MEMORANDUM

From: R. Martin Palmer, Jr. Attorney admitted to practice before the United States Supreme Court

Re: Analysis of leaked draft of Supreme Court opinion in Mississippi case (Dobbs v. Jackson Women's Health)

Date: May 25, 2022

Note: Excerpts from draft opinion in regular type. *Comments of Attorney R. Martin Palmer, Jr. are in italic*

The draft opinion itself is 67 pages in length with 21 pages of appendixes and footnotes for a total of 98 pages all together. (Truth can be said in short words. It takes a lot of words to beat around the bush.)

The court reverses and strikes down Roe and Casey, but leaves nothing in place to protect preborn children. They do away with the bad, but leave a vacuum for the States to fill. Having come to a fork in the road, they could have taken the next logical step and declare a right to life for preborn children from conception under our nation's Constitution and Declaration of Independence, the **CHARTER** of our nation. (Justice Alito mistakenly refers to the Constitution as our nation's charter on Page 36 ¶ 1 of the opinion. The Declaration of Independence is the charter. The Constitution is our bylaws.)

The Declaration of Independence is declaring what is self-evident under the Creator who endowed the right and the right is to be ensured for the entire nation, not just the people of a State or States. Nowhere in the document is it considered a prerogative of the States. Rather than accept their responsibility to take the next logical step in line with this charter, the court chose to get down Pontius Pilate's bowl, wash their hands of the matter and pretend that the killing of preborn children is a "state's rights" matter.

They failed to finish the job. They have left the States to fight it out amongst themselves and later in the opinion they even close off any reconsideration of the shirking of their duty.

Curiously, since the draft court opinion was leaked two things dealing with the sanctity of human life have surfaced in the news:

1. The legislature of the State of Oklahoma passed and the governor recently signed a law protecting the lives of preborn children from conception (the only exceptions being rape and incest).

2. Another horrific shooting of elementary school children bringing the nation to tears and on their knees in prayer. We mourn and weep over children we do not know just as God weeps over murdered preborn children, all of whom He knows.

The school shooting reminds us of the preciousness and sanctity of innocent human life and the reason for the Commandment Thou Shalt Not Kill.

The new Oklahoma law reminds the Supreme Court of what can and must be done to protect the innocent lives of preborn children. They may do so by appealing to the law above the law - the natural law. They can appeal to our Declaration of Independence – the God given unalienable right to life and liberty

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--**That to secure these rights, Governments are instituted among Men…"**

To turn the matter back to the States is to reject God and God given unalienable rights and instead pass the matter off to the political process. The court is about to hand down only half a loaf. We must pray that the Justices will yet revise the draft opinion to delete all language passing the buck back to the States and instead uphold the right to life for preborn children throughout the States. They can take judicial notice of the recently passed Oklahoma law and comment upon it as being in accord with what would then be a 'revised draft' of the court opinion.

The court speaks of our **'national heritage and traditions'**. Is not the Declaration of Independence a part of our history? It began our history! Indeed, many people consider it inspired. That which God inspired to begin the history of the nation can and must be applied that nation's history. The words of equality in our Declaration of Independence applied to the women's suffrage movement. They applied to the Civil Rights movement. They apply to our nation's greatest civil rights movement – the right to life under our nation's Declaration of independence which in truth is

a declaration of dependence upon God. This blot on our nation's soul must be washed clean (2 Chronicles 7:14).

The **SIN** of abortion (the killing of our nation's own Posterity) must be purged from our land. Just as our forefathers took down their quill pen and wrote the inspired words of the Declaration of Independence, so our present Supreme Court needs to take down their own quill and under the words of our own Declaration of Independence **"secure this right to life".**

We must rely upon the shed blood of Christ to purge and cleanse our nation of this most grievious sin. The court has acknowledged that Roe was an 'egregious error'. Do we call the killing of 20 elementary school children by a shooter an 'egregious error' on the killer's part? **NO!** We call it murder.

Roe was the use of 'raw judicial power' (called such by Justice Byron White in his dissent to Roe). Killing 60 million innocent preborn children – a blot on our nation's soul – is **Sin,** a breaking of the Commandment *Thou Shalt Not Kill.*

The nation's high court must strike down Roe and Casey and in overturning Roe and Casey must itself find a right to life of all preborn children (we are created equal – created refers to conception). The culture of death has been replaced by the culture of life – evil has been replaced by good. The unalienable right to life is upheld!

