

AJPH Podcast: Roe v. Wade
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[musical prelude]

AM Hello, welcome to this new podcast and videocast of the American Journal of Public Health. Today with my guests we're going to approach the situation that has been opened by the leak from the Supreme Court saying that Roe versus Wade was in peril and it might be overruled soon. And, I have three people on the panel that have each their own specific expertise to discuss this issue. So, I'm just going to start by asking them to introduce themselves, so if you are only on the audio you'll recognize their voice after. And Wendy, we'll start with you.

WP I'm Wendy Parmet. I am the faculty Co-director of the Center for Health Policy and Law at Northeastern University and the Matthews Distinguished Professor of Law there. I'm also really proud to say that I am Associate Editor for Law and Ethics at the American Journal for Public Health.

AM Thank you, Wendy. Herminia?

HP Thank you so much for inviting me to this podcast. I'm Dr. Herminia Palacio. I'm the President and CEO of the Guttmacher Institute. I'm a physician by training and spent much of my career in governmental public health.

AM Thank you, Herminia, and Farzana?

FK My name is Farzana Kapadia. I am an associate professor of epidemiology at the School of Global Public Health at New York University, and I also have the honor and privilege of serving as the deputy editor for the American Journal of Public Health.

AM Thank you very much, thank you all of you for being here. So, I would like to start by reminding our listeners, what would happen, you know very practically, if Roe versus Wade was overturned? What would be the practical implication? Maybe we'll start with you, Wendy, because you're, that's a long question.

WP Well, I think there are short-term, medium-term, and long-term impacts. Immediately, it's going to go to the states, and we know that many states have abortion laws that are on the books. Some have so-called trigger laws which will prohibit abortion in a wide range of circumstances and they vary for the exceptions and the weeks; but basically in the short-term, states are going to be able to prohibit abortion, perhaps no exceptions, perhaps limited exceptions; access to abortion and access to reproductive care is going to diminish dramatically. I think there are also important potential medium and longer term impacts both in terms of the law and health that hopefully we'll have a chance to explore, but certainly there is the possibility that there will be litigation and eventual prohibitions of certain forms of contraceptives, particularly those that opponents of abortion think of abort [agents], so we can't assume, I think, that there will be no problem in that area. Other rights may be challenged, and there's also the possibility, down the road, that the federal government will itself, if the Republicans take control of the federal government, will limit to access to reproductive health care. So, I think tremendous threats are to women's health both in the short and even greater in the intermediate term.

AM So, currently, abortion is regulated at the federal level for all states, and if Roe versus Wade is overruled, then each state is going to be able to have its own law and some of them may be extremely conservative. That's what you also think, Herminia? How's your perspective on Roe versus Wade and it--

HP You know, I want to add sort of follow on what Wendy said because I think it's absolutely the right analysis, and just to give you a flavor for sort of some of the data behind sort of the broad frame that she gave, at Guttmacher we estimate that 26 states are likely or certain to ban abortion if Roe goes down. And I think given the leak of the draft opinion, I think it's rather when Roe goes down rather than if, and I think that while nobody was completely surprised that Roe was likely to be abandoned at the Supreme Court either in full or de facto, I think that the breadth of this decision was a bit, was stunning, and as Wendy said I think portends a loss of other rights. Thirty-seven, just to understand what the breakneck pace, 37 abortion restrictions have been enacted—not just introduced, enacted—between January 1 and May 5. There have been over 500 different kinds of abortion restrictions introduced since January 1st at various state levels. So, the, this threat is not theoretical. It is happening right now. There are many people who already are de facto in a post-Roe world in many states, and that's only going to accelerate and get worse.

AM Thank you, Herminia. Farzana, maybe you want to complement what Wendy and Herminia said?

FK Yeah, I think the information that they've provided on what will happen in terms of the legal landscape really portends not well outcomes for women, for children, for their families. You know, the US compared to other high income countries has one of the worst maternal mortality rates. We've shown in work published in AJPH that women living in states with restrictive abortion policies such as mandatory waiting periods and restrictions on Medicaid abortions, Medicaid coverage for abortions, there's already higher maternal mortality in those states compared to states without such restrictions. So, we're looking at potentially worsening those

outcomes. We know that women who are denied are more likely to live in poverty, more likely to require public assistance, and have a harder time obtaining full-time work. These outcomes will worsen, and these hardships aren't negligible; they have impacts on food insecurity, housing availability, impacting and delaying medical care, preventative health care. You know, the cascade of effects as a result of that will worsen, so, and we know that these are the social determinants that drive health and well-being. And we're talking about potentially undermining and overturning, going backwards on the progress that's been made thus far.

