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Lifeline

A Legal Network in Support of Life

A PUBLICATION OF THE LIFE LEGAL DEFENSE FOUNDATION

Katie Short

PROPOSITION 73: CLOSE!

I know, I know. Close only counts in horseshoes.

But the vote on Proposition 73, California's parental notification initiative, *was* close, particularly compared to the outcome for the other seven initiatives on the same special election ballot—all of which were also defeated. The margin for Prop 73 was 5.6%. The next closest was 7%, then 10%, 17%, and then 20% or more. The voters were in a negative mood, and Prop 73 was submerged in an undertow created by outside forces and conditions that weren't even on the horizon when the proponents launched the project in 2004.

So, as first-place loser, what do we have to show for our efforts? A lot:

One: Many, many more people now know that parental notification is not required for minors to have an abortion in California.

Anyone who participated in any form of public outreach on Prop 73 can tell stories of people being shocked, even incredulous, when informed that a young girl could get an abortion without her parents' knowing. Multiply that by hundreds of thousands who learned the truth from newspapers, radio, and television. People were outraged when they found out! (In fact, there is a fair amount of anecdotal evidence that some people who voted "no" thought they were casting a vote *against* minors being able to get secret abortions.) School policies allowing minors to leave campus secretly for "confidential medical services" are once again in the spotlight, and parents are more aware of how their rights have been taken from them.

"There is no more economical way to ensure a public debate about an issue in California than to place it on the ballot."

Two: Prop 73 dragged into the light the abortion industry's complicity in shielding sexual predators, both inside and outside the clinics.

For the first time the public heard about how abortion clinics violate the mandated reporting laws by failing to report obvious cases of statutory rape and sexual abuse of minors by older men. People heard the shocking statistics about the percentage of young teens impregnated by older men, and how secret abortions enable sexual predators to continue their crimes.

(**PROPOSITION 73** CONT. ON PAGE 8)

IN THIS ISSUE

GENERAL RECAP & UPDATE

People's Advocate v. Independent Citizens' Oversight Committee (Calif.)—Suit for declaratory and injunctive relief to prevent expenditure of public funds for research focused on embryonic stem cells and cloning. Depositions in process. Trial set for Spring 2006. See article p. 2.

NOW v. Scheidler—On February 28, the Supreme Court unanimously reversed the Seventh Circuit's decision reviving the case and put an end to this two-decade old litigation. ***Victory!***

Pedigo v. Hershey (Calif.)—Amniocentesis detrimentally used on pre-born child with improper consent. Civil suit filed. Case proceeding in trial court.

(**RECAP** CONT. ON PAGE 2)

(RECAP CONT'D FROM PAGE 1)

O'Toole v. San Diego Community College District—Pro-lifer arrested and held for carrying sign on public college campus; he was released two days later, without having been cited. Claim filed and rejected. Plaintiff and defendants filed writ of petition to Fourth District Court of Appeal of California; awaiting decision.

Moreno v. Los Gatos (Calif.)—Pro-lifers arrested for picketing and distributing literature on public sidewalk outside high school. Police told them they had to stay 1,000 feet from the school. No charges filed. Civil action filed. Settlement agreement is being submitted to the judge for signature. Town agrees to permanent injunction; we get $21,000 attorneys fees; we appeal denial of $25,000 per person civil rights damages.

People v. Mason (Las Vegas, Nev.)—After a day of sidewalk counseling at an abortion mill and being told by police they were not violating the law, pro-lifers were charged with trespass as they were leaving. ***Victory!*** Defendants found not guilty after trial.

Moreno v. Riverside Community College (Calif.)—Suit against public college for arrest of pro-lifers engaged in free speech activity. Discovery in process.

Logsdon v. Cincinnati Womens' Services (Ohio)—Civil action in Ohio court for defamation and conversion against Cincinnati abortion clinic and clinic owner for interfering with sidewalk counselor's pro-life signs and for false reports to police that led to two arrests. Clinic closed and clinic owner filed for bankruptcy in October 2005, triggering automatic stay of proceedings. Attack on bankruptcy discharge is pending and other action is under consideration.

Logsdon v. Hains (Ohio)—Federal civil rights lawsuit for damages filed against two Cincinnati police officers for arresting sidewalk counselor at abortion clinic and filing charges against him without probable cause. Police filed motion to dimiss claims on basis of qualified immunity. Awaiting decision.

Krug v. Billings Montana—Pro-life sidewalk counselors were arrested on separate occasions; all criminal charges were dismissed. False arrest suit pending.

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FROM THE EXECUTIVE DIRECTOR

STEM CELL PROGRAM DOES NOT WIN KEY RULING

The Island of Robert Klein?

Contrary to what you may have read in the print media in November 2005 about LLDF's litigation related to the stem cell program in California, and in particular the San Francisco *Chronicle*, the stem cell institute did *not* win a key ruling in opposition to the litigation challenging the constitutionality of the operations of the Independent Citizen's Oversight Committee (ICOC), the governing arm of the California Institute for Regenerative Medicine (CIRM).[1]

Due to the media coverage about the outcome of the hearings in this case, LLDF was the recipient of many calls by unnecessarily discouraged California residents who oppose taxpayer funding of the CIRM. This brings to mind the adage that you cannot believe everything you hear or read in the media. This case also demonstrates that the media either cannot understand, or will not understand, the issues in this case.

