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Lifeline

A Legal Network in Support of Life

A PUBLICATION OF THE LIFE LEGAL DEFENSE FOUNDATION

Katie Short

Zoned Out

On April 19, 2006, a circuit court judge in Albemarle County Virginia, issued a proposed decree granting a declaratory judgment decree in favor of six local residents and landowners who opposed Planned Parenthood being permitted to operate an abortion facility in their residential neighborhood. The landowners, represented by J. Michael Sharman of Culpeper, had filed an action against the county and Planned Parenthood after learning that a building that had originally been approved by city authorities to house professional offices and apartments had morphed into a Planned Parenthood clinic offering abortions, HIV testing, and treatment for sexually transmitted diseases.

After a default decree was entered against Planned Parenthood in 2005, the judge heard evidence and argument and made a number of significant findings, including that "the current use of the property bears essentially no resemblance to the use of the property which was presented to the Planning Commission and the Board of Supervisors for their approval." Moreover, the actual uses of the building as an abortion center and treatment center for sexually transmitted diseases "are not in keeping with the Neighborhood Model," are "not in harmony with the purpose and intent of the Zoning Ordinance," and "are of substantial detriment to adjacent property." This last finding is particularly significant, in that it opens the door to a private action for damages by the landowners directly against Planned Parenthood.

[City councils] will be justifiably concerned about the deleterious effects … of an abortion clinic locating in their community and may welcome suggestions from concerned citizens about how to mitigate those effects.

Mike Sharman's victory is not the only instance of an abortion clinic's plan foundering on the shoals of city zoning restrictions. Attorney James Owens of Pennsylvania has also prevailed against abortion clinics seeking to skirt local laws. In one of his

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IN THIS ISSUE

GENERAL RECAP & UPDATE

People's Advocate v. Independent Citizens' Oversight Committee (Calif.)—Suit for declaratory and injunctive relief to prevent expenditure of public funds for research focused on embryonic stem cells and cloning. Adverse ruling from trial court; appeal pending. Please see pages 2 and 3 for more on this case.

National Tax Limitation Foundation v. Westly (Calif.)—Suit challenging award of grants to University of California for training scientists in embryonic stem cell research. Grants were made in violation of state conflict of interest laws.

Roe v. Planned Parenthood (Ohio)—***Victory!*** Please see sidebar, page 6.

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NOW v. Scheidler—In November, 2005, the U.S. Supreme Court heard the pro-life activists' appeal from a decision granting substantial damages and a purported nationwide injunction. LLDF filed amicus briefs in both the Seventh Circuit and the U.S. Supreme Court, as well as assisting the defendants with post-trial motions in the trial court. ***Victory!*** Unanimous Supreme Court decision in favor of Scheidler and co-defendants (*NOW v. Scheidler* (2006) 126 S.Ct. 1264) **CASE CLOSED.**

Pedigo v. Hershey (Calif.)—Amniocentesis detrimentally used on pre-born child with improper consent. Civil suit filed. Case proceeding in trial court.

O'Toole v. San Diego Community College District—Pro-lifer arrested and held for carrying sign on public college campus; he was released two days later, without having been cited. Claim filed and rejected. Plaintiff and defendants filed writ of petition to Fourth District Court of Appeal of California. Court ruled against plaintiffs, finding that police were entitled to statutory immunity for the arrest. Further appellate proceedings under consideration.

Moreno v. Riverside Community College (Calif.)—Suit against public college for arrest of pro-lifers engaged in free speech activity. Discovery in process.

Logsdon v. Cincinnati Women's Services (Ohio)—Civil action in Ohio court for defamation and conversion against Cincinnati abortion clinic and clinic owner for interfering with sidewalk counselor's pro-life signs and for false reports to police that led to two arrests. Clinic closed and clinic owner filed for bankruptcy in October 2005, triggering automatic stay of proceedings. Attack on bankruptcy discharge is pending and other action is under consideration.

Logsdon v. Hains (Ohio)—Federal civil rights lawsuit for damages filed against two Cincinnati police officers for arresting sidewalk counselor at abortion clinic and filing charges against him without probable cause. Police filed motion to dismiss claims on basis of qualified immunity. Awaiting decision.

Krug v. Billings Montana—Pro-life sidewalk counselors were arrested on separate occasions; all criminal charges were dismissed. False arrest suit pending.

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FROM THE DIRECTOR

Dana Cody

Appealing and Unappealing

On May 12, 2006, the Alameda Superior Court, Judge Bonnie Sabraw presiding, entered judgment in the litigation challenging the constitutionality of Proposition 71, which created California's Institute for Regenerative Medicine.

Life Legal Defense Foundation represented two taxpayer groups in the case, Plaintiffs People's Advocate and the National Tax Limitation Foundation, who challenged the constitutionality of the Act created by Proposition 71 on the basis that the Independent Citizen's Oversight Committee, also created in the Act, is an entity not under the exclusive management and control of the state. The plaintiffs alleged that the Act did not contain sufficient state controls with regard to the spending of $3 billion in general obligation bonds by the ICOC, thereby placing the ICOC outside state management and control as required by the state constitution. Plaintiffs' position is unchanged and they plan to appeal the Court's decision. The question remains, from whom is the ICOC independent?[1]

In April, the trial court first issued its Proposed Statement of Decision, and court procedure allows the parties to the case the opportunity to recommend changes to the court's proposed decision. LLDF did so by filing a Proposal for Statement of Decision on behalf of People's Advocate and the National Tax Limitation Foundation.[2] Even though the trial court's ultimate judgment was much like its earlier Proposed Statement of Decision, LLDF has maintained that this case will finally be decided either on appeal or in the California Supreme Court. Consequently, Plaintiffs' Notice of Appeal was filed on June 12, 2006.

