Talking Points on *Dobbs* Case – Fr. Frank Pavone, National Director, Priests for Life

As the drama regarding the Supreme Court's *Dobbs* case on abortion continues to unfold, we continue to update our talking points regarding the decision.

Here are some brief, key points that will help you both understand and discuss this decision:

What the case is about

(These first ten points are in our Dobbs brochure, available for order at ProLifeProducts.org.)

1. The American people want to protect their children, including their youngest children in the womb. The pro-life side in this case asked the Court to let them do that. The State of Mississippi tried to do that and a federal court told them they could not protect babies who were too young to survive outside the womb. The Court refused to even consider the evidence that Mississippi legislators had used to conclude that they should protect these children starting at 15 weeks gestation, through the Gestational Age Act passed in 2018.

2. In accepting this case in May of 2021, the Supreme Court agreed to answer the question of whether all bans on elective abortion prior to viability (now about 22 weeks into pregnancy) are unconstitutional. This question arises from the fact that *Roe vs. Wade,* as well as *Planned Parenthood vs. Casey* pointed to viability as the dividing line, before which the state **may not prohibit** abortion, and after which it may do so in certain circumstances.

3. Abortion is not mentioned in the Constitution, nor is viability, nor is the notion that the state cannot protect unborn babies. Nor are these ideas found in the objective, deeply rooted history, traditions, or legal practices of our country. On the contrary, when the 14th Amendment was adopted – which the proabortion side points to as the source of the "right" to have an abortion – 30 out of the 37 existing states prohibited abortion. Therefore, as the prolife side argued in this case, this "right" to abortion cannot be considered a "Constitutional right."

4. The Supreme Court has made clear in its abortion decisions that the states have certain interests that they can pursue, from the onset of pregnancy. Among these interests are the life in the womb, the health of the mother, and the integrity of the medical profession. The states pursue these interests by passing laws that advance them, as Mississippi did in this case.

5. But while the Courts have long held that the states have these interests, they tied their hands since *Roe* and prevented them from advancing those interests to the point of protecting the unborn because of idea that doing so before viability was unconstitutional.

6. This "viability" boundary line took policymaking on abortion away from the people and their elected representatives, and put it in the hands of unelected judges. It made the Supreme Court the national medical review board on abortion, unlike it did with any other medical procedure.

7. This unnatural role for the Supreme Court caused tremendous confusion for decades, because the Court kept changing the guidance it gave to lower courts and to legislatures about what kind of abortion-related laws were constitutional. Judges, including Supreme Court Justices, disagreed on their

interpretation of the standards, leaving both the courts and the legislatures unsure of what they should do regarding abortion policy.

8. Therefore, Mississippi is asked the Court to start evaluating abortion laws the same way as other kinds of laws, by allowing what is called a "rational basis review." In other words, if a law is rationally related to a legitimate state interest, that should be enough for it to be considered constitutional, without having to undergo any other heightened standard of scrutiny. In this way, policy-making on abortion can return to the people and their elected lawmakers, who are more equipped than the courts to gather and consider evidence, have public debate and hearings, utilize the amendment process, and make changes in the law to keep up with modern developments.

9. A key argument in this case is precisely those modern developments in science, research, law and culture that have provided much more accommodation and support for pregnant mothers to have their children, and that have allowed us to know those children in the womb as medical science's newest patients. The proliferation of pregnancy centers, including medical clinics, and the Safe Haven laws in all 50 states give mothers who cannot raise their children far more options than they had at the time of *Roe.* Research on the harm abortion does to women, men and families, furthermore, has strengthened the interests of the states in preventing such harm.

10. The Supreme Court has been asked to reject the idea that the advancement of women somehow depends on the availability of abortion. The fact that women advanced in society prior to the legalization of abortion, and continue to advance despite a decline in abortions, is just one reason why such an assertion is ridiculous. Therefore the *Dobbs* case asked the Court to uphold Mississippi's law, and also to reverse the erroneous, unworkable and damaging precedents of *Roe vs. Wade* and *Planned Parenthood vs. Casey.*

The Leak

11. On May 2, a draft opinion on the case written by Justice Alito and confirmed as authentic by Chief Justice Roberts was leaked to the media. The case shows a complete victory for the pro-life side with an overturning of *Roe* and *Casey.* Though the leak is regrettable, because the confidentiality of the Court's process must be preserved, the contents of the leak are cause for gratitude and joy, as we see the Court moving in the right direction.

