

00:04

"What's the Supreme Court going to do about abortion?"

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"They're not really going to overturn Roe v. Wade, are they?"

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"They can't do that, can they?"

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I can't tell you how many people have asked me questions like this in recent months. It makes sense. I have argued two abortion cases in the US Supreme Court, including the 1992 case Planned Parenthood v. Casey, which is credited with saving Roe v. Wade. I was a co-founder of the Center for Reproductive Rights, and I spent 20 years of my career arguing on behalf of women who needed abortions and other reproductive health care.

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So my answer is depressing but direct: Roe v. Wade will be dead within the year. The constitutional right to choose whether or not to have an abortion will no longer be protected by the United States Constitution. This court is likely to overrule Roe and Casey or so undermine its meaning that it will be effectively unavailable for use.

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Now I heard your gasps, I'm going to say it again. The Federal Constitution of the United States will no longer protect reproductive freedom.

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Now I'm also here to tell you that there's hope. That we can preserve, by working together, our reproductive freedoms. And by that, I mean more than just the right to choose abortion. By that, I mean the ability to make decisions about becoming parents. All people should have that right. Whatever their race, whatever their gender, whoever they love, all people ought to have the right to decide to become parents and the social supports that are necessary to raise those children with dignity and in safety.

02:08

So opponents argue three things when they say they want to ban abortion. They talk about religion; they talk about protection of fetal rights; they talk about protection of women's health. So let's take those each in turn. Religion. You know, the reality of the world is that the world's religions have a wide variety of views on abortion, and many support them in a whole range of different circumstances. So when abortion opponents say religion, they're really just imposing their religion on the rest of us. And what about protection of fetal rights? If in fact you cared about protecting fetal rights, you'd spend a lot of time working to eliminate the alarming rate of infant mortality in this country.

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(Applause)

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Because in the United States, we have one of the highest rates of infant mortality in the developed world. They also should be supporting programs for children once they are born.

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(Applause)

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You know, what about the protection of women's health? Well, the reality is, abortion is already an extremely safe surgical procedure. It is safer than childbirth. And imposing new restrictions on abortion only makes it less safe.

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In my view, what we're really talking about, this fixation on abortion by opponents, those people who want to ban abortion, is all about controlling women. And women are unable to operate, to be equal participants in our society, if we cannot control whether, when and with whom we have children. We cannot exercise the fundamental human right to make decisions about our bodies and our destinies.

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So why am I so convinced that the Supreme Court is going to overrule Roe and Casey and take what is clearly a radical step? Now, interestingly enough, I learned everything I needed to know to be successful in the Supreme Court on "Sesame Street."

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(Laughter)

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Why? Because you've got to learn to count. And the only number that matters is five --

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(Laughter)

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which is a majority of the justices on the Court.

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Now, when Casey went to the High Court in 1992, I was convinced that there were five justices then prepared to overrule Roe and return to the states the ability to ban abortion. I was correct. Right after my argument, the justices returned to their conference room and took a vote, and seven justices voted to uphold the Pennsylvania restrictions that were at issue in the case. And then Chief Justice Rehnquist wrote a draft opinion. While he never said the magic words, that Roe is fatal, as Justice John Paul Stevens recently wrote in his memoir, the opinion effectively repudiated the central holding of Roe. Now, luckily, that opinion was never filed in 1992. At the last minute, Justice Anthony Kennedy changed his mind, and together with justices Sandra Day O'Connor and David Souter, they issued what they called a joint opinion. And in it, they upheld the right of women to obtain abortion up until viability, usually between 24 and 28 weeks of pregnancy, in all 50 states and US territories.

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But the Casey decision went a little further, and it had permitted states to enact barriers to abortion as long as they weren't undue burdens on women. And as a result, in the following three

decades, we've seen states pass hundreds of restrictions on abortion, and the increasingly conservative courts uphold those restrictions. And as a result, we've seen a dwindling availability of abortion. Today, about 11 percent of the counties in this country that actually have an abortion provider. There are six states that have one abortion provider. As we know, in the days before Roe, women with means were able to get abortions. Other women, on the other hand, even today -- low-income women, women who live in rural areas, teenagers, women of color, women who are disabled -- all of whom have difficulty accessing safe and affordable abortion.

