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No. of pages including this page: 5

DATE: February 28, 2011

TO: Senator Clayton Hee  
Chair, Senate Judiciary Committee

FACSIMILE NO. (808) 586-6659

RE: SB 218  
Date & Time of Hearing: March 1, 2011 @ 9:00 a.m.  
Conference Room 016

Dear Senator Hee:

I urge you and your committee members to vote NO, or in the alternative to defer SB 218 in committee for several reasons, i.e., the bill as presently drafted is unconstitutional because there is no exemption for those who have religious or conscientious objections to the dispensing of the "morning-after pill," which many view as being an "abortifacient". With no such exemption, the First Amendment free speech and/or free exercise of religion rights will be transgressed.

Moreover, because there may be a contract in existence between the present owners (Hawaii Medical Center) of the formerly known "St. Francis" Hospital with the religious order selling the said hospital, namely the Franciscan Sisters, to the effect that the present owners will not engage in any abortion services whatsoever, passage of SB 218 in its present form without any "conscience" exemption may force

the current hospital to cease its operations altogether. With the said contract in place, SB 218, if enacted in its present form, may violate the "Contract clause" of the U.S. Constitution, Article I, §10: "No State shall...pass any...Law impairing the Obligation of Contracts."

I. ENACTMENT OF SB 218, IN ITS PRESENT FORM  
WOULD BE A CLEAR VIOLATION OF  
CONSTITUTIONAL RELIGIOUS, CIVIL, AND/OR  
CONSCIENTIOUS OBJECTORS' RIGHTS.

The American Center for Law and Justice, a national non-profit organization, with whom I have worked in the past, has instituted lawsuits in various parts of the country to protect the civil rights of employees not to force them to dispense the so called "morning after" pill or to make referrals to those who do. The gravamen of these lawsuits is that such compulsion violates the First Amendment rights, among other rights, of such employees and others.

For example, in one case involving a nurse named Michelle Diaz who was represented by the ACLJ, who filed a lawsuit on her behalf against Riverside County (California) after she was fired when she told her supervisor that her deeply held religious beliefs prevented her from distributing the "morning after pill" that was intended to end pregnancies because she believed she would be participating in an abortion. After a four day jury trial, the jury found that Riverside County was guilty on all three counts presented, i.e. violated her First Amendment rights of free speech; violated her rights of freedom of religion; and failed to reasonably accommodate her religious beliefs. The jury also awarded her damages totaling more than \$47,000, including \$19,000 in damages for back pay, and more than \$28,000.00 damages for emotional distress. See the news article attached hereto.

Therefore, any current employee of the formerly known "St. Francis" hospital, who chooses to bring a lawsuit against the State of Hawaii and prevails were SB 218 enacted in its present form, would be awarded in all probability all of his/her lost just compensation and/or attorney's fees because such a resident would have his/her civil rights abridged.

II. ENACTMENT OF SB 218 IN ITS PRESENT FORM WOULD VIOLATE THE SALE AND PURCHASE CONTRACT OF THE FORMER ST. FRANCIS HOSPITALS UNDER THE "CONTRACT" CLAUSE OF THE U.S. CONSTITUTION, ARTICLE I, §10.

As noted herein above, were SB 218 enacted in its present form, it may have the effect of shutting down the formerly known "St. Francis" Hospitals, in whole or in part, because of the contract provision which presumably obligates contractually the current operators NOT TO PERFORM ANY ABORTION SERVICES. This contract provision is protected under the "Contract" clause of the U.S. Constitution, Article I, §10. It is quite evident, then, that the shut down, in whole or in part, of the formerly known "St. Francis" Hospitals (Liliha and West), may have dire economic consequences of not only those working in the 2 hospitals but also may have severe health consequences on those dependent on medical services provided there who would otherwise have received such care.

III. EXISTING HAWAII "CONSCIENCE" EXEMPTION.

Hawaii already has a long standing tradition and practice of exempting hospitals and any person from participating in any abortion if to do so would violate the consciences of such hospitals and persons. HRS §453-16(e), which states,

“Nothing in this section shall require any hospital or any person to participate in such abortion nor shall any hospital or any person be liable for such refusal.”

As a suggestion, the following amendment, or something similar to it should be included in SB 218:

“Nothing in this section shall require any hospital or any person to participate in any service mentioned hereunder, nor shall any hospital or any person be liable for such refusal if such participation by said hospital or person shall infringe upon the religious, moral, ethical, and/or conscientious objection of such hospital or person.”

For the foregoing reasons, I urge you to vote NO, or in the alternative to defer SB 218 in committee.