What did happen? Life Legal Defense Foundation brought a motion for judgment on the pleadings on behalf of its clients, the People's Advocate and the National Tax Limitation Foundation, two taxpayer advocacy groups, asking the court to rule as a matter of law that the ICOC cannot spend three billion dollars in taxpayer funding on scientific research because the ICOC is not an entity under the exclusive management and control of the State of California, as required by Article 16, section 3 of the California Constitution. Another plaintiff in the case, California Family Bioethics Council, brought a motion for judgment on the pleadings, as did the Attorney General's office on behalf of the ICOC. All three motions were denied, which means as a matter of law the court declined to make a ruling and we now go to trial on the matter.

According to Robert Klein, chairman of the ICOC and chief proponent of Proposition 71, the court's ruling was a resounding victory for the ICOC. Perhaps this was just wishful thinking on his part, but the more likely explanation appeared in his statement to the media that "This opinion should be extremely helpful in providing broad support for the Bond Anticipation Note program of the CIRM." In other words, he needs to build investor confidence in order to sell bond anticipation notes to keep the institute afloat while the litigation proceeds. These notes will only be redeemable if the ICOC prevails and can sell the planned $3 billion in general obligation bonds. If the ICOC loses, buyers get nothing back. Needless to say, savvy investors aren't champing at the bit to get a share of such a risky scheme.

Chimera \Chi•me•ra\, n.; pl. Chimeras. [L. chimaera a chimera (in sense 1), Gr. ? a she-goat, a chimera, fr. ? he-goat; cf. Icel. qymbr a yearling ewe.]

1. (Myth.) A monster represented as vomiting flames, and as having the head of a lion, the body of a goat, and the tail of a dragon. "Dire chimeras and enchanted isles." —Milton.

2. A vain, foolish, or incongruous fancy, or creature of the imagination; as, the chimera of an author. —Burke.

Webster's Revised Unabridged Dictionary (1913)

(STEM CELL CONT'D ON PAGE 9)

FETAL ATTRACTION

Robert P. George

What the stem cell scientists really want.

The journal *Science* late last month published the results of research conducted at Harvard proving that embryonic stem cells can be produced by a method that does not involve creating or destroying a living human embryo. Additional progress will be required to perfect this technique of stem cell production, but few seriously doubt that it will be perfected, and many agree that this can be accomplished in the relatively near future. At the same time, important breakthroughs have been announced by scientists at the University of Pittsburgh and the University of Texas demonstrating that cells derived harmlessly from placental tissue and umbilical cord blood can be induced to exhibit the pluripotency of embryonic stem cells. ("Pluripotency" is the potential of a cell to develop into multiple types of mature cells.)

One would expect that advocates of embryonic stem cell research would be delighted by these developments. After all, they point to uncontroversial ways to obtain embryonic stem cells or their exact equivalent and to create new stem cell lines that are (unlike lines created by destroying embryos) immediately eligible for federal funding. Yet some advocates seem to be unhappy at the news. Why?

The likely answer is ominous.

Up to now, embryonic stem cell advocates have claimed that they are only interested in stem cells harvested from embryos at the blastocyst (or five- to six-day) stage. They have denied any intention of implanting embryos either in the uterus of a volunteer or in an artificial womb in order to harvest cells, tissues, or organs at more advanced stages of embryonic development or in the fetal stage. Advocates are well aware that most Americans, including those who are prepared to countenance the destruction of very early embryos, are not ready to approve the macabre practice of "fetus farming." However, based on the literature I have read and the evasive answers given by spokesmen for the biotechnology industry at meetings of the President's Council on Bioethics, I fear that the long-term goal is indeed to create an industry in harvesting late embryonic and fetal body parts for use in regenerative medicine and organ transplantation.

…important breakthroughs have been announced by scientists at the University of Pittsburgh and the University of Texas demonstrating that cells derived harmlessly from placental tissue and umbilical cord blood can be induced to exhibit the pluripotency of embryonic stem cells.

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Mason v. Colorado School of Mines— Following successful defense of pro-lifer for alleged trespass on public property, civil suit filed against public university for violation of constitutional rights. Discovery in process.

Roe v. Planned Parenthood (Ohio)—Civil action for damages and injunctive relief filed against PP for performing abortion on fourteen-year-old girl in violation of Ohio law. Claims on behalf of girl and parents include violation of parental notice and consent statutes, informed consent statute, and law requiring reports in cases of suspected child abuse. PP's motion to dismiss four of the claims was overruled, and PP appealed that decision. That appeal has been dismissed, and discovery is proceeding.

St. John's Church v. Scott et al. (Colo.)— Pro-lifers sued for speech activity exposing abortion advocacy of local church. ***Victory!*** mutually acceptable injunction negotiated.

People v. Coatney (Mich.)—Pro-lifer cited and convicted for parking violation for parking his privately-owned bus with pro-life signs near abortion clinic, not at a bus stop. When he parked it at a bus stop, he was again cited for illegal parking. Appeal pending.

Bordeaux v. Long Beach Community College—Suit against public college for arrest of pro-lifers engaged in free speech activity. Discovery in process.

New York City v. Cain—Sidewalk counselor arrested for the third time allegedly for disorderly conduct. ***Victory!*** case dismissed.

People v. Stiefken et al. (San Bernardino)— Sidewalk counselors charged with obstructing a business.

SWHC v. Sanctity of Human Life Network et al. (Sacramento)—Contempt charge pending.

Lindsley, Layman, Mason, Buchinger v. Sacramento City College (Calif.)—*Victory!* case settles for $22,000 prior to lawsuit being filed.

Sullenger, Reed et al. v. County of Sedgwick et al. (Kansas)—Civil rights/First Amendment suit for multiple violations of first amendment rights. Pro-lifers have tried to bring the

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pro-life message to the Kansas Coliseum and are arrested and later found not guilty or threatened with arrest and forced to leave.

