

Removing Warren is Gov. DeSantis' political broadside against an outspoken Democrat

BY MICHAEL MCAULIFFE

Guest Columnist

A woman checks the weather forecast. Staring at a map on her smartphone, she measures the miles to the state line and then calculates the cost of fuel to drive to her destination. She should spend the night there but plans to return home the same day because she needs to get back to work. She can sleep at a rest stop. She's afraid to tell anyone about the clandestine trip because she believes she might be arrested before she makes it out of the state or after she's back.

When the U.S. Supreme Court overturned *Roe v. Wade* in the *Dobbs v. Jackson Women's Health Organization* decision and cleaved away a woman's constitutional (and already limited) right to terminate a pregnancy, a maelstrom ensued that continues to splinter the nation along religious, philosophical and emotional lines. The post-*Roe* reality also has forced many Americans to reexamine the map in ways not considered for generations.

State laws now presumptively dictate if, how and when a woman can terminate her pregnancy. The same laws also control how health care professionals can provide abortion services. Some laws regulate how information about abortion can (or cannot) be communicated to a woman. Many of the state laws that prohibit abortion also carry significant criminal punishments.

Abortion is criminalized as a felony in one state and constitutionally protected in the neighboring state. The distance between the sword and the shield is now an invisible line running along the ground.

The multiple judicial opinions in the *Dobbs* case point to its immediate and chaotic impact. A majority of the court voted not

just to gut — but to vanquish — a federal constitutional right of 50 years. Justice Brett Kavanaugh wrote in a concurrence that women nonetheless would still be able to travel to obtain an abortion. Yet, within days of the Dobbs decision, a lawmaker in Texas threatened to pursue sanctions against a national law firm for committing to pay for travel costs to obtain a legal abortion in another state. Justice Samuel Alito, who authored the Dobbs majority opinion, predicted that, after Dobbs, the abortion issue will reflect the people's will and that the federal system would play no future role in the abortion debate. His bold proclamations already have been crushed.

Gov. Ron DeSantis just issued an executive order suspending — effectively firing — the elected Hillsborough County state attorney, Andrew Warren, because Warren signed a letter that espouses the view that prosecuting women who seek or secure an abortion under prohibited circumstances in Florida isn't a good idea. The governor's order, cloaked in long-form legalese, is a political broadside against an outspoken Democratic prosecutor.

DeSantis chose the most aggressive and public manner to address Warren's statement of intent not to prosecute women who seek an abortion in Florida. Instead of waiting for a specific case to arise, the governor simply removed a sitting (and duly elected) state attorney from office and replaced him with someone the governor preferred.

The voters weren't consulted.

As for the lack of federal involvement, President Joe Biden has issued two executive orders of his own addressing abortion since the Dobbs decision. The federal government also has created a task force to coordinate the federal actions preserving access to reproductive health care. The Department of Health and Human Services is evaluating how Medicaid can reimburse the costs of obtaining an abortion out of a beneficiary's home state.

Moreover, the Justice Department's Civil Rights Division could consider using federal criminal civil rights statutes to protect a woman's right to travel freely to obtain a legal abortion. If — as Justice Kavanaugh writes — there is a federal constitutional right of interstate travel, then existing federal laws (18 USC 242 and

241) arguably can punish a local police officer (or prosecutor) for arresting a woman for obtaining information about an abortion out of state or for actually traveling to obtain such an abortion. In theory, the local official could become a federal defendant for trying to make the woman a state defendant.

Simply, state abortion laws don't necessarily reflect the voters' will, and the feds aren't out of the abortion issue. Dobbs attempted to redraw the abortion issue along imaginary state borders. However, the cultural divide rarely has been wider or more real. And a woman's journey never less certain.

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