Very truly yours,



Robert K. Matsumoto

Babies killed since Roe v. Wade :: Babies killed in Bucks County

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## ACLJ Wins Religious Discrimination Case Against California Health Agency Over 'Morning-After' Pill

5-27-2002

RIVERSIDE, Calif.--The American Center for Law and Justice, an international public interest law firm, announced today that a federal jury in California has found that Riverside County violated the constitutional rights of a nurse who was fired from her job after she refused to dispense medication known as a "morning-after" pill designed to end pregnancies. "This is a tremendous victory for our client and for all health care professionals who want to do their jobs without violating their consciences and religious beliefs," said Francis J. Manion, Senior Counsel of the ACLJ, which represented the nurse. "This verdict sends a very clear message that conscience rights of employees must be respected by employers everywhere." A U.S. District Court jury in Riverside today found that Riverside County violated the constitutional rights of former nurse Michelle Diaz. Following a four-day trial in federal court, the jury found the county was guilty on all three counts presented: violated her First Amendment rights of free speech; violated her rights of freedom of religion; and, failed to reasonably accommodate her religious beliefs. The jury also awarded damages totaling more than \$47,000 - including \$19,000 in damages for back pay, and more than \$28,000 in damages for emotional distress. The case began in December 2000 when the ACLJ filed suit in U.S. District Court in Riverside, California against the Riverside Neighborhood Health Center on behalf of Diaz, who worked as a Clinic Health Nurse at the center. The suit contended that Diaz was fired after she told her supervisor that her deeply held religious beliefs prevented her from distributing medication designed to end pregnancies because she believed she would be participating in an abortion. The suit contended that she was fired from her job in June 1999 shortly after she talked to the news media about the "morning-after" pill controversy and explained her position. Manion said the verdict is an important victory for free speech and religious freedom. "This is an important victory in what's become the new frontier of religious discrimination - employers who force employees to violate their consciences and religious beliefs by requiring them to dispense pregnancy ending drugs." The ACLJ was assisted in the trial by attorney Robert Tyler of the firm, Tyler, Dorsa & Eldridge in Temecula, CA. The American Center for Law and Justice is an international public interest law firm that specializes in constitutional law and pro-life issues. The ACLJ is headquartered in Virginia and its web site address is [www.aclj.org](http://www.aclj.org).

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February 23, 2011

To: Senate Judiciary Committee  
From: Margaret Scow  
Re: STRONGLY OPPOSE SB218, relating to Emergency Contraceptives

Dear Chair, Vice Chair & Members of the Senate Judiciary Committee,

**I strongly OPPOSE SB218, the Emergency Contraceptives Bill.** I do not believe that a man or a woman should play God by trying to prevent a pregnancy. The Bible clearly says that children are a gift from the Lord. Who are we to prevent the birth of any child – whether it is in the first trimester, the second trimester, the third trimester or the morning after? If God allows the woman to become pregnant than she will be blessed with a child. If she doesn't want the child, there are many people who would love to raise that child. Adoption is still a viable option.

### **Emergency Contraceptives is a form of Abortion**

Emergency Contraceptives is a form of Abortion. Let me explain:

Dr. Kahlenborn, who studied the effect of the morning after pill with two other physicians told , "no one knows for sure how the morning after pill works. Acting in an area of life and death in uncertainty", says Dr. Kahlenborn, "is reckless."

Medical evidence demonstrates that the pregnancy tests used cannot accurately detect a pregnancy at fertilization but only after implantation which takes more than a week after the new life is formed. A more stringent protocol known as the ovulation method seeks to determine if the patient has ovulated. However, medical evidence demonstrates considerable doubt that even these tests can detect a potential fertilization in time to prevent **an abortion caused by the morning after pill.**

Even if such tests could accurately determine that ovulation has not yet occurred another difficulty exists. A study by Dr. Chris Kahlenborn in 2003 found that the morning after pill only works to stop ovulation half of the time. Thus fertilization may occur even after the pill is given, and **an abortion would result since in addition to stopping ovulation the pills act to weaken the lining of the uterus making implantation unsustainable. Emergency Contraceptives are a form of abortion that is completely hidden and cannot be recorded by any department or institution.**

### **Serious Side Effects**

Although, this bill SB218 says that Emergency Contraceptives are approved by the FDA, the initiators of this bill failed to include all of the findings from the studies that were given to the FDA. More specifically, morning after pills have serious side effects and are especially dangerous for:

- 1) Women who are under 18 years of age
- 2) Women who do not want destructive health effects (such as heart disease, hypertension, stroke, suppressed libido, weight gain, cancer and sterility.)
- 3) Women who do not want breast cancer.

