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A PUBLICATION OF THE LIFE
LEGAL DEFENSE FOUNDATION

LIFELINE

VOLUME XXVII, NO. 2 MAY 2018

ABOUT THOSE DECEPTIVE VIDEOS....



Mary Rose Short

"Have you watched the Planned Parenthood videos?"

Common answers include: "You know the guy who made those is in jail for making fake videos, right? He was convicted in Texas." Or: "Everyone knows those were debunked. The guy who made them even admitted he made it up." Or: "I know that Planned Parenthood is bad, but I found out that the videos aren't real." One woman

told me that she wouldn't believe that Planned Parenthood sold baby body parts even if Cecile Richards called her up and told her it was true. She's an outlier. It's usually difficult, but not impossible, to budge someone from the belief that the videos are pure fiction.

Who started the rumor that Center for Medical Progress' videos are not true? Planned Parenthood, of course.

In the wake of the first video releases, in summer of 2015, Planned Parenthood commissioned an "independent" forensic analysis by the political opposition research firm Fusion GPS. Selected quotes from the sketchy "analysis" provided the perfect

tools for the abortion giant's media allies to quell public outrage and discredit the videos for allegedly being "deceptively edited."

The so-called "deceptive edits" in the videos include every time the shorter, highlight videos were shortened and spliced—even when the removed portion contains no conversation. That the two- to five-hour long raw videos were clipped at all counts as a "deceptive edit" to Planned Parenthood. Planned Parenthood also claims that certain exculpatory statements by their employees were "deceptively edited" out of the videos. A comparison of the highlight videos and the full-

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, and oral arguments were heard on November 17. Discovery on the federal claims is proceeding while the appeal is pending. Daleiden and CMP filed a motion to disqualify Judge William Orrick from hearing the case, citing his ties to Planned Parenthood, but the motion was denied and the decision is on appeal.

NAF v. Daleiden and CMP (Calif.)—National Abortion Federation (NAF) sued Daleiden to prevent release of the recordings and information he obtained at 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. In March 2017, the district court’s ruling granting NAF a preliminary injunction was affirmed by the Ninth Circuit. Life Legal filed a petition for certiorari to the United States Supreme Court. On April 2, the Court denied the petition. The case now returns to the trial court for further proceedings. Meanwhile, NAF was awarded contempt sanctions against CMP and Daleiden based on Daleiden’s criminal defense attorneys’ release of NAF videos to the public. That order of contempt is also being appealed to the Ninth Circuit. The sanctions will be reversed if the preliminary injunction is found to be invalid by the Supreme Court or on remand to a lower court.

California v. Daleiden et al. (Calif.)—California Attorney General Xavier Becerra charged Daleiden and his Center for Medical Progress colleague Sandra Merritt with fourteen counts of eavesdropping and one count of conspiracy to eavesdrop. California’s eavesdropping

statute exempts conversations that can be overheard by others. The conversations for which Daleiden and Merritt are being charged occurred either in restaurants or in the exhibit hall at a hotel in the midst of a large conference.

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 clinic, 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 dissolved the temporary restraining order, but agreed with the lower court’s construction of the terms of the covenant. The case returns to the trial court for permanent injunction proceedings consistent with the Supreme Court’s opinion. Trial set for September 2018.



Diss v. Portland Public Schools (Ore.)—Civil complaint for unlawful termination and religious discrimination. Bill Diss, a teacher at a Portland, Oregon high school, had his teaching contract terminated following his request for a religious accommodation to excuse his participation in a school program administered by Planned Parenthood. Following his request for accommodation, Diss was subjected to harassment and retaliation by school administrators throughout the school year, which culminated in the termination of his employment. The case is currently before the Ninth Circuit Court of Appeals on appeal of summary judgment.

