

The Morning Dispatch: States Prepare for a Possible Post-Roe Future

Plus: Sri Lanka struggles to stop its economic spiral.

Declan Garvey and Esther Eaton

April 20, 2022

Happy Wednesday! How are you planning to celebrate National Lima Bean Respect Day?

Quick Hits: Today's Top Stories

- Serhiy Gaidai—the governor of Ukraine’s Luhansk region—told reporters on Tuesday that Russian forces had captured Kreminna, leading Ukrainian troops to withdraw from the eastern city of about 18,000. A senior Pentagon official told reporters yesterday that seven flights worth of military equipment for Ukraine—from the \$800 million in additional support approved last week—are expected to arrive in Eastern Europe in the next 24 hours, and President Joe Biden indicated his administration will likely send still more weaponry in the coming days and weeks.
- Moderna reported Monday that new, non-peer reviewed clinical data showed its first bivalent COVID-19 vaccine booster—designed in February 2021 to better protect against the Beta variant—generated a more robust and longer-lasting antibody response than its original vaccine against not only the Beta variant, but the Omicron variant as well. The booster is unlikely to be used because Moderna is currently testing an Omicron-specific vaccine, but the Beta results serve as an encouraging proof of concept.
- Pakistan’s military conducted airstrikes on Afghanistan’s Khost and Kunar provinces over the weekend, reportedly killing more than 40 people—including women and children—and injuring 20 more. Pakistan’s Foreign Ministry claimed Tehreek-e-Taliban Pakistan (TTP) terrorists have been using Afghan soil “with impunity” for months to target Pakistani security forces from across the border, and urged the Taliban to “take stern actions” against the militants.
- Chinese Foreign Ministry spokesman Wang Wenbin told reporters Tuesday China had signed a security agreement with the Solomon Islands. Details of the pact have not yet been made public, but the United States and Australia objected to a draft agreement leaked last month that would allow the Chinese military to deploy to—and Chinese ships to dock in—the Islands, which are about 900 miles northeast of Australia. White House Indo-Pacific Coordinator Kurt Campbell and Assistant Secretary of State for East Asian and Pacific Affairs Daniel Kritenbrink are set to visit the Solomon Islands, Fiji, and Papua New Guinea this week.

- Uber, Lyft, and Amtrak on Tuesday joined all major U.S. airlines in making masks optional for riders, drivers, and employees following Monday’s news that the Transportation Security Administration (TSA) will stop enforcing the Biden administration’s federal public transportation mask mandate in light of a ruling from a federal judge in Florida. The Justice Department said yesterday it will appeal the ruling if the Centers for Disease Control decides the mandate “remains necessary for public health.”
- The Department of Education announced Tuesday it would make a one-time adjustment for millions of federal student loan borrowers on income-driven repayment (IDR) plans that will result in immediate debt cancellation for about 40,000 people and bring 3.6 million more closer to forgiveness. The administration claims the move will partly remedy decades of administrative failures that have kept borrowers eligible for IDR plans from fully accessing the loan forgiveness they provide.
- The White House Council on Environmental Quality reimplemented and strengthened a series of National Environmental Policy Act regulations on Tuesday that had been revoked under the Trump administration. Under the latest rules, federal agencies must evaluate all the “direct,” “indirect,” and “cumulative” environmental impacts of new infrastructure projects—including pipelines, highways, power plants, etc.—before approving them.
- Netflix stock plunged more than 25 percent in after-hours trading yesterday after the video streaming giant revealed it missed revenue expectations—and lost 200,000 subscribers—in the first quarter of 2022. Co-CEO Reed Hastings told investors the company plans to crack down on password sharing and may introduce a cheaper, ad-supported subscription tier.

