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SERVING THE EDUCATIONAL NEEDS OF THE PRO-LIFE MOVEMENT

February 2005

A State Law to Forbid Abortion?

By J.C. Willke, MD

Last year, South Dakota came within one vote of passing a law that would have specifically forbidden abortion. Clearly, that law would have been enjoined by lower federal courts and then made its way to the Supreme Court. As currently composed, this present Supreme Court would undoubtedly deny *certarari* and allow the injunction that struck it down. But this court's composition is about to change, and clearly that was one of the considerations by last year's South Dakota sponsor.

Now we hear talk that either that state or another may pass such a law this year. In fact, the governor of South Dakota, Mike Rounds, who vetoed last year's legislation, has publicly stated that if it "looks good to him," he would sign it this year. The possibility that such legislation will be passed this year has produced a difference of opinion among pro-lifers.

First, we must make clear that the goal of such a bill would be the reversal of *Roe v Wade*. It would return the nation's legal system regarding abortion to *status quo ante*, that is, the existing situation prior to that momentous decision. Prior to *Roe v Wade*, the federal government and its courts had no say in the abortion issue, which was entirely a state matter. The first legalization of abortion was done one state at a time. It only became a federal issue with the Supreme Court decisions of *Roe v Wade* and *Doe v Bolton*. In the event of a reversal, each state through its legislative body and courts, would have authority to set the boundaries of abortion.

The big question is whether or not, for the pro-life movement as a whole, our goal of reversing *Roe v Wade* would be advanced or would be retarded if a state passed specific legislation forbidding



Reversing
Roe v Wade

abortion this year. Two sides in the pro-life movement are divided on this question. We have considered legal opinions opposing such legislation by three prominent and respected pro-life constitutional attorneys. They are Mr. James Bopp, Mr. Clarke Forsythe and Mr. Paul Linton. Their comments are clear, concise and cogent. Clarke Forsythe said, "Given the Supreme Court and the experience with the Federal Partial Birth Abortion law, the outcome of abortion prohibition bills in 2005 is certain. Federal Courts will immediately apply injunctions against the enforcement of such laws, Federal Appeals Courts will agree,

the Supreme Court will deny review. The laws will never go into effect, and the state legislature will get an expensive bill from the ACLU. Prohibitions on abortion are clearly dead on arrival in 2005." This clearly states what would happen to such a law if it faced federal courts at the district appeals and Supreme Court levels as currently constituted. While courts at these levels vary in their ratio of pro-life to pro-abortion judges, it is certainly fair to say that there is not a majority of pro-life thinking at the Federal District Court level or at most Appeals Courts at this time. Certainly there is not at the Supreme Court level.

Their cogent argument contrasts the original decisions with subsequent decisions. It notes that in the *Roe* decision, Justice Blackman was unsure when human life began. Mr. Linton very clearly reminds us of the recent Third Circuit judgment stating that abortion depends not on whether the unborn is a human (which it assumed was true) but rather, if the unborn child was a "constitutional person." This was bad news. If the Supreme Court takes this same

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We Will Outnumber Them

Life Issues Institute is not a partisan political organization, but an educational foundation. However, within those limits we have certainly been able and active in educating our readers and listeners to the pro-life or pro-abortion positions of candidates for office. Clearly, Bush's victory will be advancing the pro-life cause just as concretely as a Kerry victory would have been a serious setback for the pro-life cause.

Most of our readers have read various analyses, polls, etc, of the recent presidential voting. Among various classes, it was clear that Hispanic voters increased their support for the pro-life candidate Bush by about 10 percent over previous elections. African American voters upped theirs by over 5 percent, and women voters almost erased the earlier much-touted gender gap. The pro-life issue motivated most of these gains for Bush. The 22 percent of voters who voted on value issues, when broken down, revealed that the major "value" was abortion, and that these voters went almost 2 to 1 for Bush over Kerry.