AM But, before we go to more in depth to those issues of [equities], also, how did we get here and how come, you know, five Supreme Court, five justices, conservative justices today, can say that seven justices, you know, 50 years ago, were incompetent? I mean, there's something that makes no sense for me. Can you explain, Wendy, how is this possible?

WP Well, I think it's important to understand that overruling Roe, and that really also means overruling Casey and overruling a lot of other less well-known cases that have re-affirmed the right to abortion over the last 50 years, has been a central focal point of a conservative legal movement since the early 1970s. And there has been an extraordinary effort to appoint judges, to elect people who will appoint judges who adhere to ideologies, that really developed all around getting rid of Roe, right? So we hear a lot of talk about originalism and textualism, but these jurisprudential approaches really developed hand in glove with the anti-abortion movement and the anti-abortion movement's centrality to the conservative legal movement. And it has been a very important and very powerful and very well-funded movement. I think we also need to understand the politics, and we are now in a moment where the country is not just deeply polarized but moving towards to extremes where there's deep polarization, where there is

gerrymandering, and where in much of the country what goes for competitive elections is only the Republican primaries where you get people running based on how anti-abortion they are. And so we have both the politics and the legal movements have aligned. And also there's finally hardball politics and, for abortion and reproductive rights, bad luck, right? So we need to, can't forget, the hardball politics that Mitch McConnell played in, in a sense, giving Merrick Garland a vote on the Supreme Court and then rushing through Amy Coney Barrett's elevation to the court. And we now have a majority of, you know, three justices appointed by a president who did not win the popular vote; we have also justices appointed by President Bush who did not, and so we have this sort of coalescence of the triumph of the conservative political—jurisprudential—movement and the increasing radicalization on issues related to choice of the Republican party.

AM Thank you, Wendy. Herminia, what's your perspective or the Guttmacher Institute perspective on all those things that are banning—I mean, is there a majority of people supporting those laws there or, what's the situation locally?

HP Well, I want to say no. I think that there's clear data that suggests that this is not a majority popular vote. But I also want to build on what Wendy said. I think the short answer to a very detailed answer that Wendy gave to how did we arrive here is not accidentally, right. We arrived here very intentionally, very methodically, and yes, as Wendy described with some intentional effort over the last, you know, 40 to 50 years, but also I think it's important to look back at our historical grounding, because this is going to, as Farzana alluded, this is really going to impact people who are low income, people who already have difficult housing situations, people who are black, brown, and indigenous. And we have a long and storied history in this country of controlling reproduction, making the determination through policy of who makes a good parent,

who's allowed to decide when and if to become pregnant, who's allowed to decide when and if to raise children; who's allowed to decide when and if to abort. And, you know, there's an entire movement that emerged in the 1940s here originated by Black women but is really a more broad and intersectional movement of reproductive justice. And really this is a movement that frames reproduction in a human rights framework, right, that people should have the, all people should have the dignity, the humanity to be able to decide when and if to become a parent, when and if to become pregnant, when and if to terminate, and to be able to raise families if they choose to do so with appropriate housing, appropriate income. With the understanding that the very roots of slavery was Black women's bodies being treated as economic engines, being bred, being separated from their children, something that we saw now at the border, at the southern border, people being separated from their children—these anti-voting, anti-abortion, anti-immigrant policies are all being advanced by the well-funded movements that Wendy described. These are overlapping and not accidental oppressive actions.

WP Can I add something to that which is--

AM Please, please...

WP Which is, absolutely right, agree with everything you said, but I just want to add historically, you know, there's good evidence now, historical evidence, that the focus on abortion by the conservative movement was in one way a very intentional way of covering, shall I say, the attack on a liberal judiciary because of Brown versus Board of Education, and there came a point, right, where it was just harder to attack Brown. Attacking Roe, attacking abortion rights was also one way of getting to that backlash for the expansion of rights and the expansion of equality that we saw in the middle of the 20th century, and it was a way of channeling the forces that were

opposed to civil rights on racial grounds and using them as a way of coalescing around abortion. So, this intersection is [] indeed it goes back to the 1970s and sort of the turn the Republican party took, and just to know back in the day of Roe there was not the kind of political alignment, party alignment, on abortion that we have today.