People v. D'Alessio (Oakland)—sidewalk counselor charged with interfering with a business by pro-abortion guard at Family Planning Specialists. Hearing pending.

Storms, et al. v. CSU Los Angeles (Calif.)—Pro-lifers arrested for remaining on campus after being told they could only hold signs in a deserted area near campus police station. Charges dismissed. Claim pending.

Klein, et al. v. San Diego County et al.—Federal challenge to San Diego residential picketing ordinance. Decision pending from Ninth Circuit Court of Appeal.

Mason v. Klaus (Calif.)—Pro-lifers arrested for free speech activity on CSU Long Beach campus after being told that they could not hold signs. Complaint filed.

Buchinger v. Santa Barbara City College (Calif.)—Pro-lifers arrested for remaining on campus and engaging in free speech activity. Lawsuit pending.

L

LIFELINE MISSION STATEMENT

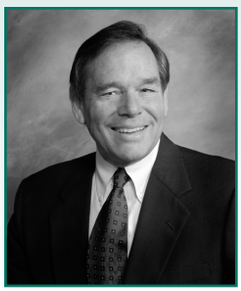
The mission of Life Legal Defense Foundation is to give innocent and helpless human beings of any age, and particularly unborn children, a trained and committed defense against the threat of death, and to support their advocates in the courtrooms of our nation.

LIFELINE EDITORIAL POLICY

The purpose of LLDF is set forth in our mission statement above. To that end, Lifeline welcomes all ideas, opinions, research and comments, and all religious and political points of view, so long as not seen to be clearly divisive, and so long as fundamentally based upon the twin pillars of truth and charity.

ASK THE ATTORNEY

An Interview with Michael J. Norton



Michael J. Norton

Michael J. Norton is a senior member of the law firm of Burns, Figa & Will, P.C., in Englewood, Colorado. He specializes in complex civil litigation, white-collar-criminal defense, and wills, trusts, and estate planning. From 1988 to 1993, he was the U.S. Attorney for the District of Colorado, a position to which he was appointed by President Ronald Reagan and then reappointed by President George H. W. Bush.

As U.S. Attorney for Colorado, Mr. Norton was the chief law enforcement officer for the state and directed criminal and civil justice priorities in the district. Among many other matters, he coordinated the government's investigation and prosecution of Rockwell International Corporation for environmental crimes at the Rocky Flats Nuclear Weapons Plant near Golden, Colorado. The result was the imposition of an $18.5 million fine, at that time the largest criminal hazardous waste fine in U.S. history. Mr. Norton resigned as U.S. Attorney in 1993 to enter private practice. A 1960 graduate of Colgate University, he earned his law degree at the American University's Washington College of Law. He is married to the former Jane Ellen Bergman of Grand Junction, Colorado. Mrs. Norton currently serves as lieutenant governor of the State of Colorado. Together, they have four children. Mr. Norton's oldest son, Jeff, died of leukemia in 1983. His daughter Lori and her family live in Colorado, his son Joe and his family live in Virginia, and Mr. Norton has two children by marriage: Lacee and Tyler Artist. Mr. Norton is active in his church and currently is a candidate for a master of arts degree in Christian studies at Denver Seminary.

What is the focus of your pro-life work?

I have worked on pro-life cases a little over ten years and the work has been almost exclusively First Amendment-oriented. One current Life Legal Defense Foundation case in which a woman, Jo Scott, is a defendant, has competing First Amendment issues. Jo is a defendant in a case involving St. John's Episcopal Church in Denver where Mrs. Scott and others have, for more than ten years, been picketing against the Church's support of abortion. The competing First Amendment concerns are Mrs. Scott's right to free speech; and the Church congregation's right to freedom of worship. Recently, Mrs. Scott and the Church amicably settled the case in a manner that preserves Mrs. Scott's right to continue picketing against the Church's pro-abortion policies.

Why are you pro-life?

Before 1983, I really did not give the issue much consideration. Then, in 1983, my oldest son died of leukemia. At his funeral service, I accepted Jesus Christ as my Lord and Savior. That experience also caused me to realize how precious life is, and to appreciate that whenever a doubt about life arises, the benefit of the doubt must go to life. Shortly thereafter, I began to assist those involved in the pro-life movement, mostly in defense of precious First Amendment liberties. My pro-life views have resulted in service to the causes of Life Legal Defense Foundation and other like-minded organizations. Today, I am open to helping where I can in religious freedom and family values cases.

What kind of pro-life clients do you prefer to represent?

Usually, my clients have been charged with various crimes relating to picketing or protesting against abortion. While I don't always agree with the methods my clients use, I do agree each client is entitled to effective assistance of counsel and a vigorous defense. That said, we do better in all things if we speak the truth in love. Often, bad facts, including unreasonable methods, can lead to bad law. Mrs. Scott, for example, communicates in a loving and Godly way. She prays and uses Scripture as she communicates her views in a soft and caring way.

One of the best pieces of evidence in the case is the video recording of Mr. Mason's peaceful, calm demeanor in contrast with that of the campus police officer who appears quite aggressive and agitated.

My other current clients for Life Legal Defense Foundation are Keith Mason and Jonathan O'Toole. Along with others, Mr. Mason and Mr. O'Toole were engaged in March 2004 in pro-life picketing and leafleting on a public sidewalk near a college campus in Golden, Colorado. Although they attempted to obtain a permit as required by college policy, the officer in charge of giving out permits was then on vacation. Both were summarily arrested by a campus police officer and criminally charged, initially, with obstructing a police officer and then later with criminal trespass. Both prevailed, with the assistance of another fine pro-life attorney, in the criminal prosecutions against them. We have now filed a civil rights section 1983 lawsuit in Federal Court against the college and the police officers seeking injunctive relief against the permit policy on grounds it constitutes an unreasonable prior restraint on their First Amendment free speech rights. At this time, the case is in the deposition stage, however, the college has expressed an interest in settling the case and is reportedly in the process of changing its permit policy. One of the best pieces of evidence in the case is the video recording of Mr. Mason's peaceful, calm demeanor in contrast with that of the campus police officer who appears quite aggressive and agitated.

