

WINTER 2010

LifeLine

A Legal Network in Support of Life

ReCAP

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. Trial set for February 2011.

Hoye v. Oakland

Federal constitutional challenge to Oakland "Mother May I" ordinance

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VOLUME XIX, NO.1

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CASES

Katie Short

Coakley Loses... Again?



The pro-life legal community is preparing for a decision from the United States Supreme Court as to whether it will take up a case from Massachusetts having far-reaching effects on the rights of pro-life advocates.

In 2007, the Massachusetts legislature passed a law making it a misdemeanor to "enter or remain" on a public sidewalk within 35 feet of the entrance to an abortion clinic. As if this weren't enough of an outrage against the First Amendment, the legislature went on to exempt certain classes of persons from the prohibition, including not just patients but employees or agents of the clinic.



Pro-life lawyers in Massachusetts filed a federal lawsuit challenging the law on behalf of Eleanor McCullen and four other sidewalk counselors. Massachusetts Attorney General Martha Coakley, named as the lead defendant, responded that the law did not violate the First Amendment but was content-neutral and narrowly tailored. After the district court upheld the law, the pro-lifers appealed to the First Circuit Court of Appeals. In July 2009, the First Circuit breezily dismissed the plaintiffs' arguments and ruled that the law was constitutional. In November, the plaintiffs filed a petition in the U.S. Supreme Court, asking for its review of the case.

LLDF has been following the case closely, and when the plaintiffs filed their petition, we immediately followed up with an amicus brief urging the Supreme Court to hear the case. Our brief was filed on behalf of LLDF itself and pastor Walter Hoye, the



Ask the Attorney

Attorney Rebekah Millard researches and writes briefs for Life Legal Defense Foundation where she serves the pro-life cause as a staff attorney. She also does contract work for other clients. A recent graduate of Oak Brook College of Law in Fresno, she lives in Oregon. She has passed the bar in California and looks forward to passing the Oregon bar. She intends eventually to become established in private practice and do pro bono work for LLDF.



Why did you choose to work with Life Legal Defense Foundation?

In 2008, I was clerking for my uncle, an attorney in Sacramento, and he and another attorney suggested I look at LLDF. I read the mission statement and immediately knew that this was a group I wanted to work for. I offered to intern, interviewed, and was hired for a part-time position.

What do you enjoy about your work?

I love the law for its own sake and because it gives me a way to be of service. I do research as needed. I like the time crunch during a case when urgent things pop up and the lead LLDF attorney asks for information on a jury selection issue, a statute, or an ordinance.

What is the broadest issue you have researched so far?

The conscience issue: what are the rights of an individual to seek medical treatment beyond that which healthcare providers recommend, and what are the rights of health care providers to refuse to participate in treatment options that violate their consciences? This specifically involves the dilemmas that arise with situations such as taking an individual off of life support, and physician assisted suicide. Do health care professionals have the right to refuse to perform abortions or refuse to assist in suicide in the states where it is legal? The issues are very interesting. As a resident of Oregon, the

first state to legalize physician-assisted suicide, I know families who have faced end-of-life problems. In one case, a friend's grandfather was dying at home and his long-time doctor voluntarily said, "You don't have to go through this. I can give you pills." The patient and his wife were shocked, since he had not asked for such advice. The doctor said he was required to make the offer. The patient refused. Some family members considered reporting the incident to the medical board. It made me think about what would happen if an Oregon patient asked a physician to hasten death and the doctor's conscience would not allow him or her to administer a lethal dose. End-of-life health care issues are treated very differently in different states. Three states now allow physician-assisted suicide. Even our horrible law here in Oregon has some patient protections, although we do not know how that will play out in practice or whether all patients actually will have the protection promised. Other states have very strong patients' rights laws while some are silent on the issue. I was also pleased to discover that many states provide explicit protection for health care professionals to protect them from being forced to participate in health care treatment which they find unconscionable.

Are you doing any other work related to end-of-life issues?

One work in progress is an LLDF brochure with legal information to guide planning

on end-of-life decisions, such as health care directives. We hope people will use it before a health care crisis occurs. There will be a lot of detail, a sample form, steps to follow, links to helpful web sites, and issues to be aware of, such as the physical signs of dying. A registered nurse will write the medical information. I am helping with legal research and editing. I'm excited because this will be a practical tool that will allow people to take action without being intimidated about complex legal and medical issues.

A new year has begun; do you expect any new themes for LLDF in 2010?

Volunteer attorney Joanna Galbraith and I will be looking at cases that may lend themselves to pro-active strategies, including ways to go after medical malpractice and zoning violations at abortion clinics. We will analyze what has worked in the past and recommend strategies that lead attorneys might consider as we continue to try to protect the lives of unborn children.

What were the highlights of your first year with LLDF?

The chance to learn from the best in this field has been the highlight for me. Besides learning practical skills, I've become more aware of what actually goes on in the pro-life movement. I now know about groups such as The Survivors, a young people's group with members my age who have been represented by LLDF.



Three states now allow physician-assisted suicide. Even our horrible law here in Oregon has some patient protections, although we do not know how that will play out in practice or whether all patients actually will have the protection promised.

Growing up, I did not even know they existed. I have learned how peaceful pro-life demonstrators often are unfairly treated by officials. I was privileged to sit in the second chair during the trial phase of the Conrad case from San Bernardino. The judge allowed us to use video images showing peaceful, legal free speech activity by pro-life defendants who were arrested on a college campus. It really hammered home the point that the public, the police and courts need to learn that peaceful pro-life activists have nothing to hide, that they have committed no crime. It has become very clear that what we hear in the news is not the whole story. This year, for the first time, I did go out in front of a clinic in Portland, where most of the Oregon clinics are. It helped me to understand more about the wonderful people who are acting peacefully on important issues. I am definitely learning!

You have referred to life issues at both ends of the human lifespan. Why are you pro-life?

