



FALL 1998

# The Pro-Life Legal Defense Fund Newsletter

## PLLDF MEMBER LUKE STANTON SUCCESSFULLY DEFENDS SIDEWALK COUNSELOR

PLLDF member Luke Stanton recently successfully defended a sidewalk counselor who was charged with various offenses outside of an abortion clinic. On April 18, 1998, Sheryl Fitzpatrick was arrested outside Planned Parenthood's newest abortion clinic at 1055 Commonwealth Avenue in Boston. She was charged with disturbing the peace and obstructing a medical facility. The incident occurred while Sheryl was peacefully leafleting near the rear entrance of the clinic. The clinic is built like a modern fortress and is protected by



guards and electronic surveillance cameras. A clinic worker claimed that Sheryl had obstructed her as the clinic worker had attempted to escort a woman into the clinic for an abortion. Sheryl steadfastly maintained that she never obstructed anyone and that she had remained on public property at all times.

PLLDF member Luke Stanton represented Sheryl in the Brighton District Court and filed a number of motions with the court. One of the more significant motions requested the court to order the prosecutor to disclose the surveillance camera tape to determine if it would corroborate the story of the alleged victim.

After a series of delays, the prosecutor informed the court that the Commonwealth would not be going forward with the case. *Commonwealth v. Sheryl Fitzpatrick* was dismissed on June 23, 1998. The tape was never provided to Attorney Stanton. ☺

## UNPRECEDENTED ABORTION BUFFER-ZONE BILL NEARS PASSAGE

By Dwight G. Duncan<sup>1</sup>

A bill to create an unprecedented 25-foot-buffer-zone around abortion clinics throughout Massachusetts nearly passed the legislature before it ended its session on July 31. S-2252, "An Act Relative to Health Care Facilities" (elsewhere defined as places "where abortions are offered or performed"), passed the Senate on July 29 by a lopsided 26-13 vote. Fortunately, the House did not have time to take up the bill before adjournment. The debate in the Senate lasted nearly five hours, focusing on the free speech implications of the proposed legislation. Sen. Brian Joyce, in his maiden speech to the Senate, voiced his pro-life conviction and added, "While we must protect the public's safety, we must also zealously protect perhaps the most precious gift of democracy, the right to free speech... [T]his bill prohibits prayer, peaceful protesting, quiet assembly or the offer of counseling... With this legislation we are stepping down that slippery slope toward unevenly applying the force of law, toward allowing speech with which the majority agrees, and stifling the free expression of the minority."

Sen. Chip Clancy, who calls himself "pro-choice", spoke against the bill's passage because of the First Amendment ramifications.

Pro-life senators also voting against the bill were Sen. Marian Walsh, Sen. Bob Antonioni, Sen. Michael Knapik, and Sen. Stephen Lynch.

On July 9, the Massachusetts Joint Committee on Criminal Justice held a hearing on the buffer-zone bill. PLLDF members Professor Dwight G. Duncan and Attorney Luke Stanton, along with



Massachusetts' Citizens for Life Executive Director Maryclare Flynn, gave forceful testimony opposing the bill for its squelching of protest in the traditional public forum of the streets and sidewalks. PLLDF member, attorney Dan Avila, from the Massachusetts Catholic Conference, also spoke against the bill, as did Bill Cotter of Operation Rescue and several citizens from Worcester. These included a mother, carrying her newborn, who testified

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## PRESIDENT'S COLUMN

An inalienable right to life? From Jefferson's beautiful statement in the Declaration of Independence until January 22, 1973, it was not disputed. Yet, on that fateful day that will live in infamy, along with December 7, 1941, the foundation seemed to crumble like a house built on sand. First came abortion, then infanticide and now assisted suicide and next euthanasia. Of course, those proponents of the Kevorkian school of ethics will argue that it is strictly a private choice. The right to privacy, almost unheard of until *Roe v. Wade*, seems to be expanding more and more, at least in Washington each and every day.

Situation ethics is a euphemism for doing anything you want at any time, in any place and then defending your position under the right to privacy. What makes it incredible is the way that otherwise rational, educated, and intelligent people defend this

position. Their justification is, simply stated, "nobody cares and besides it's nobody's business".

