from the director's desk

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Several months ago, Mike Cosper wrote a commentary on "The Banality of Abortion."[1] His reminder of Hannah Arendt's observations about the trial of Adolf Eichmann, the Nazi S.S. officer who coordinated transportation of millions of people to death camps in Europe, is profoundly prescient. In *The Origins of Totalitarianism*, Arendt, who escaped the terror of the Third Reich, struggled to describe the bland face of evil she confronted in the courtroom.

Evil wore the face of a bureaucrat, of someone who fervently believed that he was creating a better world. He was not a maniacal bloodthirsty villain, but a respectable citizen who conformed to the social realities and political expectations of his day.

We tend to look smugly at the past, claiming moral superiority over those who are now historical pariahs. But is present reality all that different?

In late June, the U.S. Supreme Court decided that state regulations designed to protect a woman's health interfere with her constitutional rights and are unconstitutional. Why? Because the regulations in question affect free-standing abortion centers and abortionists, and the right in question is "a woman's right to decide to have an abortion."[2] Abortionists were required to have admitting privileges at a nearby hospital, and the clinic had to meet the minimum standards for all other ambulatory surgical centers. Some clinics might close, limiting convenient access to abortion, the Court speculated, and thus the regulations unduly burden a woman's constitutional right to choose abortion.

Five members of our highest judicial authority, with unreviewable powers, decided that the Texas law evinced a "virtual absence of any health benefit."[3] Further, it declined to follow the explicit language of "what must surely be the most emphatic severability clause ever written."[4] The Court could not be bothered to make the effort of striking down only the objectionable provisions,[5] instead holding that the following regulations, among others, are unconstitutional:

- Surgical center patients must "be treated with respect, consideration, and dignity."[6]
- Patients may not be given misleading "advertising regarding the competence and/or capabilities of the organization."[7]
- Centers must maintain fire alarm and emergency communications systems, and eliminate "[h]azards that might lead to slipping, falling, electrical shock, burns, poisoning, or other trauma."[8]
- Each center "shall develop, implement[,] and maintain an effective, ongoing, organization-wide, data driven patient safety program."[9]

In its determined effort to preserve unimpeded access to abortion, the Court rejected the cardinal rule of *res judicata*,[10] ignored evidence submitted by the abortion clinics, and revised its standard of review—yet again. As Justice Alito wrote in strong dissent, "in this abortion case, ordinary rules of law—and fairness—are suspended."[11] Once again, abortion distortion is at work.

The law did not prohibit any abortions. The subject of abortion—the unborn child—and the object of abortion—ensuring that child's death—were never hinted at in the decision. The majority were unhappy that a woman might not have easy access to . . . just what, exactly? Breast cancer treatment centers? Voting booths? Teeth whitening salons? The majority's carefully sanitized discussion scrupulously avoids any mention of who is being aborted, or what abortion intends.

The Court was equally dismissive of the genuine grounds state legislatures have for regulating abortion centers: preventing another "Kermit Gosnell scandal." While admitting that women died at his hands, that unlicensed staff did abortions, that his facility was filthy, and a host of other problems, the majority observed that wrongdoers like him "are unlikely to be convinced to adopt safe practices by a new overlay of regulations."[12]

The Center for Bioethics & Human Dignity (CBHD) is a Christian bioethics research center at Trinity International University.

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In the Spring 2016 issue of *Dignitas*, I wrote about the investigation into the harvesting of fetal body parts after abortion. This practice, too, is clothed in the language of regulations and medical jargon, obscuring the sine qua non for this practice: a steady supply of aborted fetuses. As long as regulations are followed, one need not consider the moral ramifications of medical research that exploits the deaths of nonconsenting, very early human beings. After all, what reasonable and compassionate person could disagree with finding cures for serious diseases?

Recent evidence obtained by the House Select Investigative Panel manifest a callousness toward the recently deceased. One lab notebook celebrates efficiency—"One entire retina!"—and notes that fetal brains are being sold for use at a summer camp.[13] I wonder, will the campers be disturbed? Or will this be just another "cool" thing?

While I have no grounds to assess the moral probity of all those who approve, defend, participate in, or exploit the fruits of the practice of legal abortion in the U.S., I do question the ease with which they justify their particular role. Whether they are a judge, medical researcher, abortionist, or tissue procurement organization, they all seem to claim nobility of purpose, while papering over the lethal exploitation of unborn human children and the mothers who carry them. Perhaps Hannah Arendt's observations are chillingly contemporary, and that in the pursuit of "a better world," these "respectable citizens" are conforming to the social realities and political expectations of their day.

1 Mike Cosper, "The Banality of Abortion." The Ethics & Religious Liberty Commission, January 6, 2016, http://erlc.com/resource-library/articles/the-banality-of-abortion (accessed July 21, 2016).

2 *Whole Woman's Health v. Hellerstedt*, 579 U.S. ___ (2016), slip op. at 1.

3 Id., slip op. at 26.

4 Id., slip op at 2 (Alito, J., dissenting).

5 "Federal courts have no authority to carpet-bomb state laws, knocking out provisions that are perfectly consistent with federal law, just because it would be too much bother to separate them from unconstitutional provisions." Id., slip op. at 40 (Alito, J. dissenting).

6 Tex. Admin. Code, tit. 25, §135.5(a).

7 §135.5(g).

8 §§135.41(d), 135.42(e) and §135.10(b).

9 §135.27(b).

10 Namely, claim preclusion, meaning that previously decided matters may not be re-litigated.

11 *Whole Woman's Health,* slip op. at 19 (Alito, J., dissenting).

12 Id., slip op. at 27.

13 Criminal Referral Letter to the Attorney General of New Mexico from Marsha Blackburn, Chairman of the U.S. House of Representatives, Committee on Energy and Commerce Select Investigative Panel. The Energy and Commerce Committee, June 23, 2016, https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/114/letters/unm-referral.pdf (accessed July 21, 2016).