ReCAP
GENERAL RECAP & UPDATE

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.

Obamacare: A Pro-Life Law?

In the frantic days leading up to the passage of the Patient Protection and Affordable Care Act—otherwise known as Obamacare—pro-lifers were dismayed to see the defection of erstwhile allies whose last-minute support for the legislation pushed it over the top.

Not content with claiming that abortions can not be funded under the new law—a claim refuted by both pro-life groups and congressional leaders—these defectors also latched onto various provisions of the 2000+ page bill which they said were affirmatively pro-life.

They pointed, for example, to the extension of the adoption tax credit, which had been set to expire at the end of 2010. Under Obamacare, a moderately expanded credit is set to expire instead in 2011. Adoption proponents expected that this popular tax credit would be extended in some legislation sooner or later before it expired, so its inclusion in the health care bill can hardly be considered a huge victory. Very few legislators would oppose it no matter in what bill it showed up. Moreover, while the adoption tax credit is undoubtedly a worthy pro-child, pro-family policy, it has virtually nothing to do with decreasing abortions. Pro-lifers who assist abortion-bound women in pregnancy care centers and on the sidewalks outside abortion clinics know that no girl or woman in America has an abortion because there isn’t anyone who can afford to adopt her child.

A second purportedly pro-life provision was $250 million in funding for abstinence-only education programs over five years. Such
ASK THE ATTORNEY: Nikolas Nikas

When Nikolas Nikas joined the Board of Directors of Life Legal Defense Foundation in 2006, he brought with him not only his knowledge, skills and experience as a pro-life attorney, but also the organizational and planning abilities of one who has founded and successfully run his own non-profit pro-life organization. Nik received both his undergraduate and graduate degrees in government and international relations from the University of Notre Dame. He received his law degree from Arizona State University. Nik and his wife are the parents of five children and live in Phoenix, Arizona.

How and when did you become interested in pro-life legal work?

My father had died when I was 16 years old. In 1995, our youngest daughter Sophia died within a half an hour after she was born. I was always pro-life, but I think that having these personal experiences of just how precious life is reinforced for me the necessity of defending it. To think that life in the womb was being destroyed on a huge scale convinced me that if I were going to continue to practice law I would do so in the pro-life cause. I can honestly say that I would not be a practicing attorney if I were not doing pro-life law.

I have been involved in pro-life work since 1990. I first worked with LLDF in 1990. [Legal Director] Katie Short approached me in 1990 when I was working for the American Family Association Law Center and asked me to help defend some pro-life people. This was the Planned Parenthood vs. Holy Angels case in San Francisco. So my association with LLDF goes back 20 years—years before I was on the Board. In the beginning, my practice was both pro-life work and religious freedom work. I shifted fully into pro-life work in 1997.

You run your own non-profit pro-life organization, don’t you?

Yes. The Bioethics Defense Fund [www.bdfund.org] is a non-profit public interest law and policy organization that defends the dignity of every human life from beginning to end. We do so through litigation, legislation, education and media. We address the full range of life issues: healthcare rights of conscience, human cloning and destructive human embryo research, end-of-life issues such as physician assisted suicide and healthcare rationing, and of course abortion.

Having your hands full with your own pro-life organization, what persuaded you to join the Board of LLDF?

First of all, I had that sixteen-year relationship with Katie [Short] and I knew that anything that she was involved with would be an effort of integrity well worth supporting.

Second, I don’t see pro-life law as a zero sum game. I want to see the end of the Culture of Death. If I can help LLDF be more effective and more efficient, that is good for all of our pro-life organizations. I am not doing this just to have a job. I am doing this because the Culture of Death is the grave evil of our time and people need to rise up and respond to it. I would like to see LLDF and every other pro-life organization thrive. If I can make just a small contribution to it I am helping the cause.

Would you comment on how the issues facing pro-life advocates have increased since Roe vs. Wade was decided in 1973?

The threat to innocent human life has expanded greatly. From 1973 on there has been the threat to human life from the practice of human abortion, which is rightfully called an atrocity. But now we also have—as people predicted—threats at the end of life like euthanasia and physician-assisted suicide. And with the booming of the biotech revolution we now have new threats that weren’t even around at the time Roe was decided, such as assaults on humans in the embryonic stage of existence: embryonic stem cell research, the push to clone human embryos, genetic engineering, animal/human hybrids, and the push to create synthetic human life. All these things threaten human life at a very early stage, but not in the context of abortion. The pro-life movement has to understand that you can save lives by opposing destructive human embryo research, you can save lives by banning the cloning of human embryos, and you can save lives by preventing the misuse of genetic engineering. We’re not Luddites. We don’t say all technology is bad. What we do say is that science has to be bounded by moral norms. Some scientists believe that they should be able to do whatever they want. As I said to a group of law students to whom I spoke the other day, science may teach you how to build a hydrogen bomb, but only morality and ethics can tell you whether you should drop it.

Would you include in your enumeration of threats to human life arising out of the biotech revolution in vitro fertilization (IVF) and egg donation?

IVF is an area in which a great number of human beings in the embryonic stage of existence have been destroyed, and
As for egg donation, it depends on what you are using the eggs for. If you are donating the eggs for IVF, you are going to have all the problems with IVF that I just mentioned. If you are donating the eggs so they can be used to clone human embryos that is grossly immoral also.

There is a great quote I use from C.S. Lewis when discussing IVF and egg donation: “What we call Man’s power over Nature turns out to be a power exercised by some men over other men with Nature as its instrument.”

