

Zuckerberg's thinking. Accountability—yes, indeed. There is bipartisan agreement that it is time for accountability to come, and I sincerely hope that Mr. Zuckerberg and the rest of his Facebook colleagues are prepared for what is coming.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

ABORTION

Mr. CORNYN. Mr. President, this morning, the Senate Judiciary Committee had a hearing to discuss two of our Democratic colleagues' biggest headaches: the Supreme Court of the United States and State laws that protect the right to life.

This wasn't the first time we have seen an attack on both waged by Members of the Senate. Last year, the majority leader, Senator SCHUMER, walked across the street to the Supreme Court and threatened two Supreme Court Justices by name based on an abortion case that they were considering.

Sadly, it seems that our Democratic colleagues have simply given up when it comes to protecting innocent life. In 2020, February 2020, the Senate voted on a bill that would outlaw elective abortions after 20 weeks, when science tells us that a fetus can actually feel pain. Had this bill become law, it would have put U.S. domestic policy in line with that of most of the rest of the world.

Unfortunately, we happen to be in a small category, including North Korea and communist China, when it comes to the ability to get an abortion well into the period of gestation, including up to late-term abortions. As it stands today, the United States is currently one of only seven countries to allow elective abortions after 20 weeks. As I said, those seven countries include the Communist Party China and North Korea. But our Democratic colleagues filibustered that bill too.

Then came one more opportunity to protect the most vulnerable among us. The Senate voted on legislation requiring doctors to provide lifesaving care to infants who survive abortions, just like any other newborn child would receive. That sounds like common sense, right? Well, if you ask the American people, they say yes. More than three-quarters of the American people, when it comes to polling, said they support providing medical treatment for babies who survive abortions. But there are no Federal laws requiring healthcare providers to care for these children just as they would any other infant in their care. And, yes, you guessed it—Democrats blocked that bill too.

The attack on innocent life has been years in the making, but we have never seen anything quite like the latest endeavor that has come from the House of Representatives. The so-called Women's Health Protection Act is actually "NANCY PELOSI's Abortion Protection Act."

This isn't just about messaging. The Senate version of the bill is cospon-

sored by all but two of our Democratic colleagues. Clearly, the provisions included in this bill don't represent the beliefs of just some small subset of the Democratic Party. Apparently, it is mainstream within the Democratic Party.

But it is clear that this is a no-holds-barred attack on the right to life. One of the most outrageous and unprecedented aspects of the bill is it limits State laws limiting abortion even after viability. This goes far beyond where the Supreme Court went in *Roe v. Wade*. It also undermines another landmark abortion case, *Planned Parenthood v. Casey*. In *Casey*, the Supreme Court abandoned the trimester framework of *Roe*, replacing it with a viability standard to determine a State law's constitutionality. Even the author of *Roe v. Wade* and of *Casey* agreed that this viability standard was largely arbitrary. But this decision came in 1992, when a baby was considered viable after 23 or 24 weeks. But the marvels of modern medicine continue to challenge this estimate. Last June, a baby was born at 21 weeks and 2 days, and this past summer, he celebrated his first birthday.

The extreme legislation attacking the right to life coming out of the House and now embraced by Senate Democrats would undercut the Supreme Court's ruling in *Casey v. Planned Parenthood* and would invalidate State laws that limit abortions after 20 weeks, which is now the consensus period of viability.

A number of States have passed laws to restrict access for different gestational periods—for example, in Massachusetts and Nevada, for example, abortions are restricted after 24 weeks. In California, Washington, and Illinois—they are among the many States that restrict abortions after viability. But the Democratic proposal is so extreme, it would invalidate the laws passed in each of these blue States.

If this proposal, the Pelosi abortion bill, became law, it would allow healthcare providers to perform abortions at any point so long as it is done to preserve the mother's health. This actually undermines the decision of the Supreme Court of the United States that said it is constitutional to limit so-called partial birth abortions as a barbaric practice that does not have constitutional protection.

