

**Testimony of James Bopp, Jr.¹
Before the House Judiciary Committee Regarding
Planned Parenthood’s Fetal Tissue Procurement and
Fetal Tissue Transplantation Practices.
September 9, 2015**

Thank you for the opportunity to testify regarding Planned Parenthood’s² fetal tissue procurement practices. My testimony today will focus on how Planned Parenthood’s current practice of procuring and selling human fetal tissue from induced abortion violates various federal laws when applicable, how existing laws and regulations are not sufficient to prevent these abuses and protect the unborn, and how continuing to allow this procurement and sale of human fetal tissue from induced abortion could legitimize the abortion industry.

Abuse is inevitable in a system that (1) treats the unborn as not a human person but as a creature who can be killed at will,³ and (2) permits the use of fetal tissue from an induced abortion to be used for the alleged benefit of another⁴ through a purely utilitarian calculation.⁵

¹Principal, The Bopp Law Firm, Terre Haute, IN. General Counsel for the National Right to Life Committee. See Summary of Resume of James Bopp, Jr. attached. The author wishes to acknowledge with appreciation the research and writing assistance of Courtney Turner, J.D., of The Bopp Law Firm.

²“Planned Parenthood” refers to the corporate enterprise, its affiliates, or its personnel, as the context or reference thereto make clear.

³“One lawyer who had taken part in prosecuting Nazis for war crimes explained how the German nation could have acted so savagely. ‘There is only one step to take. You may not think it possible to take it; but I assure you that men I thought decent men did take it. You have only to decide that one group of human beings have lost human rights.’” Dissent of Bopp and Burtchaell, Report of the Human Fetal Tissue Transplantation Research Panel, Volume 1, 64 (1988) (citation omitted) (“Panel Report”).

⁴Fetal tissue research, while highly controversial both medically and ethically, has gone on for decades. Some say that “fetal tissue (is) essential for medical research.” New York Times, Aug. 11, 2015. While others view the results as either “meager” or, when it produced benefits, “ethically-derived alternatives exist.” As a result, “medical science has moved beyond any need for fetal tissue in useful medical research.” Charlotte Lozier Institute, *History of Fetal Tissue Research and Transplants* (2015). Resolution of this debate is beyond the scope of this testimony.

⁵That the justification for use of fetal tissue from induced abortion for research is based solely on a “utilitarian calculation” was made abundantly clear by the National Institutes for

Additional regulations and oversight of the procurement of fetal tissue for research will only be marginally effective to prevent abuse because, once this utilitarian calculation is adopted, the ideological commitment to abortion, the eleemosynary impulse to gain some good from abortion, and the financial benefit to the abortion industry and researchers all create a powerful predisposition to overcome any obstacle to obtaining and using the tissue and to prevent the oversight needed to enforce any regulations. Only a ban on use of fetal tissue from induced abortion⁶ in research, or a ban on abortion itself, will prevent the inevitable abuse.

Introduction

One of the great tragedies of human nature is that, what history later judges to be gravely immoral, seems perfectly moral to those engaged in the action at the time.⁷ Human sacrifice, slavery, genocide, gladiatorial moral combat, and capital punishment for minor offenses are all examples of activities once thought to be moral, but are now considered gravely immoral.⁸ That is the position we are in today.

Current practices employed by Planned Parenthood and various tissue procurement companies, not only violate federal law when applicable, but also many ethical and moral principles. Furthermore, continuing to allow procurement and sale of human fetal tissue makes one complicit in the act of aborting a child.

I. Conversations with Planned Parenthood’s Employees and Various Tissue Procurement Companies Reveal Multiple Potential Violations of Federal Law.

Recorded conversations, released by the Center for Medical Progress (CMP), reveal many legal issues with Planned Parenthood’s procedures and practices regarding fetal tissue procurement. These procedures and practices of Planned Parenthood, and their tissue

Health’s 1988 Fetal Tissue Transplantation Research Panel, on which I served, when it justified funding the research “in light of the fact that abortion is legal and that the research in question is intended to achieve significant medical goals,” despite their recognition that “it is of moral relevance that human fetal tissue for research has been obtained from induce abortions.” Panel Report at 1.

⁶Fetal tissue for sources other than induced abortion, such as spontaneous abortions or from fetal placenta, is not inherently morally compromised nor is abuse inherent in it. So fetal tissue research from such sources with proper consent and other safeguards should be allowed.

⁷ See generally, James Bopp Jr., *Fetal Tissue Transplantation and Moral Complicity with Induced Abortion*, THE FETAL TISSUE ISSUE: MEDICAL AND ETHICAL ASPECTS 61, 68 (P. Cataldo & A. Moraczewski eds., 1994).

⁸ *Id.*

procurement partners,⁹ show that federal laws when applicable, have been and are continuing to be violated during the procurement and sale of human fetal tissue.

A. Planned Parenthood Receives Valuable Consideration for Providing Fetal Tissue.

Federal law prohibits any person “to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.”¹⁰ Human fetal tissue includes all “tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth.”¹¹ However, “valuable consideration does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control or storage of human fetal tissue.”¹²

In justifying use of fetal tissue in research, those supporting such research have emphasized the need for “safeguards” in a vain attempt to separate induced abortion from the procurement of fetal tissue for research. One such “safeguard” is to prohibit “payments and other forms of remuneration and compensation associated with the procurement of fetal tissue . . . except payments for reasonable expenses occasioned by the actual retrieval, storage, preparation, and transportation of the tissues.”¹³ The Fetal Tissue Transplantation Research Panel viewed it as “essential that there be no offer of financial incentives or personal gain to encourage abortion or donation of fetal tissue.”¹⁴

However, the federal law authorizing the funding of such research went beyond the strict limits recommended by the Panel. The “reasonable payments” authorized by federal law are quite broad, going beyond Planned Parenthood’s actual costs and clearly providing financial incentives

⁹ Tissue procurement partners include companies like StemExpress, LLC, Novogenix Laboratories LLC, and Advanced Bioscience Resources, Inc. (ABR).

