Responses to *CPR's* July/August cover articles and the state High Court's Decision to Reconsider *American Academy of Pediatrics v. Lungren*

The Court's War on the Family

The following commentaries respond to California Political Review's July/August twin-bill: "The Court's War on the Family," which featured Mark S. Pulliam's "Snatching Defeat from the Jaws of Victory" and an exclusive CPR interview with California Supreme Court Chief Justice Ronald M. George. Two Supreme Court cases figure prominently in several responses: American Academy of Pediatrics v. Lungren, *involving California's law requiring a parent's or a judge's consent before an abortion can be performed on a minor (upheld as constitutional in April but, following a court membership change, scheduled in May for re-hearing) and* Committee to Defend Reproductive Rights v. Myers, *a 1981 Bird Court decision forcing California to pay for abortions. (Hereafter, these cases are referred to as* Lungren *and* Myers.)

Dr. L.P. Arnn

President, The Claremont Institute

Mark Pulliam has a point. In America, the practice of abortion enjoys a protection so perfect as to make it almost unrestrained. It enjoys a legal and political prestige among our elites that approaches piety. It reaches its worst in the *Lungren* case. Pulliam defends the "conventional" family, but the relation of men and women in reproduction and nurturing is not conventional, it is natural. It is as much the way of them to procreate in that way as it is of any species. Plainly, children are generally better raised by those who conceive them than by others who do not know their names. But if parents are to raise children, they must have the authority to do the job. Taking that authority violates their liberty and uproots the institution upon which children depend.

Today we try to read our Constitution as if it raises up "rights" that would interfere with this authority. Such "rights" do not come from the Constitution. No framer — hardly any American of the time or for 150 years after it — would have supported them. They wrote the Constitution to implement a higher law, "the laws of nature and of nature's God." They saw those laws as the source of our liberty and the morality under which alone it can be practiced and sustained. These new "rights" would destroy both. The chief justice refers to old and new precedents, calling it "conservative" to follow either set of them. He must face the fact that they are contradictory. He should ponder a little statement by Lincoln: "there is no such thing as a right to do wrong." Perhaps it will help him distinguish a right from an assertion of will.

Gary L. Bauer

President, The Family Research Council

The possible reversal of *Lungren*, as Mark Pulliam argues, involves the right of parents to direct the upbringing of their children, not simply the invokation of a "privacy" right for minor children. Historically, laws regulating children's activities have been protective. For example, adults may not enter into binding contracts with unemancipated minors. This is because a child should not be legally bound to fulfill a contract when the parties are so obviously unequal in bargaining power and in capacity to judge interests. Adults are also prohibited from selling alcohol, tobacco, and pornography to children.

It could be argued by "children's rights" advocates that such laws limit children's ability to *choose* to make such pur-

chases. Of course children have rights, but parents traditionally have been the custodians of these rights, at least until those children reach adulthood. This is a sound presumption based on the more limited capacity of children to make responsible choices. The movement to grant minors full access to the full range of choices available to adults inevitably leads to the liberation of the child from his or her parents. In this view, the parent is the *obstacle* to the free exercise of the child's rights and the state is the arbiter of family relations. Tragically, this threatens to destroy a child's most precious right: the right to a child-like dependence upon the guidance of loving parents.

Pulliam is also right to characterize the *Lungren* dissent as a challenge of the right of parents to act *as parents.* It's no secret that some influential people in our country think "it takes a village to raise a child." When the "village" shows up on our doorsteps, armed with legal briefs and court orders, those of us who are parents will find it is too late to claim our natural and historic rights to raise our families. We need to be alert *now.*

This movement threatens a child's most precious right: the right to a child-like dependence upon the guidance of loving parents.

— Gary L. Bauer

Hon. Rob Hurtt

Senate Republican Leader

Reversing ground on parental consent will signal a direct assault upon parental rights. Even though parental consent is required to treat a minor for a headache, the court wants to second guess itself on whether or not the Legislature may require parental consent for abortions. If the court strikes down parental consent, it will be a sad defeat for parents who already must contend against an intrusive "village" of arrogant government lovers who want to raise our children. Unless a minor is being abused or endangered, that child belongs to its parents, not the state. It's hard enough to fight off the Legislature's "villagers" who want to raise our children; we don't need the state Supreme Court championing their cause.

Gideon Kanner

Professor Emeritus, Loyola Law School

Lawyers know that, depending on the result a court wants to reach, a landmark, famous decision can be dismissed as the dead hand of the past or hailed as the law and it's always been the law and who are you, you silly little upstart, to challenge it. The courts, by degrees, have slipped into an overt governance mode, not an adjudicative mode. They always govern to some extent, but it's a matter of degree. Now they want to be movers and shakers and policy makers. Of course they deny it, because if you are a policy maker you have to be accountable.

Pulliam's critique is that we had far-out liberal judges and replaced them with ostensibly conservative judges but we still get anti-business, pro-government decisions. I disagree: this isn't liberal versus conservative; it's libertarian versus statist, and these guys are statists. It started when Jerry Brown appointed public defenders to the bench. Then Deukmejian appointed prosecutors and other government lawyers. That was his idea of balancing. Wilson exacerbated the trend of appointing prosecutors and civil government lawyers. I don't mean these judges consciously twist the law to serve the government. But if you spend your formative years doing particular work and being good at it, which means you like it typically, you can't be expected suddenly to drop all that and take a much more detached position. Some can do it, but they're rare gems. Under the old system, some appointments were plaintiffs lawyers, some defense lawyers, some criminal lawyers — it was a mix. Now you get a bunch of bureaucrat lawyers.

Gary Kreep

Executive Director, U.S. Justice Foundation

While I respect the requirement that the Chief Justice not discuss pending cases, I am somewhat puzzled about his declination to discuss already decided cases. That avoids criticism of those cases, but it does nothing to help the public's perception of the Court. The public believes judges promote their own social or political agenda through their decisions. The Chief Justice's comments, unfortunately, do not dispel that perception and, in fact, may aggravate the situation due to his declination to discuss previous decisions. Also, he hints that he believes *Myers* should be overturned, yet he defends the decision to rehear *Lungren.* In other words, Chief Justice George appears to be saying that California taxpayers should not be paying the bill for abortions for indigents, yet the court is going to invalidate its parental notification law. If the public is as confused as I am by these statements, then there is little wonder the judicial system is viewed as it is.

Hon. Alister McAlister

California Assembly, 1971-86

Mark Pulliam's analysis of *Lungren* stimulates further thoughts on the "independent state grounds" doctrine sometimes followed by the California Supreme Court. Whether applied