

# Leading Democrats posture on abortion ruling

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Wednesday's Supreme Court decision marks a turning point in jurisprudence on abortion in the United States. By upholding the so-called Partial-Birth Abortion Ban Act of 2003, the Court has set the stage for numerous restrictions on abortion rights.

A number of state legislatures have already responded by introducing bills aimed at restricting these rights, including measures requiring parental notification and banning particular procedures. The ultimate aim of anti-abortion advocates is to overturn the right to abortion itself, as set out in the 1973 case of *Roe v. Wade*.

The Republican Party, including all its major would-be presidential candidates in 2008 and leading figures in the Bush administration, predictably praised the ruling, as have leaders of the various anti-abortion groups.

Democratic Party candidates, on the other hand, have voiced opposition to the ruling and are seeking once again to use the issue as a means of convincing workers and young people to back the Democrats in 2008.

The three major Democratic candidates all denounced the ruling. South Carolina Senator John Edwards said he "could not disagree more strongly" with the decision and that the "hard right turn is a stark reminder of why Democrats cannot afford to lose the 2008 election." Illinois Senator Barack Obama voiced his concern that "this ruling will embolden state legislatures to enact further measures to restrict a woman's right to choose, and that the conservative Supreme Court justices will look for other opportunities to erode *Roe v. Wade*."

New York Senator Hillary Clinton, for her part, declared that it was "precisely this erosion of our constitutional rights that I warned against when I opposed the nominations of Chief Justice [John] Roberts and Justice [Samuel] Alito."

This hypocritical posturing conveniently ignores the role the Democratic Party played in passing the Partial-Birth Abortion Ban Act, allowing the appointment of two right-wing Justices to the Supreme Court over the past two years and generally facilitating and taking part in the rightward shift of American politics.

It should be recalled that the Partial-Birth Abortion Ban Act was passed with the support of a significant section of the Democratic Party in both houses. The bill passed with a 64-33 vote in the Senate, with 17 Democrats voting in favor. In the House, the vote was 281-142, with 63 Democrats voting in favor.

Among those who voted for the act were Senators Joe Biden, a Democratic Party presidential hopeful, and Harry Reid, the Senate Majority leader. Given this record, Reid's response to the Supreme Court ruling was especially hypocritical. He declared elliptically, "I would only say that this is the only decision a lot of us wish that Alito weren't there and [former Justice Sandra Day] O'Connor were

there." Presumably he does not include himself in the category of "a lot of us," unless one is to conclude that he opposes a decision in the Supreme Court upholding a law for which he himself voted.

The Alito nomination, in fact, deserves closer examination, because it typifies the role of the Democrats in facilitating the right-wing assault on democratic rights and constitutional guarantees in the US.

When Alito was nominated by George W. Bush on October 31, 2005 to replace the retiring O'Connor, it was a clearly aimed at shifting the Supreme Court significantly to the right. O'Connor was a conservative judge, appointed by Ronald Reagan, but on certain issues, such as abortion, affirmative action, and the separation of church and state, she tended to vote with the court's liberal wing.

Bush initially proposed Harriet Miers, then serving as the White House Counsel, to replace O'Connor, but Christian fundamentalist groups opposed this decision because Miers did not have sufficient credentials as an abortion rights opponent. She also did not have the support of leading figures in the Federalist Society, an organization of right-wing lawyers and judges. Alito was therefore proposed in her place.

During his prior legal history, including as an appellate court judge, Alito established a right-wing record not only on the question of abortion, but on a whole set of issues more critical to the interests of corporate America. He was chosen with the confidence that as a Supreme Court Justice he would help roll back corporate regulations, oppose social programs and expand presidential and police powers. For the ruling elite, these issues were more important than the question of abortion, and for the Democrats to really oppose Alito would require that they expose the reactionary social interests he defends. They could not do this, however, because ultimately The Democrats defend these same interests.

With Republican control of the Senate, the only way the Democrats could block Alito's nomination was through a filibuster. Earlier in 2005, a group of seven Democrats had joined with seven Republicans in forging an agreement by which the Democrats pledged not to filibuster Bush's judicial nominees except under "extraordinary circumstances," in exchange for a Republican pledge not to change Senate rules to eliminate the option altogether. That deal was a capitulation to the Republican Party at a time of growing popular opposition to the Bush administration.

The consequences of the deal became clear with the Alito nomination. Initially, Democrats indicated that they would not even attempt a filibuster, meaning that the nomination would go through with only nominal opposition. When concerns arose within the Democratic Party establishment that this would discredit the party, a half-hearted and unserious filibuster attempt was mounted, which

gained the support of only about half the Democratic caucus in the Senate.