I am from a pro-life family—parents and grandparents—but we were not politically active, and did not talk about the issues much. My own pro-life convictions arose when I was about twelve. My mother had a miscarriage at home. The baby was so tiny, with head, hands, feet, fingers and toes, and just fit into my dad's hand. We mourned that baby. The experience really made an impression on me. I am interested in many aspects of the law—

business law, government over-regulation, family law—but the pro-life issue is the most important. We cannot pretend to get anything right if we do not respect the most basic right, the right to life.

Are you optimistic that pro-life principles will prevail in the United States?

Since joining LLDF, I have been privileged to feel as if I am contributing to pro-life issues, the kind of issues for which we must stand up and fight. Once established as an attorney, I look forward to volunteering for Life Legal just for the satisfaction of working with wonderful people on issues that are so important. Ultimately, I believe this battle is going to be won in the right way by organizations like LLDF. It is fun to be part of a group with this attitude.

[Life Legal has recently updated its sample Advance Medical Directive, in PDF and word-processable formats (RTF and DOC), suitable for use in California. It is available, along with some explanatory text at <http://lldf.org/pmdd-info.html>—the page also includes a link for easy emailing to people that you think may find it useful. Links to information for PMDDs for other states are listed on the same page.—Ed.] **L**





As California Goes, So Goes the Nation?



At the time this edition of *Lifeline* went to print, the Omnibus Appropriations Act was on its way to Obama's desk for signature and both Houses of Congress had passed "Affordable Healthcare" Acts, including, in the Senate version, funding for abortion. When enacted, the Omnibus Appropriations Act will overturn a decades-long policy preventing taxpayer funded abortion in Washington D.C.¹ The enactment of the Senate version of the healthcare bill would mean immediate federal funding of abortion nationwide rather than only the District of Columbia. However, the enactment of either bill seems inevitable since all along President Obama has been pushing the government takeover of healthcare and, ultimately, health care that funds abortion.

It appears as if the federal government is following the blueprint of California's Legislature, which is beholden to the abortion lobby. We now have in our nation's capital what we have had in California for years, a Democrat-controlled legislature that, with the blessing of a long line of state chief executives, has never found a liberal cause not worthy of being funded on the taxpayer's dime.

State funding of abortion in California was originally mandated by the state supreme court, which held:

"There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper. Once the state furnishes medical care to poor women in general, it cannot withdraw part of that care solely because a woman exercises her constitutional right to choose to have an abortion." *Committee To Defend Reproductive Rights v. Myers*, (1981) 29 Cal.3d 252, 284-285.

The *Myers* court assumed that abortion is a constitutional right under California's state constitution, following a line of cases that expanded the so-called right to privacy to include the right to abortion. It declined to follow a 1977 U.S. Supreme Court precedent holding that there was no constitutional right to a taxpayer-funded abortion. However, over thirty years later, how certain can we be that the U.S. Supreme Court itself would follow that precedent, should the issue come up in the context of a national healthcare plan controlling access to medical care for every American?

In the debate surrounding the government takeover of healthcare, opponents of abortion funding have taken the position

that parallels the comments of Senator Jim DeMint, who in a speech to his colleagues prior to the vote on the Omnibus Appropriations Act stated that a vote for the Act means a vote to fund abortion; not only to fund it but to promote it. Unfortunately, the valiant efforts of Bart Stupak notwithstanding, any success at preventing abortion funding will most likely be short-lived. The position of representatives who oppose abortion funding without strongly opposing national healthcare merely validates the viewpoint that government should be involved in funding healthcare and demonstrates the sense of entitlement that our representatives have developed with respect to tax dollars. Moreover, it reveals

ReCAP

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restricting speech outside abortion clinics. Following initial successful challenge, city passed amended ordinance, prompting a second challenge. City's motion to dismiss denied. Motions for summary judgment heard June 26. On August 4, federal district

court judge Charles Breyer ruled Oakland's "Mother May I" ordinance constitutional. Opening brief and motion for injunction pending appeal were filed in Ninth Circuit in November.

People v. Hoyer (Oakland)

Criminal prosecution arising from municipal "Mother May I" ordinance. Pastor Walter Hoyer was acquitted of charges of



their shortsightedness—even naïveté—in thinking that future congresses will hold the line on abortion funding.

Should the government take over healthcare, abortion should not be funded. Taxpayers who have moral objections to abortion should not be forced to fund it directly with their tax dollars or indirectly through mandated enrollment in plans that cover abortion. However, it is time to get back to the first principles of our republican form of government but how we do so is not easily discernible.

The consensus among voters indicates growing opposition to government-run healthcare, which opposition is only sharpened by the inclusion of abortion coverage. The party of Ronald Reagan wouldn't even consider a government takeover of healthcare because its leadership understood that the Declaration of Independence and the United States Constitution were written to limit the power of government, not to increase it. These documents were written to ensure life and liberty for all United States citizens. Life and liberty at their very core cannot exist when the government may fund abortion, which ends life at its inception, while at the other end of the spectrum it may deny necessary health care for the disabled, chronically ill, and elderly.

As we consider America's mounting frustration over the national debt, the government's insatiable appetite for more tax dollars and now adding the expense of national healthcare to the mix, in all

likelihood ultimately funding abortion, the following excerpt from a fictional book, *The Law of Nines*,² aptly applies:

“There are always people like Radell Cain³ who are ready to take advantage of public resentment. He played on people's emotions by blaming everything on those who

And how will the children who inherit the national debt take care of the elderly population who outnumber them because their brothers and sisters were eliminated by abortion?

were still productive and prosperous, saying that they were uncaring and insensitive. People swooned at Cain's simplistic, populist notions. He made what was really nothing more than simple greed sound somehow morally righteous. He made taking what others had worked hard to earn sound like justice. People ate it up.

In the middle of unrest and difficult times, Cain won people over with promises of change—a new vision, a new direction. He made change

sound like a miracle solution to all our problems. People mindlessly embraced the notion of change.”

While admittedly the excerpt applies to a set of circumstances in a fictional story, substitute “Obama” for “Cain” and recall the rhetoric from the presidential campaign.

