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**Folder Title:** [Infanticide: Baby  
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Infant deliberately starved to death in Indiana

Last week a newborn child afflicted with Down's Syndrome and a digestive tract disorder (which could have been corrected by surgery) was, at the insistence of his own parents and with the approval of the Indiana Supreme Court, allowed to die of starvation in the very hospital in which he was born only a week earlier. Senators Helms Hatch, Hatfield and Congressman Hyde have written to you and Secretary Schweiker urging you to take action to insure the equal protection of our laws to handicapped children.

Although the Indiana case received a <sup>great deal</sup> lot of publicity, probably because of the involvement of the courts, the practice of quietly allowing "retarded" newborns to die of starvation or lack of treatment is apparently widespread and growing. Right-to-life groups raised this problem with Secretary Schweiker in a meeting with him in the Cabinet room in January and urged that some action be taken. Representatives of many of these groups are returning to the White House on April 27th to raise the issue again.

The Congressional letter to you points out that a statutory basis for action already exists under section 504 of the Rehabilitation Act of 1973 which prohibits any discrimination against the handicapped under programs or activities receiving federal financial assistance. They feel you need only to clarify existing regulations to expressly forbid the denial of any treatment which would be provided to normal babies in hospitals under similar circumstances. A strong case can be made that the refusal of nourishment and routine surgery to an infant because of his handicap is an unconscionable violation of the letter and spirit of the law. ~~and cannot be allowed~~

Given the basic issues involved in the case concerning the sanctity of human life and the intrinsic worth of each individual, the Administration should decide whether new regulations should be promulgated by HHS or an Executive Order issued ~~by the White House~~ as soon as possible.



FRAN WESTNER  
LEGISLATIVE ASSISTANT

CONGRESSMAN HENRY J. HYDE  
U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D. C. 20515

SIXTH DISTRICT  
ILLINOIS  
202-225-4561

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

April 20, 1982

President Ronald Reagan  
The White House  
Washington, D. C. 20500

Dear Mr. President:

Last week a tragedy, which many believe has quietly become commonplace in the United States, pushed its way into our national conscience via the front page of the WASHINGTON POST and other major media. A newborn child afflicted with Down's Syndrome and a digestive tract disorder (which could have been corrected by routine surgery) was, at the insistence of his own parents and with the approval of the Indiana Supreme Court, allowed to die of starvation in the very hospital in which he was born only a week earlier. This selective destruction of handicapped children is morally and ethically repugnant to our very way of life and cannot be tolerated in a society which cherishes the sanctity of human life and the intrinsic worth of each individual. The very idea that a court of law would sanction a parental demand to destroy a child which, for whatever reason, they did not want is an affront to the principles upon which our legal system was built and must be corrected immediately before this, too, becomes somehow acceptable.

This deliberate starvation of an infant is all the more abhorrent while there were other families eager to adopt and love this defenseless handicapped baby.

All of the academic controversies about when a human life begins and when that human life becomes a person pale into insignificance in the face of this act of eugenic infanticide. We believe the crucial factor here was that this baby was afflicted with Down's Syndrome, and hence his right to life -- his Constitutional right to equal protection of the laws -- was deemed forfeit. Such a doctrine is totally contrary to the traditional view that every human life has intrinsic worth. This example of the triumph of the Quality of Life Ethic at the expense of the Sanctity of Life Ethic has implications far beyond this case.

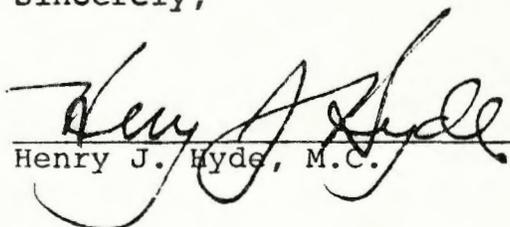
We implore you, Mr. President, to act now to insure the equal protection of our laws to handicapped children. The statutory basis for such action already exists under Section 504 of the Rehabilitation Act of 1973 which prohibits any discrimination against the handicapped

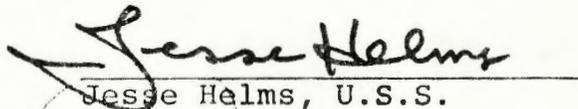
under programs or activities receiving federal financial assistance. You need only clarify existing regulations enforcing such a prohibition to expressly forbid the denial of any treatment which would be provided to normal babies in hospitals under similar circumstances. Certainly the refusal of nourishment and routine surgery to an infant because of his handicap is an unconscionable violation of the letter and spirit of the law and cannot be allowed to happen to other children like the Bloomington Baby.

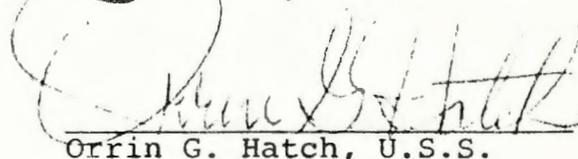
In closing, Mr. President, we cannot too strongly stress the importance of prompt action in this matter. Every day can mean the difference of life or death for a newborn Down's Syndrome or other handicapped baby.

Thank you, Mr. President, for your consideration of this request.

Sincerely,

  
Henry J. Hyde, M.C.

  
Jesse Helms, U.S.S.

  
Orrin G. Hatch, U.S.S.

  
Mark O. Hatfield, U.S.S.