12. The Justices announced a year ago (May 17, 2021) that they were taking this case, and no doubt have been under all kinds of threats and pressure since then. This latest eruption of pressure and intimidation since the leak is not likely to change anyone's mind at this late stage of the process.

13. The leaked draft would put prohibitions on abortion back into the hands of legislators. Yet the abortion supporters protest at the Justices' homes and the Churches rather than at the state houses. This is because *Roe* handed them abortion on a silver platter, without requiring them to do the mature, painstaking work of lobbying their lawmakers. So when the magic of the Court is taken away from them, all they know how to do is pout like spoiled children rather than engage the legislative process.

14. Moreover, abortion supporters show up at the Churches because the abortion clinic is their Church, abortion-on-demand is their dogma, and abortion itself is their sacrament. In their mind, when we restrict abortion, we are restricting their Church. That's why they react by coming to ours.

15. If abortion supporters believed their own rhetoric, namely, that *Roe* is "settled law," and that most Americans agree with them that unrestricted abortion should be legal, then they would not be acting with the panic and rage they are displaying now. They could just relax, because, after all, the Court will still allow lawmakers to keep abortion legal. If the people are with them, that shouldn't be a problem. But in reality, they know the people and lawmakers of America do not uphold their radical, extreme position of abortion-on-demand.

16. The Democrats passed a radical abortion-on-demand bill some months ago in the US House, but failed to pass it in the US Senate. It does not, as they like to say, "codify Roe," because *Roe* did not see the right to abortion as absolute. *Roe* permitted states to prohibit abortion in the final months of pregnancy and permitted other regulations as well, whereas the Democrat bill does not. The Democrats are supporting the elimination of all restrictions and regulations on abortion, including parental rights when a minor seeks an abortion. The American people have never agreed with unrestricted abortion.

The Victory

17. A victory in the *Dobbs* case should be celebrated by the pro-life movement as a ***"milestone victory"*** rather than a ***"final victory."*** A milestone is a significant development or change on the way to a goal. A *Dobbs* victory opens a new chapter where our lawmakers will be able to enact laws that will protect unborn babies and their families significantly more than the Courts have allowed so far. That provides the opportunity for our movement to work with our lawmakers pass such laws, which will actually go into effect, and work with public officials to enforce them.

18. The ***final victory*** would be complete legal protection of the unborn at every stage of development, and everywhere in our nation, secured not only by statute but by a Constitutional amendment recognizing the rights of the unborn to be protected and the duty of the state to protect them. To reach that point, we obviously have to remove from our jurisprudence the idea that there is a constitutional "right to abortion." The overturning of *Roe* and *Casey* accomplish that essential milestone.

Additional Talking Points

19. Once *Roe vs. Wade* is overturned by *Dobbs,* the abortion battle will heat up in the states. In some states, laws, court decisions and constitutional amendments have already been put in place, or are being crafted, to let abortion continue. These can be changed if enough people in those states want to do so. In other states, laws, court decisions and constitutional amendments are in place or are being crafted to protect the unborn. Some states have "trigger laws" that will start protecting the unborn once *Roe* is out of the way. Other states have pro-life laws on the books from before *Roe* that can be re-activated. Still others have a favorable environment to pass new pro-life laws. Basically, it's a 20-20-10 split between the states with pro-abortion policies, pro-life policies, and a favorable environment for new pro-life policies.

20. As more states prohibit abortion, more mothers will seek other options. The pro-life movement will be there to help them, as we have been all along, with thousands of pregnancy centers providing professional and confidential medical services and counseling, assistance to find multiple social services and legal assistance, parenting classes, and much more. Pro-life laws will also increase funding for these alternatives to abortion, as various states have already started to do.

21. Contrary to the pro-abortion narrative, striking down a "constitutional right to abortion" does not put our privacy or other rights in danger. The Supreme Court has acknowledged in its abortion decisions that abortion is a unique act, which unlike other acts or medical procedures, involves the ending of a life. It is the presence of a second life that has brought about in the past – and brings about again now – laws prohibiting the taking of that life. That has no constitutional bearing on acts that do not take a life.

22. Contrary to the pro-abortion narrative, most Americans favor greater restrictions on abortion, especially after the first trimester, and do not think that the Supreme Court is the best place for abortion policy to be created. (See PriestsForLife.org/Statistics for polling information.) Moreover, most Americans who express an opinion about *Roe vs. Wade* do not realize that it permitted abortion throughout the pregnancy.