07:13

Now the question is: What's going to happen now? And unfortunately, things are going to get worse. There are currently three cases pending in the Supreme Court, two from Texas and one from Mississippi. Now, most of you probably have been following the Texas situation. Texas passed a ban on abortion at about six weeks of pregnancy. It allowed any individual to sue abortion providers. Vigilantes could collect a bounty of 10,000 dollars for a violation of the law. And as a result, many, many clinics, probably most of the clinics in Texas, have closed their doors or have decreased the number of abortions they performed. It's difficult. But the critical piece about Texas is that five justices -- remember that number five -- five justices already voted to permit the Texas law to go into effect. And besides the harm for women, those justices are not really considering the constitutionality of the act, only who can be sued and where. The more important case is out of Mississippi. There, there's a ban on abortion at 15 weeks of pregnancy. Arguments were heard this week, and in my view, we are likely to see at least five justices overrule Roe and Casey and send the question of abortion back to the states. Sesame Street, five votes. And unfortunately, this time around, there is no Justice Kennedy to save us.

08:58

Now, what's going to happen when Roe and Casey are overturned? I'd guess that about half the states in this country will ban all or most abortions. We're likely to see ban stretching from Georgia all the way west to Texas, from Idaho, all the way south to Arizona. Women, like Texan women, will be forced to travel to the 15 states that are controlled by pro-choice legislators and governors. Other women will seek medication abortion, using the internet or gray or black markets and subject themselves in some states to criminal prosecutions. Still, other women will carry their unintended pregnancies to term. The bottom line is this is not a pretty picture.

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So what now? What can we do? We have been saying for five decades, "Save Roe, save Roe, save Roe." That strategy is no longer feasible. Give it up. We've got to make sure we quit hitting our heads against the marble staircase. And try to find new strategies. So I'm going to propose two of them to you today. First, we've got to build a badass social justice movement.

10:22

(Applause)

10:28

Which means loudly crying for our rights, loudly saying: this is something that belongs to us. We know from watching the Black Lives Matter movement and the marriage equality movement that coalition is queen. We've got to find allies and work with them to make sure our rights are protected. But equally important, we've got to ensure that we elect -- and I'd actually say more important -- is we've got to elect legislators, throughout the states and in Congress, who are champions for reproductive health.

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Now, I'm not going to bother to tell you all how to get politically active. This is a crowd that knows how to do it. But knowing how to do it and actually doing it are two different things, so what you need to do is get politically active.

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But one of the things I will tell you is what would our world look like if we were able to wrest the reins of governmental power away from those who oppose abortion and allow an agenda that reflects reproductive freedoms and justice. Picture this. We would have childcare and universal childhood education in every community in this country. We would have paid maternity and paternity leaves, and people would actually take them. All working parents ought to have that right. You know --

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(Applause)

12:11

According to the Centers for Disease Control, African American women, Native American women, Alaska Native women are dying of pregnancy-related causes at three times the rate of white women. And most of those deaths are preventable. So in our world where we control the reins of power, we would ensure, we would ensure that there were programs to reduce this alarming rate of maternal mortality. And we would make sure that the systemic racism in our health care system would be eliminated. And we'd work to eliminate infertility with special

programs for women who can't get pregnant. And we would make sure that all women are entitled to health care services at all stages of their life.

13:06

Now all of those things I've talked about, are family-friendly policies and ought to be supported by our opponents as well. I'll wait to see if that's the case. But in my world where we control the reins of power, we would do more. The birth control pill would be available over the counter.

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(Applause)

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OK, as easy to get as a bottle of Tylenol. And we'd have quality sex education in every public school in this country.

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(Applause)

13:44

And we would make sure that ... abortion is affordable and available -- no more bans, no more barriers, no more restrictions on funding. And medication abortion, the abortion pill, would be available not just at Planned Parenthoods and the dwindling number of abortion clinics in this country, but at pharmacies without a prescription, at walk-in health centers and on every college campus in the United States.

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(Applause)

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And if you had any doubt about the importance of getting politically active, we could also pass a constitutional amendment, what I call a gender equity amendment, that would guarantee to all

persons the ability to make decisions not just about abortion, but about pregnancy and marriage and sexuality and parenting. And it would be a permanent part of the United States Constitution.

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Now the important part of that is these rights should not be controlled by politicians. They shouldn't be dependent on where you live or how much money you make or the color of your skin or the person you love or the pronouns you use. These are universal fundamental human rights, and they ought to be guaranteed in law, in the Constitution, so the Supreme Court cannot willy-nilly take them away.

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(Applause)

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Now to do this, we need to elect champions for choice to the 500,000 elected seats in our government in this country: everything from school boards to town councils, to state legislatures to Congress and the White House. All of those seats need to be controlled by champions of our cause. And that can only happen if you get politically active. Your vote, your willingness to work in campaigns, write postcards, make phone calls, knock on doors, can make that happen. And even run for office, because that's what we need to do.

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Now while dire, the end of Roe is not the end of the story. To paraphrase Joan Baez, the best antidote to despair is action. And your action, your willingness to work hard cannot only preserve reproductive freedoms for ourselves but for our children as well. So let's do it.

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Thank you.

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(Cheers and applause)