

an explicit claim made by people who came down to this floor who might have heard it on some un reputable website, but it is not true.

You can object to protesters being outside of public officials' homes. It has happened to all of us, by the way, but don't make up threats of violence just because it makes for a better story.

I heard one Senator say that the Women's Health Protection Act, for which I will proudly vote tomorrow, allows for garage abortions. That is not true. That is just plainly not true.

Every State requires that abortions be performed in licensed healthcare facilities and nothing in the bill changes it. Don't say that just because it makes a better story.

Many Republicans claim that the bill we are taking up tomorrow allows abortions up to the date of birth. That is not true either.

The Women's Health Protection Act does codify *Roe v. Wade*, but *Roe* only protects a woman's right to have an abortion without restriction until viability and then afterward protects for the woman's health or risk of death. The bill simply does not expand the circumstances under which an abortion can be performed beyond what currently exists in case law.

So I am going to be honest with my colleagues about the admitted complexities—the political, moral complexities of this debate. But I expect opponents of the bill that we are debating tomorrow to be equally honest in the arguments they make as well.

So I will have a lot more to say about this topic as we begin what I think is a debate that will consume this Nation, rightfully, over the course of the coming weeks and months, but for today I will leave it there.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

U.S. SUPREME COURT

Mr. WHITEHOUSE. Madam President, I am here for the 14th time to keep unmasking the scheme to control our Supreme Court—a scheme that is now poised to destroy a woman's right to make her own reproductive health choices and to smash foundational Supreme Court precedent to get there.

Last week, Politico confirmed a fear that many of us have had for years. We now see that the Supreme Court has at least five votes to eradicate *Roe v. Wade*, one of the most important decisions in the Court's history. For nearly half a century, women in this country have relied on *Roe*'s recognition that our constitutional right to privacy includes the right to decide when to have a child. This is one of the most profoundly personal and life-changing decisions anyone can make. Now, the draft opinion from Justice Alito shows in black and white how the Court plans to steamroll over that right—and afterward probably many others that are

anchored in that same American right to privacy.

If Justice Alito's draft opinion becomes law, women in this country will have a well-established constitutional right stripped away. That has not happened before.

Already 13 States have trigger bans that will snap into place the moment *Roe* is overturned, and 13 more are expected to ban or severely restrict abortions in the future. And it won't stop there. For example, Louisiana's Republican lawmakers just advanced a bill that would criminalize abortion as homicide and allow prosecutors to charge women seeking abortions as criminals.

In the week since the news broke, a lot of Americans have expressed just how strongly they disagree with the path this Court is headed down. They are disappointed, stunned, outraged, and they are right. When you take a second to remember what these same Justices told us in the past about *Roe*, you can be doubly outraged. I know Democrats on the Senate Judiciary Committee are. We saw the last three Republican Justices come through that committee and look us in the eye as we asked what they thought about *Roe*. Let's be clear: Each of these Republican Justices came before the committee; each was specifically asked about *Roe v. Wade*.

Here is what they told us:

Neil Gorsuch:

Roe v. Wade, decided in 1973, is a precedent of the United States Supreme Court. It has been reaffirmed.

Brett Kavanaugh:

It is settled as a precedent of the Supreme Court, entitled to respect under principles of *stare decisis*.

Amy Coney Barrett:

Roe is not a super-precedent because calls for its overruling have never ceased. But that doesn't mean that *Roe* should be overruled. It just means that it doesn't fall within a small handful of cases like *Marbury v. Madison* and *Brown v. Board* that no one questions anymore.

Add in Alito himself:

Roe v. Wade is an important precedent of the Supreme Court.

Yet here is what Alito's draft opinion says:

Roe was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences.

Well, there was no mention of "egregiously" at the confirmation hearings. There was no mention of "wrong from the start" when we asked about *Roe*. Does anyone seriously think that this was a sudden, new epiphany that came over the Federalist Society Justices in the last few weeks? None—none—managed to mention their belief that *Roe v. Wade* was "egregiously wrong from the start." Whether that was outright lying or confirmation hearing hide-the-ball tricks, it is dishonorable, and it was dishonest.

If that is what you believe as a judge, own it. Don't keep your views secret until you have the votes to make your

move. That may be clever politics, but it is politics, not judging. It is a big tell about this captured Court.