Notes on Reading Associate Justice Alito's leaked draft of Supreme Court Opinion in the Mississippi Case

Page 5, ¶ 2

"We hold that Roe and Casey must be overruled".

Page 5, ¶ 3

"Indeed, when the 14th amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy."

Page 6, ¶ 1

"Roe was egregiously wrong from the start."

Page 6 ¶ 4 to Page 7, ¶ 1

The Supreme Court points out that the Mississippi legislature made a series off factual findings to support the new law they were about to pass.

"The legislature then found that at five or six weeks gestational age an "unborn human being's heart begins beating"; at eight weeks the "unborn human being begins to move in the womb" at nine weeks "all basic physiological functions are present;" at ten weeks "vital organs begin to function," and "[hair, fingernails, and toenails begin to form;" at eleven weeks "an unborn human being's diaphragm is developing," and he or she "may move about freely in the womb;" and at twelve weeks the "unborn human being" has "taken on the human form in all relevant respects."

Page 8, ¶ 4

The court "examines "whether a 'right to abortion' is rooted in our nation's history and tradition and whether it is an essential component of what we have described as "ordered liberty".

Page 11, ¶ 5

"In deciding whether a right falls into either of these categories, 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."

This same analysis can be employed to decide whether the right to life and liberty declared in the Declaration of Independence is rooted in our nation's scheme of ordered liberty.

The deprivation of life (abortion) extinguishes the possibility of 'liberty'. Life and liberty are declared to be unalienable rights in the Declaration of Independence, and are "deeply rooted" in our history and tradition and are an essential part of our nation's scheme of liberty.

In summary, in using this analysis to bring down Roe and the right to abortion, the court stopped short of using this identical analysis to guarantee the right to life of preborn children from conception and hold that no legislature has the right to set aside unalienable rights. Such a finding by the court would protect preborn

children's right to life from conception and would protect all life from conception to natural death (not to have euthanasia).

Page 14, ¶ 2

"..the 14th amendment does not protect the right to an abortion."

Page 15, ¶ 1

"Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. Zero."

Page 15 ¶ 2

"abortion had long been a **crime** in every single State"

Page 16 ¶ 1

"Roe either ignored or misstated this history, and Casey declined to reconsider Roe faulty historical analysis. It is therefore important to set the record straight."

The court is essentially saying "Oops, the court made a mistake. Sorry about the 60 million (preborn children killed since Roe's inception).

This time around the court must not be allowed to get down Pontius Pilate's bowl, wash their hands of the matter and send it back to the States. Such a decision would only be half a loaf. The court has now admitted that Roe was an "egregious error". They are essentially saying that the lives of 60 million children were snuffed out due to this error of the court.

Given the blot of sin that the court has brought upon the nation's soul, it is not enough to repent and leave in place a license to continue to sin on the part of some states.

Page 20 ¶ 2, page 21 ¶ 1

"The few cases available from the early colonial period corroborate that abortion was a crime…. In Maryland in 1652, for example, an indictment charged that a man "Murtherously endeavoured to destroy or Murther the Child by him begotten in the Womb."

Page 23 ¶ 2

"In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. See Appendix A (listing state statutory provisions in chronological order)."

Page 24 ¶ 3

"The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions."

It follows that the right to life is deeply rooted in our nation's history and traditions and therefore the preborn child has a right to life from conception. Life begins, like everything else, at the beginning.

Page 29 ¶ 1

",,,at the time of the adoption of the Fourteenth Amendment, over three quarters of the States had adopted statutes criminalizing abortion (usually at all stages of pregnancy)…"

Page 29 ¶ 2

"There is ample evidence that the passage of these laws was 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.

Page 29 ¶ 3

"ONE MAY DISAGREE WITH THIS BELIEF (AND OUR DECISION IS NOT BASED ON ANY VIEW ABOUT WHEN A STATE SHOULD REGARD PRENATAL LIFE AS HAVING RIGHTS OR LEGALLY COGNIZABLE INTERESTS)…" but even Roe and Casey did not question the good faith of abortion opponents. See, e.g, Casey, 505 U.S, at 850 ("Men and women of good conscience can disagree... about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage.")."

