

1 **BABY PARTS PROFITEERS DROP DALEIDEN LAWSUIT!**
REPRESENTING LAW FIRM CALLS IT QUILTS

2 **NOTHING TO SEE HERE? PART 2**
CONGRESSIONAL FINDINGS ON BABY PARTS TRAFFICKING

6 **SUICIDE BY ANY OTHER NAME: MORE DANGEROUS THAN EVER**
THE SLOPE FROM OPTION TO OBLIGATION

10 **BIOETHICS IN 2017**
OBAMACARE AND HILLARY CLINTON'S PROMISE TO REPEAL THE HYDE AMENDMENT

A PUBLICATION OF THE LIFE
LEGAL DEFENSE FOUNDATION

VOLUME XXVI, NO. 1 SPRING 2017

LIFELINE

BABY PARTS PROFITEERS DROP DALEIDEN LAWSUIT!

The Senate Judiciary Committee referred three fetal tissue brokers, including StemExpress, and four Planned Parenthood affiliates for criminal prosecution.

Alexandra Snyder
Life Legal Executive Director



The first lawsuit filed against Life Legal client David Daleiden after he exposed the abortion industry's trade in baby body parts has been dropped!

StemExpress, a fetal tissue broker that purchased organs and tissue from aborted babies from Planned Parenthood and then sold them for a profit, today filed a notice of dismissal in its suit against Daleiden.

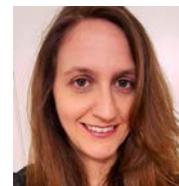
In announcing the dismissal of the lawsuit, Daleiden and the Center for Medical Progress credited the work of Katie Short, Life Legal's VP of Legal Affairs, and the Freedom of Conscience Defense Fund in bringing about this victory.

Daleiden's eighth video showed StemExpress CEO Cate Dyer discussing the purchase of fetal body parts from Planned Parenthood. In this video, Dyer notes the importance of ensuring profitability for abortion providers. She can also be seen laughing as she describes the procedure for shipping the babies'

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NOTHING TO SEE HERE? PART 2:

CONGRESSIONAL FINDINGS ON BABY PARTS TRAFFICKING YOU WON'T SEE IN THE MAINSTREAM MEDIA



[This is the second installment of an article from our Fall *Lifeline* about the investigation into Planned Parenthood by the Select Panel on Infant Lives. The Panel was established in September, 2015, shortly after David Daleiden and the Center for Medical Progress (CMP) released a series of videos exposing Planned Parenthood's role in the trafficking of baby body parts. In December 2016, the Panel published a 400-page Final Report containing the findings of its extensive investigation into the fetal tissue procurement industry.—Ed.]

Sarah Chia

Illegal Abortion Methods

CMP's videos show Planned Parenthood directors and abortionists discussing with Daleiden both illegal abortion methods and illegal changes to the procedure.

First, abortionists sometimes alter the procedure to “protect a specimen” so they can harvest intact babies or parts. This violates federal law, which prohibits “altering the timing, method, or procedures used to terminate the pregnancy” for the purpose of harvesting

organs and other parts. Changing the procedure also violates ethics regulations and policy published by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The method of abortion used should always be that which is safest for the patient—not what is needed to procure an intact “specimen.”

The CMP videos also caught Planned Parenthood personnel admitting to performing “partial-birth abortions,” which are sometimes used to deliver the heads of aborted infants intact so their brains can be used for research. The

partial-birth abortion procedure was outlawed in 2003 due to its blurring of the line between abortion and infanticide. The Panel's investigation uncovered the procurement and transfer of full-body aborted cadavers, which raises concerns about abortion methods in violation of the Partial Birth Abortion Ban Act. This also increases the likelihood that babies were killed by Planned Parenthood abortionists in violation of the Born Alive Protection Act of 2002, which requires that infants born alive at any time and under any circumstances (including during an abortion) be given medical treatment.

The Select Panel issued subpoenas to several late-term abortionists and their employees in an effort to determine whether they provided body parts or intact cadavers to research facilities. In addition, the Panel sought to find out the practices of those abortionists with regard to babies born alive during the abortion procedure. A former employee

During her tenure, Anderson was charged with the investigation into Planned Parenthood's sale of fetal body parts for profit. Instead, she launched a corrupt investigation into David Daleiden and won a grand jury indictment against him. Daleiden has since been cleared of all charges and Anderson lost her bid for reelection in November 2016.

research consent form promising that "Research using the blood from pregnant women and tissue that has been aborted has been used to treat and find a cure for such diseases as diabetes, Parkinson's disease, Alzheimer's disease, cancer, and AIDS." A noted bioethicist testified that the promise of treatment and cures in the consent form is a "very powerful



of Texas abortionist Douglas Karpen described Karpen "as conducting himself with depraved indifference to infant life and committing acts of murder." Another employee reported that Karpen performed forty late-term abortions in a typical week and, of those, "approximately three or four infants would show signs of life."