The Senate ultimately voted 72-25 to close debate on Alito's nomination (the Democrats needed 40 votes to sustain the filibuster), and this paved the way for his appointment to the lifetime post of Supreme Court Justice.

After Alito's nomination was confirmed on January 31, 2006, he joined Chief Justice John Roberts on the court. Roberts had been nominated in September 2005 after the death of Chief Justice William Rehnquist, and was approved by the full Senate less than a month later, in a vote of 78-22, with Democrats split evenly in the vote. Roberts also had a long pedigree of right-wing judicial positions, and could be counted on to vote with Alito, Clarence Thomas and Antonin Scalia in a four-vote bloc on many critical questions.

The effect of the new court's composition on abortion rights in particular could be predicted with some assurance. In 2000, Justice Anthony Kennedy dissented in a Supreme Court case (*Stenberg v. Carhart*) overturning a Nebraska law banning intact dilation and evacuation (so-called "partial-birth abortion"). Kennedy could therefore be expected to vote with the four conservative justices to uphold the federal version of the law, passed in 2003. This is precisely what occurred on Wednesday.

The Democrats' cave-in on Alito and Roberts nominations came not long after the 2004 elections. The election results generated within leading Democratic circles and among a variety of media pundits the conventional wisdom that Bush had won a second term because he had been better able to appeal to voters on the basis of religion and "values" issues. To counter this, prominent Democrats argued, it was necessary to modify the party's stance on questions such as abortion and adapt to this supposed popular concern about "values."

In particular, Hillary Clinton began a campaign in which she publicly sought "common ground" with right-wing abortion opponents and promoted abstinence-based education. "There is no reason why government cannot do more to educate and inform and provide assistance so that the choice guaranteed under our constitution either does not ever have to be exercised or only in very rare circumstances," she declared in a 2005 speech. (A recent study ordered by Congress has concluded that "sexual abstinence programs," a pet project of the right-wing Christian lobbyists, do not have the slightest effect.)

Harry Reid, a nonentity from Nevada and an opponent of abortion rights, was chosen by the Democrats as Senate minority leader in the immediate aftermath of the 2004 vote.

The assertion by Democratic circles and numerous editorialists associated with them that they lost the 2004 election because they were too far to the left on values and "cultural issues" was false and self-serving. The Democratic Party essentially threw the election to Bush by running as a second pro-war party on the basis of a right-wing program that offered no solutions to any of the population's great problems. Presidential candidate Sen. John Kerry turned the Democratic national convention into an orgy of militarism and patriotism.

The Iraq war, whose disastrous character was already obvious to millions, and the state of the economy were much higher on the list of voter concerns in 2004 than abortion. Rather than base their appeal on voters' opposition to the war or growing social inequality, the Democrats deliberately recruited right-wing candidates in 2004 and even more so in 2006, including many who opposed abortion rights.

For decades, the Democratic Party has raised the specter of the loss

of abortion rights. Every election, pro-choice voters are warned that if they do not vote for Democrats, they risk having a president who will appoint right-wing Justices who will overturn *Roe*. And yet Democrats have demonstrated repeatedly their manifest failure to actually defend abortion rights. How is this to be explained?

Opposition to abortion and other religiously motivated conceptions have been used by the Republicans to build a base among Christian conservatives and other backward social elements. For many, however, concern with so-called "moral issues" reflects a far deeper economic and social anxiety. The ground is shifting beneath their feet. In the absence of a progressive social alternative, with the disintegration of the trade unions and the collapse of liberalism, Republicans have been able to make a certain headway among some of the poorest sections of the population by appealing to "tradition" and "family" and religious prejudices. Opposition to gay marriage, stem cell research and abortion rights has been central to their effort to build some sort of popular base outside the confines of the richest 0.1 percent of the population.

To oppose this policy, the Democrats would have to reveal the real social interests that are at play. They would have to mobilize mass support on the basis of the genuine social interests of millions of Americans.

The Democrats are organically incapable of this, however, because they defend the same social interests—the interests of the US ruling elite—as the Republicans. They fear a mobilized population far more than they do the extreme right. They have proven incapable of defending the right to an abortion as they have failed to defend elementary democratic rights in general. The Democratic Party as a whole capitulated over the 2000 elections, supported repressive measures like the Patriot and the Military Commissions Acts and has not opposed illegal spying carried out by the National Security Agency.

To defend abortion rights and other elementary democratic rights today requires a broad-based struggle to educate and arouse the population against the financial-corporate elite and its representatives in both parties. It would be fatal to leave such a defense in the hands of the Democratic Party.



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