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"*Roe* was Egregiously Wrong from the start… from the day it was decided" Justice Samuel Alito

As we await the final decision on the Supreme Court's *Dobbs v. Jackson Women's Health Organization*—expected to come in the next few weeks—we have become privy to the inner workings of the high court thanks to an unprecedented leak of a first draft opinion of *Dobbs* written by Justice Samuel Alito. The draft, penned back in mid-February, is an astounding and remarkable document [detailed elsewhere in this newsletter]. The Justice makes it abundantly clear: *Roe v. Wade* was wrong from the day it was decided. It must be reversed.

Hallelujah!! Praise the Lord!! After 49 years…finally!

Yet a word of caution. The Alito draft is just that—an early draft, not the final opinion. Alito may change some portions in order to secure a majority vote from among his fellow conservative justices. A second word of caution: if *Roe* is overturned as we expect, performing an abortion will not automatically become a criminal act. Instead, as the Alito draft makes clear, the issue of abortion will return to the individual states which will have the authority to establish laws governing abortion policy. States like Texas, Oklahoma, West Virginia and many other "red" states will pass laws banning most if not all abortions. On the other hand, liberal states like California, New York, Massachusetts, and other "blue" states will retain their radical pro-abortion laws that permit abortion up until viability and beyond!

Unborn babies will continue to be killed by the thousands in liberal states. Women will continue to be targets of the abortion industry in blue states.

This potential patchwork of divergent state laws—some pro-life, others pro-abortion, creates an unsustainable situation. It permits state legislatures to craft their own laws. This does not resolve the two basic questions that the Supreme Court has refused to address. Is the unborn baby a living human being? Does the baby's right to life supersede a woman's right to "bodily autonomy?" Until the Court resolves the issue of the baby's humanity, his or her right not to be killed, and the necessity of employing the latest evidence from neonatology and embryology to prove the humanity of the unborn child, the problem of legal abortion will persist for the foreseeable future.

A *Roe* reversal is, at best, a partial and incomplete victory. While we rejoice that the Court will dispatch *Roe* to the ash heap of history, we cannot ignore the fact that the pro-life movement has entered a new phase. We have not won, not in the sense that all babies in all 50 states will be protected in the womb…but we are getting closer to that victory. We must renew every effort, secure pro-life majorities in state legislatures and governors to advance pro-life laws, and educate like never before on the sacredness of all human life, born and unborn. This is our new phase…round two of an epic battle to preserve life and restore America's pledge in the Preamble of the US Constitution: to "secure the blessings of liberty to ourselves and our posterity."

Resounding Success!
Focus on Life Dinner Features Three Guest Speakers

After two years of covid-related small crowds (including a 2020 dinner held under two tents on a cold October evening), on May 19 those numbers came roaring back as 310 people filled Kalamazoo First Assembly of God's Ministry Center. The dinner featured a first: three guest speakers: Dr. Robin Pierucci, a neo-natologist, Cathy Stoner, Executive Director of Alternatives of Kalamazoo, and Katie Shank, an adoptive and foster parent. Advertised as a "home-grown celebration" the KRTL Board of Directors wanted to highlight local experts as well as encourage people to attend in anticipation of the Supreme Court finally overturning *Roe v. Wade* in the *Dobbs v. Jackson Women's Health Organization* decision.

Our Speakers: Dr. Robin Pierucci, Katie Shank, and Cathy Stoner

Dr. Pierucci spoke lovingly of tending to the needs of tiny babies fighting for life in hospital neonatal units. She stated that the medical science is clear: from the onset of pregnancy the developing baby is a human being needing love and protection. Cathy Stoner informed the audience of the ministry of Alternatives as it rescues lives—young women facing unplanned pregnancies, and babies saved when their mothers choose life. Alternatives seeks to meet the spiritual needs of clients as well as teach them new parenting skills and abandon corrosive or dangerous lifestyle behaviors