**How can LLDF be most effective in the ongoing battle for life?**

As the threats to human life have expanded beyond abortion I would like to see LLDF expand their response to meet these new threats. While we continue to “defend the defenders of life” we should expand the services we offer because the threats are coming from new places and all innocent human life is precious no matter how it’s assaulted. We need to be there.

The end-of-life area is a huge area that needs more attention. We have done some work in that area, but if healthcare gets rationed, we will have to respond. The cheapest way to cure anyone at the end of life is to kill them. This will be a huge threat, so we will have to re-double our efforts in this area. People need to be loved at the ends of their lives, not discarded or killed.

**What is the current state of the battle for life?**

The battle for life may be a long one. It will require fortitude, courage and hope. But we have made progress. Years ago the other side denied that an unborn child in the womb was a human being. Science has overwhelmingly proven that it is a human being. Now they argue that aborting that human being is necessary for equality. This is a morally flawed argument that will also fail.

Most young people are pro-life. But people are frustrated because of the huge toll that has been and continues to be taken: 40 to 50 million or more unborn children slaughtered in the womb. The numbers are so overwhelming that at times people despair. But we have made progress and we have to keep fighting.

Social reform movements take a long time—sometimes decades or even hundreds of years. The most important thing people can do is not give up, not let the frustration and numbers overwhelm them and cause them to throw up their hands and say, “We can never win this”. We are going to see the end of abortion in our time, or our children or grandchildren will see it in their time. The only way we fail is when we give up—when we don’t show up for the battle.

I would say to the supporters of LLDF that their constant support for our work—their prayers and financial donations—are concrete ways of saying, “We’re not giving up”. *Roe vs. Wade* could be reversed in five years, or three years, or two years—who knows? Or it might be—I shudder to say—longer than that. We just need to keep fighting this battle no matter how long it takes, no matter what the sacrifice.
A Call to Watchfulness

This year marks 5 years since Terri Schindler Schiavo’s life was ended by dehydration and starvation. Her death came after a relentless legal battle to save her life waged by her parents, Robert and Mary Schindler. They simply wanted care for their disabled daughter until she died a natural death. Terri’s husband, Michael Schiavo, would not allow that to happen. After years of legal battling, Michael Schiavo’s request was granted and Terri’s feeding tube was removed, resulting in her premature and forced death.

LLDF was both humbled and honored at the privilege of assisting the Schindlers in their struggle to save their daughter. The lesson learned from Terri’s death is that should you become incapacitated by illness or disability, the person who is your decision-maker could mean the difference between life and death.

This decision-maker may very well become the federal government with the passage of the Patient Protection and Affordable Care Act (PPACA), commonly referred to as Obamacare. As you will read below, the inclusion of the word “care” in the title may be one of the biggest misnomers in the Act. There are a number of risks to the safety of patients raised by the wording of PPACA—risks that will fall with greatest force on those who are elderly, disabled, or chronically ill.

Risk number one: inadequate medical care for Medicare patients, those 65 and over.

Lack of sustainability has been a problem for Medicare for a number of years, especially as the population ages and there are fewer working-age people to bear the cost of increasing medical care. (Consider the impact that the abortion of at least 44 million unborn children—future taxpayers—has had on this phenomenon.) Despite the obvious sustainability issues Medicare faces, one of the first impacts PPACA will have is to put Medicare at an increased risk of lack of sustainable funding.

The Chief Actuary of the Centers for Medicare and Medicaid Services estimates that not only will Medicare benefits be cut under PPACA, but national spending on health care will go up by an estimated $311 billion over the next 10 years. Cuts in Medicare spending, simultaneous to overall increased health care spending, spells less care for patients, and eventually the demise of the entire program.

Risk number two: the rationing of healthcare.

An outgrowth of the lack of sustainable funding is the rationing of care. PPACA creates a new federal organization named the Independent Payment Advisory Board, and gives it the duty to make recommendations to slow the growth of national health expenditures, including private insurance health expenditures. The Secretary of Health and Human Services and other federal agencies, can then implement these recommendations administratively, or Congress or State governments can implement them legislatively.

The Secretary of Health and Human Services is also empowered to impose “quality” and “efficiency” measures on health care providers. It has been predicted that this will amount to doctors, hospitals, and other health care providers being told by Washington what medical care is considered to meet “quality” and “efficiency” standards. It has been the experience of LLDF attorneys involved with forced death cases that the words “quality” and “efficiency” are euphemisms for rationing healthcare. Thus, although implementation of PPACA remains to occur over the next few years, predictions of what to expect from the institution of such things as “quality and efficiency” guidelines are far from comforting.

Risk number three: loss of patient control over health care decisions.

The potential rationing of care isn’t the only risk created by PPACA; a loss of patient control over such basic decisions as whether to purchase comprehensive health insurance may also be implicated. One of the primary features of PPACA are health insurance exchanges, state markets designed to allow comparison shopping among insurance plans. The exchanges will control what benefits will be offered by plans participating in the exchange. This control will extend to insurance plans offered outside the exchange. For instance, under section 1003 of PPACA, exchanges can effectively limit the value of the insurance policies that exchange users are allowed to purchase. If an insurer participating in the exchange raises a premium, even for a plan offered outside the exchange, the insurer may be removed from the exchange. This means that insurers are going to be deterred from offering comprehensive plans—which in turn will limit the consumers’ ability to choose comprehensive plans.

It is feared that this will begin a pattern leading to loss of individual decision-making rights to such an extent as to
lead to panels of “experts” deciding whether or not life-sustaining healthcare will be provided to patients. Time will tell whether or not PPACA will lead to what some call “death panels,” but the Independent Payment Advisory Board (discussed above) could certainly be a step in that direction as indicated by PPACA’s focus on reducing costs and improving efficiency.

