Obamacare and the Real War on Women

It started with 33 words. One subparagraph of one subdivision of one subpart of one subchapter of one ... you get the picture. It was just one little provision in the massive Patient Protection and Affordable Care Act (PPACA), known more familiarly as Obamacare. But that one provision was the catalyst for a nationwide debate over the meaning of religious freedom, the role of churches in society, the definition of a religious employer, and the ability of 30-year-old Georgetown law students to pay for their own birth control pills.

The 33 words comprise the innocuously titled “Women’s Health Amendment,” introduced by Democratic Senator Barbara Mikulski—which should have been the first clue that something was afoot. Sen. Mikulski, a committed pro-abort and staunch defender of Planned Parenthood, claimed that her amendment mandating that all insurance plans provide no-cost “preventive services” for women “is strictly concerned with ensuring that women get the kind of preventive screenings and treatments they may need to prevent diseases particular to women such as breast cancer and cervical cancer.”

Rather than specifying in the law itself what these critical disease-preventing services were, the Women’s Health Amendment directed the Health Resources and Services Administration (HRSA), a division of the Department of Health and Human Services, to draw up “comprehensive guidelines”.
I was in high school, prior to *Roe*. My then boyfriend’s friend told us his girlfriend had had an illegal abortion. This was my first exposure to the trauma of abortion, where I witnessed the grief of the child’s parents, the emotional toll on their lives, and the impact on their family and friends. Having found out about the abortion after the fact, I grieved but also felt strangely guilty.

Three years later, *Roe v. Wade* was decided. In *Roe*, and in its companion case *Doe v. Bolton*, the Supreme Court virtually invited every female in the United States of child-bearing age, along with anyone else at the periphery of the abortion decision, to join in the grief, guilt, and other emotional and mental consequences suffered by those exposed to abortion. However, the Supreme Court decision also sparked the first large-scale, nationwide public outcry against abortion. Dr. Monica Migliorino Miller documented the public chorus of disapproval by life advocates in her book, *Abandoned: The Untold Story of the Abortion Wars*.

This book is an invaluable resource for understanding the conflict between abortion proponents and abortion opponents, especially for those whose journey into pro-life advocacy took a little longer. My personal journey took almost twenty years, post-*Roe*. Though I had always seen abortion as a grave evil, it wasn’t until years later, when a fellow congregant stated she didn’t understand the “big deal” over abortion, that I finally became pro-active. The imprudent comment by my fellow congregant inspired the determination to fight abortion and never quit. The story told in *Abandoned* fills in the twenty years my indifference left empty.

In *Abandoned*, Dr. Miller recounts her own journey—into pro-life activism, which included peaceful, effective, and life-saving civil disobedience—that is, until the fateful day that the Freedom of Access to Clinic Entrances Act (FACE) took effect. FACE brought civil disobedience to a screeching halt and laid the groundwork for government officials to attempt to characterize any activity by life advocates as unlawful. *Abandoned* documents the change in law enforcement’s approach to dealing with abortion foes who expressed their opposition in various public fora. Post-FACE, the existence of a polite tolerance, almost protectiveness, of pro-life advocates by some law enforcement quickly vanished. Enter the Obama administration and Attorney General Eric Holder, and an astronomical increase in federal prosecution of pro-life advocates. Dr. Miller and her colleagues sacrificed their liberty to protest abortion by participating in rescues prior to FACE. But *Abandoned* also gives a firsthand view of what U.S. Supreme Court Justice Antonin Scalia aptly describes as the “abortion distortion,” the special rules that have been applied to pro-life free speech activities.

One passage from *Abandoned* stands out, especially in light of the recent presidential election where the most pro-abortion president in history was re-elected. Dr. Miller recounts her encounter with Sister Mary, who—in a shocking departure from church teaching—worked at the Albany Medical Center, an abortion provider in the Chicago area. After an impassioned verbal exchange between Sister Mary and Dr. Miller about their respective beliefs concerning abortion, Dr. Miller came to this thoughtful conclusion:

Abortion was, after all, about something even bigger than “simply” the right to life. Sister Mary had revealed to me a whole new dimension to the abortion debate, born from a Nietzschean world—a world with no God of any kind and no moral standard. The prime value was human liberty and its exercise without restraint, and so, for Sister Mary abortion was a sacrament—Albany her shrine. (*Abandoned*, p. 77)

To my mind, Dr. Miller’s insight was spot-on. We have witnessed abortion become enshrined in our culture, available for any reason, at any time during pregnancy. So enshrined in our culture is abortion that employers shall pay for it upon government mandate or suffer financial penalties for failure to do so, religious liberty be damned.

I highly recommend *Abandoned*. In a time when it is easy for life advocates to become discouraged, *Abandoned* is an inspiration that will renew your resolve to keep struggling against the abortion advocates’ warped perception of human dignity and freedom.

Whether it takes another forty years or, as we all hope, many fewer, LLDF will continue to defend the free speech and other civil rights of pro-life advocates so that the essential message of life is heard at every level of our culture. As we say time and again, we couldn’t do it without your support! Thank you.
Dear Life Legal Supporters,

She’s out there. Somewhere. A girl just like me. Somewhere there’s a young innocent girl—barely a teenager. And right now, she’s suffering from the horrors of sexual abuse at the hands of an adult as I did. Somewhere “that girl” is getting raped. Like I was. Impregnated. Like I was.

And she may be taken to a Planned Parenthood abortion center. Like I was.

“That girl” may actually be telling Planned Parenthood that she’s being abused. Probably by her boyfriend. In my case, I was abused by my own father.

Hello, my name is Denise Fairbanks—and I’m “that girl” from the long-running case against Planned Parenthood that the Life Legal Defense Foundation assisted with.

Mine was the court case that you helped us with. For six years Planned Parenthood did everything possible to try to defeat my claims and drown out my message that, when Planned Parenthood knows or suspects that a young girl is being sexually abused, it must meet its duties under the law and immediately report that abuse to the proper authorities.

However, Life Legal came to my aid, and we were able to withstand Planned Parenthood’s attempt to force me to drop my suit.