How do you plan to continue your own pro-life work?

As a Christian attorney, I often say yes to requests from members of the Christian community who need assistance even if I am overloaded with other matters. I intend to continue to be what I hope is an effective witness for Christ and continue to be effective for LLDF on pro-life and other First Amendment-related issues in Colorado. Whenever LLDF-oriented activities come up, I try to jump on them. Although pro-life work does not mesh naturally with my practice, which focuses on wills, trusts and estates, I squeeze in pro-life work wherever I possibly can. For example, as Christmas 2005 approached, as a part of an Alliance Defense Fund project, I wrote and distributed a "Frequently Asked Questions" question-and-answer memorandum of law about what public school officials can actually do to celebrate Christmas to all 180 Colorado public school superintendents and to all 380 Colorado high school principals. The response was positive. Among the replies, one high school principal, in expressing thanks for the memorandum, responded that this memo marked the first time in his thirty years of service in Colorado public schools that he had received such a communication.

Do you have any words for others working with LLDF in defense of life from conception to natural death?

God bless you guys. Just say yes when asked to help—you can do it! Keep up the good fight. We will win in the end but we've got to keep on keeping on. Never give in!

L

WANTED

LLDF is receiving calls from people whose loved ones are being denied necessary medical treatment. We need local attorneys to assist us in these matters. LLDF is currently compiling model briefs, petitions and other forms for use in these cases.

Please consider making a tax-deductible contribution today. Your generosity allows LLDF to fulfill its mission to provide a trained and committed voice in the courtroom so that pro-lifers can continue their life-saving work.

If you have stock that gives you more tax trouble than earnings, please consider donating it to LLDF. You can deduct the full value of the stock at the time of donation (no need to determine the basis). Thus, what may be a burden to you can be turned directly into support for the defenders of the defenders of life.

EDUCATION

LLDF, on an ongoing basis, provides referrals to attorneys for assistance in ensuring care for medically dependent relatives and for adoption and guardianship matters; obtains legal assistance for women injured by abortion; advises employees in regard to free speech rights in the workplace; instructs pro-lifers in how to defend themselves in court; advises attorneys and citizens on working with legislative bodies re proposed legislation; advises numerous sidewalk counselors, picketers, and prayer supporters of their free speech rights and rights to peaceful assembly when speaking out for the unborn in their communities; provides spokespersons for television, radio, and print media, and speakers for training workshops and debates.

ON THE WEB

www.lldf.org

I think one reason why that clinic has been the focus of so much prayer over the years (including on the part of the prayer warrior who intervened to rescue Jack, a man who has prayed the Rosary every Saturday there for well over a decade) is because of all the attention that was put on that particular clinic that Holy Saturday in 1989, when 750 of us were arrested in the pouring rain, Jeff White, Randall Terry, and Mike McMonagle were initially charged with felonies, and the LAPD used extreme pain compliance techniques for the first time against O.R. participants.

—Colette Wilson

THE 2005 LLDF ANNUAL ATTORNEY BANQUET

AFTER THE SMOKE, OXYGEN

On Saturday, November 12, 2005, Life Legal Defense Foundation held its annual attorney banquet in Berkeley, California. Continuing its tradition of banquet venues both beautiful and historic, LLDF welcomed its guests to the Berkeley City Club. The club building is a California State Landmark. Built in 1929, it was designed by Julia Morgan, the architect of the Hearst Castle in San Simeon, California.

The evening began with a live auction of donated items. Matt Lopez served as auctioneer and performed like a pro, squeezing top dollar from each auction item. The bidding was spirited and enthusiastic, and fun for participants and spectators alike.

LLDF President John Streett opened the evening's formal program with a warm welcome to the guests and proceeded to keep the program moving along with his signature combination of dry wit and thoughtful observation. Following an invocation by LLDF board member Terry Thompson, LLDF Executive Director Dana Cody delivered her traditional "Year in Review" report. Her comments served to demonstrate the broad range of cases in which LLDF has participated, and the truth of its unofficial motto, "No case too small." Dana mentioned in particular the tragically unsuccessful fight to save the life of Terri Schiavo, and the ongoing effort to defeat the California Stem Cell Research and Cures/ Bond Act (Proposition 71). She also recognized some of LLDF's "smaller clients," courageous individuals who have been unlawfully arrested for engaging in informational leafleting.

LLDF Legal Director Katie Short then presented the 2005 Attorney of the Year Award to Colette Wilson, whom Katie described as "an attorney with the soul of an activist." In her touching acceptance remarks, Colette recalled the day in 1989 when she was arrested at an abortion mill in Los Angeles. A baby saved at the same clinic nearly sixteen years later became her third child, Jack. As Colette observed, "God's blessings follow faithfulness."

Mary and Bob Schindler

Katie then turned her attention to the recently-failed California Parental Notification Initiative (Proposition 73). She good-humoredly assured the guests that such a law in California was not defeated, but only "temporarily delayed." She called to the podium Don Sebastiani, one of the generous donors who had helped to put the initiative on the ballot. A former three-term California Assemblyman, Mr. Sebastiani expressed his gratitude to all those who had worked so hard on the initiative, several of whom were present.

