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Packing the Supreme Court with conservatives calls it legitimacy into question

Eli Untiedt

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Following the recent decision in Dobbs v. Jackson Women's Health Organization, there has been many conversations and disbelief about how we made it to this point. However, a quick examination of the history of the courts and legal movements in the United States will show that our current situation should be no surprise at all.

In many ways, the conservative legal movement started mobilizing in the 1970s as a response to *Roe v. Wade* and other civil rights decisions framed as a radical liberal shift. Conservatives frustrated by the leftward shift of the courts compared to their electoral victories recognized that they needed another plan of attack: dark money think tanks.

Organizations like The Heritage Foundation, Cato Institute and Federalist Society popped up in the decades following *Roe*. The goal of these organizations is to destroy the last 50 years of established precedent vital to our understanding of the rule of law by reshaping the federal judiciary from individual district courts all the way to the highest court in the land.

McConnell and Trump skewed the ideological makeup of the courts

Never was this goal more obvious than during the Obama administration, when then Senate Majority Leader Mitch McConnell slowed down — after taking the majority in 2014 — and virtually shut down the process for the administration to get their judicial nominees on the courts. The radical right's reward for unprecedented gridlock and shattering traditions of bipartisanship was 105 federal judgeships, including a seat on the Supreme Court of the United States.

In four short years, Leader McConnell and Former President Trump filled 234 federal judgeships: 174 district court judges, 54 appeals court judges and three seats on the Supreme Court. With only 37 of those 226 appointees being non-white and only 55 being women.

The impact on the judiciary is even more sobering with the realization that more than a quarter of currently active federal judges are Trump appointees.

Even more shocking is that organizations like the Federalist Society have worked together with the Trump administration — and past republican administrations — to identify and recruit ultra-conservative judicial candidates who would be supportive of their pet projects.

In essence, dark money backed conservatives have packed the courts, flipped the balance of power, and are poised to achieve their right-wing takeover of the rule of law 50 years in the making. We have already been given a taste of what is to come.

How will progressives respond?

Dobbs is a recent and headline grabbing example of the high court wielding their newly cemented majorities to upend the rule of law; and Justice Clarence Thomas's concurrence calling for challenges to other rights enjoyed under the court's substantive due process precedents — Griswold, Lawrence and Obergefell — should send off major alarms that this court is poised to continue to tear down decades of precedent and for no reason other than what the dissenters in Dobbs identified, “because it [the majority] has always despised them, and now it has the votes to discard them.”

With the court now in a full-fledged legitimacy crisis — seeing record low levels of confidence from the public — brought on by conservative court packing and radical decisions, progressives must act now.

Organizations like the American Constitution Society, the leading progressive law and policy institute in the country, stand ready to lead the fight to protect individual rights rooted in the history of the nation that are now threatened. The conservative legal movement was willing to play the long game to destroy the progress and liberties we hold dear.

The question now is what will the progressive legal movement be willing to do to build it back?