This is probably not news to you, but let's probe deeper. First, look across the board at who gets abortions regardless of class or ethnicity. According to *Wirthlin Worldwide*, as reported in *First Things*, Democrats account for 40 percent more abortions than Republicans. They have 49 percent compared to the Republican's 35 percent. Pursuing this statistically, the more liberal the Democrats are, the more abortions they have. The more conservative the Republicans are, the fewer abortions they have. Larry Eastland, in the June *American Spectator*, said "Examining these results through a partisan political lens, the Democrats have given the Republicans a decided advantage in electoral politics, one that grows with each

election." He further states, "As Liberals and Democrats fervently seek new voters and support through events, fund raisers, direct mail and every other form of communication available, they achieve miniscule results in comparison to the loss of voters they suffer from their own abortion policies. This is a grim irony lost on them for which they will pay dearly in elections to come."



Let's look at this through another lens. Let's look at ethnic votes. Hispanics have traditionally voted Democratic. This time (probably on "values") they moved substantially toward Bush. African Americans remained overwhelmingly Democrat but also moved, probably on the values issues. Where did the white Euro-Caucasian vote come down? This group constitutes over three-fourths of all the votes cast. Clearly, a significant shift in the "white vote" can have far-reaching effects on future elections. So let's look into the future. Let's look at birth rate.


The three New England states of MA, VT, and RI, where Bush won less than 40 percent of the popular vote, just happened to be three out of the four states with the lowest birth rates among "white voters." The nineteen states with the

highest white fertility were all won by Bush; and except for Michigan, which went for Kerry, out of the top 26 highest white fertility states, Bush carried 25.

That is the top. Let's look at the bottom. There are 16 states at the bottom of the white fertility list; Kerry carried all of them. For instance, the mean fertility rate for the state of California is 1.65 babies per woman in her lifetime, and in New York it is 1.72. In order to maintain the current population in a developed nation like the US, the average woman must have 2.1 babies. These numbers speak for themselves.

As we look to the future, the demographic trend is clear. Grant that not all of these new children will adopt and vote on the same values as their parents, but studies have shown that the great majority will. Grant also that other happenings and factors may intervene, but "there are tides in the affairs of men" and this surely looks like one of them.

What might change this? There is ongoing discussion among Democrats as to the advisability of modifying the party's position on abortion. Such a change certainly could affect this "tide."

In summary, broadly speaking and across all lines, pro-life couples have 2 or 3 children per family. Pro-abortion couples have 1 or 2. It has been said that demography is destiny. If this pattern persists, we can look to the future and state without question that it is only a matter of time until pro-life voters substantially outnumber those who favor abortion. 

State Legislation *continued from page 1*

position, it makes no difference whether the developing baby is in fact a baby, human, alive, etc., from conception, for the Court would take the position that the biological facts are irrelevant. What is relevant is whether the court judges believe this living being is to be protected under constitutional law.

Another argument against passing such a law is that in being struck down, it would establish further precedent that would someday have to be overcome if and when abortion is ever again forbidden. The above Third Circuit opinion is a good example of this.

It is the opinion of these gentlemen that attempts to do this, and of course to follow it through the lower courts up to the gate of the Supreme Court, would waste limited resources. They state that such available resources in the pro-life movement would better be used to pursue the gradualistic legislative progress that has been made in the last decade. Examples of this are women's right-to-know laws, parental notification and consent laws, abortion clinic regulations, etc.

As noted in Forsythe's statement above, such attempts and failures would enrich the pro-abortion movement. When such laws have been struck down, the courts have awarded very generous attorney's fees to the "Anti" Civil Liberties Union (ACLU) which has richly endowed their coffers. This certainly is a byproduct that no pro-lifer would want.

A less convincing argument offered is that it would undermine the political survival and credibility of those lawmakers who vote for it. And finally, they argue that such attempts would divide the pro-life movement. Let me answer these arguments one by one.

As to the court striking this down, there is absolutely no question that is what would happen if this law faced the Supreme Court with its current composition. The central argument opposing this, however, is obvious. There will be changes in personnel that will almost certainly be occurring now that Mr. Bush has been



Supreme Court

reelected for the next four years. It appears that Justice Rehnquist will step down soon. An informed guess would be that Mr. Bush might nominate a qualified Hispanic, such as Miguel Estrada. If approved, this candidate will not change the ideological composition of the court. Since we are still in the shadow of Bush's overwhelming election victory, the odds are this person will be confirmed. In addition, Thomas or Scalia may also be approved as Chief Justice.