NOTE: Identical letter sent to:

Honorable Richard S. Schweiker  
Secretary  
Department of Health and Human Services

OFFICE OF POLICY DEVELOPMENT STAFFING MEMORANDUM

DATE: 4/23/82 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: Bloomington Baby Case - Urgent Action

	ACTION	FYI		ACTION	FYI
HARPER	<input type="checkbox"/>	<input type="checkbox"/>	SMITH	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	UHLMANN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BANDOW	<input type="checkbox"/>	<input type="checkbox"/>	ADMINISTRATION	<input type="checkbox"/>	<input type="checkbox"/>
✓ BAUER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DRUG POLICY		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
FAIRBANKS	<input type="checkbox"/>	<input type="checkbox"/>	GRAY	<input type="checkbox"/>	<input type="checkbox"/>
FRANKUM	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
HEMEL	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
KASS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MALOLEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

EDWIN L. HARPER  
 ASSISTANT TO THE PRESIDENT  
 FOR POLICY DEVELOPMENT  
 (Y6515)

THE WHITE HOUSE

WASHINGTON

April 23, 1982

MEMORANDUM FOR EDWIN MEESE III

FROM:

*for* EDWIN L. HARPER *by E. Rock*

SUBJECT:

Bloomington Baby Case - Urgent Action

The attached memo from Gary Bauer suggests an opportunity for the president to take a position on an issue which I feel is morally appropriate. A draft Presidential statement is attached.

Recommendation:

That you recommend to the President that the proposed statement be issued in his name immediately.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_ SEE ME \_\_\_\_\_

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

April 22, 1982

FOR: MICHAEL UHLMANN  
FROM: GARY L. BAUER  
SUBJECT: Basis for Action in Bloomington Baby Case

In September 1973, Congress passed a law that prohibits discrimination on the basis of physical or mental handicap in every federally assisted program or activity in the country. The law is Section 504 of the Rehabilitation Act. A copy of that language is attached.

In May of 1974 the then Department of Health, Education and Welfare published a final rule implementing Section 504. Section 84 of that rule specifically states, "No qualified handicapped person shall on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance."

In January Of 1978 a rule was published applying the enforcement mechanism of Title VI of the Civil Rights Act of 1964 to Section 504 of the Rehabilitation Act of 1973. Among other things this would require recipients of federal funds to sign a statement that they will comply with Section 504.

In short, it appears that the Administration already has the power to stop infanticide in federally funded institutions.

I would point out that time is of the essence in this matter. If we do not act quickly, we may have to deal with the following:

1. Congressional hearings with Senators Hatch, Helms and Hatfield taking the lead in calling HHS to the Hill to explain our failure to enforce civil rights regulations.
2. A lawsuit will be filed by Americans United for Life Legal Defense Fund seeking a court order to make the Administration enforce Section 504.

Recommendation: I believe the attached statement is suitable for release by the President early next week to coincide with the meeting in Washington of the President's Commission on the Handicapped.

Attachment

## EMPLOYMENT UNDER FEDERAL CONTRACTS

SEC. 503. (a) Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 7(7). The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section.

(b) If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination.

## NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

SEC. 504. No otherwise qualified handicapped individual in the United States, as defined in section 7(7), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

## REMEDIES AND ATTORNEYS' FEES

SEC. 505. (a) (1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706 (f) through 706 (k) (42 U.S.C. 2000e-5 (f) through (k)), shall be available, with respect to

PROPOSED STATEMENT BY THE PRESIDENT

The recent death of a handicapped newborn baby in an Indiana hospital has shocked and saddened us all. Not the least of the ironies associated with this incident is that it occurred in this country, which has pioneered so many of the miraculous medical advances for the care of newborn infants.

The men and women of the health care professions struggle daily to save the lives of the smallest and most infirm of children. Even when they lose the battle, their work -- aiding the struggle of the newborn to live -- reaffirms our respect for the sanctity of human life.

Their heroic efforts make all the more poignant what happened in Indiana a few weeks ago. My purpose is not to second-guess the particular judgment of the parents, medical professionals, or courts who decided to withhold food and medical treatment in that case. My purpose, rather, is a larger one: to underscore the commitment of this nation and its laws to the protection of human life.

The central question before us is whether, in the United States of America, handicapped children will be allowed to die simply because they are less than perfect.

My answer is unequivocal: they will not.

As a first step in fulfilling that pledge, I have instructed Secretary Schweiker to notify health care providers of the applicability of Section 504 of the Rehabilitation Act of 1973 to the treatment of handicapped newborn infants. That law forbids recipients of federal funds to withhold from the handicapped any benefit or service which ordinarily would be provided to patients without handicaps.

In the most serious cases, those in which the question of life or death is involved, further protective measures may be necessary. Accordingly, I have instructed the Attorney General to report to me on the possible application of federal constitutional and statutory remedies in appropriate circumstances to prevent the taking of human life.

I salute those in the health care professions whose daily dedication to the care of the handicapped enobles the medical profession and reflects the highest ideals of our people.

I call upon All Americans to consider in their hearts whether the law should approve the taking of innocent human life simply because it is less than perfect, or whether, as I believe, it should seek equal protection for all.

★ U.S. GOVERNMENT PRINTING OFFICE: 1981 - 356-697

ATTENTION MR. GARY BAUER OFFICE OF POLICY DEVELOPMENT 212 OLD  
EXECUTIVE BLDG WASHINGTON DC

1534 EST  
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The White House  
Washington

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MS HONORABLE RONALD REAGAN, PRESIDENT

WHITE HOUSE DC

THE TRAGIC EVENTS LEADING TO THE DEATH OF INFANT DOE IN BLOOMINGTON INDIANA UNDER COLOR OF STATE LAW PROMPT US TO SEND THE FOLLOWING MESSAGE:

WE URGE THAT SECTION 504 OF THE REHABILITATION ACT OF 1973 IN REGARD TO HANDICAPPED PERSONS BE IMPLEMENTED WHICH SECTION PROHIBITS DISCRIMINATION AGAINST ANYONE "SOLELY BY REASON OF HANDICAP...UNDER

ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

WE FURTHER URGE THAT THE ATTORNEY GENERAL BE INSTRUCTED TO TAKE STEPS TO ENFORCE THE CIVIL RIGHTS ACT IN ORDER TO PROTECT THE CIVIL RIGHTS OF ALL AMERICANS.

