GLOBAL LIFE CAMPAIGN™

Louisiana Constitution & Law v. U.S. Supreme Court (Part 4)

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The GLC Series this week, focusing on the *Sanctity of Human Life*, continues with Part 4 of the review of the recent U.S. Supreme Court case, *June Medical Services LLC* v. *Russo, Interim Secretary, Louisiana Department of Health and Hospitals*. Today we focus on Justice Samuel Alito's dissent. I had assumed that he was both conservative and pro-life. Both his judicial record and his words below reveal that he is conservative in multiple ways, but not that he is committed to protecting children in the womb.

Justice Alito wrote his own dissenting opinion, in which Justice Gorsuch joined. Justice Thomas also joined, "except as to Parts III-C and IV-F," and Justice Kavanaugh joined "as to Parts I, II, and III." These excerpts reveal his thinking and bring clarity to important issues and errors in this case:

> "(T)he abortion right recognized in this Court's decisions is used like a bulldozer to flatten legal rules that stand in the way. . . .
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> "Both the plurality and THE CHIEF JUSTICE hold that abortion providers can invoke a woman's abortion right when they attack state laws that are enacted to protect a woman's health. Neither waiver nor *stare decisis* can justify this holding, which clashes with our general rule on third-party standing. And the idea that a regulated party can invoke the right of a third party for the purpose of attacking legislation enacted to protect the third party is stunning. Given the apparent conflict of interest, that concept would be rejected out of hand in a case not involving abortion."
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> **I.** "Under our precedent, the critical question in this case is whether the challenged Louisiana law places a 'substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.' . . . If a law like that at issue here does not have that effect, it is constitutional. . . .
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> "(A)bortion providers . . . expect . . . to be free from burdensome regulations. But unless an abortion law has an adverse effect on women, there is no reason why the law should face greater constitutional scrutiny than any other measure that burdens a regulated entity in the name of health or safety. . . . (A)bortion providers [want] an unjustifiable advantage over all other regulated parties . . . .
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> "*Casey* also rules out the balancing test adopted in *Whole Woman's Health*. *Whole Woman's Health* simply misinterpreted *Casey*, and I agree that *Whole Woman's Health* should be overruled insofar as it changed the *Casey* test. Unless *Casey* is reexamined—and Louisiana has not asked us to do that—the test it adopted should remain the governing standard."
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> **II.** ". . . (T)here is ample evidence in the record showing that admitting privileges help to protect the health of women by ensuring that physicians who perform abortions meet a higher standard of competence than is shown by the mere possession of a license to practice. In deciding whether to grant admitting privileges, hospitals typically undertake a rigorous

investigative process to ensure that a doctor is responsible and competent and has the training and experience needed to perform the procedures for which the privileges are sought. As the Fifth Circuit explained, 'hospitals verify an applicant's surgical ability, training, education, experience, practice record, and criminal history. These factors are reviewed by a board of multiple physicians.' . . .

"Hospitals look beyond the mere possession of a license, and they do that for very obvious reasons. If nothing else, their review process serves the hospitals' interests by diminishing the risk of awards for malpractice committed by doctors practicing on their premises. . . .

"The record shows that the vetting conducted by hospitals goes far beyond what is done at Louisiana abortion clinics. Some clinics demand nothing more than possession of a license. . . .

"In light of these practices [multiple examples cited], it is no surprise that the Louisiana Department of Health has issued Statements of Deficiency against abortion facilities for failing to adopt 'a detailed credentialing process for physicians,' failing to investigate 'possible restrictions' on physicians' licenses, and failing to look into 'evidence of prior malpractice claims/settlements.'

"Louisiana adopted Act 620 in the aftermath of the Kermit Gosnell grand jury report, which expounded on the failures of regulatory oversight that allowed Gosnell's practices to continue for an extended period. . . . The grand jury concluded that closer supervision would have uncovered Gosnell's egregious health and safety violations. Gosnell had a medical license, but it is doubtful that any hospital would have given him admitting privileges.

"In sum, contrary to the plurality's assertion, there is ample evidence in the record showing that requiring admitting privileges has health and safety benefits. . . .

"For these reasons, both the plurality and THE CHIEF JUSTICE err in concluding that the admitting-privileges requirement serves no valid purpose."

III. "They also err in their assessment of Act 620's likely effect on access to abortion. They misuse the doctrine of *stare decisis* and the standard of appellate review for findings of fact."

A. "*Stare decisis* is a major theme in the plurality opinion and that of THE CHIEF JUSTICE. Both opinions try to create the impression that this case is the same as *Whole Woman's Health* and that *stare decisis* therefore commands the same result. In truth, however, the two cases are very different. While it is certainly true that the Texas and Louisiana statutes are largely the same, the two cases are not. . . . There is no reason to think that a law requiring admitting privileges will necessarily have the same effect in every state. . . ."

B.2. "The District Court ignored a factor of the utmost importance, the incentives of the doctors in question.

"When the District Court made its assessment of the doctors' 'good faith,' enforcement of Act 620 had been preliminarily enjoined, and the doctors surely knew that enforcement would be permanently barred if the lawsuit was successful. Thus, the doctors had everything to lose and nothing to gain by obtaining privileges. . . .

"If these doctors had secured privileges, that would have tended to defeat the lawsuit. ..."