This spring at a yet to be determined location, The Pro-Life Legal Defense Fund will sponsor an in-depth symposium on the issue of whether the right to life is inalienable and, if so, what the constitutional ramifications will be. We anticipate that constitutional scholars representing all views will take part in what promises to be a major event.

As president, I truly believe that this event will be an important contribution to all Americans in the next millennium. I tell you this now to alert you to what all the members of the Board of Directors believe will be an outstanding educational and hopefully life saving event. ☺

Philip D. Moran. Esq.

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## PLLDF PRESIDENT MORAN HONORED BY MASSACHUSETTS FAMILY INSTITUTE

The Massachusetts Family Institute presented PLLDF President Philip D. Moran with a Citizenship Award at its Annual Fundraising Banquet, honoring Moran for more than three decades of commitment and compassionate defense of the life of unborn children.



Moran helped found Massachusetts Citizens for Life in 1972 and, in the ensuing years, he served that organization as director, president and chairman. More recently, Moran served as president of the Sullivan society which is responsible for a

series of professional, moving and effective television ads encouraging women in the midst of crisis pregnancies to seek help for themselves and life for their pre-born children.

The award was given to Moran to recognize, in particular, his work as an attorney. Several years ago, Planned Parenthood of Massachusetts started a legal battle to challenge a state law requiring a pregnant minor to obtain parents' consent before having an abortion. In an effort to eliminate parents completely from a decision that involves their child in traumatic and risky circumstances, Planned Parenthood argued before the state's highest court that the law should be stricken as unconstitutional.

Initially, an attorney from a prestigious Boston firm agreed to represent Massachusetts Citizens for Life on a pro-bono basis. The other partners in the law firm, however, refused to allow their colleague to take the case. Moran volunteered to stand in the gap and then worked without monetary compensation for over two years to defend the law.

The Attorney General of the Commonwealth had a sworn duty to defend the law, notwithstanding the fact that his wife served on the board of trustees of an abortion provider affiliated with Planned Parenthood. Seemingly ignoring that duty, the office of the Attorney General appeared to collaborate with Planned Parenthood to invalidate the law in the courts.

It was Moran who was responsible for making a strong defense of the law before the Supreme Judicial Court. He spoke on behalf of all those parents--and there are many--who want to be involved, who want to love and support a pregnant child during a difficult time and to help her in making decisions that they all would live with for the rest of their lives.

In the end, the Court struck down part of the law so that the consent of only one parent, not two, is needed to procure an abortion for a minor in this state. Moran was able, however, to salvage the involvement of at least one parent from the power of judicial fiat, demonstrating what one courageous and dedicated attorney can do in standing against much of the legal establishment of Massachusetts. ☺

# WHY THE RIGHT TO LIFE IS INALIENABLE

By Daniel Avila, Esq.

According to Thomas Jefferson, "Nothing then is unchangeable but the inherent and unalienable rights of man."<sup>1</sup> Supporters of assisted suicide reject this claim.

Three publications, the Weekly Standard, the Chicago Tribune, and the Wall Street Journal, recently carried exchanges on assisted suicide that raised the inalienable rights question.<sup>2</sup> Wesley Smith wrote in the Weekly Standard that society should reject assisted suicide as it has rejected voluntary slavery and dueling. Clarke Forsythe of Americans United for Life claimed in his Chicago Tribune commentary that the "unalienable rights" reference in the Declaration of Independence "directly applies to the alienation of life itself by assisted suicide."

In his letter to the Wall Street Journal, Frederick E. Ellis of the Hemlock Society disagreed. He distinguished voluntary harm from involuntary harm and claimed that his group harbors no interest in violating the rights of the unwilling. Sarah Thompson took up this theme in the Weekly Standard, claiming that "The most basic property right enjoyed by each person is the ownership of his body and his life. That ownership gives the individual the absolute right to dispose of his body or his life any way he chooses, so long as he doesn't infringe on the rights of others." If no one else is hurt, then why not let individuals decide whether to accept, or reject, the state's protection of their life?

The founders of our country insisted that the right to life is inviolable and inalienable. We must re-acquaint ourselves with the history and reasoning behind this insistence. More importantly, given the secular mindset of those prepared to abandon the principles of the Declaration of Independence, we must re-articulate the inalienable rights case in culturally compelling terms. As true as the religious conviction is that life comes from

God and is not our own to waste, how do we respond to the reality that religious convictions per se lack political authority on our secularized society? Can we defend the doctrine of inalienability on secular grounds?