After reviewing quickening under the common law "when the child was felt to move in the womb" being the point after which it would be considered murder to

kill the child, and catapulting into the 21st century when ultrasound has put windows on the womb and medical science and genetics teaches that everything is present from the beginning (the moment of conception) to build the new human being we will call Mary, or Peter or Paul; to build even the human brain capable of putting a man on the moon – we see that it was all there in the very beginning, nothing is added. In light of this understanding of which the court can take judicial notice, the court currently concedes at the 29th page of a 98 page opinion "our decision is not based on any view of about when a state should regard prenatal life as having rights or legally cognizable interests"

The court, after going to great lengths to review the history of the law going back to Blackstone prior to the settlement of the New World and to explain that the common law treated abortion as murder, the court is willing to allow the States to pass statutes legalizing murder and in so doing they are disrespecting and disavowing our nation's own Declaration of Independence and the truth of medical science and genetics and the unalienable gift of a right to life given from the outstretched hand of God.

Page 33 ¶ 3

"Americans who believe that abortion should be restricted press countervailing arguments"

Page 34 ¶ 1

"They also claim that many people now have a new appreciation of fetal life and when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son."

No doubt, many of the current judges on the court have seen sonograms of their own children or grandchildren, yet they would willingly allow the States to murder children simply because they are not their own children or grandchildren? The judges have received a spirit of fear.

Pontius Pilate, feared (or wanted to please) the crowd that was yelling "Crucify Him! Crucify Him!" He had received a spirit of fear. He had the power to say not only that he found no fault in this man, Jesus, but he could have gone on to order a legion of his army to escort Jesus to safe territory. Yet he said "I wash my hands of the death of this innocent man." Looking out over the crowd, he essentially said "Do what you want." He took a bowl and washed his hands of the matter.

Our U.S. Supreme Court has received a spirit of fear. And they are trying to please both sides of the aisle by allowing states that wish to do to continue to legalize abortion. They are essentially saying "This would be murder if it was my own child or grandchild, but if you wish to crucify and dismember your own children, do what you want. We wash our hands of it." Why does this remind us of the old politician's line "While I would not have an abortion myself, nor do I personally approve of abortion, I support the right of others to have an abortion if they so choose."

In the 49 years since Roe was handed down, love has won out. Love for preborn children has been displayed in countless prayerful protests in front of American abortuaries allowed to operate under the egregious error of Roe. Love has won out in Washington with the peaceful March for Life these past 48 years. Throughout this entire time, there was no 10 ft. fence, until recently, around the United States Supreme Court. The grass was mowed and the flowers and hedges bloomed and except for clearing a metal detector at the main entrance, school children and the public were free to come and go and tour the court, including getting in line on a first come first served basis to be seated and attend oral arguments in the court.

In the pasted, those who championed the 'right' to kill preborn children pointed to the court as having the final say. They have taken the egregious error of the court and have used it to kill (murder) 60 million preborn children.

As long as the court agreed with what they were doing, they held the court on a pedestal as the final arbiter of right and wrong demanding that we all respect the court. But as soon as there was the least hint (a leaked Supreme Court opinion) that the court is about to take a stand for preborn children, fencing and barbed wire comes up around the court because they threatened to storm the court and burn it down. The judge's home addresses are put up on the internet. People are encouraged to demonstrate in front of their private homes and the pro-aborts in Congress threaten to pack the court.

Page 35 ¶ 2

"We have long recognized, however, that stare decisis is "not an inexorable command,"

'Stare decisis' is of course the doctrine that past decisions of the court should ordinarily stand.

Page 36 ¶ 1

"But when it comes to the interpretation of the Constitution—the "great **CHARTER OF OUR LIBERTIES,**",,,

"We place a high value on having the matter settled right. Therefore, in appropriate circumstances we must be willing to reconsider and if necessary overrule constitutional decisions."

Page 61 ¶ 2

"Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office."

We know, in the 21st century, that life begins, like everything else, at the beginning. The unalienable right to life (and not to be murdered) is not something that should be taken out of the "hands off" category and thrust back into the political process.

Page 62 ¶ 2

"Having shown that traditional stare decisis factors do not weigh in favor of retaining Roe or Casey, we must address one final argument,,,"

Page 62 ¶ 3

The American people's belief in the rule of law would be shaken if they lost respect for this court as an institution that decides important cases **BASED ON PRINCIPLE** not "social or political pressures".

*The court should go on to hold themselves to **PRINCIPLE** as stated. The principle here is the unalienable right to life. If the court is to retain respect, it must stand for the preborn child across the board and uphold the child's right to life under the Declaration of Independence (really a declaration of **DEPENDENCE** upon God).*

If the court stands with the preborn children, will it be castigated? Will there be demonstrations in front of their homes? Will there be violent demonstrations in

front of the court and throughout the nation? Yes, but this is the price the court must be willing to pay for the court to continue to be respected and America continue to be the shining light on a hill to the world that it has been.

