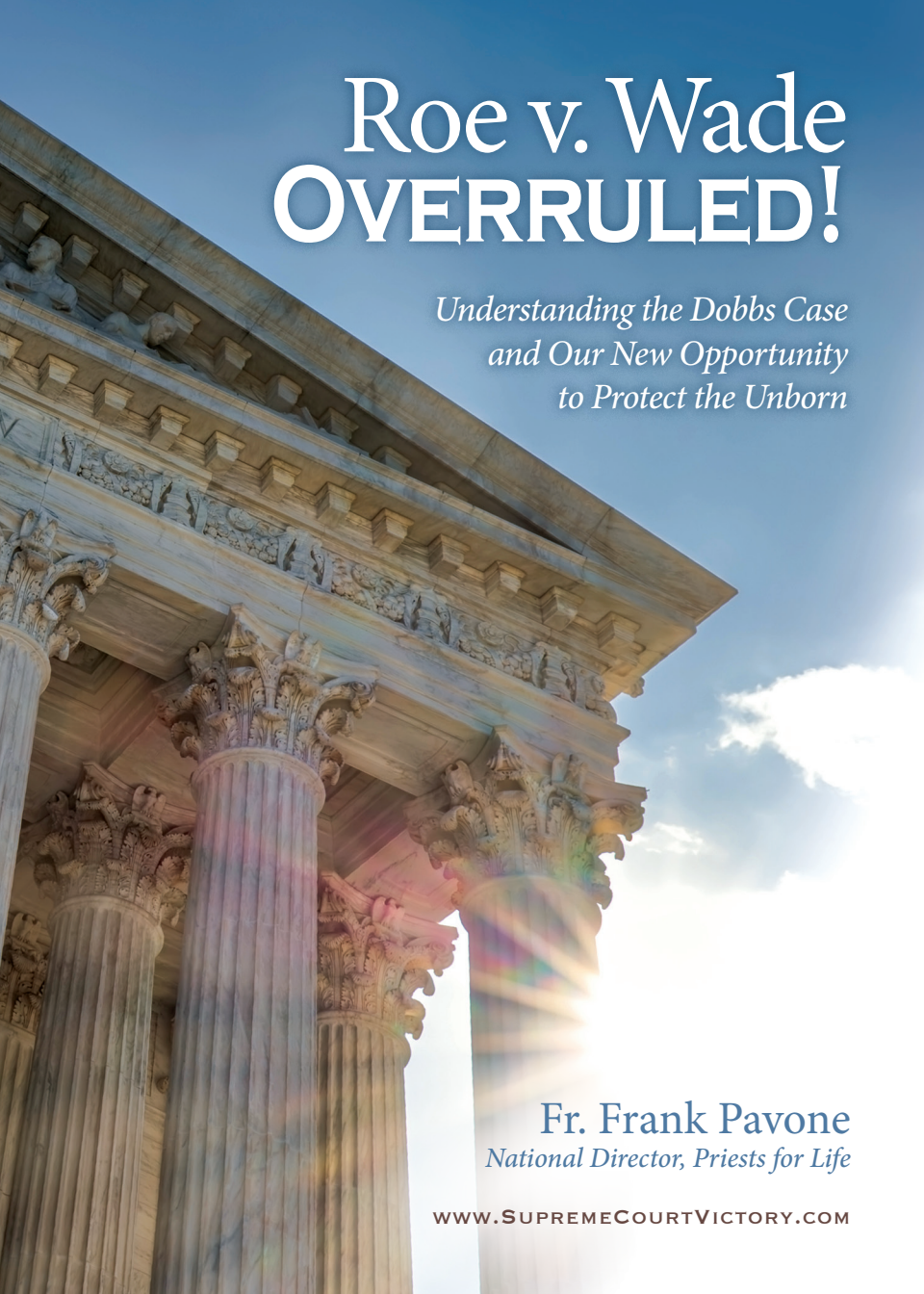




Roe v. Wade OVERRULED!