Meanwhile, the “nanny state” keeps getting bigger and the population keeps getting older. And how will the children who inherit the national debt take care of the elderly population who outnumber them because their brothers and sisters were eliminated by abortion? Will they look to their own resources or to the (vanishing) taxpayer? Children learn from their parents so you can be quite sure that once government takes over health care, hastened death will eventually become a treatment option.

Tea party, anyone?

¹ The Act would overturn the “Dornan Amendment,” that to date has prevented the federal government from paying for abortions in the District of Columbia, whose budget is overseen by Congress. <http://www.lifenews.com/nat5200.html>

² *Law of Nines*, Terry Goodkind, G.P. Putnam's Sons, 2009, page 173.

³ Radell Cain is a fictional character in *Law of Nines*. **L**

“intimidating” pro-abortion escorts, but was convicted of two counts of unlawfully approaching unspecified persons entering the clinic. Rev. Hoyer turned down probation, requiring him to stay 100 yards away from the clinic, and instead serve a 30-day sentence and paid a fine. On August 24, Judge Stuart Hing denied the Alameda County District Attorney's motion for a lifetime injunction against Rev. Walter

Hoyer coming within 100 yards of the clinic. Opening appellate brief has been filed.

Alabama v. Shaver et al. (Ala.)

Pro-lifers arrested for trespassing on a public sidewalk outside Parker High School in Birmingham, Alabama. Nine activists were jailed overnight without food or water and some were shackled. In addition, the police unlawfully seized and damaged the group's

van and confiscated their video equipment. At arraignment, the prosecutor demanded that the jailed youth agree not to sue the police for violating their constitutional rights in exchange for dropping the criminal charges. When the nine activists refused the offer, the prosecutor set the matter for trial. Trial is scheduled to begin in April.



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sidewalk counselor who was convicted and jailed for violating Oakland's "Mother May I" law. [See *Lifeline* Vol. XVIII, No. 2 (Summer 2009), and <http://lldf.org/articles/WalterHoyeVsOakland>]. Our brief urges the Court to take the case primarily to address the content and viewpoint discrimination inherent in speech-restrictive laws that apply only to abortion clinics.

Over its twenty-year history, LLDF has observed that a major goal of the pro-abortion movement is to devise a legal theory that justifies according fewer rights to pro-life advocates than to activists in other causes. One of the first efforts was to brand opposition to abortion as the legal equivalent of discrimination against women. Fortunately, the Supreme Court—narrowly—defeated this effort in *Bray v. Alexandria Women's Health Center*, 506 U.S. 263 (1993).

Since then, LLDF has seen pro-aborts try to restrict pro-life speech on the grounds that it is obscene, distracts drivers, harms children, incites violence, elevates blood pressure—the list goes on and on. Fortunately, for the most part the final outcome of these efforts has been a victory for the equal free speech rights of pro-life advocates.

The statute at issue in *McCullen* is the latest and arguably boldest of the efforts to cut pro-life advocates out of the herd of speakers protected by the First Amendment.

The Massachusetts Legislature had originally (in 2000) passed a law that prohibited only unconsented approaches within 6 feet of persons entering abortion clinics, with an exception for clinic escorts and workers. That law too was challenged and upheld by the First Circuit, which held that the law was content and viewpoint neutral, both on its face and as applied. *McGuire v. Reilly*, 260 F.3d. 36 (1st Cir.

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2001) and *McGuire v. Reilly*, 386 F.3d 45 (1st Cir. 2004). The Supreme Court declined to review either case.

The First Circuit's rationale for its holding was that the Legislature found "solid evidence that abortion protesters are particularly aggressive and patients particularly vulnerable as they enter or

leave" abortion clinics. Therefore, the First Circuit reasoned, the legislature's targeting of speech at abortion clinics "further[s] conventional objectives of the state's police power—promoting public health, preserving personal security, and affording safe access to medical services." In sum, the First Circuit held that "combating the deleterious secondary effects of anti-abortion protests" is a legitimate content-neutral governmental purpose. The exemption for clinic employees and agents was also content-neutral, because there was no evidence that they contributed to these "secondary effects."

The First Circuit thus handed the pro-aborts the legal rationale they have always yearned for. There was no longer any need to piggyback on other doctrines or theories. Rather, the First Circuit's holding provided cover for cities and states to target speech at abortion clinics simply because it was anti-abortion speech accompanied by "deleterious secondary effects."

Emboldened by this apparent judicial approval of the "content neutrality" of laws restricting speech only at abortion clinics, cities and counties across the country are enacting their own targeted speech restrictions. In Massachusetts, the Legislature actually expanded its law. Rather than prohibiting merely unconsented approaches within 35 feet of the clinic, the new law prohibited "entering or remaining" within the prohibited zone.

ReCAP

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Fairbanks v. Planned Parenthood (Ohio)

Lawsuit filed alleging that PP violated Ohio law by their failure to report the sexual abuse of minors. The suit alleges that Fairbanks was brought to PP by her father,

who had been sexually assaulting her since she was thirteen. He sought an abortion for his daughter at PP to cover up the sexual abuse and resulting pregnancy. Although minor attempted to tell PP personnel of abuse, they ignored her and failed to report, allowing abuse to continue. PP's motion to dismiss some of the claims is pending.

People v. Weimer (Jackson, Miss.)

Pro-life picketer convicted of violating local sign ordinance. Appeal pending. City's response due January 2010.

People v. Pollian et al. (Dayton, Ohio)

Pro-lifers on public college campus arrested and jailed on charges ranging from disorderly conduct to trespass to felony assault on a police officer. Grand jury convened on felony



And, in *McCullen*, the First Circuit again compliantly upheld the law. *McCullen v. Coakley*, 571 F.3d 167 (1st. Cir. 2009)

While several other pro-life organizations have also weighed in with amicus briefs urging the Supreme Court to take the case, LLDF's brief is unique in its focus on the constitutional implications of singling out speech at abortion clinics and exempting clinic agents. As explained in the brief, there are many grounds on which to find a speech restriction unconstitutional—lack of narrow tailoring, failure to leave ample alternatives, overbreadth, vagueness—but these are all matters of degree. When it comes to content and viewpoint neutrality, however, the Court's rulings are absolute. There is no such thing as a constitutionally acceptable level of viewpoint discrimination.

