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On November 4, 2008, the pro-life movement suffered losses on five state ballot initiatives. Yet there is much we can learn from the three pro-life ballot initiatives defeated (in California, Colorado, and South Dakota) and the two anti-life ballot initiatives passed (in Michigan and Washington).

Specifically, these losses demonstrate that legislative efforts at the state level must remain at the forefront of the cause for life during the coming Obama administration. With dangerous legislation like the *Freedom of Choice Act*—a radical bill Obama has promised to sign—looming, pro-life forces continue to enact laws protecting women and the unborn from the negative impact of abortion and take immediate action to counter the increased efforts by abortion advocates to enshrine abortion-on-demand into American law. We have learned that our greatest successes—as demonstrated in South Dakota—have come not through ballot initiatives, but through such state legislative action.

California: Parental Involvement

In California, Proposition 4, or “Sarah’s Law,” was narrowly defeated by a 52 to 48 percent vote. Proposition 4 would have amended the California Constitution to protect parental rights and the safety of minors by ensuring that a parent or guardian is notified of his or her minor daughter’s abortion at least 48 hours prior to that abortion. The measure would have provided protection for minors against sexual abuse and coerced abortions, and would have put California in line with the rest of the nation, as the vast majority of states have already enacted parental involvement laws.

This year’s election marks the third defeat of a parental involvement ballot initiative in California in the last six years. However, it is important to note that the margin by which the initiative was defeated is the narrowest it has been to date—a reflection of increased support for parental involvement laws in California.

The failure of Proposition 4 has left minors in California vulnerable to sexual exploitation and the harmful effects of abortion, and has left parental rights unprotected. While the legislature has also failed to pass parental involvement laws in the past, the increased support for parental involvement laws should be a wake-up call for legislators in California that the people are demanding protection for their children.

Washington: Physician-Assisted Suicide

In Washington, voters approved I-1000 by a 59 to 49 percent vote. I-1000 legalized



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physician-assisted suicide (PAS) in the state, making Washington the second state after Oregon to legalize the practice. Washington's new policy poses significant dangers to its citizens. For example, the new PAS law will encourage healthcare insurance companies to pinch pennies by denying coverage for life-saving treatments and offering only to pay for physician-assisted suicide. In other words, the new policy has created financial incentives for healthcare insurance companies to pressure vulnerable patients into "choosing" physician-assisted suicide—thus making the so-called "right to die" a "duty to die."

I-1000 also impacts the rights of conscience of healthcare providers. The Washington State Medical Association has stated that physicians practicing in the state are not required to perform PAS, even if the practice has been legalized. However, as the rights of conscience of healthcare professionals who refuse to perform and participate in abortions are under attack, we can expect the rights of healthcare professionals who refuse to perform and participate in PAS to come under attack as well.

Further, I-1000 demonstrates the impact of one state's policies on the rest of the nation. The legalization of PAS in Washington is just the first step in the pro-suicide organization Compassion and Choice's "Oregon plus One" plan. According to their plan, if Washington State legalized physician-assisted suicide, it will be easier to legalize the practice in other states, and eventually throughout the nation. The group is likely to next target states such as California, Hawaii, Arizona and Vermont in its pursuit of expanded "rights" to physician-assisted suicide across the country. Legislators and policy groups in those states must start mobilizing to fight off such efforts.

Michigan: Embryonic Stem-Cell Research

In Michigan, Proposal 2, the "Stem Cell Initiative," was approved by a 52 to 48 percent vote. Proposal 2 has legalized destructive research on human embryos, and authorizes government funding for research on human embryos produced in fertility clinics. It has also opened the door to the legalization of human cloning and the creation of human-animal hybrids. This represents a complete reversal of state law, which previously banned all destructive research.

It is incredibly unfortunate that so much effort is being wasted on embryonic stem cell research, which has not resulted in a single successful cure or treatment for any patients. Adult stem cell research, on the other hand, has successfully treated patients with over 70 kinds of diseases and conditions. In the face of quickly advancing technology and success in the area of adult stem cell research, increased funding for embryonic stem cell research is a waste of resources. State funding would be put to better use by supporting adult stem cell research, rather than by supporting research that has proven to be fruitless.

South Dakota: Abortion Ban

In South Dakota, voters failed to pass Initiated Measure 11 by a 55 to 45 percent



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vote. The measure would have amended the South Dakota Constitution to ban all abortions in the state, except for those performed in cases of rape or incest, or when continued pregnancy severely endangers the woman's life or health. This is the second time in the last two years that the voters in South Dakota have failed to pass an abortion ban.

Despite South Dakota's failure to limit abortions through state ballot initiatives, much progress has been made in that direction through the state legislature. For example, South Dakota currently has laws on informed consent, ultrasound availability, parental involvement, funding limitations for abortions, and abortion reporting. South Dakota law also requires abortions to be performed only by trained, licensed physicians, and has a law that will ban both surgical and chemical abortions with an exception to save the life of the mother when *Roe v. Wade* is eventually overturned.

In light of the failure of Initiated Measure 11 and the continuing success of incremental legislation to limit and "fence in" abortion in South Dakota, the state should continue to enact pro-life abortion legislation, and other states should take notice of South Dakota's success at limiting abortion through incremental legislative action.

Colorado: Human Life Amendment

Colorado's Proposition 48, the "Colorado Equal Rights Amendment," was defeated by a 73 to 27 percent vote. Proposition 48 would have amended the Colorado Constitution to define the term "person" as "any human being from the moment of fertilization," for purposes of actions take by the state, the state government, and state officials. In order to understand the practical effects of a human life amendment (HLA) like Proposition 48, it is necessary to note that federal and state constitutions apply only to actions taken by the government, and not to the actions of private persons. Thus, an HLA would therefore only prohibit government officials, employees, and facilities from performing abortions. State HLAs would not prohibit private abortion providers from performing abortions. Another law, such as a criminal ban on abortion, would be needed to reach private conduct.

Thus, in order to prohibit the majority of providers from performing abortions, a state's statutory law must be amended. This can only be done at the legislative level. In fact, the pro-life movement has already been successful in establishing legal personhood for the unborn in certain areas of the law, such as fetal homicide, wrongful death, and assault and battery laws.

Generally speaking, achieving comprehensive protection for the unborn requires first the establishment of full legal personhood for the unborn in a *state's statutory law*, and *then* the reinforcement this protection through an HLA. An HLA would then be the "crowning achievement" of a history of social, cultural, and legislative change and progress rather than a catalyst for reform(1). The defeat of Proposition 48 by such a wide margin demonstrates that the first step is still necessary in Colorado: legislative action to further the cause for life and effectively protect the



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unborn.

Conclusion

Although the results of ballot initiatives in California, Colorado, Michigan, South Dakota and Washington State are disheartening for the pro-life movement, they are temporary setbacks that have effectively underscored the importance of legislative action at the state-level in order to further the cause for life.

(1) Historically, constitutional amendments have generally functioned as “reinforcers” of already-existing policies and cultural values. Constitutional amendments usually come at the end of a series of legislative and social changes, not at the beginning. The Fourteenth and Nineteenth Amendments are primary examples of this general principle.

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