¹⁰ 42 U.S.C. § 289g-2(a) (2006). In 1993, Congress adopted the NIH Revitalization Act, which authorizes the National Institutes of Health (“NIH”) to fund research on the transplantation of human fetal tissue. *Id.* at § 289g-1(a)(1). *See also* The National Organ Transplant Act, 42 U.S.C. § 274e(a) (“It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.”).

¹¹ 42 U.S.C. § 289g-1(g).

¹² *Id.* at § 289g-2(e)(3).

¹³ Panel Report at 1.

¹⁴ *Id.* at 2.

to abortion clinics. This promotes substantial abuse as evidenced by multiple conversations recorded by CMP. In fact, Planned Parenthood has chosen to accept prices that have no relationship to even the “reasonable payments” authorized by federal law, but are based on the market value per-specimen.

In a conversation with CMP, Dr. Mary Gatter, Planned Parenthood’s Medical Directors’ Council President and Medical Director of Planned Parenthood Pasadena & San Gabriel Valley, discussed compensation with a potential buyer. She treated the conversation like a negotiation and told the buyer, “Well, you know in negotiations the person who throws out the figure first is at a loss, right?”¹⁵ When a number was finally given, she stated that she would like “to find out what other affiliates in California are getting, and if they’re getting substantially more, then we can discuss it then.”¹⁶ She mentioned that while money was not the most important thing, “it has to be big enough that it’s worthwhile.”¹⁷ Finally, she stated that it had been years since she had talked about compensation and wanted to find out what others were getting. She told the buyer that “if this is in the ballpark, it’s fine, if it’s still low then we can bump it up. I want a Lamborghini.”¹⁸

These clips from the conversation show that Planned Parenthood affiliates are not checking their costs of procurement and setting a number based on these costs, but are instead trying to make money off of human fetal tissue. This was further affirmed by a conversation with Dr. Savita Ginde, Planned Parenthood of the Rocky Mountains Vice President and Medical Director, where she told the potential buyer that “a per-item thing works a little better, just because we can see how much we can get out of it.”¹⁹

While it is clear from these conversations that Planned Parenthood is charging based on the market value per-specimen, there is also evidence that they report their numbers in such a way as to not attract attention. Dr. Deborah Nucatola, Planned Parenthood’s Senior Medical Director of Medical Services, was recorded by CMP stating that the price range is “anywhere from \$30 to \$100,” but that the question you have to be able to answer is, “How can you justify

¹⁵ Center for Medical Progress, *Second Planned Parenthood Senior Executive Haggles Over Baby Parts Prices, Changes Abortion Methods*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Center for Medical Progress, *Planned Parenthood VP Says Fetuses May Come Out Intact, Agrees Payment Specific to Specimen*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

that . . . it just needs to be justifiable.²⁰” She further went on to say that an affiliate just has to “come to a number that looks like it is a reasonable number for the effort that is allotted on their part.”²¹

Cecile Richards, President of Planned Parenthood Federation of America, admits that affiliates receive varying reimbursement amounts for fetal tissue, but does not explain why.²² The “Why?” would be an important question for an investigating committee to ask Cecile Richards and other PPFA executives, along with a request that they produce their fetal tissue donation contracts.

Even more troublesome than the per-specimen market value pricing scheme is the idea that Planned Parenthood may receive more – a percentage of sales. Holly O’Donnell, a former procurement technician with StemExpress, said “whatever we could procure, [Planned Parenthood] would get a certain percentage.”²³ And StemExpress certainly believes that Planned Parenthood would financial benefit for doing business with them.

²⁰ Center for Medical Progress, *Planned Parenthood Uses Partial-Birth Abortions to Sell Baby Parts*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

²¹ *Id.*

²² Planned Parenthood, Letter to Congress (August 27, 2015).

²³ Center for Medical Progress, *Human Capital*, <http://www.centerformedicalprogress.org/human-capital/documentary-web-series/> (last visited Sept. 6, 2015).

Advancing BioMedical Research Together
 Join the StemExpress partner program that **fiscally rewards clinics** for contributing to the advancement of life-saving research — with a solution that is easy to incorporate into your clinic practices. StemExpress is a California-based biomedical company that provides human tissue products ranging from fetal to adult tissues and healthy to diseased samples to many of the leading research institutions in the world. Our IRB approved protocols and consents protect you as well as donor's privacy in accordance with HIPAA guidelines.

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 Cell-free fetal DNA circulates in maternal blood throughout pregnancy. Noninvasive, stem cell free methods to obtain fetal DNA are being used for earlier detection of genetic diseases as well as reproductive decision-making. Research pioneers who develop noninvasive diagnostic technologies rely on the blood samples that are collected from hospitals and clinics throughout the United States.

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 StemExpress promotes global biomedical research while also providing a **financial benefit to your clinic**. By partnering with StemExpress, not only are you offering a way for your clients to participate in the unique opportunity to facilitate life-saving research, but you will also be contributing to the **fiscal growth of your own clinic**. The stem cell rich blood and raw materials that are usually discarded during obstetrical procedures can, instead, be expedited through StemExpress to research laboratories with complete professionalism and source anonymity.



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While Planned Parenthood is allowed, under federal law, to charge for certain statutorily specified costs, a per-specimen price based on what the market will bear and how much they can get out of it without attracting attention suggests a clear violation of the spirit and letter of the law.

B. Planned Parenthood Alters Abortion Procedures to Obtain Suitable Fetal Tissue.

One of the concerns, if abortion clinics “could profit financially from procuring fetal tissue,” was that they would change their practices to facilitate procurement.²⁴ This would include performing an abortion “by an alternate method entailing greater risk to the pregnant women.”²⁵ As a result, when federal law was amended to allow federal funding of transplantation research, it prohibited a physician from altering the timing, method or procedures used to terminate a pregnancy solely for the purpose of obtaining tissue.²⁶

²⁴Panel Report at 9.

²⁵*Id.* at 14.

