

Biden wants to make the *Roe v. Wade* decision about much more than abortion

By **LAURA BARRÓN-LÓPEZ** and **ALICE MIRANDA OLLSTEIN**
05/03/2022

As the nation erupted over news that the Supreme Court is poised to strike down half a century of abortion rights, President Joe Biden returned to a playbook he crafted 35 years ago.

Pulling from his long career overseeing court confirmation fights — and reflecting his long-standing reluctance to talk specifically about abortion — Biden said on Tuesday that the issue confronting the public now was not just a future without *Roe v. Wade*. As he prepared to board Air Force One, the president foreshadowed the message he will relay in the weeks and months ahead: If the high court’s draft opinion remains unchanged, it will threaten a larger collection of rights long taken for granted by the public, from contraception to marriage.

“It’s the main reason why I worked so hard to keep Robert Bork off the court,” Biden said of his work to defeat President Ronald Reagan’s Supreme Court nominee in 1987. “It concerns me a great deal that we’re going to, after 50 years, decide a woman does not have a right to choose.”

The comments from Biden came hours after [POLITICO reported on a draft Supreme Court opinion](#) that would fully undo the 1973 *Roe v. Wade* decision establishing the constitutional protection to access an abortion. Chief Justice John Roberts confirmed the authenticity of the document though stressed it was not a final decision. Still, Democrats rushed to warn voters that their right to abortion was on the ballot come November. Biden echoed that message but strategically attempted to expand on it.

“It would mean that every other decision relating to the notion of privacy is thrown into question,” the president said. “If what is written is what remains, it goes far beyond the concern of whether or not there is the right to choose. It goes to other basic rights: who you marry, whether or not you decide to conceive a child or not, whether or not you can have an abortion, a range of other decisions.”

The White House views the expected unraveling of *Roe* as a galvanizing moment for Democratic voters. Current and former Biden advisers told POLITICO to expect the president to continue highlighting the stakes, noting Biden felt it was “very important” to illustrate the choice before voters in November in his first statement on the draft opinion. In it, Biden acknowledged that Democrats currently lack the votes in Congress to pass meaningful abortion rights protections, and if the nation wants *Roe* codified, “We will need more pro-choice senators and a pro-choice majority in the House.”

Moving forward, the White House plans to focus on the political ramifications and the policy options at Biden’s disposal should he act without the help of Congress.

For decades prior to his 2020 White House bid, the president portrayed himself as anti-abortion but he supported *Roe* for the majority of his career. His engagement on the debate has also been defined by attempts to broaden the scope of it. Pulling from his old strategy on Tuesday, the president argued that the right to an abortion, like a number of other protections afforded by the Supreme Court over the years, rests on the Ninth Amendment and what falls under the right to privacy.

Biden's approach was forged during the Bork confirmation, when he consciously decided to sidestep the issue of abortion itself in favor of its implications on privacy.

"If there was an argument to be made against Bork in the Senate, it would have to be made to Republicans and Democrats in the political center," Biden wrote in his 2007 memoir, "Promises to Keep." "If we tried to make this a referendum on abortion rights, for example, we'd lose."

A key player who helped Biden find the right language at the time was his sister, Valerie Biden Owens. Bork believed that if the framers didn't spell out a particular right explicitly, it wasn't essential, effectively threatening civil rights, reproductive rights, and the right to privacy, Biden Owens recalled in her memoir, "Growing up Biden," released earlier this year.

"[Biden] wanted to demonstrate to the American public how Bork's narrow reading of the Constitution might affect their lives," Biden Owens wrote. As she watched her brother and his advisers raise Bork's objections to a 1965 Supreme Court decision in *Griswold v. Connecticut* that established the right to privacy in using contraceptives, Biden Owens chimed in. "It sounds like it means that the government could enter our bedroom and tell Jack and me that we couldn't use contraceptives," she wrote.

[...]

Progressives also want Biden to direct the Justice Department to get involved in lower court battles over abortion rights and crack down, for example, on states attempting to ban pregnant people from leaving the state for the procedure.

There's also pressure for Biden to improve contraception access so there are fewer unwanted pregnancies in the first place. The administration faces calls to undo a Trump-era rule allowing most employers to exclude birth control coverage from their insurance plans, ramp up enforcement against insurance companies who flout Obamacare's mandate for covering contraception, and crack down on the states trying to kick Planned Parenthood out of their Medicaid programs.