Ahn v. Hestrin (Calif.)—Proponents of physician-assisted suicide, unsuccessful for twenty 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. On June 16, 2017, Judge Daniel Ottolia denied the state’s motion to dismiss the suit. Life Legal’s motion for judgment on the pleadings is pending.

In re Estate of T.L. and In re the Matter of M.H. (Penn. and Wis.)—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. In both cases, Life Legal attorneys went to court to get the women returned to the hospital to receive nutrition. One was starved for ten days and the other for thirty-four days. Just weeks later, both women started talking and walking, and both are well on their way to a full recovery. MH is consulting with attorneys to evaluate a malpractice action against the hospital/hospice.



Two Rivers School v. Darnell et al. (Washington, D.C.)—

Pro-life advocates protested the construction of a Planned Parenthood megacenter adjacent to a middle school in Washington, D.C. The school district sued and obtained a preliminary injunction. Life Legal, representing the lead plaintiff in the case, appealed the decision to the D.C. Court of Appeals. The next hearing is scheduled for June 2018.

Passmore v. 21st Century Oncology (Fla.)—

Discriminatory termination of two medical employees for taking part in pro-life activities after work hours. Trial back on track after Plaintiffs granted a relief from stay after employer filed for bankruptcy.

Stinson/Fonseca (Calif.)—Life Legal continues our challenge to 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 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 but was subsequently found to have active brain

waves, against the California Department of Public Health and the California Attorney General. Israel Stinson died after being forcibly removed from life support in August, 2016. The hospital and state then sought to have the case dismissed, claiming the toddler’s death rendered the case moot as there were no further damages. Life Legal subsequently sought to be joined as a co-plaintiff. Case is on appeal to the Ninth Circuit.

In re Joe Williams (Calif.)—Case involving the father of two small children who suffered a brain injury in May 2015. Joe’s wife decided in December that she wanted to take him home to die, i.e., without nutrition or hydration. Life Legal was contacted by Joe’s sister (through Bobby Schindler). Tragically, Joe’s condition became unstable due to lack of fluids and he passed away in June 2017. Inexplicably, our opponents want to keep the case alive in order to prevent the family from discussing the case. We are seeking dismissal of the case.

Duran v. Southwestern Women’s Options (New Mex.)—Lawsuit filed against late-term abortion clinic for failure to obtain lawful consent to provide baby parts for research. Congress is also investigating University of New Mexico and the abortion mill for suspected violations of federal law prohibiting the sale of fetal tissue.

Masterpiece Cakeshop v. Colorado Civil Rights Commission (Colo.)—The Masterpiece case involves a baker who was asked to create a cake for the wedding of a same-sex couple. The baker, Jack Phillips, said he could not use his artistic talents to give approval to a marriage that violated his religious beliefs. In response, the Colorado Civil Rights Commission said Phillips’ religious beliefs were illegal and prohibited him from designing any wedding cakes, which resulted in the loss of 40% of his business. The Commission imposed draconian reporting requirements on Phillips, forcing him to provide a detailed account of the reasons for any orders he declines. Life Legal filed a brief in support of the baker because this case is likely to have rapid and lasting impact on the rights of medical professionals to practice their professions consistently with their consciences and the teachings of their faiths on issues of life and death—or indeed to practice their professions at all.

Schneider (Ga.)—An abortion clinic escort repeatedly harassed a 40 Days for Life sidewalk advocate. Life Legal is coordinating with local attorneys to obtain a restraining order against the escort. **Victory!** Clinic escorts have backed off for now and no longer pose a significant threat to the Life Advocates!

People v. Monagan (Calif.)—Peaceful pro-life advocate found guilty of interfering

CALIFORNIA CASE EXPOSES “PHYSICIAN ASSISTED SUICIDE”

Rebekah Millard



What is the cost to a state that chooses to decriminalize an entire category of homicide, recasting it as “aid-in dying”? Can the cost be measured in the harm inflicted on the victims? Does calling them “patients” somehow lower the cost? Can the cost be measured in harm to the perpetrators, physicians whose profession includes the traditional oath to “do no harm”?