Following Roe, other nations of the world legalized abortion. In more recent times even Ireland.

Page 65 ¶ 1

"We do not pretend to know how our political system or society will respond to today's decision overruling Roe and Casey… We can only do our job, which is to interpret the law, apply longstanding principles of stare decisis, and decide this case accordingly.

Page 65 ¶ 2

"We therefore 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."

Abortion is a polite term for the killing (murder) of a preborn child. The court just as well may have said "the authority to regulate the killing of preborn children must be returned to the people under their elective representatives."

WHAT A SHAMEFUL THING THEY ARE DOING! A SPIRIT OF FEAR HAS BROUGHT IT ABOUT. THEY HAVE FOUND PONTIUS PILATE'S BOWL AND ARE COWARDLY WASHING THEIR HANDS OF THE FUTURE BLOOD OF PREBORN CHILDREN.

Page 65 ¶ 5

"IT FOLLOWS THAT THE STATES MAY REGULATE ABORTION FOR LEGITIMATE REASONS, AND WHEN SUCH REGULATIONS ARE CHALLENGED 'UNDER THE CONSTITUTION, COURTS CANNOT "SUBSTITUTE THEIR SOCIAL AND ECONOMIC BELIEFS FOR THE JUDGMENT OF LEGISLATIVE BODIES…THAT RESPECT FOR A LEGISLATURE'S JUDGMENT APPLIES EVEN WHEN THE LAWS AT ISSUE CONCERN MATTERS OF GREAT SOCIAL SIGNIFICANCE AND MORAL SUBSTANCE."

Translated, what they are saying is "We are sending this back to the States. Let the States do what they want. We are out of it. We don't want to hear any more about it." If States pass laws legalizing partial birth abortion and even infanticide, and if the law is appealed to the Supreme Court, the court will simply point to page 65 of this opinion in which they said that "legislature's judgment applies even when the laws at issue concern matters of great social significance and ***moral substance****."*

The Supreme Court needs to revise this draft opinion before it's too late. And they need to delete entirely such language as is found on page 65. The court must do its duty and hold fast to the golden thread of life that permeates all of life. Once that golden thread is pulled, the entire garment of life becomes unraveled.

The theologian Frances Schaffer and Surgeon General Koop (under the Reagan Administration) went together on a book called "Whatever happened to the Human Race?" In the book, they explained that it all started in Nazi Germany with the legalization of abortion. It then spread to the handicapped newborn; then the Gypsies; then the Slavs; then eventually the politically unfit while euthanasianists taught the Nazis how to build the crematoriums.

Dr. Jerome Lejeune pointed out that following the Second World War, we had a representative at the Nuremburg trials who spoke 5 languages. He returned to say "It all started in Germany when it was decided that there is such a thing as a life not worth living."

The Supreme Court must not pass the buck back to the States because of their own cowardice. They must stand with preborn children created in the Image of God. The culture of death in our nation is already advocating for the legalization of infanticide and euthanasia. The States will soon fall prey to the slippery slope.

The court must stand on our Declaration of Independence, an inspired document which upholds unalienable rights deemed to be self-evident including the rights to life and liberty, and so standing, they need to hold fast to the golden thread of the sanctity of life that permeates all of the fabric of life. If that thread is allowed to be pulled, all of the fabric of life will become unraveled.

Page 67 ¶ 2

The draft opinion concludes with these words:

"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 clected representatives."

"The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered."

It is not too late for the court. The good that could come out of this leaked draft opinion is that the court could revise its opinion to take out any language that gives the States carte blanche authority to legalize the killing of preborn children in the future. Having done so, they have overturned Roe and Casey with the rest of the verbage of the opinion. The court then has a golden opportunity (we are at a tipping point for our nation) to revise the concluding paragraph of the opinion to read something like the following:

'We end this opinion where we began. ***ABORTION PRESENTS A PROFOUND MORAL QUESTION.*** *We hold that Roe was egregiously wrong. It follows that Roe was egregiously* ***MORALLY*** *wrong in that it has allowed the killing of an estimated 60 million preborn American children. Our Declaration of Independence speaks of the "laws of nature and nature's God" referring to the 'law above the law', the law beyond the province of this court or any legislature. The Declaration of Independence proclaims that "all men are created equal and endowed by their Creator with certain unalienable rights, and among these are the right to life, liberty and the pursuit of happiness." We hereby hold that every human being from the moment of creation (conception) is protected by the unalienable right to life, liberty and the pursuit of happiness.*

The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion…

It is so ordered.