### **Women who are under 18 years of age**

**The studies that were submitted to the FDA did not include enough teenagers between the ages of 15-17. And no 14 year olds were included in these studies.** That is why the morning after pills are only non-prescription drugs for women 18 years and older. Women under 18 years old must get a doctor's prescription and there are still no studies to show the side effects for women under 18 years of age. **There is no FDA approval for women under 18 years of age.**

Studies on Plan B, one of the morning after pills had inadequate sampling of younger age groups. On December 16, 2003, there was a public advisory committee meeting with a panel of medical and scientific experts from outside the federal government. The members of the Nonprescription Drugs Advisory Committee and the Advisory Committee for Reproductive Health, met jointly to consider the safety and effectiveness data of nonprescription use of Plan B. **Although the joint committee recommended to FDA that this product be sold without a prescription, some members of the committee, including the Chair, raised questions concerning whether the actual use data were generalizable to the overall population of nonprescription users, chiefly because of inadequate sampling of younger age groups.**

Following the advisory committee meeting, FDA requested additional information from the sponsor pertaining to adolescent use. The sponsor submitted this additional information to FDA in support of their pending application to change Plan B from a prescription to an over-the-counter product. This additional information was extensive enough to qualify as a major amendment to the NDA. Under the terms of the Prescription Drug User Fee Act (PDUFA) performance goals, major amendments such as this may trigger a 90-day extension of the original PDUFA deadline.

Now FDA has completed its review of the supplemental application and concluded that the application could not be approved at this time because 1) adequate data were not provided to support a conclusion that young adolescent women can safely use Plan B for emergency contraception without the professional supervision of a licensed practitioner and 2) a proposal from the sponsor to change the requested indication to allow for marketing of Plan B as a prescription-only product for women under 16 years of age and a nonprescription product for women 16 years and older was incomplete and inadequate for a full review. Therefore, **FDA concluded that the application was not approvable.**

### **Women who do not want destructive health effects**

Please read the following article that just came out yesterday:

#### **Swiss Women Abandoning the Pill Due to Adverse Health Effects**

by Matthew Cullinan Hoffman

February 27, 2009 (LifeSiteNews.com) The use of the contraceptive pill is plummeting among women in Switzerland, according to a new study. The researchers found that women who had used the pill for more than 10 years were more likely to have experienced adverse health effects, such as depression, weight gain, and hair loss. The study also found that women who had used the pill for more than 10 years were more likely to have experienced a decrease in bone density and an increase in cholesterol levels. The researchers concluded that the adverse health effects of the pill are a significant concern for women who use it long-term.

Since we know about these dangers of the contraceptive pill, we should be against distributing the morning after pill, which consists of the same contents as the contraceptive pill but in extremely large doses.

### **Women who do not want Breast Cancer**

Emergency contraception, essentially, is a high dosage of the birth control pill. Most of the risk factors associated with breast cancer involve estrogen overexposure. Preven is the morning after pill that can cause breast cancer due to the high levels of estrogens contained in these pills. (There are also high levels of progestin in Preven. However, progestin has not been found to cause breast cancer).

In 1986, government scientists wrote a letter to the British journal Lancet and acknowledged that abortion is a cause of breast cancer. They wrote, "**Induced abortion before first term pregnancy increases the risk of breast cancer.**" (Lancet, 2/22/86, p. 436)

As of 2006, eight medical organizations recognize that abortion raises a woman's risk for breast cancer, independently of the risk of delaying the birth of a first child (a secondary effect that all experts already acknowledge). **An additional medical organization, the Association of American Physicians and Surgeons, issued a statement in 2003 calling on doctors to inform patients about a "highly plausible" relationship between abortion and breast cancer.** General counsel for that medical group wrote an article for its journal warning doctors that three women (two Americans, one Australian) successfully sued their abortion providers **for neglecting to disclose the risks of breast cancer and emotional harm**, although none of the women had developed the disease.

**There are two ways that abortion raises a woman's risk for breast cancer. The first way is not debated. It's called the "protective effect of childbearing," and scientists have acknowledged this effect for centuries.** The second way is debated, and scientists have studied this effect - known as the "independent link" - since 1957. It has to do with this question: Does an abortion leave a woman with more cancer-vulnerable breast tissue than she had before she became pregnant?

