A PUBLICATION OF THE LIFE LEGAL DEFENSE FOUNDATION

SPRING 2021

LIFELINE

LIFE LEGAL PREPARES FOR ANTI-LIFE ONSLAUGHT UNDER BIDEN'S ADMINISTRATION:

Extreme Pro-Abortion Appointee Gives Lie to Biden's Promise to Unite the Nation

Mary Rose Short

Despite months of promising to unite the nation and to be a president both for those who voted for him and those who didn't, Joe Biden and his administration—to almost no one's surprise—are moving quickly to force everyone to bow down to the "progressive" agenda. Biden's appointments to key positions are extreme partisans with a disdain for those who disagree with them.

Undoubtedly the most critical of such positions for both pro-life and pro-abortion advocates is that of Secretary of the Department of Health and Human Services (HHS). HHS is a gargantuan federal department, overseeing Title X "family planning funding;" funding of international population programs; the Centers for Disease Control (CDC); the FDA; Medicaid and Medicare; the resettlement of refugees and unaccompanied alien minors—some of whom request abortions while being detained; and a host of other agencies and programs.

In December, as Biden fumbled his way through his announcement of Xavier "Bacharia" as his nominee

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THOUGHT POLICE BRUTALITY: HEADING OFF ATTACKS ON PRO-LIFE STUDENT SPEECH

Sarah Chia

When "B.L.," a high school cheerleader in rural Pennsylvania, took to social media in May of 2017 to vaguely voice some typical teen angst, it's doubtful that she had the Supreme Court of the United States on her mind. When her parents, Lawrence and Betty Lou Levy, stepped in to request that the school re-think the punishment it doled out for their daughter's off-campus speech, they likely were not intending to seek legal precedent for students' rights across the country. Yet here in 2021, this is exactly where they find themselves, as their case against Mahanoy School District has been accepted for review by the Supreme Court.

How did it get this far?

The conflict started when B.L. was placed on the JV squad as a sophomore while a younger student made the Varsity squad. Unsurprisingly, this upset B.L. because she was told the year prior that all freshman must be on the JV squad. So, in typical teenage fashion, she commiserated with a fellow cheerleader while at the mall on a Saturday afternoon. On a whim, in the midst of this conversation, B.L. posted a Snapchat message about her frustrations, complete with expletives and emojis. The message disseminated to her Snapchat friends, about 250 people who had voluntarily agreed to be connected on the app. The message, as do most Snapchat messages, disappeared by design 24 hours later.

By all objective measures, B.L.'s speech took place outside of the school context. It was not on school grounds; it was not during school hours; it was not at a school-sponsored event; it was not created on a school-owned device. If ever there was a definition of "off-campus," this one fit the bill.

But some recipients of B.L.'s Snapchat took screenshots and showed them to the cheer coaches and school administrators. These students were "visibly upset" by B.L.'s message and continued to raise their concerns to the school for several days after the off-campus speech appeared and disappeared.

The cheer coach determined that B.L.'s social media posts broke the cheer team's rules against posting any "negative information" online and revoked B.L.'s cheer team position for

The school district appealed, arguing that B.L.'s use of profanity did, in fact, create such a disruption, at least with regard to an extracurricular activity that was a privilege for the student, not a right.

the rest of the school year. Her parents asked the coach to reconsider, then appealed to the athletic director, the principal, and the school board before ultimately, filing a lawsuit against the school in federal court.

The suit claimed the rules regulating social media posts were an infringement on B.L.'s right to free speech, and the district court judge agreed with the Levy family, pointing to the Supreme Court's landmark student speech case, *Tinker v. Des Moines*, as precedent. This case held that student speech cannot be regulated by schools unless the speech "materially and substantially" disrupts the school's work or infringes on other students' rights. The school district appealed, arguing that B.L.'s use of profanity did, in fact, create such a disruption, at least with regard to an extracurricular activity that was a privilege for the student, not a right.

The Third Circuit appeals panel gave a unanimous outcome in favor of the student. Two judges joining together for a majority opinion and held that schools cannot discipline students for off-campus speech that creates a disturbance. The third judge concurred on different grounds, namely, that the speech did not create a disturbance, so the *Tinker* question was not relevant.

