



THE NATIONAL CATHOLIC BIOETHICS CENTER

6399 Drexel Road, Philadelphia, PA 19151 • Tel 215-877-2660 • Fax 215-877-2688 • www.ncbcenter.org

Bioethics Public Policy Report July 1, 2018

Federal Courts

- *Supreme Court rules in favor of pro-life pregnancy centers:* In a 5–4 decision, the US Supreme Court has [blocked](#) California’s “Reproductive FACT Act” (2015) from requiring pro-life pregnancy centers to display information about how to obtain free or low-cost abortions. The decision in *National Institute of Family and Life Advocates (NIFLA) v. Becerra* effectively sends the case back to a lower court for reconsideration, however now with the high court’s finding that NIFLA is “likely to succeed on the merits of their claim that the FACT Act violates the First Amendment.” Justice Anthony Kennedy (who has announced his retirement from the bench) stated in his concurring opinion:
“[Government] must not be allowed to force persons to express a message contrary to their deepest convictions. Freedom of speech secures freedom of thought and belief. This law [the FACT Act] imperils those liberties.”
Kevin Theriot, senior counsel with Alliance Defending Freedom which represented NIFLA, hailed the decision stating that government should not punish pro-life centers “for declining to advertise for the very act they can’t promote.” Similar laws in Maryland, Texas, and New York previously had been struck down as unconstitutional by lower courts.
- *High court grants flower shop reprieve:* In light of its *Masterpiece Cake* decision, the Supreme Court has vacated a Washington state ruling against local florist Barronelle Stutzman of [Arlene’s Flowers](#) who had declined to make flower arrangements for a same-sex “wedding.” In *Masterpiece Cake*, the Supreme Court ruled that the Colorado Civil Rights Commission had shown an impermissible hostility toward religion in their handling of the case. Stutzman’s attorneys maintained that the Washington attorney general displayed a similar hostility against religion in the Arlene’s Flowers case and the high court agreed, sending the case back to the Washington Supreme Court for reconsideration.
- *Kennedy retiring:* US Supreme Court Justice [Anthony Kennedy](#) has announced that he is retiring. He was appointed by President Ronald Reagan in 1987 and has served on the Court for more than 30 years. Kennedy has acted as the court’s “swing vote” in multiple cases and he was somewhat unpredictable in his rulings. For example, he sided with the majority on *Planned Parenthood v. Casey* (1992) which upheld abortion, however he was also the author of the majority opinion in *Gonzales v. Carhart* (2007) which upheld the constitutionality of the federal partial-birth abortion ban. Kennedy might be best remembered for his “mystery statement” offered in Casey decision: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” President Donald Trump will nominate a replacement who will need to be confirmed by the Senate. Senate Majority Leader Mitch McConnell (R-KY) has indicated the Senate will confirm Trump’s nominee in time for the start of the Court’s new term in October.

National

- *AMA tables change in position on assisted suicide:* The [American Medical Association](#) (AMA) has voted to return to committee a report that recommended against the organization changing its position on assisted suicide. As noted in the

May 15th edition of the *Bioethics Public Policy Report*, the AMA's Council on Ethics and Judicial Affairs (CEJA) had recommended that the organization *not* change its position from "oppose" to "neutral." The AMA's House of Delegates met on June 11 and voted to "not accept" the CEJA report but send it back to the council "for further review."

- *New insurance option for small business:* The Trump administration, through the Department of Labor, has issued [new rules](#) that will loosen restrictions on association health plans. Small businesses will now be able to band together more easily to offer health insurance coverage for their employees. The new regulations eliminate geographical restrictions and even allow companies in different industries to form groups for the purpose of offering coverage. The association insurance plans are exempt from Obamacare requirements for ten "essential" health care benefits including maternity care and prescription drug coverage, but they are still required to cover pre-existing conditions. Supporters argue that the new rules will lead to more affordable insurance choices for millions of American workers while critics charge the rules will siphon healthy individuals from health care exchanges, thus driving up premiums for those who remain. The Congressional Budget Office (CBO) estimates that 4 million people will join the new association health plans and as a result, premiums on the existing exchanges will increase 2 to 3 percent.
- *AGs file suit against new insurance option for small businesses:* The [Attorneys General](#) of New York (Barbara Underwood) and Massachusetts (Maura Healy) have announced they will sue the Trump administration over its expansion of associated health plans, arguing that the administration's actions will "invite fraud, mismanagement and deception." They also stated: "We will sue to safeguard the protections under the Affordable Care Act and ensure that all families and small businesses have access to quality, affordable health care ... We believe the rule, as proposed, is unlawful and would lead to fewer critical consumer health protections."
- *FDA approves marijuana derivative:* The Food and Drug Administration (FDA) has approved [Epidiolex](#) as a treatment for two forms of childhood epilepsy, Lennox-Gastaut and Dravet syndromes. What makes Epidiolex unique is that it is the first drug approved by the FDA that is derived from marijuana. Epidiolex is an oral solution containing highly purified cannabidiol (CBD), one of the chemicals in the cannabis sativa plant. The drug contains only trace amounts of THC and does not induce euphoria. FDA Commissioner Scott Gottlieb maintained that the approval is "a reminder that advancing sound development programs that properly evaluate active ingredients contained in marijuana can lead to important medical therapies." He added that the FDA's action is "not an approval of marijuana" but rather the approval of one specific medication for a particular use.