Since the news broke, Republicans have tried desperately to change the subject. The minority leader says:

The real outrage is not the obliteration of women's rights but that we found out about it a month early.

He says:

This lawless action should be investigated and punished as quickly as possible.

Other Republicans called for the FBI to prosecute the leaker criminally or civilly. Some even purport to identify the leaker.

Chief Justice Roberts called the leak "a singular and egregious breach of . . . trust" and an "affront to the community of public servants who work here."

Look, as to the leak, Mr. Chief Justice, go for it. Investigate away. Send the Marshals. But to my Republican colleagues, sharpening their pitchforks and calling for criminal prosecution: Spare me the high dudgeon. Spare me the faux outrage. As former White House Ethics Counsel Walter Shaub explains, "[T]he Supreme Court has no code of ethics—which is the place you would normally put a ban on misusing nonpublic information. [So] what crime would [the] FBI . . . investigate?"

As for the "affront" to the institution, I suggest everyone consider the real rot at the core of the Supreme Court.

If you care about the independence and integrity of the Court, it is not this leak you should be outraged about; it is that for the first time in the history of the U.S. Supreme Court, the selection of Supreme Court Justices was farmed out, handed off to a private organization, and Justices were selected in some backroom with zero transparency into how the selections were made, how the lists were assembled, and zero transparency into the dark money that flowed into that private organization while the selections were being made. Who paid what to have a seat at the Federalist Society's judicial selection turnstile?

We know from new reporting that it was the Federalist Society's Leonard Leo who "laid out [the] road map for Trump on the Federal court system" with the goal of "transforming the foundational understanding of rights in America."

So much for balls and strikes, huh?

Leo came up with the list of "judges that would please the Republican base" from among what he called the "decades of conservative lawyers in the pipeline." He became a "team" with Don McGahn, Trump's White House Counsel, and MITCH MCCONNELL to "keep the judicial nominations effort moving." It was Leo who took to the White House where he had "extensive access," to the revised nominees list that included Kavanaugh and Barrett. The picks were made by advisers, said Senator MCCONNELL, with Trump's role

merely “signing off on them,” and he “never veered from the lists of candidates suggested by Leo and others.”

Again, this was not about calling “balls and strikes.”

If you want “to have the longest possible impact on the kind of America you want,” said Leader MCCONNELL, “you look at the courts.” That is their goal, to change the kind of America we have—more accurately, the kind of America the far-right megadonors want, I would say.

Trump noticed. “MITCH MCCONNELL. Judges. Judges. Judges. The only thing he wants is judges,” said Trump.

We know this happened because the Trump White House, right up to Trump himself, said so. Trump’s own White House Counsel joked that he “insourced” the Federalist Society into the selection process. As one prominent conservative explained, this was an “enterprise”—an “enterprise of building a Supreme Court that will overturn *Roe v. Wade*.”

Once the anonymous donors behind the Federalist Society Justice-picking operation got the nominees they wanted, then came the dark money front groups rolling out ad campaigns to help ram those Justices through the Senate. Anonymous donations of \$15 million, \$17 million, \$19 million went to phony front groups like the so-called “Judicial Crisis Network” to promote those backroom-chosen Federalist Society nominees.

Then, once the Federalist Society Justices were stacked onto the Court, flotillas of dark money front groups appeared before them, both as litigants and as amici curiae, orchestrated by the dozens in little groups to signal the Republican Justices how to rule. And it is pretty likely that the same donor network was behind the nomination turnstile, the propaganda machine, and the flotillas. And by the way, they are winning—winning—with these hand-picked Justices at an astonishing rate—80 to 0 by one count.

We see the results of the scheme in this very case. The sponsors of the Mississippi abortion law admitted that they passed the law because they thought the new Supreme Court Justices would uphold it, just like a new legislative body had come in. After Amy Coney Barrett’s nomination was rushed through the Senate, the State of Mississippi even changed its position to ask the Supreme Court to overrule *Roe* in its entirety. It all smells of “fixery.” No wonder Justice Sotomayor asked during oral argument whether the Court will “survive the stench that this creates in the public perception that the Constitution and its reading are just political acts?”

