

Endangered reproductive tolerance



On Friday, June 24, 2022, the US Supreme Court officially reversed *Roe v. Wade* declaring that the constitutional right to abortion, upheld for nearly a half century, no longer exists. This constituted a chilling wakeup call for us all. Indeed, *Roe's* reversal abruptly unveiled that our long cherished—we had believed ever-lasting and ever-broadening—tolerance for reproductive choices and practices could suddenly crumble before our eyes. Yet, most of us had been oblivious of mounting ominous signs of rising intolerance that had been openly brewing before us, hiding in plain sight, but ignored by most.

The time of horrendous and menacing dystopias was gone, we believed relegated to the darkest of all dust beans of history. The year 1984 had come and gone without leaving any ripple over the ocean of our certitude regarding reproductive freedom. Ignoring mounting threats, we remained comforted with the belief that tolerance and the governing case law/ruling was here to be and stay. And yet, today in the aftermath of *Roe's* reversal, we witness that our cherished reproductive tolerance is being infringed from all directions and in great peril everywhere.

Generations upon generations, we have surfed over the wave of expanding all-embracing reproductive tolerance, which developed in post war times. President Joe Biden may best reflect the gradual transformation and evolution of reproductive views that has flourished over the past 50 years. Mr. Biden, now 80 years of age, was raised in a time when much of the country was less tolerant of people's sexual orientations. Perhaps his early policy choices in the Senate reflected those times, often siding with those who proposed restrictions, or limits, on gay men and lesbians. But a keen observer of the ways that society was changing, he modified his positions, as so many of us did. Today reflecting a sea change in public opinion—nearly 70% of Americans support same-sex marriage—the President, a practicing Catholic, openly supports gay rights including marriage and the rights of women to choose to have an abortion. (<https://www.nytimes.com/2022/08/07/us/politics/biden-abortion-catholic-history.html>). This evolution seemed so general that we took for granted that reproductive tolerance was here to stay. Indeed, the world bore witness of the progresses accomplished in reproductive tolerance.

In December 1917, 2 months after the *October Revolution*, the new Soviet Republic legalized homosexuality, discarding the ban enacted by the Russian Empire. In the Western World, increasing reproductive tolerance has been general and overwhelming. In particular, same-sex marriage now has been recognized in 33 countries, with broadening reproductive tolerance implemented in all Western countries.

The shock of *Roe's* reversal abruptly revealed that reproductive freedom as a whole—not just abortion rights—could suddenly be jeopardized. Although the Supreme Court ruling of June 24, 2022 only affects abortion rights, Justice Clarence

Thomas raised the possibility of other tenable restrictions of reproductive freedom after *Roe's* reversal. <https://www.nytimes.com/2022/06/24/us/clarence-thomas-roe-griswold-lawrence-obergefell.html>. Indeed, the same judicial intricacies linked to interpretations of the 14th Amendment—one of the 3 post-Civil War *reconstruction amendments*—stand as the kingpin of other reproductive rights in the United States. These notably include the right to same-sex marriage, gay relationship, contraception, and other reproductive rights. In 1973, Justice Harry Blackmun said that a woman's access to an abortion was implicit in the right to privacy protected under the 14th Amendment. In 2022, however, Justice Samuel Alito ruled that this view was “egregiously wrong.” Based on the bluntness of this latter judgment publicly expressed, one can rightfully question how far these reversals of reproductive tolerance can go? <https://www.nytimes.com/2022/05/11/us/politics/roe-wade-supreme-court-abortion.html>. The dominoes have started to fall, and they may not just stop at one.

Reproductive intolerance is today reemerging from everywhere. First there were parts of the world, which had never been reached by the wave of reproductive tolerance, something we mostly ignored. Communities in Africa and in predominantly Muslim countries remain among the least accepting of homosexuality. In sub-Saharan Africa, at least 9 in 10 in Nigeria (98%), Senegal (96%), Ghana (96%), Uganda (96%) and Kenya (90%) believe homosexuality should not be accepted by society (1). This likely constitutes remnants of Western colonization. Second, in the Soviet Union the first wave of tolerance for homosexuality enacted after the revolution was eradicated by Joseph Stalin. Under his tenure, male homosexuality was recriminalized and punished by up to 5 years of hard labor in prison. After a short return to tolerance with the dissolution of the Soviet Union, today however, under Vladimir Putin, ever-increasing laws have been enacted against lesbian, gay, bisexual, transgender, queer, intersex, and more (LGBTQI+) people and culture in Russia. The new laws effectively outlaw any public expression of LGBTQI+ lifestyle in Russia, to protect “traditional Russian values.” Mr. Putin has long cast LGBTQI+ life mode as a Western intrusion into Russia's traditional society and values and has done so for political reasons.

The current reversal in reproductive tolerance is not limited to Russia. In Poland, the Catholic Church—sapped by multiple sexual abuse scandals—inspired Poland's Constitutional Court to impose new restrictions on the right to abortion. This turned the country's abortion prohibition into a near-total ban. To this date, several women have died of septic shock because of these drastic measures. In Poland too, the ban on abortion sparked to initiate a broadening of reproductive intolerance. Hostile attitudes toward LGBTQI+ led several regions and municipalities to declare themselves “LGBTQI+ Ideology Free,” calling for the exclusion of LGBTQI+ people from the Polish society. Hungary as well has enacted similar restrictions on reproductive freedom. These sparked a reaction of the *European Union* direction to override the restrictions based on fundamental European Union principles. This

outcome of this legal action is however still uncertain, threatening, if it is lost, to leave the gains made in the last 50 years for LGBTQI+ people in Europe on shaky ground.

In the rest of Europe, reproductive intolerance is gaining momentum as well. Gestational surrogacy for which the *American Society for Reproductive Medicine* recently provided recommendation for practices through a committee opinion (2) is banned in several European countries. In France, gestational surrogacy is not only forbidden but criminalized with prison terms for those who might help the process. This precludes any reproductive option for male homosexual couples. In France again, a Catholic-inspired group lobbies for forbidding preimplantation genetic testing for aneuploidy (<https://www.genethique.org/dpi-a-le-comite-dethique-de-linserm-contourne-le-legislateur>), probably being oblivious of the call for tolerance expressed by the supreme Catholic leader, Pope Francis, in his famous “Who am I to judge?”

Facing mounting reproductive intolerance abruptly revealed by Roe’s reversal, the whole community of care givers in the field of reproductive medicine should unite and speak of one voice to support the plea for tolerance that stands at the very core of all medical acts. Transgender issues have existed since antiquity (3) and are here to stay unharmed. Let’s not allow reproductive medicine to become an exception in medicine by becoming the focus of intolerance and all sorts

of haltering. We who in our work become confident of people’s reproductive issues and aspiration should support with all our heart and soul the diversities of human reproductive quests and intrinsic differences. Together with Pope Francis, we should spearhead the essence of tolerance that he humbly, but forcefully, proffered: “Who am I to judge?”

Acknowledgment: The authors are indebted to Prof Catherine Racowsky for her thoughtful editorial comments.

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<https://doi.org/10.1016/j.fertnstert.2023.01.050>

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