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The Abortion Debate

No political or public issue, other than perhaps slavery, has divided the nation more than abortion. On one side of the debate are people and groups like the American Center for Law & Justice (ACLJ) who believe in the biblical and human rights principle that the life of each and every human being is sacred and that unborn children are entitled to the fundamental rights of life and liberty. On the other side of the debate are those who embrace the 1973 United States Supreme Court’s erroneous and radical decision in *Roe v. Wade*, which held abortion to be a fundamental right protected by the Constitution.

More than 60 million unborn children have been killed in the United States since *Roe*, with abortion rates hitting an all-time high of 1.6 million in 1990 alone. Although the nation’s abortion rate remains unacceptably high, the number of abortions per year has decreased. While over 900,000 abortions were performed in 2014, that year’s abortion total still reflects a decrease of nearly 700,000 abortions from the 1990 peak.

Despite the rigorous advocacy for abortion by many
powerful voices, recent trends show that the pro-life argument is winning the debate in America. In a May 2018 Gallup poll, 50% of Americans said that they favor abortion restrictions, with another 18% saying that they believe abortion should be illegal under all circumstances. In total, 68% of Americans favor abortion regulations and restrictions.\(^6\) The ACLJ is committed to seeing the number of abortions continue to decrease until all innocent human life enjoys fundamental protection.

**The History of Abortion**

Prior to 1967, all 50 states and the District of Columbia had either outlawed abortion completely or allowed it only in very limited circumstances.\(^7\) All that changed in 1973, when the United States Supreme Court handed down one of its most controversial opinions in history, *Roe v. Wade*.\(^8\) In *Roe*, the Court declared *abortion* to be a fundamental right—a right that can only be limited in rare circumstances,\(^9\) especially in the first trimester.\(^10\) The Court reasoned that the Constitution protects “zones of privacy”—an idea the Court garnered from very different cases that dealt with searches and seizures, education, and marriage, and which the Court inexplicably extended to include abortion. In somewhat of a contradictory manner, however, the Court acknowledged that because of the presence of the baby in the womb, the woman is not alone in her “privacy.”\(^11\) The effective result of *Roe* was not only the *creation* of a right to abortion, but the granting of the highest degree of protection to that right—even though the Constitution does not even mention abortion.

Since then, however, the Supreme Court has upheld a number of abortion regulations that have proven effective in reducing the number of abortions and, thus, has allowed more protection for the lives of unborn children.

The case *Planned Parenthood v. Casey*, decided by the Supreme Court in 1992, served as a key turning point.\(^12\) *Casey*
reaffirmed \textit{Roe}, ending speculation that the Court was poised to overturn that case. Nevertheless, the Court in \textit{Casey} opened the door to greater regulation of abortion. A central premise in \textit{Casey} was that \textit{Roe} had “undervalue[d] the State’s interest in [protecting] potential life.”\textsuperscript{13} The Court therefore recognized a state’s interest in protecting life throughout pregnancy. Specifically, in \textit{Casey}, the Court upheld Pennsylvania’s informed consent requirement,\textsuperscript{14} parental consent requirement,\textsuperscript{15} and 24-hour waiting period prior to abortions.\textsuperscript{16}

Fifteen years later, in \textit{Gonzales v. Carhart}, the Supreme Court also upheld the federal Partial-Birth Abortion Ban Act of 2003.\textsuperscript{17} The Supreme Court reasoned that “[t]he government may use its voice and its regulatory authority to show its profound respect for the life within the woman.”\textsuperscript{18} Additionally, both \textit{Casey} and \textit{Gonzales} affirmed that the state has an “interest in promoting respect for human life at all stages in the pregnancy.”\textsuperscript{19} \textit{Gonzales} helped to further erode the grip of \textit{Roe}.

\textit{Casey} and \textit{Gonzales} represent small but important steps in correcting the Supreme Court’s abortion jurisprudence in America. First, they reject \textit{Roe}’s conclusion that abortion is to be accorded the law’s highest protection in all cases. Second, they give much more respect and deference to states’ rights and duties to protect the life of the unborn. Thus, although \textit{Roe} has not been overturned, the Court has taken steps to mitigate its harsh rules. This has allowed the states to act on their obligation to protect life, especially the life of the unborn. Nevertheless, the Supreme Court has remained reluctant at times to approve even modest abortion regulations, for example invalidating a set of such regulations in the 2016 decision, \textit{Whole Woman’s Health v. Hellerstedt}.\textsuperscript{20}

\textbf{States Take Action}

Over the years, many states have responded to \textit{Roe v. Wade} by passing laws designed to protect the lives of the unborn,
to inform women contemplating abortion about the risks and alternatives, and to protect women from unsafe abortion practices. For example, various state laws ban late-term and partial-birth abortions, require informed consent from the mother, set mandatory waiting periods and counseling, require parental notification or consent for minor mothers, require ultrasounds before abortions, regulate abortion clinics, require that abortions be performed in hospitals or by licensed physicians, cut off public funding for abortions, and limit insurance coverage. Most states also protect conscience rights by allowing individuals and hospitals to refuse to perform abortions. All of these regulations have had a direct effect on the number of women who choose to have an abortion because they provide women with the facts of abortion, give them time to consider their decision, and deter corner-cutting abortionists from practicing the exploitation of vulnerable women.