According to the Panel's Final Report, Karpen killed the babies by severing their spinal

cords, cutting their necks, or twisting their heads. In no cases were any attempts made to save the babies' lives, as is required by federal law.

Karpen was referred to former Harris County (Texas) District Attorney Devon Anderson in 2013 for criminal charges, but the grand jury failed to return an indictment. Karpen's attorney was Anderson's largest campaign donor, contributing more than \$25,000 to Anderson's campaign in 2014 and 2015.

A FORMER EMPLOYEE OF TEXAS ABORTIONIST DOUGLAS KARPEN DESCRIBED KARPEN "AS CONDUCTING HIMSELF WITH DEPRAVED INDIFFERENCE TO INFANT LIFE AND COMMITTING ACTS OF MURDER."

In December 2016, the Select Panel referred Karpen for criminal prosecution to the Texas Attorney General and to the U.S. Department of Justice for numerous violations of state and federal law, including violating Texas homicide statutes.

Informed Consent

Federal Policy for the Protection of Human Subjects ("the Common Rule") requires informed consent prior to research on human subjects. Federal law also requires consent from the mother for fetal tissue research.

Federal law and policy also prohibit inducements to consent for vulnerable research subjects. Many Planned Parenthood facilities use a fetal tissue

motivator" for women to choose abortion. Another leading bioethicist said the form is coercive and unethical.

In some abortion facilities, the consent form for fetal tissue donation is combined with the consent form for the abortion procedure. This is the case

at Southwestern Women's Options (SWWO), a late-term abortion facility that supplies fetal parts to the University of New Mexico (UNM). One SWWO abortionist

admitted to the Panel that she had "never gotten consent from a patient at SWWO to make a fetal tissue donation." In addition, UNM conferred faculty status and generous benefits on SWWO abortionists, even though they did not teach any courses at the University.

The Select Panel termed Planned Parenthood's claims regarding fetal tissue research "wildly inaccurate." Moreover,

NOTHING TO SEE, CONTINUED FROM PAGE 3

the consent form used by Planned Parenthood does not provide women with essential information, including what type of “pregnancy tissue” will be used and whether it will be used for research, transplantation, or education. When interviewed by the Panel, even Planned Parenthood witnesses acknowledged that the form was “insufficient” and that statements regarding cures from fetal tissue were “incorrect.”

The Department of Health and Human Services (HHS) regulations governing human subject research require that informed consent forms provide detailed information, including:

“A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject’s participation, a description of the procedures to be followed, and identification of any procedures which are experimental....”

The Planned Parenthood consent form also fails to inform women that the abortion giant often sells the parts of unborn babies to human specimen brokers, and that it profits from the transfer of fetal tissue. The failure to obtain informed consent is a violation of both state and federal law.

Gifts and Disposal of Fetal Tissue

Another issue that arose during the

investigation is that some abortion clinics and researchers are not following state laws related to the disposal of fetal tissue. Minnesota, for example, forbids the donation of aborted fetuses and sets out

THE PLANNED PARENTHOOD CONSENT FORM ALSO FAILS TO INFORM WOMEN THAT THE ABORTION GIANT OFTEN SELLS THE PARTS OF UNBORN BABIES TO HUMAN SPECIMEN BROKERS, AND THAT IT PROFITS FROM THE TRANSFER OF FETAL TISSUE.

clear guides for disposing of their bodies. The University of Minnesota violated both state laws and its own policies by using aborted fetal tissue for research and then disposing of the remains improperly. Minnesota law provides for the “dignified and sanitary disposition of the remains of miscarried and aborted fetuses” through burial or cremation.

New Mexico’s Spradling Act forbids the gifting of aborted fetuses. The Select Panel obtained evidence that late-term abortion