John Streett then introduced the keynote speakers of the evening, Bob and Mary Schindler, the parents of Terri Schiavo. As John said, the question was not so much how Terri Schiavo died, but how her parents, Mr. and Mrs. Schindler, were able to keep her alive as long as they did. In the course of their remarks, the Schindlers answered that question in disturbing and heartbreaking detail. They pointed out some of the many "facts" that were incorrectly reported during the years after Michael Schiavo received a medical malpractice settlement, and

Attorney of the year, Colette Wilson with husband Tim Wilson

Jeannie McCullough Stiles, RN, Jennifer Lahl, and Mary Davenport, MD

Mimi Streett, Paul and Barbara Laubacher

My family and I are witnesses to the fact that the arbitrary assignment of this term by a doctor or court to anyone with a brain injury puts him or her on a fast track to death—mainly by starvation and thirst.

suddenly decided he was no longer interested in rehabilitating his brain-damaged wife, or even keeping her alive. Among the falsehoods promulgated by Michael Schiavo's attorneys and his public relations firm, dutifully reported by the secular media, and eventually accepted as fact by much of the public:

- Terri was comatose *(False: Terri was awake and alert.)*
- Terri was in an irreversible "persistent vegetative state" *(False: Terri was brain-damaged.)*
- Terri was hooked up to mechanical life-support equipment *(False: Terri received food and hydration through a feeding tube.)*
- Terri had collapsed from a heart attack caused by bulimia *(False: Terri never had bulimia, and did not suffer from a heart attack—as subsequently proven by an autopsy.)*
- Terri had made a verbal end-of-life will to her husband Michael *(False: Michael did not "recall" this until years later, after he had received the medical malpractice settlement and then wanted Terri's feeding tube removed.)*
- Terri's case had been heard by twenty judges *(False: Terri's case was heard by a single judge, Judge George Greer.)*

It was painful to hear the litany of injustices and cruelties heaped upon the Schindlers as they fought Michael Schiavo and the Florida judicial system—in the beginning to obtain rehabilitation for their daughter and later, just to keep her alive. Their sufferings during those years, and those of Terri, are unimaginable. Mr. Schindler gave a somber warning about the increasingly common use of the medical-sounding term, "persistent vegetative state":

> My family and I are witnesses to the fact that the arbitrary assignment of this term by a doctor or court to anyone with a brain injury puts him or her on a fast track to death—mainly by starvation and thirst.

Mr. Schindler described the last days and hours of Terri's life at the hospice—the roadblocks, the multiple checkpoints, and the police everywhere, even in Terri's room, to prevent the Schindlers from getting close to their dying daughter. He was particularly affected by the arrest of a ten-year-old boy who had attempted to bring Terri a glass of water. "And this is all happening in America," he said.

Still, Terri's ordeal has not destroyed the Schindlers' faith in God. They are confident that God chose Terri to awaken the world to the murders that are committed regularly under the name of "euthanasia." To this end they have restructured Terri's foundation (Terri Schindler Schiavo Foundation—www.terrisfight.org), originally established to help save Terri's life, to save the lives of others who are or may become disabled and therefore in danger of being deemed undeserving of life. The Schindlers are grateful for the blessings they have received along the way, such as the support from people of all faiths, races and even political persuasions. And they acknowledge that without the assistance they received from LLDF, Terri would have died in October, 2001.

As in years past, the banquet was an opportunity to look back on the year's victories and defeats (and "temporary delays"), and to re-vitalize, re-energize and re-dedicate ourselves to the defense of innocent human life. To enjoy the occasion among like-minded friends and supporters was, as Mr. Sebastiani put it, "… like coming out of a smoky building and putting on an oxygen mask."

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(**PROPOSITION 73** CONT'D FROM PAGE 1)

Also, the media finally began paying some attention to the scandal of shady abortion practitioners preying on vulnerable women. For example, pro-lifers had been trying for years to get the state medical board to revoke the license of Laurence Reich, abortionist and "medical director" of a chain of abortion mills in Southern California. Reich had several convictions for sexually abusing his patients, most recently in 2002, but the board took no action. Then Reich was singled out in a widely-distributed pro-73 flyer as an example of the dangers that await young girls seeking secret abortions, and things started happening. On October 29, the Los Angeles *Daily News* ran an article about Reich's record and the delay in disciplining him. The story was picked up by CNN, which aired its own report on December 5. Two weeks later, Senator Barbara Boxer (D.-Calif.) sent a letter to the board, calling for Reich's immediate suspension.

Three: Planned Parenthood was forced to show itself as an advocate not of "women's health" but of unrestricted abortion on demand.

By far, the biggest donor to the "no on 73" campaign was Planned Parenthood. The nine California affiliates and the statewide political organization gave an average of over quarter of million dollars each to the campaign, with several giving in excess of half a million dollars. Planned Parenthood affiliates in New Jersey, Illinois, and Washington also contributed substantial amounts. (The out-of-state contributions came not from any of the thirty-five states that have parental involvement laws in effect, but from the minority which have no such laws or whose laws are enjoined. Apparently they were alarmed at the prospect of a successful California campaign emboldening the pro-lifers in their own states.) Although Planned Parenthood put on a ventriloquist act, pretending to speak on behalf of parents who "just want my daughter to be safe," it was clear that there were very large business interests at stake in defeating Prop 73.

Four: Planned Parenthood's ideology was exposed not just by its money, but by its rhetoric.

We knew going into the campaign that many people who call themselves "pro-choice" nonetheless support parental notification as a reasonable measure promoting parental responsibility and enabling parents to advise and protect their daughters. What became clear during the course of the campaign was where the major fault line lies in the "pro-choice" side. It lies between those who are, at a minimum, troubled by the idea of young girls engaging in sexual activity, and those who don't have a problem with it at all. Planned Parenthood placed itself firmly in the latter camp. Two examples stick in my mind:

Here, faced with only an electoral defeat, we can and will try again. Proposition 73 was the beginning, not the end of the campaign for parental notification in California.