²⁶ 42 U.S.C. § 289g-1(b)(2)(A)(ii). This requirement applies only to NIH funded research on the transplantation of human fetal tissue which the NIH says it has not funded since 2007.

Regardless of whether this federal law applies to procurement of fetal tissue from Planned Parenthood, Planned Parenthood promises its patients that it will not alter the abortion procedure.²⁷ However, comments made by Planned Parenthood’s employees suggest that Planned Parenthood affiliates are willing to alter their abortion procedures in order to get suitable fetal tissue.

Dr. Deborah Nucatola said that knowing what someone wants “makes a huge difference,” because it make a physician aware of where they are putting their forceps.²⁸ She went on to say that she will not crush the part the tissue procurement company is looking for, she will “crush below, [I will] crush above, and I’m gonna see if I can get it all intact.”²⁹

But the change of a procedure is not just limited to where a doctor chooses to put his or her forceps, it goes as far as changing the position of the baby. Dr. Nucatola said that “with the calvarium, in general, some people will actually try to change the presentation so that it’s not vertex.”³⁰ She went on to say that “if you maintain enough of a dialogue with the person who’s actually doing the procedure, so they understand what the end-game is, there are little things, changes they can make in their technique to increase your success.”³¹

Another doctor, Dr. Gatter, requested a proposal with the buyer so that she could talk to the doctor performing the procedure to see if he would be willing to change to a “less crunchy technique to get more whole specimens.”³² Melissa Farrell, RN, BSN, CCRC, Director of Research for Planned Parenthood Gulf Coast, also discussed how some of her doctors that are also researchers, do abortions in such a way that “they can get the best specimens.”

²⁷For instance, the form for “Donation of blood and/or aborted pregnancy tissue for medical research, education, or treatment” of Planned Parenthood of Mar Monte provides that “I understand there will be no changes to how or when my abortion is done in order to get my blood or the tissue.” Center for Medical Progress, Letter to the Honorable John Boehner, Speaker, August 31, 2015, Attachment A.

²⁸ Center for Medical Progress, *Planned Parenthood Uses Partial-Birth Abortions to Sell Baby Parts*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Center for Medical Progress, *Second Planned Parenthood Senior Executive Haggles Over Baby Parts Prices, Changes Abortion Methods*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

Finally, Cecile Richards admits that Planned Parenthood physicians alter abortion procedures in order to “facilitate fetal tissue donation,”³³ which may not only violate federal law, but also violates PPFA’s own consent form. Planned Parenthood’s consent form states “I understand that there will be no changes to how or when my abortion is done in order to get my blood or the tissue.” Yet, despite the fact that this consent form comes from PPFA guidance policies, and Planned Parenthood clinic employees interviewed in the videos admit to using the form, Cecile Richards acknowledges that some physicians fail to consistently comply with this “no change” requirement.

The practice of altering the timing, method, or procedures used to terminate a pregnancy in order to get a better specimen potentially jeopardizes the health of the woman seeking the abortion. Abortion is an invasive medical procedure and the common protocols and methods are presumably chosen to reduce the risk to the woman’s health and safety. If doctors are willing to change a procedure in order to secure a better fetal tissue sample, and support their bottom line, they are departing from those medical standards, methods, and/or the timing that have been established to reduce the risk to women’s health and safety.

Not only is Planned Parenthood jeopardizing their patient’s health, it is also violating a commitment made to them. This brings to light some ethical issues with the company as a whole. Is Planned Parenthood really protecting women or are they trying to protect their bottom line by ensuring they can get the most money they can out of each abortion? Dr. Gatter said the following to the buyers in their recorded conversation:

[L]ittle bit of a problem, which may not be a big problem, if our usual technique is suction, at 10 to 12 weeks, and we switch to using an IPAS or something with less suction, and increase the odds that it will come out as an intact specimen, then we’re kind of violating the protocol that says to the patient, ‘We’re not doing anything different in our care of you.’ Now to me, that’s kind of a specious little argument and I wouldn’t object to asking Ian, who’s our surgeon who does the cases, to use an IPAS at that gestational age in order to increase the odds that he’s going to get an intact specimen, but I do need to throw it out there as a concern. Because the patient is signing something and we’re signing something saying that we’re not changing anything with the way we’re managing you, just because we agree to give tissue.³⁴

Despite the fact that Planned Parenthood has promised these patients that they will do nothing different if they donate their fetal tissue, they have no issue doing so.

³³Planned Parenthood, Letter to Congress 6 (August 27, 2015).

³⁴ Center for Medical Progress, *Second Planned Parenthood Senior Executive Haggles Over Baby Parts Prices, Changes Abortion Methods*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

C. Planned Parenthood Creates an Environment of Manipulation by Letting Those Who Stand to Benefit From Tissue Donation Obtain Consent from Women.

Federal and state law requires informed consent of the donor.³⁵ In order to give her consent, under federal law, a woman must sign a statement that says 1) the tissue is being donated for research purposes, 2) the donation is made without restriction as to who can receive it and 3) the woman has not been made aware of the identity of such individuals.³⁶

Even if Planned Parenthood consistently uses a consent form with all of the information required by federal law, there is still a substantial risk of manipulation of these women taking place. Throughout the CMP videos, it is clear that often times it is not Planned Parenthood getting these consents. Instead, it is the tissue procurement companies who stand to benefit from the sale of this tissue that talk women through the process of donating.

Coercion, manipulation, and deceit have been evidenced in CMP's interview with Holly O'Donnell, a former procurement technician with StemExpress. She states that there have been many times where consent was either not given or an individual was coerced to give their consent. She told CMP that "If there was a higher gestation, and the technicians needed it, they would just take what they needed. And these mothers don't know. And there's no way they would know."³⁷ She also told CMP that she was not comfortable telling a woman to kill her baby for money and that's what this company does."³⁸

Dr. Nucatola also addressed tissue procurement companies obtaining the consent. She told buyers working for CMP that,

³⁵ 42 U.S.C. § 289g-1(b). This requirement applies to NIH funded research on the transplantation of human fetal tissue. *See also* 45 C.F.R. § 46.208(b), 46.209(d) (requiring "mother and father" informed consent for NIH funded research involving "fetuses in utero" and "fetuses ex utero."). In addition, NIH funded research must comply with all applicable state laws. *See, i.e.*, 42 U.S.C. § 289g-1(e)(1); 45 C.F.R. § 46.210. All fifty states and the District of Columbia adopted the original Uniform Anatomical Gift Act which provides for consent to be given for any tissue donations from dead humans and fetuses. Furthermore, many states have enacted specific legislation regulating fetal research. *See generally* Congressional Research Service, *Federal and State Regulation of Research Involving Human Fetal Tissue* (October 9, 2001).