On June 26, the plaintiffs filed a new action, *National Tax Limitation Foundation v. Westly*, challenging the award of training grants to eight University of California campuses. Because the judge in the main action was unwilling to consider evidence of specific wrongdoing on the part of the ICOC, plaintiffs filed this as a separate taxpayer suit, calling for the return of monies awarded to U.C. campuses in violation of the ICOC's own conflict of interest polices.

In the meantime, the proponents of embryonic stem cell research have been very busy with their campaign. A coalition of embryonic stem cell proponents has been formed to campaign for stem cell research nationwide. Additionally, the State of Connecticut is now funding embryonic stem cell research.

In an article related this this one [p. 3], Jennifer Lahl, Executive Director of the Center for Bioethics and Culture kindly agreed to give us her perspective on the issue of embryonic stem cell research and its future, focusing on the attempts to have the State of Missouri fund such research.

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[1]The Court's decision can be read in its entirety via the Alameda County Court web site at www.alameda.courts.ca.gov. The case number is HG05 206766.

[2]LLDF's Proposal for Statement of Decision is posted on our web site, www.lldf.org.

FETAL ATTRACTION

Jennifer Lahl

Legislative Déjà vu

For those who aren't following the national human cloning debate, (although it sometimes feels like a traveling dog and pony show) the "Show Me" state of Missouri is currently in a battle similar to that which California faced back in 2004 as Proposition 71 successfully strapped the Golden State with $3 billion in bond debt ($6 billion if you add in the interest). Has it really been eighteen months since Proposition 71 passed? My how time flies when you are tangled up in lawsuits—*kudos* to Life Legal Defense Foundation!

The Missouri campaign against the cloning of human embryos for the sole purpose of doing destructive embryonic stem cell research mirrors many of the strategies which were attempted out west. First, both states intentionally called it what it is—Human Cloning. Both states have supporters of the legislation who want voters to believe this is a debate over leftover, spare embryos sitting in infertility cold storage which are just going to be thrown away. Wrong. The researchers themselves will tell you, and often quite candidly, that they want fresh eggs, from young women—and lots of them to make disease specific cloned embryos for their specific research. Second, the hype for cures just around the corner for every major disease is rampant. You can already see the television ads running in Missouri, pulling on the heart strings of voters. It reminds me of the movie, *My Big Fat Greek Wedding*, where the father of the bride's solution for everything is *Windex*! Embryo stem cells are put on the pedestal of the cure-all for everything—the Holy Grail of stem cells. And finally, both states have opponents of their legislation who seek to form common cause with groups and individuals outside of the traditional conservative pro-life fray. There is much to be leery about with this type of legislation. Feminists are outraged by big biotech's raping of the female body. Environmentalists are concerned about harnessing human engineering and unleashing harmful technologies which will in turn harm the earth. Social justice concerns are prevalent as worries about producing expensive therapies that only the rich will enjoy, but will be developed on the backs of the poor. And as always, if you follow the money, many people get a queasy feeling. People wonder about the ethics of squandering millions and billions of dollars on speculative research while millions of Americans don't even have basic health care coverage.

There is one thing those working the Missouri campaign have that California didn't have. Missourians against human cloning have California in their rear view mirror. Voters, and specifically taxpayers in Missouri, can look at the test case out west and learn from what happened in California before they pour their precious resources down a big black hole.

Since the passage of Proposition 71, and the following lawsuits filed against the California Institute of Regenerative Medicine (CIRM), and the impending appeals (to be filed this week as I type) it is very important to look at the current landscape in the field of stem cell research. It is evident that with the inability to begin selling bonds to fund the activities the CIRM has established, the sky has not fallen and stem cell successes continue to advance and the U.S. maintains its leading edge in the field of stem cell research.

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Mason v. Colorado School of Mines (Colo.)—Following successful defense of pro-life activists for alleged trespass on public property, civil suit filed against public university for violation of constitutional rights. ***Victory!*** Case settled with change of school speech policy and award of attorney fees.

People v. Coatney (Mich.)—Pro-lifer cited and convicted for parking violation for parking his privately-owned bus with pro-life signs near abortion clinic, not at a bus stop. When he parked it at a bus stop, he was again cited for illegal parking. Appeal pending.

McCullough v. Long Beach Community College (Calif.)—Suit against public college for arrest of pro-lifers engaged in free speech activity. College's motion for summary judgment defeated, but writ proceedings are pending.

People v. Stiefken et al. (San Bernardino)—Sidewalk counselors charged with obstructing a business. ***Victory!*** Charges dropped after multiple court appearances, when District Attorney finally viewed videotape showing what actually took place.