But the provision that would allow abortion at any point in the pregnancy so long as it is done to preserve the mother's health—that doesn't mean the pregnancy actually threatens the life of the mother. Let's be clear on that point. If a single healthcare provider determines that the birth of the baby would impact on the mother's mental health, an abortion would be legal at any point in the pregnancy up to birth.

This is way out of step with where most Americans are. A poll this last summer found that 65 percent of Americans believe that abortion should be

illegal during the second trimester, the second 3-month period of pregnancy. An abortion opposition, I should say, to a third-trimester abortion is even stronger. These are the so-called late-term abortions where the fetus is fully formed and even viable outside of the mother's womb. Eighty percent of Americans oppose third-trimester abortions but not Pelosi's abortion act, embraced by all but two of the Democrats here in the U.S. Senate.

The American people clearly do not want abortion laws that put us in the same league as China and North Korea—two of the world's most aggressive human rights abusers. Until 2016, China had a strict one-child policy. Families who didn't comply with that policy could be fined, lose their jobs, and the baby would even be the subject of a forced abortion. And it became common in China, as a result of this limitation on pregnancy, for families to prefer a son and undergo gender-selection abortions. If you are pregnant with a female child, well, abortion is fair game because they preferred to use abortion as a means to select the gender of their child.

Democrats' legislation doesn't simply remain silent on gender-selective abortions; it goes so far as to prohibit States from outlawing abortion as a method of gender selection. Not only that, it undermines State efforts to protect unborn babies with disabilities or Down syndrome. Unborn children being killed solely on gender or disabilities is a devastating problem in other countries. We cannot allow such a grotesque practice to become mainstream here in the United States. We are better than that.

The list of atrocities included in this legislation is a long one. It requires healthcare providers who hold deep religious objections to abortion to violate their own deeply held religious beliefs and kill unborn babies. It invalidates informed consent laws, which require healthcare providers to share accurate information with their patient about the baby and whether specifically the child can feel pain. It gives the Attorney General of the United States sweeping authority to block State laws that try to protect innocent human life. So this radical proposal from the House, now embraced by all but two of our Senate Democrats, would overturn existing State laws and allow abortions on a scale our country has never seen before.

I think it is a sad commentary on the conscience of America when all but a handful of our Democratic colleagues are fighting to implement these radical policies. But we cannot and we will not stay silent at a time when our most vulnerable are being attacked in such a manner. We have a moral imperative to defend those who cannot defend themselves, born or unborn, to protect those who cannot protect themselves. Babies with heartbeats, fingerprints, taste buds—they deserve to have protection of the law too. The Declaration

of Independence, after all, says that we hold these truths to be self-evident, that all are endowed by their Creator with certain unalienable rights, including the right to life. I have always been proud to defend that right, and at no time in my lifetime has it ever needed more defense than right now in the face of these outrageous proposals.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, earlier today, as we just heard from my colleague from Texas, the Judiciary Committee held a hearing on the abortion ban that took effect in the State of Texas earlier this month. I hope every American who tuned in to this hearing listened very closely—very closely—because here is what we heard:

My Republican colleagues on the committee literally made no effort to defend the Texas abortion law, the Texas abortion ban—SB 8, as it is known in Texas—not a single effort to defend it on its merits. They made no effort to engage on the issue of the shadow docket process through which the Supreme Court allowed this bill to become law, and they made no effort to argue that women's constitutional rights should be protected.

What we witnessed during today's hearing was the opening salvo on the fate and future of *Roe v. Wade*. Here are the facts:

This Texas law is no ordinary piece of legislation. To quote Supreme Court Justice Sonia Sotomayor, it is "a flagrantly unconstitutional law engineered to prohibit women from exercising their constitutional rights and evade judicial scrutiny."