These questions and many more are being addressed through a case currently before the California Superior Court in Riverside County. Filed in June of 2016, the lawsuit *Ahn v. Hestrin* argues that California’s dangerous “End of Life Option Act” (“EOLA”) deprives many California patients of their basic human rights—rights protected by the California Constitution’s guarantee of due process and equal protection. The plaintiffs are a group of courageous medical doctors whose patients are vulnerable to suicide. As the case proceeds, both sides have been actively conducting discovery, including written discovery requests, public records requests, depositions, and subpoenas to relevant third-parties. The answers uncovered through the discovery process have been profound: this law does immense damage and presents formidable danger to individual patients and to society at large.

Approximately 200 patients were prescribed lethal drugs in the first six months the EOLA was in effect. The damage to these patients comes in several forms. Under the EOLA, patients are arbitrarily categorized by disease—those who have a terminal illness (meaning a diagnosis of less than six months to live)

are singled out. They are automatically deprived of the protection of laws that apply to everyone else—for example, a serious indication of a desire to commit suicide results in psychiatric evaluation and treatment, and other forms of social support for an otherwise healthy person. Similarly, a suspicious death (such as evidence of a person assisting in a victim’s demise) results in a homicide investigation and, if appropriate, prosecution. For those deemed terminally ill, however, these protections evaporate: there is no requirement that the patient receive psychiatric evaluation, nor is there a serious effort to ensure the patient’s request is voluntary and free of undue pressure. Even if the patient *requests* lethal drugs voluntarily, there are no protections in place to guarantee that the patient is acting voluntarily when he or she *takes* the lethal dose, weeks or even months later.

Further, the law itself is based on the faulty premise that physicians can accurately determine when a patient has less than six months to live, a task that many physicians admit can be difficult if not impossible. The law does not require that the physician making the diagnosis be a specialist in the disease underlying the patient’s condition.

For example, a primary care doctor whose practice does not involve keeping abreast of emerging cancer treatments could legally prescribe a lethal dose to a patient he predicts has less than six months to live.

Patients faced with the usual fears and stresses of a serious disease need competent professional care, including pain management, palliative care and hospice care as well as strong emotional and social support. When a quick “way out” is presented, there is a very real danger that instead of doing the hard work of caring for the gravely ill, some physicians and other caregivers may choose to essentially abandon their patients.

More than 100 patients died from taking legal, lethal drugs in the six months after the EOLA took effect in June 2016. For them, the damage is irrevocable: they are dead. As of this writing, no data has been released on the EOLA deaths in 2017, but experience in other states as well as unofficial reports indicate that the rate at which people end their lives through assisted suicide will grow exponentially.

The EOLA purports to create safeguards for patients by having two physicians agree on an individual’s terminal diagnosis and

prognosis, but such physicians' professional opinions mean nothing in reality both because of the uncertainty of diagnosis and because patients can go to as many physicians as necessary to find one willing to prescribe the lethal dose. Indeed, first-person reports and anecdotal evidence reveal that some physicians are writing lethal prescriptions for a significant number of patients with whom they had no pre-existing doctor-patient relationship, repeating the pattern seen in other states that allow physician assisted suicide.

From the perspective of the physician-plaintiffs in *Ahn v. Hestrin*, the EOLA interferes with the role of the physician, and alters the profession itself. Consistent with the ethical principles that have guided the profession for thousands of years, physicians should do no harm. Physician assisted suicide undermines the very physician-patient relationship and trust in the profession that is essential to the practice of medicine. The profession's response to suffering should be to stay beside each patient, no matter how long or difficult the journey, and to promote efforts to improve palliative and hospice care. In this way, physicians can fulfill their mission and give dying patients and their families the care, compassion, and comfort they need and deserve.