Risk number four: lack of protection for the conscience rights of health care professionals.

Another potentially devastating impact of PPACA is its lack of conscience protections for health care professionals. While PPACA contains language mandating that plans offered through exchanges may not discriminate against providers who have conscientious objections to certain medical practices, these protections are offered only to health “plans,” which may leave the conscience of the individual health care professional without protection. The potential for this result will no doubt lead to legal challenges that will take years to work their way through the courts, and the lack of conscience protections may lead some medical professionals to exit the field rather than compromise their convictions.

PPACA: Is the cure worse than the disease?

While the full impact of PPACA will remain unclear until it is implemented, one thing is clear: PPACA creates more questions than answers. And since the government did such an excellent job overseeing banks and mortgage companies perhaps we should just trust them to provide our healthcare?

As President Ronald Reagan so aptly put it, “In this present crisis, government is not the solution to our problem; government is the problem.”

With the government taking on the role of health care decision-maker in increasing ways, those who value life should be challenged to increased watchfulness lest the most vulnerable among us be subjected to premature, forced death.

[Part of the solution to restoring our culture to respect the sanctity of human life is seen in the daily operations of LLDF. The research for this article was completed by Rebekah Millard, one of our staff attorneys who works tirelessly for life at reduced wages. Congratulations, Rebekah! Your sacrifice on behalf of the weak and vulnerable among us does not go unnoticed. The same can be said of all of LLDF’s staff and volunteers, the majority of whom have been working with LLDF for many years. As for our reader, please know that we could not accomplish our mission without your support, for which we are very grateful.—Ed.]


2 See discussion of PPACA’s neglect to fix existing Medicare issues, http://docs4patientcare.org/_blog/Resources/post/10_Disastrous_Consequences_of_Obamacare_The_Heritage_Foundation/ (Kathy Nix, March 30, 2010); point number 7 discusses Medicare.


4 See letter from Chief Actuary for the Centers for Medicare and Medicaid Services, note 2, supra. This analysis has been among the more damaging given to PPACA; a summary of it is available at http://www.galen.org/component,8/action,show_content/id,14/category_id,0/blog_id,1399/type,33/(The Galen Institute, April 23, 2010).

5 The Obama Health Care Rationing Law: The Commission That Will Develop Standards the Administration Will Impose to Limit Private Sector Medical Care (The Robert Powell Center for Medical Ethics) http://www.nrlc.org/HealthCareRationing/ObamacareLaw032110.html; and see the Patient Protection and Affordable Care Act Sec. 10320(b).

6 The Patient Protection and Affordable Care Act, Sec. 10304, amending Sections 1890(b)(7) and 1890A of the Social Security Act, as added by sec. 3014.


8 See id. at section entitled “Limiting Exchange Users’ Right to Use Their Own Money to Save Their Own Lives” discussing the impact of Sec. 1003 giving bureaucrats the ability to limit the cost, and thus what is afforded, in insurance plans.


programs are unquestionably superior to Planned Parenthood-style propaganda and are an important tool in decreasing the teen pregnancy rate. However, the health care bill only provides these funds if they are first matched by state funds. Moreover, the bill also provides funding for “personal responsibility education” (i.e., Planned Parenthood-style sex education) according to a formula too Byzantine for this writer to decode. Finally, the bill also appropriates $50 million per year for school-based clinics (SBCs) to provide “age appropriate” comprehensive health care services to elementary and high school age children. Although the bill prohibits these SBCs from providing abortions on site, there is no prohibition on their assisting students in obtaining abortions elsewhere, nor on providing students with contraceptives. Unfortunately, parents frequently sign a general consent form for their children to receive services at SBCs, having in mind medical emergencies, not realizing that they are consenting to their child’s receiving “confidential medical services” such as birth control, pregnancy testing, and abortion assistance. The mother of a fifteen-year-old girl in Seattle recently learned this lesson too late to protect her daughter and grandchild. Thus, far from merely providing healthcare assistance for first-aid or urgent-care-type needs, SBCs might more accurately be viewed as free-contraceptives-dispensing, abortion-referral centers, strategically located where the majority of U.S. teens could not find them. This seems guaranteed to increase, not decrease, teen promiscuity and, inevitably, teen abortions.

Another “pro-life” provision of Obama care allocates $250 million over 10 years to the newly-created “Pregnancy Assistance Fund.” This money will be available in the form of grants to states that will in turn be awarded to universities, colleges, high schools and “community service centers” to “establish, maintain, or operate pregnant and parenting services” in the areas of insurance coverage, housing, child care, parenting education, material assistance (maternity and baby clothes, food, etc.), post-partum counseling, and assistance with continuing and completing education. The money may also be given to state attorneys general and local officials to improve services for pregnant and recently pregnant women who are the victims of domestic violence, sexual assault and stalking. The money may also be used to raise public awareness concerning the availability of all of these services.

It doesn’t take a math major to realize

**ReCAP**

(CONT’D FROM PAGE 1)

**Hoyle v. Oakland** (Oakland) Federal constitutional challenge to Oakland “Mother May I” ordinance 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. The case was appealed to the Ninth Circuit. Briefing is complete, and the parties await a date to be set for oral argument.

