The Washington Flyer
July 1, 2022

"I've noticed that everyone who is for abortion has already been born."
Ronald Reagan

Life Is Protected—*Roe v. Wade* Overturned by the Supreme Court

In a historic decision, the U.S. Supreme Court overturned the infamous *Roe v. Wade* decision. The opinion begins: "The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives." The case in question was *Dobbs v. Jackson Women's Health Organization,* a case which originated in Mississippi and challenged the 2018 state law which banned abortion at 15 weeks. When *Roe v. Wade* was decided in 1973, the court ruled that abortion was legal up until viability, when an unborn baby can survive outside the womb, generally thought to be around 24 weeks gestation. However, as pointed out by Tom Jipping of the Heritage Foundation, the issue of viability was "made up" by the Court in 1973, as it was not part of the arguments included in the original *Roe* case. With Mississippi's law banning abortions after 15 weeks, the abortion clinic Jackson Women's Health Organization sued the state, claiming the law was unconstitutional based on the viability issue laid out in *Roe.* The U.S. Supreme Court upheld Mississippi's law, recognizing a state's right to create its own laws regarding the issue of abortion, and in so doing, overruling the *Roe v. Wade* decision.

The decision to uphold Mississippi's law was 6-3, but the decision to overturn *Roe* was 5-4 with Chief Justice John Roberts writing his own opinion, asserting his belief that upholding Mississippi's law does not require overturning *Roe v. Wade.* In his words, "My point is that *Roe* adopted two distinct rules of constitutional law: one, that a woman has the right to choose to terminate a pregnancy; two, that such right may be overridden by the State's legitimate interests when the fetus is viable outside the womb. The latter is obviously distinct from the former. I would abandon that timing rule, but see no need in this case to consider the basic right." However, the majority opinion, written by Justice Alito, states that "*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." The dissenting opinion, submitted by Justices Elana Kagan, Sonia Sotomayor, and Stephen Breyer charge that the ruling hurts women's rights and will affect other rights which have been declared constitutional by the High Court, such as contraception and gay marriage. However, the majority opinion debunks this claim, explicitly stating, "*Roe*'s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called 'fetal life' and what the law now before us describes as an 'unborn human being.'" Notably, as Tom Jipping points out, abortion supporters who are upset about the ruling never mention that fact that abortion involves a baby. The issue now rests in the hands of state legislatures elected by the people. Reportedly, 26 states are currently poised to prohibit abortion in some way since *Roe* has been overturned, including 13 states which had passed "trigger laws" to go into effect upon the reversal of *Roe.* Over 63 million babies have been lost to abortion since the tragic *Roe* decision; the *Dobbs* ruling is indeed a monumental victory for life, providing increased opportunity for people to fight on the state and local level to ensure life is protected at all stages.

Supreme Court Upholds Religious Liberty and Free Speech

In another win for religious liberty, the Supreme Court ruled to uphold First Amendment rights in *Kennedy v. Bremerton School District*, often referred to as the "Coach Kennedy Case." Coach Kennedy, along with First Liberty Institute, brought the case against the Washington school district in 2016 when Bremerton High School suspended and later fired Coach Kennedy for praying briefly at the fifty yard line after football games during the 2015 football season, a practice he had observed after every game for all seven years of his coaching career. The school district claimed that as an employee of a public school, and thus a government employee, his private prayer could be seen as government establishing religion and was a violation of the separation of church and state. But Coach Kennedy filed the lawsuit on the grounds that this discrimination towards his expression of his religious beliefs was a violation of his constitutional rights to observe personal religious practices. The 6-3 decision authored by Justice Neil Gorsuch determined that Coach Kennedy should be allowed to pray at football games and that the school district had "a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination." The case is especially important because it effectively undoes the Lemon test, the test by which the Court has determined Establishment Clause cases—often against religious liberty—over the past fifty years. Coach Kennedy's win helps set a new precedent for religious expression cases and provides a better way to interpret Establishment Clause cases according to the Constitution. *By AACS summer intern Kaylee Soule*

Department of Education Proposes New Regulations for Title IX

On Thursday, June 23, to commemorate the 50th anniversary of Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act being passed into law, the Department of Education released its much-anticipated Title IX proposed rules. The proposed rules expand the definition of *sex* in Title IX to "provide greater clarity regarding the scope of sex discrimination, including recipients' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity." The regulations would require federally funded K–12 schools and colleges to affirm the gender identity of students by allowing them to participate in programs, including athletics, that align with their identity rather than their sex. It also prohibits those schools from discriminating against students based on their pregnancy status or "pregnancy-related conditions," which likely encompasses abortions. The Department admits that "the understanding of Title IX has evolved through judicial interpretation," notably through the Supreme Court's 2020 decision in *Bostock v. Clayton County* that opened the door for the government to include sexual orientation and gender identity in bans on sex discrimination in federal law, but it does not add any clarity on how the religious exemption in Title IX will be viewed. The regulations also walk back the Trump administration's clarifications in its 2020 rules that secured greater due process rights for students accused of sexual harassment. Once the rules are published in the Federal Register, there will be a 60-day comment period open to the public. The AACS will prepare public comments urging the Department to protect the religious exemption in Title IX that is vital to the ability of Christian institutions of higher education to pursue their religious mission.

In Case You Missed It:

Weekly Market Update provided by Jeff Beach of the AACS Investment Team at Merrill Lynch

Practical Legal Help for Christian Schools: ADF Ministry Alliance

Promise to America's Children

Jamison Coppola: Government Relations Director
Maureen Van Den Berg: Policy Analyst
Hannah DeBruler: Government Relations Assistant
Washington Office, 119 C Street SE, Washington, DC 20003
Phone: 202.547.2991