Medical experts have universally recognized since the publication of **a landmark Harvard study in 1970 that the earlier a woman has her first full term pregnancy (FFTP), the lower her risk for breast cancer is.** [MacMahon et al. (1970) Bulletin of the World Health Org 43:209-21]

Anti-cancer groups tell women that late FFTP (30 years of age or older) increases risk, but this is a half-truth. A late FFTP is at age 24 or older. Each year that a woman delays her FFTP, her risk climbs markedly. A subsequent Harvard study reported that for each one year delay of a first full term pregnancy, risk is elevated 3.5%. [Trichopoulos D, Hsieh Cc, MacMahon B, Lin T, et al. Age at Any Birth and Breast Cancer Risk. International J Cancer (1983) 31:701-704]

Nancy Krieger, PhD, wrote in 1989 that early FFTP had ~~been shown to be protective against the disease.~~ **against the disease. [Breast Cancer Research and Treatment, 13:205-223]**

### **What are Emergency Contraceptives? And what are the Side Effects?**

As stated earlier, Emergency Contraceptives is a high dosage of the birth control pill. It is recommended for use after sexual intercourse, over a period of 72 hours, to achieve the goal of preventing pregnancy. There are 3 different ingredients in the birth control pills: estrogen (alone), progesterone (alone) or both of these artificial steroids together. Again, these are the same steroids found in the typical birth control pill. Two of the most commonly used Emergency Contraceptive pills are Preven and Plan B.

### **Side Effects of Preven**

These are the side effects of Preven: Nausea, vomiting, menstrual changes, breast tenderness, headache, stomach pain, cramps, rash, or dizziness may occur. If these effects persist or worsen, notify your doctor. Tell your doctor immediately if you have any of these serious side effects: chest pain, coughing up blood, shortness of breath, pain in the groin or calf, chest pain, sudden severe headache,



one-sided weakness, vision problems, slurred speech, confusion, numbness, pain or tenderness in the stomach, lumps in the breast, yellowing of the skin or eyes.

Also, it says about Preven, if you develop any of the following warning signs while using (or shortly after using) Preven, call your doctor immediately: **Sharp chest pain, coughing up blood**, or sudden shortness of breath (indicates a **possible blood clot in the lung**) Pain in the calf (indicates a **possible blood clot in the leg**) Crushing chest pain or heaviness in the chest (indicates a **possible heart attack**), **sudden severe headache, weakness or numbness in an arm or leg, disturbances of vision or speech, dizziness, confusion**, or loss of consciousness (indicates a **possible stroke**), sudden partial or complete loss of vision (indicates a **possible blood clot in the eye**). **severe pain or tenderness in the stomach area** (indicates liver problems or ectopic pregnancy).

### **SIDE EFFECTS of Plan B**

These are the side effects of taking Plan B: **Nausea, vomiting, stomach pain, dizziness, breast tenderness, tiredness and weakness, headache, menstrual changes, and diarrhea** may occur. If any of these effects persist or worsen, notify your doctor. Tell your doctor immediately if any of these **serious side effects occur: low stomach/abdominal pain** If you notice other effects not listed above, contact your doctor or pharmacist.

### **More PRECAUTIONS**

Here are more precautions of taking Plan B: Tell your doctor your medical history, especially of: **diabetes, possible pregnancy, unusual vaginal bleeding, allergies** (especially to birth control pills). Tell your doctor if your normal menstrual period is late by at least 1 week. This medication is not recommended for use during pregnancy. Consult your doctor for more details. **This medication passes into breast milk.** While there have been no reports of harm to nursing infants, consult your doctor before breast-feeding.

**As I stated earlier, Emergency Contraceptives are a form of abortion and this form of abortion is completely hidden and cannot be recorded by any department or institution.**

I will conclude with these 2 Scriptures from the Word of God:

**Jeremiah 1:5 NKJV**

**"Before I formed you in the womb I knew you;**

**Before you were born I sanctified you;**

**I ordained you a prophet to the nations."**

**Psalms 139:13-16 KJV**

**For thou hast possessed my reins: thou hast covered me in my mother's womb.**

**I will praise thee; for I am fearfully and wonderfully made: marvellous are thy works; and that my soul knoweth right well.**

**My substance was not hid from thee, when I was made in secret, and curiously wrought in the lowest parts of the earth.**

**Thine eyes did see my substance, yet being imperfect; and in thy book all my members were written, which in continuance were fashioned, when as yet there was none of them.**

**I ask you to OPPOSE SB218, the Emergency Contraceptives Bill.**

Sincerely, *Margaret Scow*, Wife, Mother, Business Owner, Community Leader & Church Leader

## PRO-FAMILY HAWAII

P.O. Box 25158

Honolulu, Hawaii 96825

Phone and Fax: (808) 396-6569

Senate Judiciary  
Testimony on SB218  
Tues., March 1,  
Room 016 at 9a.m.