My attorneys, led by Brian Hurley, worked tirelessly on this case. They put in so many hours (most that they simply donated), it’s unimaginable what they sacrificed for me and the fight for all the abused and exploited girls like me, from this point forward.

But Mr. Hurley and his colleagues persevered, because he knew that they could rely on Life Legal’s help. And that’s what got us through. It took years, but we did it.

You see, all we need is an advocate willing to do the right thing: to take on the tough cases, the impossible cases, the unpopular causes—the kinds of cases where it’s not about money but about something much bigger.

Mr. Hurley and Life Legal took on this case because they know what sexual abuse does to a young girl’s life, especially in cases of young girls like me who are the victim of sexual abuse by their own relatives or close family friends for many years.

Thanks be to God, I am in the process of healing.

So now, I just wanted you to know that when you support Life Legal, you’re helping protect more young girls than you could ever imagine. More than you’ll ever know.

We can all get behind cases like mine. Because they’re out there. I know they’re out there. You know they’re out there. Planned Parenthood knows they’re out there.

Most of all, however, I simply can’t forget that “that girl” who is being sexually abused is also out there.

“That girl” once was me, and I ask that you generously support her in her quest for justice the way you supported me.

— Denise Fairbanks

P.S. I was thirteen years old when my father started to abuse me, and my father continued to abuse me for almost two years after he took me to Planned Parenthood to have an abortion.

So from this day forward, I ask that you will please continue to help Life Legal as much as you can.

They truly deserve your support. I’m living proof of that.

Thank you.

RESOLVED:

Fairbanks v. Planned Parenthood

Life Legal assisted a young woman, Denise Fairbanks, in a suit against Planned Parenthood, who failed to report her father for his sexual molestation of her when she presented for an abortion as a young teenager. Much of her story is recounted below in a letter of thanks to LLDF.
**ASK THE ATTORNEY:** An Interview with Kevin C. Bedolla

Kevin C. Bedolla has been practicing law in San Jose for over 35 years. A graduate of Santa Clara University and Santa Clara University School of Law, Mr. Bedolla first became involved in pro-life legal matters in the late 1980s.

**Please tell me a little about your professional background.**

I have been an attorney since 1976. For most of my career, I have focused my practice mostly on business matters. I have handled everything from business formations and management to business litigation. My practice areas include employment law, trade secrets disputes, unfair business practices, and commercial collections. About two to three years ago, I realized that the “culture of death” was entering into a very different phase and was widening its target to those who were already born. One of the more obvious examples of this is the increasing pressure to legalize assisted suicide and euthanasia. I felt I needed to do something.

**How and why did you first become active in pro-life matters?**

It all started about 30 years ago when I started attending Mass at Our Lady of Peace Church in Santa Clara. The pastor at the time, the late Msgr. John Sweeny (at the time, Fr. Sweeny), was a very orthodox priest who early on recognized the growing battle against life. He helped make Our Lady of Peace into a center of pro-life activity in the San Francisco Bay Area. One example of his foresight: during the late 1980s Fr. Sweeny invited the late Fr. Paul Marx to visit Our Lady of Peace. For the better part of a week, Fr. Marx gave pro-life sermons at each Mass. This was not unique. Consequently, anyone who attended mass at Our Lady of Peace either embraced the culture of life or went elsewhere.

Also, in the late 1980s, Msgr. Sweeny asked me and a number of other attorneys to help defend some defendants who were being sued and prosecuted in some Operation Rescue-related cases. I recall two cases specifically. One was a suit by Planned Parenthood against several “protesters” seeking injunctive relief and monetary damages. I represented one of the defendants. The one thing about that case that I will never forget was the lead attorney for Planned Parenthood. He had the coldest eyes I have ever seen.

The second was a criminal case. Two firemen were being prosecuted for carrying a photograph of the image of Our Lady of Guadalupe while praying the rosary near an abortion clinic in Sunnyvale. This was not a normal picture. It was one of about five that had been commissioned by the Cardinal of Mexico City and blessed by him. At the time, Sunnyvale had an ordinance limiting the size of protest signs. The image of Our Lady of Guadalupe was about three inches narrower than the maximum permitted by the ordinance, but was also about two inches too tall. What I will never forget about this case was how it was disposed of. When I met with the judge and assistant district attorney to discuss a possible plea bargain, I was stunned when both the judge and the assistant district attorney said that the case was going to be dismissed. At the time that was a very rare event in Santa Clara County. I attributed this result solely to Our Lady.

**When many people hear the term “pro-life”, their first thought is that it is a reference to abortion or abortion-related issues. But “pro-life” is broader than that, isn’t it?**

That is correct and it is becoming more apparent every day. The life issues by their nature have always encompassed everything from contraception and abortion to assisted suicide and euthanasia. I remember about 20 years ago coming across a short treatise prepared by Human Life International that analyzed the impact of birth control on a society; every society that accepted birth control eventually accepted euthanasia and assisted suicide. And that is what has happened in United States. About 50 years ago, the U.S. Supreme Court legalized contraception. 40 years ago it legalized abortion. Now we have reached the final stage where the courts and legislatures are starting to legalize assisted suicide and euthanasia is being practiced secretly.

Euthanasia is hardly rare in this country. Excepting rare cases, like that of Terri Schiavo, most cases of euthanasia never see the light of day. In October 2011, a doctor and I gave a talk entitled “End-of Life Issues from a Catholic Prospective.” The doctor informed the audience that he believed 100,000 people were being euthanized in American hospitals annually. Based on my research, I believe that the doctor’s estimate was low by a factor of 2 or 3. Since that talk, a number of people have told me stories about relatives—usually a parent—who had probably been euthanized in a hospital. In many cases, their parent was given morphine for a condition that did not merit morphine, like a stroke.

There is no question in my mind that those supporting euthanasia and assisted suicide are becoming increasingly bold.
What tools do we have to protect ourselves and others from being euthanized?

While the best tools are spiritual, we can do some things to protect ourselves and loved ones from being euthanized. There are essentially four things that we can do; (1) have an Advance Health Care Directive that is consistent with orthodox Catholic principles, (2) appoint a health care agent who will adhere to orthodox Catholic principles, (3) make sure your treating physicians are pro-life, and (4) be treated at a hospital that operates under pro-life principles.