States Prepare for a Possible Post-Roe Future

You know how the level of vitriol in our political discourse feels like it’s at an all-time high, and civil disagreement seems increasingly unattainable? In just a few short months, we could be pining for the halcyon days of April 2022. Yes, debates over Florida’s “Parental Rights”/“Don’t Say Gay” bill tend to elicit heated arguments and over-the-top rhetoric. Sure, you may chuck your phone in the nearest lake the next time you see something about Elon Musk and Twitter, or Taylor Lorenz and TikTok.

But that’s all child’s play compared to what’s coming this summer, when the Supreme Court is set to rule in *Dobbs v. Jackson Women’s Health Organization*. As we wrote after oral arguments back in December, a majority of the Court sounded open to chipping away at the precedents established in *Roe v. Wade* and *Planned Parenthood v. Casey*, if not outright overturning them.

In passing the Gestational Age Act, Mississippi lawmakers weren’t merely trying to tighten existing restrictions in the state by a handful of weeks; they were endeavoring to upend decades of legal precedent that has governed abortion law in the United States for half a century. And judging by what transpired in the courtroom yesterday, it may just work.

“The Supreme Court seems poised to overturn *Roe v. Wade*,” Noah Feldman—Harvard Law School professor and former clerk for Justice David Souter—concluded at the end of

Wednesday's arguments. Veteran watchers of the court were keyed in on its two newest members—Justices Brett Kavanaugh and Amy Coney Barrett—each of whom laid down plenty of hints.

“Why should this court be the arbiter rather than Congress, the state legislatures, state supreme courts, the people being able to resolve this?” Kavanaugh said, noting that, in Mississippi's view, the Constitution is neither pro-life nor pro-choice. “There will be different answers in Mississippi and New York, different answers in Alabama than California because they're two different interests at stake and the people in those states might value those interests somewhat differently. Why is that not the right answer?”

Whether or not they agree that it is, lawmakers across the country have spent the past several months preparing for a world in which Kavanaugh and Barrett do. Last Thursday, Republican Gov. Ron DeSantis signed into law House Bill 5, legislation prohibiting physicians in Florida from performing abortions after 15 weeks of gestation, unless two physicians certify in writing the fetus has a fatal abnormality or the procedure is necessary to save the mother's life/prevent irreversible physical impairment. One day earlier, the Kentucky legislature had overridden Democratic Gov. Andy Beshear's veto to enact a similar 15-week ban. GOP Gov. Kevin Stitt of Oklahoma went even further on April 12, putting his stamp of approval on Senate Bill 612, which bars Oklahomans from performing abortions at any point of a pregnancy “except to save the life of a pregnant woman in a medical emergency.” Kentucky's law kicked in immediately, but the other two are timed to go into effect later this summer.

That's no accident. By late June or early July, whether the Supreme Court overturns *Roe* and *Casey* or merely tweaks them, states are likely to have more autonomy in dictating their own abortion restrictions than at any point since *Roe* was decided in 1973. If justices gut that landmark decision entirely, it would effectively revoke the constitutional right to an abortion created therein and allow state legislatures and governors to implement as many—or as few—restrictions as their voters will allow.

But even if the Supreme Court's originalist majority opts for a more gradual approach—eliminating the viability standard established in *Casey* without doing away with the undue burden standard altogether—that would still provide an opening for state legislatures with pro-life majorities to tighten abortion restrictions. “I could see the Court saying that they're abandoning the viability line, sort of a magic line in abortion jurisprudence,” American Enterprise Institute constitutional scholar Adam White told *The Dispatch*. “But once you get rid of that line, you might well be able to say that the Mississippi statute does not present an undue burden on the current right to abortion.” Depending on how the *Dobbs* opinion is worded, Florida and Kentucky's 15-week bans would probably survive a court challenge, for example, while Oklahoma's near-total prohibition likely wouldn't.

Those three states may have updated their abortion laws most recently, but they're far from alone in seeking to curtail the procedure further in a post-*Roe/Casey* world. Thirteen states have enacted some form of a “trigger law” that would automatically go into effect in the event of a favorable Supreme Court ruling, and a couple more still have laws on the books from the pre-*Roe* days that could kick back in this summer. Several others have passed legislation in recent

years that was blocked by the courts for violating the tests laid out in *Roe* and *Casey*, and would likely do so again if the legal environment changes.