Few political philosophers of recent vintage have explored these questions in any depth, perhaps because so many have dismissed the term "inalienable" as being nothing more than a speech ornament. This interpretation ignores the historical record, of course, which documents the revolutionary impact of the inalienable rights idea not only in our own country, but around the world.

In particular, the American Revolution was in many respects a war over the meaning and scope of natural rights. Why did the Massachusetts colonists, indeed members of all the colonies, declare certain rights inalienable? One might find a possible explanation in the course of intellectual history, in which political philosophers debated the legitimacy of slavery and of absolute monarchical rule. Certain philosophers posited an unlimited natural freedom to consent to any form of outside control, even bondage and tyranny. These philosophers defended the African slave trade, for example, because the Africans sold to European slave traders were already enslaved by other Africans as a result of intertribal wars. Accordingly, this view held that Africans had a natural right to consent to arrangements by which the victors in war could enslave the vanquished and sell them to others. Members of this school of thought also defended absolute rule by monarchs because, in their view, such authority arose from an "original contract" between the Crown and the Crown's subjects. If individuals were free to give away their personal freedom, then an entire population was free to hand over its political freedom. This demonstrates the

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## PLLDF LAWYERS IN THE SCHOOLS

By Colbe C. Mazzarella

Abraham Lincoln said "[H]e who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions... He makes statutes and decisions possible or impossible to be executed." Attorneys make valuable contributions to an improved society not only by working to enact wise statutes and by pronouncing just decisions, but also by molding public opinion. PLLDF lawyers are making contributions in all three areas.

PLLDF attorneys have appeared during the past year at local high schools to pronounce and defend the pro-life position. PLLDF board member Robert W. Joyce made a presentation of pro-life law as part of a panel concerning reproductive choices at Newton North High School. Attorney Joyce, along with a Massachusetts Citizens for Life (MCFL) representative, Dr. Mildred F. Jefferson, countered the perspectives given by representatives from Planned Parenthood and the American Civil Liberties Union.

Recently, three members of the PLLDF board spoke at a Teen Life

Night at Catholic Memorial High School in West Roxbury. The event was sponsored by the West Roxbury Chapter of MCFL. An estimated 150 teenagers and 50 adults made it reportedly the biggest teen event in MCFL history.

PLLDF board member Robert W. Joyce coordinated and moderated the Teen Life Night event. PLLDF board member Luke Stanton spoke about the history of abortion law, and recounted his personal legal battles for life in the Massachusetts trial and appellate courts (including the Supreme Judicial Court). PLLDF board member Colbe Mazzarella, mother of six, participated in a panel on parental involvement. An enthusiastic crowd of high school students also heard short presentations by a physician and by a mother who told her personal abortion story.

PLLDF president Philip Moran encourages all pro-life attorneys to help mold public sentiment in the pro-life direction by seeking and accepting public speaking engagements. ☞

paradoxical relation between theories of unlimited natural rights and practices of absolute political oppression.<sup>3</sup>

The doctrine of inalienable rights arose in opposition. Inalienable rights proponents considered certain personal or political arrangements so irrational or harmful that no one should be bound to abide by them or to honor them. According to Samuel Adams, one of the authors of the Massachusetts Constitution, it would be:

[T]he greatest absurdity to suppose it is in the power of one or any other number of men at the entering of society, to renounce their essential natural rights, or the means of preserving those rights when the great end of civil government... is for the support, protection and defense of those very rights [including] life...<sup>4</sup>

By legalizing assisted suicide, public policy will no longer treat suicide and assistance with suicide as "malum in se", that is, inherently contrary to the public good and always harmful to the victim. In short, assisted suicide will cease to be "an absurdity". Instead, legalization will shield suicide assistance from criminal penalty based on the view that access to a lethal drug overdose in at least some cases benefits a suicidal individual and poses no overriding threat to society. Any absolute prohibition will yield therefore to exceptions somehow deemed "compassionate".

