Column: States’ Rights

Abraham Lincoln did not believe his Emancipation Proclamation would end slavery in the United States. In fact, that executive order only declared slaves free in the states in rebellion against the government of the United States. Slavery in border states, such as Kentucky, which did not secede from the Union, were not affected. The Supreme Court 1857 ruling in the Dred Scott v. Sandford case had already indicated that Federal laws banning slavery in some of the states were unconstitutional. According to that Court, each state had a Constitutional right to decide whether or not it would allow slavery. A decree from a subsequent President, such as his own Vice President, Andrew Johnson, could nullify the Emancipation order and re-establish slavery as a matter for each state to decide. Consequently, Lincoln recognized the need for an amendment to the Constitution that would ban slavery in all of the United States. That was realized in the Thirteenth Amendment, but even with that change to the Constitution, legislatures in “slave-holding states” found ways to deny former slaves and their descendants rights guaranteed to all Americans, including the right to vote for their representatives.

Fast forward to 2022, and we have a freshly minted Supreme Court with a majority of Justices espousing the wisdom of Chief Justice Roger Taney’s 1857 states’ rights opinion. We are told that it is up to the states to decide who can or cannot get an abortion. It is up to the state legislatures to rule if abortion is legal within their state

borders and under what circumstances it is allowable, if any. This 2022 Court noted for the uninformed that the Constitution does not discuss abortion and the prior court ruling in Roe v. Wade was an “egregious” error. Justice Clarence Thomas went even further by opining that the Supreme Court had possibly made several other egregious errors in rulings concerning birth control, pornography, same sex marriage, and gay rights, all of which were based on “rights to privacy” claims. Thomas failed to mention one other case decided on the basis of a right to privacy, that being the “Loving” case in which the court ruled that states’ bans on interracial marriage violated a couple’s right to privacy. Without that ruling, Justice Thomas’s own marriage would have been invalid in most southern states.

Americans sharing this antebellum view of our democracy are delighted with this court ruling on abortion and will probably be equally delighted with future court decisions that dismiss Twentieth Century views on the right to privacy. If voters want to make abortion available on demand, they need only install state legislators who will introduce and support laws to that effect and elect governors who will sign those bills. Since the majority of Americans did not want to see Roe v. Wade overturned, the only barrier to achieving this utopia is politics.

Over the past decade, state legislatures have passed laws and supported practices that suppress voting by constituents they deem likely to vote against them. The revision of voting districts, known as gerrymandering, has been applied with a vengeance to nullify the impact of citizens likely to vote against incumbents. Shortages and malfunctions of voting machines have become a biennial tradition in districts with voters favoring the opposition party. Wait times in the districts supporting incumbents may last several minutes, while wait times in districts housing opposition party voters may last 9, 10, or 11 hours. Rules on identification requirements have been tailored to disenfranchise students, the poor, the elderly, and the unemployed.

There can be little doubt that if every citizen had equal access to the vote and gerrymandering were eliminated and other discriminatory voting practices were banned,

most states would allow a woman and her physician to decide whether or not an abortion was the appropriate choice for her. As it currently stands, twenty-six state legislatures have announced that they will make abortion effectively inaccessible within their state borders. These elected officials, most of whom are white, Christian men and most of whom apparently base their opposition to abortion on religious grounds, have no reason to fear that their view on abortion will place their legislative seats in jeopardy. They need only follow the dictates of the political leaders that keep them on the ballots and the special interest groups that finance them to keep their jobs. What the majority of their constituents want is irrelevant.

That poor black and brown women and girls will be disproportionately affected by the Supreme Court ruling is widely acknowledged by those celebrating this decision. The Texas legislature claims that it is appropriating $100 million to help these impregnated women and children who would have otherwise had abortions get prenatal care, cover labor and delivery costs, pay for perinatal expenses, and assist with adoption expenses if requested.

As of 2020, there were already nearly 48,000 children in foster care in Texas looking for adoption. In 2021, only 4,586 children were adopted in Texas, many of whom were from foreign countries that provided white babies. That $100 million allocated by the legislature for unplanned and unwanted pregnancies and the children born to women denied the option of choosing when, with whom and how often they will have children may cover the cost of diapers for the next few years. It certainly will not cover the cost of college for even one years' addition to the population of Texas. Of course, the legislature does not consider it their responsibility to provide adequate housing, food, clothing or education for these children they insist must be birthed by thousands of affected women and children, regardless of the girl's or woman's health or financial situation.

In a burst of liberal largesse, more than a dozen major corporations have offered to pay pregnant employees' travel expenses to states offering abortions. It is unlikely this is

viable. How does advising her employer that she is requesting a trip to an abortion provider conform with federal requirements for patient confidentiality? How is the affected employee protected from supervisors who deem her licentious for her sexual activity, negligent for getting pregnant, or sinful for seeking an abortion? What protection will be afforded the woman requesting an abortion from career-ending reprisals? Several states have already drafted laws making it a crime to assist women seeking abortions outside the states in which they live. Will the company financing the trip face criminal charges for facilitating what is considered a crime in the state that has banned abortions and will it continue the program after the first indictment is filed? As is often the case, that there is a question is the answer. The Supreme Court ruling on abortion rights left this option stillborn.

Dr. Lechtenberg is an Easton resident who graduated from Tufts University and Tufts Medical School in Massachusetts and subsequently trained at The Mount Sinai Hospital and Columbia-Presbyterian Medical Center in Manhattan. He worked as a neurologist at several New York Hospitals, including Kings County and The Long Island College Hospital, while maintaining a private practice, teaching at SUNY Downstate Medical School, and publishing 15 books on a variety of medical topics. He worked in drug development in the USA, as well as in England, Germany, and France.