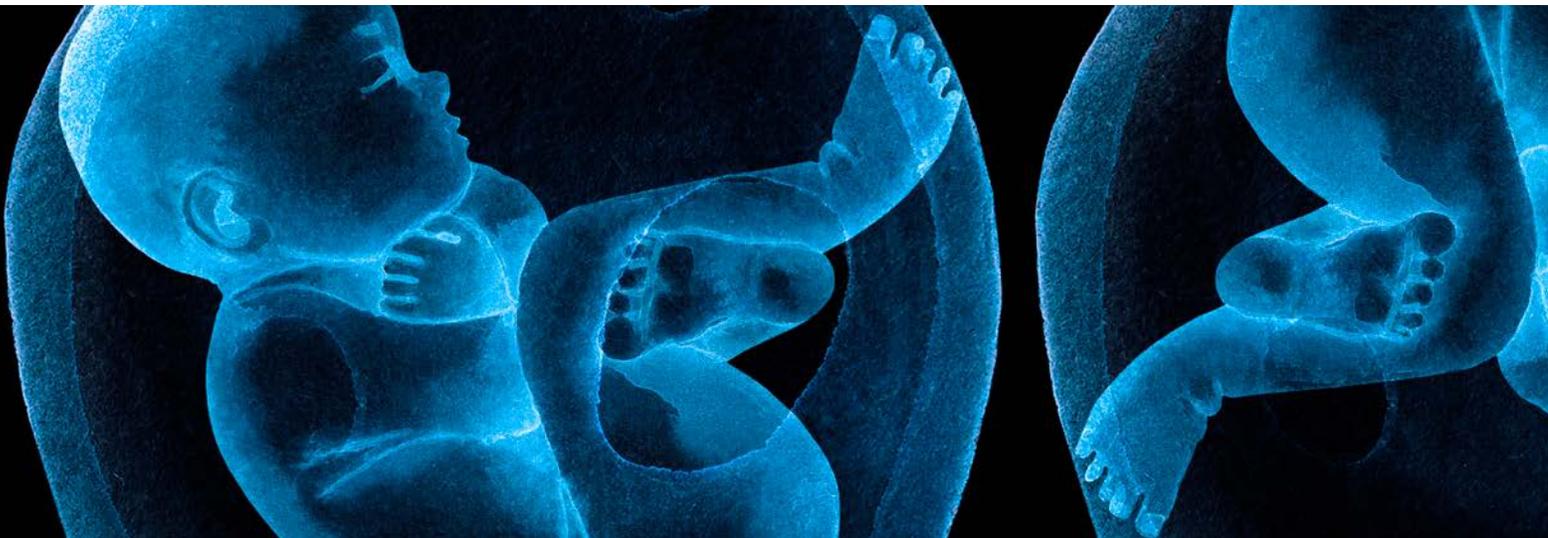
facility Southwestern Women’s Options (see above) donated fetal tissue to the University of New Mexico in violation of the Spradling Act. A technician from the University went to SWWO an average of 39 times a year to collect body parts, including “brain/head, heart, lung, eyes/retinae, kidney, spleen, adrenal gland, intestines, bone marrow, and stomach” from unborn babies up to 30.5 weeks gestation. In one case, a request was made for the intact brains of unborn babies at 24-28 weeks “to dissect with summer camp students.”

Criminal Referrals

The Select Panel made 15 separate referrals for criminal investigation and possible prosecution to state and federal authorities. For example, the fetal tissue broker StemExpress was referred to the U.S. Department of Justice for violating federal fetal tissue trafficking laws as well as health information privacy laws (HIPAA) for gaining unlawful access to patient records at a Planned Parenthood facility.

Another fetal tissue broker, DV Biologics, was referred to the Orange County District Attorney, who filed suit against the company for unlawful selling of fetal tissue.

The Panel was deeply troubled by the close relationship between Southwestern Women’s Options and the University of New Mexico and referred both entities



to the New Mexico Attorney General for violating the Spradling Act and for failing to obtain patient consent for the transfer of fetal tissue.

The Select Panel also referred Planned Parenthood Gulf Coast to the Texas Attorney General for profiting from the sale of fetal tissue. In one of Daleiden's videos Planned Parenthood Gulf Coast's Director of Research Melissa Farrell boasts that her department "contributes so much to the bottom line of our organization here." She goes on to describe the way prices for unborn babies are calculated, citing costs as "per specimen." This is a violation of the federal fetal tissue trafficking statute, which prohibits the transfer of fetal tissue for profit.

Senate Investigation

The Senate Judiciary Committee conducted its own investigation into Planned Parenthood's involvement in the sale of aborted baby parts. The Committee obtained evidence showing that Planned Parenthood Federation of America, its affiliates, and fetal tissue brokers violated the federal ban on fetal tissue trafficking, under which it is a crime to sell fetal tissue, organs, and intact cadavers for profit. Federal law also prohibits changing the method of abortion to harvest fetal body parts.

Several of the CMP videos show Planned Parenthood directors and staff discussing how to alter the abortion procedure in

order to obtain intact fetal specimens. As noted above, delivering intact babies raises the possibility that the children will be born alive in violation of the Partial Birth Abortion Ban Act. In one video, Dr. Amna Dermish, an abortionist with Planned Parenthood of Greater Texas who performs 30 abortions per month; she boasted to Daleiden that her "aim is to usually get the specimen out pretty intact." She said that delivering a baby's head in one piece is something she will "strive for." Again, these admissions raise serious concerns that babies are born alive and then killed by the abortionist.