One of our many happy groups

One of many tables

The Alito Draft of *Dobbs v. Jackson Women's Health Organization*: A Summary

On May 2, Politico released a 98-page document—the leaked first draft opinion on *Dobbs v. Jackson Women's Health Organization* written by Supreme Court Justice Samuel Alito. This "leak" was a breach of ethics and violated the Court's rule of strict confidentiality. It is assumed that one of the 36 law clerks did the dirty deed. At this point the name of the leaker remains unknown. Conservatives were outraged that the leak occurred. Liberals were shocked at what the leak contained—a majority of the members were poised to overturn *Roe v. Wade*. Protests, demonstrations (even at the private homes of the conservative justices) became the norm as pro-abortion individuals and groups agonized at the thought that abortion could be banned in half the nation.

The following is a summary, part-paraphrase or direct quote from the Alito draft. Remember—this is only a draft and may not reflect the final opinion.

P. 5 The pro-abortion attorneys who argued against the Mississippi law stated that if the state law is upheld it would be "no different than overruling *Casey* and *Roe* entirely." They contend that "no half-measurers" are available and that we must either reaffirm or overrule *Roe* and *Casey*. Alito wrote, "We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion and no such right is implicitly protected by any constitutional provision."

P. 5: "When the 14th amendment was adopted, three quarters of the states made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the 14th amendment's protection of 'liberty.'… Abortion destroys what *Roe* and *Casey* called 'fetal life' and what the law now before us describes as human being.'"

P. 6: "*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division. It's time to heed the Constitution and return the issue of abortion to the people's elected representatives."

P. 15: "Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. Zero. None. No state constitutional provision had recognized such a right. Until a few years before *Roe* no federal or state court had recognized such a right. Nor had any scholarly treatise of which we are aware. Not only was there no support for such a constitutional right until shortly before *Roe*, but abortion had long been a crime in every single state. At common law abortion was criminal in at least some stages of pregnancy and was regarded as unlawful. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time of the adoption of the 14th amendment, three-quarters of the states had made abortion a crime at any stage of pregnancy and the remaining states would soon follow."

P. 16: "*Roe* either ignored or misstated this history and *Casey* declined to reconsider *Roe*'s faulty historical analysis. It is therefore important to set the record straight."

[Alito goes into a more accurate historical review of abortion laws down through the centuries. Abortion was a crime under English common law, at least after fetal quickening. Abortion after quickening was a crime back to the 13th century.]

P. 19: "Although common law authorities differed on the severity of punishment for abortion committed at different points in pregnancy, none endorsed the practice. Moreover, we are aware of no common law case or authority that remotely suggests a positive right to procure an abortion at any stage of pregnancy."

P. 21: "The few cases available from the early colonial period corroborate that abortion was a crime."

P. 25: "The inescapable conclusion is that a right to abortion is not deeply rooted in the nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973."

P. 25-26: "Not only are respondents [pro-choice side] unable to show that a constitutional right to abortion was established when the 14th amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise. The earliest sources [listed in *Roe*] are a few district court and state court decisions decided shortly before *Roe* and a small number of law review articles of the same period.

P. 26: "Instead of following common law authorizes like Bracton, Coke, Hale and Blackstone… *Roe* relied largely on two articles by a pro-abortion advocate who claimed that Coke had intentionally misstated the common law because of his strong anti-abortion views. These articles have been discredited and it has come to light that even members of Jane Roe's legal team did not regard them as serious scholarship. Continued reliance on such scholarship is unsupportable.

NOTE: The two articles mentioned by Alito were written by a pro-abortion advocate, New York law professor Cyril Means, lead counsel for the National Association for the Repeal of Abortion Laws (NARAL) soon to be renamed the National Abortion Rights Action League (NARAL). Means had two lengthy articles published in 1968 and 1971 that Justice Harry Blackmun relied on uncritically to write his *Roe v. Wade* opinion. Pro-life scholars have long believed that Means's version of abortion history was severely flawed. Moderate pro-choice law professor Joseph Dellapenna wrote a 1,100 page book in 2006, *Dispelling the Myths of Abortion History*, in which he refuted all of Means's conclusions. Alito cites Dellapenna in his footnotes as well as pro-life scholars John Keown, John Finnis, Robert Destro, and Robert Byrn.

