

Akron Beacon Journal

NEWS

How Catholic Democrats in Akron helped write the conservative playbook to overturn Roe

Doug Livingston and Seyma Bayram Akron Beacon Journal

Published 6:00 a.m. ET March 24, 2022

In 1978, hundreds of protesters marched in downtown Akron or outside the city's four abortion clinics in their first year of operation. The civil unrest, from threats of violence to documented arson, burned even as the Storm of the Century buried Akron in more than 3 feet of snow.

Akron City Council moved public hearings on 16 proposed abortion restrictions to the Morley Health Center to accommodate a standing-room only crowd of 300 people, evenly split in support or opposition. A national audience followed along as the three major news channels of the day covered sweeping restrictions crafted by national anti-abortion lawyers and sponsored by Catholic Democrats on Akron City Council.

The debate was intense. Council members shouted long after some hearings ended.

In a 7-6 vote on the last day in February, national leaders in the anti-abortion movement had found in Akron willing participants in the creation of "the playbook" to incrementally unravel Roe v. Wade.

Today, Akron's policies and politicians skew more to the left than the right.

But in the late 1970s, conservatives ran their first plays in a five-decade drive to overturn Roe through Akron, and what passed here became a road map for state legislatures across the nation.

Scholars, constitutional lawyers and anti-abortion activists expect the U.S. Supreme Court to gut or overturn Roe in an upcoming decision on a 15-week abortion ban passed by Mississippi lawmakers in 2018. In accepting the case, titled *Dobbs v. Jackson Women's Health Organization*, the high court will ask and answer whether pre-viability restrictions on abortion can be constitutional.

Based on the constitutional right of a pregnant woman's privacy, the ruling of the original Roe court prohibited any first-trimester restriction on abortion. The 1973 justices did, however, leave room for regulation in the second trimester and all-out bans at the point of viability, or at about 23 weeks, when the fetus is likely to survive outside the womb.

Observers expect the high court to revert regulation or restriction of abortion to the states. And the same organizations that tapped Akron to quarterback their anti-abortion agenda 45 years ago say Ohio lawmakers are willing today to outlaw abortion altogether.

Nibbling at Roe

By 1976, a few states tried and none succeeded in chipping away at the landmark 1973 ruling that legalized abortion in the United States. A Missouri law requiring a husband's consent was the latest to fail that year.

By the late 1980s, though, a more conservative bench would revisit Roe, giving increased deference to state and local restrictions.

"It's the nibble theory," said Tracy Thomas, Seiberling chair of constitutional law at the University of Akron.

Going further and earlier than others in the effort to restrict abortion, Democrats on Akron City Council would not nibble. They chomped.

Thomas has chronicled the legal history of abortion in Akron in multiple judicial reviews. In 2013, she examined the legacy of the 1978 restrictions passed by City Council and a later case out of Akron, which resulted in one of the first of several national rulings pulling at the loose threads of a woman's right to access an abortion. Thomas' research drew on "archives and long-forgotten files in dusty basements" and "interviews with key

players in the cases,” including a couple now in their 80s or 90s and unwilling to return a call from the Beacon Journal.

As the first stand-alone clinics opened in the city, Akron passed an ordinance requiring all abortions after three months to be done in a hospital. In 1978, they approved 16 more restrictions — waiting periods requiring multiple patient visits, parental consent for minors and the inclusion of religious and non-medical language designed to discourage people from seeking abortions.

In 1983, the justices who decided Roe a decade earlier ultimately overturned the new laws in Akron. The ruling gave abortion-rights advocates their earliest and strongest reaffirmation of a woman’s reproductive rights and the Reagan administration, which joined the case alongside legal counsel for the city of Akron, its first national “embarrassment.”

But the lasting legacy is that Akron lawmakers, at the bidding of anti-abortion groups, “created that conservative playbook” for the eventual fall of Roe, which Thomas said “is definitely not going to survive ... in any way, shape or form.”

The high court rejected nibbles that went too deep, Thomas explained. Within a decade, though, several restrictions got through, gradually battering Roe to the point of teetering on collapse.

This was the playbook assembled in Akron. And that point of collapse could come in a ruling expected this spring or early summer by a high court with members installed by the Trump administration based, in part, on their anti-abortion credentials.

After Akron failed, Ohio lawmakers passed similar laws requiring abortion doctors to disclose risks and minors to get parental permission. The same Akron clinic, the now-defunct Akron Center for Reproductive Health that stood up to City Council years earlier, challenged these state laws in federal court — and lost.

In 1990, the high court upheld the statewide restrictions modeled after the failed Akron ordinances on the assumption that young women, and by extension all women, could not fully appreciate the psychological and moral implications of their decisions.

While every Akron clinic eventually closed following decades of aggressive regulation, the politics of Akron today strongly support women's reproductive rights. But if and when Roe falls, Thomas expects conservatives to take a page from the old playbook in Akron, passing local and state laws to restrict not only abortion but the rights of transgender people and other groups.