The Senate Judiciary Committee referred three fetal tissue brokers, including StemExpress, and four Planned Parenthood affiliates for criminal prosecution. Included among those is Planned Parenthood Mar Monte, the nation's largest affiliate with annual revenue of over \$96 million. In 2016, PP Mar Monte performed nearly 17,000 abortions. The four affiliates referred for prosecution, all of whom are suing Daleiden and CMP, represent over \$263 million in annual revenue for Planned Parenthood—approximately a quarter of the abortion giant's total operating budget.

New Administration

During the Obama administration, the U.S. Department of Justice did nothing to curb the sale and purchase of fetal body parts. Four months after the first Daleiden

video was released, then-Attorney General Loretta Lynch testified that she had not viewed any of the footage. The Senate Judiciary Committee found that the U.S. Department of Justice under President Obama refused to enforce the federal fetal tissue trafficking statute and had failed to prosecute even one entity under the law despite substantial evidence of criminal wrongdoing.

Recently, former Senator Jeff Sessions was confirmed as the new U.S. Attorney General. Sessions has a stellar prolife record and Life Legal is confident that he will make the investigation into Planned Parenthood and its abortion allies a priority. Additionally, former Congressman Dr. Tom Price, who is also strongly prolife, was confirmed as the Director of HHS, which has been tasked with investigating health information privacy violations by StemExpress.

The confirmation of prolife individuals to these (and other) key cabinet positions is key to the prosecution of those who profit from the killing and sale of unborn babies. Although Planned Parenthood still has many allies, we believe we are closer than ever to toppling the abortion cartel. And we believe that one day, even the mainstream media will take notice. **L**



SUICIDE BY ANY OTHER NAME: MORE DANGEROUS THAN EVER



You have heard the heart-wrenching stories of people suffering from serious medical conditions, people who have to face pain, loss of independence, financial pressure and all the emotional turmoil that ensues. Brittany Maynard has become a household name, and her tragic situation has been cited *ad nauseam* by proponents of assisted suicide.



Rebekah Millard, Staff Counsel

Despite this, suicide continues to carry a negative connotation. Thus, when proponents successfully navigated an end run around the normal legislative process to force physician-assisted suicide on Californians, the Bill was titled the “End of Life Option Act.” The law specifically provides that the lethal dose of barbiturates provided by a physician to end a patient’s life is not, for any purpose, “suicide, assisted suicide, homicide, or elder abuse.” It is instead, “aid-in-dying.” By the stroke of a pen, California has transformed suicide into a rational choice and homicide into a benevolent act.

But what if, despite this linguistic maneuvering, the new law actually deprives a whole group of people the protection to which they are entitled as citizens? What if the law intended to increase personal choice in end-of-life decision making effectively removes choice

from a whole class of persons? What if people are not adequately protected?

These questions, and others, motivated a group of California physicians to take a hard look at California’s assisted suicide law. Working with attorneys at Life Legal Defense Foundation, they determined that the law places patients in imminent danger of having their lives prematurely ended without adequate safeguards. For these physicians, it was not enough merely to refuse to participate in prescribing lethal drugs, since their patients could go elsewhere to get such a prescription no matter their mental stability. They filed suit to stop implementation of the End of Life Option Act on June 8, 2016—one day before the Act came into effect. The plaintiffs in *Ahn et al. v. Hestrin* argue, among other things, that California’s approach to physician-assisted suicide suffers from defects that violate California’s constitutional guarantees of equal protection and due process.

The Act treats those who are terminally ill differently under the law than healthy adults are treated. Their lives are not protected the way the rest of Californians’ lives are protected. Their security is not safeguarded the way other Californians’ security is safeguarded.

The End of Life Option Act (the Act) allows patients who have received a terminal diagnosis to request and receive a lethal prescription from their attending physician for the purpose of ending their lives. A “terminal diagnosis” means that they have been told they have six months or less to live. Despite the Act’s dependence on such diagnoses, “physicians are very poor prognosticators of life expectancy,” explains Dr. George Delgado, the Associate Medical Director at a large hospice in San Diego in a declaration filed in this case. “Except in the last two weeks of life, it is extremely difficult to accurately predict how long a seriously ill person has to live.” This

means that the terms used in the Act are inherently unclear. Patients are sometimes misdiagnosed. They outlive their prognoses. New cures are found. The Act's approach deprives terminally ill patients of the legal protections that would otherwise be available to them. In effect, the Act changes the criminal code: under the Act, aiding, or advising, or encouraging a terminally ill person's suicide is no longer a criminal act.