Testimony by Daniel P. McGivern, President

Pro-Family Hawaii, which I serve as president, asks the chair and committee members to vote NO on this bill, SB218, unanimously.

Two evils do not make one of them right. A horrible evil is rape or incest. A greater evil is killing an unborn, newly developing baby.

On one occasion, I heard Larry King interview the famous Dr. Billy Graham on abortion. King tried to trap Billy Graham by asking would he surely be in favor of abortion if it was the result of rape or incest. Dr. Graham waffled and caved in on the issue, allowing for such an abortion. Larry King Then, to his credit, came right back with the perfect question: How is that baby any less innocent?

That's the issue here. The real issue!

Sure, it's federal law that any person or institution does not have to be forced to participate in an abortion or any medical procedure if that person objects to it on moral, religious or ethical grounds.

What should we really be doing today? Gut it, take this bill and make<sup>n</sup> that all pharmacists in Hawaii do not have to, in any way, distribute or refer anyone for these so-called emergency contraceptives. Many have consciences which preclude being involved in abortion in any way. Reverse the law passed a couple of years ago.

We all know that one of the ways this drug works is to not allow a fertilized egg to implant iteself in the womb, and therefore, the baby dies. Fetus is a misnomer.

No pharmacist should have to violate his conscience, morals, ~~ethics~~ ethics or religious beliefs to practice in this state. For these reasons, please vote unanimously NO to SB218.

And remember, two evils do not make one of them right! So, it's far better to kill SB218. Transporting a mother-to-be to a secular, non-religious hospital, makes that transporting party guilty, too. Evil should never be cooperated with. We should

McGivern Testimony on SB218, Tues. 3/1, 016 at 9a.m.

stand up for what is right, from this day forward--and be brave enough to do so--like the image John Wayne projected on the screen.

Thank you on behalf of Pro-Family Hawaii.

**ROBERT K. MATSUMOTO**  
**Attorney at Law**  
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**Facsimile: (808) 585-7284**  
**Email: [rkmbengoshi@hawaii.rr.com](mailto:rkmbengoshi@hawaii.rr.com)**

February 24, 2011

Senator Clayton Hee  
State Capitol  
Honolulu, HI 96813

HAND DELIVERY

Re: SB 218  
Relating to Healthcare/Compassionate Care  
Date & Time of Hearing: February 24, 2011 @ 9:00 a.m.

Thank you for permitting to testify before the Senate Judiciary Committee on the above described bill.

Per the request of Senator Les Ihara, I enclose herewith information relating to the lawsuits filed by the American Center for Law and Justice (ACLJ) on behalf of various pharmacist and pharmacist owners regarding their refusal to dispense the "morning after pill".

While the pharmacy cases are centered in the State of Illinois, there is a California case in which the ACLJ represented a nurse (Michelle Diaz) who was fired from her job after telling her supervisors she could not distribute the morning after pill because her deeply held religious belief prevented her from doing so. Ms. Diaz believed she would be participating in an abortion since the pill was designed to end pregnancies. With the assistance of the ACLJ, the nurse was awarded a substantial jury verdict. I enclose herewith an excerpt of that case.

I also enclose herewith my written testimony, which I had "faxed" to your office yesterday, February 23, 2011 in case it was lost for whatever reason. If there is anything else you or the members of your committee require, please let me know. Once again, thank you for allowing me to testify this morning.

Very truly yours,



Robert K. Matsumoto

**ROBERT K. MATSUMOTO**  
Attorney at Law  
345 Queen St., Suite 701  
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No. of pages including this page: 3

DATE: February 23, 2011

TO: Senator Clayton Hee  
Chair, Senate Judiciary Committee

FACSIMILE NO. (808) 586-7334

RE: SB 218  
Date & Time of Hearing: February 24, 2011 @ 9:00 a.m.  
Conference Room 016

Dear Senator Hee:

I urge you and your committee members to vote NO, or in the alternative to defer SB 218 in committee for several reasons, i.e., the bill as presently drafted is unconstitutional because there is no exemption for those who have religious or conscientious objections to the dispensing of the "morning-after pill." With no such exemption, the First Amendment free speech and/or free exercise of religion rights will be transgressed. Moreover, because there may be a contract in existence between the present owners (Hawaii Medical Center) of the formerly known "St. Francis" Hospital with the religious order selling the said hospital, namely the Franciscan Sisters, to the effect that the present owners will not engage in any abortion services whatsoever, passage of SB 218 in its present form may force the current hospital to cease its operations. With the said contract in place, SB 218,

if enacted in its present form, may violate the “Contract clause” of the U.S. Constitution, Article I, §10: “No State shall...pass any...Law impairing the Obligation of Contracts.”