**Late-Term Abortion Bans.** A majority of states have implemented laws that protect the lives of unborn babies late in the pregnancy. Such policies are constitutional, even under the old, rigid framework of *Roe.*Currently, 43 states prohibit abortions in the late stages of pregnancy, normally after “viability.” A child is considered viable around 21 to 24 weeks of gestation. Unfortunately, 9 out of 10 abortions are done within the first 12 weeks of pregnancy. Thus, while late-term abortion bans are a step in the right direction, their impact is not as great as one would hope.

**Partial-Birth Abortion Bans.** Any intentional taking of innocent human life is a profound injustice, but partial-birth abortions are especially horrific, inhumane procedures. They terminate the life of the unborn child after inducing partial delivery of the child. As noted above, because of the shocking nature of this procedure, 20 states have outlawed partial-birth abortion to date. In 2003, Congress followed the lead of the
states by passing the partial-birth abortion ban.\textsuperscript{26} Although the nationwide ban of partial-birth abortions is a major victory for the pro-life movement, as even one innocent life saved is a victory, it is important to note that partial-birth abortions comprised only a very small percentage of abortions performed. For example, in the year 2000, approximately 0.2\% of the total number of abortions performed were conducted by the partial-birth method.\textsuperscript{27} What the partial-birth abortion ban accomplished was to bring to the public’s attention the horrors of abortion, making it a huge victory in the battle for public opinion.

**Informed Consent.** Informed consent is a powerful tool through which state legislatures can protect the lives of the unborn by reducing the number of abortions. Informed consent laws simply require that the physician inform the mother of the nature of the abortive procedure, the risks involved, and the alternatives to abortion.\textsuperscript{28} Indeed, the Supreme Court held in *Casey* that states have a “legitimate [interest in] reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.”\textsuperscript{29}

In crafting informed consent laws, states have generally required that a woman seeking an abortion “receive state authored or state provided information [relating to abortion], [and] require the woman to sign a consent form or otherwise acknowledge receipt of the information.”\textsuperscript{30} This can include information on fetal development and fetal pain, the negative psychological effects of abortion, the link between abortion and various health consequences, and the availability of help should the mother choose not to have an abortion. The United States Court of Appeals for the Eighth Circuit upheld the constitutionality of a South Dakota statute that was particularly explicit, requiring abortion providers to provide information 24 hours before an abortion, stating:
That the abortion will terminate the life of a whole, separate, unique, living human being; that the patient has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota; that by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated.\textsuperscript{31}

Informed consent laws ensure that women seeking abortions know that they are not alone during a time that is highly emotional and stressful. Because of these laws, women are more likely to know what the consequences of their actions will be before the abortion, when they still have time to reconsider their decision.

**Waiting Periods.** Often coupled with informed consent laws, waiting periods are another effective tool used to protect life. Currently, 27 states require a woman seeking an abortion to first obtain counseling and then wait anywhere from 18 to 72 hours before having an abortion.\textsuperscript{32} These “cooling off” periods help to prevent women from making a rash or ill-informed decision to have an abortion, when they may be in a very vulnerable emotional state. They give women time to contemplate the information provided by a counselor or physician before following through with their original decision.

**Parental Notification or Consent.** The Supreme Court’s decision in *Casey* ruled that requiring parental notification and consent before the abortion procedure does not violate the rights of a minor seeking to terminate her pregnancy.\textsuperscript{33} By requiring parents to be involved in the decision, states can provide a buffer between the understandable fear, emotion, and confusion of a pregnant minor and the termination of an unborn child’s life. Currently, 26 states require that at least one parent consent to the abortion, 11 states require that at least one parent be notified,
and 5 states require both consent from and notification to at least one parent.34

**Sonogram Requirements.** Some states, like Texas, have passed laws requiring all abortion providers to display a sonogram image, make audible the child’s heartbeat, and explain the result of each of these procedures to the mother.35 The constitutionality of the Texas law was affirmed by the United States Court of Appeals for the Fifth Circuit.36 Similarly, in April 2019, the United States Court of Appeals for the Sixth Circuit upheld a Kentucky law requiring doctors to show and describe ultrasounds to women seeking abortions.37 However, the United States Court of Appeals for the Fourth Circuit struck down a similar North Carolina law, and the Supreme Court declined to review the case, causing a Circuit split regarding ultrasound laws. To date, 26 states have implemented regulations regarding the provision of ultrasounds and sonograms to women seeking abortions.38 Three of those states require the abortion provider to show the woman the ultrasound and explain the image.39