*Understanding the Dobbs Case
and Our New Opportunity
to Protect the Unborn*

Fr. Frank Pavone
National Director, Priests for Life

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Our nation has become stronger in its ability and willingness to protect the unborn. A major turning point occurred on June 24, 2022 with the Supreme Court's decision in the case of *Dobbs vs. Jackson Women's Health Organization*.

The Court admitted its mistake in *Roe v. Wade* – a mistake that prevented the people, for the most part, from protecting children in the womb.

While *Dobbs* did not return that protection to the unborn, it said that the people may pass laws to do so.

This is a victory for which tens of millions of Americans in the pro-life movement have fought, prayed, sacrificed, marched and voted for five decades. With *Roe* out of the way, the work of protecting the unborn can and will advance more quickly and effectively.

Let's explore some of the key points in understanding the Dobbs decision and its impact.

1. In *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), the Supreme Court took sides in the abortion debate and said that abortion, unlike any other medical procedure and unlike most other activities, had a special status as a “Constitutional right.”
2. This meant it was very difficult for the law to prohibit or limit abortion. The Court was saying that the American people, through their elected lawmakers, ***could not prohibit abortion prior to viability***.
3. *Roe* and *Casey* did admit, however, that the “right to abortion” was ***not absolute***, because along with the woman's freedom, there was also her health to protect and a developing life within her to consider. The Court said that the state does have an interest in protecting these, but it tied the hands of the state as far as how much protection it could provide.
4. Therefore, just about any time pro-life laws were passed, court battles would ensue, and the Supreme Court had to rule on abortion dozens of times. But the rules the Supreme used in order to evaluate laws about

abortion kept changing and were unclear. Judges around the country were confused and how a court would rule about abortion laws became very unpredictable. And the people felt more and more powerless to make any meaningful changes.

5. In the *Dobbs* case, the Court examined the question of whether the Constitution really does confer a “right to abortion,” and concluded that *it does not*. The *Dobbs* case was really the first time the Court adequately addressed this question, because *Roe* itself didn’t make much of a Constitutional argument, used discredited history and outdated science, and then *Casey* literally skipped over the core question of whether the Constitution confers a right to abortion.

6. By deciding that abortion is not a Constitutional right, the *Dobbs* case overruled *Roe* and *Casey* and returned the regulation of abortion to the people and their elected representatives. This means that the Supreme Court is no longer taking sides in the abortion debate, and is not imposing any national policy. Instead it is leaving it to the American people to work out abortion policy through their elected representatives at every level of government.

In the words of the *Dobbs* decision, “The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives” (Syllabus, p.1).

7. The *Dobbs* case made clear that a “right to abortion” is nowhere in the text of the Constitution or in the history, tradition, and legal practices of our country. When Courts consider a “Constitutional right,” it’s either in the text or in the history. Abortion is in neither. History instead shows it was a crime in every state.

To quote the *Dobbs* decision,

“Guided by the history and tradition that map the essential components of the Nation’s concept of ordered liberty, the Court finds the Fourteenth Amendment clearly does not protect the right to an abortion. Until the latter part of the 20th century, there was no

support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before *Roe*, no federal or state court had recognized such a right. Nor had any scholarly treatise. Indeed, abortion had long been a crime in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. This consensus endured until the day *Roe* was decided. *Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis" (Syllabus p.3).

8. Supporters of *Roe* and *Casey* say the "right to abortion" is rooted in the broader right of "privacy," or in the provision of "liberty" in the 14th Amendment. But again, history does not show this, and the *Dobbs* Court reminded us that Courts need to be very cautious about reading into "liberty" rights that are not there. The Supreme Court has had to correct itself on this matter in the past.

The *Dobbs* decision explained, "As the Court cautioned in *Glucksberg*, '[w]e must . . . exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court'" (Opinion, p.31).