State by State

- *Missouri abortion restrictions upheld:* US District Judge Beth Phillips has denied two Planned Parenthood affiliates' request for a preliminary injunction that would block a [Missouri](#) law that places restrictions on medically-induced abortion. The state law requires that abortion providers have written contracts with at least two doctors who have local hospital admitting privileges who will agree to be on call at all times to treat complications that could arise from the medication abortion procedure. Planned Parenthood Great Plains and Planned Parenthood of the St. Louis Region and Southwest Missouri argued that the regulations prevent them from getting approval from the state health department to provide medication abortions. In her ruling, Judge Phillips wrote, in part, that the regulations do not impose enough of a burden on women to be considered unconstitutional.
- *Golden state reinstates assisted suicide:* Assisted suicide is legal once again in [California](#), at least for now, as the Fourth District Court of Appeals has reinstated

the so-called “End of Life Options Act” that allows people to end their lives. In May, the law was ruled unconstitutional by Judge Daniel Ottolia because politicians illegally enacted it during a special legislative session called to address other health care matters. While reinstating assisted suicide, the appeals court gave opponents until July 2 to file objections.

International

- *Catholic hospitals in Ireland to perform abortions?* Following [Ireland's](#) referendum to remove legal protections for unborn children, the nation's prime minister has promised that all publicly-funded hospitals will be required to perform abortions. Prime Minister Leo Varadkar stated that while individual medical professionals will be able to opt out, “It will not, however, be possible for publicly-funded hospitals, no matter who their patron or owner is, to opt out of providing these necessary services, which will be legal in this state once this legislation is passed by the Dáil (parliament) and Seanad (senate).” He added that hospitals such as Holles Street and Mater St. Vincent's, which are Catholic hospitals, “will be required, and will be expected to, carry out any procedure that is legal in this state and that is the model we will follow.” The Catholic bishops of Ireland responded by stating:

“For healthcare professionals, the right of conscientious objection must be respected. It would be a great injustice to require doctors and nurses to participate, even by referral, in the provision of services which would be a serious violation of their conscience. This would only be ‘a way of pretending to respect freedom of conscience while actually requiring one person to cooperate in what he or she sincerely believes is the wrong-doing of another.’”

Reportedly, only 20 percent of general practitioners in Ireland have indicated they are willing to perform abortions.

- *Irish hospitals settle in “wrongful birth” suit:* Our Lady's Children's Hospital and Rotunda Hospital (both in [Dublin](#)) have settled a case of “wrongful birth.” The plaintiff, a woman who carried a rare genetic condition, had undergone a prenatal test to see if her unborn child had the genetic condition. She intended to travel to Britain for an abortion if the test result was positive. The result came back negative and the pregnancy continued. However, the child was born with the condition and it was subsequently determined that the test result was incorrect. The mother argued that because of the incorrect test result, she was deprived of the ability to make an informed choice in respect of the continuance of her pregnancy. She also argued she was deprived of her right to travel for an abortion. The hospitals settled for an interim payment of €1.8 million, or approximately \$2.1 million. (Note: the NCBC's Fr. Tad Pacholczyk wrote about such “wrongful birth” lawsuits the March 2018 edition of his “Making Sense of Bioethics,” available [here](#)).
- *WHO reassigns transgenderism:* Following the lead of the American Psychiatric Association, the [World Health Organization](#) (WHO) has declared that transgenderism is no longer a mental health disorder. The change is reflected in the updated section on sexual health conditions in *The International Statistical Classification of Diseases and Related Health Problems*. According to Dr. Lale Say, coordinator of WHO's adolescents and at-risk populations team, “transgenderism” was removed as a mental health disorder because “we had [a] better understanding that this was not actually a mental health condition, and leaving it there was causing stigma.” People who identify as “transgender” are estimated to make up 6 percent (or .006) of the population.

Of Note

- “We all have a duty to defend the most basic and fundamental human right—the right to life. As President I am dedicated to protecting the lives of every American including the unborn.” Excerpt from President Trump’s June 28th [letter](#) to delegates at the National Right to Life Convention.
- *Medicare and Social Security insolvent*: According to newly released reports, the Medicare program will be [insolvent](#) by 2026, three years earlier than previously forecast. The “good” news is that this year there is no change in the projection of when Social Security will become insolvent. This will happen in 2034.
- *New healthcare venture names CEO*: Last January, Amazon.com Inc., Berkshire Hathaway Inc. and JPMorgan Chase & Co announced the formation of a jointly-held health care company dedicated to cutting costs (and waste) and improving care. The company, as yet unnamed, has now appointed Dr. Atul [Gawande](#) as its head. Gawande practices general and endocrine surgery at Boston’s Brigham and Women’s Hospital in Boston and is an outspoken critic of the high cost of health care in the United States.

Sharing the News: If you have public policy news that you would like to share with the NCBC, or if you have colleagues who would like to receive the Bioethics Public Policy Report, please contact Joe Zalot at 215-871-2014 or jzalot@ncbcenter.org.

Sharing the Resources: The web page of The National Catholic Bioethics Center, available at <http://www.ncbcenter.org/>, is a significant resource for bioethics information. NCBC bioethicists are also on-call for consultation twenty-four hours a day, seven days per week, at 215-877-2660.

Previous editions of the Bioethics Public Policy Report are available on the NCBC website at <https://www.ncbcenter.org/advocacy/public-policy-reports/>.