**People v. Hoyle** (Oakland) Criminal prosecution arising from municipal receiving “confidential medical services” such as birth control, pregnancy testing, and abortion assistance. The mother of a fifteen-year-old girl in Seattle recently learned this lesson too late to protect her daughter and grandchild. Thus, far from merely providing healthcare assistance for first-aid or urgent-care-type needs, SBCs might more accurately be viewed as free-contraceptives-dispensing, abortion-referral centers, strategically located where the majority of U.S. teens could not find them. This seems guaranteed to increase, not decrease, teen promiscuity and, inevitably, teen abortions.

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It doesn’t take a math major to realize

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**Mother May I** ordinance. Pastor Walter Hoyle was acquitted of charges of “intimidating” pro-abortion escorts, but was convicted of two counts of unlawfully approaching unspecified persons entering the clinic. Rev. Hoyle turned down probation, requiring him to stay 100 yards away from the clinic, and instead served a 30-day sentence and paid a fine. On August 24, 2009, Judge Stuart Hing denied the Alameda County District Attorney’s motion for a lifetime injunction against Rev. Walter Hoyle coming within 100 yards of the clinic. The criminal conviction was appealed. Briefing is complete and the case was argued on June 25, 2010.

**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 pending.

**Turn the Hearts v. Birmingham** (Ala.) Civil action filed against city and individual police officers for arrest of pro-life activists (see above.) Plaintiffs moved for preliminary injunction. The city responded by claiming that the arrests were for violation of city ordinance requiring permits for “demonstrations” consisting of two or more
that, in terms of preventing abortions, $25 million per year, filtered through various centers, programs, and agencies, will have to be spread very thin to reach any appreciable number of the more than 1.2 million women per year who have abortions. And that is assuming that the money could be aimed solely at women who would otherwise have abortions—which is impossible.

The amount appropriated for the Pregnancy Assistance Fund is dwarfed by the $11 billion appropriated in the health care bill for Community Health Centers (CHCs), with no restrictions on how the money may be used. These CHCs, of which there are currently 1,250 in operation around the country, are already being lobbied by the Reproductive Health Access Project to expand their services to include abortion.

In a public statement lauding the passage of the health care bill, Planned Parenthood president Cecile Richards happily pointed to “the fact that the legislation … would significantly increase access to reproductive healthcare,” and noted that the bill would “expand family planning under Medicaid, which would significantly increase access to essential preventive health care for millions of women.”

Ms. Richards herself is trying to put a “pro-life” spin on the bill, by dangling before the public the promise that more money spent on “family planning” and “preventive” care, (i.e., birth control drugs and devices) will translate into fewer abortions. However, as professor Michael New and others have demonstrated, the research behind these claims is flawed and incomplete. This research, frequently underwritten by friends of PP, also fails to take into account the negative social consequences of the government underwriting sexual promiscuity by providing contraceptives on demand to all comers.

Moreover, Ms. Richards’ use of the word “preventive” in the context of the “services” Planned Parenthood offers is carefully calculated. The health care bill grants ample authority to the Secretary of Health and Human Services (Kathleen Sebelius, friend of late-term abortionist George Tiller), if she so chooses, to place abortion on the list of “preventive” care services, thereby making abortion coverage mandatory in some state exchange plans.

On closer examination, then, even the supposedly “pro-life” aspects of Obamacare are not calculated to reduce the numbers of abortions. On the contrary, the new law seems hell bent on driving the numbers ever higher, all at taxpayers’ expense. No wonder Cecile Richards was so pleased.

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**People v. Weimer (Jackson, Miss.)**

Pro-life picketer convicted of violating local sign ordinance. Appeal briefs filed and arguments pending.

**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 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. 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. *Frachey v. Planned Parenthood* was brought against both the city of Aurora and PP, based on the former failing to enforce municipal zoning regulations and building permit requirements. In May, the court denied Planned Parenthood’s and Aurora’s motions to dismiss three of the counts and a decision is pending on the remaining counts, so the case is proceeding. The second lawsuit, against the city of Aurora alone for suppressing First Amendment-protected protests and prayer vigils, has settled, with the city agreeing to amend its residential picketing and parade...
The group was led to focus forty days of prayer, fasting, and repentance for an end to abortion in their community of Bryan/College Station, Texas. A thousand people responded to the call, with dramatic results: a 28% decline in the number of abortions in their area.

News of this new vision of prayerful activism soon spread to other communities. In the fall of 2007, 40 Days launched its first nationwide campaign, with 80 cities participating. By the spring of 2010, over 300 cities, representing all 50 states, six Canadian provinces, as well as cities in Australia, Northern Ireland, and Denmark, had held 40 Days vigils. In its wake, 40 Days has seen thousands of mothers decide to let their babies live, as well as dozens of clinic workers quitting the abortion business.

Back at Ground Zero, the Fall 2009 campaign saw the resignation of Bryan (Texas) Planned Parenthood clinic director Abby Johnson. Ms. Johnson viewed an ultrasound and “I just thought I can’t do this any more and it was just like a flash that hit me and I thought that’s it.” Ms. Johnson also noted that Planned Parenthood’s business model was focusing more on abortion. “The money wasn’t in family planning, the money wasn’t in prevention, the money was in abortion and so I had a problem with that,” she stated.

With more than 20 years’ experience defending pro-life activists, LLDF is well aware that where the pro-life message comes in direct contact with the abortion juggernaut, legal conflicts are almost sure to follow. On several occasions, LLDF attorneys have intervened to ensure that the 40 Days campaign could proceed as planned, without unlawful interference from the clinic or law enforcement.