FWHC v. Sanctity of Human Life Network et al. (Sacramento)—FWHC brought a contempt action against Harry Reeves for allegedly violating an injunction. He was accused of yelling, blocking, and substantially disrupting clinic operations. ***Victory!*** After the court reviewed a videotape of Mr. Reeves' activities he was exonerated except for a technical finding of contempt related to the tape, for which the court imposed a minimal fine. FWHC then sought to recover attorney fees. Their motion was denied. Mr. Reeves sought and was granted a modification of the injunction so that he can videotape in order to effectively defend himself against future false accusations of contempt.

People v. D'Alessio (Oakland)—Sidewalk counselor charged with interfering with a business by pro-abortion guard at Family Planning Specialists. Case pending.

Storms, et al. v. California State University Los Angeles—Pro-lifers arrested for remaining on campus after being told they could only hold signs in a deserted area near campus police station. Charges dismissed. Civil rights action filed against university.

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Klein, et al. v. San Diego County et al.—Federal challenge to San Diego residential picketing ordinance. Decision pending from Ninth Circuit Court of Appeal.

Mason v. Klaus (Calif.)—Pro-lifers arrested for free speech activity on California State University Long Beach campus after being told that they could not hold signs. Complaint filed.

Buchinger v. Santa Barbara City College—Pro-lifers arrested for remaining on campus and engaging in free speech activity. Lawsuit pending.

Laubacher and Parents' Right to Know v. McPherson (Calif.)—Declaratory relief granted establishing compliance of Parents' Right to Know petitions with statutes. Also ongoing legal advice and representation re election law and free speech issues.

Feminist Women's Health Center v. Canfield (Chico)—Feminist Women's Health Center obtained a Temporary Restraining Order on allegation that sidewalk counselor verbally threatened doctor. At the evidentiary hearing, issue was raised whether the abortion facility and doctor provide informed consent to the mothers seeking abortion, per Penal Code 187 (the Murder Statute) in that the statute states that the unlawful killing of a fetus is murder unless the mother aids, abets, solicits, or consents to the abortion. Judge excluded evidence, but suspended the trial to allow Mr. Canfield to appeal that ruling. Appeal pending.

LIFELINE MISSION STATEMENT

The mission of Life Legal Defense Foundation is to give innocent and helpless human beings of any age, and particularly unborn children, a trained and committed defense against the threat of death, and to support their advocates in the courtrooms of our nation.

ON THE WEB

www.lldf.org

ASK THE ATTORNEY

An Interview with Terry L. Thompson

Terry L. Thompson, an attorney in private practice in the San Francisco East Bay Area, is a Life Legal Defense Foundation board member and volunteer attorney. In concert with other LLDF attorneys, he has argued pro bono for the free speech rights of defendants sued for doing sidewalk counseling outside abortion mills. Terry also serves on the board of California Right to Life while maintaining his practice, which includes business law, wills, and trusts.

Dee and Terry Thompson

Before becoming an attorney, he served jail time himself for clinic rescue activity. Currently he is on the LLDF legal team challenging the constitutionality of Proposition 71, the state law passed by California voters to fund human embryonic stem cell research. Educated as a mechanical engineer at Cornell University, Mr. Thompson had a career with Bechtel Corporation and later co-founded an engineering firm specializing in long-distance pipeline transportation of solids. He and his wife, Dee, were married in 1960 and have three adult daughters, all married, and six grandchildren. Mr. and Mrs. Thompson began sidewalk counseling outside abortion clinics in the 1980s and they still go out to the local abortion clinic once a week.

Who inspired your interest in the pro-life movement?

My wife, Dee, in the 1980s started going to the local abortion clinic, and in connection with that, asked about inviting the neighbors to see a film called *The Silent Scream*. I had never heard of it—all I thought was that we were providing a place for people to see a film. When I saw that film, I was convicted that abortion was murder. I had not thought about the issue before that. My wife led the way.

What did you do after seeing the film?

I joined Dee as a sidewalk counselor outside our local Planned Parenthood abortion clinic. About that time, Operation Rescue had their 1993 "cities of refuge" campaign and we went to one of their meetings. They asked people to raise their hands if they were willing to risk arrest for demonstrating outside clinics. I thought, "If I believe that abortion is murder, I had better act like it." I raised my hand. I ended up getting arrested three times and serving three weeks in jail. My wife was arrested once. She served a month in jail.

Where did you serve your jail time?

I call it the Elmwood Christian Retreat Center (laughs). Actually it was the Elmwood Correctional Facility in Milpitas. My wife and I were serving sentences at the same time. I was in the men's section and she was in the women's. One day using my telephone privilege, I happened to call my youngest daughter at the same time my wife had called her. Our daughter was able to patch the calls together, and Dee and I got to talk to each other. It was serendipity—or we might call it God's will. I had another experience in jail: The man in the bunk above me, Keith, asked why I was there and I told him. He said

he knew all about "your people," as he called all pro-life people. He had met a sidewalk counselor six or seven years back when he and his wife, who was pregnant, decided on an abortion and went to a local clinic. After yelling at the sidewalk counselor who had approached them with a brochure, Keith went to his vehicle while his wife went inside for the abortion. Keith read the literature that had been handed to him, had a change of heart, rushed past the guard into the clinic, and cried out asking his wife if she wanted to abort. She said, "No!" He helped her up off the gurney and they left. As I crawled into my bunk later that evening, I noticed Keith's personal box—a small clear plastic drawer that each inmate was given to store personal items. On the end facing me, I could see a hand-made card with a crayoned heart and the writing of a six-year-old. It read, "Happy Birthday Daddy. I love you. Tiffany." It brought tears to my eyes.