At one debate I participated in, a student asked the PP representative whether parental notification might not prevent the problems she had seen among some of her friends who had two, three, or more abortions by the time they were eighteen. The PP representative declared in resounding tones: "The solution to repeat abortions is sex education and contraception!" Nothing about abstinence. No concern for the spiritual or emotional well-being of young girls in sexual relationships—just sex education and contraception.

Another time I was on a radio program debating Kathy Kneer, CEO of Planned Parenthood Affiliates of California. Accompanying Kneer was a mother-with-teen-age-daughter, whose role was to repeat PP's mantra, "If she can't come to me, I just want her to be safe." She recited her lines well, and then the host asked about their involvement with PP. The fifteen-year-old daughter said that she was a volunteer "teen sex educator" at Planned Parenthood, where she counseled her peers about sexual issues. When I heard that, I decided I wouldn't even try to say another word. The absurdity was too rich to comment on. Parents everywhere would undoubtedly sleep more soundly knowing that, though their young daughter could have an abortion without their knowing, she was receiving the wise counsel of an experienced fifteen-year-old peer.

To sum up, as the proponent of one of the other losing initiatives said after the election: "There is no more economical way to ensure a public debate about an issue in California than to place it on the ballot." For the first time in decades, we had a public debate in California about abortion. Abortion and abortion providers were in the spotlight, and they didn't like it.

I can't deny feeling depressed as I watched Prop 73 go down to defeat, but it was not the same feeling one gets when a bad supreme court decision comes down. (Believe me, I know that feeling well.) Then one feels truly helpless; there is nowhere else to turn, nothing more one can do or say. Here, faced with only an electoral defeat, we can and will try again. Proposition 73 was the beginning, not the end of the campaign for parental notification in California.

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(**STEM CELL** CONT'D FROM PAGE 2)

A deputy Attorney General who appeared at case management conference on December 6, 2005 also suggested that the court's decision regarding the Motion for Judgment on the Pleadings was a victory for the ICOC, and, on that basis sought to have the court narrow discovery issues. The judge declined to narrow the issues as suggested, stating to the Attoney General that the issues would not be narrowed during discovery because no party won motion for judgment.

Admittedly it would have been ideal for the People's Advocate and the National Tax Limitation Foundation to prevail on their motion for judgment. However, a trial leaves the ICOC exposed to the fact-finding discovery process. And brother, do they need to be exposed. Here is why:

In support of People's Advocate and the National Tax Limitation Foundation's motion for judgment, a friend-of-the-court brief was filed by five "pro-choice" individuals (Amici) who support our position in this case for a number of very noteworthy reasons.[2]

According to Amici, "Proposition 71 provides that the members of the ICOC are all potential grantees. Therefore, since the ICOC is 'independent' of government control, Prop 71 entrusts $3 billion of public funds in the autonomous hands of the grantees, all of whom have impermissible conflicts of interest." Amici go on to explain that ICOC procedure has departed from the federal model used by the National Institutes of Health (NIH), which protects against such conflicts of interest.

Amici also point out that NIH procedures protect human subjects from unsafe research. In that regard, the importance of the ICOC's departure from such procedures is obvious, and in light of the following, may be dangerous to human research subjects.

According to Amici, "some of the same scientists from the field of gene delivery research, having made millions of dollars from university faculty start-up companies, are now the entrepreneurs of hESC [human Embryonic Stem Cell] research.".

This means that scientists who were also "touting miracle cures of single-gene, single-disease cures, including [a] cure for diabetes through insulin gene delivery" are now touting another miracle cure resulting from hESC research. Keep in mind that "In 2002 the FSDA [U.S. Food and Drug Administration] halted several gene therapy trials after a boy in France developed a leukemia-like disease three years after receiving gene therapy bringing this line of research to a virtual dead end." Perhaps the recent reports of Hwang Woo-suk, the Korean stem cell research scientist, whose recent confessions about his hESC research will result in a similar outcome for hESC research in the U.S. should the FDA take a second look at hESCR in California.[4]

Last, and perhaps the most striking example that Amici point to in their brief is what hESC opponents have been saying all along—"The truth is that hESC create human chimeras, and the long-term implications are wholly unknown… Prop 71 promoted hESC research, but promised there would be no funding of human cloning. However, Prop 71 used confusing and obscure terminology to mislead and conceal permitted forms of research. For example, Prop 71 permitted 'somatic cell nuclear transfer' (SCNT), which is a 'softer' term for 'embryo cloning' and 'cloned embryo.' The same technology was used to produce the cloned sheep, Dolly, and the cloned dog, Snuppy. In fact, that is the same necessary research for perfecting the means for producing cloned human beings."

Amici go on to expose and document draft CIRM Guidelines which provide for the introduction of human embryonic stem cells into animals to produce "quasi-human chimeras." That this type of "research" is being considered was never mentioned during the campaign by proponents of Proposition 71, and understandably so since the reaction to such a possibility would have been astonishing, not to mention detrimental to the Proposition 71 campaign.

As this issue of *Lifeline* goes to print we are beginning the discovery process in *People's Advocate, et al. vs. the Independent Citizens' Oversight Committee, et al.* The trial on this matter is set for February 27, 2006. The trial may be underway by the time this issue of *Lifeline* has been published. However, no matter what the outcome of the trial, what the CIRM and ICOC have planned with your tax dollars will still need to be exposed.