LLDF's position is based on the famous observation of Justice Robert Jackson:

The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.¹

Although the specific restriction at issue in *McCullen* (i.e., a total exclusion from the area) is particularly egregious and should be summarily struck down, pro-life advocates will not be well-served if the principle that governments may target speech at abortion clinics is left standing. Such a principle simply invites pro-abortion legislatures to come up with more subtle and “creative” restrictions to hamper the life-saving work of sidewalk counselors. Rather, the best defense for the free speech rights of pro-lifers is to ensure that the “laws be equal in operation.”

The brief of the Massachusetts Attorney General opposing the *McCullen* petition for certiorari is due on February 4; the Supreme Court's decision on whether or not to take the case is expected shortly thereafter.

¹*Railway Express v. New York*, 336 U.S. 106, 112–113 (1949) (Jackson, J., concurring.).

charge, but refused to indict. Motion to dismiss remaining trespass charges pending.

Aurora, Illinois

Multi-pronged attack on Planned Parenthood for lying its way into Aurora, the fastest-growing city in Illinois some 40 miles west of Chicago, to open what was in 2007 the largest mega-clinic providing abortions in the U.S., including some twelve surgical

recovery rooms! Planned Parenthood deemed Aurora “ground zero” in its nationwide effort to “protect reproductive freedom.” Three different lawsuits remain pending against Planned Parenthood and compliant city officials for failing to enforce municipal zoning regulations and building permit requirements that are diligently enforced against all other Aurora citizens, for suppressing First Amendment-protected

protests and prayer vigils, and—against Planned Parenthood alone—for defamation, as it libeled and slandered protest leaders as “violent” and having been found guilty of “violent crimes,” this despite Planned Parenthood having been one of the class member plaintiffs in *NOW v. Scheidler*, a nationwide class action in which the entire abortion industry claimed that these same protest leaders were violent and lost. That

(RECAP CONT'D ON PAGE 10)



The 2009 LLDF Dinner: Our 20th Anniversary Celebration

On November 7, 2009, LLDF took the occasion of its annual banquet to celebrate the twentieth anniversary of its founding. Over 160 pro-life attorneys, clients and guests enjoyed dinner and an evening of camaraderie and inspiration at the Marriott Hotel in San Ramon, California.



In recognition of the two decade milestone, guests were treated to a video retrospective of the history of LLDF consisting of interviews with many of those who have played critical roles in the organization, development and operations of LLDF since 1989. It was in the summer of that year that a few young attorneys volunteered to provide pro bono legal representation to scores of pro-lifers arrested during an Operation Rescue blockade of a Sunnyvale, California abortion clinic. Those attorneys (and some of their clients) became the founders of LLDF. [The retrospective video is available for viewing at the LLDF website (lldf.org).]

Among the banquet guests were Baptist pastor Walter Hoyo of Oakland and his wife Lori. Rev. Hoyo has been the object of a targeted campaign by the City of Oakland—including the passage of an ordinance—to prevent him from sidewalk counseling outside Family Planning Specialists clinic. Rev. Hoyo, now a client of LLDF, has remained undaunted in this ministry, even in the face of harassment, arrest, trial and imprisonment. Rev. Hoyo's crime: standing on a public sidewalk while holding a sign that reads, "Jesus loves you and your baby. Let us help." [See page 1 and 3 for a cases update.]

To Rev. Hoyo went the honor of introducing

his friend and mentor Rev. Dr. Clenard H. Childress, Jr. Rev. Childress is the senior pastor of the New Calvary Baptist Church in Montclair, New Jersey, and founder of the website www.blackgenocide.org. Rev. Hoyo credited Rev. Childress "... with opening [his] eyes to the horror of the genocide that is happening in the African-American community."

Abortion is indeed a matter of civil rights, said Rev. Childress, but not in the way the pro-aborts mean. Citing the staggering loss of human life in this country due to abortion, Rev. Childress remarked on its disproportionate impact on African-Americans. In fact, said Rev. Childress, in his last Sunday sermon before his death, Dr. Martin Luther King, Jr., expressed his deep concern about the pre-born death rate in the African-American community. So in spite of the pro-aborts' attempts to co-opt the spirit and momentum of the African-American civil rights movement, it is the pro-life movement that is the continuation and fulfillment of the civil rights movement.

Referring to the 1973 U.S. Supreme Court decision of *Roe v. Wade*, Rev. Childress observed that the case was never about the Constitution or its proper application or intent, but about ideology. That was certainly the understanding of current U.S. Supreme Court Justice Ruth Bader

Top: Rev. Walter Hoyo, 2nd: Dana Cody and speaker, Rev. Clenard Childress, 3rd: Hoyo supporters Elga Kendall and Christiana Downer; 4th: Katie Short, Mary Arnold, and Ginny Hitchcock



Ginsburg—at least at one time. She is quoted in a mid-2009 interview as saying, “Frankly, I had thought that at the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don’t want to have too many of.”

Similarly, said Rev. Childress, the healthcare bill currently before the U.S. Congress is not about health or even about saving money. Again, it is about ideology—an ideology that holds that human life is not sacred and has no intrinsic value. Not only would the proposed legislation provide public funding of abortions, but

the healthcare bill currently before the U.S. Congress is not about health or even about saving money. Again, it is about ideology—an ideology that holds that human life is not sacred and has no intrinsic value.

it would also withhold or limit medical treatment to veterans, the elderly and the terminally ill or disabled, in effect dismissing such people as, in the words of Adolf Hitler, “useless eaters.”