What role does faith play in your life?

I was raised in a Christian home with good values, read the Bible through twice when I was in high school and was president of our church youth group, but you could say I was a cultural Christian. When I got to college I received challenges to my faith and could not defend it. It was easier to become agnostic. In the mid-1980s I dedicated my life to the Lord and experienced a saving faith. I'm now an elder in the Presbyterian Church (PCA). The commandments guide me. The Lord said, "Thou shalt not murder." What does that mean on the positive side? It means that we should protect life at all stages, from conception through to natural death. It is not our job to decide when a person lives or dies.

How are you challenging California's Proposition 71, which provides for three billion dollars of bond funding of human embryonic stem cell research?

I agree with Phyllis Schlafly of Eagle Forum who said, "I am all for stem cell research as long as it doesn't kill the donor", but that is what happens in human embryonic stem cell research. Contrasted with embryonic stem cell

Dee and Terry Thompson with family

research, there are immediate cures coming from adult stem cell research (which does not kill the donor) and that is where the focus should be. Four of us are working pro bono on this case for LLDF. Our legal challenge is not an ethical argument, however, but a challenge on the constitutionality of the proposition. Article 3, Section 16 of the state constitution says all expenditures from the state treasury must be under the exclusive management and control of the state, and that is not the case in Proposition 71. The scheme behind the proposition establishes a dangerous precedent in which a wealthy individual with an idea for some project that he believes will benefit the state spends a million or two of seed money to put a multi-billion dollar bond or tax issue on the ballot, and then spends another few million to advertise in support of it, and then has himself named chairman of the board that oversees the distribution of the billions of dollars of taxpayer money outside the exclusive control of the state. One example of this is the special tobacco tax that California voters passed, and another is the preschool proposition rejected in the June election. You or I may actually agree with the ideas behind some of these propositions, but using the taxpayers' money for them is wrong. Proposition 71, also passed by the voters, provides for an "Independent Citizens' Oversight Committee" to control distribution of the three billion dollars in bond funds. We are suing the independent committee, which is aptly named! It is so independent that committee members may only be removed by judicial action, and only if the law has been broken. Simple ineptness or poor performance by a committee member would not be reason for removal. The executive and legislative branches of state government have almost no power in this situation. Further—the proposition can't be amended by the legislature for the first three years, except by a 70 percent majority vote of both houses of the legislature, that is almost impossible to attain. Even though the proposition decreases the power of the state, state officials are defending it and the Attorney General is our opponent in the case. An appeal has just been filed and whoever loses that will appeal to the California Supreme Court.

Your first career was in engineering. When and why did you become an attorney?

In the 1990s I became interested in politics and in the Constitution and decided to try to audit a course at a local law school. They said that wasn't possible—I would have to enroll. So I took the LSAT, registered and one thing led to another. Four years later, at the age of sixty, I took the bar exam and passed. Being an attorney had always been in the back of my mind. I could not have attended law school at night while also working full-time without the support of my wife. She made sure we always ate dinner together—even at 10:30 p.m. She not only supported my interest but also saw the law degree as a great asset in pro-life work.

What would you say to an attorney considering volunteering for pro-life work?

Jump in! We need you! Life is a spiritual battle and you need to be part of God's army. It's tremendously rewarding. There is nothing better than the real peace that comes of being in God's will. It is satisfying to volunteer for an organization like Life Legal because LLDF will defend the little guy. Yes, LLDF has very skilled lawyers who will handle cases of national interest and cases that may set legal precedent, but unlike some other nonprofits they also will go to bat for those who others won't defend. It is a real strength of LLDF.

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MAJOR VICTORY IN ROE V. PLANNED PARENTHOOD

Judge orders clinic to turn over records

On June 21, Hamilton County judge Patrick Dinkelacker ordered Planned Parenthood of Greater Cincinnati to turn over all records for abortion patients under the age of 18 to the attorneys for "Jane Roe," a minor on whom Planned Parenthood performed an abortion without notifying her parents. The records are needed to establish the pattern or practice on the part of Planned Parenthood of disregarding Ohio's parental involvement laws as well as laws mandating reporting of child abuse to authorities.

Roe and her parents sued Planned Parenthood following a secret abortion which she obtained at the age of 14, under pressure from the father of the baby, her soccer coach. He is now serving a prison sentence for sexual battery on a minor.

Judge Dinkelacker's order is the first in the country requiring an abortion clinic to comply with discovery requests for patient records in a civil matter. Although names and other identifying information will be redacted to protect patient confidentiality, Planned Parenthood, joined by the ACLU, claims that the order violates the right to privacy of nonparties. Meanwhile, attorneys general in Kansas and Indiana have also opened investigations into Planned Parenthood's compliance with mandatory abuse reporting laws, and Planned Parenthood is trying to fend off those investigations.

Planned Parenthood has vowed to appeal—an unsurprising move, given the resources it has poured into resisting turning over the records. At the hearing on the discovery motion, Planned Parenthood was represented by a phalanx of half a dozen attorneys, several paralegals, and various Planned Parenthood executives. As *Cincinnati Inquirer* writer Peter Bronson commented after the hearing: "[A]ny time lawyers fight so hard to keep records secret, we should find out: What are they hiding?"