When the next retirements occur, there will be vicious fighting. However, the numbers favor our side. It is more than wishful thinking to assume that by the time a law, passed in 2005, reaches the Supreme Court, there may well be a definitive change in the Supreme Court's make-up. It takes 2 to 3 years for a law to finally be brought before the Court.

Does precedent influence the Court? Yes, this is completely valid as long as the current court composition remains intact. But the Supreme Court has the power to overturn decisions and has done so. As a result, developments like the Third Circuit decision mentioned above, notwithstanding the weight of precedent, do not govern here as the court can overturn them.

As to wasting limited resources, my response is, "Have faith!" This movement has experienced defeat. Pro-

lifers have labored under periodic defeat for thirty-two years. Our movement has been judged dead on a number of occasions, but we still live.

Today a change in public opinion is slowly increasing. Major pro-life state legislation has a potential that should not be discounted. It can strike a flame of hope and enthusiasm within our pro-life troops and legislators. Moving in new directions energizes members in the organization, and even those who have doubts about the action become more actively involved. The pro-life movement does not have a limited amount of assets to be cut up like a pie. Its potential ultimately is unlimited.

Losing and thus enriching the ACLU by attorney's fees is not a first order of magnitude. We should not let dollar signs on their side or ours be a governing factor in our actions. Our main objective is to save babies, not limit the income of the ACLU.

Would it undermine the credibility and the political survival of those who vote for such a law? We would not deny that this might well injure some, but think of the legislators who vote against it. One could legitimately make a case that their credibility and political future would be further undermined by having to publicly admit their pro-abortion position. This cuts both ways.

Finally, would it cause division in the movement? This is self-evident. Last

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The official quarterly publication of Life Issues Institute.
Vol. 14 Number 1 Subscription \$25.
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Democratic Party Must Rethink Its Abortion Stand

By Bradley Mattes

Eyebrows were raised in the offices of pro-abortion activists, as well as the National Democratic headquarters, when an article by Frances Kissling began to circulate. Kissling is the president of the so-called *Catholics for Choice*, a pro-abortion organization. Her article, in no uncertain terms, questioned the hard-core radicalism of the pro-abortion movement.

Kissling cited a *New York Times* op-ed that said pro-abortion activists “don’t know how to articulate the value of unborn human life.” Of course you and I know the reason for that. They hold no value for unborn life.

This particular pro-abortion leader took Planned Parenthood to task for encouraging women to brag about their abortions. The selling of t-shirts announcing “I had an abortion” crossed the line for many abortion advocates. Kissling feels this rigid approach to abortion is costing them public opinion. She also referred to pro-abortion activists who opposed the Laci and Conner Peterson bill, which she said “made us seem heartless.”

The harshest criticism for her fellow activists was directed at their collective opposition to the Partial-Birth Abortion Ban, which she acknowledged was a public relations disaster. And she’s worried about the continued erosion of public support for abortion in the wake of upcoming federal legislation. The *Unborn Child Pain Awareness Act* would require that abortionists offer anesthesia for the babies of women aborting past twenty weeks gestation. Kissling suggests the pro-abortion movement recognize that modern science has for years documented pain felt by unborn babies. She says they should get their heads out of the sand and deal with this legislation realistically. To do otherwise would invite a continued widespread erosion of public support for abortion in America. Basically, she cautioned her movement against opposing this legislation. She cited John Kerry’s

support for partial-birth abortion as a key reason for his defeat in the presidential election.

Kissling thinks her movement needs to take a different approach. She advocates that so-called “pro-choicers” should in the future react with sadness over the loss of the baby’s life. She questions whether or not it’s “time to try and combine rights and morality, to consider both women and developing human life.”

**It’s telling to see
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for moderation on
abortion within
his party.**

Kissling’s article should be taken with a grain of salt by pro-lifers. Her organization is still dedicated to abortion-on-demand. It’s certainly possible she wants the pro-abortion movement to soften their rhetoric to disguise their real agenda. It’s interesting to note, while she calls late-term abortion “grim,” she isn’t advocating these babies be protected by society from abortion. Considering this reality, the Kissling article was little more than an fascinating wrinkle in the ongoing life-or-death battle.

However, the events that followed it make the bigger picture more interesting. Some in the National Democrat Party are questioning their total loyalty to the abortion industry.

