KRTL LIFELINE

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# ***Roe v. Wade* is History!!!!!**

# Now What?

On June 24, 2022 the United States Supreme Court overturned the 49-year-old *Roe v. Wade* decision by a 5-4 vote (Chief Justice Roberts voted to uphold the Mississippi 15-week abortion ban but did not vote with the majority to reverse *Roe*). The five justices voting to overrule Roe were Clarence Thomas, Samuel Alito (who wrote the majority opinion), Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. Filing a dissent where the three liberal justices: Stephen Breyer, Elena Kagan, and Sonia Sotomayor. Thus ended the federal court's half- century stranglehold on abortion law and its complicity in the deaths of over 63 million unborn babies that have been sacrificed on the altar of "reproductive rights." Yet, despite the new ruling in *Dobbs v. Jackson Women's Health*, and contrary to the abortion-rights activists, liberal commentators in the media, and pro-abortion Democrats unrelenting hysterical claims, the Court did not ban abortion. It merely returned the issue to the individual states where abortion policies will be decided.

*Dobbs* is clearly one of the most consequential decisions in our lifetimes. In fact, *Dobbs* will be listed among the select few monumental decisions in the last 230 year history of the Supreme Court. The decision will be analyzed in greater detail in this newsletter, using specific quotes from the justices to explain their rationale to overturn or defend *Roe*.

Now that *Roe* is history, what is the next step for the pro-life movement? We have definitely moved into a new phase. Before, our politically-oriented goals were generally well-defined: elect pro-life presidents who would nominate pro-life judges to the high court, elect pro-life lawmakers at the state and federal level to enact pro-life laws that could survive a court challenge, and provide test cases for the Supreme Court to do its duty to overturn *Roe*. But our movement is far more complex than merely getting politicians elected. We have doctors and scientists who use science to prove the humanity of the unborn. We have 3,000 pregnancy care centers scattered all over America that provide alternatives to abortion, counseling women to choose life for their babies. We have speakers who debate pro-abortion opponents on college campuses helping to educate the next generation of leaders of the inviolability of human life in the womb. We have pastors who preach the sanctity of human life from the pulpit, and prayer groups who stand near abortion clinics offering hope for pregnant women. And we have dozens of national pro-life groups with thousands of smaller affiliates who do their part in advancing the pro-life message.

Now as the issue has moved back to the states, our political goals remain the same but more on a local level. Elect pro-life state senators and state representatives to secure pro-life legislation, elect pro-life governors who will sign pro-life bills. Elect pro-life attorneys to the state courts, especially the state Supreme Courts who will uphold new pro-life laws. At the national level we must remain as vigilant. Democrats will continue to advance a radical, extreme, pro-abortion through all nine months of pregnancy agenda: codify abortion-rights into law, abolish the senate filibuster, add liberal justices to the Supreme Court. In short: a disaster on all levels. We must continue to elect pro-life presidents, pro-life senators and congressmen to block any attempt to push pro-abortion legislation.

The battle that once resided in the 9-member Supreme Court has now become a 50-state war. True, in some very liberal states like New York or California we will probably have a hard time getting any pro-life bills enacted. But the opposite is true in conservative states. Already, about twelve states have restored previous pro-life laws (the so-called "trigger laws").

For fifty years pro-abortionists relied on *Roe* to give them their "bodily autonomy" to kill their unborn children. In half the country that has been stripped away. Pro-abortionists will fight to the death to get that right back. Even in conservative GOP states, expect state courts to impose limits on what pro-life legislators can do. The court must not be allowed to run rough-shod over the will of the people to impose abortion rights when the majority of legislators enact new laws that protect the lives of unborn babies. This 50-state war will probably be ugly and combative for the next several years. Pro-lifers must be as single-minded as ever to defend the lives of the unborn. Now is not the time to celebrate *Dobbs* and think we've suddenly won. We did not win because abortion is still legal. Now is the time to roll up our sleeves and get to work. Our battle at the state level has just begun.

**Kalamazoo Right to Life has a NEW PHONE NUMBER 269-615-2411**

# Michigan Pro-Lifers Gear Up to Defeat Pro-abortion Referendum

On July 11 the pro-abortion coalition Reproductive Freedom for All submitted over 753,000 signatures in its quest to amend the Michigan Constitution to legalize abortion up to viability. With that numerical cushion (it needed 425,000 signatures) it is almost assured that the State Board of Canvassers will certify the results and place the referendum on the November ballot.

Now the work begins. Right to Life of Michigan and the Michigan Catholic Conference have formed their own coalition: The Citizens to Support Women and Children. It's all hands on deck if we want to defeat this referendum. If we lose, every single pro-life law enacted in the last 40 years will be declared null and void. They include the embryo & fetal research ban, the ban on Medicaid-funded abortions, parental consent, abortion clinic regulations, informed consent, the born-alive infant protection law, the ultrasound viewing option, the partial-birth abortion ban, clinic reporting…and more!