The *Dobbs* decision also speaks about "the 'original constitutional proposition' that 'courts do not substitute their social and economic beliefs for the judgment of legislative bodies.'" *Ferguson v. Skrupa*, 372 U. S. 726, 729-730" (Syllabus, p.7).

9. As for privacy, the "right to abortion" is not like privacy rights to choose whom you will marry or how you will educate your children, because none of these or other widely-acknowledged privacy rights involve purposely

ending a life. Even *Roe* and *Casey* acknowledge that abortion is “inherently different,” and “a unique act,” because of this.

In the words of the *Dobbs* decision,

“What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call “potential life” and what the law at issue in this case regards as the life of an “unborn human being.” See *Roe*, 410 U. S., at 159 (abortion is “inherently different”); *Casey*, 505 U. S., at 852 (abortion is “a unique act”). None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion” (Opinion, p.32).

10. In deciding cases, the Supreme Court looks at how it has ruled previously on similar issues, and has a presumption of sticking with past decisions, so that Court decisions have a certain amount of predictability and consistency. This is called “*stare decisis*.” But it is not absolute, and is not “an inexorable command,” the Court has declared. The Court has reversed itself many times when it realized a past decision was wrong, as in *Brown v. Board of Education*, which, after 58 years, reversed *Plessy v. Ferguson*, a case that had legalized segregation.

11. The *Dobbs* case explained that, consistent with the rules of “*stare decisis*,” there are five reasons for overruling *Roe* and *Casey*. First, the decision that abortion was a “Constitutional right” was an egregious error, not on a small matter, but on a very deeply consequential matter, which it removed from the democratic lawmaking process.

12. The second reason is that the reasoning behind *Roe* and *Casey* was exceptionally weak. Both decisions drew lines about when and in what way abortion could be regulated, but gave no reason why the Constitution would require the lines to be drawn in those places. The policy those decisions set was more like *legislative activity* than *judicial activity*. And *Casey*, although it upheld *Roe*, also modified it significantly, changed its reasoning, and overruled two other abortion cases that relied on it. That was another sign of *Roe*’s weakness.

13. The third reason is that the standards the *Roe* and *Casey* decisions gave the courts for evaluating the constitutionality of abortion laws were so vague, inconsistent and undefined that they were *unworkable*. They did not provide the kind of clear and predictable guidance courts and legislators needed. *Casey*, for instance, introduced a novel standard, saying the state could not put an “undue burden” in the way of getting an abortion. But what is “undue” and a “burden” is subjective, as evidenced by conflicting court interpretations and applications of the standard proved that to be true.

14. The fourth reason is that the *Roe* and *Casey* decisions did damage to other areas of the law, including to free speech rights of those who oppose abortion, and to various legal doctrines, one example of which is “third-party standing.” It is usually not permitted to come into court to make a claim for someone else whom you do not know and who can speak for themselves. But in abortion cases, the Court has allowed abortionists to represent their patients in court – patients who are complete strangers and who would be quite able to approach the courts themselves.

15. The fifth reason is that contrary to what *Casey* said, the advancement of women in society does not depend on the availability of abortion. In *Casey* the Court made a novel claim to be able to evaluate the ways in which women have come to rely on abortion in planning their lives. *Dobbs* said that the Court is not in a position to make these kinds of evaluations.

16. The *Dobbs* decision allows legislatures to pass any laws prohibiting or restricting abortion as long as there is a rational basis for those laws and that they are advancing a legitimate interest of the state. Legitimate interests would include, for instance, protecting unborn babies, women’s health and the integrity of medical profession; eliminating barbaric procedures; protecting unborn babies from pain, and other interests the state may identify. In other words, the door is wide open for legislatures to regulate or prohibit abortion, right from the start of pregnancy.

This is a change in the standard the courts use to determine the constitutionality of a law, and it takes abortion out of the special category of constitutional rights – which demand a higher standard of review. This more

common standard, which now applies to abortion, is called “rational basis review.”