**Abortion Clinic Regulations.** In an effort to protect the health of women, many states have enacted abortion clinic regulations. For example, in 2011, Virginia underwent a process of defining those regulations. A review of Virginia’s regulations regarding abortion clinic inspections was triggered by a growing concern that abortion clinics were not meeting health standards. In an effort to determine the truth, the Family Foundation of Virginia sought and obtained health inspection documents from the Department of Health. Those documents revealed more than 80 documented violations in just nine of Virginia’s 20 abortion centers.40 At the Alexandria abortion center, a physician was reading a newspaper when his patient came in for an ultrasound. He put on gloves and conducted a vaginal ultrasound. After completing the ultrasound and dismissing the patient, the physician picked up a prescription pad. All this was
done without washing his hands and in plain view of the health inspector. When the clinic’s administrator was confronted about this, she explained that, “He never washes his hands; he always uses gloves.” When it was pointed out to her that gloves may have holes in them, the administrator responded, “Oh! That’s gross!”

At the Roanoke Medical Center in Virginia, the following was observed:

Staff used . . . a sponge to clean the procedure jars and failed to disinfect procedure jars and stoppers between patients . . . failure to disinfect three (3) of three recovery cots between patients and one (1) of one lab chair . . . observation revealed one of the vacutainer needle holders had visible dark red splatter within the hub, which attached to the needle to draw the patient’s blood.

At the Planned Parenthood of Metropolitan Washington, D.C., clinic in Falls Church, Virginia, an employee expressly admitted:

“I mix the medications, applies (sic) a label and takes (sic) the vials to the procedure room for the physician to draw up and inject into the patient prior to the procedure. They are used for numbing the cervix.” Employee #6 was asked who verified the medications she was mixing and she stated, “No one.” While observing the medications being mixed, Employee #6 was observed cleaning the tops of the vials prior to the first puncture of each vial. She did not clean the tops prior to the second puncture of the vials. Employee #6 stated, “The current research says it doesn’t make any difference. You could lick the tops of the vials and the infection rate would be the same.”
These examples are simply a sampling of the repeated and horrendous violations committed by abortion clinics across the country. As of June 2019, Planned Parenthood was fighting the attempted closure of the last abortion clinic in Missouri. According to reports, the abortion clinic lost its license “because it failed to follow basic health standards.”\textsuperscript{44} The clinic’s documented violations included:

- Staff used single dose injectable medications for more than one patient to “save money” (repeated violation).
- The bin containing emergency supplies was “covered in dust,” confirming that the supplies had not been checked in quite some time.
- The staff did not log their abortions over 18 weeks’ gestation as required by law.
- Fire extinguishers were not tested.
- No background checks on employees were conducted.
- Medications were not stored properly (repeated violation).
- Staff did not wear personal protective equipment to ensure protection from blood-borne pathogens as they cleaned surgical instruments. The likelihood of splashes and splatters is great.
- Exam tables with tears in them could not be cleaned to ensure that women were not exposed to infections.
- There was dust covering equipment and supplies all over the clinic.
- The refrigerator had not been cleaned in over 1½ years, according to a staff member (health care assistant) who had been working in the clinic for that period of time.
He had no idea who was responsible for that.

- The clinic failed to properly sterilize instruments that are used from woman to woman.
- The temperature of a medication refrigerator was recorded as “out of range” with no intervention or resolution for several days. Anything stored in this refrigerator was compromised.
- Staff used heating pads on patients in recovery that were clearly marked “for household use only.”

As a result of the repeated and egregious violations of basic health standards, states have fought back to protect women from reckless and negligent conduct by abortion providers. In the last three years, Arizona, Arkansas, Indiana, Minnesota, Missouri, Tennessee, and Texas have all enacted or adopted regulations that require abortion clinics to meet ambulatory surgical center requirements.

**Medical Doctor/Hospital Requirement.** To ensure that abortions are conducted by adequately trained personnel, 42 states have passed laws requiring that abortions be conducted by licensed physicians. Although these statutes have been challenged, the Supreme Court has upheld the ability of states to enact such statutes in the interest of promoting women’s health. These are “common sense” statutes, as it is entirely reasonable for states to limit the performance of invasive medical procedures to those who are well-trained and licensed to perform such procedures. The burden is on abortion advocates to show why abortion should not receive the same level of protection and scrutiny that is required for other medical operations.

