey is egregiously wrong. In support of its decision the majority opinion cites 30 other cases where the Court has overturned prior precedent. As to the five factors, Justice Alito said that Roe was fundamentally unfair because it foreclosed the opportunity for anti-abortion advocates to lobby their government for change: "Those on the losing side, those who sought to advance the state's interest and fetal life, could no longer

seek to persuade their elected representatives to adopt policies consistent with their views".

Though the statement ignores the decades of law making around abortion, where legislatures passed abortion restrictions in response to the democratic process. And as to the workability factor, Alito said that as a practical matter, the undue burden test was too confusing to apply. Though he also criticized Roe's original trimester framework as being plucked out of nowhere.

And in a stunningly short section, Alito wrote that overturning the precedent would not hurt women because there's no evidence that women rely on the right to abortion in living their lives. He said, quote, conventional concrete reliance interests are not present here. And he concluded that the right to an abortion had nothing in common with other types of interest that people rely on like contract and property rights, because abortion is unplanned.

And he said that if women really think they rely on the right to abortion, they should vote. He dismissed generalized issues of reliance by saying, "The Court is ill-equipped to assess generalized assertions about the national psyche".

Final comments on the importance of state judicial elections

[01:04:22] **JAY TOMLINSON - HOST, BEST OF THE LEFT:** We've just heard clips today, starting with *Burn It All Down* giving resources and action items. *There Are No Girls on the Internet* explained the importance of digital privacy when seeking reproductive healthcare. *Boom! Lawyered* broke down the decision, the justices, and the longstanding comparison between abortion and slavery. *This is Hell!* looked at the criminalization of pregnancy that long predates this new ruling. *Democracy Now!* analyzed the new ruling as a continuation of Jim Crow. *Amicus* looked ahead at the potential cascade of anti privacy rulings we may see from this court. And AOC was on *The Late Show* with Steven Colbert explaining what Democrats need to do to check the Supreme Court's overreach. That's what everyone heard, but members also heard a bonus clip from *LegalEagle* that did a deep dive analysis into the nuts and bolts of the ruling.

To hear that and have all of our bonus content delivered seamlessly to the new members-only podcast feed that you'll receive, sign up to support the show at bestoftheleft.com/support, or shoot me an email requesting a financial hardship

membership, because we don't let a lack of funds stand in the way of hearing more information.

So now that you're informed and angry, here's one last thing you can do about it. Today we're highlighting some excellent advice from lawyer, reproductive rights activist, and amazing co-host of *Boom! Lawyered*, Imani Gandy, who you heard in the show today discussing the slavery comparison, most prominently. Also known on Twitter as @AngryBlackLady, Imani recently tweeted that in the wake of Roe's reversal, it's time to start paying attention to some political races that never get as much attention as they should—state judicial elections.

According to Ballotpedia, in the upcoming midterms election 87 State Supreme Court seats and 299 State Intermediate Appellate Court seats are on the table. These state judges have serious power in our post Roe world. This is how some state abortion trigger bans were blocked, at least temporarily, and the state level will be where critical cases of bodily autonomy and privacy will be fought going forward.

Be aware that judicial elections are a little different than voting for your average political office, there are three kinds of state judicial elections. There are partisan elections where the judges are elected by the people and the candidates political party affiliations are listed on the ballot. There are nonpartisan elections, meaning, unsurprisingly, that the judges are elected by the people, but the candidate party affiliations are not listed on the ballot. And finally, there are retention elections where people decide if judges who have been appointed by governors should remain for another term.

It turns out a majority of states where there are bans or heavy restrictions on abortion have a significant number of judicial elections this fall. For instance, Texas, Louisiana, Tennessee, Florida, and Ohio each have around 20 or more State Intermediate Appellate Court judges, and up to six state Supreme court judges up for election. We've included resources in the show notes for you to easily get the lay of the land, and some resources on how to dive into the candidates themselves and find out where they stand on the legal issues of our time. It can be a bit harder to find this info for judicial candidates, but it is very much worth the work.

Now, as always, keep the comments coming in at (202) 999-3991 or by emailing me to jay@bestoftheleft.com. That is going to be it for today. And also it appears that I have finally caught COVID. I haven't tested positive yet, but it seems extremely likely that that is what is happening. So I'm in the very early

stages and I'm gonna take it easy and see how things go. The production schedule of the show may be interrupted by that, I'm sure you understand.

As always, thanks to everyone for listening. Thanks to Deon Clark and Erin Clayton for their research work for the show and participation in our bonus episodes. Thanks to the Monosyllabic Transcriptionist Trio, Ben, Ken, and Brian for their volunteer work, helping put our transcripts together. Thanks to Amanda Hoffman for all of her work on our social media outlets, activism segments, graphic designing, web mastering, and bonus show co-hosting. And thanks to those who support the show by becoming a member or purchasing gift memberships at bestoftheleft.com/support, through our Patreon page, or from right inside the Apple Podcast app.

Membership is how you get instant access to our incredibly good bonus episodes, if I do say so myself, in addition to there being extra content and no ads in all of our regular episodes, all through your regular podcast player. And if you want to continue the discussion, join our Best of the Left Discord community to discuss the show, the news, other podcasts, interesting articles, whatever you like. There's already a bunch of fun and interesting people chatting in there. Links are in the show notes to access the community.

So, coming to from far outside, the conventional wisdom of Washington, DC, my name is Jay!, and this has been the *Best of the Left Podcast* coming to twice weekly, thanks entirely to the members and donors to the show from bestoftheleft.com.