This law has effectively banned abortion after 6 weeks in the Nation's second largest State, even in cases of rape and incest. The fact is, many women do not even know they are pregnant by 6 weeks.

The architects behind SB 8 took an extreme proposal that clearly violated Supreme Court precedent and paired it with a new, disturbing private bounty hunter enforcement scheme, and they did so in the hope that the courts would not block the law because it wasn't clear who should be sued.

At midnight on September 1, the Supreme Court allowed SB 8 to go into effect. As a result, millions of Texas women have had their constitutional rights challenged and suspended.

This attack on women has already caused irreparable harm to countless women who lost their right to reproductive care in Texas.

At today's hearing, we heard from Donna Howard, a State representative from Texas. In her written testimony, she shared the story of a woman who was denied the healthcare she was entitled to under the Federal Constitution. The woman went in to an appointment on August 31 of this year, and at the time, there was no heartbeat detected on the State-mandated sonogram. But when she came back the next day to

have the procedure done, a cardiac motion was detected.

Representative Howard said of this woman that at only 5 weeks—5 weeks of pregnancy—she was too late to receive an abortion under the provisions of this new law. She was devastated. She already had a child at home and knew that bringing another child into their lives threatened her family's situation and their financial security.

As Representative Howard went on to note, having an abortion was "the right decision for this mother's life and her family's well-being."

But the Texas law went into effect, and the Supreme Court deprived this woman of her constitutional right.

SB 8 marks a turning point in the decades-long campaign to undermine the Supreme Court's holding in *Roe v. Wade*. For years, legislative efforts to ban previability abortion have been stopped by courts. Until now.

The legal architects behind this Texas law crafted a scheme to avoid judicial review. They lifted the responsibility of enforcement from the State and put it in the hands of private citizens. Listen to this: As a result of this Texas law, they have turned ordinary citizens into bounty hunters.

I want to clarify something. I have read it and asked the Texas State representative to verify. It has been said that you can sue a person who aids and abets an abortion in Texas and recover \$10,000 costs and attorney's fees. That is not what the law said. The law says you can recover not less than \$10,000 in costs and attorney's fees. The first lawsuits have been filed already against doctors in these clinics, and they are seeking damages in the amount of \$100,000 or more.

You don't even have to live in Texas to receive this bounty. Consider Dr. Alan Braid, the first person to be sued under this new Texas law. Earlier this month, Dr. Braid, a practicing OB-GYN in San Antonio, penned an op-ed in the *Washington Post* explaining why he is continuing to provide abortions despite the law.

As someone who has worked in medicine since 1972, the year before *Roe v. Wade*, Dr. Braid remembers a time when women could not safely access abortion care. He believes he has a "duty of care" to his patients, and he refuses to "sit back and watch us return to 1972," in the doctor's own words. Well, as I mentioned, he is already facing the legal consequences of this new Texas law.

Who is exactly the bounty hunter who filed the first lawsuit against him? You might guess it is a fellow Texan, right? You are wrong. It is a disbarred lawyer who lives in Arkansas, a bounty hunter; \$100,000 is what he thinks this law is going to give him.

That lawsuit being filed against Dr. Braid illustrates how irregular this Texas law's bounty hunter enforcement model really is. Anyone from any State can file a lawsuit against any physician. But when we include the cat-

egories of people who aid and abet the person receiving the abortion, the categories go wide afield, from the people who gave her advice, the folks who gave the transportation to the clinic, the minister who counseled her—all of these things makes them eligible to be sued for a minimum of \$10,000 now in Texas.

There is a reason why the Texas legislators designed the law this way. They sensed an opportunity on the Supreme Court. They knew an emergency legal challenge to this Texas law had a good chance of coming all the way to the Supreme Court. And they knew the Supreme Court has shown a willingness to allow sweeping changes to the law to take place on a short timetable without detailed explanation.