We have the most control over the first two. The last two can be problematic, because you often cannot control where you will be hospitalized. Further, simply finding a pro-life hospital can be difficult. One doctor who has researched the matter told me that he thought there was only one hospital in the State of California that operated under pro-life principles and maybe one other. Finding a pro-life doctor can also be very difficult. Unfortunately, as is the case with attorneys, most doctors are not pro-life.

No matter how careful you are, circumstances can neutralize your efforts. If you are on vacation in another state and involved in a serious accident, you will be taken to the nearest hospital. Under HIPAA (“Health Insurance Portability and Accountability Act”), the admitting hospital is required to present you with a number of documents to sign, including an Advance Health Care Directive. Even though you are not required to sign it, it will still be presented to you and it is unlikely that anyone will tell you that you are not required to sign it. You probably won’t be asked if you have your own Advance Health Care Directive. The Advance Health Care Directive presented to you by the hospital will likely not be similar to the one you prepared nor will it be pro-life. Then consider your state of mind. How many of us, when being admitted to a hospital after a traumatic event, have the presence of mind to carefully read everything presented to us? I find it difficult enough to get myself to carefully read legal papers in my office. When we are brought to a hospital we are under a lot of stress and often in shock. We just want to be treated. None of us reads these documents very closely. We just sign to be admitted and treated.

And do not forget the health care agent you chose. If he/she is not readily available, someone who is available will probably be appointed.

What is an “Advance Health Care Directive”?

An Advance Health Care Directive is a document whereby an individual essentially does two things; (1) states how they want to be cared for if they are incapable of making such decisions when treatment is needed, and (2) identifies the person they want to make certain medical decisions for them if they are incapable of doing so. The document typically only becomes effective when the person is rendered incapable of making decisions. This can occur if they become incapable of making any decisions [often by being rendered comatose due to a stroke or some head trauma or they become demented]. The primary care physician typically makes this decision.

With respect to a template for Advance Health Care Directives, there are a number of technical requirements for an Advance Health Care Directive, you cannot forget the medical considerations. For instance, if you do not prepare your Advance Health Care Directive carefully, you could authorize your health care agent to have the hospital withhold food and water from you. The media rarely informs us of the implications of such an event. It usually leads to a drawn out and excruciatingly painful death, usually from dehydration over a 10–14 day period.

While you can draft a Advance Health Care Directive that has a number of specific guidelines for your treatment, even if you have a trusted agent, you should communicate periodically with that person to make sure they understand your wishes and will follow them.

Is an Advance Health Care Directive a legal document?

Yes, it is. Consequently, it needs to be done in the manner required by law. In California, for instance, the Advance Health Care Directive needs to be dated when executed, signed by the patient (or someone at their direction in their presence), and either acknowledged before a notary or signed by two witnesses. [Probate Code §4673]. The California Probate Code, starting at Section 4600, deals with health care decisions. The Uniform Health Care Act starts at Section 4670. It is also important to know that each state has its own requirements for Advance Health Care Directives. If you prepare an Advance Health Care Directive that does not conform to your state law, it may not be enforceable.
From the Pain of the Ashes of Death to the Power and Artistry of Life—Julia’s Story

LLDF held its Annual Benefit Dinner on Saturday, November 17, 2012. In a departure from years past, this year’s benefit was held in Santa Clara, California, at Our Lady of Peace Church, a facility that—from its bustling atmosphere—is apparently put to frequent use in worthwhile causes.

In another departure from years past, the program began at 3:00pm with a conference on current pro-life legal endeavors with presentations from LLDF staff and host attorney, Kevin Bedolla. The conference room was filled to capacity with approximately 50 people attending. LLDF Legal Director Katie Short shared her insight on current legal action, including the lawsuits challenging the HHS Contraception Mandate and the unique arguments LLDF has been able to bring forward in those cases (see article on p. 1). Executive Director Dana Cody spoke about LLDF’s work generally, including the upcoming Law of Life Summit in Washington D.C., and the newest attorney training on health care decision making. LLDF Staff Counsel Rebekah Millard discussed some of the behind-the-scenes work LLDF does day to day, sharing some success stories of cases that settled through the use of strategic demand letters. The conference concluded with a question-and-answer period, in which the guests asked insightful questions that generated excellent discussion of the current issues and ideas going forward.

Following the conference, most guests were able to attend Mass before returning for the Benefit Dinner.

Upon entering the room for the Benefit, guests were met by a stunning 20x20 inch oil painting featuring symbolism of the Trinity (the Father, the Word, and the Spirit). The painting was donated for auction by artist (and the evening’s keynote speaker) Julia Holcomb.

The evening got underway with an invocation by Father Jose Giunta, the Pledge of Allegiance led by one of LLDF’s founders, Col. Ron Maxson, and introductions of the Board of Directors by long-time Chairman John Streett. Executive Director Dana Cody introduced the evening’s keynote speaker, Julia Holcomb. With tears in her voice, Cody recalled hearing Julia’s story on the radio—a story of redemption from death itself.

In a quiet, yet beautifully powerful way, Julia began her story. She recounted the gradual breakdown of her family beginning with her father’s abandonment, and her parents’ divorce when Julia and her siblings were young. Following some devastatingly traumatic events including death in the family and a second divorce, their family stability dissolved. The trauma proved overwhelming to Julia’s mother. As teenagers disillusioned with family, Julia and her sister embraced rebellion. At 16, Julia met Steven Tyler, lead singer of the rock band Aerosmith, backstage at a concert and became intimately involved with him. As a teenager from a broken home, the excitement of being in this relationship, traveling the world, and living the celebrity lifestyle was all that Julia could see. The relationship led to Tyler becoming her legal guardian, asking her to have a child with him, and later asking her to marry him.