Why, asked Rev. Childress, would abortion even be in the healthcare bill other than for ideological reasons? It is, after all, an elective surgery and has nothing to do with health. In fact, it is no coincidence that African-American women, who percentage-wise lead the nation in abortions, also lead the nation in miscarriages. A pregnancy in a woman who has already had an abortion is

considered a high risk pregnancy, resulting in more costly prenatal care. How does funding and encouraging abortion reduce healthcare costs? It doesn’t. Again, said Rev. Childress, it’s not about health or even economics. It’s about ideology.

As a matter of fact, observed Rev. Childress, if abortion were really a question of “choice,” women would be given adequate information to make an informed choice, including information about the proven link between abortion and breast cancer.

Surprisingly, Rev. Childress views the election of Barack Obama, “the biggest pro-abortion in our history,” as “the best thing to happen to end black genocide.” With the election of Barack Obama, said Rev. Childress, “we now have a face to put on the abortion plague and a link to the leading abortion provider in the country, Planned Parenthood.” It is an opportunity to educate people about the racist legacy and history of Planned Parenthood, and the bond that Barack Obama has with that organization.

The twentieth anniversary banquet was an opportunity for LLDF and its supporters to pause and reflect on two decades of fighting against the culture of death. It was also an occasion for them to pray to God that He hasten the day when LLDF and organizations like it will no longer be necessary, and to ask for His help in continuing the fight until that day comes. **L**



Top: Miguel and Allison Aranda, Cheryl Conrad, Nik Nikas, Jeff and Janis White; 2nd: Nik Nikas, Eva Muntean; 3rd: Michelle Smedley, baby Charlie Maxson, Pattie Philipbosian; 4th: Mark Wynne and Sue Antonoplos



Technological Morality:

The top ten bioethics stories of the decade.



As we come to the end of the first tenth of the 21st century, pundits are making lists about the decade just past: the biggest stories, the worst movies. In that spirit, here's a list of the top ten stories in bioethics.

This isn't an idle exercise. Bioethics matters. The field exerts tremendous influence over the most important questions of public policy and moral values: How should we treat the most vulnerable and dependent among us? What makes us human? Indeed, is it even morally relevant that one is human? Trends in bioethics, thus, illuminate where we are as a society and the nature of the culture we are creating for our progeny.

10. The ascendance of an anti-human environmentalism.

Deep ecology, the most radical expression of environmentalism, maintains that human beings are the world's enemy—the AIDS of the Earth, as one advocate put it—and that saving the planet will require depopulating the Earth to under 1 billion. It is easy to dismiss such misanthropy as the radical fringe. Alas, during the last decade, vocal and unapologetic support for draconian depopulation has become

a part of the environmental mainstream, and is now almost universal within the global-warming movement. China's one-child policy is not considered anathema by many global-warming alarmists, and is even extolled by influential leaders. The head of the U.K. Green party, Jonathon Porritt, who chairs the U.K. government's Sustainable Development Commission, said that curbing population growth through contraception and abortion must be at the heart of policies to fight global warming. Radical environmentalism appears to have morphed into anti-humanism, the result of which could be a new impetus for eugenics and radical population control.

9. The growth of biological colonialism.

Desperate and destitute people are increasingly being exploited for their body parts and functions. For example, a black market has developed in human organs, in which well-off Westerners avoid transplant

waiting lists by traveling to countries such as India, Bangladesh, or Turkey to purchase kidneys. The exploitation got so out of hand in the Philippines that the government was forced to outlaw organ-transplant surgery for non-citizens. Matters were even worse in China, where it was credibly charged that prisoners—perhaps practitioners of Falun Gong—were executed and their organs sold.

Organ buying wasn't the only growth sector in biological colonialism. The *Daily Mail* reported that women in Ukraine were being paid to get pregnant and have abortions to create stem cells for use in beauty treatments; the BBC reported the practice might even include infanticide. Poor women in India are renting their wombs to rich women for gestation, and some Westerners are buying Indian IVF embryos because it is cheaper than having them made at home.

ReCAP

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case, in which LLDF played a pivotal role, went up to the U.S. Supreme Court three times, and the last two trips culminated in wins by 8-1 and 8-0 margins.

A second amended & supplemental

complaint has been filed in the zoning action, pending in DuPage County Circuit Court. The First Amendment lawsuit is about to be settled on terms favorable to the pro-lifers. The libel case hit a brick wall when the lawyers for Planned Parenthood prevailed on the trial judge to interpret Illinois' newly effective (just days before suit was filed) anti-SLAPP law—a law designed to protect citizen participation in seeking relief from government—in a way that penalizes

the pro-lifers who were themselves citizen participants in seeking relief from government against Planned Parenthood's libels and slanders. The trial judge held that because the libels and slanders were uttered in an effort by Planned Parenthood to get its zoning and building permits approved, the fact that they were tortious, illegal and wrongful was beside the point. Planned Parenthood was totally immune



8. The increase in American pro-life attitudes.

In the last decade, polling showed a dramatic increase in the number of people who identify themselves as pro-life. For example, in 2000, a Gallup poll found that 48 percent of respondents were “pro-choice” and 43 percent “pro-life.” In 2009, those numbers had more than reversed, with a majority identifying as pro-life (51 percent) and only 42 percent pro-choice. These changed attitudes were reflected in public policy, for example



the passage of the federal ban on partial-birth abortion and the Born Alive Infant Protection Act. If this trend continues, it could eventually shake the *Roe* regimen off its foundation.

from suit and free to spread whatever lies it wanted so long as it was trying to get its permits, according to the trial judge, and indeed the pro-life plaintiffs would have to pay its attorney’s fees, said to exceed \$300,000 for less than a year’s efforts. The cases are now on appeal, with two appeals pending in that case alone before the Illinois Appellate Court.

7. The struggle over Obamacare.

The political brouhaha over Obamacare was *the* bioethics story of 2009, not only in the U.S. but throughout much of the developed world. The strong victory of Obamacare opponents in the political debate—which may not prevent the bill’s becoming law—demonstrated that the majority of Americans do not want European-style health care, nor, for that matter, health-care rationing (thus the resonance of Sarah Palin’s “death panel” remark). The debate will not end with the passage or failure of a bill, and health-care reform will likely be one of the most important stories of the coming decade.