For example, shortly before the Fall 2009 campaign was scheduled to start, city officials in Pomona, California, told 40 Days’ organizers that they needed a parade permit—and no permit would be forthcoming. LLDF attorney Allison Aranda contacted the city and resolved the issue in time for the campaign to begin on schedule—without a permit. Pro-lifers in Merrillville, Indiana, were harassed by a city police officer on special duty “protecting” the Planned Parenthood clinic by shouting at them over his patrol car’s PA system, making communication with women virtually impossible. Again, a letter from LLDF to the chief of police resolved the issue. The offending officer was removed from the assignment, and other officers were instructed on their duty to remain impartial.

Sometimes the threats are less direct or are directed at “residual” 40 Days activity, where pro-lifers inspired by the 40 Days campaign decide to continue their prayer and sidewalk counseling after the official vigil is over. For example, Planned Parenthood Golden Gate attempted to have longtime pro-life activist Ross Foti held in contempt for allegedly violating a court order. In so doing, PP’s attorneys argued that all persons at the clinic at the same time as Foti, including many 40 Days pray-ers, were “acting in concert” with Foti and thus also bound by the injunction. After a two-day trial and extensive post-trial briefing, the court ruled that Foti was not in contempt, noting that PP’s evidence of others “acting in concert” with him was particularly weak.

LLDF also is working with 40 Days’ organizers to prevent problems before they start. Allison Aranda has participated in organizational meetings and seminars with leaders, instructing them on the law, answering their questions, and assuring them of legal assistance in case of problems.

“The 40 Days campaign has truly led to a re-awakening of the Christian community about the scourge of abortion in their own towns and cities. 40 Days is saving lives and changing hearts. We are honored to assist this effort, to smooth its path and clear away obstacles in any way we can,” said Aranda.

[Information on 40 Days for Life may be located at 40DaysforLife.com—Ed.]
The Eggsploited: When Two Markets Collide

Louise Brown was born in the United Kingdom on July 25, 1978, the world’s first test-tube baby, conceived by in vitro fertilization (IVF).

Just five years later in Australia, fertility doctors used the first donor egg in an IVF procedure. Since then, IVF technologies have been accepted almost entirely without criticism as the treatment of choice for couples struggling with infertility. These technologies have become so mainstream that we now see IVF treatments being used by couples with otherwise healthy and functioning reproductive bodies.

Same-sex couples can now become parents using donated eggs, sperm, and surrogate wombs. To be a “single mom by choice” is gaining popularity as a lifestyle option for women who don’t want to wait for Mr. Right—or who just choose, as “Octomom” did, not to bother with Mr. Right.

Post-menopausal women, sometimes well into their 60s, who should be welcoming grandchildren into their families, are seeking reproductive technologies for more children of their own.

Recently, Illinois passed a new law requiring insurance providers with IVF coverage to extend benefits not just to infertile couples, but now to same-sex couples and single-by-choice folks (neither of whom can be said to be “infertile” in any common sense).

The baby-making industry is now a global market, making many rich as others are being exploited. Furthermore, reproductive technologies are becoming increasingly eugenic, seeking to design the “best” children money and technology can buy.

Egg Donation

Take a look at the egg donation market in the U.S. The most recent data from the Centers for Disease Control and Prevention states that in 2007, in the United States alone, over 17,000 assisted reproductive technology cycles were performed using donated eggs. And this number is on the rise.

The majority of cycles were performed using anonymously donated eggs, meaning the young egg donor has no idea if her eggs produced children and who the parents are. Would-be parents scour the internet and egg broker agencies like “Our Fairy Godmother,” or “A Perfect Match,” looking for the best genetic material available to create a child of their dreams.

Certain desirable characteristics—being pretty or tall or having high SAT scores—can fetch more money for the donor. If the donor’s eggs produce healthy children, she has secured her position as the coveted “proven” egg donor who can donate again and again, often at even higher payments.

But the general public, let alone most potential egg donors, doesn’t really understand (1) what is involved in egg donation—that is, how doctors can manipulate a young woman’s body to produce multiple eggs at one time (Hint: It requires many weeks of injecting powerful hormones, followed by anesthesia and surgery to remove the eggs), and (2) how little we have studied the effects of the donation procedures on egg donors over time—we have little to no data on the short- and longer-term risks to egg donors who take the powerful drugs needed to produce many eggs.

For those who ascribe to the Christian view of marriage, family, and procreation, certainly we can agree that third-party means to build a family are quite problematic. And we should be deeply concerned about the potential harm done to young women.

Market Competition

But as the egg donation practice continues, now the competition is expanding. Human eggs are a coveted resource for embryonic stem cell and cloning researchers. On June 14, the California Institute for Regenerative Medicine—responsible for spending California Proposition 71’s $3 billion in taxpayer funds on human embryonic stem cell and cloning research—had a private session where the agenda was to discuss “Procurement of Human Oocytes [eggs].”

Two of my colleagues attended this meeting, but were barred from entering. They were told the meeting was private because of the need to protect intellectual property. One has to wonder what intellectual property needs to be protected when the discussion is around the purchasing of human eggs for research, which is prohibited in California.

Currently, the only state that can pay donors for their eggs for scientific research is New York, and that is now being challenged in the courts. Of course, California stem cell researchers are trying
Assisted Suicide: Why Now?

Since 1988, when euthanasia advocates failed to qualify for a legalization initiative on the California ballot, the assisted suicide movement in the United States has gone from a barely noticed fringe movement to a well-funded political machine that threatens Hippocratic medical values and the sanctity/equality of human life.

Consider the disturbing history: In 1994, Oregon legalized assisted suicide (by a 51-49% vote), with the law going into effect in 1997. The movement had a setback in 1997 when the U.S. Supreme Court ruled, in a rare unanimous decision, that there is no constitutional right to assisted suicide. But in 2008, Washington State legalized Oregon-style assisted suicide by a lopsided 58-42%. Then, last year, Montana’s Supreme Court ruled that assisted suicide was not against the state’s “public policy.”