States have also limited the availability of abortions by restricting such procedures to hospitals. Generally, while a state may not mandate that all abortions occur in a hospital, states can
do so in specific instances. The Eighth Circuit, however, upheld a South Dakota statute mandating that abortions be conducted in a hospital if one “is available.” Additionally, the Supreme Court upheld a state statute requiring that second trimester abortions be conducted in a specialized outpatient abortion clinic.

**Heartbeat Statutes.** The latest strategy by states wishing to combat abortion is to pass “heartbeat statutes.” A heartbeat statute prohibits any abortion from being performed once a baby’s heartbeat can be detected, which can be as early as six weeks into pregnancy. As of April 2019, 14 states have proposed heartbeat bills. Out of those 14, seven states have passed heartbeat laws: Georgia, Ohio, Kentucky, Mississippi, Iowa, Arkansas, and North Dakota, with the high probability of more following suit. In addition, Alabama passed a law banning nearly all abortions and declaring the personhood of the unborn child. The ACLJ has been instrumental in working with state legislators to craft such bills in a way that has the best chance of holding up in court while maintaining protections for the unborn.

**State Public Policy.** In addition to passing specific pro-life legislation regarding abortion, some states are affirming life in other ways. For example, an Alabama statute makes it a crime to expose a child to a controlled substance, chemical substance, or drug paraphernalia. The statute was challenged by two women who had been charged and convicted for its violation. Both women had directly caused the death of their babies by doing drugs while pregnant. They argued that the word “child” did not include an unborn baby and, therefore, they were not guilty of the crime. The Alabama Supreme Court disagreed. In a thorough opinion, the court ruled that the word “child” undoubtedly included an unborn baby and further clarified that viability was not a factor in that determination. Justice Parker, who wrote the opinion, concurred specifically and concluded:
The decision of this Court today is in keeping with the widespread legal recognition that unborn children are persons with rights that should be protected by law. Today, the only major area in which unborn children are denied legal protection is abortion, and that denial is only because of the dictates of Roe. Furthermore, the decision in the present cases is consistent with the Declaration of Rights in the Alabama Constitution, which states that “all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.”

Alabama’s Attorney General applauded the decision as an affirmation of Alabama’s public policy, stating, “The Court has ratified our argument that the public policy of our state is to protect life, both born and unborn. It is a tremendous victory that the Alabama Supreme Court has affirmed the value of all life, including those of unborn children whose lives are among the most vulnerable of all.”

Effectiveness of Abortion Regulations

The effectiveness of abortion regulations to protect the lives of the unborn is evident and cannot be overlooked. It is an important strategy that states can use to effectively protect life until Roe v. Wade is finally overturned. Take, for example, South Carolina, which has had enormous success curbing abortions through effective pro-life legislation.

In 1988, abortions performed on women between the ages of 15 and 44 peaked at 14,133. Two years later, in 1990, South Carolina introduced the Parental Consent Act, and the next year abortions decreased to 12,538. In 1995, a year after South Carolina passed the Women’s Right to Know Act and the Abortion Clinic Regulation Act, the number of abortions dropped
to 9,984. In 1998, abortions dropped to 8,801, just one year after partial-birth abortions were banned. And in 2017—after South Carolina adopted the Ultrasound Act in 2008, the Born Alive Infant Protection and Opt Out of Abortion in ObamaCare Acts in 2012, and the Pain-Capable Unborn Child Protection Act in 2016—records show that the number of abortions performed in South Carolina decreased to approximately 5,100—a record low since 1977.

In sum, since abortions peaked in 1988, the abortion rate in South Carolina has been cut by over 60% through effective pro-life legislation. It is undeniable that state legislation enacted within the parameters set by the U.S. Supreme Court has had a drastic effect on preserving life.
Victories in the Battle

Since its founding, the ACLJ has been on the front lines of the pro-life fight in the courts and in the public arena. As part of this fight, the ACLJ created and has distributed more than 140,000 copies of a documentary, Choosing Life: The History of the Pro-Life Movement, to help pro-life advocates understand the movement’s history in the United States.62

The ACLJ has also represented pro-life parties before the U.S. Supreme Court on several occasions and has won major victories for the Right to Life movement. Further, the ACLJ has submitted amicus curiae (friend of the court) briefs in numerous cases defending the right to life. Our defense of life and the pro-life movement has included arguing for pro-life speech, litigating against Planned Parenthood and other abortion providers, defending pro-life pregnancy centers, and challenging the HHS Mandate.

Defending the Message. One of the first lines of legal defense for the pro-life cause is the free speech rights of pro-life advocates. All too often, pro-life protesters are singled out for negative treatment by cities, states, and courts. If the pro-life message is going to resonate with the American people, the rights guaranteed by the First Amendment must be defended vigilantly. This has been one of the ACLJ’s top priorities since its founding.