6. Legalization of assisted suicide in Washington.

Though some thought it inevitable, legalized assisted suicide faced very rough sledding after

Oregon passed its breakthrough law in 1994. After many years of failure, in 2008, an abundantly financed initiative campaign, fronted and partially paid for by a popular ex-governor, finally succeeded in Washington. Interestingly, as

soon as the law went into effect, so did the pushback: Many Washington doctors and health-care systems publicly opted out of participation. A month later, a Montana trial judge declared a constitutional right to assisted suicide; the Montana supreme court eventually vacated the decision, but also ruled it legal under the living-will law for doctors to write lethal prescriptions for their terminally ill patients. Then, in 2009, the old stalemate reemerged, with legislatures in states as widespread as Hawaii, Arizona, Wisconsin, Vermont, and New Hampshire refusing to follow Washington’s lead. Still, the Washington victory boosted the morale of assisted-suicide activists, who promise to wage an energetic legalization campaign in the coming decade.

5. The success of adult-stem-cell research.

When the embryonic-stem-cell debate first emerged at the end of the Clinton presidency, bio-scientists and their media acolytes insisted that embryonic stem cells offered the “best hope” for developing regenerative medical treatments and cures. At the same time, the potential for adult stem cells was downplayed, for example because they can’t become every type of cell in the body, a capacity known as “pluripotency.” But things didn’t turn out as expected. Embryonic stem cells proved difficult to harness and are still not approved for use in any human trials due to safety concerns, although two studies may begin next year. In contrast, adult stem

People v. Hunt (Asheville, N.C.)

Pro-lifers arrested at A-B Tech College for not complying with unconstitutional permit requirement. Appeal filed following trial court conviction.

Vivian Skovgard v. Pedro (Ohio)

Civil action arising from unlawful arrests for trespass of two sidewalk counselors

standing in the public right-of-way. Discovery proceeding. Trial set for January 2010.

Blythe v. Cypress College (Calif.)

Pro-lifers arrested for trespassing on a public college campus for allegedly refusing to leave property not open to the general public. The prosecution dismissed all charges and the judge found the pro-lifers “factually innocent” and ordered that all

(RECAP CONT'D ON PAGE 12)



cells have shown remarkable capacities. For example, in early human trials, adult stem cells have helped diabetics get off insulin, restored sensation to paralyzed people with spinal-cord injuries, helped heal unhealthy hearts, and provided hope to patients with autoimmune diseases such as multiple sclerosis. These and other amazing advances in adult-stem-cell research provided one of the few pieces of truly good news in a sour decade.

4. "Suicide tourism" in Switzerland.

Over the last decade, Switzerland became Jack Kevorkian as a country, its suicide clinics catering to an increasingly international clientele—mostly from the United Kingdom—with the victims ranging from the terminally ill, to people with disabilities, to even a double suicide of a terminally ill elderly woman and her frail husband, who wanted to die rather than be cared for by others. Alas, as was the case with Kevorkian in the 1990s, audacity was rewarded. In the face of a wave of high-profile suicide-tourism stories, England's head prosecutor published guidelines that, in essence, decriminalized family and friends' assisting the suicides of the dying, disabled, and infirm. Others mimicked the Swiss. In the U.S., the Final Exit Network appears to have created mobile suicide clinics, leading to the indictment of several of its organizers. Meanwhile, the Australian "Dr. Death," Philip Nitschke, traveled the world holding how-to-commit-suicide clinics. Still, as the decade came to a close,

there was a sense that the tide could be turning: The Swiss government appears poised to shut down the suicide-tourism industry, perhaps even—although this is less likely—outlawing assisted suicide altogether.

3. IVF anarchy.

The story of Nadya Suleman—better known as "Octomom"—epitomized all that has gone wrong in the assisted-reproduction industry. With the field virtually unregulated in the U.S. (and many other countries), oftentimes, anything goes. Because there were no regulations on the number of embryos that could be made during an IVF procedure, we now have 400,000 "spare" embryos on ice, looked upon by some as being akin to a crop ripe for the harvest. The lack of regulations has also led to a market in human eggs, in which eugenically correct college-age women are paid huge fees to donate their eggs—a procedure that can leave donors dead, infertile, or seriously ill. IVF has led to childbirth as manufacture, with our progeny chosen for their genetic makeup. It is likely that babies will soon be created with three parents. What comes next is anybody's guess.

2. The Bush embryonic-stem-cell funding policy.

When Pres. George W. Bush signed an executive order restricting federal funding of embryonic-stem-cell research to lines already in existence on Aug. 9, 2001, he set off a nearly decade-long firestorm. It

wasn't that the NIH didn't fund ESCR during the Bush years: It did to the tune of nearly \$200 million. California passed Proposition 71, authorizing \$3 billion in bond money to be spent on ESCR and human-cloning research over ten years. Other states and private philanthropies also funded the research. Indeed, a study published by the Rockefeller Institute reported that \$2 billion-plus was put into ESCR from private and public sources during the Bush years.

So what was the fuss all about? Yes, the policy inconvenienced researchers, requiring, for example, that experiments on "Bush qualified" ESC lines be segregated from non-qualified research. And yes, the limited number of authorized lines may have dissuaded some researchers from entering the field. But the real poke in the eye for the Science Establishment and liberal media was that Bush's policy sent a clarion message that embryos—which are, after all, nascent human life—*matter*, thrusting his policy into a buzz saw involving our most touchy cultural issues, particularly abortion.