But these preparations are not solely taking place in red states. Democratic Gov. Jared Polis, for example, signed legislation earlier this month codifying Colorado's "right to make reproductive health-care decisions free from government interference." A week later, Maryland's legislature overrode a Gov. Larry Hogan veto to enact the Abortion Care Access Act, removing a restriction prohibiting non-physicians from performing abortions. At least 17 other states have enshrined similar protections into law.

"States where the political climate is most consistent with banning abortion will soon consider such legislation if they have not so far," said Walter Olson, senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies. "Just as surely, in states where there is a strong political consensus in favor of liberal abortion rules, they will do demonstrative things to say 'we really mean it!' or to underline that through expenditures or whatever other steps that they can find. ... You have to expect everyone to pursue their advantage in the states where they have a working majority."

In a French Press last July, David argued returning the abortion question to the states could "de-escalate national politics, de-escalate the judicial nomination wars, and perhaps cause voters to focus more on political races closer to home." He's right, in many ways—but the debate won't disappear from national politics entirely. The Food and Drug Administration, for example, announced last December it was lifting a regulation requiring abortion pills "be dispensed only in healthcare settings," allowing providers to prescribe the pills—used up to 10 weeks' gestation—via telemedicine and send them to women in the mail. Nearly two dozen states had preemptively banned the practice after varying periods of gestation, but enforcement will prove difficult.

Furthermore, partially extricating abortion policy from the judicial system will likely place heightened pressure on lawmakers to act next time either party holds both the presidency and substantial congressional majorities. The House voted 218-211 last September—after the Supreme Court took up Dobbs—to codify many of *Roe* and *Casey*'s protections into federal law, but a similar measure in the Senate came far short of securing enough support to advance. Republicans have warned Democrats against doing away with the legislative filibuster by threatening to pass a nationwide 20-week abortion ban if the Senate's 60-vote threshold is lowered.

"It is possible that there was not any great wave of liberal national legislation from Congress when the existence of the *Roe* and *Casey* line of cases reassured most of the pro-abortion sentiment that extreme measures were not needed," Olson said. "Once that's destabilized by a lot of publicity and a lot of attention to states veering in very different directions, then you could have people campaigning for congressional legislation—either pro or anti. ... [Both sides] will be going to the drafting board saying, 'How can we use strings on federal funds either to discourage the more liberal states from doing what they're doing in a pro-abortion direction, or discourage the anti-abortion states.'"

But if Congress moves too decisively in one direction or another, that, too, will almost assuredly end up back before the Supreme Court. “There’ll be litigation over whether Congress actually has the power to legislate on [some of] that,” White said. “Congress obviously has passed abortion legislation in the past, particularly on partial-birth abortion. Of course Congress can put limits on federal spending for abortion—the Hyde amendment—but in terms of actually creating a right to abortion or prohibiting abortion, the constitutionality of that issue has never really been adjudicated.”

Sri Lanka Struggles to Stop Its Economic Spiral

Sri Lanka’s simmering economic disaster has boiled over into more than a week of protests—police killed one protestor and wounded more than 10 others in clashes Tuesday—as Sri Lankans demand political change amid shortages of gas, medicine, and other essentials. The island nation’s government has finally asked for the International Monetary Fund’s help dealing with its billions in debt and ballooning inflation, but the IMF will likely demand politically unpopular austerity measures in return.

A nation of about 22 million off India’s southern tip, Sri Lanka attracted investment from both India and deeper-pocketed China as the two powers competed for influence. But Sri Lanka spread itself too thin, borrowing from Beijing for ambitious infrastructure projects like highways and an airport that haven’t paid off. After building a port in 2017, for example, Sri Lanka had to lease it back to China for 99 years to make debt servicing payments.