This change in the criminal code strips legal protections from a class of people who are among the most susceptible to depression, abuse, and coercion—those who are very sick—at the time they are most vulnerable.

Under normal circumstances, if a patient expresses a desire to end his or her life the request will trigger an inquiry as to whether a psychological evaluation should be conducted and efforts will be made to get proper support for the patient. Support might include things like counseling, anti-depressant medication, and social services. A patient could be put under an involuntary hold for assessment, evaluation, and intervention or for placement for evaluation and treatment, if there is cause to believe the person is a danger to himself or herself. Under the Act, however physicians can give out a lethal prescription without any requirement that the patient have a psychological or psychiatric evaluation or any counseling, screening or medication. It is left to the treating physician to determine the patient's mental capacity and whether there are undue influences on the patient—but physicians are seldom specially trained to identify such factors. The experience in Oregon, where physician-assisted suicide has been legal for a period of years, demonstrates that very few patients who request assisted suicide are given any type of psychological evaluation, despite the fact that depression is a major factor in these requests.



THE RATE OF SUICIDE INCREASES SIGNIFICANTLY WITH ADVANCED AGE. DEPRESSION AND CHRONIC ILLNESS ARE OFTEN SIGNIFICANT RISK FACTORS FOR SUICIDE AMONG OLDER ADULTS.

Within the “terminally ill” classification, assisted suicide has an especially devastating impact on the elderly. The rate of suicide increases significantly with advanced age. Depression and chronic illness are often significant risk factors for suicide among older adults. These dangers are illustrated by the experience in Oregon: more than 69% were 65 or older. Along with age and frailty caused by physical and mental illness, there is an increased risk of elder abuse, undue influence, and coercion that all too often is entirely invisible on the surface—dangers that California's assisted suicide law does little or nothing to prevent.

The terminally ill who are financially underprivileged may also be especially vulnerable under the Act due to the increasing expense of medical care and

the perceived shortage of resources. The majority (60.2%) of patients who killed themselves under Oregon's so-called “Death with Dignity” law in 2014 had only Medicare or Medicaid insurance. California's law requires that, before prescribing the lethal drug, the attending physician confirm that the patient is making “an informed decision” by discussing feasible alternatives or additional treatment options. But for uninsured or underinsured Californians, those “feasible alternatives” may not be real options, especially if not presented by a professional expert in the subject matter, such as a licensed social worker.

The proponents of this legislation have proved themselves especially prompt in defending the law. One group, Compassion and Choices (formerly the Hemlock Society) went so far as to file an *amicus* brief with the trial court—an almost unheard of action at this point in litigation. Will the plaintiffs ultimately prevail? As in most lawsuits, the outcome remains uncertain. The plaintiffs, however, have good reason to hope: arguments very similar to theirs were successful in a challenge to Oregon's assisted suicide law in 1995. (See *Lee v. Oregon*, 891 F. Supp. 1429 [Or. Dist. 1995]; ultimately the Ninth Circuit Court of Appeals overruled the decision for lack of standing, but the reasoning of the trial court judge has not been assailed, *Lee v. Oregon*, 107 F.3d 1382 [9th Cir. 1997].)

Already, Californians have died as a result of California's physician-assisted suicide law. Yes, assisted suicide—whether it is called “aid-in-dying” or anything else—is deadly. Given the fact that any Californian could become a part of the class of persons threatened by the Act at any time should they encounter serious accident or illness, it behooves all to realize the stake they have in the determination of whether this law passes constitutional scrutiny. **L**

CASES TO WATCH

GENERAL RECAP & UPDATE OF CURRENT CASES

Planned Parenthood v. Daleiden et al. (Calif.)—In January 2016, Planned Parenthood Federation of America and several PP affiliates sued David Daleiden and several of his fellow investigators for the express purpose of punishing them for their investigative work, claiming over \$10 million in actual damages. Planned Parenthood is also seeking treble damages for alleged “racketeering” (RICO) as well as punitive damages and attorney fees. The abortion giant is represented by one of the largest law firms in the United States. Daleiden and his co-defendants’ motions to dismiss and anti-SLAPP motions were denied. They have appealed the denial of the anti-SLAPP motions to the Ninth Circuit, but discovery is proceeding in the case while the appeal is pending. Life Legal filed our opening brief with the Ninth Circuit on the anti-SLAPP motion on February 6, 2017.

NAF v. Daleiden and CMP (Calif.)—NAF sued Daleiden to prevent release of the recordings and information he obtained at the NAF meetings on the grounds that he is a “racketeer” who “committed fraud,” “snuck into” their meetings, “stole” NAF information, and repelled them with his constant questions about buying fetal tissue. The

district court’s ruling granting NAF a preliminary injunction is on appeal to Ninth Circuit, with oral argument held October 18 in San Francisco. Decision Pending.