The school district appealed again, this time to the Supreme Court of the United States, asking a single, specific question:

"Whether *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), which holds that public school officials may regulate speech that would materially and substantially disrupt the work and discipline of the school, applies to student speech that occurs off campus."[1]

The Supreme Court granted the Petition on January 8, 2021, and will hear the case on April 28, with a decision expected by the end of the term in June.

Why is Life Legal Involved?

The Levy family is represented by the ACLU of Pennsylvania, and Life Legal is not involved in the case as legal counsel to either party. However, as we reviewed the case briefs and lower court decisions, it was clear to us that this case may become a landmark ruling for students' rights, including pro-life students whose message is deemed "disruptive."

Consider the implications of this case on student speech: If one student's social media post voicing frustration about cheerleading is subject to discipline because *other* students were upset, what is to come for student speech that speaks up against systematic murder of the youngest humans? Certainly, some ardent pro-aborts will react badly to efforts to break through the establishment party line that abortion is just a "choice." Is that a reason to silence the student?

Moreover, many of Life Legal's clients use the sidewalks outside high schools to provide students with facts and information about abortion that they are highly unlikely to receive in school—or anywhere else. These clients know how easy it is for teachers and administrators to cry "disruption" when what they really mean is that students are engaged and interested in what they are hearing for the first time. Our clients tell us that, nine times out of ten when there is a problem, it's not with the students. It's school personnel who overreact to "outsiders" giving information to "their" students.

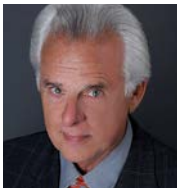
What is Life Legal Arguing?

Our review of the briefs and decisions in the lower courts led us to the conclusion that the Supreme Court should not have agreed to hear the case. The implications of an up-or-down decision as to whether schools can punish students for off-campus speech will be significant. However, both the district court and the Third Circuit gave almost no weight to the primary facts stressed by the school in the courts below, that B.L.'s profane rant was in the context of her involvement with an extracurricular athletic activity, and that the penalty she received related solely to that activity. We believe that any decision which excludes that context poses a substantial risk of confusing rather than clarifying the law in this area. Therefore, our brief will urge the Court to dismiss the petition as "improvidently granted," to use Supreme Court parlance.

[The author has provided web addresses to further document individual points in this article. These web addresses are lengthy to enter in your browser and are most easily accessed/utilized by the reader by clicking hyperlinks as found in the LLDF web page presenting content of *Lifeline* online: https://tinyurl.com/LLDF-LifeLine]

[1]Mahanoy School District's Petition for a Writ of Certiorari, pg. (I) accessible on https://tinyurl.com/ycnk4rxv

NO ARGUMENT AGAINST DEATH



Wesley J. Smith

Once a society accepts the noxious notion that killing is an acceptable answer to human suffering, the definition of "suffering" never stops expanding.

The history of euthanasia in the Netherlands proves that maxim. The Dutch have allowed doctors to kill sick patients since the '70s, taking an approach of quasi-decriminalization. Euthanasia was formally legalized in 2002. Over the decades, Dutch doctors "progressed" from euthanizing the terminally ill who ask for it, to the chronically ill who ask for it, to people with disabilities who ask for it, to the mentally ill who ask for it, and even to people with dementia who are unable to ask for it (as long as they left written instructions requesting it). The Dutch have also conjoined euthanasia with organ donation, creating a utilitarian impetus for lethal injection for both despairing patients and society. There have even been joint euthanasia killings of elderly couples who don't want to experience the grief of widowhood.

Now the country is getting ready to allow little children to be euthanized. When euthanasia was first legalized, 16 was the age limit. Later, it was lowered to 12. Now, the government is proposing legislation that will allow pediatric euthanasia starting at age one. From the *NL Times* story[*]:

> For the children referenced in the new policy, doctors are only allowed to give palliative care, like sedation, or withhold nutrition over an extended period of time until the patient dies. Doctors describe this as "a gray area" between normal palliative care and active life termination, he said, and they have been calling out for more regulation.… [Health Minister Hugo] De Jonge said his proposal will protect the interests of children, and will afford more transparency to the "gray area."

Four points bear making here. First, the story notes that young children can already be killed via slow-motion euthanasia, known in bioethics parlance as "terminal sedation." Unlike legitimate pain control, terminal sedation aims to cause death by keeping the patient in an artificial coma and withholding all sustenance until the patient dies

of dehydration (thirst) in about two weeks. This is not the same procedure as "palliative sedation," an ethical pain-controlling technique that puts the patient into lesser or deeper levels of sedation as the patient requires. The purpose of palliative sedation[*] is to maximize the patient's comfort. In such cases, death comes naturally from the underlying condition—not from the sedation or withheld food or water.

