

GLOBAL LIFE CAMPAIGN™

The Position of the U.S. Supreme Court Justices on Abortion, and Part 6 of Louisiana Constitution & Law v. U.S. Supreme Court

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Justices (back): Gorsuch, Sotomayor, Kagan, Kavanaugh;
Front: Breyer, Thomas, Chief J. Roberts, Ginsburg, Alito

The GLC Series this week focuses on the Supreme Court of the United States and the position of the nine justices on abortion, along with Part 6 of the review of the recent case, *June Medical Services LLC v. Russo*, Interim Secretary, Louisiana Department of Health and Hospitals, covering Justice Kavanaugh's short dissenting opinion. To gain clarity on the positions of the justices, I read parts of their opinions in 10 Supreme Court cases between 2007 and 2020, during the present tenure of Chief Justice John Roberts. There is

consistency in the positions of justices regarding abortion, except for the Chief Justice. Even though there is evidence of Samuel Alito supporting abortion prior to his tenure on this Court, since he became a member of the Court on January 31, 2006, his positions have been consistent. However, there remains a question as to whether the Chief Justice and Justices Alito, Gorsuch and Kavanaugh would have the righteous courage, integrity and nobility to vacate (overturn) *Roe v. Wade*.

Position of the U.S. Supreme Court Justices on Abortion:

- Four justices of the Court always support abortion: Breyer, Ginsburg, Kagan and Sotomayor.
- A majority of the justices believe that a mother has a constitutionally protected "right" to abort her pre-viable child, that is, before the point at which the baby could survive outside her womb. The Chief Justice has become unpredictable, joining the pro-abortion justices in the *June Medical Services v. Louisiana* case this year.
- All of the justices except Justice Thomas appear to believe that aborting a baby prior to viability is a "constitutionally" protected right of women based on the Court's decisions; but some *may* be open to changing this standard: Justices Alito, Gorsuch and Kavanaugh.
- All of the justices except Justice Thomas have such a high opinion of Supreme Court decisions – their decisions and those of their recent predecessors – that they view what is "constitutional" through their own opinions rather than the original intent and text of the Constitution.
- All of the justices except Justice Thomas appear to believe that as long as abortion doctors can obtain admitting privileges, aborting pre-viable babies should be protected under the Court's rulings (not the Constitution).
- Justice Thomas is the only member of the Court who based his opinion on the U.S. Constitution itself, and may be the only one who recognizes in truth that Federal courts do not have authority to make judgments about state laws that require hospital admitting privileges or restrict abortion.

- If *Roe v. Wade* were reconsidered by the Court today, Justice Thomas would vacate it (overrule, cancel, annul); Justices Alito, Gorsuch and Kavanaugh would *likely* vacate it; Chief Justice Roberts *may or may not* vacate it; and Justices Breyer, Ginsburg, Kagan and Sotomayor would **oppose any change** or tampering to *Roe*.

How would the Supreme Court justices vote today if <i>Roe v. Wade</i> was reconsidered?			
Vacate (overrule)	Likely to Vacate	Uncertain	Oppose any change
Justice Thomas	Justice Alito Justice Gorsuch Justice Kavanaugh	Chief Justice Roberts	Justice Breyer Justice Ginsburg Justice Kagan Justice Sotomayor

Justice Kavanaugh wrote a short dissent in the case of *June Medical Services v. Louisiana*, which is included below in its entirety:

I join Parts I, II, and III of JUSTICE ALITO’S dissent. A threshold question in this case concerns the proper standard for evaluating state abortion laws. The Louisiana law at issue here requires doctors who perform abortions to have admitting privileges at a hospital within 30 miles of the abortion clinic. The State asks us to assess the law by applying the undue burden standard of *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992). The plaintiffs ask us to apply the cost-benefit standard of *Whole Woman’s Health v. Hellerstedt*, 579 U. S. ____ (2016).

Today, five Members of the Court reject the *Whole Woman’s Health* cost-benefit standard. Ante, at 4–11 (ROBERTS, C. J., concurring in judgment); ante, at 14–20 (THOMAS, J., dissenting); ante, at 4 (ALITO, J., joined by THOMAS, GORSUCH, and KAVANAUGH, JJ., dissenting); ante, at 15–18 (GORSUCH, J., dissenting). A different five Members of the Court conclude that Louisiana’s admitting-privileges law is unconstitutional because it “would restrict women’s access to abortion to the same degree as” the Texas law in *Whole Woman’s Health*. Ante, at 12 (opinion of ROBERTS, C. J.); see also ante, at 16–40 (opinion of BREYER, J., joined by GINSBURG, Sotomayor, and KAGAN, JJ.).

I agree with the first of those two conclusions. But I respectfully dissent from the second because, in my view, additional factfinding is necessary to properly evaluate Louisiana’s law. As JUSTICE ALITO thoroughly and carefully explains, the factual record at this stage of plaintiffs’ facial, pre-enforcement challenge does not adequately demonstrate that the three relevant doctors (Does 2, 5, and 6) cannot obtain admitting privileges or, therefore, that any of the three Louisiana abortion clinics would close as a result of the admitting-privileges law. I expressed the same concern about the incomplete factual record more than a year ago during the stay proceedings, and the factual record has not changed since then. See *June Medical Services, L.L.C. v. Gee*, 586 U. S. ____ (2019) (opinion dissenting from grant of application for stay). In short, I agree with JUSTICE ALITO that the Court should remand the case for a new trial and additional factfinding under the appropriate legal standards.

From Justice Kavanaugh’s dissenting opinion, we may conclude:

- Justice Kavanaugh believes that the Federal government and U.S. Supreme Court do have authority to evaluate “state abortion laws” and create standards for doing so.

- Correspondingly, he believes the case should be reconsidered with more evidence: “additional factfinding is necessary to properly evaluate Louisiana’s law . . . the Court should remand the case for a new trial and additional factfinding under the appropriate legal standards.”
- He agrees with the “undue burden standard” created in the *Casey* ruling, and appears to agree with Justice Alito that a state law “is constitutional” as long as it does not place a “substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus” (Justice Alito dissenting opinion, Part I).
- He agrees with Justice Alito that a state law requiring abortion doctors to have hospital admitting privileges helps “protect the health of women,” and does not agree that “Louisiana’s admitting privileges law is unconstitutional” (Justice Alito dissenting opinion, Part II).

Conclusion: We need *at least one more* justice on the Supreme Court who is totally committed to the sanctity of human life and opposing abortion before *Roe v. Wade* can be overturned.

SDG and for the sanctity of human life,

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"I call heaven and earth to witness against you today, that I have set before you life and death, the blessing and the curse. So choose life in order that you may live, you and your descendants, by loving the LORD your God, by obeying His voice, and by holding fast to Him; for this is your life and the length of your days, that you may live in the land which the LORD swore to your fathers, to Abraham, Isaac, and Jacob, to give them" (Deuteronomy 30:19-20).