Current President Gotabaya Rajapaksa took office in 2019 and swiftly exacerbated economic problems, cutting taxes and boosting spending in a bid to encourage economic activity that instead drained government coffers. He also decided the country should stop using chemical fertilizers—a decision he reversed in 2021 after crop yields dropped—forcing the government to boost spending on food imports. COVID-19 decimated the island’s lucrative tourism industry, and Russia’s invasion of Ukraine exacerbated existing price increases on gas and other goods. Inflation in the country has rocketed from a 6 percent annual rate in September to about 14.2 percent year-over-year in January, according to its central bank.

Sri Lanka’s debt could top 110 percent of its gross domestic product in 2022, credit rating company Fitch Ratings reported in January, and Sri Lanka estimated it had about \$35 billion in external debt as of April 2021. About \$6.9 billion of payments and interest will come due in 2022, according to Fitch, or about 430 percent of the country’s international reserves as of November. Its central bank last month invited Sri Lankans living abroad to donate foreign currency to its reserves.

Sri Lankans have taken to the streets and camped outside the president’s mansion to protest the rising prices of gas and other necessities. Rajapaksa replaced most of his cabinet this month and promised to cut presidential powers as party members in parliament deserted him, but he and his brother—Sri Lanka’s prime minister—have ignored calls to step down. The country’s stock exchange froze trading this week to stave off market collapse, and officials have suspended debt payments to use dwindling foreign currency reserves on importing food and fuel as the Sri Lankan rupee’s value plummets.

Rajapaksa's government began bailout talks with the International Monetary Fund this week, with the president requesting up to \$4 billion. The IMF would impose requirements that—depending on the size and type of the loan it offers—can range from hiring financial advisors to hitting specific revenue and deficit targets by cutting spending and raising taxes. Tightening Sri Lanka's belt isn't likely to win fans in a population already struggling to afford necessities. "Ultimately, the country may become ungovernable between high fuel prices, food shortages, and then further IMF austerity measures," Sumit Ganguly, a political science professor at Indiana University who studies South Asia, told *The Dispatch*. "And that might force the Rajapaksas to finally step down."

An IMF loan may not address the core problems in Sri Lanka's economy. "Since 1965, Sri Lanka has had 16 IMF programs," Steve Hanke, a professor of applied economics at Johns Hopkins University who researches hyperinflation, told *The Dispatch*. "They have been punctuated by failure because Sri Lanka has a central bank, and therefore, lacks a hard budget constraint, which disciplines the fiscal system." Hanke believes Sri Lanka should remove the central bank's power to control the supply and exchange rate of Sri Lankan rupees, instead tying the value of its rupee to a stable foreign currency using a fixed exchange rate. This would help prevent Sri Lanka's central bank from taking the economy on more monetary policy roller coasters, he continued, arguing that "while stability might not be everything, everything is nothing without stability."

So far, Sri Lanka's leaders have shown no appetite for such fundamental changes, and they may still be hoping for more help from abroad. China has thus far rebuffed Sri Lanka's latest request for \$2.5 billion in additional credit, creating an opening for India to help out a neighbor—and undermine China's growing influence. Indian officials have said the country may offer another \$2 billion in credit and help deliver food and fuel to Sri Lanka, and urged the IMF to consider Sri Lanka's bailout request. "The Indians are making the most of it," Ganguly told *The Dispatch*, adding that he expects India to offer Sri Lanka favorable terms on new loans. "They'll probably give the Sri Lankans a long rope, knowing that in the foreseeable future, Sri Lanka's ability to pay anything back is quite dubious. India has to play the long game."