Congratulations to attorneys Brian Hurley, Todd Wilkowski, and Kathy Hidy for their excellent work on this case!

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Terry L. Thompson

Isn't There a Better Way? (Or Tiffany's Response)

"Isn't there a better way?" This is a question I've often been asked. "Sure, abortion is wrong but why break the law? Why not just educate everyone on what abortion really is?" I wish it could work just that way.

However, when you're passing by a neighbor's house and you see a child drowning in the swimming pool, you don't stop to educate the family on swimming pool safety or hold a class in the elementary backstroke. You rush across the neighbor's yard (i.e., trespass) and jump into the pool to rescue the child. Sitting in front of an abortion mill door to temporarily shut it down (i.e., trespass), while sidewalk counselors talk to the baby's mother in an attempt to save both her baby's life and to save the mother from the lifelong pain that comes from allowing her baby to be killed, is also a last ditch rescue attempt. We won't stop all abortion in the U.S. by this method, but … we will save some lives. Every life is precious. Ask anyone who has been spared from abortion and see what they say about the value of saving one life!

Every life is precious. Ask anyone who has been spared from abortion and see what they say about the value of saving one life!

I wrote the above the day after I arrived at Elmwood Correctional Facility to serve ten days for blocking an abortion mill door. The next night I was talking to Keith, on the bunk above me. Keith and I were discussing a wide range of subjects. When he found out why I was in jail, he said, "I know one of 'your' people.' He then related the following story to me. He said that in 1987 his wife, Michelle, was pregnant. After a lot of discussion she decided to get an abortion and Keith drove her to a Planned Parenthood clinic in San Jose. As they walked to the clinic from his car, Keith said, some of "your" people called to them to "Please let your baby live!' He was upset and told them to "Go to.…" After he took Michelle into the clinic he walked back to his car and this guy (one of "your" people) walked over to the car and started talking to him. Keith said he let him talk for a few minutes and then said he'd had enough and told him to leave. Before he left he gave Keith a brochure on abortion and asked him to read it. A few minutes later Keith said he began to think to himself that he really didn't want Michelle to have the abortion. The pressure grew inside him and he suddenly threw open the car door and raced across the parking lot and up the steps of Planned Parenthood. The security guard was also racing toward Keith. As he approached to within a few feet, Keith shook his fist at him and warned him not to touch him. Inside the clinic manager was trying to keep the door closed. Keith pushed

(**BETTER WAY** CONT'D ON PAGE 9)

Stem Cell Standstill:
Can lawsuits thwart the development of a lucrative stem cell industry?

California voters' decision in 2004 to spend nearly $3 billion on stem cell research has energized "sanctity of life" lawyers both here and in other parts of the United States. This network of attorneys and a cadre of nonprofits started out more than a decade ago fighting to protect abortion protesters' free speech rights. More recently, these groups have battled against euthanasia and life-support removal. Now they're weighing in on another great controversy of modern medicine.

Scientists believe that human stem cells have the potential to help cure several diseases, such as diabetes, cancer, Parkinson's, and Alzheimer's. But opponents note that the laboratory process used to create new stem cell lines destroys human embryos. President Bush has restricted federal funding to research using the 78 existing stem cell lines and denied any federal money for experimentation on new lines. So far, Congress has gone along.

Two years ago California found a way around those federal funding roadblocks, setting the stage for development of a potentially lucrative stem cell industry, when 59 percent of voters approved Proposition 71. The initiative authorizes tax-free bonds to provide up to $350 million a year over the next decade to support stem cell research in California—far and away more than any other state has proposed spending on such experiments. But the California Institute for Regenerative Medicine has yet to spend a single dime from the state treasury on stem cell research. That's because Sacramento attorney Dana C. Cody and other like-minded lawyers have stymied the program by filing lawsuits.

Two lawsuits were recently consolidated and set for jury trial in Alameda County on February 27. In one, Cody, the executive director of the Life Legal Defense Foundation, represents two taxpayer groups: the Peoples' Advocate and the National Tax Limitation Foundation. Her counterpart, David Llewellyn, a longtime anti-abortion activist, filed the second suit on behalf of the California Family Bioethics Council.

Cody says she would also have argued that embryonic stem cell research denies equal protection under the 14th Amendment to the unborn, but she doubted the courts would be receptive.

The lawsuits allege that, unlike other state agencies created to distribute public funds, the institute operates outside state control. They also assert that institute board members have conflicts of interest because of their affiliations with biotech companies, universities, and interest groups that stand to receive grants.

Cody says she would also have argued that embryonic stem cell research denies equal protection under the 14th Amendment to the unborn, but she doubted the courts would be receptive. Such concerns, however, did not stop Martin Palmer, lead attorney for the Maryland-based National Association for the Advancement of Preborn Children, from making that argument in a Los Angeles federal court. Palmer said embryonic stem cell research treats embryos like property rather than human beings. "It's reminiscent of the Dred Scott case," he asserts.

Other groups have joined the fray, including the Arizona-based Alliance Defense Fund and the 35-year-old Chicago-based Americans United for Life, which has served as a resource for lawmakers in 43 states who oppose embryonic stem cell research.