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Therefore, any current employee of the formerly known “St. Francis” hospital, who chooses to bring a lawsuit against the State of Hawaii and prevails were SB 218 enacted in its present form, would be awarded in all probability all of his/her lost just compensation and/or attorney’s fees because such a resident would have his/her civil rights abridged.

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As noted herein above, were SB 218 enacted in its present form, it may have the effect of shutting down the formerly known “St. Francis” Hospitals, in whole or in part, because of the contract provision which presumably obligates contractually the current operators NOT TO PERFORM ANY ABORTION

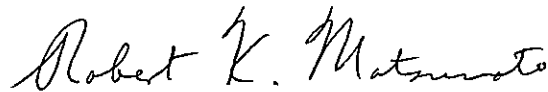
SERVICES. This contract provision is protected under the "Contract" clause of the U.S. Constitution, Article I, §10. It is quite evident, then, that the shut down, in whole or in part, of the formerly known "St. Francis" Hospitals (Liliha and West), may have dire economic consequences of not only those working in the 2 hospitals but also may have severe health consequences on those dependent on medical services provided there who would otherwise have received such care.

As a suggestion, the following amendment, or something similar to it should be included in SB 218:

"Nothing in this section shall require any hospital or any person to participate in any service mentioned hereunder, nor shall any hospital or any person be liable for such refusal if such participation by said hospital or person shall infringe upon the religious, moral, and/or conscientious objection of such hospital or person."

For the foregoing reasons, I urge you to vote NO, or in the alternative to defer SB 218 in committee.

Very truly yours,



Robert K. Matsumoto

Sending Confirm

Date : FEB-23-2011 WED 05:02PM  
Name : *Senator Clayton Kiew*  
Tel. :

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|--------------|---|---------------|
| Phone        | : | 5867334       |
| Pages        | : | 3/3           |
| Start Time   | : | 02-23 05:00PM |
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Thursday, February 24, 2011

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**A President is not above the law**

It's a power-grab of unprecedented proportions exceeding constitutional limits. President Obama has ordered the Department of Justice not to defend a law, duly passed by Congress and signed into law by then-President Clinton. Why? Simply because he doesn't like it.

Declare your membership with the ACLJ today by joining our Committee to Defend the Rule of Law Over an Imperial Presidency.

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## Litigation Report - Illinois

### ILLINOIS

#### ***Stephanie Adamson v. Superior Ambulance Serv. (U.S. District Court for the Northern District of Illinois):***

Stephanie Adamson is an EMT who was fired after she asked out of a call to transport a patient from a hospital to an abortion clinic for an elective procedure. The ACLJ filed suit under Title VII and the Illinois Health Care Right of Conscience Act. Discovery is complete. The defendants have an 11/25/06 deadline for filing a motion for summary judgment.

#### ***Melanie Antuma v. Walgreens (Illinois Circuit Court, Cook County):***

Antuma is a Walgreens pharmacist who was fired for refusing to fill a morning-after pill prescription. The ACLJ is pursuing an EEOC claim at this time.

#### ***Kelly Hubble v. Walgreens (Illinois Circuit Court, Madison County):***

Hubble is a Walgreens pharmacist who was fired for requesting accommodation of her beliefs against dispensing the morning-after pill. The ACLJ is suing under the Illinois Health Care Right of Conscience Act. Walgreens has moved to dismiss the case or, in the alternative, stay the case pending the federal court proceeding.

#### ***Menges, et al. v. Blagojevich (U.S. District Court for the Central District of Illinois):***

The ACLJ has made a federal court challenge to Illinois Governor Blagojevich's regulation mandating the dispensing of the morning-after pill. We argue that the regulation violates the federal Free Exercise Clause (it is neither neutral nor generally applicable) and conflicts with Title VII. The defendants have moved to dismiss both complaints, and we have filed a brief in opposition. Walgreens has been granted leave to intervene as a co-plaintiff. On September 6, 2006, the court denied the state's motion to dismiss and issued an opinion recognizing the theoretical validity of our causes of action and encouraging the state to amend the challenged regulation "in a manner consistent with individual constitutional rights."

**OUR  
EFFORTS****JOIN THE  
COMMITTEE**

***Menges, et al. v. Blagojevich II (Illinois Circuit Ct., Springfield)***: This is the state court version of the previous case. Here the ACLJ alleges that the Governor's regulation violates the Illinois Health Care Right of Conscience Act and the Illinois RFRA. The state has filed a motion to dismiss, and we have filed our opposition.

