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The Kentucky
CITIZEN

STRENGTHENING FAMILIES AND THE VALUES THAT MAKE FAMILIES STRONG

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After 10 years, *FINALLY,* oral arguments offered!

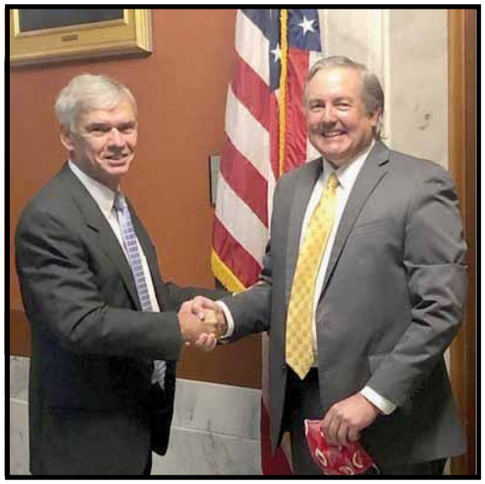
Stan Cave, The Family Foundation's attorney, delivered a powerful argument exposing the gambling advocates' misconceptions.

Ten years of legal wrangling finally came to an end on Friday, Aug. 14, when Stan Cave offered oral argument against "Historical Racing" gambling machines. Sadly, these machines have proliferated across the state even though they have never been declared legal by the courts and the General Assembly has never voted to change the state's policies on gambling.

Justices apparently had taken a serious interest in the case, allowing 30 minutes per side as opposed to the normal 15 minutes per side when the Court hears oral arguments.

And, their questions indicated they understood what was being considered.

Justices focused on two main areas: Are these machines pari-mutuel? Cave underscored that they do not rise to the clear standard of how "pari-mutuel" is defined in regulations.



Stan Cave *(r)* and Kent Ostrander at the Court after oral arguments

Secondly, two justices also noted that they were the only state court in the United States that has been tasked with legalizing expanded gambling, as opposed to state legislatures.

At one point, attorneys for the gambling devices accused Cave of "adding words" to the regulatory definition of "pari-mutuel" to which Cave retorted in his final remarks: "Both attorneys have claimed that The Family Foundation has added words to the regulations – nothing could be further from the truth."

As he planned, Cave argued that the Kentucky Horse Racing Commission and the state's race tracks did not reach their burden of proving that these machines are, in fact, a form of pari-mutuel wagering, as required by Kentucky law.

"Pari-mutuel" is a two-word French phrase literally meaning "wager mutually." ("Pari" – *to wager* and "mutuel" – *mutually, with, among, against.)* When a person is on his *own* machine, betting on his *own* race, pushing the button at his *own* time, *EXACTLY WHO* is he wagering *with, among or against*? *(No one.)* Gambling on these devices is pari-*SERIAL* wagering – "one after the other" in series.

"What happened here *(gambling expansion)* is just plain wrong. And my hope is that it will not be sanctioned by the court."

– Stan Cave's closing to the Court

The second major question that will be answered by the Court deals with the Separation of Powers described in the Kentucky Constitution. The state constitution provides that the General Assembly makes policy; the courts settle disputes. Yet, in this case, Gov. STEVE Beshear, literally directed his Kentucky Horse Racing Commission to take the matter to court and have the courts decide whether his new gambling policy – expanded gambling via machines – would be the law of the land. Neither the people nor their duly-elected representatives and senators would decide the issue of expanded gambling.

In his closing remarks, Cave addressed the Court: "What happened here *(gambling expansion)* is just plain wrong. And my hope is that it will not be sanctioned by the court."

Though there is no defined calendar, many believe the opinion will come out this Fall.

Go to: *thegamblingscam.com*

This site lists the history and the many "irregularities" of the case.

Number three of The Family Foundation's four policy points that explain why the expansion of gambling is bad public policy is **"Government will be corrupted."** That sounds harsh but it is universally true.

With millions going into the hands of the gambling industry, who becomes the greatest contributor and most influential group in the political process? The gambling industry will have the cash! Consider Nevada, home of Las Vegas – the "Gambling Capital of the World": Their legislature was elected and is just like ours – it's made up of Moms, Dads and Grandparents – yet it voted "Yes" to legalize prostitution (because the gambling industry wanted it). And, there are 13 abortion clinics serving Las Vegas – population 640,000. (It's the size of Louisville.) Kentucky now has two for 4.3 million. (Gov. Beshear opened Planned Parenthood in March.)

Consider these so-called "Historical Racing" devices – 7,500 have been authorized in Kentucky, thousands have been operating for years yet the Court has not said they are legal and the legislature has never voted.

It's just the gambling industry's ongoing sleight of hand.

thegamblingscam.org **Is a website provided by The Family Foundation entirely focused on the 10-year "slot-like" gambling effort and court case.**

Abortion "Buffer Zone" ordinance defeated

Some on the Louisville City Council tried to block pro-life sidewalk counselors from doing their constitutionally protected task.