Shortly after Thanksgiving, top Democrat activists gathered in Washington, DC at the headquarters of the AFL-CIO. John Kerry was in attendance and was asked a key question. Ellen Malcolm is the president of Emily’s List, a pro-abortion

political action committee. She asked Senator Kerry for his opinion on where the Democrat party was going. His answer shocked everyone in the room. Kerry said the Party must reach out to pro-life voters. He also advocated welcoming pro-life Democrat candidates. For years such candidates and incumbents have been weeded out of the National Party. Nancy Keenan, president of the National Abortion Rights Action League, told the media there was a gasp in the room.

If there is to be a pro-life evolution in the Democrat party, don’t expect pro-abortion activists to go down without a fight. Gloria Feldt, president of Planned Parenthood, responded to Kerry’s comments by criticizing him for not touting his pro-abortion position more strongly during the campaign. These radical organizations know they will slip into the pages of history without the support of the Democrat party. Evidence abounds that Americans are becoming more pro-life and see them for what they are.

There’s further evidence leaders of the Democrat party see their hard-core pro-abortion image as a detriment. House Minority Leader, Nancy Pelosi (D-CA) and Senate Minority Leader, Harry Reid (D-NV), both pro-abortion (Reid to a lesser degree), have endorsed a pro-lifer as the new chair of the Democratic National Committee. It’s possible they have finally faced the reality that so many Americans have known for years — it’s a net positive for candidates who are pro-life. The latest presidential race helped to confirm this. Twenty-two percent of voters cited “moral values” as their number one issue in voting. Further research has pointed to abortion as the key issue in the minds of value voters. A poll shows that President Bush’s pro-life position gave him an 8% advantage over John Kerry.

It’s telling to see John Kerry, a hard-core pro-abortion candidate, advocate for moderation on abortion within his party.

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State Legislation *continued from page 3*

year South Dakota came within a hair's breadth of passing such a law. Upfront in opposition to it was a South Dakota State Senator who sits on the board of the National Right to Life Committee. He claimed sole responsibility for his position of opposing that pro-life law. The National Right to Life Committee, while denying their central role here, nevertheless did get credit in the minds of many groups for being the force behind opposition to that law. All of the above arguments against the bill were voiced. But to a great number of pro-life organizations these arguments were unconvincing. Justified or not, there is no question passing such a law will create controversy, but opposing it will result in a larger divide within the movement.

The fact of Bush's reelection, and that we are one year closer to realignment on the Supreme Court; the fact of Senator Daschle's defeat and other developments


all combine to shed new light on this argument, making this debate substantially different than it was a year ago. One final thought. Under no circumstances should such a law punish the woman. She is the second victim. Punish instead the abortionist who took money in the cold light of day and killed her baby.

Conclusion:

Let the pro-lifers of this country by all means pursue this debate with vigor. The arguments posed by the three attorneys above have great validity. However, they all rest upon the composition of the US Supreme Court when such a law reaches it. We know that legislation passed, at the state level, takes an average of 2 to 3 years to reach the Supreme Court. What will the high court's composition be when such a law does reach it? We do not know, but we have far more reason to hope optimistically

for a friendlier court than a year ago.

However, we cannot let up in pursuit of our ultimate goal. To accept incremental steps along the way is a valid approach, which I have supported. I doubt that many today honestly subscribe to the hope that we can get a human life amendment in the present climate of this nation. Steps on the way are the way to go, but a giant step will be reversing *Roe v Wade*. A famous quote applies here: "Better to have tried and failed than never to have tried at all." To fly in the face of an immovable object is foolish, but looking at this through today's perspective, the odds for success are quite tangible.

Let's by all means keep discussing this in a professional fashion. But, those of us here at Life Issues Institute feel the time is ripe to move forward with major pro-life legislation in the states. 



From the Executive Director

Bradley Mattes

The Rest of the Story

Six months ago I told you about a remarkable young couple, Tasha and Darrell Smith. Tasha was Britain's hopeful for gold in the Summer Olympics last year. That is until she found out she was pregnant. There was incredible pressure on Tasha to abort her baby. However, she and Darrell quickly came to the conclusion that the child she carried beneath her heart was worth much more than Olympic gold. He was God's gold. I presented Tasha with Life Issues Institute's prestigious *Hero at Heart* award. It's given to those who demonstrate outstanding courage or compassion on behalf of innocent life. Tasha, who delayed her Olympic dream to give her baby life, certainly qualified.