With the passage of Prop. 71, California is clearly where the action is. As Cody observes, "Other states are looking at Prop. 71 and thinking about doing the same thing." So, if Cody wins her case, it's bound to have a ripple effect. —*Robert Selna*

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cases, notorious abortion malpractitioner Stephen Brigham opened a clinic in King of Prussia, Pennsylvania. Bingham had evaded minimum acreage standards applicable to medical clinics by styling his abortion mill a "professional office." However, the truth came out when the clinic contacted the police about a planned pro-life rally in front of the clinic. When township officials became aware of the operation of the facility at that location, they demanded Brigham obtain the necessary permits or shut down.

Owens, who represented local residents during the administrative and judicial phases of the case, developed a factual record showing that Brigham himself was not currently a practicing physician but an abortion entrepreneur, owning and operating at least ten other clinics in the region. Further, the record showed that the clinic, for all practical purposes, provided only one service—abortion—performed by a rotating team of anonymous doctors who did not keep regular office hours or have ongoing doctor-patient relationships with the clinic clientele. The zoning board's decision that the clinic was not a "professional office" was upheld at every stage of appeal, and the clinic closed in March 2003.

In Monrovia, California, attorney Greg Weiler represented residents challenging the granting of a conditional use permit to Planned Parenthood. While the action was still pending, accompanied by both public protest and prayer, the city decided to include Planned Parenthood's building in a downtown redevelopment project, thus ending the dispute—and preventing the clinic from opening.

In response to this experience, Weiler called on his expertise in land use law to draft a model zoning ordinance specifically for abortion facilities. The beauty—one might even say the poetry—of this ordinance is that it uses the pro-aborts' own rhetoric against them. For years abortion advocates have argued (unfortunately, in many cases successfully) to legislatures, courts, and the general public that abortion clinics and providers are in constant danger of being bombed, shot, set on fire, doused in acid, or otherwise violently attacked. These overblown claims have been used to justify privileged status for abortion clinics and providers as well as restrictions on those opposed to abortion.

The beauty—one might even say the poetry—of this ordinance is that it uses the pro-aborts' own rhetoric against them.

However, looking at this same "evidence," a reasonable city council could well conclude that an abortion clinic is not just another business or professional office. If a clinic installs bullet-proof windows, where is that bullet going to go after it bounces off the window? If the building is likely to be set on fire, aren't adjacent buildings also at risk? If a bomb goes off in the middle of the night, who in the neighborhood might get hurt?

Based on the statements of the abortion providers themselves as to the extraordinarily hazardous nature of their operations, it would be quite reasonable for a city council to decide that operating an abortion clinic should be a special use, subject to conditions and restrictions related to these dangers. For example, clinics could not be situated within a certain distance of residences, schools, or playgrounds. They could be required to provide their own twenty-four-hour security, whether live or through surveillance cameras. They could be required to reimburse the city for the extra costs for law enforcement when requested by the clinic.

In addition to the alleged danger of violence, it is well-established that abortion clinics tend to attract protesters (we hope!). The clinics then complain about congested sidewalks and blocked driveways, and demand that the pro-lifer's free speech rights be restricted by means of speech-free zones. Under the abortion clinic ordinance, however, the clinic itself would be required to provide an area immediately adjacent to its property, where free speech activity could take place without impeding the public's use of the right-of-way.

Finally, under the city's general police powers, it could require that no special use or conditional use permit issue except on findings that the proposed use would not adversely affect the public's health, safety and welfare.

Obviously, this ordinance is not going to be to every city council's taste. There are many towns and cities whose elected officials would welcome Planned Parenthood with open arms. But there are others who are not so blinded by pro-abortion ideology as to miss the fact that where abortion businesses go, trouble follows. They will be justifiably concerned about the deleterious effects—economic, moral, and otherwise—of an abortion clinic locating in their community and may welcome suggestions from concerned citizens about how to mitigate those effects.

However, one need not, and should not, wait until Planned Parenthood is already making plans to open a clinic or expand its services in a particular town before acting. In many cases, residents don't find out about the arrival of an abortion provider until property has been purchased, permits have issued, and even construction has begun. By then, the clinic may have a vested legal right in pursuing its plans to completion. By acting before a potential abortion provider is even

on the horizon, a city can prevent being ambushed by learning too late what that innocuous-sounding "professional office" offering "health services" actually is. At a minimum, city officials should be urged to review their zoning ordinances to eliminate ambiguities, such as whether "professional services," "health services" or "medical services" includes surgical procedures such as first and second trimester abortions.

For more information about the model abortion clinic zoning ordinance, contact LLDF at (707) 224-6675 or lifelegaldefense@cs.com

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"In regard to the institution of slavery, indeed, I tremble for my country when I reflect that God is just."
—Thomas Jefferson

(**BETTER WAY** CONT'D FROM PAGE 6)

the door open and shoved her against the wall and then shouted to Michelle. "Where are you? Do you want to have your baby?' "Yes", she called back. She was already on a gurney. "Get off and let's get out of here!", Keith shouted. Well, they did get out, and a few months later Keith and Michelle's daughter Tiffany was born. I was very moved by Keith's story.