“What was immediately drafted in opposition to Roe becomes the playbook because eventually all of those (Akron restrictions) are upheld” in separate court cases that followed, Thomas said. “As a case, Akron becomes a much more important example of how it can be done. I think it will come back to life with restrictions passed by the states. And cities are obviously easier to get things through.”

Unrecognizable politics

The modern politics of abortion in Akron or the country bear little resemblance to where the public and its major parties stood on the issue in the years before or after Roe.

Like the record-high share of Americans recently surveyed by Gallup, leading evangelical scholars well into the 1970s considered abortion morally acceptable for reasons of family welfare, individual autonomy and social responsibility.

Nationally, Protestants cared less about abortion when Roe was decided than they did about government attempts to racially desegregate schools and universities, still fighting over the 1954 *Brown v. Board of Education* decision. In 1979, as it had multiple times in the previous decade, the Southern Baptist Convention said that although it rejected any indiscriminate attitude toward abortion, it supported limiting government's role in the matter and the right of women to “the full range of medical services and personal counseling for the preservation of life and health.”

Baptists in Akron, however, were ahead of the anti-abortion curve, openly pushing restrictions even before they passed locally in 1978.

The Akron Catholic Commission launched a petition drive ahead of the contentious public hearings to gather 25,000 signatures in support of the restrictions. Nationally, the Catholic Church, which first backed the National Right to Life organization in 1967, took the lead. Protestants followed after the 1980 election of Ronald Reagan.

Elected leaders espousing hostility toward abortion in Akron ran counter to Northeast Ohio's emergence, and current status, as a sanctuary for reproductive rights. As early as 1967 in Cleveland Heights, a medical doctor formed the Association for the Reform of Ohio Abortion Laws to urge state and local lawmakers to allow safe, legal abortion.

Up until the Roe ruling, even in cases of rape or incest, abortion was illegal in Ohio except to save the life of the pregnant woman. Only Alaska, Hawaii, New York and Washington had legalized abortion by 1970 when the Roe case began in Texas. Abortion-rights advocates retell accounts of Ohio women boarding buses from Cleveland to New York state to access abortion before Roe.

At the time, state and federal courts were knocking down restrictions. Fifty years later, the opposite is true with a more conservative U.S. Supreme Court declining to accept multiple challenges to a recent six-week ban in Texas.

A 'most volatile' issue in Ohio

Politically, it was Ohio Republicans who pushed for decriminalization of abortion before Roe. And it was a Democratic governor who threatened to veto abortion-rights legislation.

Rep. Robert Manning, R-Akron, who served in the Ohio House from 1967 to 1972, expressed "no concern for my political future" in 1971 when he reintroduced a bill to legalize abortion in Ohio. Two Republicans and two Democrats joined him in the Ohio House.

Rewriting Ohio's 1834 abortion law was reportedly "the most volatile" issue after tax reform in state budget talks that year. Lawmakers rejected an amendment to strike abortion from the state criminal code.

Manning, who supported restrictions after 20 weeks, would try five times to repeal Ohio's virtual ban on abortion.

His early attempts kept some restrictions. In his final effort before Roe v. Wade, the Akron Republican went for a wide-open repeal, providing a blank slate on which lawmakers could compromise. But the abortion-rights bill was dead on arrival

with Democratic Gov. John Gilligan, an Irish Catholic from Cincinnati, wielding the veto pen.

In 1972, another northern Republican, Rep. John Galbraith of Maumee, proposed \$300 payments for low-income pregnant women to get abortions. Galbraith pitched the idea as a way to contain the cost their children would place on the state's welfare system.

The proposal got no support.

Ohio emerges as anti-abortion capital of America

Neither party at the national or state level openly supported abortion rights at the time.

The major parties flew to Miami Beach for their national conventions in 1972. Democrats rejected support for legal abortion in their party platform. Republican women on a policy subcommittee floated a raft of women's issues, from equal pay to reproductive rights. Easily dispatching his primary opponents in a bid for reelection, Republican President Richard Nixon considered abortion an issue for states, ending any discussion on a national endorsement.

As the U.S. Supreme Court heard oral arguments in *Roe v. Wade*, the Ohio Abortion Alliance formed in 1972 to collect petitions to put abortion on the ballot for voters to decide. It's a move some abortion-rights advocates are privately discussing today with oral arguments over in the high court's consideration of the 15-week ban in Mississippi.

The board of the American Civil Liberties Union, which had emerged years earlier as the leading counsel for reproductive rights cases, voted in 1972 to include abortion access in its national agenda, hiring Ruth Bader Ginsburg to run the newly established Women's Rights Project with startup funding from the Ford Foundation and Playboy.

Anti-abortion groups say "it all started with that fateful day in 1973" when the Supreme Court decided *Roe*.

"We had cases along the way since 1973," said current Ohio Right to Life President Mike Gonidakis. "But it began in 1973."

"The pro-life movement was founded in the great state of Ohio," Gonidakis said. "The late Dr. John Willke, who passed away several years ago, with his wife, Barbara, founded it in Cincinnati, Ohio. They founded not only Ohio Right to Life, but they founded National Right to Life amongst other rights life groups in different states and internationally.