AM Yeah, this is very clear, very important in terms of the background for this overruling now. And so in practice, what will happen in the different states and across the country when there will be such inequality of access across states? Who wants to address that?

HP Well, I mean I think I'll begin, you know, I think that Farzana really talked about what are some of the health impacts going to be, and I think it's important that we couch this and we understand in some ways what some of the options are, right? So, people will have to travel much further to get an abortion. Traveling doesn't just mean covering the cost of travel, right? It means taking days off from work; it means finding, you may need to find childcare because many people who have abortions are already parents; it may mean risking a job. And as we see, there have been efforts to—but it may also mean criminalization, right, that you are risking legal sanctions. And it's important to recognize that medication abortion incredibly from a health and medical perspective is also under direct assault. So as they're making abortion illegal, they're also attacking telemedicine laws and restricting access to medication abortion. This is an all out assault. The people who will get crushed are the people who always get crushed, right? And wealthy people will be able to fly to a friendly state to successfully acquire their abortion or they'll be able to successfully acquire medication. And it is the populations that are historically marginalized—and it's not historical, they are currently marginalized—will be the most adversely, by this effort including being forced to carry a pregnancy to term which by the way,

childbirth is from a medical perspective a much more dangerous and risky procedure than an abortion. And I think it's really important that we really highly because there's a lot of rhetorical devices, there's all these laws that are made, the track laws, that are really about, that are guides in a disingenuous narrative about trying to make abortion safe. Abortion is safe. The data are really quite clear about that.

AM Absolutely, absolutely.

FK I guess I just want to add to Herminia's comments which is that when we're talking about women who are marginalized, women who live in rural areas always face some of the worse health outcomes, have lack of access to adequate care, quality care, they're living in poverty or on the margins, and I raise this because it really an issue of, you know, access and travel time, et cetera, but also these, you know, when we're talking about these abortion restrictions, from a provider perspective, providers will be less likely—and I'm not just talking about ob/gyns but also primary care physicians—will be less likely to want to practice in states with such restrictive abortion policies. And those are already states that are woefully inadequate healthcare infrastructures. So, you know, in terms of access to care, this could really have significant and damaging impacts.

AM So we need, thank you, Farzana—we need to, as I hear what you say, we need also to look forward because if Roe is going to be overruled, you know, and I mean the Supreme Court decision that rules abortion for a country, that's not the optimal situation, and you have a few conservative justices that can overrule it like that against the opinion of the majority of the population. So, steps that could be taken in order to improve the situation in terms of abortion in this country, going beyond Roe...

HP Well, one thing is certainly the passage of the Women's Health Protection Act which was passed in the House of Representatives and it was voted down in the Senate. And, again, as we think about sort of the fact that we can't get voter rights protections, that we can't get the Women's Health Protection Act, these things are actually all tied into filibuster reform. And I think it's important that we not desegregate and treat all of these issues as sort of separate issues because they are very much related, and the public health and legal discourse and societal discourse, I think, needs to really zone in on what are the opportunities to advance not just access to abortion but really to sort of broaden the lens to talk about the way in which society makes decisions about who gets to have dignity, who gets to live in inequitable circumstances, what are those policies. And I think we do have to sort of really understand what legal actions are available to us that we're not taking. Filibuster reform is one of those, to get the Women's Health Protection Act passed in the Senate which is the only remaining chamber that hasn't passed it.

AM Can you just explain briefly what's the Women's Health Protection Act? What is there in it?

HP Sure, I'll take a quick fly-over and, Wendy, if you want to do a deeper legal [], that would be fine. Really, it is an act that will, that sort of will prevent sort of the rolling back of abortion rights in all of these 50 states. It is a way to sort of expand and to to make sure that at the federal government level that access to this broad array of reproduction services is protected.

AM So does it introduce it in the Constitution, Wendy? Where would be the difference?

