

Wake Up And Take Notice: We Are Losing Our Rights And Protections

Friday's opinion overturning *Roe v. Wade* will have devastating consequences for people with disabilities and other marginalized communities.

The 5-4 decision, one of the most consequential rulings in decades, calling for the end of *Roe* must serve as a wakeup call to the disabled community, the LGBTQ community and People of Color who could lose protections and rights.

When Politico published a May 2 article about the leaked draft of Justice Samuel Alito's opinion in *Dobbs v. Jackson Women's Health Organization*, overturning *Roe v. Wade*, it set off a firestorm of questions and speculation on what would happen next.

Justice Alito wrote in the Supreme Court ruling that the *Roe* decision will not affect other long-standing rulings, but advocates in the LGBTQ and disability communities worry that we are sliding down a slippery slope of losing protections now that *Roe* is overturned.

Alito stated that "Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division."

Justice Alito's reassurance should not comfort us. This Court's decisions have already shown us that the Justices have no respect for precedent, Congressional intent, or common understanding of the law, and the *Dobbs* decision overturning *Roe* will not be the last.

Justice Clarence Thomas wrote that he is open to the possibility of revisiting other rulings guaranteeing protections.

Let's take a quick look at the 1973 *Roe v. Wade* 7-2 Supreme Court opinion. The Majority held that the Constitution's right to privacy protects a woman's right to choose whether to have an abortion. The constitution doesn't explicitly say that Americans have a right to privacy, but the Court

has long recognized a zone of privacy arising from the protections of the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments, beginning with the right to access contraception. In its decision, the Court held that abortion falls within this privacy right.

Now that the long-standing decision in the Roe v. Wade case has been overturned, Access Ready believes that it will lead to devastating consequences, including gutting previous decisions allowing people the right to choose various aspects of their personal lives without fear of reprisal.

The Supreme Court's recognition of the constitutional right to privacy has paved the way for courts to recognize same sex marriage, interracial marriage, contraception, the right to choose with whom you live, the right to refuse medical treatment, and the right to choose how to educate one's children. Undermining the right to privacy threatens recognition of all these rights.

Erosion of the privacy right would also undermine the rights of people with disabilities. The Supreme Court's in *Buck v. Bell* in 1927 found that states could forcibly sterilize people with disabilities and *Buck v. Bell* has never been overturned, so 31 states still have laws on the books allowing forced sterilization of people with disabilities. Similarly, many states still have laws that prohibit certain people with disabilities from marrying.

At the same time, however, the federal and state disability rights laws, such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, have guaranteed people with disabilities more control over their personal autonomy. States are implementing their sterilization and anti-marriage laws less and less, likely in response to the combination of disability rights laws and the development of law on constitutional privacy rights. Nevertheless, those laws have not been repealed. So an about-face by the Supreme Court on the constitutional right to autonomy within a zone of privacy may trigger these state laws to snap back into action, much like state anti-abortion laws will be triggered if *Roe* is overturned.

But *Dobbs* is not this Supreme Court's first decision overturning what we believed to be settled law. Access Ready is also concerned about the

ramifications of an April 28 Supreme Court opinion that didn't garner much attention.

The *Cummings v. Premier Rehab* case involved a north Texas woman, Jane Cummings who is deaf and legally blind. In 2016, Cummings sought physical therapy from Premier Rehab, and requested an American Sign Language interpreter, since that is her primary means of communication. Premier refused to grant Cummings' request, stating that she could lipread or write notes.

Cummings got services from another provider, but sued Premier, alleging that the company's failure to provide an interpreter constituted discrimination under the Section 504 and the Patient Protection and Affordable Healthcare Act because Premier receives Medicare and Medicaid reimbursements.

The Supreme Court upheld the dismissal of Cummings' case, holding that individuals who experience discrimination at the hands of a federally funded entity cannot recover damages for the emotional distress they suffer. Instead, they are limited to contract-type damages, such as out-of-pocket expenses. This holding is not limited to disability discrimination, but also eliminates emotional distress damages for Title VI (race discrimination) and Title IX (sex discrimination in educational institutions). This decision means hospitals, colleges, and police who discriminate, even blatantly and hatefully, will suffer little or no consequences for the humiliation, oppression and segregation they cause.

Just this week, the Supreme Court again struck out at core national principles, and undermined civil rights, in *Carson v. Makin*. The Court held that a state cannot constitutionally refuse to provide tuition assistance for private religious instruction if it provides tuition assistance to private schools for public education. This decision did not address how the state should deal with religious instruction that does not meet the state's public education standards. For example, does the state have to fund the religious school if the school does not teach about evolution?

And relevant for the disability community, the Court's decision does not address how the antidiscrimination requirements that generally accompany

such funding, should be handled when applied to religious entities who are not otherwise subject to those requirements. For example, while the Individuals with Disabilities Education Act requires public schools to provide special education and related services to students with disabilities, it does not require such services for students who are parentally-placed in private schools, even if those schools receive state funding (which the state received from the federal government) in the form of tuition assistance or a voucher. The funding flows to the private school, but the special education obligation stops at the public school.

Just as importantly, even as state funding is now required to flow to private religious schools, will those schools be required to accept students with disabilities or LGBTQ+ students (or girls or people of color) because they are indirect recipients of federal funding through the state and the parent? Or will they be permitted to discriminate as if they were not receiving federal funding? Usually a flow of federal funding to a school through a state carries with it antidiscrimination obligations under Section 504 of the Rehabilitation Act (disability), Title IX of the Education Amendments Act (sex), and Title VI of the Civil Rights Act (race and national origin). But does the involvement of parental choice break that chain? The question doesn't matter much for private nonreligious schools, because they are covered by the Americans with Disabilities Act and other federal and state antidiscrimination laws. But religious schools are exempt from the ADA and often from other antidiscrimination laws.

Access Ready believes these decisions will harm the disabled community, as well as women, LGBTQ+ people, and people of color, and make it more difficult to address civil rights concerns. And, as the ruling in the *Dobbs* decision overturning *Roe* demonstrates, this is just the beginning. If you care about having the right to privacy when it comes to making decisions about everything from marrying the person who you love to what's right for you medically, if you care whether victims of discrimination are able to recover damages for their injuries, or if you care about ensuring state and federal funding is not funneled to religious entities that are free to discriminate, then you should worry about what is taking place in the Supreme Court.