Julia was well into her second trimester when their relationship became strained. Tyler entertained second thoughts about their marriage after talking to his parents and to his grandmother. Eventually, Tyler went on tour, leaving Julia—now more than five months pregnant—alone in their apartment without prenatal care, without a driver’s license, without even money for food. But they were in daily touch by phone, and eventually, Tyler told Julia that he would send a friend of his to help Julia get some groceries.

Julia remembers letting the friend in, but the next thing she recalls is waking up, alone, in a smoke-filled apartment. She discovered that both exits were blocked—the back stairway was engulfed in flames, and the lock on the front door was jammed and immovable. Into her mind came a commercial she had seen—“Learn not to burn”—that described an empty fireplace, with the flue open, as a good place to go if one were trapped in a burning house. Julia crawled to the fireplace in the bedroom and curled up on the marble floor. Over the fireplace hung a painting, “Jesus, Light of the World,” that had belonged to Julia’s grandmother who...
had been a school teacher for many years, and always had this painting hanging in her classroom (even refusing to take it down when asked to do so by school authorities). This painting recalled to Julia’s mind that God is approachable and merciful. In that moment, faced with the terror of dying, she spoke the words to a song she sang as a child in Sunday school: “Into thine hand I commit my spirit: thou hast redeemed me, O Lord God of truth.” (Psalm 31:5.)

When she awoke in the hospital, having been rescued by firefighters, Tyler was there and told her the doctors were afraid she would not survive, and also feared permanent brain damage. Yet miraculously, Julia survived without serious injury.

She was recovering well when Tyler and a doctor approached her and told her she should have an abortion. Julia was shocked. Into her mind came the thought, “You had better resist.” She had always been docile and gone along with Tyler’s ideas—but this idea she resisted, arguing with Tyler for hours. The argument ended with Tyler’s ultimatum: have the abortion or the relationship would be over.

Not knowing her rights, or what she would do or where she would go if Tyler turned her out, Julia eventually gave in, as many other women have. Research has shown that up to 60% of women who choose abortion experienced coercion in their decision making; they are made to feel that there is no other choice available.

Julia was immediately taken to another part of the hospital for the procedure. Just before he injected the saline solution, the doctor told her “Be very still or you could be killed.” Julia described the agony of the hours that followed, and the lies she was fed: “It’s not a baby, it’s a fetus.”

She came home with Tyler after it was all over, but she was not the same person. Her happy, bubbly personality was gone. She would wake at night in terror. Tyler brought her the only thing that survived the fire—the painting of Jesus the Light of the World. It was covered with soot, but the soot wiped off and the painting was intact.

As time passed, and Julia did not recover from the trauma she had undergone, Tyler spoke to her about his own guilt. He told her the baby—a boy—had actually been born alive and the nurse “had to do something.” Julia described her thoughts on hearing this, “This is the United States, how can that have happened?” She felt betrayed by all the lies she had been told. She learned then what her later experience confirmed, that every abortion leaves a trail of victims, not only the child, but the mother and the father as well.

Their relationship never recovered. Eventually Julia left Tyler and returned to her mother’s home.

Her mother had undergone personal healing. She had married again, she and her husband had a little boy, and the family had begun attending church. Julia attended a week-long church camp on the Oregon Coast where she enjoyed the beauty of the ocean, and the fun of campfires on the beach. It was at this camp that Jesus took hold of her life. She saw the wholesomeness, the joy and happiness of the young people she was with and wanted what they had. Her friends shared Jesus with her, and she accepted him as her Lord.

Julia’s life was transformed: she broke off her old friendships, was baptized, learned to pray, and began attending church where she was encouraged to read and meditate on God’s word. Her mother helped her earn her GED and her first job. She became active in the youth activities of the church. She gained confidence, and enrolled in college. That is when she met a wonderful Christian man, her husband-to-be. Julia describes her husband as her hero: he has never judged her for her past life but values her for who she is. Together they have raised seven wonderful children.

Julia never wanted to talk about her past relationship with Steven Tyler. It was Tyler himself who made the matter public. In fact, Julia’s son first learned of it by seeing the story in a magazine—including a photo of his mother with Tyler. At that point, Julia shared the entire story with her children, through many tears. Her teenage son came to her at the end of the evening in which he had heard it all, and wrapping his arms around her said, “Mom, I love you and I forgive you.”

Now, Julia shares her story with the power of experience and the passion of conviction. She is a living example of the beauty that God can bring from ashes of death and despair, and she inspires each of us to take heart as we seek to bring the message of hope and life to our culture.

About discouragement, Julia said that there are many things that look like lost causes, but, she points out, “People thought I was a lost cause. God is bigger than our worst sin.” She spoke of God’s invitation to embrace life, to embrace conversion. As she expressed it, if she could accept that invitation, so can our nation.

The evening closed with remarks by Father Samuel Leonard, who shared enough of his own inspiring story to add the perfect close to the evening. Before becoming a priest, he and his late wife had raised a large family of their own. When his teenage daughter was faced with an unplanned pregnancy, the emotions of anger and fear threatened to take over. But then God met Father Leonard and told him to love her just as he had been loved, and God gave him that unconditional love for his daughter. At each step of the way, God not only provided for the Leonard family, but for the daughter and her little one as well. Father Leonard ended with a powerful admonition to “give with that unstinting generosity that God has shown to us.”

This year’s Benefit was an opportunity for LLDF and its supporters to reflect on the challenges of the fight against the culture of death, and also provided the opportunity to recharge and recommit to remain in the fight to build a culture of life.
Obama Looks to Strip Entrepreneurs of Religious Liberty

Do entrepreneurs sacrifice their religious liberties merely by seeking a profit? That question would have stunned our Founding Fathers, most of whom were businessmen as well as statesmen. George Washington owned a large for-profit farm. So did James Madison. John Adams and Alexander Hamilton ran successful law practices. Benjamin Franklin was a printer and an inventor. Having secured freedom of religion for themselves and their posterity, these men of liberty would be astounded that the government they established asserted the legal authority to force business owners to violate their religious beliefs in the operation of their enterprises.

Yet, that is exactly the power claimed by the Obama Administration under the “free birth control rule” promulgated under the Affordable Care Act. This audacious agenda is promoted in a legal brief filed by the Department of Justice in Newland v. Sebelius, in which a Catholic family (the Newland siblings) seek court protection against being forced by the government to provide free contraception and sterilization surgeries to their female employees.

