

**JAY SEKULOW LIVE!**  
**12.03.04**

Jay: This is Jay Sekulow. In California, the Attorney General says “No” to parental involvement in abortion decisions.

Gene: This is *JAY SEKULOW LIVE!* From Washington, Chief Counsel of the American Center for Law and Justice (ACLJ), Jay Sekulow.

Jay: Welcome to the broadcast, everyone. Two interesting developments in California. One is on our website today. Interestingly, the Governor Arnold Swartznegger came out when he lit what’s been called the last couple of years the “Holiday Tree” in California at the state capitol, and he called it the “Christmas Tree.” He said specifically that’s what this tree represents; that’s what the holiday is. The fact is that the former Governor of California, Gray Davis, said contrary and was basically the one who named it the “Holiday Tree” for political correctness’ sake. The new Governor wasn’t going to tolerate that and called it for what it was, and that is the Christmas holidays. A little issue, but a bit of a refreshing issue in light of some of the political correctness that’s going around this holiday season, this Christmas season, with discussions about everything from schools to the town squares. Everyone seems to be discussing the cans and cannots of the nativity scenes; although by and large, nativity scenes are going up with really very few problems.

Let me get right into the major issue that’s developed in California, and this is the issue we are very concerned about. The Attorney General of California, Bill Lockyer, has said that California law as he interprets it means that school officials can send minor girls, young 14 to 16-year-old girls, to abortion clinics and other medical facilities to have procedures, including abortions, without even notifying the parents. That is his view of privacy under California law. Gene, this is getting a lot of reaction, not only in California but across the country.

Gene: A lot of people are upset, Jay. You look at what the Attorney General’s opinion actually says. He says schools must tell both students and parents that students are allowed to be excused from school for confidential medical appointments without parental consent. That according to the Attorney General.

Jay: I think that is a very incorrect move not only from a legal standpoint, but it also completely disregards the rights and authority of parents. The idea that your child goes to a public school does not mean that your child is then somehow a ward of the state. The Supreme Court for 100 years has said that it’s the parents’ primary responsibility, not the state’s, to direct the well-being, education, upbringing and safety of their children. These are schools, after all, that are paid for by the parents’ taxpayer dollars. The idea that you would have a medical procedure like an abortion take place without parental consent arranged for by the school is simply outrageous. Now these are the same schools in

California, remember, that were giving students difficulty about having a Bible club meeting during the club period at school. So the Bible club was getting harassed and we had to go to federal court to represent them, but the same Attorney General is taking the position that these same minors could go get an abortion off campus on a medical facility and never tell the parents it's taking place.

Gene: The Attorney General's opinion, Jay, was actually prompted by resistance from both teachers' unions and groups like Planned Parenthood to a policy that was put in place by a Sacramento-based lobbying group's efforts to help schools enact a parent-friendly policy, requiring parental notification. So this is their response. They wanted the Attorney General to give his formal legal opinion. He has now done so. Many in that state are criticizing it, Jay, saying there is no basis in law for what he is saying.

Jay: There absolutely isn't. Those of you in California, we need to hear from you. Those of you around the country who are concerned about this and other issues, we want to encourage you to call us. Our lines are open. If you want to talk with us, dial 1.800.684.3110.

On another front, Gene, let me update everybody on the situation with the filibuster. There's a lot of activity in the media about it, and there's also a lot of activity going on with Senate leadership. I spoke with one of the senior lawyers on the Senate Judiciary Committee yesterday about this filibuster issue, and this is what he said, "The response right now with the calls coming in is significant. The discussion is great. We need to keep this pressure up."

Gene: Well, Jay, we just started this petition to put an end to judicial filibusters, just started it this week and already, tremendous results. People understand the importance of this issue and they understand that putting filibusters in place to block the President's judicial nominees is not only wrong, but unconstitutional.

Jay: Absolutely unconstitutional. What we need to see happen and we have to see this develop very quickly is this rule change, and we need to see it now. But we have to hear from our friends around the country on this. It's that critical.

Gene: If you have not yet signed on to our Petition to End Judicial Filibusters, take a moment and do so right now. Pick up the phone and call toll free 1.877.989.2255. The Petition to End Judicial Filibusters. Call now 1.877.989.2255. If you'd like, you can add your name online at the website at [www.aclj.org](http://www.aclj.org). Stay with us. Your phone calls ahead.