The euthanasia movement is not resting on its recent laurels. Advocates have filed a lawsuit in Connecticut to legalize assisted suicide by redefinition—on the dubious theory that a doctor who lethally prescribes drugs for use by a terminally ill patient is merely performing “aid in dying,” rather than the legally proscribed assisted suicide. Meanwhile, legislative legalization efforts have been initiated in Hawaii, Arizona, Wisconsin, Vermont, New Hampshire and Connecticut—all without success.

A question amidst all of this Sturm und Drang naturally arises: Why now? After all, 100 years ago when people did die in agony from such illnesses as a burst appendix, there was little talk of legalizing euthanasia. But now, when pain and other forms of suffering are readily alleviated and the hospice movement has created truly compassionate methods to care for the dying, suddenly we hear the battle cry “death with dignity” as “the ultimate civil liberty.”

In fighting assisted suicide since 1993, I have often pondered the “why now” question. I’ve found two answers: First, the perceived overriding purpose of society has shifted to the benefit of assisted suicide advocacy, and second, our public policies are driven and defined by a media increasingly addicted to slinging emotional narratives rather than reporting about rational discourse and engaging in principled analysis. Add in a popular culture enamored with social outlaws, and the potential exists for a perfect euthanasia storm.

Social commentator Yuval Levin, a protégé of ethicist Leon Kass, described the new societal zeitgeist in his recent book Imagining the Future: Science and American Democracy. While not about assisted suicide per se, Levin hit the nail on the head when he described society as no longer being concerned primarily with helping citizens to lead “the virtuous life.” Rather, he wrote, “relief and preservation from disease and pain, from misery and necessity” have “become the defining ends of human action, and therefore of human societies.” In other words, preventing suffering and virtually all difficulty is now paramount. In such a cultural milieu, eliminating suffering easily mutates into eliminating the sufferer.

The prevent-suffering-at-all-costs agenda is harnessed by assisted suicide advocates through publicizing heart-rending stories of seriously ill or disabled patients who want to die. Illustrating how potent this emotional narrative has become, even the ghoulish Jack Kevorkian is being remade into a big softy concerned solely with relieving guilt of violent crimes. In response to the lawsuit, Planned Parenthood prevailed on the trial judge to broadly interpret Illinois' newly effective (just days before suit was filed) anti-SLAPP law. 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 from suit and free to spread whatever lies it wanted so long as it was trying to get its permits. The judge also ordered the pro-life plaintiffs to pay PP’s attorney’s fees, said to exceed $300,000 for less than a year’s efforts. This case is on appeal.

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.
suffering. Indeed, none other than Al Pacino sympathetically portrayed Kevorkian in the recent HBO movie, You Don’t Know Jack.

Ignored by the script writers and the media, the real Kevorkian was the mirror opposite of compassionate. In his 1993 book Prescription Medicide: The Goodness of Planned Death, Kevorkian made his ultimate purpose chillingly clear, calling assisted suicide “a first step, an early distasteful professional obligation” toward obtaining a license to engage in human experimentation.

Writing further: “What I find most satisfying is the prospect of making possible the performance of invaluable experiments or other beneficial acts under conditions that this first unpleasant step can help establish—in a word, obitiatry—as defined earlier.” (“Obitiatry” is the word Kevorkian coined to describe experimenting on people as part of the practice of human euthanasia.) That the media depict Kevorkian as caring rather than self serving tells us how far awry we have been pushed by the collective desperation to avoid suffering by whatever means necessary.

Still, there is good news in spite of the darkening sky: Principle and virtue are not dead. To the consternation of assisted suicide advocates, the sanctity-of-life principle has not yet completely lost its vitality. The vast majority of doctors in Oregon do not assist patient suicides; most of such deaths are facilitated by the advocacy group Compassion and Choices. In Washington, physicians and health corporations—such as the Providence Hospitals—have pushed back against the new law by stating publicly that they will not participate. And despite millions of dollars spent promoting the agenda (financed by the likes of George Soros), assisted suicide has not broken into the mainstream of American law and medical practice.

But they will keep trying. Successful resistance does not require giving up vital principles. Opponents, however, will have to tailor their message of true compassion and care in ways that resonate within the current cultural milieu. Just saying that killing is wrong is no longer enough.

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[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 has been released by Encounter Books. [http://www.encounterbooks.com/]

Please note that Mr. Smith’s blog, Secondhand Smoke has been relocated to the blog pages on First Things web site: http://www.firstthings.com/blogs/secondhandsmoke]
Promoting A Culture of Life

Human Life Alliance (HLA) is a non-profit, non-denominational, pro-life organization dedicated to protecting human life from the moment of conception until natural death.

Founded on April 2, 1977, by dedicated pro-life volunteers, HLA operates out of a small office in Minneapolis, Minnesota.

HLA seeks to educate all people on life issues by:

- Raising awareness of the humanity of the unborn child and exposing the gruesome realities of abortion.
- Opposing euthanasia in all its forms, both active and passive, and fighting for the protection of all human life, including the terminally ill, elderly, disabled, and medically vulnerable.
- Promoting chastity, abstinence until marriage, and educating on the errors and health risks of the “safe-sex” promotion.

HLA's priority project is to publish and distribute advertising supplements, focusing on abortion, euthanasia, and chastity, through mainstream media and college newspapers. Reaching a combined circulation of nearly 30 million copies over the past 14 years, these extremely powerful and creative advertising supplements are the cause of vigorous debate on high school and college campuses across the nation receiving widespread acclaim.