This result, of course, will plunge us into a maelstrom of contradictions. Imagine, for example, a judge deciding on similar grounds that a group called Compassion in Bondage may assist a person of color into voluntary slavery. Such a ruling would call down universal shock and condemnation. Then why do so many in our society endorse proposals for voluntary suicide just as antithetical to our founding aspirations? The reasons vary, and lie beyond the scope of this essay. The only points to make here are that an assisted-suicide regime will create profound philosophical and social contradictions, and our founders' awareness of similar contradictions in their own regime fueled a political revolution. Our task is to regain the founders' vision.

The founders were convinced that an invitation to alienate essential rights would beget the violation of rights, with the purported consent of the people serving as a pretense for continued encroachments by the ruling monarch. In addition, even though many Tory colonists were quite willing to cede to the Crown near-absolute control over their "inalienable" interests, this willingness to waive fundamental rights was not universal among all the colonists. Thus, royal rule was not a "victimless" political act. Taxation and military control infringed on the interests of those colonists who rejected the supposed "freedom" to consent to tyranny. These revolutionaries rejected the "right" to renounce their rights as really a devaluation of their political constituency, a wolf clothed in sheepskin.

The legalization of assisted suicide will likewise burden the unwilling. A law that deems a class of persons, such as those with terminal conditions, as eligible for suicide assistance will alter interests of all the persons within the class, not just those who desire and eventually obtain suicide assistance. By virtue of a policy mandate and irrespective of individual desires, the right to life of all the persons within the targeted class will devolve to an inferior, alienable status. No longer will the law respect each member of the class as an individual possessing an inalienable right to live.

Therefore, the legalization of suicide assistance for a category of persons inflicts a potent form of harm - devalued political status - on willing and unwilling persons alike. This belies the autonomy claims so prevalent in the campaigns to legalize assisted suicide. Every member of the eligible class will hold only a weaker claim or no claim at all, for example, against tyrannical notions of "normalcy" and "quality of life" policy making. All those affected will be left far less secure against both internal and external pressures to end life because their most fundamental right - the protection of life - would hang only by the thread of their own resolve to defend it. Moreover, an eligible person's commitment to resist the temptation to exercise any "suicide right" would not change the fact that the law has discounted his right to life by rendering it alienable.

From this secular perspective, the right to life is inalienable because no one has the right to devalue the inalienable rights of others to obtain the legal right to alienate his own rights. Because the political devaluation of others' rights is a necessary element of legalizing assisted suicide, decriminalization violates even the rule of autonomy cited above by the Hemlock Society members and their supporters.

An important task lies ahead. We must bring out of the shadows of history the wisdom and insights that spawned the doctrine of inalienable rights. We should apply our findings to the present debate over assisted suicide. We can do more than defend the status quo - we will make it come alive again. ∞

<sup>1</sup> Thomas Jefferson, Letter to Major John Cartwright, June 5, 1824.

<sup>2</sup> George A. Forsyth, "God-Given Rights Provide True Freedom", Letters to the Editor, Wall Street J., April 27, 1998, at A23, responding letters by Howard A. Kerten, Ananda Gupta, and Frederick E. Ellis published May 12, 1998, at A23; Clarke D. Forsythe, "There's No Right to Assisted Suicide", Commentary, Chicago Tribune, July 7, 1998, at 12, responding to a letter to the editor by Sheila Johnson, published July 18, 1998; Sarah Thompson, "The Right to Death", with response by Wesley J. Smith, Letters to the Editor, Weekly Standard, Aug. 3, 1998, at 6-7.

<sup>3</sup> For an excellent survey of this intellectual history, see Richard Tuck, *Natural Rights Theories: Their Origin and Development* (1979).

<sup>4</sup> Samuel Adams, "The Rights of the Colonists, in The Founders Constitution" 394, 395 (Philip B. Kurland & Ralph Lerner eds. 1987).

## **PRO-LIFE LAW STUDENTS LINK WITH PRO-LIFE ATTORNEYS**

Pro-Life Law Students (PLLS) is a new network linking law students with like-minded practicing attorneys for volunteer, work-study or fully-paid positions. It has student contacts at several local law schools and plans to expand in the New England area. PLLS (pronounced "pulse") helps law students to "monitor the vital signs" of our legal system on life-related issues. It seeks to catalyze pro-life action by getting attorneys and future attorneys to work together. This network will support participating students in their pro-life convictions whether they begin with life-and-death projects or general legal work.