Worth Your Time

- Following the success of the mRNA COVID-19 vaccines, researchers are optimistic the technology will lead to breakthroughs in a number of areas. "Dozens of clinical trials are now underway for new forms of the mRNA vaccine—targeting everything from malaria to Zika, herpes, and cytomegalovirus," Amit Katwala writes for Wired. "Last month, Moderna—which was founded in 2014 to explore the potential of mRNA—announced it had started Phase I clinical trials for two mRNA-based HIV vaccines. 'The timeline for what can be achieved using the mRNA platform is so much better,' says Carl Dieffenbach, director of the Division of AIDS at the US National Institutes of Health, who is overseeing those trials." Because mRNA's only raw ingredients are the four amino acid bases that form the "letters" of the RNA sequence, vaccines can be designed and manufactured more quickly. "Biological manufacturing is very hard and temperamental and has been difficult to introduce in many environments. It's taken India decades to build up the vaccine manufacturing capability they have," Richard Hatchett of the Coalition for Epidemic Preparedness Innovations tells Katwala. "It may

be easier for countries to develop an mRNA production capacity than traditional biological manufacturing capability.”

Presented Without Comment

Justin Amash @justinamash

I can't tell if this is sarcasm.

mark barrett @eyewir

@justinamash Justin - the difference is that some authoritarian efforts are for power grabs and others for protection of the common welfare

April 19th 2022

74 Retweets1,141 Likes

Also Presented Without Comment

Insider News @InsiderNews

China's 'Twitter' appears to have blocked searches for a line from the country's national anthem that tells people to 'stand up' and 'refuse to be slaves' **China's 'Twitter' appears to have**

blocked searches for a line from the country's national anthem that tells people to 'stand up' and 'refus...Amid Shanghai's harsh COVID-19 lockdown, China's Twitter-like Weibo

platform has blocked searches for a hashtag referencing the lyrics.insider.com

April 18th 2022

1 Retweet3 Likes

Also Also Presented Without Comment

FOX Sports: MLB @MLBONFOX

Oof...with the bases loaded and two outs (via @YESNetwork)

April 19th 2022

57 Retweets589 Likes

Toeing the Company Line

- In a fascinating piece for the site today, Andrew Fink examines the political currents that have led to the reestablishment of some memorials to Vladimir Lenin in Russia-occupied parts of Ukraine.
- The second part of Jonah's conversation with Matthew Continetti about his new book—*The Right: The Hundred-Year War for American Conservatism*—was published on **The Remnant** feed yesterday, and covers the 1970s through the present. Can the contemporary right hold off resurgent anti-Americanism? Could fascism happen here?
- In this week's **Sweep**, Sarah checks in on Ohio's Republican U.S. Senate primary following Donald Trump's endorsement, discusses what Joe Biden's 2020 performance in "pivot counties" means for 2024, and provides some thoughts on potential shakeups

by the RNC and DNC. Plus: What to make of young voters this cycle? “I’m expecting youth turnout to take a big hit in 2022,” she writes. “And I’m expecting some surprisingly low margins for Democrats with this group in specific races where the Republican candidate is the least Trump-esque.”

- David’s Tuesday **French Press** ponders why we can’t have nice things. “When Biden’s policies pushed our nation away from the very thing millions of his voters so desperately desired, he lost an immense amount of goodwill,” he writes. “It’s time for the president to harmonize his temperament, his ideology, and his judgment and center them around a single, simple goal—make America normal again.”
- Thanks to those of you who joined us for **Dispatch Live** last night! On this week’s episode, Steve and Jonah were joined by *Dispatch* contributor Klon Kitchen for a conversation about the cyber threat Russia poses to Ukraine and the U.S., foreign policy realism, and the defense budget. And as always, they answered members’ questions. If you weren’t able to tune in, never fear: *Dispatch* members can rewatch the hour by clicking here.

Let Us Know

Setting aside your own feelings on the merits of the decision, which outcome do you think would result in less polarization around the abortion issue? Why?

- The Supreme Court leaves *Roe* and *Casey*’s viability and undue burden standards intact, dictating a baseline abortion policy for the country; or
- The Supreme Court fully or partially overturns *Roe* and *Casey*, allowing state legislatures—and potentially Congress—to dictate abortion policy.