The Coming Tension between the Pro-Life Movement and Public Opinion

Thomas F. X. Varacalli

The Supreme Court’s decision in Dobbs v. Jackson is a victory not just for the pro-life movement in particular, but also for sound jurisprudence in general. But how long will this victory last? This article concludes that it will likely be for some time, but also acknowledges a few ways by which Dobbs may be challenged, particularly state politics, public opinion, a biased media, and skewed polling. It acknowledges that while most Americans favor restrictions on abortion, most do not favor its elimination altogether, concluding that the pro-life movement must now work towards what is truly necessary: a cultural renewal in this nation that favors a culture of life.

Dobbs v. Jackson Women’s Health Organization is the best possible outcome for the pro-life movement given the personages of this Supreme Court. Dobbs is its most outstanding judicial victory to date: the overturning of Roe v. Wade and Planned Parenthood v. Casey through a clear five-person majority. In the majority opinion, Justice Samuel Alito argues that Roe was an “exercise in raw judicial power.”¹ The Constitution, Alito continues, “makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.”² The silence of the federal government, the tradition of the common law, and the states’ long established history of prohibiting abortion, excludes the federal government from usurping a power held by the states.

Alito follows a distinctly originalist interpretation of the Constitution. His argumentation stays within the boundaries of constitutional law. He acknowledges that the issue of abortion is contentious and touches upon morality, but he refrains from making a moral claim. He emphasizes, “our decision is not based on any view about when a State should regard pre-natal life as having rights or legally cognizable interests.”³ Although the case is a pro-life victory, it is somewhat of an accidental one. In no way does the Court endorse the notion that a fetus is equal to a fully-formed adult. Instead, Alito is careful to employ the terminology of Roe and Casey. He uses “potential life” to describe the fetus. Thus, he leaves the people of the United States and their elected officials to decide the morality of abortion.

The states, whose governments are closer to the people, now have an essential task: determining the legality or illegality of abortion. The
role of the states is amplified by the unlikeliness of rolling back *Dobbs* before the 2024 presidential election. In the 2022 midterms, Republicans won a slight Republican majority in the House. Congress currently does not have the necessary votes in the House to codify abortion by statute. Congress will not be able to pack the Court unless the Senate filibuster is dismantled. However, if a Republican-nominated Supreme Court justice dies abruptly, the *Dobbs* decision could be in jeopardy. President Joseph Biden would have the votes in the Senate to push through the nomination of a pro-choice justice. Furthermore, if the Democrats win the presidency in 2024, the *Dobbs* majority would be in significant jeopardy since Samuel Alito and Clarence Thomas—two justices in *Dobbs*’s majority opinion—are approaching ages where retirement or untimely death is feasible.

On the one hand, the pro-life movement has never had this degree of institutional advantage. On the other hand, the movement is still precarious. The most likely situation, I think, is for the *Dobbs* decision to remain the law of the land for a considerable amount of time. Yet, the gains of the pro-life movement are likely to plateau for four reasons: state politics, public opinion, a biased media, and skewed polling.

**THE PLATEAUING OF THE PRO-LIFE MOVEMENT**

The *Dobbs* decision returns the issue of abortion back to the states. This devolution is itself a tactical victory, but it also comes with significant costs, since the pro-life movement now must deal with activist judges, progressive governors, and zealous attorneys general. As of December 8, 2022 (the Feast of the Immaculate Conception), *The New York Times* tabulates that full abortion bans exist in thirteen states: Alabama, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. Of these thirteen states, only Kentucky and Louisiana provide exceptions for rape and incest. Other states ban abortion based on gestational limits. Georgia bans abortion after six weeks, Florida after fifteen weeks, and North Carolina after twenty weeks. Thus, sixteen states have some form of ban. However, there are judges who have blocked abortion bans from taking effect in ten additional states: Arizona, Indiana, Iowa, North Dakota, Michigan, Montana, Ohio, South Carolina, Utah, and Wyoming. Through the actions of a runaway judiciary, unborn lives are now in danger in most states.

The American people are also hamstringing potential pro-life victories. On August 2, 2022, Kansas was the first state to vote on a state referendum concerning abortion after the *Dobbs* decision. Voters rejected the proposed pro-life amendment to the state constitution 59–41 percent. Then, during the midterm elections, the pro-life movement lost all five
The Coming Tension between the Pro-Life Movement and Public Opinion

state referenda. Abortion received further legal protection in California, Michigan, and Vermont. In Kentucky and Montana, two reliably Republican states, voters rejected amendments which would have banned abortion constitutionally in their states. Thus, if the pro-life movement cannot win by referenda in ruby-red Kansas and Kentucky, where can it win? The referenda reaffirm that most Americans are not fully pro-life. Consequently, there are real limitations to what the pro-life movement can do electorally. The movement is likely to plateau or perhaps lose some ground through future referenda.

American public opinion, in turn, is too easily influenced by a biased media. Most mainstream outlets assume the constitutionality of abortion. Dobbs states definitively that there is no constitutional right to abortion, but the media insists on using the term “abortion rights,” even though the origin of the supposed right to abortion is never identified. This narrative instills the assumption that a right was taken away from the people, when, in truth, it was never given democratically in the first place. In other words, the media refuses to engage with Justice Alito’s reasoning that the Constitution never ordained a right to abortion. Roe created an ahistorical narrative which the media seeks to propagate to delegitimize the Dobbs decision.

The bias of the media also affects how public opinion is measured. The pro-life movement is disadvantaged by two polling tactics. The first tactic consists of asking vague questions which hide the nuances of American public opinion. For example, Pew Research, in the immediate aftermath of Dobbs, measured the “percentage who say abortion should be legal in all or most cases.” Pew found that 62 percent of Americans want abortion legal in most or all cases. Specifically, 29 percent desire legal abortion in all cases, while 33 percent favor the legality of abortion in most cases. Of the 36 percent of Americans who want abortion illegal in most or all cases, 8 percent desire abortion illegal in all cases, while 28 percent favor it banned in most cases. The problem with such a question is that it does not precisely measure whether the respondents support abortion in the first, second, or third trimester. It does not adequately address the reasons why many pro-choice Americans want some restrictions on abortion and why some pro-lifers favor some exceptions. It hides in plain sight the fact that most Americans want some restrictions on abortion.

The second tactic of biased polling is measuring support for Roe without gauging what Americans know about it. Polls show that Americans are against the overturning of Roe. These polls further a narrative that the Court is out-of-step with public opinion. Yet, it is also well documented that Americans have had misconceptions about Roe for years. Many
Americans wrongly thought that *Roe* would ban all abortions in the country or that it would make women liable for miscarriages. Thus, when the media outlets bring attention to these polls without proper context, they are purposefully ignoring whether Americans truly understand the milder political effects of the Court’s decisions. After all, the overturning of *Roe* can lead the states to have gestational abortion bans that reflect the wishes of the American people.

**WHAT IS TO BE DONE?**

Natural law teaches that abortion is a horrendous crime. The United States is committing a great evil in perpetuating abortion. Pro-life advocates must see our country as it is, and not how they want it to be. Most Americans are in favor of first-trimester abortions, and the pro-life movement must now find a way to convince their fellow citizens to oppose this form of abortion. With *Dobbs*, there are limits to what can be done politically. The pro-life movement must recommit itself to cultural renewal in education, civic institutions, voluntary associations, the arts, pregnancy ministry, and alternative media. Without a cultural renewal, the pro-life movement will plateau, or perhaps even stumble back into the *Roe* era.

**Notes**

2. Ibid.
3. Ibid.
The Coming Tension between the Pro-Life Movement and Public Opinion