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[1]San Francisco *Chronicle*, Nov. 30, 2005, Stem Cell Program Wins Key Court Ruling (Carl Hall).

[2]You can read the excellent brief in its entirety by downloading it from the Alameda Superior Court website: http://apps.alameda.courts.ca.gov/fortecgi/fortecgi.exe?ServiceName=DomainWebService&TemplateName=index.html. Select "Brief Amici in Support of Motions Filed." (Case no. HG05206766 ["People's Advocate and Nationa VS Independent Citizens' Overs"])

[3]The Associated Press reported on December 15, 2005, that Hwang Woo-suk admitted that most of the stem cells produced for a key research paper Hwang co-authored on the subject were faked. Just the month before confessing to the fake stem cell lines, he admitted and apologized for using eggs donated by two junior female scientists in his lab, a violation of international ethics guidelines.

[4]Section 100010

(e) All protocols involving the combination of hES cells with nonhuman embryos, fetuses, or adult animals shall be submitted to the local IACUC for review of animal welfare issues and to the ESCRO [Embryonic Stem Cell Research Oversight] committee ***for consideration of the consequences of the human contributions to the resulting chimeras***.

(f) Experiments in which hES cells, their derivatives, or other pluripotent cells are introduced into nonhuman fetuses and allowed to develop into adult chimeras shall be carefully reviewed, including consideration of any major functional contributions to the brain.

(g) Introduction of hES cells into nonhuman mammalian blastocytes shall be considered only under circumstances in which no other experiment can provide the information needed.

Excerpts from brief of Amici, citing Draft CIRM Interim Guidelines, accessed week of September 26, 2005.

NOTHING TO DIE OVER

Wesley J. Smith

A narrow assisted-suicide ruling.

The news about Monday's [Jan. 16] 6-3 assisted suicide ruling is not as bad as euthanasia opponents might have feared. Indeed, even in the midst of disappointment that Oregon carried the day, there is some moderately good news: *Gonzales v. Oregon* was not an exercise in judicial activism. The Supreme Court did not issue a sweeping endorsement of physician-assisted suicide. Nor did it "uphold" the Oregon statue as a matter of constitutional law. Rather, the Court's decision is so narrowly drawn and steeped in the arcana of regulatory and statutory interpretation that it would normally spark little interest outside of administrative-law journals.

Of course, that isn't a storyline likely to sell newspapers. Hence, the general media spin about the case has been that, as Reuters put it, the Supremes issued a "stinging rebuke" to the administration and endorsed assisted suicide as a legitimate public policy. But this isn't true. Justice Anthony Kennedy's majority decision even acknowledged that the Justice Department was "reasonable" in its assertion that "medicine's boundaries" preclude assisted suicide. The majority also explicitly agreed that the federal government possesses the inherent power to prevent narcotics from being prescribed for assisted suicide, for example, by amending the federal Controlled Substances Act. The case provided neither a sweeping assertion of the validity of assisted suicide nor a ringing endorsement of its legality being strictly a matter of state's rights.

So if the federal government can, in theory, preclude controlled substances from being used in assisted suicide, why did it lose? The majority believed that former Attorney General John Ashcroft went about that task in the wrong way. Specifically, it ruled that Ashcroft exceeded his authority when he determined that assisted suicide was not a "legitimate medical use" of controlled substances without obtaining any information about the practice of medicine, assisted suicide, or other relevant matters necessary to come to that conclusion from outside the Department of Justice. Consequently, the Court found, Ashcroft's interpretation, while reasonable, was not persuasive because it exceeded his "expertise."

Instead of the Department of Justice, the proper place to determine the medical (il)legitimacy of assisted suicide lies elsewhere within the executive bureaucracy (presumably the Department of Health and Human Services) where bureaucrats and management would possess greater depth of knowledge about medical issues. (I told you the ruling was mind-numbingly arcane.)

Finally, the Court interpreted the Controlled Substances Act as primarily aimed at controlling drug trafficking and addiction. Hence, Justice Kennedy wrote that it cannot be read to explicitly preclude assisted suicide. And it is true: The CSA is silent about assisted suicide—probably because when it was passed decades ago, lawmakers never dreamed that it would ever be an issue. Recent legislative efforts to outlaw the use of controlled substances for assisted suicide, while promoting their aggressive use in pain control, foundered on the shoals of a Senate filibuster led by Oregon Democrat Senator Ron Wyden.

The dissenting opinions were first rate. Justice Antonin Scalia (joined by Chief Justice John Roberts and Justice Clarence Thomas) complained that "if the term 'legitimate medical purpose' has any meaning, it surely excludes the prescription of drugs to produce death." Scalia seemed to be hinting that the majority refused to enforce this commonsense and admittedly "reasonable" finding because its ruling was result-driven rather than legally mandated. Justice Thomas's individual dissent supported this view when he noted that the Court's reasoning directly contradicted its own seven-month-old ruling in *Gonzales v. Raich*—a medical-marijuana case. "The Court's reliance upon the constitutional principles it rejected in *Raich*," Thomas sarcastically noted, "is perplexing."

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But that is all grist for law-review articles and legal symposia. The real question is what the likely political impact of the decision will be—or, more accurately stated, the effect likely to be produced by the spin about the case that will be produced by the media and assisted-suicide advocates.

There seems little doubt that the ruling will put some wind back into the sails of the

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(**FETAL ATTRACTION** CONT'D FROM PAGE 3)

This would explain why some advocates of embryonic stem cell research are not cheering the news about alternative sources of pluripotent stem cells. If their real goal is fetus farming, then the cells produced by alternative methods will not serve their purposes.