As usual, God's timing is perfect. We posted Tasha's award on our website while we tried to contact her. One sleepless night, Tasha was searching the Internet, bracing herself for more negative articles about putting her child's life above her career. To her amazement, she came upon our website and saw the award. Her tears of joy awoke an anxious husband. She then shared the good news with him.

Tasha quickly contacted me and shared how much this gesture meant to her

and her family. I was appalled, but not surprised, by how much harassment she had endured for choosing life.

At that time, I asked you to send an email of encouragement to Tasha and her family. Hundreds of you did. That meant the world to this growing family. Your emails were compiled in a booklet and sent to the expectant couple. They were very pleased to receive this



Tasha, Darrell and Jaden

special gift. It was the main topic of a pre-birth celebration with friends.

I'm happy to announce that on December 8th God's gold entered the outside world. Jaden Wayde Smith was 7 pounds, 13 ounces. His name means, "God has heard." Everyone has thrived since the birth, and they enjoyed an extra special Christmas.



I've often said that small acts of kindness mean a great deal to those who receive them. Your encouraging emails meant a great deal to Jaden's family. Could I impose on you once more to

send an email of congratulations and best wishes to Jaden and his family? You can do so by writing to telltasha@lifeissues.org or go to our website at www.lifeissues.org. And please keep this "Hero at Heart" in your prayers. 🌸

Democrat Party *continued from page 5*

But will they listen to sound advice and welcome unborn babies and their mothers into the political tent? Or will pro-abortion activists retain their chokehold on the Party? It would seem many have found worshiping at the altar of the abortion industry has left many Democrat candidates swelling the ranks of the unemployed.

Here's further evidence if you need it. Kristin Day, Executive Director of Democrats for Life of America, has compiled some persuasive facts. The Democrat party went from controlling the

House of Representatives, with the support of 125 pro-life members, to holding a minority position in the House with only 35 pro-life Democrats. Many political pundits credit the Democrats' loss of the majority in the US Senate to three key races in the pro-life stronghold states of Georgia, Missouri and Minnesota.

A growing number of Democrats, both pro-life and pro-abortion, realize the Democrat party is being held hostage to the abortion industry. They also see no future for their party if its hard-core pro-abortion

position prevails. If you are a pro-life Democrat who feels disenfranchised by your party, join the swelling ranks of Democrats for Life of America. Their website is www.democratsforlife.org. Now is the time to let your voice be heard at the National Democrat Headquarters. More pro-life Democrat candidates and incumbents mean that more unborn babies will be saved from abortion. And their parents will be spared from the emotional ravages it so often brings. 🌸



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Ultrasound on Wheels

Here is a spectacular idea for those of you who reach out to abortion-minded women. *Image Clear Ultrasound* is the brainchild of Pregnancy Solutions & Services in Akron, OH. It's an ultrasound machine on wheels. The idea is to bring this equipment and services directly to women. The acronym ICU also stands for "I See You" which is very appropriate for this application.

They purchased and refurbished an RV. It contains top-of-the-line ultrasound equipment, in addition to waiting and examining rooms. They use trained ultrasonographers and counselors. It operates as a mobile medical unit, and all services are free of charge.

In the past, they have provided free ultrasound to women, but they had to travel to a doctor's office to have it done.

Sometimes the women didn't show up for their appointments. Now, this new concept allows women to see their unborn children immediately, only steps away from the center.



Three to four days each week, the RV rotates to various set locations, so appointments can be made in advance. However, walk-ins are welcome. Locations include crisis pregnancy centers, college campuses, abortion mills, inner

cities and suburbs. The pregnancy center estimates 90% of abortion-minded women change their minds after seeing their babies on ultrasound. They promote the mobile units through advertising on billboards, newspaper and radio.

The program is in its infancy. However, they would love to assist other centers in establishing a mobile ultrasound unit in their area. Their goal is to replicate this exciting and effective new tool throughout the state of Ohio and into other states as well. Stated another way, they want to have a "Fleet for Little Feet." If you are interested, contact them at: Pregnancy Solutions

& Services 3515 Manchester Rd., Akron, OH 44319. Phone 330.644.4490. E-mail smsjr@bright.net. 