YOUR PROMPT ACTION IN THIS MATTER HOPEFULLY CAN PRECLUDE MANDAMUS OR OTHER CIVIL ACTION ON BEHALF OF THIS CHILD AND OTHERS SIMILARLY SITUATED.

VERY TRULY YOURS,

PATRICK MONAGHAN GENERAL COUNSEL CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

U.S. GOVERNMENT PRINTING OFFICE: 1981 - 350-697

U.S. GOVERNMENT PRINTING OFFICE: 1981 - 350-697

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

April 30, 1982

FOR: EDWIN L. HARPER  
FROM: GARY L. BAUER *GLB*  
SUBJECT: Bloomington Baby -- Law Suit to be Filed  
Against Administration Monday

We received a telegram this morning addressed to the President in care of me from the Catholic League for Religious and Civil Rights. It is attached.

I talked with this group today and was told by their General Counsel that they are coming to Washington on Monday to sue HHS and Secretary Schweiker for failure to enforce the laws protecting the handicapped. I think the press could have a field day with a Catholic group suing the Administration for failure to protect a handicapped new-born.

The Catholic League made it clear that they would postpone or cancel the suit if the President makes a statement today or early Monday.

A second factor which has come up in the last 48 hours is a concerted attack by House Democrats charging us with being soft on protecting the rights of the handicapped. Over a dozen members of the House have used this week, which is the anniversary of the implementation of Section 504 of the Rehabilitation Act of 1973, to charge in the Congressional Record that we are "heartless." None of this criticism is related to the Bloomington case directly but rather to other aspects of handicapped rights. The Congressional criticism along with the law suit to be filed Monday will provide a nice opportunity for our critics to bring out the "compassion" theme again.

Recommendation: Since the suit is no longer a rumor but now a fact, I recommend we make one last effort to increase the visibility of the President by having a statement released from the White House today. In the alternative, we should get letters to the Attorney General and Secretary Schweiker today, and those letters should be released to the public on Monday.

cc: Roger Porter  
Michael Uhlmann

The White House  
Washington

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RMS HONORABLE RONALD REAGAN, PRESIDENT  
WHITE HOUSE DC

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ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

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YOUR PROMPT ACTION IN THIS MATTER HOPEFULLY CAN PRECLUDE MANDAMUS OR OTHER CIVIL ACTION ON BEHALF OF THIS CHILD AND OTHERS SIMILARLY SITUATED.

VERY TRULY YOURS,

PATRICK MONAGHAN GENERAL COUNSEL CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

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# Americans United for Life

## *AUL Legal Defense Fund*

230 North Michigan Avenue, Suite 915  
Chicago, IL 60601  
(312) 263-5029



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Law  
University of California  
1975 - 1977

April 29, 1982

Mr. Gary Baurer  
Old Executive Office Bldg.  
Room 212  
Washington, D.C. 20500

Dear Gary:

Enclosed is the compilation of articles on the case of "Infant Doe" in Bloomington. Also enclosed is a proof of one of our upcoming AUL Studies in Law and Medicine entitled "Infanticide" by Joseph Stanton. This piece provides a good background on infanticide and its history in contemporary society.

Please let me know if there is any other information you would like to have or any other way in which we can be of help to you.

Sincerely yours,

*Melinda Delahoyde*  
(Mrs.) Melinda Delahoyde,  
Director of Education,  
Americans United for Life

MD/clb

Encs.

# 13

ON THE ISSUE OF INFANTICIDE

by

Joseph R. Stanton, M.D.

Testimony given before the Connecticut state legislature November 13, 1981.

*An Educational Publication of  
Americans United for Life, Inc.*



**Law and Medicine Series**

***Americans United for Life, Inc.***

230 N. Michigan Ave., Suite 915

Chicago, Illinois 60601

(312) 263 - 5029

**A  
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# STUDIES IN LAW AND MEDICINE

## On The Issue Of Infanticide

by  
Joseph R. Stanton, M.D.

*Testimony given before the Connecticut state legislature  
November 13, 1981.*

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**No. 13**

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INSIDE COVER (2)

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# On The Issue Of Infanticide

by  
Joseph R. Stanton, M.D.

I appreciate the opportunity of appearing before you. In October, 1973, The Boston Herald headlined the story, "43 Defective Babies Allowed to Die". At that time, I wrote a short commentary, "Death With A Whimper in New Haven." In the intervening years, a substantial literature has developed. Indeed, there now exist books and chapters in books devoted to justifying infanticide [the killing of newborn infants by direct or indirect acts] as a medical practice. [When we discuss infanticide we are talking about euthanasia of newborn human beings.]

X At a large pediatric ethical conference in Sonoma, California in 1974, 17 of 20 participants agreed that the doctor could take direct action to end the life of the self-sustaining infant.<sup>(1)</sup> James Rachels in an article in the *New England Journal of Medicine* in early 1975 suggested that the A.M.A.'s ethical strictures against killing were outmoded, and suggested that there was no significant ethical difference between killing and letting die.<sup>(2)</sup>

X [In response to the excellent series of articles in *The Hartford Courant* on the practice of infanticide at Yale-New Haven Hospital,<sup>(3)</sup>] I wrote to Governor O'Neill and the Attorney General of Connecticut asking for a full and formal investigation. I stated then and I believe that infanticide is presently illegal in every one of the fifty states, and starving a child to death is also actionable under the child abuse law. I believe that legislative vigilance is necessary and proper to protect "unwanted" or congenitally defective human life at birth from so called "humane" killing by active or passive means.