Second, given the steady expansion of euthanasia eligibility in the Netherlands over the years, there is no reason to believe that the "terminal diagnosis" restriction will be followed—much less stick—for long. Some mentally ill people who are killed would otherwise live a normal lifespan, but that fact has been used as a justification for killing because it means the patient could experience many years of suffering.

Third, doctors already euthanize terminally ill and seriously disabled babies—that is, they commit infanticide—thanks to a bureaucratic checklist known as the Groningen Protocol.[*] If a three-week-old baby with, say, spina bifida can be killed in the Netherlands without legal repercussions, eventually it will be permissible to kill children who become seriously disabled (particularly if the disability is cognitive).

Finally, the Dutch frequently justify expanding euthanasia eligibility by claiming they are merely coloring in "gray areas" to permit greater certainty and transparency. Yet these redefinitions of the law only go in one direction—increasing the number of people eligible for lethal injection. Besides, transparency does not transform an act that is immoral into somehow being moral. It just makes the entire society complicit.

The Netherlands won't be the first country to permit child euthanasia. Belgium removed all age restrictions a few years ago. We know, based on government reports,[*] that children as young as nine have been killed by doctors. One assumes their parents gave the go-ahead. But children are not so many pets to be put down when the owners think the time has come.

Pediatric euthanasia may soon come to this side of the Atlantic. Canada permits lethal injection euthanasia for adults—known as "medical assistance in dying" (MAID). As the country is preparing to expand its eligibility criteria, some hope that will include children—perhaps without parental consent. An article published last year in the *Journal of Medical Ethics* supported pediatric euthanasia. It was written by doctors who practice at a Toronto children's hospital. Since Canadian children considered sufficiently mature may legally refuse life-extending care without parental consent, the doctors wrote, they should also be allowed to request a lethal injection. From "Medical Assistance in Dying at a Paediatric Hospital":[*]

> If … a capable [legally underage] patient explicitly indicates that they do not want their family members involved in their decision-making, although healthcare providers may encourage the patient to reconsider and involve their family, ultimately the wishes of capable patients with respect to confidentiality must be respected. If we regard MAID as practically and ethically equivalent to other medical decisions that result in the end of life, then confidentiality regarding MAID should be managed in this same way.

Can you imagine visiting your sick child, only to learn that hospital doctors killed her without your knowledge or consent? The rage and agony would be unimaginable.

So what is the bottom line? Once a society embraces killing as an acceptable answer to human suffering and redefines assisted suicide as a "medical treatment," the culture's entire mindset shifts. Helping suffering people live ceases to be the overriding objective: These patients are rarely offered suicide prevention. Instead, death becomes the imperative, and not just for adults but eventually for sick and disabled children too—perhaps with organ donation thrown in as a plum to society.

It's all so disheartening. As Canadian journalist Andrew Coyne once wrote about the growing popularity of euthanasia: "A society that believes in nothing can offer no argument even against death. A culture that has lost its faith in life cannot comprehend why it should be endured." When the euthanasia death angel comes for children, who can say he is wrong?

THESE PATIENTS ARE RARELY OFFERED SUICIDE PREVENTION. INSTEAD, DEATH BECOMES THE IMPERATIVE, AND NOT JUST FOR ADULTS BUT EVENTUALLY FOR SICK AND DISABLED CHILDREN TOO…

[Wesley J. Smith is a senior fellow at the Discovery Institute (Discovery.org). His latest book is *Culture of Death: The Age of "Do Harm" Medicine* (https://tinyurl.com/WSmithCultureOfDeath). This article (https://www.firstthings.com/web-exclusives/2020/10/no-argument-against-death) was published 10/21/2020 in *First Things* (FirstThings.com), where links to web sources cited by the author may be clicked and followed. This article has been reproduced with kind permission of the author.]

CONTINUED FROM PAGE 1

to head the "Department of Health and Education Services," he didn't mention that Xavier Becerra has no experience in health care and is best known for his partisan legal battle against the Little Sisters of the Poor. Rather, Biden touted Becerra as a "world class expert" who would help the United States "heal as a nation."