The pro-abortion referendum people are well-funded with outside money in the millions. They have a huge war chest already and can spend money as they please.

**To win, our pro-life coalition needs to raise at least $25 million to wage an aggressive and sophisticated and competitive ad campaign with radio and TV commercials. Kalamazoo Right to Life members (and those receiving this newsletter via email or at kazoortl.org can play a pivotal role in that fundraising. Every bit helps! Let's all get on board and make a donation of any size. Make checks payable to Right to Life of Michigan and mail your very best donation to:**

**Right to Life of Michigan**
**PO Box 901**
**Grand Rapids, MI 49509-0901**

**Or you can donate to Kalamazoo Right to Life. We are part of the larger pro-life movement. Every donation will be set aside to defeat the Referendum. Make checks payable to Kalamazoo Right to Life. Our address is:**

**Kalamazoo Right to Life**
**PO Box 2366**
**Kalamazoo, MI 49003**

***Thank you for responding to this urgent need.***

# *Dobbs v. Jackson Women's Health* Rob Karrer

Note: The following is a summary of the controversial and historic 215-page *Dobbs v. Jackson Women's Health* decision. This article contains actual Supreme Court quotes so forgive me if this summary is too legalese. The *Dobbs* decision is so important I thought it necessary to let the Justices defend themselves with their own words.

Two points: First, this case originated in Mississippi where the state legislature enacted a bill [the Gestational Age Act] that prohibited abortions after the 15th week of pregnancy. This 15-week ban was a direct challenge to both *Roe v. Wade* and *Planned Parenthood v. Casey* which reaffirmed that a woman had an unrestricted right to terminate a pregnancy up to fetal viability (about 22-24 weeks gestation) and only after viability could state lawmakers assert a compelling interest in preserving the life of the developing fetus and enact restrictive laws except for a woman's life or health. Second, the final opinion written by Justice Sam Alito was almost word-for-word identical to the leaked draft that we quoted from and summarized in the May-June issue of the KRTL newsletter. Those portions are reprinted here as well.

The following is from Justice Alito's majority opinion:

"*Casey* threw out *Roe*'s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an 'undue burden' on a woman's right to have an abortion…the three Justices who authored [*Casey*] 'called the contending sides of a national controversy to end their national division' by treating the Court's decision as the final settlement of the question of the constitutional right to abortion. As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions." (p. 4)

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 contended 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 an 'unborn human being.'" (p. 5)

"*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.6)

To determine if the right to abortion was a fundamental right not mentioned in the Constitution, the Court "has long asked whether the right is 'deeply rooted in [our} history and tradition' and whether it is essential to our Nation's 'scheme of ordered liberty.'" Alito then investigated the historical roots of abortion in America. (p. 12)

"Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. 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…*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." (p, 15-16)

[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.]

For this portion of the opinion, Alito relied heavily on the 1,100- page book *Dispelling the Myths of Abortion History* by law professor Joseph Dellapenna. Dellapenna did extensive research on English court cases and discovered that abortion was a crime back to the 13th century.

"Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was permissible at common law—much less that abortion was a legal right." (p. 18)

"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. 19-20)

"The few cases available from the early colonial period corroborate that abortion was a crime." (p. 21)

"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)

"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. 25-26)

"Instead of following [common law] authorities [like Bracton, Coke, Hale and Blackstone who all wrote that a post-quickening abortion was a serious crime]… *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." (p. 26-27)

**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 deeply flawed. Moderate pro-choice law professor Joseph Dellapenna destroyed the Means thesis in his book *Dispelling the Myths of Abortion History*.**

"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. 29)

"What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely [privacy, contraception, interracial marriage] is something that both those decisions acknowledged: Abortion destroys what those decisions call 'potential life' and what the law at issue in this case regards as the life of an 'unborn human being'…None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion." (p. 32)

"The dissent is very candid that it cannot show that a constitutional right to abortion has any foundation, let alone a 'deeply rooted' one, 'in this Nation's history and tradition.' The dissent does not identify any pre-*Roe* authority that supports such a right—no state constitutional provision or statute, no federal or state judicial precedent, not even a scholarly treatise." (p. 35)

"The dissent has much to say about the effects of pregnancy on women, the burdens of motherhood, and the difficulties faced by poor women. These are important concerns. However, the dissent evinces no similar regard for a State's interest in protecting prenatal life. The dissent repeatedly praises the 'balance' that the viability line strikes between a woman's liberty interest and the State's interest in prenatal life. But for reasons we discuss later…the viability line makes no sense. It was not adequately justified in *Roe*, and the dissent does not even try to defend it today. Nor does it identify any other point in a pregnancy after which a State is permitted to prohibit the destruction of a fetus. Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth. The dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin." (p. 38)