In the marvelous introduction to the book, *Abortion and Social Justice*,<sup>(4)</sup> George Huntston Williams, the Hollis Professor of Divinity Emeritus at Harvard, quotes from a

\* Testimony given before the Connecticut state legislature November 13, 1981.

famous epistle from the second century written to a pagan lawyer, named Diognetus, by an unnamed Christian. After quoting extensively from that letter, Williams writes: "Among the marks of the Christians within Roman imperial society was their abhorrence of the then common practice of casting out offspring by abortion, by exposure, or by selling them into slavery."<sup>(5)</sup>

Today, we are witnessing the development of marvelous new technology where curative or ameliorative procedures have been carried out on fetuses in utero in order to assure that the post natal life of that individual will be healthier. Our neonatal care nurseries with the regionalization of neonatal care, and increasingly sophisticated technology daily save younger and younger premature babies. This is the positive side of medical care. The paradox to which I draw your earnest attention is that as our technology increases, a dark side of medicine, death, as a treatment option for afflicted newborns, arises.

I believe the threat of infanticide is part of the evil fruit of the Supreme Court abortion decisions, [Roe v. Doe <sup>(6)</sup> and Doe v. Bolton <sup>(7)</sup>]. Its logic is expressed as follows: If you can kill before birth a perfectly normal healthy fetus at 20, 22, or 24 weeks by abortion simply because it is unwanted, why should you protect a defective child at birth?

Joseph Fletcher writes: "It is reasonable to describe infanticide as post natal abortion....Furthermore, infanticide is passive. An infant cannot put an end to its own life. This makes it allocide not suicide. Its variables are only (1) with respect to the euthanasiasts' choice of direct or indirect means; and (2) whether it is done within the context of terminal illness or some other adverse state."<sup>(8)</sup>

John Fletcher, (no kin), writing in the *New England Journal of Medicine*, asks, "How should physicians and parents now understand their obligation to care for the *defective newborn* in the light of arguments for genetically indicated abortion after amniocentesis?"<sup>(9)</sup> — This John Fletcher believes you *can* tolerate the destruction of defective fetuses before

birth, but hold the line and defend the right to life of defective newborns after birth.

Dr. Milton Heifetz, speaking of those newborns who could not live without medical care and even with medical care would live only a "sub-human existence," writes: "We must evaluate what can coldly be termed the salvage value. This factor is vital in our decision making. What kind of child will result? Will life be one continuous form of agony? Will life be meaningful to any degree? What is meaningful and to whom?"<sup>(10)</sup> [Later, Heifetz explains that the newborn does not possess human qualities, but] is an organism with a potential for human qualities, qualities which are as yet nonexistent.<sup>(11)</sup>

He continues: "Is life at birth more significant than at the second, fourth or sixth month of pregnancy? It is not. True, it is closer to gaining the attributes of man, but, as yet, it has only the potential for those qualities. If this difference is true for the normal newborn, how much less significant is it for the newborn who doesn't even have this potential?"<sup>(12)</sup> You see, in Heifetz' words, the malignant dehumanization of the unwanted unborn child spreads to the born handicapped child.

The awesome fact is that infanticide has been in and out of human experience since the dawn of recorded history. The father in Roman law had the power to murder his children under the concept "patria potestas".<sup>(13)</sup> In Sparta, frail or defective infants were left exposed to the elements to die. The same practice was followed by the Eskimos. Infanticide and child abandonment were common in the industrial revolution in England. In China, the killing of female offspring or their abandonment was widespread as late as the 1800's.<sup>(14)</sup>

Let us examine some of the evidence for the advancement of the concept of infanticide in modern society.

You will recall the famous Kennedy Conference report in the early 1970's.<sup>(15)</sup> It caused widespread discussion at the time. A mongoloid child was born in John Hopkins hospital with a duodenal atresia — that is atrophy of a small segment

of the duodenum as it leaves the stomach. No food can get out of the stomach. Untreated, the child will die. Treatment is by what the newspapers called a twenty minute operation. You open the abdomen, take a loop of small bowel below the obstruction, and join it with a new opening to the stomach. You short circuit the obstruction and close the abdomen. In the Hopkins case, a decision was made not to treat only because the child had Downs Syndrome or Mongolism. A sign was placed on the baby's crib - "Do Not Feed". The child lived for fifteen days until it died.

Of the Hopkins case, Joseph Fletcher writes:

The Physicians in charge believed that direct euthanasia is wrong, that doing it indirectly, though undesirable, was morally tolerable. Hoping that the newborn would die of dehydration and starvation in three or four days, they wheeled it off into a corner where it lay dying for fifteen days, not three or four. Some form of *direct termination* would have been far more merciful as far as the infant,

nurses, parents and some of the physicians were concerned. In that case, indirect was morally worse than direct - if, as I and most of us would content, the good and the right are determined by human well-being. Indirect euthanasia did no good at all in that case, but lots of evil."<sup>(16)</sup>

The identical handicap has occurred in other mongoloid babies in American hospitals, and they too have been allowed to die.

In "The Way We Die." Dempsey writes as follows:

Doctors don't talk much about infanticide, and, for obvious reasons, hospitals don't specify euthanasia as the cause of death. Thus, no one knows how many deformed, brain-damaged and poor-risk "preemies" who might be coaxed into life are allowed to die, or are chloroformed outright.

and further:

When almost everyone was born at home, infanticide was rarer. But the hospital, by its very sterility, gives a curious sanction to such deaths. It speaks for society. When a parent does not want the damaged child, or when a physician decides that the world needs no more monsters, the hospital staff not infrequently omits the usual feeding orders. Starvation is seen as more merciful than outright suffocation. Yet it takes a long time for even a newborn baby to starve.