That night as I was getting ready to crawl into my bunk, I noticed something that brought tears to my eyes. Under Keith's bunk, at about my eye level, was his small plastic drawer that contained the few possessions he had in jail. The drawer was lined with newspaper to keep the contents private except for the end of the drawer that faced me. There, inside the plastic facing out, was a handmade card with a crayoned heart and the writing of a six year old that said, "Happy Birthday Daddy … I love you … Tiffany."

Thank you, Tiffany, for answering my question.

L

WANTED

LLDF is receiving calls from people whose loved ones are being denied necessary medical treatment. We need local attorneys to assist us in these matters. LLDF is currently compiling model briefs, petitions and other forms for use in these cases.

Please consider making a tax-deductible contribution today. Your generosity allows LLDF to fulfill its mission to provide a trained and committed voice in the courtroom so that pro-lifers can continue their life-saving work.

If you have stock that gives you more tax trouble than earnings, please consider donating it to LLDF. You can deduct the full value of the stock at the time of donation (no need to determine the basis). Thus, what may be a burden to you can be turned directly into support for the defenders of the defenders of life.

EDUCATION

LLDF, on an ongoing basis, provides referrals to attorneys for assistance in ensuring care for medically dependent relatives and for adoption and guardianship matters; obtains legal assistance for women injured by abortion; advises employees in regard to free speech rights in the workplace; instructs pro-lifers in how to defend themselves in court; advises attorneys and citizens on working with legislative bodies re proposed legislation; advises numerous sidewalk counselors, picketers, and prayer supporters of their free speech rights and rights to peaceful assembly when speaking out for the unborn in their communities; provides spokespersons for television, radio, and print media, and speakers for training workshops and debates.

Wesley J. Smith

Harm Done:
Codifying the decline of the medical profession.

In 2000, *The New England Journal of Medicine* reported that patients being euthanized in the Netherlands sometimes experienced significant side effects (apart from death, that is), such as nausea, convulsions, or coma. This belied the assertion oft made by euthanasia proponents that being killed by a doctor necessarily provides the euphemistic "gentle landing" of euthanasia lore.

Responding to the Netherlands report, the *NEJM* published an editorial authored by Dr. Sherwin Nuland, author of the bestselling book *How We Die* and an internationally prominent physician and bioethicist from Yale University. Nuland, a supporter of euthanasia in limited cases, proposed a remedy: that doctors be provided "thorough training in [euthanasia] techniques." Yes, you read right: One of the country's most celebrated doctors urged that continuing medical education classes teach doctors how to kill.

Such "how to kill your patients" classes would clearly violate the famous Hippocratic Oath under which doctors have for some 2,500 years pledged, "I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect."

Nuland knew that, of course. But he dismissed the relevance of the Oath, writing:

> [T]hose who turn to the oath in an effort to shape or legitimize their ethical viewpoints [against euthanasia], must realize that the statement has been embraced over approximately the past 200 years far more as a symbol of professional cohesion than for its content. Its pithy sentences cannot be used as all-encompassing maxims to avoid the personal responsibility inherent in the practice of medicine. Ultimately, a physician's conduct at the bedside is a matter of individual conscience.

For most people, this is a very radical idea. When I read this quote in my lectures, audiences invariably gasp in surprise and shocked concern. You see, real people—that is, *patients*—don't blithely dismiss the Hippocratic Oath as if it were merely akin to a secret handshake. In their commonsense understanding, the Oath protects their welfare by making doctors honor-bound to always "do no harm" (a catchphrase that succinctly summarizes the moral thrust of the Oath, although it does not appear in the document itself).

Unfortunately, we live in an age when pledges of duty and fidelity of the kind found in the Oath are fast becoming passé. Indeed, there is little doubt that the medical profession generally sides with Nuland: Very few doctors take the actual Oath anymore. But there remains the pull of tradition. So, many medical schools and professional associations have instituted various watery pledges or declarations that are mere shadows of the great document itself.

Most recently, for example, Cornell Medical School published a rewritten oath for its graduating doctors to take. Gone, of course, is the proscription against performing abortions. No surprise there: Doctors ceased foreswearing that particular procedure decades ago (although it is interesting to note that recent newspaper stories complain that very few doctors are willing to perform abortions).

But now, Cornell has cast aside two other crucial affirmations of the Oath: First, the prohibition against euthanasia has been erased ("I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect"), and second, Cornell's oath does not require its graduates to avoid sexual relations with their patients.

This is most unfortunate. The author of the Oath (whether or not it was actually Hippocrates) understood that killing is not a medical act. Moreover, the requirement that doctors pledge (on all they hold most sacred) to refrain from either killing or having sex with patients reflects the wisdom that doctors should refrain from taking too much (potentially corrupting) power over their patients into their own hands.

Illustrating the dramatic difference between the rich patient-protecting impetus of the original and the mostly non-specific generalities of the Cornell version, compare these similar provisions in the two oaths:

Hippocrates: "*Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons, be they free or slaves.*" The clear call here is active, requiring doctors never to take advantage of patients in any way, with the specific example of engaging in sexual relations included to emphasize the point.

Cornell: "*That into whatever house I shall enter, it shall be for the good of the sick. That I will maintain this sacred trust, holding myself*

far aloof from wrong, from corrupting, from the tempting of others to vice." This is a far more passive and vague approach. If Nuland is right, and a doctor's own conscience is his only guide, what is deemed to constitute the "good of the patient" will vary from doctor to doctor. Indeed, if a physician believes that a patient's ill health or serious disability makes his or her life not worth living, it would permit killing as the prescribed remedy—even if the patient never asked to be killed (a common practice, not by mere coincidence, in the Netherlands nowadays). Besides: What does "tempting others to vice" mean in the context of today's anything goes morality?