She’s a Child, Not a “Choice”, the 20th anniversary edition of HLA’s very first publication, is designed to further inform those who are already pro-life about the realities of abortion, as well as increase awareness of the personhood of the preborn child. This publication covers topics never seen before in other HLA publications, including stem cells, in vitro fertilization, and eugenic abortion. She’s a Child, Not a “Choice” equips pro-lifers with the tools they need to know their stance and engage with pro-abortion minded people. HLA hopes that this piece will be used in churches and pro-life groups and organizations. Printable/reproducible files may be downloaded from http://www.humanlife.org/shesachild.php.

Powerful Pro-Life Literature

Representative articles:

- What is the Key Question?
- Shouldn’t the Law Protect Everyone?
  by Keith Mason
- Follow the Logic
  by Scott Klusendorf
- Preborn Children, the Law and Personhood by Gregory J. Roden
- Peter’s Contribution: Disability Rights and Human Worth by Mary Kellet
- Women’s Health After Abortion by Georgette Forney
- Stem Cell Research: Opening Pandora’s Box
- Abortion Boom and Bust by Dennis Howard
- Persons Not Property by Walter Hoye

Caught in the Middle: The Eggsploited

Our new documentary film, Eggsploitation, seeks to spotlight the booming business of human eggs, told through the tragic and revealing stories of real women who became involved and whose lives have changed forever. You will meet women whose stories you won’t hear in the mainstream press, and aren’t talked about on Oprah or discussed at professional meetings among fertility specialists. Some are women who were students on prestigious college campuses in America, racking up student loan debt, who responded to ads posted in their school newspapers and on bulletin boards, and thought the answer to their mounting debt was to answer an ad to “help make someone’s dream come true.”

This film seeks to shed light on the experiences of these young women, telling the full story of this multi-billion dollar industry. As one young woman laments in a comment shared with her mother, after her near brush with death, “The industry knew that this would happen sooner or later. They’ve just been rolling the dice and it fell on your daughter. It was worth the money to them.”

[Jennifer Lahl is National Director for the Center for Bioethics and Culture Network (cbc-network.org) and founding member of Hands Off Our Ovaries (handsoffourovaries.com). This article originally appeared July 6, 2010, on BreakPoint.org.]
Personhood and the Law

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.” Declaration of Independence, 1776. More than 230 years after the Declaration of Independence, a specific “created” class of persons in America is denied the most essential of the guarantees contained in this pronouncement.

Personhood under the law is a malleable creature, chiseled by the vicissitudes of social mores and the nation’s moral landscape. By the courts’ attachment of this nomenclature, constitutional rights have been granted to corporations and business entities. Also, by its detachment, constitutional rights such as life and liberty have been denied to unborn children. The youngest members of our society have a fragile existence, jeopardized by the inconsistent application of personhood under the various divisions of law, specifically, criminal, civil, probate and constitutional.

In the criminal sphere, 36 states prosecute the killing of a preborn child as homicide, although application varies based on the child’s stage of development. Alternatively, the “born-alive rule” is applied in 12 states, which requires a live birth and subsequent death due to injuries caused before birth in order to prosecute for homicide.

Thousands of years ago when God delivered the criminal law to the nation of Israel He outlined the appropriate punishment for assault on a pregnant woman resulting in the death of her unborn child. “If men fight, and hurt a woman with child, so that she gives birth prematurely, yet no lasting harm follows, he shall surely be punished accordingly as the woman’s husband imposes on him; and he shall pay as the judges determine. But if any lasting harm follows, then you shall give life for life…” Exodus 21:22, 23. This principle has imprinted our criminal laws today.

By its detachment, constitutional rights such as life and liberty have been denied to unborn children.

Justice Blackmun, who authored the majority opinion in Roe v. Wade, concluded “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.”

Twenty one states prosecute assailants for attacks on pregnant women which injure their unborn child. In 11 states prosecutions and enhancements of penalty are authorized in cases where a woman is assaulted and as a result thereof suffers a miscarriage, stillbirth, or “damage to pregnancy,” albeit six of these fail to recognize the unborn child as a victim of the assault. Ironically excluded from prosecution under any of the foregoing are mothers of the unborn child and medical personnel in the context of legal induced abortion. However, in 6 states mothers who engage in substance abuse during pregnancy may be prosecuted for child abuse. Ten other states provide for a civil action under child welfare statutes.

Civilly, thirty eight states permit a legal action for wrongful death of a preborn child dependent on the preborn child’s state of development. In contrast, 12 states require a live birth and subsequent death in order to bring suit.

For more than 120 years, probate law has recognized the unborn child’s rights of inheritance followed by a live birth, a standard applied nationwide. Cowles v. Cowles, 56 Conn. 240, 13 A. 414 (1887). However, constitutional law, as interpreted by the Supreme Court, refuses to acknowledge the personhood of the preborn.

Justice Blackmun, who authored the majority opinion in Roe v. Wade, concluded “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.”

A preborn human being was therefore not a “person” and had no right to life. Justice Blackmun suggested that if the unborn were constitutional persons, the case for abortion would collapse. Roe v. Wade, 410 U.S. 113 (1973).

“So God created man in His own image; in the image of God He created him; male and female He created them.” Genesis 1:27. While all persons may have been created equal, under abortion jurisprudence millions of Americans suffer the worst stigma of inequality by denial of the right to life.