Stem Express v. CMP and Daleiden (Calif.)—

StemExpress, the biotech firm buying baby body parts from Planned Parenthood in earlier undercover videos, filed a lawsuit against the Center for Medical Progress to prevent the release of video material obtained by CMP. Partial victory: The injunction was denied, allowing the release of the video of CMP’s dinner meeting with StemExpress CEO Cate Dyer. While the case was on appeal, StemExpress’s attorneys asked to withdraw from the case, citing conflicts with their clients over payment and other unspecified issues. **Victory:** in January, StemExpress and Dyer dismissed their case.

Respect Life South San Francisco v. City of South San Francisco and Planned Parenthood (Calif.)—Petition for writ of mandate to overturn grant of use permit for Planned Parenthood clinic. Petitioners assert that the city wrongfully exempted the permit from compliance with applicable state environmental impact law and regulations. After delaying Planned Parenthood from opening for

2 years, an adverse decision came down. Appeal filed May 2016.

Diss v. Portland Public Schools (Ore.)—Bill Diss, a Portland, Oregon high school teacher, was fired from his teaching position after he sought a religious exemption to excuse his participation in a Planned Parenthood administered teen program. Life Legal filed employment discrimination complaints as well a civil action on Diss’ behalf, seeking reinstatement in his teaching position. In November, the district court granted summary judgment against Diss. The ruling is on appeal to the Ninth Circuit.

Planned Parenthood v. MMB Properties (Kissimmee, Fla.)—Planned Parenthood purchased and occupied the property in Kissimmee in April of 2014. When it became clear that the office was going to become an abortion mill, a cardiology practice which also had an office at Oak Commons sued to enforce the restrictive covenant that forbade “outpatient surgical centers” at the site. Planned Parenthood lost when the Fifth District Court of Appeals for the State of Florida upheld a trial court preliminary ruling that prohibited the abortion giant from running a baby-killing mill at its office in Kissimmee.

Planned Parenthood appealed the decision by the Fifth District Court of Appeals to the Florida Supreme Court. Oral arguments heard August 31, 2016. On February 23, the Court ruled dissolved the TRO, but agreed with the lower court’s construction of the terms of the covenant. The case returns to the trial court for proceedings consistent with the Supreme Court’s opinion.

Jackson State University v. White (Miss.)—Pro-life activist arrested for protesting on public sidewalk adjacent to public university. Others in the group left the sidewalk under threat of arrest. Criminal case pending.

Ahn v. Hestrin (Calif.)—Proponents of physician-assisted suicide, unsuccessful for 20 years in passing legislation during regular sessions, took advantage of an abbreviated review process in an extraordinary legislative session, called to address Medi-Cal funding shortfalls, to advance their agenda. California Governor Jerry Brown signed the bill, making California the fourth state, and by far the largest state, to decriminalize physician-assisted suicide, permitting physicians to prescribe lethal drugs (so-called “aid-in-dying drugs”) to individuals believed to have a terminal

disease. Life Legal filed a challenge in June 2016 on behalf of doctors asserting the constitutional rights of their sick and vulnerable patients to the full protection of the law enjoyed by other Californians. Although the court denied the plaintiffs' motion for a preliminary injunction preventing the law from going into effect, the court also denied the defendants' motion to dismiss. Discovery is underway.

In re Estate of TL and In re the Matter of MH—Two very similar cases in different parts of the country involving women in their thirties who were placed in hospice care to be starved to death only days after suffering temporary lack of oxygen to the brain. Neither woman was married, but each had a fiancé who called Life Legal for help. Life Legal attorneys had to go to court in both cases to get the women returned to the hospital to receive nutrition. One was starved for 10 days and the other for 34 days. Just weeks later, both women are talking, walking, and well on their way to a full recovery. Life Legal continues to be involved in both cases, as guardianship issues have not been fully resolved. TL's guardian is not providing treatment as required,

which poses a threat to her life. MH's court-appointed guardian continues to seek involvement from the very family members who sought to put her to death.

Two Rivers School vs. Darnell et al. (Washington, D.C.)—Prolife advocates protested the building of a Planned Parenthood megacenter adjacent to a middle school in Washington, D.C. The school district sued. Life Legal is representing the lead plaintiff in the case. Trial set for September 2017.

San Bernardino v. Pastor Linton (Calif.)—40 Days participant who offered to pray for women entering a Planned Parenthood abortion facility arrested for trespass. Charges filed. At no time did he set foot on Planned Parenthood's private property. Not guilty plea entered on February 22, 2017. Trial set for March.