Another poor substitute for the traditional Oath is the "Christian" physician's pledge taken by graduates of Loma Linda University. Unfortunately, LLU has also emasculated the robustness of the original. Thus, LLU's pledge states: *"I will maintain the utmost respect for human life. I will not use my medical knowledge contrary to the laws of humanity. I will respect the rights and decision of my patients.*" Why edit out the explicit promise not to kill, if respecting human life is a priority? And if respecting patient decisions is paramount, that would permit voluntary euthanasia among other potentially harmful "treatments," such as amputating the healthy limbs of mentally disturbed patients known as "amputee wannabes."

Of perhaps even greater concern, LLU's oath adds a clause that could interpose a conflict of interest between doctors and certain of their individual patients. *"Acting as a good steward of the resources of society and of the talents granted me, I will endeavor to reflect God's mercy and compassion by caring for the lonely, the poor, the suffering, and those who are dying.*"

Under the Hippocratic medical principles, the doctor's sole loyalty was owed to each and every patient as individuals. That is, the doctor is not free to give optimal care to one patient but provide a lower standard to another. In contrast, LLU's version now requires physicians to treat individual patients in the context of a potentially superseding duty to broader society to steward resources—which, in some hands, could be exercised at the direct expense of patients who are the most expensive to care for. Indeed, a fair reading of the LLU's oath would justify bedside health-care rationing.

This is not to say, of course, that physicians shouldn't make proper use of resources. But, to prevent discrimination and abuse, a doctor's first duty must be to the individual patient, not to society as a whole. Placing a dual mandate on the doctor, as LLU's oath appears to do, is dangerous precisely because resource management could trump the health, welfare, and even the lives of the sickest patients.

As the Christian bioethicist Gilbert Meilaender has written, the Hippocratic Oath commits doctors to "to the bodily life of their patients." In an era when the economics of managed care and the growing utilitarian sway of contemporary bioethics increasingly endanger the weakest and most vulnerable among us, substituting the Oath's venerable maxims with tepid generalities and the vagaries of individual consciences is precisely the wrong approach. Rather than being an archaic relic, the Oath's "do no harm" approach to medical practice is more important than ever.

L

[This article was originally published March 9, 2006 by *National Review Online* (www.nationalreview.com) and is here reprinted by the kind permission of the author. Wesley J. Smith (wesleyjsmith.com) is a senior fellow at the Discovery Institute (discovery.org), an attorney for the International Task Force on Euthanasia and Assisted Suicide (iaetf.org), and a special consultant to the Center for Bioethics and Culture (thecbc.org). He is the author most recently of *Consumer's Guide to a Brave New World*.]

(**DEJA VU** CONT'D FROM PAGE 3)

Recently James Sherley, an associate professor of biological engineering at MIT said, "In the end, when the public says no to the use of human embryos for research, stem cell research in America will not die. It will just get better from increased research effort on adult stem cells and new approaches to convert adult stem cells, but without the use of human embryos. And when there is good science, good funding and good investment will soon follow, as always."

And sure enough, with the lawsuit filed by Life Legal Defense Foundation on behalf of People's Advocate and the National Tax Limitation Foundation and the continued lack of venture capital funding and private monies being dumped into the wallets of big biotech for unethical and controversial research; good science has moved forward. Blood-derived and bone marrow stem cell research is moving forward with wonderful news for heart attack patients. Statewide cord blood banks are popping up all over the nation which will benefit thousands of patients in need of blood stem cell transplants for the myriad cancers which bone marrow transplants traditionally treated. Successes with using the patient's own stem cells to treat Lupus, Multiple Sclerosis and spinal cord injuries for example are progressing. StemCellResearch.org now has the score card at 65 treatments from adult stem cells to 0 treatments using embryo stem cell research. And these are treatments helping actual patients, right now. Not treatments at the animal trial stage!

All this good news must beg the question. Did we need Proposition 71? No! Does Missouri need to pass their legislation for destructive embryo cloning research? Absolutely not!

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[Jennifer Lahl is National Director for The Center for Bioethics and Culture Network (www.cbc-network.org) and founding member of Hands Off Our Ovaries (www.handsoffourovaries.com).]

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MARK YOUR CALENDARS

Saturday
November 18
Bellevue Club, Oakland

Ramesh Ponnuru,
Featured Speaker

Life Legal's Annual Fall Banquet will be Saturday, November 18 at the Bellevue Club in Oakland, California. Our featured speaker will be Ramesh Ponnuru, senior editor at National Review, who is no doubt familiar to many *Lifeline* readers. Mr. Ponnuru has covered national politics for eleven years. He has appeared on numerous television and radio talk shows. He is also the author of *The Party of Death: The Democrats, the Media, the Courts, and the Disregard for Human Life.* [http://www.nationalreview.com/interrogatory/qa200604240727.asp]

Please join us for no-host cocktails at 5:00 p.m. Dinner will be served at 6:00 p.m. A map and directions to the Bellevue Club may be found at www.bellevueclub.org/contact-location.html