The case primarily hinges on the applicability of the Religious Freedom Restoration Act, passed in 1993, which requires that the government prove it has a “compelling state interest” when legally forcing individuals to violate their faith tenets. Perhaps because their business is self-insured, the court issued a preliminary injunction pending trial, so at least for now, the Newlands are safe.

But that doesn’t settle the case. The court deferred a hugely important issue until trial as a matter “of first impression;” whether the Newlands lost their RFRA protections when they decided to adopt a corporate business platform (Hercules Industries). Specifically, the government’s “Memorandum in Support of Motion to Dismiss” argues:

Hercules Industries is a for-profit, secular employer, and a secular entity by definition does not practice religion.…

It is well established that a corporation and its owners are wholly separate entities and the Court should not permit the Newlands to eliminate that legal separation to impose their personal religious beliefs on the corporate entity or its employees…

The Newlands should not be allowed to impose their religious beliefs on the corporation’s group health plan or its 265 employees.

Impose? They own Hercules. They are the company’s sole stockholders and serve as its corporate officers. They pay for their employees’ covered health expenses out of their own pockets. Surely, operating as a close corporation does not strip American citizens of their religious liberties in the business context.

Or maybe it does. Some would argue that abiding by secular rules is the price paid for taking advantage of secular laws that accord entrepreneurs the advantages of conducting business through a juridical entity.

But a closer look at the government’s brief shows that it isn’t the act of incorporating that supposedly strips business owners of religious liberties in the marketplace, but simply seeking
profit. “By definition, a secular employer does not engage in any ‘exercise of religion,’” the brief states boldly. Any burden on religion arises out of the “choice to enter into commercial activity.” In other words, business is a religion free zone. Once we enter the stream of commerce—even, it would seem, as a sole proprietor—we leave our religious liberties on the dock.

Ironically, the Obama Administration is the party in the lawsuit attempting to impose its feminist ideology on others. Forcing businesses to provide free contraception is essential, the DOJ argues, because controlling reproduction places working women “on an equal playing field with men” by “removing barriers.”

Construing potential pregnancy as a “burden” is as much a dogma of contemporary secularism as the purported moral wrongness of artificial birth control is Catholic....

Obama Administration is using the ACA to further its ideological goal of enervating freedom of religion into a hollow freedom of worship—in which people are allowed to believe and worship as they choose, but not practice their faiths in the public square contrary to worldly imperatives.

That’s only part of the Obama secularization agenda found in their legal brief. In another radical move, the DOJ argues that by standing up for their own religious liberties, the Newlands are actually forcing their workers to follow the precepts of the Catholic faith:

The owners of Hercules Industries have no right to control the choices of their company’s employees, many of whom may not share the Newland’s religious beliefs.

That’s topsy-turvy. Refuse-to-pay is not synonymous with prevent-from-obtaining. Medicaid doesn’t cover abortion, for example, but that doesn’t mean the government is “controlling” the reproductive choices (in the common lexicon) of Medicaid recipients. Otherwise, Medicaid rules would violate Roe v Wade. Similarly, the Newlands are not preventing their female workers from using birth control simply because they won’t pay for it.

to economic advancement and political and social integration.” Not only that, but requiring employers to provide free contraception assures “equal access … to goods, privileges, and advantages” that otherwise are denied due to the “unique health care burdens and responsibilities” borne by women.

Construing potential pregnancy as a “burden” is as much a dogma of contemporary secularism as the purported moral wrongness of artificial birth control is Catholic. Indeed, if the ACA is ever amended to allow HHS to require that employers provide free abortion, the government would make identical arguments as in Newland. And don’t think the Obama Administration wouldn’t do just that were they given the legal authority. Should this next logical step ever be taken, it wouldn’t just be (primarily) Catholics oppressed by the profit = secularization meme.

To summarize, the government claims that:

1) Seeking profit is a wholly secularist pursuit;
2) Hence, once we go into business, we lose our religious freedoms in the context of those activities;
3) Meaning that all who engage in such secular undertakings must accede to the precepts of secular ideology;
4) Which the government establishes through the passage of laws and promulgation of regulations.

And that is how the Obama Administration is using the ACA to further its ideological goal of enervating freedom of religion into a hollow freedom of worship—in which people are allowed to believe and worship as they choose, but not practice their faiths in the public square contrary to worldly imperatives. Should the Administration ultimately prevail in the Newland case—and in imposing the free birth control rule on explicitly objecting religious institutions (as I have discussed here previously)—naked secularism will reign triumphant to the significant detriment of traditional American liberty.

[Wesley J. Smith is a senior fellow at the Discovery Institute’s Center on Human Exceptionalism (http://www.discovery.org/bioethics/), and consults for the Patients Rights Council (patientsrightscouncil.org) and the Center for Bioethics and Culture (cbc-network.org). This article was originally published Aug 10, 2012, in First Things “On the Square” (http://www.firstthings.com/onthesquare). It has been reprinted by kind permission of the author.]
Should Patients Be Allowed to Die of Bed Sores?

One of the (few, in my book) real achievements of bioethics was the institution of the legal right to refuse unwanted medical treatment. But some things done for patients in a hospital aren’t “medical” precisely, but rather, fall within the parameters of humane care. Keeping a patient warm, for example. Giving them oral food and water. Keeping them clean. And I would submit, turning the patient so they don’t develop bed sores.

But now, the bioethicist Art Caplan—working off the facts of a real case—discusses whether humane care should be withheld if the patient doesn’t want it. From, “You MUST Let My Bedsores Kill Me. You MUST!,” published on Medscape (http://www.medscape.com/viewarticle/774911).

What are the lessons to be learned from this refusal-to-be-turned request? For one thing, we need to be sensitive to the idea that it is as likely that someone may say “don’t turn me” as they may say “I don’t want any more dialysis” or “I want you to shut off my ventilator” or “take out my feeding tube.” Institutions may want to establish policies such as: “We always turn people and we do not shut off the heat in a patient’s room. There are certain things we are not going to do, and as soon as someone says they do not want that, we need to talk about moving them home or moving them elsewhere because there are some steps that we will not take here.” Patients need to know that. Hospital staff, ethics committees, and others may want to think about developing policies concerning requests that will not be honored.