Once a society accepts the premise that some people are better off dead, there is no logical reason for limiting "aid-in-dying" to situations covered by the EOLA. Limiting the "right" to assisted suicide to those who are conscious, have mental capacity, and are able to make verbal and written requests and to take medication orally quickly becomes labeled unfair or even discriminatory. After all, many who are incapacitated mentally or physically suffer far more, and yet cannot avail themselves of this "way out." Opening a door to assisted suicide for one group necessarily pushes the issue for others.

This is not mere speculation: the logical progression is clear in every jurisdiction where assisted suicide has been legalized (most notably in Belgium and the Netherlands where involuntary euthanasia is a regular practice). In California, the government has already put into place procedures to ensure that *individuals committed to state mental institutions* can "participate in the Act" and receive lethal drugs.

The mainstream media, heavily influenced by Compassion & Choices (formerly the Hemlock Society), broadcasts soothing stories about patients availing themselves of the "options" presented by the EOLA. There is a siren song appeal in the assurance of "ending my life in a humane and dignified manner," as the law's paperwork promises. Stories tell of the safety and peacefulness of physician-assisted suicide, but as the lawsuit has uncovered, there are many untold stories. Stories of the lethal dose of drugs causing severe symptoms and suffering. Stories of the tragedy and heartbreak that suicide brings for those left behind. Stories of the covert and overt pressure brought to bear on vulnerable patients by those who should take the greatest care of them: their families, their physicians, their friends.

The cost of rebranding suicide is indeed high. Unless forestalled, the cost—especially the cost measured in human lives lost—will continue to mount.

RECAP CONTINUED FROM PAGE 3

with a police officer. The conviction has been appealed.

Kline v. Biles (Kan.)—Former Kansas Attorney General was accused by Planned Parenthood and pro-abortion public officials of violating state ethics rules while investigating Kansas abortion providers, including notorious late-term abortionist George Tiller, as well as others who failed to report cases of child rape. Kline's license to practice law was suspended indefinitely by the Kansas Supreme Court in 2013—however, five of the seven justices had to recuse themselves because of conflicts. Kline filed a motion in federal court to challenge what he calls a void judgment by an "unlawfully constituted" court. The motion was dismissed and Kline appealed to the Tenth Circuit, which affirmed the lower court's ruling in July 2017. Kline's attorneys plan to appeal the case to the U.S. Supreme Court.

People v. Imbarrato, et al. (Washington, D.C.)—Criminal charges resulting from Red Rose Rescue.

People v. Handy, et al. (Alexandria, Va.)—Criminal charges resulting from Red Rose Rescue.

McKitty v. Hayani (Canada)—Life Legal is assisting in the Canadian case of twenty-seven-year-old Taquisha McKitty, who was declared brain dead in September, but has since been exhibiting movements and responses incompatible with brain failure. We are waiting for the judge's ruling after a five-day trial that centered on Taquisha's religious belief that life is not determined solely on the basis of neurological criteria.

National Institute of Family and Life Advocates (NIFLA) v. Becerra (Calif.)—On March 20, the Supreme Court heard oral arguments in a case involving a challenge to a California law that (1) forces medically-licensed pregnancy resource centers to tell their clients how to obtain a state-funded abortion, and (2) forces non-medical centers to post large signs saying that they are not medical centers. Life Legal filed an amicus brief with the Supreme Court on behalf of Priests for Life and the Justice Foundation addressing the draconian disclosure mandate for non-medical pregnancy centers.

40 Days for Life Thousand Oaks and Lawndale (Calif.)—Both Cities classified prayer vigil as a "special event" and demanded the group submit an application and obtain liability insurance in order

CONTINUED ON BACK PAGE

OBLIGED TO KILL: THE ASSAULT ON MEDICAL CONSCIENCE

Wesley J. Smith



A court in Ontario, Canada, has ruled that a patient's desire to be euthanized trumps a doctor's conscientious objection. Doctors there now face the cruel choice between complicity in what they consider a grievous wrong—killing a sick or disabled patient—and the very real prospect of legal or professional sanction.