³⁶ 42 U.S.C. § 289g-1(b).

³⁷ Center for Medical Progress, *Human Capital*, <http://www.centerformedicalprogress.org/human-capital/documentary-web-series/> (last visited Sept. 6, 2015).

³⁸ *Id.*

It is a [Planned Parenthood] consent form for tissue donation. But the interesting thing, I'll tell you is, some people consent, some people don't. The funny thing is, the second day, when that patients actually comes back for their procedure, when they're waiting, what often happens is, Novogenix will talk to people who haven't consented, and they usually do, once someone has the time and energy to sit and have the conversation with them. So, she ends up picking up several more specimens, just from being there and speaking.³⁹

Permitting StemExpress employees to procure donor consent is even more reckless when one considers that it paid its employees a bonus for procuring fetal tissue. The employee received larger bonuses for certain types of fetal tissue, such as baby brains, hearts and lungs.

Effective 01/01/2013

Procurement Fees
 - Procurement Technicians are compensated at a rate of \$10.00 per hour plus a per tissue or blood bonus as outlined in the table below:

Tissue Bonus Structure			
# Specimens	Category A*	Category B*	Category C
1-10 Specimens	\$35/Tissue	\$15/Tissue	\$10/Blood
11-20 Specimens	\$45/Tissue	\$20/Tissue	\$15/Blood
21-30 Specimens	\$55/Tissue	\$25/Tissue	\$20/Blood
31-40 Specimens	\$65/Tissue	\$30/Tissue	\$25/Blood
41-50 Specimens	\$75/Tissue	\$35/Tissue	\$30/Blood

*Blood Samples may be obtained with these specimens in which case Category C bonus does not apply.

Please refer to the Procurement Specifications by Category dated 01/01/2013 for a detailed listing of Tissue

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³⁹ Center for Medical Progress, *Planned Parenthood Uses Partial-Birth Abortions to Sell Baby Parts*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

Procurable Specimens by Category
Effective 01/01/2013

Category A*	Category B*	Category C
Brain	Kidneys	Maternal Blood
Heart	Adrenal glands	Post Surgery Blood
Lungs	Ear	Umbilical Cord Blood
Liver	Decidua	Trisomy Blood
Thymus	Chorionic Villi	
Thyroid w/parathyroid	Umbilical Cord	
Liver	Placenta	
Spleen	Amniotic Fluid	
Large Intestine	Large Intestine	

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Furthermore, StemExpress told their employees every morning, in advance of procuring consents, which specimens had been ordered by buyers, such as “liver, thymus and skin (same donor) 16-20 weeks.” Thus, StemExpress employees know prior to trying to obtain the patient’s consent that they would be paid more in bonuses for that patient’s fetal body parts.

Liver, Thymus & Skin (Same donor)/16-20wks/RPMI /Wet Ice/ HIV,HBsAG,HCV/FedEx Priority Overnight/HARVARD (Cohen)
 1 SPEC=
 IMPORTANT: Use FedEx account #431793989. Note: THE LIVER AND THYMUS SHIP TO MICHAEL BREHM AT UMASS AND THE SKIN SHIPS TO DR. COHEN AT HARVARD. ALL TISSUE UNDER HARVARD'S FEDEX NUMBER.
 **Dena E. Cohen, PhD, Research Specialist Molten Group, HHMI/Harvard Dept of Stem Cell and Regenerative Biology, 7 Divinity Avenue-Fairchild 360, Cambridge, MA 02138, email-dcohen@mcb.harvard.edu, Phone: (617) 495-8556.

PROCURE ON WEDNESDAY ONLY- Pancreas/14wks/HEPES with antibiotic/Gel Pack/ HBSAG, HCV/FedEx Priority Overnight/UMASS (Dilonio)
 2 SPEC=
 IMPORTANT: Use gel packs that are NOT frozen but just chilled.
 IMPORTANT: Please document PO#0006147108 in the reference section.

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2:55 / 10:29

Brain 16-18wks/Complete but can be in pieccest/Use Client Supplied media/Wet

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If those who stand to benefit from a woman donating her aborted child’s fetal tissue are the ones convincing a woman and getting her consent, it is likely that at times coercion and manipulation are used in order to obtain that consent. Furthermore, it is likely that Planned Parenthood disclosed confidential medical information to the procurement employees, violating ethical standards.

Proponents of fetal tissue research consider it vital that “the decision to terminate a pregnancy and the procedures of abortion should be kept independent from the retrieval and use of fetal tissue.”⁴⁰ They view it as an essential “safeguard” that the “abortion decisions and procedures be kept separate from the considerations of fetal tissue procurement and use in research and therapy.”⁴¹ However, it is apparent that, under the pressure to obtain suitable fetal tissue, the abortion procedure is not at the service of fetal tissue procurement, not the woman.

As Dr. Nucatola explained: “For example, so I had 8 cases yesterday. And I know exactly what we needed, and I kinda looked at the list and said okay, this 17-weeker has 8 lams, and this

⁴⁰Panel Report at 1.

⁴¹*Id.* at 2.

one – so I knew which were the cases that were probably more likely to yield what we needed, and I made my decisions according to that too, so it’s worth having a huddle at the beginning of the day, and that’s what I do.” “If I know what they’re looking for, I’ll just keep it in the back of my mind, and try to at least keep that part intact.”⁴²

So rather than on a “search and destroy” mission for the mother, Planned Parenthood abortionist are on a “search and harvest” mission for their own profit.