A few years ago, in a Chicago hospital, such a mongoloid was rejected by its parents; although physicians could have saved his life, parental consent would have been necessary for the operation that would make it possible for him to ingest milk. Instead, the baby was placed in a side room where its cries would not offend others. Nurses, torn by this decision, went in from time to time to hold and rock the infant as they might any normal baby. They did this for the eleven days it took the child to die.<sup>(17)</sup>

Newborn Siamese twins were recently transferred by court order from Lakeview Hospital in Danville, Illinois to the Children's Memorial Hospital in Chicago. At birth, the doctor instructed the nurse not to resuscitate them. The babies surprised everyone with the vigor of their fight for life. In the chart was entered the note, "Do not feed in accordance with the parents' wishes."<sup>(18)</sup>

Professor John A. Robertson has recently analyzed this specific case and the law in The Hastings Center Report, October, 1981<sup>(19)</sup>. He writes:

In any event, a custom among physicians to violate a criminal law does not in and of itself modify the law. Physician custom does determine the standard of care in malpractice cases because the law sets no other standard of practice as it does here with the criminal laws against homicide and child abuse. Neither physician custom nor previous non-prosecution can override those

laws. The Danville case has now alerted everyone that "the law hath slept but is not dead," and can awake alive and kicking if they choose to ignore the legal rights of the handicapped infant.

Reporting on a case from England, August 8th of this year, the *Chicago Tribune* headlined an article, "Court condemns baby girl to live." Overruling the decision of parents to allow their Downs syndrome daughter to starve to death, Lord Justice Tempelman said, "We are asked to condemn her to life because we cannot be certain we should condemn her to death."<sup>(20)</sup>

Dr. Anthony Shaw probably fired the opening gun for American acceptance of infanticide by neglect in the non-treatment of defective newborns in the article, "Doctor, Do We Have a Choice?" in the *New York Times* Sunday Magazine in 1972.<sup>(21)</sup> [Death, as an option in the treatment of the newborn, was brought out in the open in companion pieces in the *New England Journal of Medicine* written by Dr. Shaw,<sup>(22)</sup> and Doctors Raymond S. Duff and A.G.M. Campbell.<sup>(23)</sup> Although infanticide is presently forbidden by the laws of every one of the 50 states, Duff and Campbell suggest that these laws be changed.<sup>(24)</sup>

This is but a partial citation of an increasing body of material, medical reports and books, and symposia where helpful, life saving treatment is withheld because a quality of life judgement, a social judgement of the worth of a newborn or a strain on parental bonds becomes the determinant factor.

Listen now to Professor Victor G. Rosenblum of Northwestern University Law School. Incidentally, Professor Rosenblum has a son, Josh, who is retarded. Rosenblum writes:

Modern advocacy of infanticide betrays an hostility toward and fear of the disabled. When the defective newborn is left to die, something vital dies within us all, our sense of justice, our self respect, our mission as human beings. When that child is left to die, we become idolators of the plastic, the cosmetic, the illusory and the

elitist. When, on the other hand, we help that child to live we affirm our capacity to love, our respect for human differences, our dedication to the democratic values of heterogeneity as instruments of creative achievement.<sup>(25)</sup>

In response to the question, "How shall we respond to malformed babies?" Jean Rostand, the French biologist, rather prophetically wrote:

Above all, I believe a terrible precedent would be established if we agree that life could be allowed to end because it was not worth preserving, since the notion of biological unworthiness, even if carefully circumscribed at first, would soon become broader and less precise. After first eliminating what was no longer human, the next step would be to eliminate what was not significantly human, and, finally, nothing would be spared except what fitted a certain level of humanity.<sup>(26)</sup>

He further comments, "I would almost measure society's degree of civilization by the amount of effort and vigilance it imposes on itself out of pure respect for life."<sup>(27)</sup>

In considering extensions of the mentality that would tolerate infanticide, Rostand further writes:

If eliminating 'monsters' became common practice, lesser defects would come to be considered monstrous. There is only one step from suppression of the horrible to suppression of the undesirable. If it became customary to thin out the ranks of people over ninety, those in their eighties would begin to seem very decrepit, and then those in their seventies. Little by little the collective mentality, the social outlook, would be altered. Any physical or mental impairment would diminish the right to live. Each passing year, each stress, each illness would be felt as an exclusion; the sadness of aging and deteriorating would be combined with a kind of shame at still being there."<sup>(28)</sup>

Such may yet become the pressures on the aged and infirm if the impulse toward tolerating infanticide is not arrested.

The Down's syndrome children are but one group of the impaired. What about others without mental impairment? In the United States and in England, as the technology of helping children born with myelomeningocele through reparative surgery improves, there is a move to withhold surgery from some of these children in the name of the quality of their lives.