It was interesting to listen to the Republican Senators go into orbit over the fact that we would raise questions about the shadow docket. It is a motions docket where the Justices on the Supreme Court can decide an issue on a very short timeframe without even explaining their position.

That is exactly what happened with SB 8. When the law came before the Supreme Court, a majority of Supreme Court Justices, late at night, allowed it to take effect.

The next day, the Court issued a one-paragraph opinion to explain it. It said they would not stay Texas's abortion ban because of the law's "complex and novel" procedural questions. In other words, the Texas legislators got their way. By designing SB 8 with a new bounty hunter enforcement model, Texas lawmakers managed to evade judicial review.

In her dissent, Justice Sotomayor explained how this scheme worked. She said, "The Court has rewarded the State's effort to delay federal review of a plainly unconstitutional statute, enacted in disregard of the Court's precedents, through procedural entanglements of the State's own creation."

The Court's ruling on SB 8 is distressing for a number of reasons. For one, it has galvanized lawmakers across the country to undermine constitutional rights in their States. Over the past month, lawmakers and candidates in Arkansas, Florida, South Dakota, and other States have pledged to follow suit and copycat the Texas law. They saw what happened when this bill came before the Supreme Court. The Supreme Court basically said it can go forward.

Additionally, the conservative majority on the Supreme Court has now signaled that it is willing to use the shadow docket to allow even laws unconstitutional on their face to take effect, as long as it aligns with certain ideological norms.

Another witness we heard from today was Professor Steve Vladeck, an expert in constitutional law who has written extensively about the Court's shifting use of the shadow docket.

The shadow docket, of course, refers to situations where the Court issues

decisions outside the traditional merits docket. Historically, shadow docket orders are used to help resolve routine or procedural questions frequently without public deliberation, full briefings, or even signed opinions.

But as Professor Vladeck testified, there has been a notable uptick in the Supreme Court issuing shadow docket orders that are “having a far broader substantive impact, for better or worse, compared to [the] emergency rulings in the past.” And many of these shadow docket orders appear to be driven by ideology.

Let me tell why I say that. Listen to these numbers. During the 4-year Presidency of Donald Trump, the Supreme Court issued 28 grants of emergency relief on the shadow docket at the request of the Trump administration—28 grants of shadow docket relief out of 36 requests. Each of these orders advanced President Trump’s political agenda, including one that allowed the resumption of Federal executions for the first time and in nearly two decades.

Now, let’s do a comparison. If there were 36 requests of the Supreme Court for shadow docket opinions and 28 of them were granted in the 4 years of Donald Trump, how about previous Presidents? During the 16 years of the George W. Bush and Obama Presidencies, from 2001 to 2017, the Supreme Court issued four—four—orders in 16 years. In this last 4-year period of time, they granted 28 out of 36 with the Trump Justice Department.

With its handling of Texas’s abortion ban, as well as other shadow docket orders, the Supreme Court’s conservative majority has indicated a willingness to change substantive law in sweeping ways without due deliberation and public reporting.

In doing so, they are undermining confidence in the Court, and the conservative majority has opened the door for ideologically driven legal schemes to rewrite laws from the shadows, like SB 8. This is a five-alarm fire for due process, as well as our constitutional rights.

And as I expressed during this today’s hearing, I hope every Member of the Senate—Democrat or Republican—will join together to protect and preserve independent, transparent, and reasoned judicial decision making based on the rule of law.

At a time when the public’s confidence in our governmental institutions has been greatly eroded, we must restore it.

I yield the floor.

The PRESIDING OFFICER (Ms. ROSEN). The Senator from Utah.

UNANIMOUS CONSENT REQUEST—S. 2840

Mr. LEE. Madam President, I rise again today to express my objection to President Biden’s sweeping vaccine mandate and to offer legislation that would protect Americans from this Federal intrusion.

As I said yesterday, the Federal Government has no business mandating COVID-19 vaccination for all Ameri-

cans. Unfortunately, at least some of my colleagues disagree. The President of the United States said, while announcing the mandate, “This isn’t about freedom or personal choice.”

