

The Texas abortion ban: A massive assault on democratic rights

Patrick Martin
3 September 2021

The US Supreme Court's decision to allow the Texas abortion ban to go into effect September 1 is a brutal attack on democratic rights that must be opposed by the entire working class. At a stroke, abortion has been made effectively illegal in a state with nearly 10 percent of the American population. As many as two dozen other states are expected to follow the Texas example. The outlawing of abortion in half the country will not wait for a formal decision by the Supreme Court to overturn *Roe v. Wade*: It has already begun.

The Texas state law, passed last May, imposes the so-called “fetal heartbeat” rule adopted by half a dozen states previously, which effectively prohibits abortion after about six weeks of pregnancy—before most women even know they have become pregnant. The name is itself a medical absurdity, since at six weeks there is no fetus, only an embryo, and no heart to beat, only a collection of cells able to discharge electricity, which is detectable only on monitors developed in the last several decades.

A remarkable feature of the Supreme Court action is its moral and intellectual cowardice. The five justices who comprise the majority offered only a single paragraph to explain it, unsigned by any of them, made public 24 hours after the law had been allowed to take effect, and released to the public just before midnight. This for a decision that has incalculable and immediate effects on the lives of thousands of women, and ominous implications for millions.

The four justices who opposed the 5–4 decision spelled out the contradictions and legal absurdities of the Supreme Court action in dissenting opinions. Justice Sonia Sotomayor wrote that the Texas law “is a breathtaking act of defiance—of the Constitution, of this Court's precedents, and of the rights of women seeking abortions throughout Texas... 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.”

Justice Elena Kagan focused on the anti-democratic procedure adopted by the high court itself, not only in the

Texas abortion issue, but in a series of other cases decided in what is now called the “shadow docket,” where the court rules on an emergency basis without hearings and other essential legal procedures. One such action was the recent high court ruling striking down the ban on most evictions imposed as a public health measure by the Centers for Disease Control and Prevention.

“Without full briefing or argument, and after less than 72 hours' thought, this Court greenlights the operation of Texas's patently unconstitutional law banning most abortions,” she wrote. “It has reviewed only the most cursory party submissions, and then only hastily. And it barely bothers to explain its conclusion—that a challenge to an obviously unconstitutional abortion regulation backed by a wholly unprecedented enforcement scheme is unlikely to prevail.”

This is a critical issue, as one legal analyst explained to the WSW: “Perhaps the single most important consideration in deciding such injunctions is ‘the likelihood of success on the merits.’ The Texas law cannot be sustained unless *Roe* is reversed, as the dissents point out. The fact that the Supreme Court majority denied the injunction without discussing the likelihood of success on the merits can only be interpreted by someone who understands how these jurisprudential matters work as a stealth overruling of *Roe*.”

Reactionary and anti-democratic policies require reactionary and anti-democratic methods. Almost as significant as the effective repeal of abortion rights in the Texas law is the method chosen to carry out this attack: authorizing any individual to file a lawsuit against anyone who “aids or abets” an abortion, with the promise of a \$10,000 reward and recovery of all legal costs if the lawsuit is upheld. As Justice Sotomayor wrote, “In effect, the Texas Legislature has deputized the State's citizens as bounty hunters, offering them cash prizes for civilly prosecuting their neighbors' medical procedures.”

According to press reports, Texas Right to Life has already begun soliciting anonymous tips on its website and asking

for volunteers to “join the team of pro-lifers working to enforce” the law. An online form solicits informants to name a clinic or doctor potentially involved and pledges to “ensure that these lawbreakers are held accountable for their actions.”

The appeal to vigilantism is a feature of other new Texas state laws, like the bill restricting voting procedures that was passed last week, empowering far more aggressive conduct by “poll watchers,” whose task will be to challenge the right of voters to cast ballots. Because of another new state law permitting unrestricted “open carry” of firearms without license or permit, voters going to the polls are likely to confront armed challengers demanding their credentials.

President Biden issued a statement Wednesday denouncing the Supreme Court action as “an unprecedented assault on a woman’s constitutional rights under *Roe v. Wade*,” and the Texas law as one that “unleashes unconstitutional chaos and empowers self-anointed enforcers to have devastating impacts.”

But he proposed in response to this no more than consultations between the White House and various federal departments “to see what steps the Federal Government can take to ensure that women in Texas have access to safe and legal abortions...” In other words, nothing. He did not call for Congress to pass a law to codify *Roe v. Wade*, which would require overriding a Senate filibuster. Too many Senate Democrats support the filibuster—or oppose abortion rights—to carry this out.

The Democrats invariably use the five-member ultra-right majority on the Supreme Court as an excuse for doing nothing, but every one of these five justices owes his or her seat to the perfidy and fecklessness of the Democratic Party.

Clarence Thomas was confirmed after the notorious hearing presided over by Senator Joe Biden, then the chairman of the Judiciary Committee, who refused to block the nomination. Samuel Alito was confirmed after 18 Democrats joined with the Republicans to shut down a filibuster.

Neil Gorsuch was confirmed to fill the seat vacated by the death of arch-reactionary Antonin Scalia after Senate Republican Leader Mitch McConnell blocked the filling of the vacancy by President Obama with only a perfunctory response from either the White House or the Senate Democrats. McConnell then abolished the filibuster for Supreme Court nominations—something the Democrats now refuse to do to consolidate *Roe v. Wade* into law.

When Trump nominated Brett Kavanaugh for the high court in 2018, the Democrats avoided any examination of his right-wing political and judicial record—including on abortion rights—in favor of a #MeToo-style denunciation of actions he allegedly carried out as a teenager, 30 years

before his nomination. This approach, as well as the whole #MeToo campaign, was enthusiastically supported by the pseudo-left and publications like *Jacobin*.

Two years later, following the death of Ruth Bader Ginsburg less than two months before the election, McConnell cynically abandoned the supposed principle of holding back on filling a Supreme Court vacancy during the final year of a presidency and rammed through Trump’s nomination of Amy Coney Barrett. Her gender made her immune to the type of attack carried out against Kavanaugh, as well as winning her points in those layers of the upper-middle class obsessed with identity politics.

As the *World Socialist Web Site* wrote in 2019,

The systematic evisceration of abortion rights across much of the country has attracted only a tiny fraction of the energy, money and media attention devoted to the Democrats’ reactionary #MeToo campaign, which seeks to improve the fortunes of upper-income women—actors, corporate executives, professors—by removing their male superiors and peers through largely trumped-up allegations of sexual misconduct. The Alyssa Milanos of this world do not care about abortion rights for working class women in Alabama and Georgia. Even with a total US ban, they would always be able to jet off to Toronto or London.

This political record demonstrates that even in those areas where the Democratic Party professes the most irreconcilable differences with the Republicans, such as abortion rights, this corporate-controlled party is incapable of offering any serious resistance to the mounting attacks on the democratic rights of the working class.

The fight to defend abortion rights, and all democratic rights, can go forward only through the independent political mobilization of the working class, in a struggle against the Democratic Party and the entire capitalist two-party setup, for a revolutionary socialist perspective.



To contact the WSWWS and the
Socialist Equality Party visit:

wsws.org/contact