

and suggests that biomedical research defies God's will, he may win some points with Gary Bauer. But he is handing the future—and all it represents—to the Democratic Party.

**L**ike Hewitt, I believe that the high-tech entrepreneurs who hang out with Al Gore are politically naive. They are giving their time and money to a man who wrote an endorsement blurb for Jeremy Rifkin's anti-biotech screed, *Algeny*, and whose career has been marked by an impulse to slap regulations on technologies old and new. They are implicitly endorsing a vision of the future as designed by Washington bureaucrats. The Democrats' zest for higher taxes is the least of their worries.

But identity trumps interest. Whatever he may have said in the past, nowadays Gore courts innovators, says they're important, affirms their values. Bill Clinton does the same. The Democrats may be lying, but the national Republican Party is hardly even trying. It is too busy advancing its own agenda of new regulations—and too busy appeasing activists who think Ralph Reed is a moderate squish. It is too busy heaping contempt on the people who are creating the future.

Yes, there are many fine Republican officeholders—people like Reps. Chris Cox (R-Calif.) and Rick White (R-Wash.) or Sens. Connie Mack (R-Fla.) and Spence Abraham (R-Mich.)—who support opportunity and openness. But they are vir-

tually invisible. Theirs is not the message of the national party, a message that is carried not only by official spokesmen but by the Bauers and Bennetts, Kristols and Dobsons—all the pundits and activists for whom the party is a vehicle to attack contemporary America. To the values of creativity, enterprise, and progress, the Republican Party says nothing, except occasionally, "Shut up, Newt."

Maybe the problem is all those Washington-based intellectuals whose professors taught them that civilization has been going downhill since the Renaissance. Maybe it's too many fund-raising dinners for Team 100, where party leaders address entrepreneurs as mere sources of big bucks. Maybe it's a reaction to Newt Gingrich's jargon-filled enthusiasms. Or maybe it really is the conviction that the upwardly mobile Republicans of the South care only about banning abortion, denouncing television, and censoring the Internet—and that the South is all of America.

Whatever is going on, the GOP has reclaimed its old status as "the stupid party," deaf to the language of achievement and hope. With the 2000 presidential race fast approaching, it has two years to get smart—to re-embrace the Reaganite ideal of a city on the hill and stop bashing America. It has two years to affirm the values of creativity, enterprise, and progress. If it doesn't, it will lose much more than another presidential election. It will lose its claim on the American Dream. ♦

## Mouths Sued Shut

### Making racketeers out of protesters

By Jacob Sullum

**T**endentious terminology has always been a problem in the abortion debate. People who support restrictions, for example, call themselves "pro-life," implying that their opponents are "pro-death." Now a federal jury in Chicago has resolved this semantic difficulty. The correct term for anti-abortion activists, it turns out, is *racketeers*—or, if you prefer, *extortionists*.

That was the upshot of a class action

lawsuit filed 12 years ago by two abortion clinics and the National Organization for Women. NOW argued that Joseph Scheidler of the Chicago-based Pro-Life Action League and three other prominent activists had violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by encouraging anti-abortion protests.

Under RICO, Scheidler et al. are liable for triple damages, and abortion clinics around the country are expected to de-

mand compensation (mostly for extra security costs). If the verdict is upheld and other groups copy NOW's strategy, many forms of political activism could become prohibitively expensive.

Since RICO was intended to fight organized crime, applying it to anti-abortion activists required some creative definitions. According to my dictionary, *extort* means "to wrest or wring (money, information, etc.) from a person by violence, intimidation, or abuse of authority." Yet NOW maintained that anti-abortion protesters were guilty of extortion, a "predicate act" under RICO, when they blocked the entrances of clinics. Exactly what they wrested is a little hazy.

Similarly, my dictionary defines *racket* as "an organized illegal activity, such as bootlegging or the extortion of money from legitimate business people by threat or violence." On the face of it, anti-abortion protests don't fit into this category very well.

**B**ut Susan Hill, who owns the two clinics that sued Scheidler and his colleagues, explained that appearances can be deceiving: "In our case, they weren't coming for the bag of money—but to force us to close down by blockades or threats. For us, working in the clinics, it was racketeering." In 1994 that argument got a boost from the U.S. Supreme Court, which unanimously ruled that an "enterprise" can be subject to RICO even if it's not aimed at making money. But in a concurring opinion, Justice David Souter said courts should "bear in mind the First Amendment interests that could be at stake," since "RICO actions could deter protected advocacy."

In fact, RICO actions against political groups are *intended* to deter advocacy. Protesters who use force to prevent abortion—whether through blockades, vandalism, or violence—have always been subject to arrest under state law. Four years ago, just in case the existing prohibitions against trespassing, disorderly conduct, and assault were inadequate, Congress passed the Federal Access to Clinic Entrances Act.