The *Lancet* is the leading British medical journal. An editorial, November 24, 1979, written by a pediatric surgeon was titled, "Nontreatment of Defective Newborn Babies."<sup>(29)</sup>

Early in the editorial, he writes: "Even with the splendid words of Pope John Paul II, in his sermon in Phoenix Park on the sacredness of human life ringing in our ears, God (I am a Christian) asks us to be merciful. This does not include forcing a half man to eke out a miserable existence when it is our power to end it."<sup>(30)</sup> Incredibly, the half man he talks about is a newborn paralyzed from the waist down. He then details how a colleague "let slip the information that it takes at least 30 cc. of intravenous air to produce fatal embolus."<sup>(31)</sup> He calls the newborn only "potential," and states that "potential is fulfilled by the capital of love that parents invest in him after birth."<sup>(32)</sup>

Who does he propose for subjects of "treatment" by non-treatment? "Among treatable infants are those with severe spina bifida and hydrocephalus, babies with more severe chromosome disorders, and even straight-forward Downs Syndrome, and babies with rubella syndrome."<sup>(33)</sup>

What is this new treatment? "I offer the baby careful and loving nursing, water sufficient to satisfy thirst, and increasing doses of sedative."<sup>(34)</sup> The sedative is chloral hydrate. What happens with this treatment? Babies starve to death, or become so weak and sedated they die of dehydration.

Here is how Jerome Lejeune, <sup>(35)</sup> the discoverer of the genetic defect Trisomy 21, or Downs Syndrome, responds to the *Lancet* proposal for destroying the handicapped child.

In your introduction to an unsigned paper on Non-treatment of Defective Newborn Babies (Nov. 24, p. 1123) you state that "the editorial view was that the balance of benefit lay in anonymity." Balance of benefit to whom? To the anonymous children's physician nursing to death babies with Trisomy 21 and mourning them so tactfully thereafter? Or to the hospital in which such a mortuary facility is replacing a treatment ward? Or to you, Sir, indulging yourself in an anti-medicine scoop without revealing its source? Or to all three, because infanticide is still a criminal offense in civilised countries?

The whole history of medicine is at hand to answer any unknown death-doctor. Those who delivered humanity from plague and rabies were not those who burned the plague-stricken alive in their houses or suffocated rabid patients between two mattresses. Health by death is a desperate mockery of medicine.

Victory against Down syndrome - i.e., curing children of the ill-effect of their genic overdoes - may not be too far off, if only the disease is attacked, not the babies. The length of the road to be covered before such an achievement cannot be predicted, but at least wounded parents have the right to know that life-doctors still exist and that we will never give up.<sup>(36)</sup>

Now all of the push for infanticide is coming under the aegis of the quality of life and cost control. We should not really be surprised. Eleven years ago, a frank editorial in a major American medical journal said we would reach this point. The only real surprise is that we have reached it so quickly. The editorial, entitled "A New Ethic for Medicine and Society" speaks of medicine's changing role in society "as the problems of birth control and birth selection are extended inevitable to death selection and death control whether by the individual or by society."<sup>(37)</sup>

Ladies and Gentlemen, infanticide and the poisoning of "quality of life" ethics have already badly corrupted the organizations of law and medicine both here and in England. It is very

dubious that corrective actions will come from the elites of either profession, that is, from the official organizations of law or medicine.

The protection of the unborn child and the child born handicapped lies, then, in the consciences, and the dedication and actions of legislators and simple citizens. I call for perseverance in the defense of all life, for re-dedication to those noble impulses of the human spirit that reject killing actively or passively as an acceptable solution to what can be admittedly difficult problems.

Dr. Robert Zachary of England, who has been caring for spina bifida babies for thirty years writes:

Under no circumstances would I administer drugs to cause the death of a child. There is no doubt that those who are severely affected at birth will continue to be severely handicapped. But I conceive it to be my duty to overcome that handicap as much as possible and to achieve the maximum development of their potential in as many aspects of life as possible - physical, emotional, recreational, and vocational - and I find them very nice people."<sup>(38)</sup>

John Donne wrote in 1624.

No man is an island, entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friends or of thine own were, any man's death diminishes me, because I am involved in mankinde; and therefore never send to know for whom the bell tolls; it tolls for thee."<sup>(39)</sup>

Whenever an innocent human life ends, even if it be in the sophisticated setting of a pediatric ward of a university hospital, where a decision is made to not treat, and to sedate and starve to death a defenseless, defective newborn - each time and every time the bell tolls.

## ENDNOTES

1. Jonsen, et al, *Critical Issues in Newborn Intensive Care: A Conference Report and Policy Proposal*, 55 *Pediatrics* 756 (1975).
2. Rachels, *Active and Passive Euthanasia*, 292 *New Eng. J. Med.* 75 - 80 (1975).
3. *The Hartford Courant*, June 14 - 27, 1981.
4. T.W. Hilgers and D. Horan, *Abortion and Social Justice* ix (1980).
5. *Id* at x.
6. 410 U.S. 113 (1973).
7. 410 U.S. 179 (1973).
8. Joseph Fletcher, *Infanticide and the Ethics of Loving Concern* in Kohl, *Infanticide and the Value of Life* 17 (1978).
9. John Fletcher, *Abortion, Euthanasia and Care of Defective Newborns* 292 *New Eng. J. Med.* 75 - 78 (1975).
10. M. Heifetz & C. Mangel, *The Right to Die* 51 (1975).
11. *Id.*
12. *Id.*
13. See note 4 *supra*.
14. See generally: V. Rosenblum and M. Budde *Infanticide: Selected Historical and Cultural Considerations*, (1981) unpublished article); M. Piers, *Infanticide: Past and Present* (1978).
15. Report of the Joseph P. Kennedy Foundation Int'l. Symposium on Human Rights, Retardation and Research (Oct. 16, 1971). For an extended version of the Johns Hopkins case study, see Gustafson, *Mongolism, Parental Desires and the Right to Life*, 16 *Perspectives in Biol. and Med.* 529 (1973).
16. Joseph Fletcher, *Humanhood: Essays in Biomedical Ethics* 142 (1979).
17. D. Dempsey, *The Way We Die* 102 - 103 (1975).
18. *A.M.A. News*, Oct. 9, 1981.
19. Robertson, *Dilemma in Danville*, 11 *Hastings Center Report* 5 (1981).
20. *Chicago Tribune*, Aug. 8, 1981 at Sec. 3 p. 17.
21. *New York Times*, Jan. 30, 1973 Magazine sec.
22. Shaw, *Dilemmas of Informed Consent in Children*, 289 *New Eng. J. Med.* 885 - 890 (1973).