17. In short, the Supreme Court no longer wants to be the “medical review board” for abortion policy, nor does it want to replace its judgment for the judgment of the lawmakers whom the people elect. Laws on abortion that are challenged in court are to be given “a strong presumption of validity.”

18. The *Dobbs* decision does not take a position on whether abortion should be allowed or prohibited, or on how much protection should be given to the unborn.

In his concurring opinion in *Dobbs*, Justice Brett Kavanaugh says it this way:

“The Court’s decision today properly returns the Court to a position of judicial neutrality on the issue of abortion, and properly restores the people’s authority to resolve the issue of abortion through the processes of democratic self-government established by the Constitution. To be sure, many Americans will disagree with the Court’s decision today. That would be true no matter how the Court decided this case. Both sides on the abortion issue believe sincerely and passionately in the rightness of their cause. Especially in those difficult and fraught circumstances, the Court must scrupulously adhere to the Constitution’s neutral position on the issue of abortion” (Kavanaugh. p.11).

19. The *Dobbs* decision also responds to the objection that the Court should not change course on a matter of such public contention as abortion, lest its change of decision be seen as bowing to political pressure. The *Dobbs* opinion says that the Court’s decisions must be based on the Constitution, and that the Justices don’t have the option of letting these other considerations sway them.

The *Casey* decision tried to “settle” the abortion controversy by telling Americans just to accept the Court’s way of balancing the interests of the mom and the baby. But the *Dobbs* decision rejected this approach, saying, “This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem

from the strength of our opinions, not an attempt to exercise ‘raw judicial power.’ *Roe*, 410 U. S., at 222 (White, J., dissenting).”

And on the question of public opinion, the *Dobbs* decision says,

“We do not pretend to know how our political system or society will respond to today’s decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly. 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” (Opinion, pp. 68-69).

20. The serious weaknesses of *Roe* as exposed in this case show the weakness of any stated effort of its supporters to “codify *Roe*” in law. The legislative proposals put forth by Democrat politicians on a state and federal level go far beyond *Roe* and reflect instead the Democrat view of abortion as an absolute right without restrictions – a position that *Roe* explicitly rejected.

21. By leaving the matter of abortion policy to the people and their elected representatives, the Court in *Dobbs* opens the way to reach our final goal of protecting all unborn children everywhere throughout pregnancy. Such a goal, even to the point of eventually amending the Constitution to make it clear that the unborn are persons, is achieved precisely through “the people and their elected representatives.” The *Dobbs* decision makes clear that abortion poses a unique Constitutional question, because, in the exercise of whatever “privacy” or “liberty” one might claim, it involves the purposeful ending of another life. As to when that life has rights of personhood, *Dobbs* very convincingly argues against the arbitrary way that abortion supporters draw their lines:

“The definition of a “viable” fetus is one that is capable of surviving outside the womb, but why is this the point at which the State’s interest becomes compelling? If, as *Roe* held, a State’s interest in

protecting prenatal life is compelling “after viability,” ... why isn’t that interest “equally compelling before viability”? ... *Roe* did not say, and no explanation is apparent.

“This arbitrary line has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. Some have argued that a fetus should not be entitled to legal protection until it acquires the characteristics that they regard as defining what it means to be a “person.” Among the characteristics that have been offered as essential attributes of “personhood” are sentience, self-awareness, the ability to reason, or some combination thereof. By this logic, it would be an open question whether even born individuals, including young children or those afflicted with certain developmental or medical conditions, merit protection as “persons.” But even if one takes the view that “personhood” begins when a certain attribute or combination of attributes is acquired, it is very hard to see why viability should mark the point where “personhood” begins” (Opinion, p. 51).