Passamore v. 21st Century Oncology (Fla.)—Discriminatory termination of two medical employees for taking part in prolife activities after work hours. Mediation is scheduled for August 31, 2017.

Stinson (Calif.)—Life Legal continues our challenge California's brain death statute in federal court. The statute does not provide due process for family members who seek a second opinion after their loved one has been suffered a serious brain injury. The lawsuit was filed on behalf of the parents of Israel Stinson, whose two-year old son was declared brain dead by a California hospital and was subsequently found to have active brain waves.

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bodies so as not to alarm the recipients who will see their intact faces.

StemExpress sold the parts to universities and research facilities at a substantial markup. The body parts broker has been referred to the FBI and the U.S. Department of Justice for investigation and possible criminal prosecution for its role in the illegal trafficking of fetal body parts.

In August, McDermott, Will and Emery, the high-priced Chicago-based law firm that represented StemExpress inexplicably withdrew from the case over Dyer's objections.

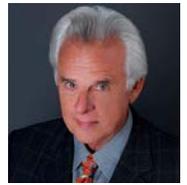
"Life Legal is thrilled that StemExpress has dropped its meritless lawsuit," said Alexandra Snyder, Executive Director of Life Legal Defense Foundation. "We have always maintained that the allegations raised in the lawsuit were baseless and that the suit was only filed to punish David Daleiden for exposing the truth about StemExpress' role in the illegal trafficking of fetal body parts."

Life Legal continues to defend Daleiden in two other lawsuits filed against him by the National Abortion Federation and Planned Parenthood. **L**



BIOETHICS IN 2017

Wesley J. Smith



FIVE BIOETHICAL ISSUES THAT HAVE THE POTENTIAL TO EXPLODE INTO CONTROVERSY

Aside from Donald Trump's call to "repeal and replace" Obamacare and Hillary Clinton's promise to repeal the Hyde Amendment, bioethical issues were not much discussed during the 2016 election. But that doesn't mean that such issues won't be important in the coming year. Here are five bioethical issues that have the potential to explode into controversy:



1. Assisted Suicide: Last year, Colorado voters and the Washington, D.C. City Council legalized physician-assisted suicide. Ohio, by contrast, passed a law making assisted suicide a felony, no matter who does the helping, and attempts to legalize doctor-prescribed death in about half the states failed. Expect advocates across the country—funded in the abundant millions by George Soros—to push legalization again, with the greatest efforts focused in Hawaii, Massachusetts, New York, and New Jersey.

While this issue mostly plays out at the state level, there is potential for the debate to go federal. In 1997, the United States Supreme Court ruled 9-0 that there is no constitutional right to assisted suicide. I

believe advocates would like to try again for an assisted suicide *Roe v. Wade*—such as they recently achieved in Canada—but they would need around twenty states to legalize in order to make another go at it. Opponents of assisted suicide could strike a body blow by amending the Controlled Substances Act to prohibit the use of federally regulated drugs in the intentional ending of life. Indeed, during the Bush years, the Department of Justice interpreted the CSA to that effect, but that interpretation was deemed invalid by the United States Supreme Court, for failure to follow proper administrative procedures. It is worth noting, however, that the Court ruled that Congress *could* pass such a prohibition. Perhaps some

intrepid congressperson or senator will take up that important cause.

2. Futile Care: Futile care is a form of ad hoc health-care rationing. Doctors and hospital bioethics committees are empowered to refuse to provide *wanted* life-sustaining treatment, based on their perception of the patient's quality of life and/or cost-of-care considerations—a true "death panel." The bioethics movement has been quietly pushing futile care for years, with mixed success, mostly via internal hospital administrative policies.

Texas—improbable as it might seem—has the most explicitly pro-futile care law. Repealing the Texas law has proved difficult. But a major legal challenge has

now been mounted, seeking to declare the law unconstitutional. Notably, the Texas Attorney General decided not to defend the futile care provisions of Texas law. If the law is ruled unconstitutional, it will be a blow to the futile care movement nationwide. If it is not, look for increased legislative efforts to grant bioethics committees the legal right to make the ultimate decision about whether to provide life-sustaining medical treatment.

3. Brave New World: The term “Brave New World” encompasses a number of developing, futuristic biotechnologies that have the potential to influence culture, medicine, and our concept of the human family. Did I say “futuristic”? That “future” is already here. Though it has been little noted in the media, scientists have successfully accomplished human cloning, manufacturing four human embryos via the same process that created Dolly the sheep. Researchers are on the verge of creating sperm and eggs from skin cells. In rodent tests, these gametes were successfully fertilized and pups were born. The UK has opened the door to the creation of “three-parent” embryos, now intended to prevent the transmission of mitochondrial disease but with the potential to create novel family forms. The FDA has also begun considering the question. Bioscientists are beginning to clamor for permission to experiment on twenty-eight-day-old embryos, twice the current general fourteen-day restriction on maintaining embryos for experiments. A form of gene editing called CRISPR makes it easy to genetically engineer any organism, including human beings.