Perhaps the most frequent infringement of pro-lifers’ First Amendment rights is “buffer zones”—areas where advocates are not allowed to counsel or protest. The Supreme Court has been regrettably inconsistent in its treatment of these anti-speech zones. The Court has both struck down and upheld static buffer zones63 (such as around doorways and driveway entrances of abortion clinics) and “floating bubble zones.” Floating bubble zones attach to people entering an abortion clinic and “float” with...
them, prohibiting pro-life speakers from getting within a certain distance of them. The ACLJ helped overturn this unconstitutional practice through its work in *Schenck v. Pro-Choice Network of Western New York*.\(^{64}\) In *Schenck*, the ACLJ represented pro-life advocates who were prohibited from walking within 15 feet of any person or vehicle entering or leaving an abortion clinic.\(^{65}\) The ACLJ vigorously argued that such prohibitions violated the First Amendment; and in 1997, the Supreme Court agreed in an 8-1 vote in favor of the pro-life advocates.\(^{66}\)

Abortion clinics have also tried to silence pro-life voices by resorting to private lawsuits. The ACLJ helped prevent this abuse of pro-life advocates by securing another victory in the Supreme Court case *Bray v. Alexandria Women’s Health Clinic*.\(^{67}\) The ACLJ defended Operation Rescue and individual pro-life protesters against a lawsuit claiming that pro-life advocates violated women’s civil rights by interfering with abortions.\(^{68}\) The clinics won the lawsuit in the lower courts and obtained a court injunction.\(^{69}\) However, the ACLJ successfully petitioned the Supreme Court to review the case, and the High Court agreed with Operation Rescue and the ACLJ that pro-lifers did not violate the civil rights laws by their efforts to halt abortions.\(^{70}\)

Despite the ACLJ’s victory in *Bray*, abortionists continued to use the courts to counter lawful pro-life counseling and protests. The ACLJ once again defended Operation Rescue in *Scheidler v. National Organization for Women*.\(^{71}\) In that case, abortion clinics claimed the conduct of pro-life advocates outside their clinics amounted to extortion in violation of the federal Racketeer Influenced and Corrupt Organizations (RICO) statute and the Hobbs Act.\(^{72}\) Ultimately, the Supreme Court ruled *twice* in favor of the pro-life demonstrators, holding that RICO did not forbid their conduct.\(^{73}\)

The federal government has even tried to use campaign
finance laws to silence the pro-life message. In *Federal Election Commission v. Wisconsin Right to Life*, the Federal Election Commission sought to prevent Wisconsin Right to Life from airing pro-life television and radio ads during an election season.\(^74\) In his opinion for the Court, Chief Justice Roberts cited facts raised by the ACLJ’s *amicus* brief as evidence to support the holding that pro-life “issue ads,” such as the one Wisconsin Right to Life wanted to air, could not be restricted by the Bipartisan Campaign Reform Act.\(^75\)

Our fight is far from over. We continue to represent clients whose free speech rights regarding the sanctity of life have been violated. We are committed to protecting these rights, ensuring that the pro-life message is not silenced.

**Taking on the Giant.** Aside from its political and ideological agenda, Planned Parenthood is financially invested in the abortion debate, and heavily so. Each year, Planned Parenthood performs about 330,000 abortions. With the cost of each abortion averaging $500, Planned Parenthood collects about $165 million from abortion every year.\(^76\) To make matters worse, Planned Parenthood receives more than $560 million in government funding each year, making up nearly 40% of its budget.\(^77\) Given the outrageous amount of money on the line, Planned Parenthood has a huge incentive to keep its abortion rate elevated. The ACLJ intends to slow down, if not completely halt, the abortion industry’s grotesque profiteering from abortion, and we have been very active in litigation against Planned Parenthood in several contexts.

Not only have we supported efforts to cut public funding to Planned Parenthood, but the ACLJ has been engaged in lawsuits against the organization itself. We represented the former Chief Financial Officer (CFO) of Planned Parenthood of Los Angeles in *Gonzalez v. Planned Parenthood of Los Angeles*,\(^78\) a case
which alleged that Planned Parenthood had been overbilling state and federal governments for contraceptives. While the courts unfortunately let Planned Parenthood escape liability in that case, our lawsuit added to the exposure of Planned Parenthood’s shameful business practices. In a similar case, the ACLJ represented a former Health Center Assistant at the Planned Parenthood Gulf Coast (PPGC) in Lufkin, Texas, who learned that PPGC was engaged in continued violations of both federal and state law by adopting and implementing company-wide billing policies intended to maximize revenue received from government health care programs. That case was ultimately settled.  