**Attorneys wishing to see resumes contact: Colbe Mazzarella (617) 969-8383**  
or contact the following students directly:

### **Boston College Law School**

Dawn O'Brien, President  
B.C. Law for Life  
58 Lane Park, #2  
Brighton, MA 02135  
(617) 787-8271

### **Northeastern University School of Law**

Kendra Mansur  
395 Commonwealth Avenue  
Boston, MA 02215  
(617) 536-2586  
(423) 457-3828

### **Boston University School of Law**

Terence Noonan  
1150 Walnut St.  
Newton, MA 02161  
(617) 969-4518

### **Suffolk University Law School**

Kathleena R. Scarpato  
16 Hearthstone Circle  
Wayland, MA 01778  
(617) 924-9633  
(508) 653-8802

### **Harvard Law School**

Jay Webber  
Society for Law, Life & Religion  
Room G, Story Hall, 12 Everett St.  
Cambridge, MA 02138  
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### **Southern New England School of Law**

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(413) 783-7839

that while on her way into an abortion clinic she had been dissuaded by sidewalk counselors from having the abortion.

What is the constitutional problem with the buffer zone? For example, if someone wants to leaflet those entering an abortion clinic, he or she may be as polite, as deferential as anyone would want, conversational in tone and ultimately, persuasive in his or her message of opposition to abortion. The law would ban such activity around the clinic. Actually, any and all expressive activity as such runs afoul of the proposed Act, unless it is engaged in by exempted personnel. As such, it is overbroad, for it outlaws, indeed criminalizes, expressive activity on the public streets and sidewalks.

The reason for this unprecedented prohibition of expressive activity in the public forum is supposedly "public safety," pointing to the blockades of abortion clinics (which have not occurred here for at least six years), and the shooting by John Salvi. Of course, there is plenty of existing law on the books which prohibits such activity, both non-violent and violent. As to the blockades of abortion clinics, the existing statewide injunction with criminal penalties, together with the Act to protect access to such facilities, whose penalties are cumulative with the contempt penalties for violating the injunction, have proven more than sufficient to deter any such illegal conduct. There is also, of course, a federal law protecting

access to abortion clinics (FACE). The Salvi shootings were prohibited by any number of state and federal laws. Oddly, the buffer zone bill exempts persons entering or leaving abortion clinics and would exempt John Salvi himself from its coverage. Something is wrong with a law that forbids constitutionally protected expression while exempting even murderous activity, all under the guise of protecting public safety.

The factual predicate of blockading and shootings at abortion clinics are problems of the more or less distant past, not present. Thus, they fall short of the "clear and present danger" that would be required to restrict speech in the traditional public forum.

The Texas Supreme Court invalidated a buffer zone injunction because a "complete buffer zone burdened more speech than necessary by proscribing peaceful conduct." Our legislature should not be in the business of creating First-Amendment-free zones in the traditional public forum.

Doubtless, the buffer zone bill will be proposed again in the legislature. It is up to the citizens to demonstrate that it is not a public safety issue. ☞

<sup>1</sup> Associate Professor, Southern New England School of Law, North Dartmouth, MA

## HELP WANTED

**As a lawyer, you can help save lives! The Pro-Life Defense Fund is building a resource bank of lawyers who will consider assisting on a case that matches their legal skills. We need your legal talents!**

Please let us know of your interest. This is not a commitment, as we respect your good judgment on the many factors involved in a case selection. If you would consider joining a team to work on a case that fits your abilities, please contact our president, Philip D. Moran, at (978) 747-6085, or send the form below to Philip D. Moran, Esq., 265 Essex Street, Ste. 202, Salem, MA 01970.

Do you have expertise or interest in any of the following areas of law? Please check any that apply:

- Constitutional (for sidewalk counselors or for a direct, "right-to-life" attack on abortion)
- Criminal (for sidewalk counselors, protestors, women in crisis pregnancies, or infanticide)
- Medical Malpractice (for botched abortions or termination of life support)
- Licensing, Zoning (to oppose abortion clinics or support crisis pregnancy centers)
- Contracts, Employment, Real Estate, Tax (to assist crisis pregnancy centers or pro-life groups)
- Probate (designing living wills, health-care proxies, guardianship of fetus or incompetent person)
- Family, Immigration, Housing (for women in crisis pregnancies)
- Appeals (for any of the above areas of law)
- Legislation (for drafting and critiquing life-related legislation)
- Other (specify)

Additionally:

- Would you be interested in speaking to pro-life or student groups?
- Would you testify before a legislative committee on a pro-life issue?
- Would you consider hiring a pro-life law student on a paid, work-study, or volunteer basis?