B.3. "Not only did the District Court apply the wrong test, but the evidence in the record fails to show that the doctors made anything more than perfunctory efforts to obtain privileges. . . . [and] the record does not show that Act 620 would drive any of these doctors out of abortion practice . . ."

[Justice Thomas did not concur in this section C of Part III.]

C. "The Court should remand this case for a new trial under the correct legal standards."

[Justice Kavanaugh only concurred in Parts I, II, & III above, and did not concur in this Part IV.]

IV. "On remand, the District Court should not permit June Medical to assert the rights of women wishing to obtain an abortion. . . . Indeed, what June Medical seeks is something we have never allowed. It wants to rely on the rights of third parties whose interests conflict with its own."

B. "This case features a blatant conflict of interest between an abortion provider and its patients. Like any other regulated entity, an abortion provider has a financial interest in avoiding burdensome regulations such as Act 620's admitting privileges requirement. Applying for privileges takes time and energy, and maintaining privileges may impose additional burdens. . . . Women seeking abortions, on the other hand, have an interest in the preservation of regulations that protect their health. The conflict inherent in such a situation is glaring. . . .

"When an abortion regulation is enacted for the asserted purpose of protecting the health of women, an abortion provider seeking to strike down that law should not be able to rely on the constitutional rights of women. Like any other party unhappy with burdensome regulation, the provider should be limited to its own rights. . . ."

D. ". . . (A) woman who obtains an abortion typically does not develop a close relationship with the doctor who performs the procedure. On the contrary, their relationship is generally brief and very limited. In Louisiana, a woman may make her first visit to an abortion clinic the day before the procedure, and if she goes to June Medical, she is likely to have a short meeting with a counselor, not the doctor who will actually perform the procedure. . . . She will typically meet the abortion doctor for the first time just before the procedure, and if Doe 1's [abortion doctor] description is representative, their relationship consists of the doctor's telling the woman what he will do, offering to answer questions, informing her of his progress as the abortion is performed, and asking her to remain calm. . . . Doe 4 testified that the surgical procedure itself takes 'two or three minutes.' . . . Doe 3 testified that he can perform six abortions an hour and once performed 64 abortions in a 2-day period.

"In the case of medication abortions, patients are required to schedule a follow-up appointment three weeks after the procedure . . . but surgical abortions, which constitute the majority of the procedures at June Medical and across the State, do not require any follow-up . . . and the great majority of women never return to the clinic . . . . 'there was no doctor/patient relationship' . . . For these reasons . . . the third-party standing rule cannot be met. . . ."

[Justice Thomas did not concur in section F of Part IV, likely because of remand to District Court]

F. ". . . but it is deeply offensive to our rules of standing to permit them to sue in the name of their patients when they challenge laws enacted to protect their patients' safety.

"On remand, the District Court should permit the joinder of a plaintiff with standing and should not proceed until such a plaintiff appears."

"The decision in this case, like that in *Whole Woman's Health*, twists the law, and I therefore respectfully dissent."

Selected quotes and key points of Justice Alito:

- "(T)he abortion right recognized in this Court's decisions."
- "If a law . . . does not have" the effect of being a "'substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus,'" then "it is constitutional."
- The abortion doctors/businesses did not have legitimate standing before the Court because they were third parties contesting a state law designed to protect women they claimed to represent.
- "(T)here is ample evidence in the record showing that admitting privileges help to protect the health of women by ensuring that physicians who perform abortions meet a higher standard of competence than is shown by the mere possession of a license to practice."
- "Louisiana adopted Act 620 in the aftermath of the Kermit Gosnell grand jury report, which expounded on the failures of regulatory oversight that allowed Gosnell's practices to continue for an extended period."
- "(C)ontrary to the plurality's assertion, there is ample evidence in the record showing that requiring admitting privileges has health and safety benefits."
- "The District Court ignored a factor of the utmost importance, the incentives of the doctors in question. . . . (T)he doctors had everything to lose and nothing to gain by obtaining privileges. . . . If these doctors had secured privileges, that would have tended to defeat the lawsuit."
- "This case features a blatant conflict of interest between an abortion provider and its patients."

Conclusion. Justice Alito vigilantly respects the rule of law and legal standards as developed through the opinions of the U.S. Supreme Court, but lacks reverential respect for the sanctity of human life. Like the four abortion advocate justices of the Court – Breyer, Ginsburg, Sotomayor, and Kagan – and Chief Justice Roberts, he does not seem to have developed a correct understanding of the inherent purpose of civil government and law to protect innocent human life from conception to natural death. This reveals a lack of knowledge of God as Creator of every human being in the womb (King Solomon, Ecclesiastes 11:5), or a deliberate decision to deny in "law" that reality. And this also reveals a lack of recognition of ultimate and inevitable accountability to "the Supreme Judge of the World" (U.S. Declaration of Independence). Justice Alito was correct in dissenting in this case, but needs to submit his mind fully to the Spirit of God so that his thinking, conscience and decisions related to human life conform to "the Laws of Nature and of Nature's God" (U.S. Declaration). Part 5 next week will review the dissenting opinions of Justices Gorsuch and Kavanaugh.

SDG and for the sanctity of human life,

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"The prophets prophesy falsely, and the priests rule on their own authority; and My people love it so! But what will you do at the end of it?" (Jeremiah 5:31).