The ACLJ submitted an *amicus* brief in *Planned Parenthood Association of Hidalgo County Texas, Inc. v. Suehs*, supporting the interest of Texas in promoting life, denying Planned Parenthood any state funding. The Fifth Circuit agreed and upheld the authority of Texas to disfavor abortion, including cutting funds to abortion providers and their affiliates.

In addition, the ACLJ submitted an *amicus* brief in the Sixth Circuit supporting the rights of states (there, Ohio) to defund Planned Parenthood and any abortion providers, and to direct that funding to actual family planning services instead. The Sixth Circuit, in an 11-6 decision, upheld the Ohio law and ruled that states can indeed choose to cut funding to Planned Parenthood.

We will continue to stay engaged in this battle to make sure Planned Parenthood is held accountable for its actions. We will also continue to support efforts to stop the flow of public funding to this abortion giant.

**Protecting Pro-Life Pregnancy Centers.** Abortionists also target pro-life pregnancy centers—places where pregnant women can go to get free care, help, and counseling related to
pregnancy without being bombarded with abortion propaganda. Needless to say, pro-life pregnancy centers, especially those that provide ultrasounds, pose a threat to the ideology and profits of the abortion industry. Pro-abortion advocates have convinced several states and municipalities, as part of a nationwide plan, to pass laws making it more difficult to operate pro-life pregnancy centers.⁸₂

The laws being passed establish requirements that generally apply only to pro-life pregnancy centers and not to abortion businesses like Planned Parenthood. These measures penalize pro-life pregnancy centers by requiring them to comply with costly and burdensome requirements, including, for example, providing lengthy disclaimers in both English and Spanish regarding the services they do and do not offer. These disclaimers must appear in all of their advertisements, on signage in their lobbies, and on their websites. In some cases, the centers are required to make these disclaimers in all phone and in-person conversations. These extensive and unreasonable requirements—that pro-abortion institutions do not have to follow—will lead to substantial increases in operational costs, not to mention potential hefty fines and criminal penalties for these pro-life pregnancy centers.

The problem with these laws is that they destroy the chosen messages of these pro-life pregnancy centers by forcing them to adopt and express the views and opinions regarding abortion and contraception preferred by the government and abortion advocates. The Supreme Court has said on numerous occasions that the right to freedom of speech includes both the right of a speaker to choose his own preferred message and the right not to convey a message with which the speaker disagrees. These laws strike at both of these important components of the right to free speech. First, it selects which individuals and groups will be targeted based on their chosen message. Second, it coerces
pro-life pregnancy centers, on pain of forced closures and fines, to express the government’s messages.

In *Evergreen Association, Inc. v. City of New York*, the ACLJ represented two New York City pro-life pregnancy centers in a lawsuit attacking such a law passed by the New York City Council. The ACLJ won a unanimous decision striking down most of the law’s requirements. The ACLJ anticipates that New York will continue its assault on pro-life pregnancy centers, and is fully prepared to engage in legal battles to quash every effort by New York to interfere with these centers’ attempts to provide life-saving assistance, counsel, and care.

In 2015, the ACLJ filed suit on behalf of three pro-life pregnancy centers—LivingWell Medical Clinic, Pregnancy Care Center of the North Coast, and Confidence Pregnancy Center—that challenged a California law requiring them to advertise the availability of state-funded abortions. The Supreme Court granted our *certiorari* petition in the case and vacated the lower court’s erroneous ruling upholding the law. We also submitted a critical *amicus* brief with the Supreme Court in *NIFLA v. Becerra*, a case challenging the same California law. Ultimately, the Supreme Court held in a 5-4 decision that the challengers were likely to succeed on the merits of their claim that the California Reproductive FACT Act violates the First Amendment. These were two significant victories for pro-life pregnancy centers and for the First Amendment.

**Fighting the HHS Mandate.** With the passage and implementation of ObamaCare, abortion advocates acquired a new tool for their arsenal: the HHS Mandate. The HHS Mandate was a regulation issued by the Obama Administration under ObamaCare that required non-exempt employers to include—at no cost to the employee—all FDA-approved contraceptives in their employee health insurance plans. These approved
contraceptives included abortifacients such as “Plan B” and “Ella,” both designed to prevent—fatally—the implantation of a newly conceived child.\textsuperscript{88}

The HHS Mandate threatened a greater proliferation of abortion due to easy, cost-free access to abortion-inducing drugs. The Mandate was an affront to the religious liberties of employers opposed to abortion. From religious universities to private business owners, Americans across the country challenged the HHS Mandate in court in order to protect their own religious liberty and the right to life.

In response, the ACLJ challenged the HHS Mandate in federal court, representing 32 individuals and corporations in seven different legal actions.\textsuperscript{89} Each of these cases involved a for-profit company that objected, on religious grounds, to paying for and providing abortion-inducing drugs in their health plans. Despite the federal government’s vigorous defense of the Mandate, we were ultimately successful in obtaining injunctions for all of our clients, halting the enforcement of the HHS Mandate against them.