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

## POSITION WANTED

Pro-Life law student seeking position with a pro-life attorney or law firm. Is interested in gaining legal experience in general legal work. Seeking fully-paid or work-study position. Also willing to work as a volunteer.

Contact point to obtain resume:  
Colbe Mazzarella (617) 969-8383

## **PRO-LIFE LAW VIDEO IN EVERY MASSACHUSETTS LAW SCHOOL LIBRARY**

Pro-Life Legal Defense Fund is proud to announce that its generous donors have made it possible to provide a set of six videotapes to every law school in Massachusetts. The videotapes record the six-week seminar series given at Boston College Law School last fall titled, *What Every Pro-Life Lawyer Should Know*. PLLDF has sent a set of videotapes to the dean of each law school as a donation to the law library for the use of students.

## HELP WANTED - LAW STUDENT

A summer work-study position with the Pro-Life Legal Defense Fund is available for an interested law student. Duties will include assisting members of the board of directors with legal and administrative projects. Past such projects have included the following: researching and drafting a Supreme Court certiorari petition; researching the status of the fetus under the Massachusetts Wrongful Death and Homicide statutes; writing a newsletter article on the legality of partial birth abortion in the light of the results of said research; editing newsletter articles; compiling and filing reports with the Secretary of State and with the state Attorney General's Office; updating a mailing list; and assisting in the organization of seminar series for pro-life lawyers, including drafting a syllabus, inviting guest speakers, reserving space, and promoting the series.

Interested law students should call or write to  
**Robert Joyce, Law Offices of Robert Joyce**  
1150 Walnut Street, Newton, MA 02161 (617) 969-8383

## What Every Pro-Life Lawyer Should Know

### *Set of Six Videotapes of Seminar Series*

Videotapes of our seminar series, *What every Pro-Life Lawyer Should Know*, are still available. They can be purchased using the order form below, or borrowed from the video library of Massachusetts Citizens for Life, (617) 242-4199. The set of six tapes (one for each session of the series) covers the following topics:

1. Overview of Life Issues - Current State of the Law, Prof. Dwight Duncan
2. History of Abortion Law Through Roe v. Wade, Philip D. Moran, Esq.
3. Political Spending and the First Amendment, Francis H. Fox, Esq., and Parameters of Civil Disobedience, Prof. Dwight Duncan
4. Parameters of the Right to Refuse Medical Treatment, Prof. Dwight Duncan
5. Physician-Assisted Suicide, Prof. Scott FitzGibbon and Prof. Jane L. Greenlaw
6. Public Funding of Abortion, Prof. Dwight Duncan, and Where Do We Go from Here?, (audience questions for panel)

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Please send me a set of six VHS videotapes of *What Every Pro-Life Lawyer Should Know*.  
I have enclosed my check for \$75.00 (includes shipping and handling).

Name \_\_\_\_\_

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We are encouraged by the success we have had thus far in establishing a database to keep in touch with our many friends and supporters.

However, if you are receiving more than one mailing or the mailing label needs a correction, please let us know by clipping this out and forwarding to us the correct information. THANKS!

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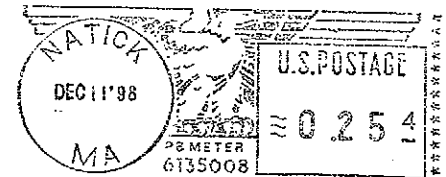
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Please consider making a contribution today. Your generosity allows The Pro-Life Legal Defense Fund to fulfill its mission to provide a trained and committed voice in the courtroom, so that you and others can continue Life-saving work. All contributions to The Pro-Life Legal Defense Fund are tax deductible.

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Enclosed is my contribution of \$ \_\_\_\_\_  
Please keep up your pro-life work.

I would like to help in other ways.

Please contact me. (Phone #: \_\_\_\_\_)

Mail any correspondence to:

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