"*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 to resolve the debate, but in doing so, *Casey* 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. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*…Together, *Roe* and *Casey* represent error that cannot be allowed to stand."(p. 44)

"Without any grounding in the constitutional text, history, or precedent, [*Roe*] imposed on the entire country a detailed set of rules much like one might expect to find in statute or regulation…This elaborate scheme was the Court's own brainchild. Neither party advocated the trimester framework, nor did either party or any amicus [friend of the court brief] argue that 'viability' should mark the point at which the scope of the abortion right and a State's regulatory authority should be substantially transformed." (p. 46-47)

"Roe featured a lengthy survey on history, but much of its discussion was irrelevant, and the Court made no effort to explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations [Greece and Rome] where infanticide was widely accepted…When it came to the most important historical fact—how the States regulated abortion when the 14th Amendment was adopted—the Court said almost nothing." (p. 47)

"Viability also depends on the quality of the available medical facilities. Thus, a 24-week old fetus may be viable if a woman gives birth in a city with hospitals that provide advanced care for very premature babies, but if the woman travels to a remote area far from any such hospital, the fetus may no longer be viable. On what ground could the constitutional status of a fetus depend on the pregnant woman's location? And if viability is meant to mark a line having universal moral significance, can it be that a fetus that is viable in a big city in the Unites States has a privileged moral status not enjoyed by an identical fetus in a remote area of a poor country? In addition, as the Court once explained, viability is not really a hard-and-fast line…. Is a fetus viable with a 10 percent chance of

survival? 25 percent? 50 percent? Can such a judgment be made by s State? And can a State specify a gestational age limit that applies in all cases? Or must these difficult questions be left entirely to the individual attending physician on the particular facts of the case before him? The viability line, which *Casey* termed *Roe*'s central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line. The Court thus asserted raw judicial power to impose, as a matter of constitutional law, a uniform viability rule that allowed the States less freedom to regulate abortion than the majority of western democracies enjoy. (p. 52-53)

"*Casey*'s 'undue burden' test has proved to be unworkable. 'Plucked from nowhere.'" (p. 62)

"The Court has no authority to decree that an erroneous precedent is permanently exempt from evaluation under traditional stare decisis [let the decision stand] principle." (p. 68)

"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." (p. 69)

Justice Kavanaugh wrote his own concurring opinion. After stating that both pro-choice and pro-life arguments are valid, Kavanaugh wrote: "The issues before this Court…is not the policy or morality of abortion. The issue before this Court is what the Constitution says about abortion. The Constitution does not take sides on the issue of abortion…" adding that "a right to abortion is not deeply rooted in American history and tradition…The Constitution is therefore neither pro-life nor pro-choice. The Constitution is neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the States or Congress." Because of this neutrality "the nine unelected Members of this Court do not possess the constitutional authority to override the democratic process and to decree either a pro-life or a pro-choice abortion policy for all 330 million people in the United States." Kavanaugh faulted the Court in *Roe* for "taking sides on the issue and unilaterally decree[ing] that abortion was legal…up to the point of viability…The Court's decision today does not outlaw abortion…On the contrary, the Court's decision properly leaves the question of abortion for the people and their elected representatives in the democratic process." (p. 5) "The Constitution does not grant [the Court] the unilateral authority to rewrite the Constitution to create new rights and liberties based on our own moral or policy views." (p. 8-9) While respecting the authors of the *Casey* opinion, and their effort to "locate some middle ground or compromise that could resolve this controversy for America…[it] has become increasingly evident over time *Casey*'s well-intentioned effort did not resolve the abortion debate. The national division has not ended. In recent years, a significant number of States have enacted abortion restrictions that directly conflict with *Roe*. Those laws cannot be dismissed as political stunts or as outlier laws. Those numerous state laws collectively represent the sincere and deeply held views of tens of millions of Americans who continue to fervently believe that allowing abortions up to 24 weeks is far too radical and far too extreme…In this case—26 [States] in all—ask the Court to overrule *Roe* and return the abortion issue to the States." (p. 9)

Chief Justice Roberts did not vote to overturn *Roe*, but did vote to uphold Mississippi's 15-week abortion ban. Roberts stated that when the Court agreed to hear *Dobbs* that it would decide one question: "Whether all pre-viability prohibitions on elective abortions are unconstitutional." The State of Mississippi agreed that its law was "an ideal vehicle" to overturn *Roe* and *Casey*. Wrote Roberts, "Today, the Court…rules for Mississippi by doing just that. I would take a more measured course. I agree with the Court that the viability line established by *Ro*e and *Casey* should be discarded…That line never made any sense…The right [to an abortion] should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further—certainly not all the way to viability. Mississippi's law allows a woman three months to obtain an abortion, well beyond the point at which it is considered late to discover a pregnancy. I see no sound basis for questioning the adequacy of that opportunity." (p. 1-2)