["Judicial Filibuster" Spots]

Jay: Welcome back to the broadcast, everyone. If you are just joining us, California's Attorney General has issued what we consider a very troubling decision. He's given an opinion, which was asked for. The Attorney General gives advice as to the meaning of law in California, at least according to his view, and that opinion states that in California,

minors (13, 14, 15, 16-year-olds) can be taken to medical clinics off-site to have procedures such as an abortion without parental notification, without parental consent, under what they are calling their “privacy right.” We think this is a very, very dangerous issue. There is federal legislation pending on this, which we think should go into place.

We had a major case in Pennsylvania where an individual girl, a 16-year-old, was actually taken to New Jersey—where they did not have a parental notification requirement and Pennsylvania did—and the school actually gave the money for the abortion procedure and never notified the parents. This tells you why this is significant. We went to federal court and won that case. That has sparked this need for federal legislation. But frankly, this California Attorney General’s opinion is also going to spark the need for the legislation which needs to be looked at as soon as the Senate gets back in January.

Gene: It’s sparking a lot of questions, to be sure. Let’s go to California with Carol on the line with a question along those lines. Go ahead, Carol, you’re on the air.

Carol: I just wanted to say that I used to work in a health office at schools, and nurses can’t even give Tylenol or any medicine at all without the parent’s approval. I don’t understand how this could even happen. I am just concerned that after the kids leave the campus, they could bleed to death, they could have a car crash, what would happen then?

Jay: Carol, you’re right. When I was in elementary and high school—granted, that was a long time ago—you couldn’t get an aspirin from a teacher without parental consent; and the same is true right now in most states. But there is this abortion distortion factor that somehow abortion is sacrosanct, it’s protected specially in the Constitution, so you violate all the other rules, which go out the door. This is a very troubling situation in California. I think those of you in the state need to talk to your legislators and get this changed. Put a lot of pressure on your Attorney General. It’s that big of an issue.

Gene: Jay, in essence, what the Attorney General is saying that the schools have the authority and are required to keep secrets from parents regarding their own kids. That’s what this amounts to.

Jay: You’re absolutely correct. Not only secrets, but secrets about a medical procedure that has risks and is dangerous. The idea that you would not notify parents about this is, to me, absolutely outrageous and wrong.

Gene: Jay, is there anything that can be done with an Attorney General’s opinion. As you said earlier, that’s his interpretation of state law. Is that binding, if you will?

Jay: No, it’s not binding on a court, but it sure is very influential when it comes to school districts. The difficulty you have there is the impact the Attorney General’s advisory opinion has. It’s not binding. A court could say “No, that’s not the way the law should

be.” The legislature could pass another law. But right now, it is certainly an overwhelming precedent that has to be dealt with.

Gene: Nancy is joining us from California with a question along those lines. Go ahead, Nancy.

Nancy: I’m curious, if it is such a big secret, who’s going to be paying for this? I know from experience that we, as the parents, are financial responsible for this. So what happens as far as insurance and that? Also, along the same lines but a little bit different—here in California, it takes two—not one, but two—parents to sign before your child can get their drivers’ license.

Jay: Yes, the drivers’ license issue goes back to what I call the “abortion distortion factor.” You’re right. Two parents are necessary to get a drivers’ license; no parent is necessary to have an abortion procedure. Well, not only who pays for the actual abortion procedure, and sometimes the schools will pay for them which is what happened in Pennsylvania; but other times—and this is a big concern, of course--the parents, if there are any complications as there often are with this procedures or follow-up medical, who do you think pays for it? A parent is going to pay for the medical necessity of their child, but that parent should be informed on what’s going on. At least, at a minimum, notified; and I think, parental consent is absolutely required. I understand the need that they argue for judicial bypass, but this isn’t a judicial bypass situation where if both parents are not with the child, that somehow this child would be in this horrible situation. That’s not what we are talking about. We’re talking about you could have two very loving parents—a mother and a father—and their child has the abortion procedure, and that parent is not notified, and that is wrong.

Gene: Jay, how do these privacy rights allegedly apply when you are talking about students who are legally minors under the age of consent?