Ironically, Bush repeatedly expressed his confidence that scientists could find ways to obtain the benefits of ESCR without destroying embryos. That prediction appeared to come true in 2007 with the creation of induced-pluripotent stem cells, which are made from normal skin or other tissues. With the potential of iPSCs to do most of what scientists said they wanted from ESCR, the stem-cell issue lost its

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record of the arrests be removed from their criminal records. Lawsuit filed against college and police department for false arrest and civil rights violations. A mandatory settlement conference is set for March 17, 2010. The judge has requested the

Chancellor of the college, the Mayor of Cypress, and the Chief of Police attend the conference that will begin with a visit to the campus to review the current unconstitutional "free speech zones" designated by Cypress College.

Blythe v. Cypress College II (Calif.)

Pro-lifers arrested for the third time on the campus of Cypress College for refusing to

stand in the "free speech zone" located sufficiently far away from the most traversed areas of campus to make contact with any students virtually impossible. The prosecution dismissed all charges just moments before the trial was set to begin. A third lawsuit has been filed against the college and the police department for false arrest and civil rights violations. This case has been related to the preceding case, with the goal of a single resolution for both cases.



political potency. Thus, when President Obama revoked the Bush policy, it was something of an anticlimax. But look for the issue to be revived in all its emotional force in the next decade if scientists learn to reliably clone human embryos.

1. The dehydration of Terri Schiavo.

The emotionally wrenching tug of war over the life of Terri Schiavo, covered sensationally by the international media and culminating in her slow death, was—hands down—the decade’s most important story in bioethics (as well of one of the most important stories of the early 2000s). Who hasn’t heard her name? Who doesn’t have an opinion about what happened? For a seeming eternity, the world groaned and argued bitterly about the weighty moral question of whether it is right to deprive a human being of food and water because he or she is profoundly cognitively impaired. Nearly five years after her death, we are not over it yet. Whenever a “miraculous awakening” story is reported, our minds and the media’s pens immediately come back to the question of whether that case is somehow “different” from Terri Schiavo’s.

It hasn’t stopped there. With Terri dead

and buried, and with majority poll support, some of the most notable voices within bioethics and transplant medicine openly argue that persistently unconscious patients should, with consent of family, have their organs harvested—which results in death—or be used in research as if they were actually dead. And with Obamacare coming full throttle, the question of whether the expenses required to care for these most helpless patients will continue

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to be borne has become a subject of acute bioethical attention.

Hubert Humphrey (among others) once said that a society is judged by the way it treats its most vulnerable citizens. That truism explains why the Terri Schiavo case was far more than a personal and family tragedy: It was a modern-day passion play from which we are still reeling.

What do these stories tell us about ourselves and our society? The signals are mixed. First, we are in danger of supplanting human exceptionalism—belief in the intrinsic dignity and equality of human life—with a “quality-of-life ethic” in which some of us are deemed to matter more than others. But the path to such a brave new world is proving to be neither straight nor unimpeded. Indeed, there are encouraging signs the sanctity of life could make a comeback. This much is sure: Bioethics will continue to matter profoundly in the years and decades to come.

[Wesley J. Smith is a senior fellow at the Discovery Institute (discovery.org), an attorney for the International Task Force on Euthanasia and Assisted Suicide (internationaltaskforce.org), and a special consultant to the Center for Bioethics and Culture (theCBC.org). His book *A Rat Is a Pig Is a Dog Is a Boy* will be released later this month by Encounter

Books. This article was originally published January 08, 2010 by *National Review Online* (nationalreview.com) and is here republished by kind permission of the author.]

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White v. Laguna Beach (Calif.)

Pro-lifer arrested for blocking a public sidewalk in Laguna Beach. When the criminal case went to trial, the police officer brought photos that proved Mr. White was not blocking any sidewalk and that other members of the public were free to traverse the walkway undeterred. The court found Mr. White not guilty. A civil lawsuit for false arrest and civil rights violations has been

filed against the City and the officer who made the unlawful arrest. On January 12, 2010, the court granted the City’s motion for summary judgment, holding that, in light of the “heavily congested” sidewalk, the officers acted lawfully. An appeal has been filed.

Cox, et al. v. Romano, et al. (Calif.)

Pro-lifer forcibly removed from Chaffey College campus and property unlawfully

confiscated for simply walking into the campus police station and asking who made an order telling the Survivors they could only stand in one specific location on campus. When other pro-lifers tried to find out what had happened to their friend, they too were arrested and quickly ushered into a private room where the police covered the windows so no one could see what was happening inside. The police threw one pro-lifer on a table and vigorously frisked him

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Proposition 71 a Failure

Investor's Business Daily editorializes about the failure of Prop 71.

Wesley Smith comments.

From its editorial:

California Proposition 71 was intended to create a \$3 billion West Coast counterpart to the National Institutes of Health, empowered to go where the NIH could not—either because of federal policy or funding restraints on biomedical research centered on human embryonic stem cells.... Five years later, ESCR has failed to deliver and backers of Prop 71 are admitting failure. The California Institute for Regenerative Medicine, the state agency created to, as some have put it, restore science to its rightful place, is diverting funds from ESCR to research that has produced actual therapies and treatments: adult stem cell research. It not only has treated real people with real results; it also does not come with the moral baggage ESCR does.

To us, this is a classic bait-and-switch, an attempt to snatch success from the jaws of failure and take credit for discoveries and advances achieved by research Prop. 71 supporters once cavalierly dismissed. We have noted how over the years that when funding was needed, the phrase embryonic stem cells was used. When actual progress was discussed, the word embryonic was dropped because ESCR never got out of the lab.

The IBD speaks truth about how the science is turning out, although I think it is certainly way premature to say that ESCR will not eventually advance toward the clinic.

But if the IBD is right in the narrow sense, it misses the big picture. The sad fact

is that Proposition 71 was a smashing success that splendidly served the broader purpose for which it was brought forth. Using outrageous hype, little children getting out of their wheelchairs, etc., its designers saw it both as a political hammer with which to concuss President Bush (only bruising him) and, more importantly, as a way by which to grab a permanent seat at the table of power for the Science Establishment.