In fact, Becerra is a self-described "pit-bull" when it comes to fighting for—and suppressing opposition to—abortion, gender ideology, and a host of issues that divide Americans. He spent 24 years in Congress representing a heavily Democrat district and, in his confirmation committee hearing for his appointment as California's attorney general, he lamented the difficulties in passing legislation in Washington D.C., where Republicans held some power. He hoped to have no such trials while enforcing laws passed by California's effectively one-party legislature and assured the Democrat members of the committee that he was ready to "charge forward" with their agenda: "I intend to push this as far as I can."

While attorney general, Becerra brought over 100 lawsuits against the Trump administration, fought the Little Sisters of the Poor and other religious organizations seeking an exemption from the Obamacare contraceptive coverage mandate, and prosecuted pregnancy resource clinics who refused to comply with California's FACT Act, which mandated that pro-life clinics advertise state-funded abortions. Regarding the FACT Act, he said that the consequences for a woman might be "dire" if the pregnancy centers did not post information promoting free abortions.

Not surprisingly, Becerra has said that he believes that organizations, faith-based or otherwise, have no conscience rights.

Planned Parenthood gives him a 100% rating and called him a "relentless advocate for reproductive rights." Becerra has said that laws restricting abortion are "outrageous."

In addition to running the federal health agencies, Health and Human Services (HHS) is responsible for enforcing dozens of federal conscience-protection statutes. Under the Trump Administration, HHS's Office of Civil Rights opened a new Conscience and Religious Freedom division to field complaints and conduct investigations of conscience violations.

"That was something that was unique—that hadn't been done in previous administrations," said Melanie Israel, a research associate in the DeVos Center for Religion and Civil Society at The Heritage Foundation. "It will be interesting going forward to see if that office continues to be a fixture at HHS."

Part of the enforcement mechanism is publicizing the conscience rights statutes. "People don't know that they can file a complaint of discrimination if they don't know what their rights are," Israel said. "That's been something that this division has been working very hard on for the last four years, to make sure that organizations know what's required of them, that people know what their rights are."

Under the Obama Administration, the HHS Office of Civil Rights took years to respond to complaints —often before finally announcing its conclusion that no violation had occurred. It is likely that Becerra will take HHS back along a similar path, deciding that those who object to participating in abortion or other destructive practices are themselves behaving discriminatorily, rather than that they are being discriminated against for their beliefs.

In the coming years, just as it did under the Obama Administration, Life Legal will legally defend individuals who are being coerced to violate their pro-life convictions. We will continue to fight on behalf of religious organizations—yes, those which Becerra believes have no religious or conscience rights—who object to participating in or providing abortion. Life Legal's efforts on behalf of various entities in California, which were being forced to provide abortion insurance coverage in violation of their religious beliefs, led last year to HHS declaring that California had forfeited millions of dollars in federal funding.

Life Legal is also fighting to hold onto pro-life gains made during the Trump Administration. Last year, Life Legal submitted a white paper to HHS about

the common phenomenon of premature babies being left to die simply because they have not reached the gestational age that the hospital guidelines assign as the threshold to receive treatment. Life Legal's efforts led both to investigations and enforcement by HHS against hospitals that had denied treatment to newborns, and also to an executive order by President Trump that reinforced the department's actions and directed it to prioritize research and training that would improve the outcomes of premature babies.

Letting babies die without being assessed for the possibility of treatment is a violation of federal funding statutes, and Life Legal will continue to push HHS to issue guidance to healthcare institutions to assess all babies, regardless of gestational age and regardless of the circumstances of birth. Even babies who are born alive during abortion attempts should not be left to die. That should be a non-issue.

Life Legal is working to advance legislation that would prohibit removing life-sustaining treatment—and certainly nutrition and hydration—from patients, unless specifically directed to by an advance health care directive.

Under the Trump Administration, some pro-life pregnancy clinics were able to apply to HHS for Title X family planning funding. Becerra will most certainly try to strip that funding and Life Legal will work on behalf of the pregnancy clinics. Life Legal is also working in other states to help pregnancy clinics retain state-distributed HHS funding.

As HHS and the rest of the Biden Administration ramps up its intolerance of pro-lifers, Life Legal will be fighting them every step of the way.

