

On January 26, 2024, Yale Law School's Program for the Study of Reproductive Justice and the Birnbaum Women's Leadership Center at NYU Law hosted a joint conference, "Democracy and Reproductive Rights and Justice."

Honoring our off-the-record status, we only include top-lines and reflections below without speaker attribution. We hope this is a helpful summary and look forward to more opportunities to work in partnership with all of you – in particular, to incorporate ideas into collective organizing, advocacy, scholarship, and messaging strategy. (We do ask that you please refrain from sharing this document outside your respective organizations.)

### Setting the Stage

Scholars offered a distinct lens – assessing rulings on myriad issues, placing *Dobbs* in context, and pointing to **doctrinal interpretation** that can guide advocacy and messaging.

We highlighted why **the *Dobbs* decision itself is antidemocratic**:

- Its reasoning is based on laws in place in the 1860s before women and people of color had the right to vote, perpetuating those exclusions.
- The hypocrisy of "returning the issue to the states" at the very moment that the Court has created a landscape in which true democratic deliberation is elusive and true representation is likely not possible.
- It is part of a larger problem of systemic power grabbing, fueled by white supremacy and patriarchy, that has led to structural problems and gerrymandering across the country.

We discussed the **hierarchy of rights** being created by a Court that considers itself entitled to intervene and control political determinations while at the same time upending the rights of particular groups of people.

### Facing Antidemocratic Institutions and Strategies Head-On

**Lack of representative democracy** is clearly evidenced by the fact that 24 states have abortion bans despite overwhelming lack of popular support (only [13 percent](#) support abortion bans).

States passing the **most draconian abortion bans** are those with the **greatest structural hurdles to voter representation**, including ongoing voter disenfranchisement, partisan and racial gerrymandering, and silencing of minority groups – enabling state legislatures to pass laws inconsistent with the desires of their constituents with no electoral consequence.

Participants addressed the tension between **relying on majoritarianism** to protect reproductive rights with the mandate to protect people.

Participants discussed Ohio's abortion ballot initiative and the juxtaposition of systemic attacks on voting rights and representation with the extraordinary number of voters who supported the

initiative. There, the electorate understood that the people in power were **moving the goalposts**, a message that **motivated voters** to turn out in force.

- The ballot initiative – and the antiabortion movement’s attempt to raise the threshold to pass such an initiative to a 60 percent supermajority – took place in an off-cycle year, when average turnout is less than a million voters in a state of 12 million people.
- But 3.1 million people voted in a special election against the attempted 60 percent supermajority requirement, and 3.8 million people voted to protect reproductive freedom.

A similar story was conveyed about Michigan, where despite antidemocratic maneuvering, people “**finally saw themselves in that vote.**”

The palpable increase in **antidemocratic measures to secure victory at any cost** was illustrated by a reproductive healthcare provider who spoke about facing a daily onslaught of protesters outside the clinic... without a single protestor present on January 6th, because they were at the Capitol. The violence and intimidation abortion clinics have faced for years was described as a dress rehearsal for the violence and lawlessness of January 6th.

### The Fight Forward

Participants expressed optimism about using the momentum of this moment to **build back our rights and our democracy**:

- “We have polling that shows the American people are ready for this. We have electoral results that show the American people are ready for this.”
- “It’s not a news flash to anybody in this room that codifying the right to abortion is more popular than the President.”
- “Even the ‘democracy bros’ now know that abortion wins elections.”

**This moment is fundamentally about power** – it is no accident that the *Dobbs* decision comes amid an escalation of authoritarian tactics and erosions of democracy. Participants offered a countermeasure: embracing our collective power by tying reproductive rights and democracy to voting rights, transgender rights, climate justice, racial justice, book bans, gun safety, and other progressive issues.

- “**We are in a progressive era waiting to be born**” said one participant, calling on other advocates to become comfortable with the acquisition of power.
- “**Winning begets winning**... and counters the cultivation of political despair as a strategy—the sense that nothing you do matters, that no matter what you do you can’t win, that all these laws are against you. The antidote to that is winning.”
- Those experienced in polling and messaging advised **speaking directly to the voters about their power**. Overwhelmingly, there is bipartisan support that abortion and contraception should be the person’s decision – not made by government or politicians. “There’s just nothing more to say when people feel like they have agency, that they are empowered to do something.”

Participants addressed the opportunity to galvanize voters and make the kinds of **structural changes** that will provide meaningful protections in the future, emphasizing the need for a **plan for the future that addresses people's suffering**.

- “We can only win and win again if we make structural changes and ensure that solutions effect meaningful change.”
- “The popular democracy where you actually come out in droves to vote for something – and then your life stays the same – that is when we start to lose in a way we haven’t experienced so far.”

**Key next steps** include addressing our broken court systems, the election and compensation of state legislators, and gerrymandering in the states, as well as ensuring more direct democracy opportunities in the 24 states where they are not allowed.

Several participants spoke with optimism about electing a majority in the U.S. Senate that would **eliminate the filibuster permanently**, enabling the passage of legislation to codify protections for reproductive rights, voting rights, and other progressive issues.

- Polling experts noted that “voters in every state polled hate supermajorities,” which points to opportunities to disrupt the narrative that winning cannot lead to change.
- Responding to historical objections by some Senators to eliminate the filibuster: “What Ohio shows us is that they will eliminate the filibuster if they want to. It is not based on whether we eliminate it to pass abortion legislation.”

As one participant summarized, “this is a **huge opportunity to mobilize a base of people across party lines** to save us from what could be a very devastating outcome.”

- Advocates called on one another to **do more than “brace ourselves for impact and prepare for the next terrible, inhumane thing brought to our door,”** and instead “demand the things that we want over and over and over again, unrelentingly.”
- The **current media ecosystem** poses a challenge, especially the loss of statehouse coverage. It is no longer just “our side v. their side” but “hostile opposition rhetoric that is reinforced by a shrinking media.” Investments in nonprofit and independent media – and movement messengers – are needed.
- Though we are no longer in a defensive crouch – and that offers exciting opportunities to build anew – the need is urgent and immediate: **“We finally have this window that we have been waiting for, for a very long time. We should be winning however, wherever we can, all the time, because if we don’t, people’s lives are actually at risk.”**