So RICO is not needed to punish activists who violate other people's rights. RICO is needed to punish activists, like Scheidler, who don't commit crimes but who plan

and participate in protests where other people do. NOW argued that Scheidler's writings and public comments implicitly condoned illegal behavior. But any vigorous condemnation of abortion—say, equating it with murder—could be said to encourage lawlessness.

Ann Rose, a women's health consultant who maintains the Web site Abortion Clinics Online ([www.gynpages.com](http://www.gynpages.com)), reports receiving the following message: "I think anyone that promotes [sic] the destruction and death of human life does not deserve their own life. Get your crap off the web." Though Rose calls this a "death threat," it seems more like a strongly worded protest. Still, some people *have* killed for this cause, so activists might reasonably worry that expressing such opinions would invite a RICO lawsuit.

Since every protest movement includes hotheads who get carried away or extremists who are prepared to break the law, NOW's successful use of RICO has sweeping implications. The law could be used against animal rights activists, environ-

mentalists, union members, supporters of racial preferences—even feminists.

No less an authority than G. Robert Blakely, the Notre Dame law professor who wrote RICO, warns that applying it to protesters will have a chilling effect on speech. "Everybody who loves the First Amendment has got to sleep uneasily to-night," he said after the verdict.

Even the people who brought the lawsuit seem to have qualms about it. "I don't like RICO; I think it's a terrible statute," NOW attorney Fay Clayton told *The National Law Journal* during the trial. "But as long as it's there, we should use it." Given RICO's potential to squelch dissent, that sort of moral reasoning is not exactly reassuring. ♦

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ance, suddenly found themselves dealing with firms that limited choice. Patients found their choice of doctors restricted; doctors found their choice of medical procedures questioned by the companies paying for those procedures. This situation led today's health care problem: the "crisis" in managed care.

Just as Washington wanted to solve the cost crisis in 1993 and 1994, it now wants to deploy its regulatory wisdom to remake managed care. Sen. Thomas Daschle (D-S.D.) and Rep. John Dingell (D-Mich.) are sponsoring the Patient Bill of Rights to implement the recommendations of the President's Advisory Commission on Health Care. On the other side of the aisle, Sen. Alfonse D'Amato (R-N.Y.) and Rep. Charles Norwood (R-Ga.) are sponsoring the Patients Access to Responsible Care Act (PARCA). (See "Clinton Care Lite," February.)

These bills differ in degree, but not in their heavy-handedness. And, just as the Clintons' bureaucratizing solution to health care inflation arrived as the problem was being resolved, the current crop of health care reformers are tackling issues that health care companies, in their need to keep customers happy, are already addressing.

Central to both the Democratic and Republican bills is a mandate on health insurers to provide a point-of-service option, which is health care jargon for being allowed to use a doctor who is not a member of the patient's insurance company's network. According to D'Amato, among the rights our federal government should secure is the "right to choose [our] own doctor."

**B**ut Americans already enjoy this right. What D'Amato really means is that government must dictate the contracts which private companies make with their customers. In this case, that means using the full force of the federal government to secure a patient's "option to see doctors outside their HMO for an additional fee."

This provision addresses Americans' main gripe with managed care: the restrictions HMOs place on choice. But that preference is already being addressed by firms in the marketplace; after all, those companies can only prosper if they offer their customers what they want.

## Timing Error

**Politicians just can't keep up with health care markets.**

By Michael W. Lynch

**"W**ithout reform, spending on health care will reach 19 percent of GDP by the year 2000," the White House warned ominously in an October 1993 press release. "If we do nothing, almost one in every five dollars spent by Americans will go to health care by the end of the decade, robbing workers of wages, straining state budgets and adding tens of billions of dollars to the national debt."

Well, we did nothing, at least nothing resembling the proposed ClintonCare system that promised to push every American into a government-managed health alliance. The decade is nearly ended, and American workers are again getting raises, state budgets are in the black and the central question facing Washington's budget writers is what to do with the purported surplus.

So what went right? Americans said "No" to ClintonCare and left the medical marketplace relatively free to evolve. In fact, by the time Hillary Clinton's task force got around to unveiling its notoriously bureaucratic solution, the central problem it aimed to solve—double-digit health inflation—was already a thing of the past. In 1993, total health spending increased 8.6 percent. By 1994, the private sector health market was deflating, with insurance premiums dropping 1.1 percent, according to the well-respected Mercer/Foster Higgins National Survey of Employer Sponsored Health Plans. Total health care spending as a share of GDP has held constant at 13.6 percent since 1993.

America's move to managed care put the lid on health costs. But there was a trade-off: Patients, doctors, and nurses, long accustomed to blank-check insur-