Jay: I thought about that today. It was a year ago that we got the decision from the Supreme Court of the United States in the campaign finance case. We had to go to the Supreme Court of the United States to get minors to give \$5 to a political campaign and say that that was not criminal. Remember, that was a criminal act passed under the campaign finance laws to say a minor, a 15-year-old let’s say female, could give \$5 to a pro-life candidate, had to go to federal court and ultimately the Supreme Court of the United States to win their right, which we did. Now, that same 15-year-old is given an absolute pass—no problem—to have an abortion procedure. It’s absolutely outrageous. It has some huge ramifications and a big impact.

Gene: Let’s go to Washington State with Will on the line with us. Welcome, Will. Go ahead with your question for Jay.

Will: Good morning, Jay! My daughter had intercourse with a young man at her school and she is only 14-1/2 years old, and they took her—I don’t know if his friends or what, she’s pretty tight-lipped about it—but they took to a clinic here in Washington State and gave

her a Depo-Provera shot, which is a birth control shot and it made her system all backwards, so we had to put her on the pill just to get her system back on order. There was no notification to us at all. We had no idea. It was three months after the fact that we finally found out about it. What kind of recourse do we have and how can we go about protecting our child from that again if anything happens?

Jay: First, let me get you in touch with our legal department here at the American Center for Law and Justice. We will take a look at Washington State Law to determine what parental notifications—because basically, it’s an abortion-type procedure—what the parental notification and parental consent statutes are in the state. Now this clinic where it was provided may well be (again, I have to look at the particular law) liable if they did this procedure without the parental consent. That’s a violation of state law and they can be prosecuted for it. We need to check to see exactly what the law is, how it is developed. You hang on the line, and I am going to get you in touch with our legal department immediately and get you some help on this.

Gene: Jay, we have already heard from people across the country, not just California. This issue, clearly, is concerning a lot of people.

Jay: Gene, we had the lead case in the country on this in Pennsylvania probably three or four years ago now. We were able to get it resolved when we won in federal court. But what’s interesting about it is that it spurred this need for legislation, which has been stalled in the Senate. It passed the House and stalled in the Senate, which, unfortunately, happens more times than not. This issue now with California is one which I think we have to use as a catalyst for change. We are going to get very aggressive about this and work on this very aggressively in the coming weeks. Now we are doing that with a lot of other things on the agenda, but you have to multi-task here. The idea that you would have these kinds of advisory opinions and, of course, the scary part is that you may find a judge who agrees with the Attorney General in California. Probably in California, you would find a judge who agreed with it. Very dangerous precedent.

Gene: Let’s go to Sean in South Carolina. Welcome, Sean, your question for Jay.

Sean: I am familiar with some of the arguments that have been going on in public schools about the existence of God in science classrooms, and there was a teacher in a local middle school this week who basically told the classroom that God didn’t exist—that was something their parents had told them like Santa Claus. I was just wondering what kind of reaction we should be considering.

Jay: Sean, could you imagine if an Islamic student was in a classroom and a teacher went up and said that Mohammed was a false prophet, was a myth, wasn’t even a real person, what the reaction would be for those who are politically correct? But here you have the general existence of God being put into play in a middle school (you’re talking about 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grades) that God is just a tale. That teacher needs to understand how the First Amendment really works. We need to get the facts of the case. We also have really great

resources on our website at [www.aclj.org](http://www.aclj.org), and I encourage you, Sean, to go to our website. When you go, you will find that we have a section of the site that is dedicated to these Christmas-type issues that are becoming much more prevalent in the next couple of weeks, obviously. There is a Christmas information section; just click on there and there are great resources. But, Sean, we need to get the particulars on this. Again, let me get you in touch with our legal team at the ACLJ and get you some help right away.

Gene: Jay, you talked about the efforts underway when the new congressional session begins and the work that will be before the Senate. Noteworthy is this parental notification measure. But also right now, we are focusing on another issue that is tied into this with the legal system. That, of course, is bringing an end to this unconstitutional use of filibusters.

Jay: That's right. The judicial filibuster is going forward, and we have to get it stopped. You are looking at the possibility of a Supreme Court retirement. But look at the issues we've talked about today: parental notification on abortion, mention of God in a classroom being deemed off limits. All of these issues are decided by judges, and the idea that you would have a judge who doesn't share our worldview and a person who is a Christian, conservative or pro-life is automatically disqualified is ridiculous. That needs to not be the reality. Here's what we need to do. We need that rule changed, and we have to be aggressive this month to keep this pressure on the Senate to have the rule change come into place.