WP Well, it would be a federal statute; it would seek to preempt, override state prohibitions by ensuring the right. But I want to emphasize something that was said earlier. We really need to see the connections between this act, its potential, voting rights, and what's going on sort of at the state level. Um, not only is filibuster reform would be needed to get this, but we need to

understand first of all that the federal courts are probably not the friend, even of this act; that efforts that are going to be undertaken to try to secure reproductive rights will likely face federal court challenges. Yet, what we really need to see is a change in political dynamics. For a very long time, those people who supported reproductive health, and frankly all kinds of issues that relate to health equity and the improvement, a majority of people who've cared about these issues but they're not the ones who voted for state legislatures, and the problem right now ultimately is that state legislatures in many states are very gerrymandered; the elections do not represent the health needs, the well being, or the views of much of the population. Look what's happening in Texas, look what's happening—there are a lot of states where, you know, the support for reproductive health and the outcome and the way the state legislatures are going are going dramatically different. And so this needs to be, you know, organized; this needs for people to be educated and involved at the local level. Unfortunately, that's a long-term agenda, and you know, women, families, the most vulnerable are going to be adversely impacted in the short and in the midterm, but in the long term, you know, no federal law, in fact no law, is secure as long as you have the political dynamics that we have right now and the conflation of the political and judicial dynamics.

AM Well, I want to say that in the long term, and here's a little bit the historian that comes in, in the long term, history goes in the direction of expanding women's rights and reproductive rights. Look at South America. You know, after years of conservative government and dictator[ship], Colombia has legalized abortion; Argentina, Chile, Chile 15 years ago Chile was, you know, the army was overthrowing legally elected government with the help of the CIA. Today, they have a very progressive government; they're considering having the right to abortion in the constitution,

and we are in the United States, you know, having to handle people like Pinochet to be who sends their troops against the Capitol. So, I mean, the direction of history of rather positive, so I know the situation is very difficult and tragic in some aspects, but I mean, we should maybe not be pessimist of the long run what will happen.

HP I think in the short run, there are folks who are really activated to make sure that the resources are provided to people who need abortion right now, right? Abortion funds are activated; there's donations appropriately pouring into them; they're helping people get the access to this health care service that they need in the right now. But they're not able to reach everybody, not everybody knows how to reach them, and it shouldn't be this hard, frankly, right? We shouldn't make people jump through this many hoops, but Alfredo you're absolutely right that well I would say not only is the direction in the rest of the globe positive in many aspects but that the US has something to learn from that, very specifically, and can look to, to you know sort of looking global and thinking more domestically here. But you mentioned some of the countries, Argentina, Bolivia, Brazil, Colombia, and Nepal, they've all incorporated human rights into reproductive, you know, human rights standards into sort of groundbreaking cases around reproduction. It's also important to know that what the US does does seek permissiveness for oppression, and regimes that are predisposed to oppress, so there is a give and take. We need to learn from the liberalization that's happening across the globe, but we should also be very worried about the signals that we're sending. We do not have even our own foreign policy very clear here, right? We are still restric—so not only domestically with the Hyde Amendment do we restrict access for Medicaid to pay for abortion so we're saying, poor people, you don't have the same rights to this healthcare service that other people do. But we've got a

Helms Amendment, globally, which is, it's over-interpreted, frankly and part of it is over, it, part of the reason it's over-interpreted is that, and the Global Gag order which has been rescinded but Helms is not—part of the reason they're over-interpreted is that there is benefit in confusion for those who oppose abortion. And so you've got abortion providers in other countries who are providers of reproductive health who are loathe to even talk about abortion which they're able to do if they get USAID dollars, if they get US aid. So it's really important that we are firing on all cylinders so that, as you say, the march, you know, the march is—but there are urgent needs, right? You can't—there are people who need abortions right now. These are urgent needs, these are life-altering decisions, right. People who are pregnant can just wave a magic wand and decide not to be pregnant if they don't have access to this important healthcare service.

AM Absolutely, absolutely, and I think, Herminia that you summarize the situation and it's a very difficult situation but things are happening to help women and there are some perspectives in trying to reverse the situation if, politically, as Wendy and Farzana said, we can create the momentum and the forces to actually change the conservative direction in which we are now. I want to thank you all for your time and really for your ideas. It's a very difficult question and I learned a lot from all of you, thank you.

[musical postlude]