In addition, the ACLJ filed an amicus brief in \textit{Burwell v. Hobby Lobby Stores, Inc.}, in which we argued that religious owners of for-profit companies are entitled to legal protection under the federal Religious Freedom Restoration Act and should not have to comply with the HHS Mandate. The Supreme Court held in that case that protecting the free-exercise rights of closely held corporations protects the religious liberty of the individuals who own and control them.\textsuperscript{90}

The ACLJ also filed an amicus brief in support of the Little Sisters of the Poor and other religious organizations in the case of \textit{Zubik v. Burwell}, where the federal government tried to coerce non-profit entities into complying with the HHS Mandate
in a way that violated their religious tenets.\cite{91} We argued the government should respect the religious autonomy of these groups and not burden them with regulations that force them to violate their religious convictions.

As a direct result of the 2016 presidential election, the U.S. Department of Health and Human Services radically changed course: from aggressively advocating a pro-abortion ideology to advancing the sanctity of human life and supporting religious liberty. It expanded conscience exemptions to the HHS Mandate and created enforcement mechanisms to ensure that employers comply with various federal laws that protect the right of conscience. The Department also issued a new regulation that would prohibit government-supported family planning services at the same location where abortions are provided.\cite{92}

**Conclusion**

The pro-life movement has come a long way since *Roe v. Wade*. Today, the majority of Americans describe themselves as pro-life, and the trends show that pro-choice identifiers are declining. The Supreme Court has continued to back away from the most extreme aspects of its terrible decision in *Roe v. Wade* and has expressed increased respect for the life of the unborn and for states’ rights to protect that life. States, in turn, have enacted legislation that produces lower abortion rates. The ACLJ has been fighting the battle in both the courts and the public arena, securing the rights of pro-life counselors and pregnancy resource centers, and fighting against Planned Parenthood and the HHS Mandate. But with more than 900,000 children killed in the womb each year, there is still much to be done to protect the sanctity of life.

Most of the people affected by the pro-abortion agenda—whether they are pro-life counselors, pregnancy resource centers, or institutions forced to provide abortion insurance for their
employees—cannot afford legal counsel. That is why the ACLJ is committed to defending pro-life advocates without charge as we defend the sanctity of life. We encourage you to join us in this battle for life and urge your state and local governments to take a firm stance in support of life, especially that of the unborn child.
Defending Life

4 weeks (6 weeks LMP*)
I am a whole, separate, and unique living human being. All of my physical attributes, such as gender and hair and eye color, are determined. Blood is flowing through my veins. My eyes, nose, legs, and arms have begun to form.

8 weeks (10 weeks LMP)
All of my organs are in place, and my bones have begun to form. My heart is beating, and I have elbows. I now have fingers and toes.

12 weeks (14 weeks LMP)
I practice my breathing now. I can grasp with my hand, make facial expressions, and I can experience pain.

*Last Menstrual Period
Illustrations courtesy of StandUpGirl.com
16 weeks (18 weeks LMP)
My heart is now pumping blood. My nostrils and toenails are visible. I suck my thumb, and I turn somersaults. I also have sleeping habits and a firm grip. I am about 10 inches long!

20 weeks (22 weeks LMP)
I recognize my mommy’s voice. She can feel me now as I kick, turn, or hiccup. I have dream (REM) sleep, and my brain has a billion nerve cells on each side. I can survive on my own (I’m viable).

24 weeks (26 weeks LMP)
My lungs have now developed more fully, and I can breathe by inhaling amniotic fluid. I have taste buds, and my oil and sweat glands work. Sometimes I stretch when I wake up. I have fingerprints.

Illustrations courtesy of StandUpGirl.com
28 weeks (30 weeks LMP)
My mommy can now see my movements when I kick or nudge. I have eyelashes and can open and close my eyes. I can cry.

32 weeks (34 weeks LMP)
My skin is now pink and smooth. My fingernails are fully formed, and my pupils react to light. I use four of the five senses: touch, hearing, taste, and sight. I have reserves of body fat.

36 weeks (38 weeks LMP)
My lungs are now almost fully formed. I can blink, my immune system is working, and I am changing position to prepare for my birth.

Illustrations courtesy of StandUpGirl.com
1Genesis 1:27 (King James Version) (“God created man in his own image . . . ”); Jeremiah 1:5 (King James Version) (“Before I formed you in the womb I knew you, before you were born I set you apart . . . ”); Psalm 139:13-16 (New International Version) (“For you created my inmost being; you knit me together in my mother’s womb. . . . Your eyes saw my unformed body; all the days ordained for me were written in your book before one of them came to be.”).