The door, then, is clearly open to work both on the state and federal level to restore full protection to the unborn. *Dobbs* says state laws should be reasonable in advancing state interests. The pro-life movement should go on the offense in challenging pro-abortion laws that draw these arbitrary lines to deprive the unborn of protection. Likewise, past court decisions on abortion should no longer be allowed to stand in our way, inasmuch as they rely on *Roe* and *Casey*, which have now been overruled. The idea that abortion is a federal “Constitutional right” is no longer recognized; it is an error that has been rejected, and any error that was built on it must be rejected as well.

It is time to build a nation with liberty and justice not just for some, but for all, born and unborn!

Prayer in Thanksgiving for Pro-life Victory at the US Supreme Court

Lord, God and Father of Life,
You love all that you have created,
And protect all who are in danger.

You entrust us to the care of each other
And establish earthly authority
To protect the rights that you yourself bestow.

Lord, for five decades,
Your people in America
Have prayed, marched, educated, lobbied and voted,
Seeking to end the destruction brought about
By abortion and the *Roe vs. Wade* decision.

And now, before our eyes,
You have answered those prayers,
With the decision of the Supreme Court
To reverse *Roe* and allow the people
To protect the unborn once again.

We praise you for your faithfulness,
And for the strength of our American Constitution
That allows us to correct these mistakes.

We thank you for the work of all in the pro-life movement
Over all these years
To bring about this victory.

We thank you for the lawmakers in Mississippi and elsewhere
Who have passed laws to protect the unborn
Despite the obstacles the Courts have put in the way.

We thank you for the voters
Who have elected pro-life candidates
At the state and federal level
In the hope that Roe would eventually fall.

We thank you for President Donald J. Trump
And for the Justices he placed on the Supreme Court,
All of whom voted to reverse Roe.

We thank you for all the Justices
Who courageously voted the right way in this case,
Despite pressure, protest and threats.

We thank you that they have decided
To restore to the people and their elected representatives
The right to limit and prohibit abortion.

Continue to give your grace and protection
To them and to their families.

Lord, as a result of this case,
Give the unborn, and our whole nation,
A new and refreshing season of Life.
Bring us a new breath of freedom,
A new measure of common sense,
A rediscovery of justice and wisdom
And a big step forward in building a culture of life.

Your Son Jesus Christ
Came to grant freedom to the oppressed.
Grant freedom, then, to the children in the womb
And in these days, set our nation on a course
Of rejecting the violence of abortion,
And treating children in the womb
With equal justice under law.

Thank you, Lord, for the Victory of Life!

We pray in the Name of Jesus the Lord. Amen.

About Priests for Life

Priests for Life is one of the largest organizations in the world focused on ending abortion. We are a family of ministries, including a team of speakers consisting of clergy and lay men and women who offer presentations, trainings, preaching and broadcasting throughout the world. This family of ministries also includes the Silent No More Awareness Campaign and Rachel's Vineyard, the world's largest ministry of healing after abortion. Priests for Life likewise promotes pro-life laws and political responsibility, as well as youth outreach, daily live programming, a publications division, prayer campaigns, outreach programs for minority communities, and international work in many countries, at the Organization of American States, and at the United Nations.

Fr. Frank Pavone has led this ministry as National Director since 1993. Fr. Denis G. Wilde, OSA, is Associate Director; Janet Morana is Executive Director and co-founder of Silent No More. Bryan Kemper heads up "Stand True," our youth ministry. Dr. Theresa and Kevin Burke, the founders of Rachel's Vineyard, are full-time pastoral associates of Priests for Life. Evangelist Alveda King started our "Civil Rights for the Unborn" ministry and has served fulltime on our team for 16 years.

For a more in-depth analysis of *Dobbs*,
both from a legal and strategic viewpoint,
see **www.SupremeCourtVictory.com**.