⁴² Center for Medical Progress, *Planned Parenthood Uses Partial-Birth Abortions to Sell Baby Parts*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

D. Planned Parenthood May Perform Partial-Birth Abortions.

Partial-birth abortions are prohibited by federal law.⁴³ A partial-birth abortion occurs when the person performing the abortion vaginally delivers a living fetus (with either the entire head or the entire trunk of the baby being out of the body of the mother) for the purpose of performing an overt act to kill the partially delivered child and then he or she performs the overt act.⁴⁴

Planned Parenthood's doctors have tried to avoid any legal issues by claiming that it is their intent that matters: that when they begin an abortion procedure they do not intend to do a partial-birth abortion, so that if they then actually perform one, they are not liable. According to Dr. Nucatola:

Federal Abortion Ban is a law, and laws are up to interpretation. So there are some people who interpret it as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn't matter. Because I didn't intend to do this on Day 1 so I'm complying with the law.⁴⁵

While it is unclear from the recordings whether Planned Parenthood performs partial-birth abortions, the fact that their executives are trying to find ways to explain away the law is concerning. It is necessary to further investigate these claims to see if Planned Parenthood actually performs partial-birth abortions.

E. Planned Parenthood May Kill Infants Born Alive After an Induced Abortion to Harvest Fetal Tissue.

With the pressure to obtain suitable fetal tissue comes the pressure to deliver an intact and potentially alive child and there is already ample support among bioethicists for harvesting tissue from live born infants.⁴⁶ While it is not clear from the videos whether or not Planned Parenthood kills babies born alive after an induced abortion to harvest fetal tissue, this is an area that needs further investigation.

⁴³ 18 U.S.C. § 1531(a) (2006).

⁴⁴ *Id.* at § 1531(b)(1).

⁴⁵ Center for Medical Progress, *Planned Parenthood Uses Partial-Birth Abortions to Sell Baby Parts*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

⁴⁶ See Bopp and Burtchaell Dissent, Panel Report at 61-62.

The Born-Alive Infant Protection Act (BAIPA) defines an infant born alive after an induced abortion as “person” and “human being” for purposes of federal law.⁴⁷ BAIPA provides that “[T]he term ‘born alive’, with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.”⁴⁸

Comments made by employees of Planned Parenthood and tissue procurement employees raise credible concerns that infants are born alive after an induced abortion at Planned Parenthood and then killed to harvest their tissue. Dr. Ginde stated, “Sometimes, [if] someone delivers before we get to see them for a procedure, then they are intact, but that’s not what we go for.”⁴⁹ Additionally, Parrin Larton, a Procurement Manager for ABR, said that she has had women only be in the operating room for three minutes.⁵⁰ When she questioned the doctor, he said “Oh yeah. The fetus was already in the vaginal canal whenever we put her in the stirrups it just fell out.”⁵¹

Holly O’Donnell discussed a time where a doctor tapped the heart of a fetus and it started beating.⁵² She admitted that she did not know whether the fetus was technically alive or dead but that because the fetus was so intact, the doctor said they could procure a lot from it, including the brain.⁵³

⁴⁷ 1 U.S.C. § 8 (2006).

⁴⁸ *Id.* at § 8(b).

⁴⁹ Center for Medical Progress, *Planned Parenthood VP Says Fetuses May Come Out Intact, Agrees Payment Specific to Specimen*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

⁵⁰ Center for Medical Progress, *Planned Parenthood Baby Parts Vendor Advanced Bioscience Resources Pays Off Clinics, Intact Fetuses “Just Fell Out”*, <http://www.centerformedicalprogress.org/cmp/investigative-footage/> (last visited Sept. 6, 2015).

⁵¹ *Id.*

⁵² Center for Medical Progress, *Human Capital*, <http://www.centerformedicalprogress.org/human-capital/documentary-web-series/> (last visited Sept. 6, 2015).

⁵³ *Id.*

While it is evident from these recordings that children are born intact after an induced abortion, it is not clear if they were alive. Therefore, it is necessary to further investigate these instances where a child is born intact after an induced abortion.

II. Existing Laws and Regulations Are Not Sufficient to Protect the Unborn.

Even if induced abortion remains legal and fetal tissue transplantation proves effective, the act of using fetal tissue from an induced abortion is ethically compromised and should not be pursued.⁵⁴ Existing laws and regulations are not sufficient to protect the unborn for four reasons, using human fetal tissue 1) goes against the idea of bodily integrity, 2) is contrary to the principle that you should not kill one for the benefit of another, 3) may convince an already vulnerable woman to have an abortion, and 4) leads to pressure to harvest, and even create, more fetal tissue.

A. Protection of Bodily Integrity.

All human beings deserve respect for their bodily integrity. This is the idea of sanctity of life which says that every person is worthy of protection by society despite what value others in society deem that person to have⁵⁵ In the case of *Union Pacific Ry. Co. v. Botsford*, the Court proclaimed:

No right is more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.⁵⁶

This principle protects individuals from unconsented-to violations of their bodily integrity.⁵⁷

The issue at hand violates this principle of bodily integrity. The unborn child deserves the same level of societal protection as other human beings and should have the right to avoid un-consented to violations of his or her bodily integrity.

A person not only has the ability to consent or not consent to medical actions on their person, they also have the right to consent to or not consent to donation of their body tissue. It is clear that an unborn child has not consented to the donation of his or her tissue. Some argue that

⁵⁴ See generally James Bopp, Jr. *Ethical Limitations on the Use of Human Fetus in Research*, ETHICAL ISSUES IN RESEARCH 199, 204 (D. Cheney ed. 1993).

⁵⁵ *Id.* at 203.

⁵⁶ 141 U.S. 250, 251 (1891).