2U.S. Const. amend. XIV, § 1 (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

3410 U.S. 113 (1973).


5Id.


In addition, the American Law Institute drafted model abortion legislation, which was used by over a dozen states during the 1960s and early 1970s. Id. at 740–41; Samuel W. Buell, Criminal Abortion Revisited, 66 N.Y.U. L. Rev. 1774, 1796–97 (1991). The model statute made it a third degree felony to “purposely and unjustifiably terminate[] the pregnancy of another” and a second-degree felony if the abortion were performed “beyond the twenty-sixth week.” Model Penal Code § 230.3(1).

8410 U.S. 113 (1973).

9See Id. at 155.
10 Id. at 163.

11 Id. at 152–53.


13 Id. at 873. Importantly, the Supreme Court in Casey overturned the part of Roe that applied different levels of judicial scrutiny to abortion regulations, depending on the trimester. Casey, Id. at 872–74. Under this set of rules, almost no regulation at all [was] permitted during the first trimester of pregnancy; regulations designed to protect the woman’s health, but not to further the State’s interest in potential life, [were] permitted during the second trimester; and during the third trimester, when the fetus is viable, prohibitions [were] permitted provided the life or health of the mother is not at stake.

Id. at 872. Casey replaced this “elaborate but rigid construct” with a simpler test which allows regulation of abortion so long as it does not impose an “undue burden” on the woman’s right to have an abortion. Id. at 874–76. This test, the Court concluded, places sufficient weight on the State’s interest in protecting potential human life and balances it with the woman’s right to abort. Id. at 876.

14 Id. at 887.

15 Id. at 899.

16 Id. at 887.

17 Gonzales v. Carhart, 550 U.S. 124, 158 (2007). The Court had previously struck down a ban on partial-birth abortions in Stenberg v. Carhart, 530 U.S. 914 (2000). In upholding the Partial-Birth Abortion Ban Act in Gonzales, the Court also lowered the standard of abortion regulation even further by adding a “rational basis” test (the lowest level of protection under the Constitution) to the undue burden standard outlined in Casey. Id.

18 Id. at 157.

19 Id. at 163.

20 136 S. Ct. 2292 (2016).

21 410 U.S. at 164–65.


For a graphic, yet clinical description of this shocking procedure, see Justice Kennedy’s opinion in Gonzales v. Carhart, 550 U.S. 124, 137–140 (2007), in which the Court upheld the federal ban on partial-birth abortions.

Overview of Abortion Laws, supra note 22.


505 U.S. at 882.


Planned Parenthood Minn. v. Rounds, 653 F.3d 662, 665 (8th Cir. 2011) opinion vacated in part on reh’g en banc sub nom. Planned Parenthood Minn., N. Dakota, S. Dakota v. Rounds, 662 F.3d 1072 (8th Cir. 2011) and on reh’g en banc in part sub nom. Planned Parenthood Minn., N. Dakota, S. Dakota v. Rounds, 686 F.3d 889 (8th Cir. 2012).

Overview of Abortion Laws, supra note 22.

505 U.S. at 899. The Court, however, noted that requiring parental consent or notification must include a judicial bypass mechanism; that is, it must provide a way for minors to receive judicial permission in place of parental consent. Id. at 899–900. See also Ayotte v. Planned Parenthood of Northern New England, 546 U.S. 320 (2006).

Overview of Abortion Laws, supra note 22.

36Texas Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570, 584 (5th Cir. 2012).


39Id.


41Id.

42Id.


47Overview of Abortion Laws, supra note 22.


50Planned Parenthood of Minnesota/S. Dakota v. Rounds, 372 F.3d 969, 974 (8th Cir. 2004).


56Effect of Pro-Life Legislation on Number of Abortions in South Carolina, South Carolina Citizens for Life, https://docs.wixstatic.com/ugd/371f6b_7734165ca9dd4cdab92036af67ff0f0.pdf (last visited May 24, 2019) [hereinafter Effect of Pro-Life Legislation].

57Id.


59Effect of Pro-Life Legislation, supra note 55.

60Id.

61Id.


65Id. at 360–62.

66Id. at 377.


68Id. at 361–63.

69Id.

70Id. at 273, 286–87.


72Id.

73Id. at 16, 23.


75Id. at 457, 481.


77PLANNED PARENTHOOD Fed’n of AM., supra note 75, at 8.

See, United States and Texas ex rel. Reynolds v. Planned Parenthood Gulf Coast, No. 9-09-cv-125 (E.D. Texas).

692 F.3d 343 (5th Cir. 2012).

Id. at 352.


Evergreen Ass’n, Inc. v. City of New York, No. 1:11-cv-02055-WHP (N.Y.S.D).


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