Why would biomedical scientists be interested in fetus farming? Researchers know that stem cells derived from blastocyst-stage embryos are currently of no therapeutic value and may never actually be used in the treatment of diseases. (In a candid admission, South Korean cloning expert Curie Ahn recently said that developing therapies may take "three to five decades.")

In fact, there is not a single embryonic stem cell therapy even in clinical trials. (By contrast, adult and umbilical cord stem cells are already being used in the treatment of 65 diseases.) All informed commentators know that embryonic stem cells cannot be used in therapies because of their tendency to generate dangerous tumors. However, recent studies show that the problem of tumor formation does not exist in cells taken from cows, mice, and other mammals when embryos have been implanted and extracted after several weeks or months of development (i.e. have been gestated to the late embryonic or fetal stage). This means that the real therapeutic potential lies precisely in the practice of fetus farming. Because the developmental process stabilizes cells (which is why we are not all masses of tumors), it is likely true that stem cells, tissues, and organs harvested from human beings at, say, 16 or 18 weeks or later *could* be used in the treatment of diseases.

Scientists associated with a leading firm in the embryonic stem cell field, Advanced Cell Technology, recently published a research paper discussing the use of stem cells derived from cattle fetuses that had been produced by cloning (to create a genetic match). Although the article did not mention human beings, it was plain that the purpose of the research was not to cure diseased cows, but rather to establish the potential therapeutic value of doing precisely the same thing with human beings. For those who have ears to hear, the message is clear. I am hardly the first to perceive this message. *Slate* magazine bioethics writer Will Saletan drew precisely the same conclusion in a remarkable five-part series, the final installment of which was entitled "The Organ Factory: The Case for Harvesting Older Human Embryos."

If we do not put into place a legislative ban on fetus farming, public opposition to the practice could erode. People *now* find it revolting. But what will happen to public sentiment if the research is permitted to go forward and in fact generates treatments for some dreadful diseases or afflictions? I suspect that those in the biotech industry who do look forward to fetus farming are betting that moral opposition will collapse when the realistic prospect of cures is placed before the public.

The ideal legislation to protect human life and preserve public moral sensibilities would ban all production of human embryos for research in which they are destroyed. Unfortunately, Congress is not prepared to pass such legislation. Indeed, a bill passed by the House of Representatives to ban the production of human embryos, for any purpose, by cloning has been stymied in the Senate. (In this one instance, many American liberals decline to follow the lead of Europe—where many jurisdictions ban all human cloning, including the creation of embryos by cloning for biomedical research—or of the United Nations General Assembly, which has called for a complete cloning ban.) So what can be done?

One possibility is to make a pre-emptive strike against fetus farming by banning the initiation of any pregnancy (whether in a human uterus or artificial womb) for purposes other than the live birth of a child. This has been recommended by the President's Council on Bioethics. Another possible approach would be to add to the safeguards already in the U.S. Code on fetal tissue, stating that it is unlawful for anyone to use, or engage in interstate commerce in, such tissue when the person knows that the pregnancy was initiated in order to produce this tissue. An effective strategy would eliminate what would otherwise almost certainly emerge as a powerful incentive for the production of thousands of embryos that would be destroyed in perfecting and practicing cloning and fetal farming.

My suspicions and sense of urgency have been heightened by the fact that my home state of New Jersey has passed a bill that specifically authorizes and encourages human cloning for, among other purposes, the harvesting of "cadaveric fetal tissue." A "cadaver," of course, is a dead body. The bodies in question are those of fetuses created by cloning specifically to be gestated and killed as sources of tissues and organs. What the bill envisages and promotes, in other words, is fetus farming. The biotechnology industry put an enormous amount of money into pushing this bill through the New Jersey legislature and is now funding support for similar bills in states around the country.

So we find ourselves at a critical juncture. On the one hand, techniques for obtaining pluripotent stem cells without destroying embros will, it appears, soon eliminate any plausible argument for killing pre-implantation embryos. This is great news. On the other hand, these developments have, if I am correct, smoked out the true objectives of at least some who have been leading the charge for embryonic stem cell research. Things cannot remain as they are. The battle over embryonic stem cell research will determine whether we as a people move in the direction of restoring our sanctity of life ethic, or go in precisely the opposite direction. Either we will protect embryonic human life more fully than we do now, or we will begin creating human beings precisely as "organ factories." Those of us on the pro-life side must take the measure of the problem quickly so that we can develop and begin implementing a strategy that takes the nation in the honorable direction.

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(**ASSISTED SUICIDE** CONT'D FROM PAGE 10)

assisted-suicide/euthanasia movement that has been becalmed in the United States for the last decade. But it will be a slight breeze, not a gale. In truth, legalizing assisted suicide is very low on people's political-priority scale. Demonstrators are not exactly marching in the streets demanding the right to be killed by a doctor and few politicians run on the plank of authorizing physicians to write lethal drug prescriptions. Indeed, a recent Pew Poll found that support and opposition to assisted suicide was evenly divided 46 percent for and 45 percent against—hardly an unstoppable political tide. Moreover, experience has shown that when people are forced to look beyond the abstract idea of assisted suicide and actively consider the dysfunctional real-world *context* in which assisted suicide would be practiced—the problems associated with HMOs, difficulties in obtaining quality health insurance, and rampant elder abuse, to mention just a few—their support for transforming killing into a medical act sinks like a crowbar thrown off of a bridge.

The American euthanasia movement has not moved its agenda forward since 1994 when Oregon legalized assisted suicide. Beyond relatively small cadres of very dedicated activists, both pro and con, most people are just not that interested in the issue. Thus, the limited ruling issued by the Supreme Court yesterday is unlikely to have a sufficiently substantive impact to materially change the current political dynamic.

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