A little background: In 2015, the Supreme Court of Canada conjured a right to lethal-injection euthanasia for anyone with a medically diagnosable condition that causes irremediable suffering—as defined by the patient. No matter if palliative interventions could significantly reduce painful symptoms, if the patient would rather die, it's the patient's right to be killed. Parliament then kowtowed to the court and legalized euthanasia across Canada. Since each province administers the country's socialized single-payer health-care system within its bounds, each provincial parliament also passed laws to accommodate euthanasia's legalization.

Not surprisingly, that raised the thorny question of what is often called “medical conscience,” most acutely for Christian doctors as well as those who take seriously the Hippocratic oath, which prohibits doctors from participating in a patient's suicide. These conscientious objectors demanded the right not to kill patients or to be obliged to “refer” patients to a doctor who will. Most provinces accommodated dissenting doctors by creating lists of practitioners willing to participate in what is euphemistically termed MAID (medical assistance in dying).

But Ontario refused that accommodation. Instead, its euthanasia law requires physicians asked by a legally qualified patient either to do the deed personally

or make an “effective referral” to a “non-objecting available and accessible physician, nurse practitioner, or agency . . . in a timely manner.”

A group of physicians sued to be exempted from the requirement, arguing rightly that the euthanize-or-refer requirement is a violation of their Charter-protected right (akin to a constitutional right) to “freedom of conscience and religion.”

THE ONTARIO COURT RULING IS A HARBINGER OF OUR PUBLIC POLICY FUTURE.

Unfortunately, the reviewing court acknowledged that while forced referral does indeed “infringe the rights of religious freedom . . . guaranteed under the Charter,” this enumerated right must nonetheless take a back seat to the court-invented right of “equitable access to such medical services as are legally available in Ontario,” which the court deemed a “natural corollary of the right of each individual to life, liberty, and the security of the person.” Penumbrae, meet emanations.

And if physicians don't want to commit what they consider a cardinal sin, being complicit in a homicide? The court bluntly

ruled: “It would appear that, for these [objecting] physicians, the principal, if not the only, means of addressing their concerns would be a change in the nature of their practice if they intend to continue practicing medicine in Ontario.” In other words, a Catholic oncologist with years of advanced training and experience should stop treating cancer patients and become a podiatrist. (An appeal is expected.)

This isn't just about Canada. Powerful political and professional forces are pushing to impose the same policy here. The ACLU has repeatedly sued Catholic hospitals for refusing to violate the church's moral teaching around issues such as abortion and sterilization. Prominent bioethicists have argued in the world's most prestigious medical and bioethical professional journals that doctors have no right to refuse to provide lawful but morally contentious medical procedures unless they procure another doctor willing to do as requested. Indeed, the eminent doctor and ethicist Ezekiel Emanuel argued in a coauthored piece published by the *New England Journal of Medicine* that every physician is ethically required to participate in a patient's legal medical request if the service is not controversial among the professional establishment—explicitly including abortion. If doctors don't like it? Ezekiel was as blunt as the Canadian court:

Health care professionals who are unwilling to accept these limits have two choices: select an area of medicine, such as radiology, that will not put them in situations that conflict with their personal morality or, if there is no such area, leave the profession.

For now, federal law generally supports medical conscience by prohibiting medical employers from discriminating against professionals who refuse to participate in abortion and other controversial medical services. But the law requires administrative enforcement in disputes rather than permitting an individual cause of action in civil court. That has been a problem in recent years. The Obama administration, clearly hostile to the free exercise of religion in the context of health care, was not viewed by pro-life and orthodox Christian doctors as a reliable or enthusiastic upholder of medical conscience.

The Trump administration has been changing course to actively support medical conscience. The Department of Health and Human Services recently announced the formation of a new Conscience and Religious Freedom Division in the HHS Office for Civil Rights, which would shift emphasis toward rigorous defense of medical conscience rights.