***John Menges v. Walgreens (Illinois Circuit Ct., Madison County)***: Menges is a Walgreens pharmacist who was fired for requesting accommodation of his beliefs against dispensing the morning-after pill. The ACLJ is suing under the Illinois Health Care Right of Conscience Act. Walgreens has moved to dismiss the case or, in the alternative, stay the case pending the federal court proceeding.

***Carol Muzzarelli v. Walgreens (Illinois Circuit Court, Madison County)***: Muzzarelli is a Walgreens pharmacist who was fired for requesting accommodation of her beliefs against dispensing the morning-after pill. We are suing under the Illinois Health Care Right of Conscience Act. Walgreens has moved to dismiss the case or, in the alternative, stay the case pending the federal court proceeding.

***Nead v. Eastern Illinois University (U.S. District Court for the Northern District of Illinois)***: A nurse was denied a full-time position after she stated in an interview that her religious beliefs would not permit her to dispense morning-after pills. The ACLJ sued under Title VII. Defendants filed a 12(b)(6) motion. The district court denied most of the defendants' motion, and we are beginning discovery.

***NOW v. Scheidler (U.S. District Court for the Northern District of Illinois)***: In this class-action RICO case brought by NOW and two abortion businesses against various pro-life activist individuals and organizations in federal court in Chicago, the ACLJ represents defendants Randall Terry, Operation Rescue, and Project Life. Having now fully prevailed at the Supreme Court of the United States, we have filed a post-appeal motion asking the Court to nullify an injunction against Randall Terry based upon a settlement he entered which exceeds the authority of the court under civil R.I.C.O.

***Richard Quayle v. Walgreens (Illinois Circuit Court, Madison County)***: Quayle is a Walgreens pharmacist who was fired for requesting accommodation of his beliefs against dispensing the morning-after pill. The ACLJ is suing under the Illinois Health Care Right of Conscience Act. Walgreens has moved to dismiss the case or, in the alternative, stay the case

pending the federal court proceeding.

***State of Illinois v. Bonnie Brown (Illinois Dept. of Financial and Professional Regs.)***: Brown is an Illinois pharmacist being prosecuted for “unprofessional conduct” for telling a Planned Parenthood nurse her store was “out of stock” of the morning-after pill. Brown’s supervisor had told her that this was an acceptable way to deal with her objection to dispensing the morning-after pill. The ACLJ is defending Brown in the pending administrative proceeding.

***VanderBleek v. Blagojevich (Illinois Court of Appeals)***: The ACLJ is representing pharmacy owners who are challenging the Illinois emergency contraception rule. They were denied standing in the trial court. We are awaiting an oral argument date from the court of appeals.

**September 8, West Frankfort, IL**: The ACLJ sent local officials an informational letter about protest activities at the funeral of Army Sgt. Matthew J. Vosbein.

**September 14, Skokie, IL**: The ACLJ sent local officials an informational letter about protest activities at the funeral of Staff Sgt. Robert J. Paul.

**November 9, Skokie, IL**: The ACLJ sent local officials an informational letter about protest activities at the funeral of Army Sgt. Kraig Foyteck.

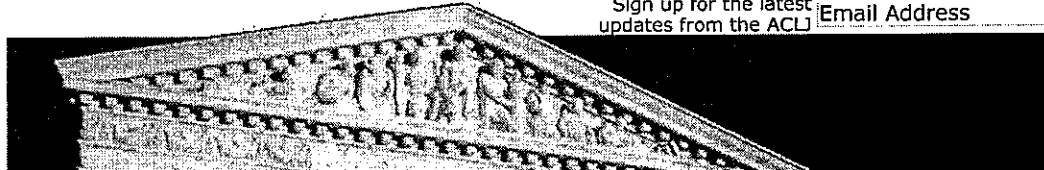
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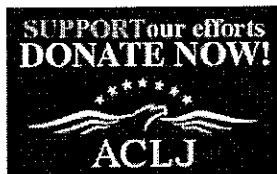
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## Jay Sekulow's Trial Notebook

### Notebook Entry

#### ACLJ Before Illinois Supreme Court on Behalf of Pro-Life Medical Professionals

Our ACLJ Senior Counsel Frank Manion was at the Illinois Supreme Court yesterday as co-counsel in two very important pro-life cases. Here is Frank's report:

#### *Morr-Fitz, et al. v. Blagojevich, et al.*

The ACLJ is co-counsel for two pro-life pharmacy owners in Illinois who have sued the Governor and other state officials over a 2005 administrative regulation that coerces pro-life pharmacists into dispensing Plan B, the so-called "morning-after pill." The lawsuit asks that the regulation, which provides for license revocation and steep fines for religiously-based refusals to dispense, be struck down as violative of the First Amendment, the Illinois Health Care Right of Conscience Act, and the Illinois Religious Freedom Restoration Act. The trial court dismissed the lawsuit and a divided Court of Appeals affirmed that dismissal on the grounds that the lawsuit was not "ripe" for adjudication because the pharmacists had not yet actually suffered any concrete harm from the regulation. The Illinois Supreme Court granted review of the case.