⁵⁷ See generally *Ethical Limitations* at 199, 203.

the parent is able to consent for the child as the child's proxy. However, others assert that a mother "planning the death of her unborn child has abdicated her protective role and [she] cannot speak on the child's behalf."⁵⁸

This is equivalent to the case of *Curran v. Bosze* in the Illinois Supreme Court.⁵⁹ In this case, a father of twins petitioned to court to order the twins to submit to bone marrow harvesting in order to help their half-brother who had leukemia.⁶⁰ The father offered the idea of consent in this case; however, the court ruled it inapplicable and said that "that a parent or guardian may give consent on behalf of a minor daughter or son for the child to donate bone marrow to a sibling, only when to do so would be in the minor's best interest."⁶¹ It follows that in order for a mother to give consent to donate the tissue of her unborn child, it would need to be in the best interest's of the fetus to do so. Therefore, it is impossible for a mother to give valid consent because the donation is not in the best interest's of the fetus.

Abortion and using human fetal tissue violates the principle of respecting a human's bodily integrity. Therefore, it is objectionable under traditional ethical standards.⁶² Furthermore, a mother cannot give consent to donation of fetal tissue due to the fact that she has abdicated her role and has instead become the agent of the child's death.

B. A Person May Not Kill One for the Benefit of Another.

Many advocates of fetal tissue research argue that the use of human fetal tissue is good for society as a whole and has the potential to help eliminate diseases; therefore, it is justified. However, this goes against an important principle of our society, that a person may not kill one for the benefit of another.⁶³

An old English case dealt with an issue very close to the one at hand. In *Regina v.*

⁵⁸ Fetal Tissue Transplant Research Fact Sheet, NCHLA 2 (1992).

⁵⁹ 566 N.E.2d 1319 (Ill. 1990).

⁶⁰ *Id.*

⁶¹ *Id.* at 1331.

⁶² *See generally Ethical Limitations* at 199, 205.

⁶³"The history of the abuse of human research subjects, from Tuskegee to Dachau to Willowbrook to Helsinki, cries out unambiguously that neither the goodwill of the researcher nor the prospective yield in beneficial knowledge has the slightest finger hold on any moral right to relieve one human's affliction by exploiting another." Dissent of Bopp and Burtchaell, Panel Report at 51.

Dudley, there were two men and a seventeen-year-old boy stranded on the boat.⁶⁴ They had been on the boat for twenty days without food (with the exception of two tins of turnips and a turtle).⁶⁵ Due to the horrid conditions and the fact that the boy was already weak and likely would not have survived to be rescued, Dudley killed the boy.⁶⁶ While Dudley did the killing, the other man, Stevens, consented to the murder, in order to eat the boy's flesh and drink his blood.⁶⁷ The two men were rescued four days later and upon their return were tried for the murder of the boy.⁶⁸ The court found that the grave threat to their life did not justify the killing of another nor did starvation and dehydration constitute a necessity defense for taking the life of the young boy.⁶⁹ Both men were convicted of murder.⁷⁰

This case leads to one of the foundations of our society, that killing someone or aiding in the killing of someone for the benefit of another is morally wrong and should be forbidden by law. No matter what progress could be made using human fetal tissue from induced abortions, it does not justify the killing of a child.⁷¹

C. The Use of Human Fetal Tissue for Research May Convince an Already Vulnerable Woman to Obtain an Abortion.

When Dr. Louis W. Sullivan, Secretary of Health and Human Services in 1989, was considering whether to implement the finding of the NIH Human Fetal Tissue Transplantation Panel, he decided to reject the Panel's suggestions and maintained the view that the moratorium against funding the research should be left in place.

He stated,

[P]ermitting the human fetal research at issue will increase the incidence of abortion across the country. I am particularly convinced by those who point out that most women arrive at the abortion decision after much soul searching and

⁶⁴ 15 Cox C.C. 624, 14 Q.B.D. 273 (1884).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Bopp and Burtchaell Dissent, Panel Report at 63-70

uncertainty. Providing the additional rationalization of directly advancing the cause of human therapeutics cannot help but tilt some already vulnerable women toward a decision to have an abortion."⁷²

The Human Tissue Transplantation Research Panel agreed that this was a legitimate danger: "knowledge of the possibility for using fetal tissue in research and transplantation might constitute motivation, reason, or incentive for a pregnant woman to have an abortion,"⁷³ but most of the Panel members were unconcerned.⁷⁴

If a woman is conflicted about whether or not to have an abortion, knowledge of the potential utility of the dead fetus has to the potential to tip the balance. Further, studies have shown that women consider outside needs and desires when considered whether or not to abort their child.⁷⁵ This research would add another level of pressure to an already vulnerable woman. The only way to avoid encouragement of abortions is to eliminate research using human fetal tissue from induced abortions.

D. The Use of Human Fetal Tissue for Research Increases the Pressure to Harvest, and Even Create, More Fetal Tissue.

Dr. Sullivan also noted that "if the research proved successful, there would be a demand for more fetal tissue."⁷⁶ This would lead to pressure to harvest and even create more fetal tissue. The effect of this demand for more tissue could take on many forms. First, it would create pressure to harvest more fetal tissue from current abortions. Second, it could increase the occurrence of women getting pregnant in order to donate. Third, it would increase the likelihood of the implementation of a black-market of baby selling.

First, the evidence in the CMP videos already demonstrate that the current need for suitable fetal tissue from induced abortion is already putting substantial strain on existing regulations of the practice, cause violations of law and abuse. There is documented instances of failure to obtain or to coerce the woman's consent and of alteration of the abortion procedure to facilitate fetal tissue procurement. This has lead to delivery of intact children, some with beating hearts, as the ultimate means to extract suitable fetal tissue, raising concerns that Planned

⁷² BIOMEDICAL POLITICS 235 (Kathi E. Hanna, ed., 1991). *See generally* Bopp and Burtchaell Dissent, Panel Report at 53-59.

⁷³Panel Report at 4.

⁷⁴Concurrence of John A. Robertson, Panel Report at 34-35.

⁷⁵ *See* Kathleen Nolan, *Genug ist Genug: A Fetus is Not A Kidney*, 18 HASTINGS CENTER REPORT 13-19 (1988).

⁷⁶ *Id.* at 236.