P. 29: "There is ample evidence that the passage of these 19th century pro-life laws were instead spurred by a sincere belief that abortion kills a human being. Many judicial decisions from the late 19th and early 20th centuries made that point."

P. 32: "What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely [privacy: contraception, interracial marriage] is that abortion destroys potential life and what the Mississippi law regards as an unborn human being. None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion."

P. 40: "*Roe* was on a collision course with the Constitution from the day it was decided and *Casey* perpetuated its errors…The Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of this national controversy but necessarily declared a winning side. Those on the losing side—those who sought to advance the state's interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. Together, *Roe* and *Casey* represent error that cannot be allowed to stand."

P. 41: "*Roe* failed to ground its decision in text, history, or precedent. It relied on an erroneous historical narrative. It concocted an elaborate set of rules with different restrictions for each trimester, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source, and its viability rule was never raised by any party and has never been plausibly explained."

P. 65: "We hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives."

Focus on Life Dinner

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and security for them to thrive. She added that believers in Christ have also been adopted into God's family.

"This was new for us," said KRTL president Rob Karrer. "But our three speakers brought a complexity to the life issues that we had not explored more fully before. Usually we bring in one speaker to talk about one issue. But here we had a medical professional talking about tiny babies a little larger than the size of your hand, a pregnancy care director talking about sharing the Christian message while saving babies from abortion, and a mother explaining that foster care and adoption saves lives." Two other speakers rounded out the event: the KRTL Oratory Contest winner, Rachael Joseph, a home-schooled freshman, and Renee Bohr, the leader of Protect Life WMU, who spoke of her impressions attending the 2022 March for Life in Washington, DC. Check out the photos of the dinner, our student volunteers, and guest speakers on the website (under **Events**). Kudos to St. Mary's Youth Group, Light of Christ Academy, and Protect Life WMU for either setting up the room in the morning or "tearing it down" after the event. Thanks to EMA Catering for another great meal and donated items: flowers from Wedel's Garden Center and Boonzaaijer Bakery for dessert.

Dr. Pierucci with Oratory Contest winner Rachael Joseph

Renee Bohr of Protect Life WMU speaks about attending the March for Life

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President's Corner by Rob Karrer

This has been an exciting month—filled with hope and expectation. The Supreme Court is poised to overturn *Roe*. Oklahoma just passed the most pro-life law in the country, even stronger than the Texas heartbeat law. However, we must remain vigilant because our opponents at the state capital have been working just as hard. Governor Whitmer appealed to the State Court of Appeals to have our 1846/1931 anti-abortion law tossed out. Why? She knows that when *Roe v. Wade* is overturned then our old law takes effect immediately and Michigan will become an abortion-free state. Whitmer is a pro-abortion zealot and has been wanting to see our law scraped for years. Thankfully, we have slim pro-life majorities in Lansing so any bill on her part is dead on arrival. Her back up plan is to by-pass the legislature and get action through the courts. Meanwhile, Planned Parenthood filed suit in the Michigan Court of Claims to declare our 1846 law to be in violation of the Michigan Constitution. Judge Elizabeth Gleicher, a Planned Parenthood donor and former ACLU attorney, ruled our law unconstitutional. It is clear that she is biased and cannot be objective. She should have recused herself from the case. Meanwhile, pro-abortion forces have been circulating a petition drive to place on the November ballot a referendum that would change the Michigan Constitution to make abortion legal up to fetal viability. If approved by voters, it would nullify EVERY SINGLE pro-life law enacted in the last 40 years.