

WHERE THE SPIRIT OF THE LORD IS, THERE IS LIBERTY. —2 CORINTHIANS 3:17



The Fight for Life Erupts in the States

In one momentous, historic moment — 49 years in the making — the Supreme Court overturned the bloody reign of *Roe v. Wade* in the 5-4 ruling for *Dobbs v. Jackson Women’s Health Organization*. For almost five decades, *Roe* became the legal justification for the death of 63 million babies in the United States in the wake of the unfounded legal decision handed down in 1973. Following the historic *Dobbs* decision on June 24, a firestorm of legislative and legal battles have erupted in Congress and in more than a dozen states. To understand why the legal landscape is changing daily in the states, it’s important to know why the Supreme Court overturned *Roe* in the first place.

“No Constitutional Basis”

The abortion decisions, specifically *Roe v. Wade* and *Planned Parenthood v. Casey*, did incalculable damage to the Supreme Court’s integrity because they were wrongly decided and had no connection with the Constitution.

In the 79-page *Dobbs* opinion, Justice Samuel Alito wrote, “*Roe* was egregiously wrong from the start. We hold that *Roe* and *Casey* must be overruled. It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”

The opinion continues: “*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.”

In the conclusion of the opinion, the High Court relinquishes the federal government of its responsibility to regulate abortion, sending future decisions back to the states.

“We end this opinion where we began. Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.”

Understanding States’ Pre-Roe Bans and Trigger Laws

Post *Roe*, about half the states are moving to ban abortion or significantly limit it. The same day *Roe* was overturned, 13 states were ready and waiting to pull the trigger to enact preexisting laws. A trigger law is a law that is unenforceable but may achieve enforceability when a specific change in circumstance occurs. In the case of abortion, the “specific change in circumstance” was the Supreme Court’s overturn>>



SCOTUS Rules 9-0 to Let Freedom Fly in Boston Christian Flag Case

The far-reaching impact of the *Shurtleff* decision

The *Shurtleff* decision is unanimous affirmation that the First Amendment Free Speech Clause protects religious viewpoints. Conversely, it is a unanimous rejection of the Lemon Test, which Justice Gorsuch described as an opinion issued in a “‘bygone era’ when this Court took a more freewheeling approach to interpreting legal texts.”

The Lemon Test has been a favorite weapon used by those who oppose religious symbols, display and speech. The *Shurtleff* case represents a historic shift in which the Court is trending to a more originalist interpretation of the Constitution.

The *Shurtleff* case would likely have had a different outcome during the era of judicial activist Justices. That trend began to change after

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the Supreme Court's 1990 decision in *Employment Division v. Smith*, which weakened the Free Exercise Clause. In response to this decision, attorney Jay Sekulow and I independently began to pioneer a new approach to protect religious free exercise and speech by using the Free Speech Clause.

Whether a private display of a nativity scene, a religious symbol or speech, we gradually began winning under the Free Speech Clause. When schools censored afterschool Bible clubs or religious meetings in secondary schools and on college campuses, we won by arguing the Free Speech Clause prevents government from excluding religious speech and viewpoints. We extended these victories to the elementary school level with the Good News Club case at the Supreme Court in 2001.

Each precedent was built upon another. Collectively, these precedents began chipping away at the Lemon Test that had frequently been used against religious expression.

The amazing thing about the *Shurtleff* case is that the ruling was unanimous. Justice Gorsuch captures this significance when he writes: "Not a single Member of the Court seeks to defend Boston's view that a municipal policy allowing all groups to fly their flags, secular and religious alike, would offend the Establishment Clause."

Reason to Rejoice

This momentous Supreme Court decision soundly affirmed that religious viewpoints are not an orphan of the First Amendment. As Justice Kavanaugh said in his concurring opinion, "Under the Constitution, a government may not treat religious persons, religious organizations, or religious speech as second-class." **LC**

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of *Roe v. Wade*. The states with trigger laws are Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah and Wyoming.

A "pre-*Roe* ban," on the other hand, refers to states that had laws banning abortion dating prior to the *Roe v. Wade* decision. As of the start of June, nine states had pre-*Roe* abortion bans in place: Alabama, Arizona, Arkansas, Michigan, Mississippi, Oklahoma, Texas, West Virginia and Wisconsin.

In Arkansas, Missouri, South Dakota and Wisconsin, restrictive abortion laws went into effect right after the court handed down its ruling. To understand how intense the battle in the states is (and will be going forward), look no further than Wisconsin. The state's legislature intercepted a ploy by its Democratic governor by ending a special session called to repeal a 19th-century abortion ban that remains on the books. Because of the legislature's decision, the 1849 state law is allowed to take effect after the High Court's decision on *Dobbs*. Additionally, Mississippi's trigger law was certified on June 27 by Republican Attorney General Lynn Finch enacting a near total ban on abortion on July 7. The last abortion clinic in Mississippi, Jackson Women's Health Organization, which brought the *Dobbs* case, has now closed.

Wyoming, North Dakota, Idaho and Tennessee await state action following the Supreme Court decision. These states are set to have stricter abortion bans and policies in place no later than 60 days from now.

Overcoming Legal Challenges

Oklahoma is one of the latest states to confront legal challenges. Abortion clinics in the state are asking the state Supreme Court to block an abortion law enacted earlier this year along with a pre-abortion ban dating back more than 100 years. In May, the state prohibited abortion at the point of fertilization, except for rape and incest.

Behind Oklahoma, two states —



Louisiana, Utah and Kentucky — face related legal hurdles where courts have temporarily blocked statewide abortion bans. On Friday, July 8 in Louisiana, a judge ruled that a lawsuit to block the ban needed to be heard in another court, so Louisiana's trigger ban is now in effect.

Other recent wins can be found in Florida, Mississippi, Ohio and Texas, which are the latest states to enact abortion bans after overcoming legal challenges. Florida's 15-week abortion ban is now in effect after a court order blocking its enforcement was put on hold this week. Mississippi enacted a near-total abortion ban after a judge denied an injunction to stop it from taking effect. The ban prompted the state's sole abortion provider to close its doors. In Texas, the Lone Star State's high court has allowed a pre-*Roe* ban to go into effect, while Ohio's top court declined to block the state's heartbeat bill, which bans abortion when a heartbeat is detected, usually around six weeks.

One of the most common tactics to slow down the pro-life ripple effect of the *Dobbs* decision is for challengers to request that state courts issue "emergency" temporary restraining orders or "holds" on pro-life legislation from going into effect. The states fighting those challenges right now are Texas, Alabama and South Carolina.

In light of the historic win overturning *Roe v. Wade* at the Supreme Court, the fight to protect human life will intensify. For some states, the battle has just begun. This is a historic opportunity that we have worked to achieve for many decades. Pro-life advocates must be engaged at all levels across the country to protect the sanctity of human life and end the terrible scourge of abortion. **LC**

**LET
FREEDOM
FLY**