Parenthood is committing partial birth abortions or terminating the lives on infants born alive after an induced abortion. Finally, the pressure to obtain suitable fetal tissue has created a seller's market where Planned Parenthood is demanding top dollar from procurement companies.

Second, many argue that women will not consent to an abortion in order to donate their fetal tissue. However, if fetal tissue research becomes successful then wide-spread knowledge of it will lead to more abortions. It could encourage a woman to get an abortion in order to help others or to help with negative thoughts surrounding abortion. Further, if demand increases and human fetal tissue procurement continues to be a profitable industry,⁷⁷ it follows that people will start encouraging women to have an abortion in order to donate.⁷⁸ Even if a fee is not paid directly to the woman, there are other financial inducements for women to donate. Since abortion clinics receive payment for harvesting tissue, they may then indirectly transfer their profit to their patients by lowering the costs associated with abortion in order to encourage more women to have abortions.⁷⁹

Despite the many abortions in this country, few abortions actually yield usable human fetal tissue (whether from contamination or from the abortion procedure itself). The amount of usable tissue would not be able to fulfill the need if fetal tissue research proves successful. Then there would be millions of people that scientists would claim that fetal tissue research could help, but the supply would not meet demand and costs would skyrocket. This opens the door for a black-market of harvesting fetal tissue and baby-selling.

III. Legitimizing the Abortion Industry and the Powerful Bond it Creates.

The final issue with the use of aborted human fetal tissue is that if research proves to be successful, it will legitimize the abortion industry. This research would create a powerful bond between the abortion industry, the medical community, the recipients of transfers. This bond would occur due to the necessity of having fresh tissue. As a result, researchers will become an integral part in the abortion procedure (both in planning and in the act itself). This tie to research makes abortion seem compassionate and altruistic and has the potential to make more women choose an abortion. Furthermore, it could cause individuals, who currently oppose the practice,

⁷⁷See Bopp and Burtchaell Dissent, Panel Report at 59-61.

⁷⁸Indeed ten of the 17 members of the Fetal Tissue Transplantation Research Panel, who endorsed federal funding of the research, agreed that "if the situation changes so that the supply of fetal tissue from family planning abortions proves inadequate, the ban on donor designation of recipients and aborting for transplant purposes should be re-examined," since "when another person's life or health depends on it, the argument in favor of abortions to obtain tissue is much stronger than has generally been thought." Concurrence of Professor John A. Robertson, Panel Report at 38, 38 n.31.

⁷⁹ See generally *Fetal Tissue Transplantation and Moral Complicity* at 61, 75.

to choose abortions as an acceptable form of birth control. This bond between abortion providers and medical researchers cannot be tolerated.

Another implication of using human fetal tissue from induced abortions is the bond it would create between the federal government and abortion providers. First, the acceptance of benefits from an immoral act gives approval and encouragement of the act.⁸⁰ This is the equivalent of buying stolen goods.⁸¹ While an individual who ultimately receives the goods may not have committed the initial act of theft, they are complicit in the act when they choose to purchase a good they know was stolen.

With a question of legality or morality, the answer is still the same. If one accepts the benefits of the act, they are being complicit in the act itself. Second, “[o]nce the basic act of collaboration is accepted, attempts to regulate it to prevent the most egregious abuses may only involve the Administration more deeply and intricately into the system of collaboration.”⁸² In order to properly regulate the process and implement the amount of safeguards needed, as well as the investigation that will be needed to ensure providers are complying with the law, the government will become deeply entangled in the act itself. The only way to ensure this does not happen is to ban the use of human fetal tissue from induced abortions for research purposes or to ultimately outlaw abortion itself.

⁸⁰ Fetal Tissue Transplant Research Fact Sheet, NCHLA 2 (1992).

⁸¹ *Id.*

⁸² *Id.* at 3.

SUMMARY OF RESUME OF JAMES BOPP, JR

James Bopp, Jr., is an attorney and scholar whose law practice concentrates on the biomedical issues of abortion, foregoing and withdrawing life-sustaining medical treatment and assisted suicide, on not-for-profit corporate and tax law, on campaign finance and election law, and on federal court and United States Supreme Court practice.

Mr. Bopp is the principal of The Bopp Law Firm, P.C. of Terre Haute, IN. Since 1978, he has served as General Counsel for the National Right to Life Committee and, from 1984 to 2010, as President of the National Legal Center for the Medically Dependent & Disabled, a public interest law firm dedicated to end-of-life issues. From 1985 to 2010, he was also Editor-in-Chief of *Issues in Law & Medicine*, a peer-reviewed journal publishing scholarly articles on the medical, ethical and legal aspects of biomedical issues.

In 1987, Mr. Bopp was appointed by the United States Congress to the Biomedical Ethics Advisory Committee, which advised Congress on the ethical issues arising from delivery of health care and from biomedical and behavioral research. The Congressional Office of Technology Assessment rated Mr. Bopp as “highly qualified for service on the Committee” in law and ethics. In 1988, Mr. Bopp served on the Human Fetal Tissue Transplantation Research Panel for the National Institutes of Health. He also served on the President’s Committee on Mental Retardation from 1985-1987.

Mr. Bopp has published extensively on biomedical issues, including editing two books, *Human Life and Health Care Ethics* in 1985 and *Restoring the Right to Life: The Human Life Amendment* in 1984 on biomedical issues. In 1987, he served as Reviewer for U.S. Congress, Office of Technology Assessment, LIFE SUSTAINING TECHNOLOGIES AND THE ELDERLY (1987). In 1996, he served as Section Editor of one of the leading academic publications on biomedical issues, the *Encyclopedia of U.S. Biomedical Policy*. Throughout his career, he has authored or co-authored over 60 articles in books and journals on biomedical issues, publishing scholarly articles in the *New England Journal of Medicine*, the *Journal of the American Geriatrics Society*, *Law, Medicine & Health Care*, the *University of Pennsylvania Law Review*, the *American Journal of Law and Medicine*, the *Duquesne Law Review*, the *Stanford Law & Policy Review*, *The Hastings Center Report*, *First Things*, and the *National Law Journal*.