In not voting to overturn *Roe*, Roberts argued for judicial restraint. "If it is not necessary to decide more to dispose of a case, then it is necessary not to decide more." He spent the next three pages explaining why the viability line was wrong from the start, "and always…completely unreasoned, and fails to take account of state interests since recognized as legitimate." He added that "only a handful of countries, among them China and North Korea, permit elective abortions after twenty weeks; the rest have coalesced around a 12-week line." (p. 5)

Again, Roberts fell back on why *Roe* should not be reversed. "Here, there is a clear path to deciding this case correctly without overruling *Roe* all the way down to the studs: recognize that the viability line must be discarded…and leave for another day whether to reject any right to abortion at all." (p. 7)

Later he wrote, "The Court's decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases. A narrower decision rejecting the misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case." (p. 11)

Justices Gorsuch and Justice Barrett did not write concurring opinions Justice Breyer wrote the dissent, joined by Justices Kagan, and Sotomayor. Their arguments were pre*Roe* would strip away fundamental rights for women. Women would be forced to carry children they do not want. Alito's version of history was flawed and selective. The majority disregarded precedent established by *Roe* and reaffirmed in *Casey*. The ratifiers of the 14th Amendment did not understand the reproductive needs of women in 1868 because they were ALL MEN. Women were second-class citizens. Thus, women were not full members of the community and did not have equal rights. Wrote Breyer, "A woman's place in society had changed [since 1868] and constitutional law had changed along with it. The relegation of women to inferior status in either the public sphere or the family was no longer consistent with our understanding of the Constitution." (p. 15) Breyer challenged Kavanaugh's "neutrality" point, asking if the Justice would agree if some states banned guns snd others not? (p. 20) Breyer added tha t the Court was not neutral at all. It took sides "against women who wish to exercise the right, and for States (like Mississippi) that want to bar them from doing so." (p. 21)

Conclusion: Justice Alito's opinion is brilliant, well-written, easy to understand, thoughtful, and historically accurate. It puts to shame the *Roe* and *Casey* opinions for its common sense and clarity. *Dobbs v. Jackson Women's Health* is masterful! It will stand the test of time.

## August 2 Michigan Primary Results
## RLM-PAC candidates win!
## Tudor Dixon to face Whitmer for governor

Michigan's GOP voters selected Tudor Dixon getting over 40 percent of the vote in a crowded field of five candidates. Her closest rival received about 21 percent of the vote. In the 42nd State House race, incumbent Matt Hall easily won his race getting 71 percent of the GOP vote. In County Commission races, Wendy Mazer won her race to represent District 8 (Texas, Prairie Ronde, and Schoolcraft townships) by garnering 61 percent of the vote. For the non-partisan ballot, Rebecca D'Angelo finished first in votes (among six candidates) in her quest to become a Circuit Court judge. In November she will face off against the other top three challengers to decide who will fill two judicial vacancies. All these pro-life candidates will be on the November ballot and need your support. If this is going to be a wave election (defeating pro-abortion Democrats and electing pro-life Republicans…for a variety of reasons: abortion, gas prices, economy, southern border, baby food shortages, crime, fentanyl, school curriculum, gender issues, critical race theory, *Dobbs* decision, defund the police, etc.) then we must be engaged. Two major objectives this November: elect Tudor Dixon as governor, defeat the pro-abortion referendum. We must achieve those two goals! Every vote counts!! In this post-*Roe* environment your pro-life vote counts more than ever.

Kalamazoo Right to Life, Inc.
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# KRTL Annual Business Meeting

**September 19, 2022**

**Kalamazoo First Assembly of God (Connection Cafe)**

**5550 Oakland Dr., Portage, MI 49024**

**7 - 8 pm**

Everyone is encouraged to attend the annual meeting. Our slate of KRTL officers will be presented. Hear plans for the future and where we are headed post-Dobbs. We plan to invite local candidates or elected officials who are endorsed by Right to Life of Michigan PAC. Interact with local candidates. Time to ask pertinent questions. Enter the building at the door straight from the main drive. Turn right in the foyer. The cafe is on the right, halfway down the hallway. Light refreshments will be served.

**KRTL Officers for 2022-2023**

*President: Jean Talanda*
*Vice President: Rob Karrer*
*Treasurer: Candy Courtney*
*Secretary: Ann Brissette*