Leaked SCOTUS Ruling: “We’re Down but by No Means Out of This Fight”

People with HIV, medical societies and women’s health organizations sound off on the SCOTUS draft that proposes to overrule *Roe v. Wade*.

May 5, 2022 By Heather Boerner

On May 2, news leaked that the Supreme Court plans to overturn the landmark Roe v. Wade decision that guarantees a right to abortion nationwide.

The 98-page leaked draft opinion, written by Justice Samuel Alito, relates to the current case before the Supreme Court, Dobbs v. Jackson Women’s Health Organization, in which a clinic that provides abortions challenged a Mississippi law that bans the procedure after 15 weeks of pregnancy.

The draft opinion contains a 31-page appendix listing every state statute banning abortion going back to 1825. Alito states that the 1973 Roe decision “did not claim that American law or the common law had ever recognized such a right [to abortion] and its survey of history ranged from constitutionally irrelevant (e.g., its discussion of abortion in antiquity) to the plainly incorrect (e.g., its assertion that abortion was probably never a crime under the common law).”

Further, it states that “Roe was on a collision course with the Constitution from the day it was decided.” Alito added that this ruling and another one that followed in 1992 “must be overruled” and stated, “It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”

Estimates suggest that somewhere between 630,000 and 890,000 abortions were performed in the United States between 2015 and 2019, according to a Washington Post analysis. Studies show that pregnancy can have lifelong health effects—including for the most vulnerable, such as young people. For instance, recent data published in the Journal of the American College of Cardiology and funded by the National Institutes of Health show that women who develop gestational hypertension during pregnancy were 63% more likely to develop heart disease later in life.

The draft opinion has garnered condemnation from many health care professionals and from professional organizations that serve people who need reproductive and cancer care. Both the Society for Gynecologic Oncology (SGO) and the American College of Obstetricians and Gynecologists (ACOG) have issued statements on the law.

SGO states that it “opposes any ruling that restricts a person’s access to health care and criminalizes the practice of medicine. This ruling ultimately poses a serious threat to the physician-patient relationship and subsequent decision-making necessary to ensure optimal outcomes for patients.”

ACOG stated that if the leaked ruling becomes law, it will create a “dissonance between the practice of ethical and evidence-based medical care and statutory and regulatory language.”

And they are not alone.

The Positive Women’s Network–USA, a network of cisgender and transgender women and nonbinary people living with HIV, called the leaked draft “a horrifying and unprecedented confirmation that the Supreme Court is prepared to fully dismantle the rights of people who need abortions.”

“The consequences of this draft opinion would be swift and devastating. Overturning Roe means abortion will be banned or severely restricted in 23 states, primarily in the U.S. South,” the statement continues. “Tens of millions of people would immediately be deprived of control over their bodies and reproductive decisions. This will especially be devastating for Black, Indigenous and other people of color, people with disabilities, people in rural areas, young people, undocumented people and those having difficulty making ends meet.”

Deon Haywood, executive director of the New Orleans nonprofit Women With a Vision concurred.

“While reproductive justice organizers have been preparing for this decision, the news still knocked the wind out of me,” Haywood wrote in an email the next day. “We’re down but by no means out of this fight.”

Women With a Vision, like other reproductive justice organizations, was founded and is run by Black women who advocate for health care access in their communities, including HIV care, reproductive health care, LGBTQ health care, public insurance coverage, harm reduction and legislative changes regarding voting rights and sex work.

The nonprofit Black Women’s Health Imperative issued a statement urging the upholding of Roe v. Wade, specifically because of the ramifications for Black women’s health, including the fact that Black women are three times more likely to die during childbirth than their white peers.

“Roe has given Black women the bodily autonomy we’ve historically been denied,” wrote Byllye Avery, founder of the National Black Women’s Health Project (which later become the Black Women’s Health Imperative), and Linda Goler Blount, president and CEO of the Black Women’s Health Imperative. “In so doing, the landmark decision has contributed to the physical, emotional and financial health of millions of Black women. If issued, the Court’s opinion will jeopardize that autonomy and the advancement of Black women in this country.”

The immigration group United We Dream also issued a statement, warning, “If SCOTUS ends Roe v. Wade, undocumented folks would be some of the hardest hit.” The group states, “Folks risk interacting with the deportation force as they travel out of state to get abortion care and need access to all health care including abortion.”

But it’s not just organizations that specifically serve women and other people who could become pregnant that are sounding the alarm.

Jesse Milan Jr., president and CEO of AIDS United, issued this statement: “We, as HIV advocates, recognize that reproductive health clinics are often the first touchpoint that people who are vulnerable to HIV have to the HIV health care system. Each day, trusted reproductive health care providers educate the community on how to limit their HIV risk and prescribe the life-changing medications of PrEP and PEP [pre- and post-exposure prophylaxis, drugs that prevent HIV]. And yes, they even provide people with information on their choices when it comes to pregnancy. These reproductive health care providers were among the first to stand beside us when HIV treatments became widely available. It is our turn, as HIV advocates, to stand in support of these providers and the safety net they grant us each and every day.”

In another statement, Lambda Legal warned that the decision also calls into question the basis for decriminalizing queer sex in Lawrence v. Texas and legalizing same-sex marriage in Obergefell v. Hodges.

“Undermining the right to bodily autonomy, as the leaked opinion does, poses a grave threat to the Lawrence and Obergefell rulings,” Lambda Legal stated. “These historic victories are now at risk.”

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