On March 18, 2008, the case was argued before the Illinois Supreme Court. The Court appeared to be receptive to our arguments both that the case was indeed ripe for consideration and, further, that the regulation was in apparent conflict with the state's Health Care Right of Conscience Act. A clear majority of the justices were openly skeptical of the arguments put forth by the state's attorney. We anticipate a ruling perhaps within the next 60 days.

**EFFORTS****JOIN THE  
COMMITTEE**

This case is just one of a number of related pieces of litigation that have made up the ACLJ's ongoing efforts to protect the conscience rights of pro-life health care professionals in Illinois and elsewhere. Directly related to the *Morr-Fitz* case, is the case of *Menges et al. v. Blagojevich*, where the ACLJ represented seven individual pharmacists suing over the same regulation at issue in *Morr-Fitz*. The U.S. District Court ruled that our clients had a valid claim that the regulation violated their Free Exercise rights because there was evidence that it intentionally targeted religious objectors. After that ruling, the state agreed to enter into an agreement that the regulation did not apply to individual pharmacists (as opposed to pharmacy owners) and that it could not be applied against our clients.

In *Vandersand v. Wal-Mart*, the U.S. District Court held that Illinois pharmacists are clearly covered by the Illinois Health Care Right of Conscience Act which prohibits discrimination against any person based on that person's refusal to participate in any form of health care contrary to his or her moral or religious convictions. In *Nead v. Bd. of Trustees*, the court upheld the right of a nurse to sue under Title VII after being denied a promotion based on her opposition to dispensing the morning-after pill. In *Moncivaiz v. DeKalb County*, the court upheld the claims of a part-time secretary in a county health department who refused to participate in abortion referrals. And in 2002, we obtained a jury verdict on behalf of a pro-life nurse who was fired by her county employer for refusing to participate in abortion related procedures (*Diaz v. Riverside County*).

Current litigation includes *Quayle, et al. v. Walgreens*, in which we are pursuing claims against Walgreens for firing four Illinois pharmacists and *Baretela v. Unity Health*, in which we represent a New York state social worker fired for refusing to participate in abortion referrals.

The ACLJ has been and remains at the forefront of a litigation to protect the religious freedom and conscience rights of health care professionals. No American should be forced to make a choice between their conscience and their livelihood.

Posted: 3/19/2008 12:00:00 PM

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## Religious Discrimination Case Over 'Morning-After' Pill

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*May 28 2002* - The American Center for Law and Justice, an international public interest law firm and pro life group, announced that a federal jury in California found that Riverside County violated the constitutional rights of a nurse fired from her job after refusing to dispense the "morning-after" pill.

"This is a tremendous victory for our client and for all health care professionals who want to do their jobs without violating their consciences and religious beliefs," said Francis J. Manion, Senior Counsel of the ACLJ, which represented the nurse. "This verdict sends a very clear message that conscience rights of employees must be respected by employers everywhere."

The U.S. District Court jury in Riverside found that Riverside County had violated the constitutional rights of former nurse Michelle Diaz after a four-day trial. The jury found the county was liable on all three counts presented: violating her First Amendment rights of free speech; violating her rights of freedom of religion; and failing to reasonably accommodate her religious beliefs. The jury awarded damages totaling more than \$47,000. This included \$19,000 in damages for back pay, and more than \$28,000 in damages for emotional distress.

The ACLJ filed suit in U.S. District Court in Riverside, California against the Riverside Neighborhood Health Center in December 2000 on behalf of Michelle Diaz. She worked as a Clinic Health Nurse at the center. The suit contended that Diaz was fired after telling her supervisor that her deeply held religious beliefs prevented her from distributing the medication, arguing that it was designed to end pregnancies and she believed that she would be participating in an abortion. The suit contended that she was subsequently fired from her job in June 1999 shortly after she talked to news media about the "morning-after" pill controversy and explained her position.

Manion said that the verdict was an important victory for free speech and religious freedom. "This is an important victory in what's become the new frontier of religious discrimination - employers who force employees to violate their consciences and religious beliefs by requiring them to dispense pregnancy ending drugs."

The ACLJ was assisted in the trial by attorney Robert Tyler of the firm, Tyler & Dorsa in Temecula, CA.

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