CANADIAN HOSPICE TO BE SHUTTERED FOR REFUSING EUTHANASIA

Wesley J. Smith

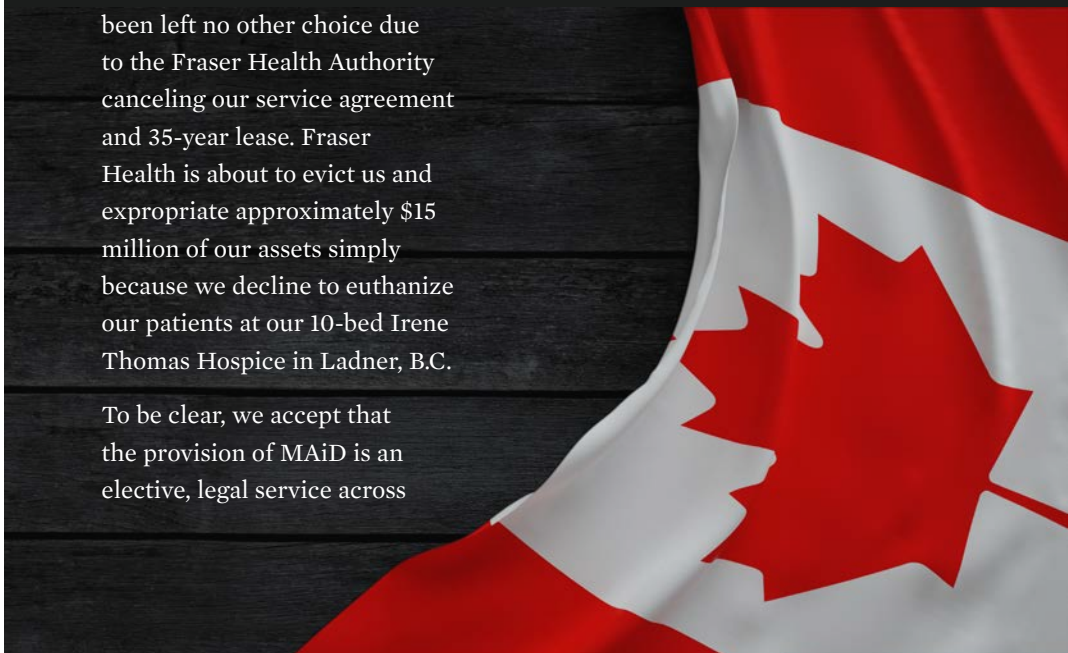
I have written here before[*] about Delta Hospice in British Columbia, which has been under unremitting pressure by the government of the province—including a funding cutoff—only because it refuses to participate in euthanasia. It is now being forced to lay off clinical workers and faces eviction. From the press release:

> The board of DHS deeply regrets being compelled to take this action. Tragically, as the video and the attached background document make clear, we have been left no other choice due to the Fraser Health Authority canceling our service agreement and 35-year lease. Fraser Health is about to evict us and expropriate approximately $15 million of our assets simply because we decline to euthanize our patients at our 10-bed Irene Thomas Hospice in Ladner, B.C.
>
> To be clear, we accept that the provision of MAiD is an elective, legal service across Canada. Nothing in Canadian law, however, requires medically assisted death to be made available everywhere, at all times, to everyone. The Constitution of our private Society and our commitment to palliative care, bars us from offering it. Neither the board of the DHS, nor the vast majority of our patients and members want to change that.

Euthanasia—killing patients—is directly antithetical to the hospice philosophy as established by the modern movement's founder, the late Dame Cicely Saunders.[*] Indeed, when I interviewed her for my book, *Culture of Death*, she told me that assisted suicide denies the intrinsic equal dignity of terminally ill patients.

Not only that, but there is a hospital directly next door to Delta where patients can go to be lethally injected, so it isn't as if suicidal patients won't be able to obtain their desire to be made dead.

But that isn't the problem. Delta's stand sends the moral message that human life has intrinsic value and that medicalized killing is wrong. We can't have that. The culture of death brooks no dissent.



LIFELINE

A PUBLICATION OF THE LIFE LEGAL DEFENSE FOUNDATION

Editor. . . . . Alexandra Snyder
Production . . . . . John O'Rourke
Design. . . . . Kelly Connelly Design

LLDF.org

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- Please contact your U.S. Senator to support legislation defunding Planned Parenthood!
- **Wanted:** Attorneys to assist with forced death and denial of care cases. We also need doctors willing to serve as expert witnesses. Please call Life Legal for more information: **(707) 224-6675**