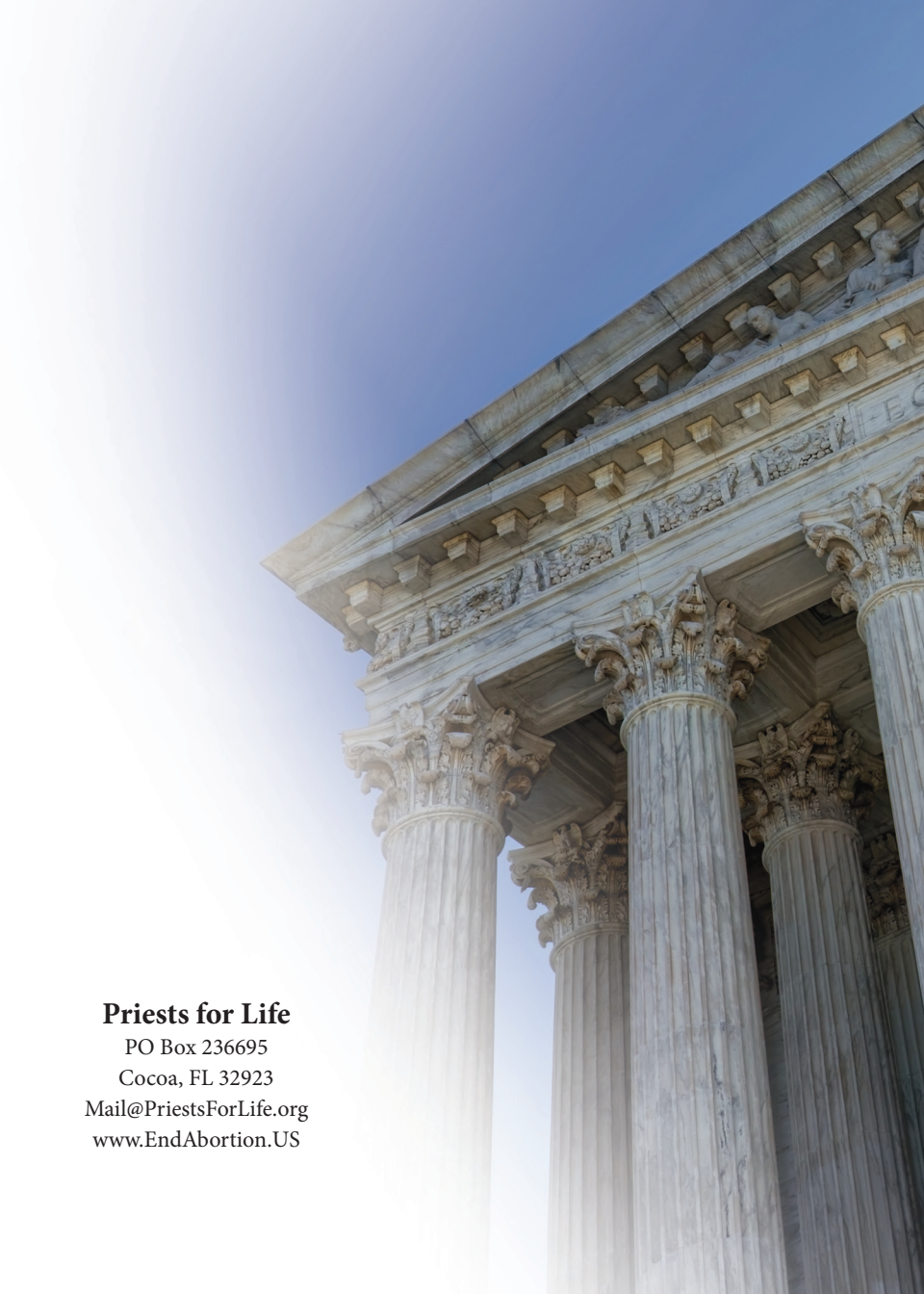
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and on Facebook at **FatherFrankPavone**.

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A low-angle, upward-looking photograph of a classical building's facade. Several tall, fluted columns with ornate Corinthian capitals support a heavy entablature. The pediment above the columns is filled with intricate relief sculptures. The sky is a clear, bright blue, and a strong lens flare emanates from the top left corner, creating a soft, circular glow over the left side of the image.

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