

September 2023

Dear Friends and Supporters,

We have had two encouraging developments in the last few weeks. The first deals with the developing law around transgender sex change operations on minors. The second deals with whether the federal Food and Drug Administration (FDA) preempts state law on the regulation of abortifacients.

On August 21, 2023, the Eleventh Circuit Court of Appeals reversed the trial court finding in the lawsuit challenging the Vulnerable Child Compassion and Protection Act, a law which criminalizes attempts to change the biological sex of minors. The trial court had preliminarily enjoined operation of the law, relying on not only a faulty legal standard, but a faulty medical basis, as well. Relying on the *Dobbs* decision which reversed the *Roe v Wade* abortion law, the appellate court found there is no violation of the due process law rooted in the historical basis in this nation. In other words, the trial court applied the wrong legal standard. While parents have a fundamental right in the upbringing of their children, they cannot do things that will jeopardize the health and safety of their children. Consequently, there was not a heightened standard of judicial review, but only a review of a law to see if it had a rational basis.

The other case was a federal district court decision from West Virginia on August 24, 2023, which held that the FDA does not preempt a state's right to regulate abortifacients. As you know, the Biden administration directed the FDA to override all state laws and make abortifacients available by mail, even without a doctor's visit. This is very bad medicine. It is an even worse law. The *Dobbs* decision held that the abortion issue is to be determined on a state-by-state basis. This court held the federal law does not preempt state law. This issue has a long way to go before it is resolved. We hope to file a legislative bill next session that criminalizes abortifacients from coming into Alabama. We do not need to FDA interfering with that.

We will give a complete report on each of these cases in coming updates. This month, we will complete our religious liberty update of recent SCOTUS decisions.

Thank you for your continuing support of our efforts.

Yours very truly,

A. Eric Johnston

AEJ/jfj