At the end of the day, I think this man did have the right to say “don’t touch me.” I think he had the right to say “don’t turn me.” But if his decision started to affect nursing and staff morale and began to become a problem in the delivery of care for others, then I believe that is a factor that has to be considered when deciding whether to honor what he says. The nurses being compromised by these morale issues and staff problems, I might override a patient’s wishes. I might not honor his request in the name of other people’s rights. In my opinion, there may be limits to what you can request when it affects the care that others can receive. That is a tradeoff that has to be weighed at all times.

Similarly, a hospital should not leave a patient before an open window in winter without a blanket—even if that is what the patient wants. In other words, patients don’t have the right to force medical professionals to act unprofessionally.

I think Art is too equivocal here. And more is involved than staff morale and a clean overall environment. Humane care should never be withheld. (For example, if a patient wants to self-starve and is otherwise capable of eating, I think the staff brings the tray even if the patient shouldn’t be force fed.)

Refusing medical treatment—the administration or ingestion of medicines, surgeries, examinations, and the like—should be distinguished legally and morally from refusing non medical support that does not “unnaturally” (I am sure there is better term to use here) alter the body or its natural processes in any way. More to the point, to not turn the patient is to actively harm the patient. (And, by the way, what about psychiatric intervention?) Similarly, a hospital should not leave a patient before an open window in winter without a blanket—
even if that is what the patient wants. In other words, patients don’t have the right to force medical professionals to act unprofessionally.

We sure have come to a pretty pass, though, when this has to be discussed.

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Recap

(Cont’d from page 1)

trial, found guilty on two of the three charges. New trial pending.

People v. White (Birmingham, Ala.)—Clinic director attempted to disperse pro-life sidewalk counselors by directing a high pressure sprinkler nozzle into their faces, injuring White’s eye and damaging other property. White was charged with assault after attempting to prevent further use of sprinkler as weapon. Trial pending.

Colantuono v. 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. 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. The District is awaiting Board approval of the newly-drafted free speech policy.

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 alleged that sixteen-year-old Denise 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 Denise attempted to tell PP personnel of abuse, they ignored her and failed to report, allowing abuse to continue. Victory!: Case resolved!

Morr-Fitz, Inc. v. Blagojevich (Ill.)—Challenge to state administrative rule requiring pharmacists to dispense abortifacient drugs without regard to their conscientious objections. LLDF assisted with an amicus brief at the Illinois Supreme Court after the case had been dismissed for lack of ripeness. In 2008, the Illinois Supreme Court held the pharmacists’ claims were ripe for adjudication and remanded the case for trial on the merits. Victory! After seven years in court, the decision by the Illinois Attorney General not to file an appeal in Morr-Fitz v. Quinn means that Illinois pharmacists will not be forced to dispense life-ending drugs against their Rights of Conscience. Those rights are protected under the Illinois Health Care Rights of Conscience Act and the Illinois Religious Freedom Restoration Act, as well as the U.S. Constitution.

Hoye v. Oakland (Calif.)—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 unconstitutional. The Court also held that escort misconduct could be a basis for holding the law unconstitutional as applied, if the Ordinance, in conjunction with such misconduct, effectively prevented communication with patients.

(Recap cont’d on page 13)
Do people need go to lawyers to have these documents prepared?

While it is not necessary for a person to have a lawyer prepare an Advance Health Care Directive, it generally a good idea. There are some excellent pro-life attorneys who will help your with these at very little if any costs. Even if you decide not to use an attorney, it is still a good idea to discuss these decisions with a trusted advisor who understands the process and has an orthodox Catholic prospective.

Would you comment on the importance of choosing the right health care agent?

Of the four “tools” I described earlier, this is probably the most important. The person you choose may literally have your life in their hands. Further, your health care agent may be the “last line” in defense of your life and the person most capable of responding to changed circumstances. If you have an Advance Health Care Directive, it does not matter very much how well it is drafted if the person you appointed as your health care agent ignores it and your wishes.

It is highly recommended that your health care agent have an orthodox Catholic prospective in life matters. Your health care agent needs to be compelled to do the right thing by God. If they do not have this perspective, they will often be tempted to make incorrect decisions. They likely will not have the courage to stand up to hospital ethicists and doctors who often pressure people into anti-life decisions.

An obvious example of the importance of one’s choice of a health care agent is the Terri Schiavo case. Terri’s husband was made Terri’s health care agent. We know what happened there. If Terri had prepared an Advance Health Care Directive appointing her mother as her health care agent, the result in Terri’s case would have been dramatically different.

What about those who have no family member or friend who they can trust to carry out their wishes as health care agent?

Right now there is nothing in place to deal with this problem. These people are on their own. Traditionally, parents could trust their children to act as their health care agents. Today, one’s own children may be some of the least trustworthy people to act as health care agents. This is particularly the case when people have converted late in life and discover that their children do not embrace the same Christian values that they now embrace, particularly on life issues. The problem is even worse when people have built up a significant amount of wealth. The sad truth is that, too often in these cases, their children are often more interested in their inheritance than in their parents well-being. And people without children are sometimes even more vulnerable as they can fall prey to strangers who are only interested in their money.

One solution we are exploring is to form a group of volunteers who are willing to act as health care agents. I suspect that this could take the form of a Third Order. These people would accept the burden of acting as health care agents for people who need one but cannot identify anyone they can trust to carry out the responsibilities utilizing Catholic principles.

Why Third Orders?

You need people who will do this for the highest purpose, not people who are doing this professionally. While it does not necessarily need to be a Third Order, forming an order of religious to take on this task is not likely in the near future. On the other hand, forming a group of people who are willing to perform somewhat like a religious order is more feasible. An example is the St. Vincent de Paul Society. Volunteers to this organization are not paid and help because it is an act of charity. This is essentially what we are referring to.