[Joanna Galbraith is a volunteer staff attorney for Life Legal Defense Foundation. She wrote the preceding at the invitation of the Human Life Alliance for one of their publications. The work of HLA is briefly described in the article on page 12.]
Federal Funds Available to Planned Parenthood and Other Pro-Abortion Organizations (2002-2009)

On June 16, 2010, Rep. Pete Olson (R-Tex.) announced a new Government Accountability Office (GAO) report detailing federal funding levels for pro-abortion organizations, including Planned Parenthood. The report reveals that over the reporting period contained in the report the selected organizations spent roughly a billion dollars in federal taxpayer funds, and Planned Parenthood Federation of America received over half of that billion dollars. Specifically Planned Parenthood Federation of America received $657.1 million dollars over seven years, which averages just under $100 million federal taxpayer dollars each year—and that does not include state and local taxpayer funding. Notably, these funds underwrite abortion promoting organizations, but do not directly pay for abortion due to the Hyde and Helms amendments. However, by providing cash to groups like Planned Parenthood, the federal government offsets the abortion funding of these groups and enables all of their activities.

Organizations Covered by the Report
The six selected organizations are listed below along with their funding level over the reporting period. Depending on which numbers were more reliable, either disbursement data or expenditure data is listed, explained in more detail below.

1. Advocates for Youth ($8.7 million over 8 years)
2. Guttmacher Institute ($12.7 million over 7 years)
3. International Planned Parenthood Federation ($93.8 million over 8 years to affiliates willing to comply with the Mexico City Policy when it was in place)
4. Planned Parenthood Federation of America ($657.1 million over 7 years)
5. Population Council of the United States ($284.3 million over 7 years)
6. Sexuality Information and Education Council of the United States ($1.6 million over 8 years)

Information Regarding the Type of Data Included in the Report
GAO gathered two types of information. First, they collected obligation and disbursement data from the Department of Health and Human Services (HHS) and the U.S. Agency for International Development (USAID). This data is limited to funds given directly to the selected organizations by HHS or USAID. It does not capture funds that HHS or USAID gave to another entity that then passed federal funds on to Planned Parenthood or another selected organization, resulting indirect federal funding. (This secondary funding is referred to as a subcontract or a subgrant.) Generally, obligation and disbursement information is available for the full 8 year period covered in the report.

Since indirect funding is not captured through obligation and disbursement data, GAO collected expenditure data directly from reports filed by the selected organizations. The reports containing expenditure data are referred to as single audit reports. They list all of the federal funds spent by domestic organizations that receive more than $500,000 in federal funds in a given year, including funding received as a subgrant or subcontract. Foreign organizations and organizations that fall below the $500,000 threshold are not required to file a single audit report, so data from such organizations is not captured in the report. Generally expenditure information is available for only 7 of the 8 years covered in the report.

According to GAO, obligations, disbursements and expenditures “in this report may understimate the actual amount of federal funds the selected organizations and their affiliates spent,” but totaling obligations, disbursement and expenditures will result in over-counting.

See also 2010 GAO Report Technical Summary and Selected Organization Information; 2010 GAO Planned Parenthood Services Chart: both are linked to LLDF web page (same as this article) http://lldf.org/articles/Federal_Funding-abortion Providers.
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 October 11, 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 and the opening brief is due in July.

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 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 unlawful seized property, resulting in the dismissal of six charges. Defendants acquitted by jury in May 2009. Civil rights complaint filed in federal court.

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 which 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 in January 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 imposed new speech policy. Plaintiffs are awaiting settlement proposal from Peralta Community College District.

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-abort 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: case settled.

Planned Parenthood v. Goddard (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
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. Dismissed on technicality.

People v. Pomeroy (Calif.)
Pro-life sidewalk counselor cited for sign ordinance violation. No charges filed. LLDF Attorney sent letter to city setting out flaws in ordinance and there have been no further incidents to date.

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. Victory!: Foti found not guilty.

Bray v. Planned Parenthood Columbia Willamette, Inc. (Ohio)
Suit for damages for civil rights violations and emotional distress for unlawful levy on writ of execution against personal property of prolifers. Defendant federal marshals and Planned Parenthood have filed motions to dismiss; decision pending.

McCullen v. Coakley (Mass.)
Amicus brief filed (U.S. Supreme Court) in support of petition for certiorari in case challenging constitutionality of
Massachusetts law prohibiting “entering or remaining” within 35 feet of abortion clinic. LLDF urged the Court to take the case. LLDF’s brief, filed on behalf of itself and Pastor Walter Hoye, took issue with speech restrictions targeted at locales associated with particular issues, such as abortion. These restrictions, the brief says, are de facto content and viewpoint based laws and thus inconsistent with the First Amendment. Supreme Court denied cert and left standing the Massachusetts law.

**MARK YOUR CALENDARS:**

November 13, 2010, Oakland

**2010 LLDF Annual Benefit**

Please join us to bring love back to life on Saturday, November 13, to celebrate the 2010 LLDF annual benefit. This year’s event will be a benefit with a more relaxed format allowing attendees to socialize with old friends and meet new ones. The location is yet to be determined, but you will receive an update in the mail soon. Dorinda Bordlee will speak on “How Roe Ruined Romance.” Ms. Bordlee is formerly senior legislative counsel for Americans United for Life (http://www.aul.org), a national bioethics law firm. She now serves as senior counsel for Bioethics Defense Fund (bdfund.org), a public-interest law firm whose mission is to advocate for the human right to life through litigation, legislation and public education, on the issues of healthcare rights of conscience, abortion, human cloning/destructive human embryo research, and end of life issues including physician-assisted suicide and healthcare rationing. Please save the date and plan to join us.