Critics have objected belligerently. The *New York Times* editorialized that the new emphasis could lead to “grim consequences” for patients—including, ludicrously, the denial by religious doctors of “breast exams or pap smears.”

The American College of Obstetricians and Gynecologists joined the Physicians for Reproductive Health to decry the creation of the new office—which, remember, is merely dedicated to improving the enforcement of *existing law*—warning darkly that the proposal “could embolden some providers and institutions to discriminate against patients based on the patient’s health care decisions.”

The Massachusetts Medical Society joined the fearmongering chorus, opining that the new office could allow doctors to shirk their “responsibility to heal the sick.” Not to be outdone in the paranoia department, People for the American Way worried the new office might mean that “other staff like translators also refuse to serve patients, which could heighten disparities in health care for non-English-speaking patients.”

The Ontario court ruling is a harbinger of our public policy future. Judging by the apocalyptic reaction against the formation of the Conscience and Religious Freedom Division, powerful domestic social and political forces want to do here what the Ontario court ruling—if it sticks on appeal—could do in that province: drive pro-life, orthodox Christian, and other conscience-driven doctors, nurses, and medical professionals from their current positions in our health-care system. **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. This article was originally published by the *Weekly Standard* (weeklstandard.com) March 12, 2018, and is here reproduced by kind permission of the author.]

VIDEOS CONTINUED FROM PAGE 1

length videos, both of which are available on CMP’s Youtube channel shows that the supposedly exculpatory statements either were included in the highlight videos or, viewed in the context of the full conversation, were not actually exculpatory. In short, none of the “deceptive edits” are deceptive at all, though Planned Parenthood’s list of them certainly is.

Planned Parenthood’s damage control strategy has worked: the media took the phrase “deceptively edited” and communicated to the public that the videos were not just edited, but “doctored,” “falsified,” “fabricated,” “dubbed,”—you name it: completely fake from beginning to end.

Politics makes strange bedfellows, however, and by partnering with Fusion GPS, Planned Parenthood found itself in bed with an organization that is itself widely viewed as discredited for having fabricated information about Donald Trump at the behest of the Clinton campaign. Now Planned Parenthood, which relied so heavily on the Fusion GPS report in bringing its accusations of fraud and illegality against David and CMP, has notified Life Legal that it *does not intend to rely on the Fusion GPS report in its lawsuit!*

David and Center for Medical Progress worked for years to research and infiltrate the abortion industry, gather video evidence, release it to the public, and expose Planned Parenthood’s wrongdoing. Their struggles are far from over. In addition to lawsuits brought by Planned Parenthood and the National Abortion Federation, David and fellow investigator Sandra Merritt face criminal charges in California. More of CMP’s damning video footage is being suppressed by a court order. Almost every day brings a new legal crisis or project, and Life Legal stands with David and Sandra as they continue to battle Planned Parenthood and the abortion industry.

David and CMP fought to bring Planned Parenthood’s wrongdoing into the light. Planned Parenthood’s propaganda machine worked to push it back into the dark. Now it’s our turn. Ask someone, everyone, “Have you watched the Planned Parenthood videos?” Don’t let Planned Parenthood’s dirty secrets slip out of sight. **L**

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RECAP. CONTINUED FROM PAGE 5

to pray on the public sidewalk. Life Legal intervened and got the City to rescind their unconstitutional requests. Both cases are **Victories!**

40 Days for Life San Francisco (People v. McCormick)—Violent pro-abort attacks pro-life advocate outside Planned Parenthood San Francisco then lies to the police and claims sidewalk counselor hit her. Police issued a citation to the peaceful life advocate, but formal charges have not been filed yet. Life Legal attorneys are communicating with the District Attorney's office to ensure no formal charges are filed. **L**



40 Days for Life in San Francisco

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