And it worked. Big Biotech and The Scientists are now big league political players gorging at the larder filled with the people's money. The media have become star-struck groupies. The political Left—that utterly disdains Big Pharma and Big Oil—embraces Big Biotech, even though its business agendas and methods are the same. After all, how better to infuriate the Religious Right, the Left primary purpose in life? More importantly, Proposition 71 unleashed an Oklahoma Land Race mentality in the states, by which Big Biotech whipsawed cash strapped states into throwing bounteous tax credits and

Proposition 71 can now be seen as a disaster, its mismanagement a disgrace, with hubris the coin of its realm.

grant money at them, not in the name of CURES! CURES! CURES! but JOBS! JOBS! JOBS! And so much of it was a pure pie in the sky.



But eventually, all parties have to come to an end. Proposition 71 can now be seen as a disaster, its mismanagement a disgrace, with hubris the coin of its realm. California is dying and can no longer afford the reckless financial boondoggle that goes by the name of CIRM. Shut. It. Down.

[The *Investor's Business Daily* article quoted by Mr. Smith may be found at <http://www.investors.com/NewsAndAnalysis/Article.aspx?id=517870> and is worth reading in its entirety. Readers of *Lifeline* are no doubt experiencing a sense of déjà vu about now—this was the tack taken by LLDF in its litigation against CIRM after the passage of Proposition 71 in 2004. Numerous articles in back issues of *Lifeline* address this and are available at <http://lldf.org>.

This article was originally published January 13, 2010 by *First Things* (<http://www.firstthings.com/blogs/secondhandsmoke/2010/01/13/proposition-71-a-failure/>) and is here reprinted by kind permission of the author.] **L**

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removing everything from his pockets. The police handcuffed the other pro-lifer in a dark bathroom with his hands locked to a metal bar above his head. The two were held in jail for more than three days before being released on bail. The appellate court threw out the unlawfully seized property, resulting in the dismissal of six charges. Defendants acquitted by jury in May 2009. *Victory!* Civil rights complaint filed in federal court. College administrators and campus police must file an answer to the claims by February 21, 2010.

Conrad v. San Bernardino (Calif.)

Sidewalk counselor arrested for trespassing in parking lot open to the public. Charges dismissed. Lawsuit for false arrest and constitutional violations filed against city and clinic security guard. *Victory!* City settled for monetary damages. Settlement with clinic reached prior to summary judgment hearing.

White v. San Bernardino (Calif.)

Pro-life picketer arrested for sign ordinance violation for failing to hold sign off the ground while avoiding fire department hosing off pro-life Mother's Day messages chalked on sidewalk. Charges dismissed. Lawsuit against city and clinic security guard. *Victory!* City settled for monetary damages. Settlement with clinic reached prior to summary judgment hearing.

Guengerich, et al. vs. Baron, et al. (Calif.)

Pro-lifers arrested for causing a campus disturbance at Los Angeles City College. The alleged disturbance consisted of five individuals peacefully holding signs and handing out literature on a public college campus. The event was captured on video and will be used to defend the group against these frivolous charges. After a hearing at the L.A. City Attorney's office, no charges were filed. Claim against LACC denied. Complaint for civil rights violations filed in federal court on January 7, 2010.

Colantuono vs. College of Alameda (Calif.)

Pro-lifers arrested for trespassing on a public college campus. College of Alameda administrators told the police that they did not approve of the Survivors signs and literature and therefore they wanted the group removed from the campus. Three activists spent twelve hours in jail before being released. Government tort claims denied by operation of law because college failed to respond. College desires to settle case without formal civil complaint being filed. College will have draft of new speech policy sent to plaintiffs for review and approval. Plaintiffs are awaiting settlement proposal from Peralta Community College District, due by January 15, 2010.

People v. Wiechec (Colo.)

Pro-lifer arrested for disrupting a lawful assembly by protesting at a rally opposing the Colorado Personhood Amendment held on steps of state capitol. Charges dismissed after pro-abortion governor subpoenaed to testify about unconstitutional application of the law against pro-lifers but not against pro-abortionists. Civil suit filed against individual state police officers and governor's attorney who instigated the arrest. *Victory!* State settled civil suit for monetary damages.

Womenscare Gynecology, Inc. v. Holy Spirit Catholic Church, et al. (Missouri)

Injunction sought against pro-life sidewalk counselors. Preliminary injunction denied. Discovery proceeding.

ACT v. John Doe (Mass.)

Advanced Cell Technologies sued anonymous pro-lifer who posted an opinion on their work in embryonic stem cell research. ACT sought records from Yahoo to obtain pro-lifer's identity and other personal information. Motion to quash subpoena filed.

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Planned Parenthood v. Arizona (Arizona)

Arizona abortionists and abortion facilities (including Planned Parenthood) filed two separate lawsuits, one in state court, one in federal court. The suits sought to enjoin common sense laws related to informed consent for abortion, parental consent for minors, and health care rights of conscience. LLDF and allied attorneys represent intervenors defending the law.

Citizens of Pasco, Washington v. PP/Pasco (Washington)

City Council of Pasco approved special use permit for Planned Parenthood clinic over recommendation of Planning Commission to deny. Appeal filed by local residents and businesses.

People v. Pomeroy (Calif.)

Pro-life sidewalk counselor cited for sign ordinance violation. Arraignment set for March 3, 2010.

Planned Parenthood v. Ross Foti (Calif.)

Five years after entering into a mutually binding stipulated injunction with sidewalk counselor Ross Foti, Planned Parenthood is attempting to rewrite the terms of the injunction by bringing a contempt action against Foti for actions not prohibited in the injunction. The contempt action also seeks to have Foti held in contempt for actions of unrelated third parties, in an effort to prevent these third parties from praying and demonstrating at the clinic. Trial held on February 4–5. Judge indicated that plaintiff had not met their burden, but ordered further briefing. Final ruling expected in April.

McCullen v. Coakley (Mass.)

Amicus brief filed in support of petition for certiorari in case challenging constitutionality of Massachusetts law prohibiting “entering or remaining” within 35 feet of abortion clinic. See article page 1.

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