“This isn’t about freedom or personal choice.” It stuns me to think that a sweeping Federal mandate could be about anything other than freedom or personal choice. It is like robbing a bank and then saying it is not about the money.

Our Constitution was designed to protect the liberties of the people of the United States. But now, the government is being used by the Executive to force Americans to be vaccinated or to be terminated.

Yesterday, I came to the floor to speak about those Americans with sincerely held beliefs, whether religious or otherwise. My bill yesterday would have simply required that any mandate of this sort contain an exemption for those individuals.

Now, I don’t believe that such an exception would be sufficient to resolve the constitutional and the policy problems with such a mandate. But there are millions of Americans who would be able to live according to their beliefs if, in fact, such an exemption were included by law, which it should be.

Lamentably, my colleague the senior Senator from Washington objected. So I pledged to come back again today and tomorrow, for as long as it takes, to win the fight against this egregious mandate.

Today, I am providing another opportunity for this body to protect Americans.

This mandate poses a real threat to the well-being of millions. Those who choose not to be vaccinated are at risk of losing their jobs. My office has been in contact with 144 Utahns who are concerned about this very issue. I shared some of their stories yesterday.

Despite what many on the other side of this debate would have you believe, these are, in fact, everyday Americans: people with preexisting medical conditions, like autoimmune disorders. These are people who are just wanting to provide for their families and not to be able to expect that. These are pregnant mothers who are concerned about the safety of their own health and that of their unborn children.

Some of these people are the heroes of yesterday. They are first responders; they are medical professionals and essential workers who sacrificed to carry our Nation through the hardest days of this pandemic. And they are still heroes today. These Americans are not the enemy.

President Biden and those who support this effort are grasping for solutions they believe can bolster their political position and shift blame on the status of the pandemic. Those paying the price are the people back home, including many of the people I just described.

So today, I offer another proposal. This bill would provide those Ameri-

cans harmed by this mandate with a means of recourse. Under this bill, those who lose employment or lose their livelihoods due to this mandate may sue the United States for relief. The bill would make these very Americans whole after the President of the United States made working impossible for them.

This bill is only one of many that I have introduced to combat this unconstitutional, unwarranted, indefensible mandate. While I believe this mandate will eventually be invalidated in court—I am quite confident that it will—until that day comes, these bills can provide businesses and the American people with the certainty that they need to make their own decisions. We will be protecting their God-given and constitutionally protected right to make medical decisions for themselves.

So, Madam President, I am here today and I will be back tomorrow and fighting against this mandate for as long as it takes.

Madam President, as if in legislative session, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2840, and that the Senate proceed to its immediate consideration. Further, I ask unanimous consent that the bill be considered read a third time and passed, and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there an objection?

Mr. DURBIN. Reserving the right to object.

The PRESIDING OFFICER. The majority whip.

Mr. DURBIN. Madam President, more than 680,000 Americans have died from COVID. The majority of these deaths occurred before we had viable, effective, and safe vaccines. Doctors were begging for these vaccines to save lives, and now we have three safe, effective, widely available vaccines in America. All three have been proven successful and safe.

However, one in four adults in America still refuses to get the vaccine. According to the CDC, these unvaccinated individuals—listen to this—are 10 times more likely to be hospitalized from COVID, 10 times more likely to die from COVID than those who got the shot. And as long as large numbers of Americans remain unvaccinated, this virus is going to continue to spread and raise the risk of mutation and more deadly variants.

We have tried approaches to incentivize people. What more can we do? We created a lottery in Illinois and said: If you are vaccinated, you are automatically buying a lottery ticket; you don’t even have to pay for it.

The head of the Federal Bureau of Prisons union for employees, with only 50 percent of those working in Federal prisons vaccinated, said they were going to set up a popcorn machine at the prisons in the break room in the