Given our increasing biotechnological prowess and the potential consequences of these new developments, properly regulating these areas should be the subject of intense democratic deliberation. Instead, we hear the corn growing. But that could change. The birth of a cloned human being or the attempt to gestate a genetically engineered baby,

the development of an artificial womb (currently in animal testing), or some other such sudden breakthrough—any of these could awaken the sleeping giant and spark an intense policy brouhaha.

4. Medical Conscience: Should doctors and nurses be forced to provide abortions even if they believe that doing so would be a mortal sin? Should a doctor who is opposed to assisted suicide be forced, where that procedure is legal, to discuss it with his patients? Should Catholic hospitals that receive public funding be legally required to sterilize patients who request it? Is it “sex discrimination” for a health-insurance company to refuse coverage for elective abortions? Forcing doctors, nurses, pharmacists, and medical institutions to perform or permit legal medical procedures that violate their religious or moral consciences is fast becoming one of the hottest of hot-button issues in bioethics. Imagine a court ordering a Catholic hospital to perform an abortion or else face millions of dollars in damages. The societal clash such a decision would provoke would quickly reach Terri Schiavo levels.

5. Animal Research: For nearly four decades, the animal liberation movement has been at war with medical research conducted on animals—even though conducting such experiments before trying new drugs or procedures on people is a crucial human rights protection established in the Nuremberg Code. Hostility to animal research now extends beyond the animal rights movement. The NIH will no longer fund experiments using chimpanzees—based on animal welfare criteria—which is understandable, given chimpanzees’ high intelligence and social needs. But there is also an incipient movement to thwart research on other primates, even though doing so would cause tremendous harm to the biological sciences and medical advancements. For example, a new Ebola vaccine was just developed, and its creation required

TO PARAPHRASE
A FAMOUS QUOTE
ATTRIBUTED TO
LEON TROTSKY:
YOU MAY NOT BE
INTERESTED IN
BIOETHICS, BUT
BIOETHICS IS
INTERESTED IN
YOU.

the use of monkeys. Animal welfare is an important issue, but so is human thriving. The simmering controversy over experiments on primates and other lab animals could heat up wherever there are attempts to impose undue restrictions.

These are just a few of the many controversial bioethical issues we will be hearing more about. Some bioethicists want to do away with the dead donor rule in organ transplant medicine, opening the prospect of live human harvesting. The abortion issue never goes away. And the movement to repeal and replace Obamacare is sure to be fraught with bioethical controversy. To paraphrase a famous quote attributed to Leon Trotsky: You may not be interested in bioethics, but bioethics is interested in you. **L**

[Wesley J. Smith is a senior fellow at the Discovery Institute’s Center on Human Exceptionalism and a consultant to the Patients Rights Council. His most recent book, *Culture of Death: The Age of “Do Harm” Medicine*, was published in 2016, on *First Things* (<https://www.firstthings.com/web-exclusives/2017/01/bioethics-in-2017#print>) and is re-printed here with permission of the author.]

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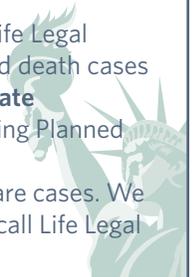
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CASES TO WATCH

CONTINUED FROM PAGE 9

Joe Williams (Calif.)—Case involving a 36-year-old father of two small children who suffered a brain injury in May 2015. He is not on a ventilator, can recognize his family, and responds positively to their presence. Joe has been cared for in a long-term care facility, as he requires artificial nutrition and hydration. In December, Joe's wife decided that she wanted to take him home without food or water. One of Joe's sisters contacted us for help via Bobby Schindler. Joe had been without food for two weeks by the time we received the call. We were able to get a court order reinstating nutrition and prohibiting removal of fluids. During one hearing, a professor of Catholic theology was flown in to testify that removal of nutrition and hydration are appropriate under Catholic teaching in this case, even though Juan's death is not otherwise imminent. Life Legal continues to argue that nutrition and hydration are elements of basic care that should be provided to disabled persons, including those in a minimally conscious state.

In re Robert Sharpe (Calif.)—Life Legal intervened after a prestigious California hospital decided to withdraw hydration from an elderly man who was intubated, but lucid and fully aware of his surroundings. We obtained a temporary court order. **L**

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