"So, the pro-life movement was born here in Ohio, Southwest Ohio, but Ohio nonetheless."

In a 1974 testimony before the U.S. Senate Judiciary Committee, the anti-abortion leader of Feminists for Life reported that the Ohio Abortion Alliance had dissolved since Roe was decided while membership in Ohio Right to Life had tripled.

The fight was on, and conservative Democrats in Akron threw the first punches at the municipal level.

'Willing to be a test ground'

With new clinics opening every year since the Roe decision and the number of abortions rising annually in Ohio, Catholics and other groups pushed national and local lawmakers to restrict wherever possible, careful not to run afoul of the constitutional freedom the Supreme Court ruling secured for first-trimester pregnancies.

Violence against abortion doctors and clinics was on the rise.

Investigators in Akron suspected "amateurs" were behind a small fire at a clinic on Market Street in 1978. As City Council voted on abortion restrictions, an arsonist posing as a deliveryman barged into an abortion clinic in Cleveland and threw a plastic bag of gasoline onto a technician's face before setting the operating room on fire.

With no evidence, anti-abortion groups blamed the attacks on "irate clients" or clinics violently scapegoating themselves for attention.

By 1978, Akron council had regularly weighed in on controversial topics before passing its 17 abortion restrictions, some tested nowhere else in America. The case was argued and decided by an almost entirely male cast of lawyers, lawmakers and judges at the city,

state and federal levels. Women had little say in the future of their reproductive autonomy.

The Akron legislation was drafted by national lawyers and lobbied by Catholics and Orthodox Jews in the burgeoning anti-abortion movement.

In addition to a requirement that abortions after three months be conducted in hospitals, which council had passed the year before, council President Ray Kapper, an at-large Democrat, announced 16 new restrictions at a news conference in October 1977. He was joined by 23-year-old law student Marvin Weinberger with Citizens for Informed Consent and 34-year-old attorney Allen Segedy, past president of the Greater Akron Right to Life Society.

“Its controversial provisions included parental consent for minors under fifteen, parental notification for minors between fifteen and eighteen, informed consent for all women, a twenty-four-hour waiting period and counseling with highly detailed medical disclosures about the procedure and biological disclosures about the ‘unborn child.’” Thomas wrote.

“Doctors would have to say ‘the unborn child is a human life from the moment of conception’ and give ‘a detailed description of the anatomical and physiological characteristics of the particular unborn child,’ including ‘appearance, mobility, tactile sensitivity including pain, perception or response, brain and heart function, the presence of internal organs and the presence of external members,’” Thomas found in her research.

“It was municipal legislation fueled by national groups,” Thomas told the Beacon Journal this month. “Akron folks weren’t inventing the argument, but they were willing to be a test ground.”

Willard F. Spicer, chief trial attorney for the city, accurately predicted that Akron would pay dearly to defend these unconstitutional restrictions. Six of the 13 on council voted against the restrictions, including the sole Republican, John Frank, and one of only two women on council.

At the time and in a 2012 interview with Thomas, Councilman Frank cited the personal experience of an unplanned pregnancy with a former girlfriend as the rationale for his

opposition to restricting abortion.

“It’s a woman decision whether or not to have a baby. Period,” he told Thomas.

Every Catholic on council except William Grimm approved the restrictions. “It’s pretty hard to go against my religion,” Grimm told his colleagues. But he had taken an oath “to uphold the laws of the land,” even if the contentious debate had turned “family against family.”

Religious leaders in Akron threatened to end Republican Mayor John Ballard's political career if he vetoed. So, he refused to sign the ordinance, allowing the restrictions to become law.

The Akron Center for Reproductive Health challenged the city in court in a case that captivated national viewers in local and federal courts, concluding five years later in a ruling by the U.S. Supreme Court.

Linda Greenhouse of The New York Times wrote of the ruling by six white male justices with an average age of 73: “With the decision, the right to abortion — exercised last year by 1.2 million American women — entered the mainstream, and the burden shifted to the other side to show why it should not remain there.”

The case was sent back to the federal courthouse in Akron, where Judge David Dowd Jr. ordered the city to pay \$368,710 to cover the other side’s attorney fees. The city had been emboldened to fight by the National Right to Life and its leader from Cincinnati, John C. Willke, who preached zealously against abortion in the streets and testified with passion before Akron City Council.

Frank, the last Republican to serve on Akron council, demanded that Willke and National Right to Life pay the legal penalty. They refused, “politely thanking the city for its valiant anti-abortion efforts,” Thomas wrote in her review of the case.

The rest is a history lesson.

“It’s a reminder that the opposition and the support for Roe have always been intense from the very beginning,” Thomas said. The 1973 ruling was never “settled” and people

have “always been willing to go all in on both sides.”

Reach Doug Livingston at dlivingston@thebeaconjournal.com or 330-996-3792 or on Twitter @ABJDoug. Seyma Bayram is a corps member with Report for America, a national service program that places journalists into local newsrooms. Learn more at reportforamerica.org. Contact her at sbayram@thebeaconjournal.com or 330-996-3327 or on Twitter @SeymaBayramO.