23. Duff and Campbell, *Moral and Ethical Dilemmas in the Special Care Nursery*, 289 New Eng. J. Med. 890 - 894 (1973).
24. *Id.*
25. V. Rosenblum, *Infanticide and the Handicapped Newborn* (Brigham Young Univ. Press, In Press).
26. J. Rostand, *Humanly Possible* 89 - 92 (1973).
27. *Id.*
28. *Id.*
29. *Lancet*, Nov. 24, 1979 at 1123 - 24.
30. *Id.*
31. *Id.* at 1124.
32. *Id.*
33. *Id.*
34. *Id.*
35. Dr. Jerome Le Jeune is Chairman of the Department of Fundamental Genetics at the University of Paris. Currently he is engaged in research into possible therapies for the condition of Down's syndrome.
36. *Lancet*, Jan. 5, 1980 at 49.
37. *A New Ethic for Medicine and Society*, 113 Calif Med. 67 - 68 (1970).
38. *British Medical Journal*, Dec. 1977 at 1460 - 62.
39. J. Donne, *Devotions upon Emergent Occasions* no. 6 (1624).

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# CATHOLIC LEAGUE FOR RELIGIOUS & CIVIL RIGHTS

OFFICE OF GENERAL COUNSEL • 1100 WEST WELLS STREET • MILWAUKEE, WISCONSIN 53233 • (414) 289-9331

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- TELEGRAM -

April 29, 1982

The Honorable Ronald Reagan  
The President  
The White House  
Washington, D.C. 20500

Dear President Reagan:

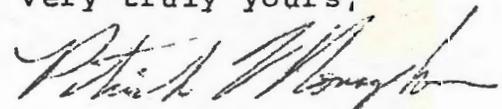
The tragic events leading to the death of Infant Doe in Bloomington, Indiana under color of state law prompt us to send the following message:

We urge that Section 504 of the Rehabilitation Act of 1973 in regard to handicapped persons be implemented which section prohibits discrimination against anyone "solely by reason of his handicap.... under any program or activity receiving Federal financial assistance."

We further urge that the Attorney General be instructed to take steps to enforce the Civil Rights Act in order to protect the civil rights of all Americans.

Your prompt action in this matter hopefully can preclude Mandamus or other civil action on behalf of this child and others similarly situated.

Very truly yours,



Patrick Monaghan  
General Counsel

PM:mg



CATHOLIC LEAGUE for Religious and Civil Rights

April 29, 1982      Contact: Orlan Love

# NEWS COMMUNICATIONS

The Catholic League for Religious and Civil Rights has urged the Reagan Administration to enforce an existing law which could prevent further instances of infanticide such as that which recently claimed the life of "Baby Doe," who died of starvation in a Bloomington, Indiana hospital after his parents, with court approval, ordered that he receive no food, water or medical aid because he had Down's Syndrome.

The existing law, Section 504 of the Rehabilitation Act of 1973, prohibits discrimination against handicapped persons, solely by reason of their handicap, under any program or activity receiving federal financial assistance. Few, if any, hospitals in the United States operate without some federal assistance.

"It is obvious that Baby Doe suffered discrimination solely on the basis of his handicap," said Catholic League General Counsel Patrick Monaghan. "Because he was handicapped, he was denied his right to life."

In a telegram to President Reagan, Monaghan urged that the law be enforced promptly and that the attorney general be instructed to enforce the Civil Rights Act, since the discrimination suffered by "Baby Doe" was approved by the Indiana courts, and was done therefore under color of state law.

"Litigation to require enforcement of the Act's prohibition of discrimination against the handicapped is being considered in the event that there is federal bureaucratic indifference to the infanticide," said Monaghan.

May 1, 1982

The Honorable Ronald Reagan  
The President  
The White House  
Washington, D.C. 20500

Your bold and decisive action bringing the powers of your Administration and the Federal government to the care and protection of the innocent and defenseless handicapped newborns is taken to heart by all Americans concerned about the least among us.

This courageous act demonstrates your deep compassion and concern for those unable to speak for themselves.

Your heart has heard the cries of the innocent and your mind and will have acted in their defense.

America will forever be grateful for the compassion you have shown.  
God bless you.

Very truly yours,

Patrick Monaghan, Esq.  
General Counsel  
Catholic League for Religious  
& Civil Rights

Text of telegram sent 5/1/82.

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General Counsel  
Catholic League for Religious  
& Civil Rights

Text of telegram sent 5/1/82.

4/30

THE WHITE HOUSE  
WASHINGTON

MEMORANDUM FOR THE ATTORNEY GENERAL  
THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Enforcement of Federal Laws Prohibiting  
Discrimination Against the Handicapped

Following the recent death of a handicapped newborn child in Indiana, many have raised the question whether Federal laws protecting the rights of handicapped citizens are being adequately enforced.

Therefore, I am instructing Secretary Schweiker to notify health care providers of the applicability of section 504 of the Rehabilitation Act of 1973 to the treatment of handicapped patients. That law forbids recipients of Federal funds from withholding from handicapped citizens, simply because they are handicapped, any benefit or service that would ordinarily be provided to persons without handicaps. Regulations under this law specifically prohibit hospitals and other providers of health services receiving Federal assistance from discriminating against the handicapped.