Are there any new developments on the horizon in terms of tools people can use, or steps they can take, to protect themselves and their loved ones from euthanasia?

There are a number of things being discussed to deal with the problem proactively. The internet provides wonderful opportunities. One idea is to form panels of pro-life doctors and lawyers. Another concept is to create a website that can be accessed by health care agents to provide them with needed information and to answer questions.

This is not a battle that we are going to win anytime soon, is it?

The battle for life will likely be with us until the end of the world. We have to be realistic about what we are confronting. We need to be prudent about how we approach it. And we must be humble about what we can accomplish. This is a spiritual battle and not a battle against other people. At the end of the recent LLDF dinner, the priest who gave the closing message said, “We have to look to God and realize that we cannot do it alone.” We are not going to achieve anything because of our talents and skills alone. We need to be humble and seek help from God.

What advice would you give to an attorney who is considering doing pro-life work?

Pray a lot. I do not think anyone can do anything effectively in this line of work unless they are prayerful. You need to realize that this is a much more profound battle than might otherwise be apparent. It is a religious battle at the highest level. The deck is often stacked against us. If someone does not understand this, they will not get it and will probably become very discouraged and disillusioned. This type of work is not a “resume builder.” You can lose family and friends because of it. If you have aspirations of becoming a judge someday, you could find this type of work will make you “unqualified.” That said, we know we are on the right team and that in the end we are on the side that will win… just not necessarily during our lifetime.

[For information on pro-life advance health care directives, please see http://lldf.org/advance-medical-directives—Ed.]
**People v. Brock** (Glendora, Calif.)—Pro-life activist Ronald Brock convicted of violating the city ordinance prohibiting “mobile billboard advertising.” Brock travels around the United States displaying the truth about abortion on signs affixed to his motorhome. Court of Appeal upheld conviction. Civil case to be filed in federal court.

**Pollian, et al. v. Warren County Montgomery County Community College 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. Civil suit filed. **Victory!** Case settled.

**Holder U.S. v. Hamilton** (Ky.)—Civil lawsuit for damages, penalties, and injunctive relief pursuant to FACE brought against sidewalk counselor who moved escort’s arm out of his way in order to hand leaflet to patient. Escorts were locking arms on sidewalk to block sidewalk counselors. Court denied government’s motion for summary judgment. Trial has been set for January 2013.

**Phill Kline**—Former Kansas Attorney General accused of violating state ethics rules while investigating abortion providers. As District Attorney, Kline filed 107 criminal charges against the Planned Parenthood clinic in 2007, accusing them of performing illegal abortions and falsifying records. Kline is the only Attorney General / prosecutor ever to obtain abortion records and formally charge both George Tiller and Planned Parenthood. In May 2012 claiming political motivations, Kline filed exceptions to the findings of fact and brief. Hearing held at Supreme Court and decision pending amid ethical violations within the court.

**Aurora, Illinois**—Three separate cases arose out of the furor surrounding the opening in 2007 of what was then America’s largest abortion clinic, a furor that led Cecile Richards, president of Planned Parenthood Federation of America to call Aurora, Illinois, in suburban Chicago, “Ground Zero” in the nation’s “war” over abortion rights. Two of these cases remain. One, regarding whether Planned Parenthood’s clinic is an unlawful, non-conforming use of the property, is proceeding through multiple motions and temporary, non-dispositive rulings, with Planned Parenthood’s attorneys working furiously to put off the day of reckoning. The second concerns Planned Parenthood’s defamatory statements about Eric Scheidler and the Pro-Life Action League. That suit is currently on appeal from an adverse ruling in the trial court.

**Personhood Oklahoma v. Barber et al.**—amicus brief filed urges the United States Supreme Court to review a decision of the Oklahoma Supreme Court striking a ballot initiative that would amend the Oklahoma Constitution to define “person” as “any human being from the beginning of the biological development of that human being to natural death.” In a friend of the court brief LLDF told the Court that the Oklahoma court ruling conflicted with prior Supreme Court precedent and should be reversed. Petition for certiorari was denied.

**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. **Victory!** Case settled.

**HHS Mandate litigation:**

LLDF, in conjunction with the Bioethics Defense Fund, is filing amicus briefs in many of the cases challenging the HHS contraceptive abortifacient mandate. Brief argues that the mandate does not comply with the Administrative Procedures Act, because HHS entirely failed to consider the harmful effects of hormonal contraceptives on women’s health before mandating no-cost coverage of these drugs in virtually every insurance plan. Brief also argues that these harmful effects make it impossible for the government to meet its burden under the Religious Freedom Act of showing that the mandate furthers a compelling governmental interest. See article p. 1.

To date, LLDF has filed amicus briefs in:

**Legatus, et al. v. Sebelius et al.** (Mich.)—Federal district court issued a preliminary injunction against enforcement of the mandate.

**Priests for Life v. Sebelius et al.** (N.Y.)—Motion for preliminary injunction pending

**Frank O’Brien, Jr., et al. v. Department of HHS**—(Mo.) District court dismissed the case, but the Eighth Circuit Court of Appeal granted a motion for a stay of enforcement of the mandate while an appeal is pending.

**Wheaton College and Belmont Abbey v. Sebelius** (D.C.)—District Court dismissed for lack of ripeness; case is on appeal to D.C. Circuit Court of Appeal.

**Korte v. U.S. Dept. of HHS** (III.)—Motion for preliminary injunction pending.

**Autocam v. Sebelius** (Mich.)—Motion for preliminary injunction pending.
furnishing the details. HRSA in turn outsourced the decision-making process to the purportedly independent Institute of Medicine, and that’s where Sen. Mikulski’s real agenda was revealed.

The Institute of Medicine committee tasked with making recommendations for preventive services for women was stacked with individuals whose backgrounds included significant involvement with Planned Parenthood and other pro-abortion advocacy groups. The committee members then invited various groups to make presentations, and—what are the odds?—the first three presenters to the committee were representatives from the National Women’s Law Center, the National Women’s Health Network, and Planned Parenthood Federation of America, all staunch advocates of “reproductive freedom,” meaning abortion on demand.