Gene: One thing we know that works, Jay, is when people speak out across America and make their voice known before Congress, specifically members of the Senate, that will make a difference.

Jay: It does make a difference. It makes a huge difference, and we want to encourage you in that regard to add your name to the chorus of thousands who have already contacted us on this important issue.

Gene: Stand with us and support the Constitution. Sign on today to the Petition to End Judicial Filibusters; take a moment and do so right now. Pick up the phone and call toll free 1.877.989.2255. The Petition to End Judicial Filibusters. Call now 1.877.989.2255. If you'd like, you can add your name online at the website at [www.aclj.org](http://www.aclj.org). Stay with us. Much more ahead when we come back.

["Judicial Filibuster" Spots]

Jay: Welcome back to the broadcast, everyone. Jay Sekulow here in our studios with Gene Kapp as well. We have a lot of calls coming in. Let's go right back to our phones.

Gene: Let's go to Oregon with Summer on the line with us. Summer, welcome to the broadcast. Your question for Jay, please.

Summer: Hi! My girlfriends and I are trying to start a Bible club on campus at my college. We had to write a constitution, and in our constitution we said that to be leadership in the club you have to profess Jesus Christ as your Lord and Savior. They have told us that that is being discriminatory and that they are not going to let us be a club because of it.

Jay: Summer, are you in a public university in Oregon?

Summer: It's a community college. Yes.

Jay: So it is a public university.

Summer: Yes.

Jay: I will tell you something. This is an important issue and it's a big issue. We did have good success back probably ten years ago at the Second Circuit Court of Appeals in New York on a very similar situation. There it was on a high school level, which is even more difficult, but we were successful unanimously. They opened the club to other people but had the provision that only Christians could be in leadership. The school said, "No, that violates the state's antidiscrimination laws." We won on that case and won overwhelmingly. By the way, they tried to take it to the Supreme Court of the United States on an emergency stay to Justice Ginsburg, and we won there too! So, let me do this for you. Let me get you in touch right now with our lawyers at the American Center for Law and Justice. We'll get you some help on this. Has the club formation—do you have everything else together for the club? Are they all ready to go?

Summer: Yes, everything. They actually had a meeting about it to appeal it; and at the meeting, they said if you don't want to change this and take this out of your constitution, you can't be a club. So they are having another meeting on the 5<sup>th</sup> with the Board of Education.

Jay: When you say "they," is that the other students in the Bible club?

Summer: Yes.

Jay: Let me get our lawyers involved in this right away. You hang on the line and we'll get you some help. We'll see if we can get this situation resolved.

Gene: It's amazing, Jay, that we still get these questions about Bible clubs, the formation of them, the dos and don'ts—it can't be that complicated.

Jay: No, it's really not that complicated. But I'll tell you why you get the calls. These Bible clubs have been tremendously successful. The fact of the matter is that these Christian clubs have done a great service in promoting and spreading the Gospel of Jesus Christ. These students have taken on issues on their campuses and have done a really great job. In Summer's situation where it is on a college campus, it's even easier than the high school campuses. As I said, we now have three solid Supreme Court decisions. The

closest case, which we still won and our position carried the day, was 6-3. The others have been 8-1 and 9-0. So, we have the law on our side. We'll get Summer some help on that right away.

Gene: Let's go to Maryland with Lanay on the line. Welcome to the broadcast, Lanay; your question for Jay.

Lanay: Yes, I was wondering if there was a way to get away the law in California by the parents drawing up some sort of a legal document saying that the school was forbidden from taking their child, especially a girl, off the school premise, especially for the reason of an abortion.

Jay: That's a good question. Yes, I think parents should put in those kinds of notification. Most schools, you don't have to. I don't want to say that most schools are doing this, but it is a growing trend we're concerned about. Of course, in California now they have basically opened what I think is the ultimate Pandora's box on the situation by allowing this kind of activity. But I think in a situation like this, sure, notifying the school officially of your intent is very important.

Gene: We have Paula from Illinois joining us. Welcome to the broadcast, Paula. You're on the air. Your question for Jay, please.

Paula: My 16-year-old daughter was date-raped, and her friend took her to a clinic and they gave her the abortion pill, and her kidneys almost completely failed. She is still having problems.