I am also instructing the Attorney General to report to me on the possible application of Federal constitutional and statutory remedies in appropriate circumstances to prevent the withholding from the handicapped of potentially life-saving treatment that would be given as a matter of course to those who are not handicapped.

Our Nation's commitment to equal protection of the law will have little meaning if we deny such protection to those who have not been blessed with the same physical or mental gifts we too often take for granted. I support Federal laws prohibiting discrimination against the handicapped, and remain determined that such laws will be vigorously enforced.



**CATHOLIC LEAGUE** for Religious and Civil Rights

April 29, 1982      Contact: Orlan Love

**NEWS**  
COMMUNICATIONS

The Catholic League for Religious and Civil Rights has urged the Reagan Administration to enforce an existing law which could prevent further instances of infanticide such as that which recently claimed the life of "Baby Doe," who died of starvation in a Bloomington, Indiana hospital after his parents, with court approval, ordered that he receive no food, water or medical aid because he had Down's Syndrome.

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- TELEGRAM -

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The President  
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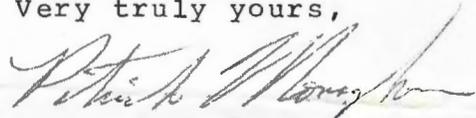
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We further urge that the Attorney General be instructed to take steps to enforce the Civil Rights Act in order to protect the civil rights of all Americans.

Your prompt action in this matter hopefully can preclude Mandamus or other civil action on behalf of this child and others similarly situated.

Very truly yours,



Patrick Monaghan  
General Counsel

PM:mg

Dear Mr. Monaghan

On April 29 I received a telegram from you representing the Catholic League for Religious and Civil Rights expressing your deep concern about the tragic events leading to the death of Infant Doe in Bloomington, Indiana. I share your concern ~~that the handicapped must be safeguarded~~ that all ~~steps~~ steps be taken to protect the handicapped newborn and guarantee them equal protection under our laws. In order to make clear my strong views on this matter I have sent the attached memo to the Attorney General and to the Secretary of Health and Human Services. My Administration looks forward to working with groups such as your own to protect ~~our~~ the most defenseless among us.

Sincerely,

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

April 30, 1982

FOR: EDWIN L. HARPER  
FROM: GARY L. BAUER *GLB*  
SUBJECT: Bloomington Baby -- Law Suit to be Filed  
Against Administration Monday

We received a telegram this morning addressed to the President in care of me from the Catholic League for Religious and Civil Rights. It is attached.

I talked with this group today and was told by their General Counsel that they are coming to Washington on Monday to sue HHS and Secretary Schweiker for failure to enforce the laws protecting the handicapped. I think the press could have a field day with a Catholic group suing the Administration for failure to protect a handicapped new-born.

The Catholic League made it clear that they would postpone or cancel the suit if the President makes a statement today or early Monday.

A second factor which has come up in the last 48 hours is a concerted attack by House Democrats charging us with being soft on protecting the rights of the handicapped. Over a dozen members of the House have used this week, which is the anniversary of the implementation of Section 504 of the Rehabilitation Act of 1973, to charge in the Congressional Record that we are "heartless." None of this criticism is related to the Bloomington case directly but rather to other aspects of handicapped rights. The Congressional criticism along with the law suit to be filed Monday will provide a nice opportunity for our critics to bring out the "compassion" theme again.

Recommendation: Since the suit is no longer a rumor but now a fact, I recommend we make one last effort to increase the visibility of the President by having a statement released from the White House today. In the alternative, we should get letters to the Attorney General and Secretary Schweiker today, and those letters should be released to the public on Monday.

cc: Roger Porter  
Michael Uhlmann

414-895-6705  
714-289-0170

The White House  
Washington

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MS HONORABLE RONALD REAGAN, PRESIDENT  
WHITE HOUSE DC

THE TRAGIC EVENTS LEADING TO THE DEATH OF INFANT DOE IN BLOOMINGTON INDIANA UNDER COLOR OF STATE LAW PROMPT US TO SEND THE FOLLOWING MESSAGE:

WE URGE THAT SECTION 504 OF THE REHABILITATION ACT OF 1973 IN REGARD TO HANDICAPPED PERSONS BE IMPLEMENTED WHICH SECTION PROHIBITS DISCRIMINATION AGAINST ANYONE "SOLELY BY REASON OF HANDICAP...UNDER

ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

WE FURTHER URGE THAT THE ATTORNEY GENERAL BE INSTRUCTED TO TAKE STEPS TO ENFORCE THE CIVIL RIGHTS ACT IN ORDER TO PROTECT THE CIVIL RIGHTS OF ALL AMERICANS.

YOUR PROMPT ACTION IN THIS MATTER HOPEFULLY CAN PRECLUDE MANDAMUS OR OTHER CIVIL ACTION ON BEHALF OF THIS CHILD AND OTHERS SIMILARLY SITUATED.

VERY TRULY YOURS,

PATRICK MONAGHAN GENERAL COUNSEL CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

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# CATHOLIC LEAGUE for Religious and Civil Rights

1100 WEST WELLS STREET · MILWAUKEE, WISCONSIN 53233  
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Attorney at Law, Columbus, Ohio
- Hon. Clement J. Zablocki**  
U.S. House of Representatives

May 1, 1982

The Honorable Ronald Reagan  
President  
White House  
Washington, D.C. 20500

Dear Mr. President:

Your bold and decisive action bringing the powers of your administration and the federal government to the care and protection of innocent and defenseless handicapped newborns is taken to heart by all Americans concerned about the least among us.

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Patrick Monaghan  
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PM:mg

**Michael Schwartz**  
Director of Public Affairs

**Thomas Patrick Monaghan, Esq.**  
General Counsel

**Orlan R. Love**  
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