



NEWS

Pro-lifers who exposed sale of aborted baby body parts appeal ruling in favor of Planned Parenthood

Attorney Catherine Short explains where the lawsuit against the investigative journalists went wrong, and how the court could respond to the appeals.

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Planned Parenthood sign

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By Emily Mangiaracina

March 8, 2021 (LifeSiteNews) — Last weekend, the Center for Medical Progress (CMP), David Daleiden, and other pro-lifers involved in exposing Planned Parenthood’s baby organ harvesting and trafficking, filed appeals seeking to overturn a verdict that found them jointly liable for fraud, trespassing, racketeering, and unlawful recording.

Planned Parenthood sued CMP in January of 2016 after the pro-life organization had released undercover videos showed top-level Planned Parenthood executives haggling over prices of aborted baby body parts, and discussing how to change abortion procedures to obtain more intact organs. The videos sparked public outrage, congressional hearings, and a Department of Justice criminal investigation into Planned Parenthood.

After the exposé, Planned Parenthood claimed that they were merely receiving “reasonable payments” associated with the processing of “donations” of fetal tissue, which is a stated exception to the law prohibiting the purchase of fetal tissue. However, unsealed documents showed that Planned Parenthood had charged a biospecimen company “per ‘POC,’ or products of conception — another term for fetal remains.”

Shortly after CMP’s video releases, Planned Parenthood wrote to the National Institutes of Health to “announce they would no longer accept financial reimbursement for expenses despite such practices being ‘fully legal.’”

Even as Planned Parenthood was suing CMP in court, two bioscience businesses were shut down and had their profits seized after it was found they illegally sold fetal tissue from Planned Parenthood to companies around the world. The investigation had been opened after a complaint was submitted by CMP.

Without addressing the legality of what Daleiden and his fellow pro-lifers uncovered in their investigation, in Nov. 2019, a San Francisco jury found CMP and its co-defendants jointly liable for hundreds of thousands of dollars in damages to Planned Parenthood, tripled to \$1.4 million under a Racketeer Influenced and Corrupt Organizations (RICO) charge. Combined with compensatory damages, the award totaled over \$2 million. This past December, an additional \$13.6 million in attorney fees were awarded to Planned Parenthood.

CMP and the co-defendants are fighting the verdict with four separate appeals briefs, filed on behalf of David Daleiden, Sandra Merritt, Albin Rhomberg, and Troy Newman.

Catherine Short, Chief Legal Officer of the Life Legal Defense Foundation, who is representing former CMP board member Rhomberg, explained a common misunderstanding about the case to LifeSiteNews.

“The fact that you succeeded in uncovering illegal activity, or that that is what your intent was, does not absolve you from either civil or criminal liability,” Short said. She noted, however, that in the majority of cases, people don’t get sued for things like using false names

during the process of uncovering illegal activity.

“Now in nine cases out of ten, the body shop guy who is caught damaging stuff and then fixing it, or whatever, he’s not gonna sue you. He’s not dumb enough to try to sue you for the fact that you misled him about giving him a false name, or whatever,” she continued.

Short explained that in Planned Parenthood’s lawsuit against CMP, “[t]he trial was not about the truth of whether or not Planned Parenthood was engaged in fetal tissue trafficking. They didn’t say a word about the false and misleading videos. Because they knew that if they did, that would’ve opened the doors.”

“They very assiduously avoided saying anything about the content of the videos. Most of what came out about the content of the videos was brought out by our guys cross-examining,” she continued.

Short argued that the trial that held CMP and its co-defendants liable for millions of dollars in damages to Planned Parenthood was in error, because the allegations of fraud and trespass must hinge upon direct damage to Planned Parenthood and its employees.

“The real key, the reason undercover journalists can do what they do is because they don’t cause harm. In other words, they don’t actually affirmatively harm the person they are investigating. Because when you fool someone, and you lie, and you get in, you get to go to their meeting, and you leave — if you haven’t damaged anything, they don’t have a claim under fraud or trespass,” said Short.

The “main error” of the case, according to Short, was that Planned Parenthood was making the defendants pay not for *actual damage* done, but for things like hiring security to make sure they didn’t get “infiltrated” again.

“They’re making us pay for the cost of their post-infiltration security and calling that damage. That is the main error of this case,” said Short.

“That is a classic publication damage. We put a constitutionally protected publication out there, and you want to sue us for some outcome from that. There was zero evidence that this is anything but a reaction to the public reaction to the publication,” she continued.

— Article continues below Petition —

Short went on to give a “road map” of possible outcomes of the appeals. She explained that reversal of the trial for any of the claims made against CMP and co-defendants can come in two ways: an outright win; or, the decision that they were denied a fair trial for any of the claims, and that these claims should be re-tried.

Alternatively, the Ninth Circuit could “affirm enough of its judgement [against CMP] that it’s

simply not worth going to trial again for whatever is left over. They will take their victory and not bother with the rest,” according to Short.

“One possible mixed outcome would be the reversal of all compensatory damages for the reasons set forth in the Rhomberg brief,” said Short, referring to the lack of direct damage to Planned Parenthood, which she had previously explained to LifeSiteNews.

“If the Ninth Circuit rules that none of the awarded damages are legally compensable damages, that would effectively enter judgement for the defendants on RICO, trespass, fraud, and breach of contract, leaving only the recording claims,” Short continued.

“The federal recording claim, which applies to all 42 recordings, should be knocked out with one blow: the recordings were not made for the purpose of committing any crime or tort.”