Jay: RU-486. The Food & Drug Administration (FDA) came out and said that there were serious concerns about RU-486, and they renewed their concerns because of medical evidence and testing. In a situation like that, first of all, we'd have to check out the laws in Illinois. I want to get you in touch with our lawyers immediately. Here's why, Paula. It may be that you have a situation where there was a violation of state law. What it does, if we can find out about those cases and get the government involved, we could put these clinics on notification that they can't do these things without parental permission. You don't even have a situation where these procedures are not banned, no one's saying they're banned; we're saying, let the parents be involved in the process, which is your concern. Because you do have to deal with the consequences of the decision once it is made and the medical follow-up that's necessary. So, Paula, let me get you in touch with our legal staff here at the American Center for Law and Justice to get you some help.

Gene: Jay, when did this law change and this swing occur? I know it wasn't long ago where parents knew everything about what was taking place with their kid in school.

Jay: Here's the irony of this, Gene. The Supreme Court of the United States has upheld parental consent laws and parental notification laws. There have been a couple of these Florida Supreme Court decisions or a California Supreme Court decision that have taken



a contrary view—not under the federal Constitution—but saying the California or Florida constitution has provided this greater degree of protection. They just amended the constitution in Florida to end that kind of ridiculous interpretation, in my view; but it's a trend that's continuing. As the country becomes more aware of the importance of protecting unborn life (and the trend is clearly in our favor there whether on the partial-birth abortion issue or just medical science generally), I think these abortion entities—the business of abortion—will get more and more involved and more and more aggressive in getting abortion services out there. That's their business.

Gene: Let's go to Steve in California. Welcome to the broadcast, Steve. Your question, please, for Jay.

Steve: We're a church in Encinitas and we're part of a parade. The city's employee told us that we couldn't mention God, Christmas or any Scriptures in the little explanation of our float and who we are. So it's a city holiday parade, but we're wondering if the city can discriminate against mentioning God either in our Christmas carols we want to sing on the float, on our float decorations, or in this written description of us that's part of their published brochure on the parade.

Jay: Steve, the answer to that is no, they can't discriminate based on the religious content of your float in a public parade. It's clearly identified as your church organization's float. It just happens to be in the parade. The idea that they could then come in and say, "You don't get to participate or you can't have a Christian message on it" is just plain wrong. That's not what the law allows. The Court was unanimous in saying viewpoint discrimination targeting religion is unconstitutional. We'll get some help to you as well. A busy day of getting people help, but that's what we do here at the American Center for Law and Justice.

Gene: Don't forget, too, we have great resource material on this whole Christmas topic on the website at [www.aclj.org](http://www.aclj.org). Let's go to Ohio now and take Tammy's question. Go ahead, Tammy, you're on the air.

Tammy: Hi! I was just informed yesterday by my daughter that at her school they had an abstinence skit put on by the high schoolers for the eighth grade kids. Afterwards, there were breakout sessions, and these high schoolers were left alone with these girls when the adult walked out of the room. The high schoolers proceeded to tell my daughter and the other girls about websites where they could go to get birth control pills without their parents' permission, and they basically told them the complete opposite of the whole abstinence message they did in the skit, and that sex was their choice and they just needed to be so-called "safe."

Jay: This is outrageous! The first caller we had today—you cannot get an aspirin if you have a headache in a public school without parental consent because they are concerned about liability. But they are distributing birth control in some schools, referring people to other places for birth control in other schools, and some are arranging for abortion procedures

without notifying the parents. This means we need change. We need it quickly. We need it aggressively. But let me tell you the biggest challenge in all this. Any action we take will end up in court. We know that. That's what we do here. And who sits on the bench makes a difference. So, Tammy, in your situation and in the others' who called in today, the judges ultimately really matter in this.

Gene: Jay, when you talk about the judges mattering, we have to break this unconstitutional use of the judicial filibuster. That's not only tying up nominees, but it's putting the whole legal situation in limbo.

Jay: Realize that some in the Senate would say that a judge who would rule that parental consent is a good idea or that kids should not be given birth control without parental notification or parental consent is a good idea, those would be deemed "radical, out of the mainstream judges" by some in the Senate. That's why the rules need to be changed.

Gene: Sign on to the Petition to End Judicial Filibusters. Call now toll free 1.877.989.2255. The Petition to End Judicial Filibusters. Call now 1.877.989.2255. If you'd like, you can add your name online at the website at [www.aclj.org](http://www.aclj.org).

That'll do it for our broadcast today. Thanks for being with us. We hope you have a great weekend!