So, if colleagues want to talk about demolition of the integrity and independence of the Court, then they better have something to say about turning the Supreme Court over to dark money special interests, about special interests capturing the Court to serve their rightwing “enterprise.” A captured

Court, that is delivering for the special interests that stacked it and helping to keep their secrets has had its integrity and independence pretty well demolished already.

The last gasp of the scoundrels is to pretend that it is Democrats calling out this dark money mess who are the ones undermining the integrity of the Court. They even point to a brief of mine where several colleagues and I quoted to the Court a poll showing that a majority of Americans feel the Court is “mainly motivated by politics” and that it ought to be “restructured in order to reduce the influence of politics.”

That is a poll, not a threat.

And the Court better start paying attention to why the American people feel that way, rather than quarreling that anyone that is “threatening” or “bullying” the Court by pointing that out.

By the way, if threatening is what you want to fuss about, have the decency to be consistent. Here is a quote from FOX News’ host Laura Ingraham discussing this actual abortion case after the oral arguments were done.

Forgive my bad language to the pages who are here. I am actually quoting her verbatim.

We have six Republican appointees on this Court after all the money that has been raised, the Federalist Society, all these big “fat cat” dinners. I’m sorry. I’m pissed about this. If this Court with six Justices cannot do the right thing here, the constitutional thing, then I think it’s time to do what Robert Bork said we should do, which is to circumscribe the jurisdiction of this Court, and if they want to blow it up, then that’s the way to change things finally.

Far from pushing back on that threat to “blow it up” and “change things finally,” the Senate colleague she was talking to said:

... in a heartbeat.

When you are treating an accurate quotation of a poll as a threat and ignoring a public threat to blow up the Court and change things finally—after all the “fat cat” money spent on the Federalist Society, no less—forgive me for doubting your sincerity.

As Senator PADILLA said in the Judiciary Committee last week, have the decency to be consistent at least.

Justice Alito spent over 98 pages trying and failing to justify overturning the decision protecting these rights—overturning a decision he told the U.S. Senate was an “important precedent of the Supreme Court.”

His opinion isn’t persuasive to me at all as it reads as snide and cruel, but that is not going to stop these Justices from trying to throw us back into an age where women aren’t free to make their own choices about their own bodies and their own futures. It looks like the fix went in on that a while ago, and we just weren’t told about it in the hearings.

So, tomorrow, the majority leader will bring before this Chamber legislation to protect those rights nation-

wide, to protect that freedom across this country, and I am eager to vote for it. We have got to stand against this assault on women’s constitutional rights, and I hope some Republican colleagues will join us.

Particularly, I hope, in the weeks and months ahead, that we can find ways to unravel the dark money scheme that has brought this Court and our country closer to the brink because the Court that dark money built—it is not done. It is not done trying to reshape America against our will to suit the extreme ideology of the rightwing billionaires behind the scheme.

There is one good thing in all this darkness, and that is that the American people see this nonsense and have had enough.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Vermont.

WOMEN’S HEALTH PROTECTION ACT

Mr. SANDERS. Madam President, the recently leaked draft opinion in *Dobbs v. Jackson Women’s Health Organization* signals what many of us have feared would happen: At least five rightwing Supreme Court Justices seem poised to overturn *Roe v. Wade* and abolish the constitutional right of women to have an abortion.

In my view, the U.S. Senate cannot and must not allow that to happen. We cannot go back to the days when women had to risk their lives to end an unwanted pregnancy. We cannot go back to the days of back alley abortions. We cannot go back to the days of forcing a woman to carry a pregnancy or go through a childbirth that could cause her illness or death. That, we cannot go back to.

In America today, it is estimated that one out of every four women will choose to have an abortion by the time she turns 45. In 2019, over 625,000 women in America chose to have an abortion. While no one can say with any degree of certainty how many deaths there will be if abortion is made illegal and women are forced to carry unsafe pregnancies to term, there is no doubt that, over a period of time, many thousands of American women will die.

Now, I get very tired of hearing the hypocrisy from the extreme rightwing, who say to “get the government off our backs.” How often have we heard that—“get the government off our backs; we want small government”?

Well, I say to those rightwingers: If you want to get the government off the backs of the American people, then understand that it is women who control their own bodies, not politicians.

During the COVID crisis, how many times had we heard on this floor and throughout this country the extreme rightwing say: The government must not force us to wear a mask. How dare the government do that. Government must not force us to have a vaccine. We