Interestingly, there were no single-issue speakers on behalf of osteoporosis prevention, or breast cancer prevention, or heart disease prevention. The bulk of the committee’s time and paper was spent on just one of Senator Mikulski’s “diseases particular to women”: pregnancy and how to prevent it.

As the saying goes, personnel is policy. The policy recommendations from the IOM reflected the priorities and biases of the committee members. As these biases lined up quite nicely with those of HHS Secretary Kathleen Sebelius and others in the Obama Administration, HHS turned the IOM’s eight recommendations, word for word, into mandates of what health insurance plans must cover at no cost, including “all FDA-approved contraceptive methods [including abortifacients] and sterilization procedures.”

We all know what happened next. Scores of religious institutions filed suit challenging the mandate as a violation of their right to free exercise of religion. They were joined by a number of for-profit businesses whose owners also objected to being forced to provide coverage for contraceptives and abortifacients, in violation of their religious beliefs.

Because the mandate is merely an administrative regulation, not a law itself, it is governed by the Religious Freedom Restoration Act, which provides that no federal action may substantially burden the free exercise of religion unless the government demonstrates that the action furthers a compelling state interest and is the least restrictive means of furthering that interest.

To date, the government has attempted to meet this burden by citing the IOM report that accompanied its recommendations. The report supposedly shows that 1) cost deters women from using contraceptives; 2) greater use of contraceptives and abortifacient drugs would lead to fewer unplanned and too closely spaced pregnancies; 3) unplanned and too closely spaced pregnancies are unhealthy for women and their children; 4) therefore, providing free contraceptives will lead to healthier women and children. However, the evidence that the IOM cites for each step of this syllogism is nebulous, inconclusive, disputed, or fictitious.

More importantly, the IOM report barely touched on the negative health effects of hormonal contraceptives, which include greater risks of cardiovascular disease (strokes, heart attacks), breast cancer, cervical cancer, liver tumors, and sexually transmitted infections, including HPV and HIV. The IOM report blithely sidesteps these risks by asserting that some unspecified “side effects” of hormonal contraceptives are “generally considered minimal.”

Because, in formulating the mandate, the government simply adopted the IOM’s recommendations and report, the IOM’s failure has become the government’s failure. The government has put itself in the position of having to demonstrate that the contraceptive mandate “furthers the compelling governmental interest” of promoting women’s health, when the record makes clear that it never even considered these health risks associated with contraceptive use, much less balanced these risks against the sketchy benefits supposedly accruing to increased contraceptive use.

This complete failure to consider the risks also leads to a second legal vulnerability of the mandate. Government regulations are adopted according to a strict process set out in the federal Administrative Procedures Act (APA). The APA provides that a government agency action may be set aside if it is “arbitrary and capricious,” including if the agency “entirely failed to consider an important aspect of the problem” before issuing its ruling. And that is exactly what HRSA did in issuing the mandate: it adopted the IOM’s recommendations while “entirely failing to consider” the evidence, much of it compiled by the government itself, that contraceptives increase various health risks for women.

Another basis on which an agency...
action may be set aside as “arbitrary and capricious” is when the agency “considered factors which Congress did not intend it to consider.” Judging from the name of the amendment itself, Congress had one goal in mind. It passed the Women’s Health Amendment to promote women’s health. And nothing in the legislative history of the WHA suggests that Congress had any intention other than making it easier for women to stay healthy by ensuring that cost was not a deterrent to them receiving preventive health services.

But apparently HHS Secretary Sebelius was unable to resist letting some of her Planned Parenthood-inspired ideology slip into the final regulation. The regulation explains the supposed health benefits of contraceptives and how the cost of preventive care falls more heavily on women than men because of “gender specific” conditions. But it also states, “Researchers have shown that access to contraception improves the social and economic status of women.” A footnote to the statement cites publications of the Guttmacher Institute (Planned Parenthood’s research arm) and articles with titles such as “Career and marriage in the age of the Pill” and “The power of the Pill: oral contraceptives and women’s career and marriage decisions,” and “More power to the Pill: the impact of contraceptive freedom on women’s life cycle labor supply.”

This statement in the regulation and the cited materials are claiming benefits for increased contraceptive use that are unrelated to women’s health. They are touting contraceptives as a tool of social engineering, declaring that childless and child-lite women are better able to climb the socio-economic ladder, better able to contribute to the country’s labor supply, and, in general, better able to “make something of themselves” than those benighted women who are bearing and raising the next generation.

Again, nothing in the legislative history of the Women’s Health Amendment suggests that Congress was giving HRSA carte blanche to dictate health insurance coverage for the purpose of assisting with the restructuring of society along the anti-natalist lines of Planned Parenthood and the National Organization of Increasingly Elderly Women.

On all these fronts, the contraceptive mandate is vulnerable to being struck down in court. To date, LLDF, in partnership with the Bioethics Defense Fund, has filed amicus curiae briefs in six different lawsuits challenging the Mandate, and we have received requests from several other parties to file in their lawsuits as well. In our briefs, we highlight the peer-reviewed research showing the serious health risks associated with contraceptives/abortifacients. Moreover, we challenge the government’s claim that these drugs, which were designed solely to disrupt the normal functioning of healthy women’s bodies, should, as a matter of national policy, be pushed as a means of “promoting women’s health” and “ensuring gender equity.”

Abortion proponents have used the mythical “war on women” to great effect in furthering their agenda, equating opposition to the contraceptive mandate with misogyny, pure and simple. LLDF’s challenges to the legality of the HHS mandate present a unique opportunity to set the record straight as to who is playing politics with women’s health.
LLDF would like to invite you to the 3rd Law of Life Summit, Calling Out the Media.

Pro-life leaders in the law and media will be addressing participants to effectively “call out the media” and how doing so will help create measurable and achievable goals to overturn Roe v. Wade. Dana Cody will address the ABA Rules of Professional Conduct related to trial publicity.

LLDF is co-sponsoring the Law of Life Summit at the March for Life in conjunction with the March for Life Education and Defense Fund and Ave Maria School of Law, along with other sponsors. Please see www.lawlife.org for details.