Mr. Bopp has chaired thirteen professional conferences on biomedical issues, including at Stanford University Medical School, University of Chicago and The Catholic University of America School of Law. He has also been invited to make scholarly presentations on biomedical issues to many professional organizations and universities, including the American Bar Association, Society for Health and Human Values, the American Society of Law & Medicine, the Center for Biomedical Ethics of the University of Minnesota, St. John’s University School of Law, Hastings College of Law, Georgetown University, Harvard School of Public Health, and

Harvard Law School.

Mr. Bopp has extensive involvement with the ethical and legal issues regarding use of fetal tissue. In 1988, Bopp served on the National Institutes of Health, Human Fetal Tissue Transplantation Research Panel. He published a dissent from the Panel's recommendation that NIH fund fetal tissue transplantation research from induced abortion, Report of the Human Fetal Tissue Transplantation Research Panel, Volume I, 45 (1988), and testified that the Advisory Committee to the Director of NIH should reject the Panel's recommendations. Report of the Advisory Committee to the Director, NIH, Human Fetal Tissue Transplantation Research, C12 (1988). In 1992, he also served on the Pope John Center Fetal Tissue Transplantation Task Force. Bopp has published two articles on the issue of use of fetal tissue in research. Bopp, *Fetal Tissue Transplantation and Complicity with Induced Abortion*, in THE FETAL TISSUE ISSUE: MEDICAL AND ETHICAL ASPECTS 61 (P. Cataldo & A. Moraczewski eds. 1994); Bopp, *Ethical Limitations on Use of the Human Fetus in Research*, in ETHICAL ISSUES IN RESEARCH 199 (D. Cheney ed. 1993).

Bopp's successful campaign finance and election law litigation practice includes over 140 campaign finance cases against federal laws and state laws in over 35 states. His extensive Supreme Court practice includes winning nine of 13 of his cases that the Court has decided on the merits.

Bopp has also achieved national recognition for his legal work. In 2013, the National Law Journal named Bopp one of the 100 Most Influential Lawyers in America. As a result of his successful litigation, the ABA Journal called Bopp: "The most prominent lawyer in the country in campaign finance and election law." The liberal Common Cause said that he is "One of the most powerful and influential leaders of corporate America's efforts to dismantle the post-Watergate campaign finance system." The Washington DC insider publication ROLL CALL describe Bopp as "The pre-eminent election law attorney for conservative groups. He has scored a string of victories challenging restrictions on political activity on First Amendment grounds." And in 2014, Reuters identified Bopp as one of an "elite cadre" of "lawyers (that) dominate the (U.S. Supreme Court) docket."

Bopp successfully argued the landmark United State Supreme Court cases of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which struck down restrictions on the speech of candidates for elected judicial office on First Amendment grounds; *Wisconsin Right to Life v. Federal Election Commission*, 126 S. Ct, 1016 (2006), which held that McCain-Feingold's "electioneering communication" corporate prohibition could be subject to as-applied challenges for genuine issue ads; *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), which struck down Vermont's mandatory candidate expenditure limits and candidate contribution limits; and *Federal Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), which held that McCain-Feingold's "electioneering communication" prohibition is unconstitutional as applied to grass roots lobbying ads. He was lead counsel for Citizens United in *Citizens United v. Federal Election Commission*,

558 U. S. 310 (2010), which struck down McCain-Feingold’s electioneering communication provision and prohibitions on corporations advocating the election or defeat of candidates and was lead counsel for the Republican National Committee in *McCutcheon v Federal Election Commission*, 134 S. Ct. 1434 (2014), which struck aggregate limits on the total amount that an individual may contribute to all political parties, PACs and federal candidates in an election cycle.

Because of his expertise in campaign finance and election law, he has also testified numerous times on campaign finance reform before the United States Senate Committee on Rules and Administration, before the United State House Committee on House Administration and before the Subcommittee on the Constitution of the United States House Judiciary Committee.

Bopp has published many leading law review articles on campaign finance law including Bopp, Elf & Milanovich, *Contribution after McCutcheon v. FEC*, 49 Val. L. Rev. __ (2015); Bopp, *The Perils of Merit Selection*, 46 INDIANA L. REV. 87 (2013); Bopp & Coleson, *Vote-Dilution Analysis in Bush v. Gore*, 23 ST. THOMAS L. REV. 461 (2011); Bopp, La Rue & Kosel, *The Game Changer: Citizens United’s Impact on Campaign Finance Law in General and Corporate Political Speech in Particular*, 9 FIRST AMEND. L. REV. 251 (2011); Bopp & Coleson, *Citizens United v. Federal Election Commission: “Precisely What WRTL Sought to Avoid,”* CATO SUPREME COURT REVIEW 29 (2010); Bopp & Woudenberg, *Extreme Facts, Extraordinary Case: The Sui Generis Recusal Test of Caperton v. Massey*, 60 Syracuse L. Rev. 307 (2010); Bopp. & Neeley, *How Not to Reform Judicial Elections: Davis, White, and the Future of Judicial Campaign Financing*, 86 Denver U. L. Rev. 195 (2008); Bopp, *Preserving Judicial Independence: Judicial Elections As the Antidote to Judicial Activism*, 6 FIRST AMEND. L. REV. 180 (2007); Bopp & Woudenberg, *To Speak or Not To Speak: Unconstitutional Regulation in The Wake of White*, 28 JUST. SYS. J. 329 (2007); Bopp & Lee, *So There Are Campaign Contribution Limits That Are Too Low*, 18 Stanford Law & Policy Rev. 266 (2007); Bopp & Coleson, *The First Amendment Is Still Not a Loophole: Examining McConnell’s Exception to Buckley’s General Rule Protecting Issue Advocacy*, 31 NORTHERN KENTUCKY LAW REV. 289 (2004); Bopp & Coleson, *The First Amendment Is Not A Loophole: Protecting Free Expression in the Election Campaign Context*, 28 UWLA LAW REV. 1 (1997).