On Aug. 20, the Louisville Metro Council upheld free speech by defeating efforts to impose a "buffer zone" around the city's abortion clinics.

Abortion advocates claimed that prohibiting pro-life sidewalk counselors was necessary to address health and safety concerns with COVID-19, but failed to include any language to end the restriction post-COVID-19 precautions. In fact, a proposed amendment to add the necessary language failed to receive enough votes for passage.

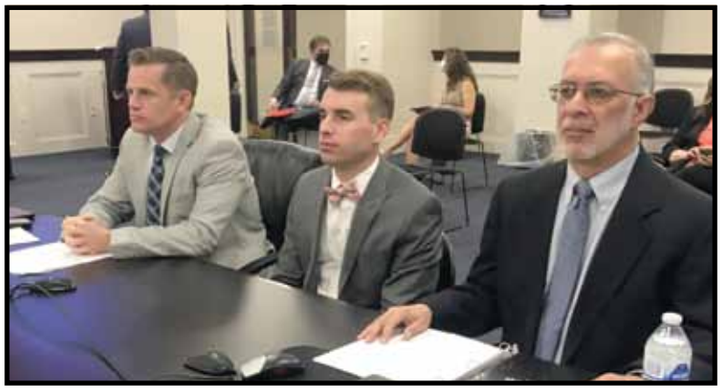
Council members who voted against the ordinance raised questions about the lack of a sunset clause to make the buffer zone temporary, who would enforce it, and whether it was appropriate to limit the First Amendment.

Ultimately, the proposed buffer zone was defeated 12-13. The vote against the ordinance was bipartisan, with 7 Republicans and 6 Democrats joining to protect free speech.

Pro-life advocates and those who value the protections of the First Amendment must remain vigilant because those behind the proposed buffer zone have vowed they "won't stop until we achieve a Louisville Safety Zone."

Anti-"Conversion Ban" testimony given

Those trying to ban all speech and counseling to individuals who experience same-sex attractions and don't want them, pushed their bill on Aug. 25 in Frankfort. Fortunately, Daniel Mingo with *Abba's Delight*, Joseph Backholm with *Family Research Council* and Cole Cuzick with *The Family Foundation* were there to testify to the fact that First Amendment free speech and religious freedom rights would be trampled. The bill is expected to be brought up again in January during the 2021 Session of the General



Joseph Backholm, Cole Cuzick and Daniel Mingo testify.

Stunning victory in Nelson federal court case

The Family Foundation filed an amicus brief *in this Louisville case, believing the decision would have national ramifications.*

Before departing for his seat on the DC Circuit Court of Appeals, the nation's second most powerful court, Federal District Judge Justin Walker issued an important decision upholding the First Amendment rights of Kentuckians.

On Aug. 14, Walker issued a preliminary injunction prohibiting the City of Louisville from enforcing its so-called "fairness" ordinance.

Chelsey Nelson, a wedding photographer and blogger, desired to use her God-given passion for photography and storytelling to "positively depict creation, truth, purity, beauty, and excellence. (Philippians 4:8)."

> ***"America is wide enough for those who applaud same-sex marriage and those who refuse to."***
>
> *– Federal District Judge Justin Walker*

But Louisville, with its "sexual orientation" and "gender identity" ordinance, threatened to punish her.

So, she filed a lawsuit seeking to protect her simple freedom to promote and celebrate marriages according to her faith, just as those Louisville photographers promoting and celebrating same-sex marriages do.

The Friday, Aug. 7, hearing was a surreal experience. Faces were obscured with masks, the room was filled with a maze of plexiglass barriers, hand sanitizer dispensers stood guard at the door, and social distancing was strictly enforced among observers. But court was in session, with a federal judge weighing the constitutional rights of Americans within our Commonwealth's largest city.

The Family Foundation's policy analyst, Michael Johnson, attended the hearing and observed that "there was something very comforting about seeing the Great Seal of the United States and a federal judge's black robe; a reminder that the pursuit of justice and righteousness should be a constant, even in the midst of unprecedented times."

The judge assured the attorneys that he had read every word of the legal briefs they filed prior to the hearing and it showed. Walker quickly identified the issues presented in the case, summarized each side's arguments, and asked questions focusing on the areas where he felt more explanation was necessary.

The two-and-a-half-hour hearing proceeded smoothly with Walker's knowledge of and apparent interest in the case. His conversational approach to questioning the attorneys also made it enlightening.

Ultimately, Walker determined that this case was *NOT* about discrimination, as Louisville and LGBT advocates claimed, and he stated so in his order.

Chelsey Nelson

For Walker, this case was about treating religious Americans equally and continuing to uphold the First Amendment's free speech and free exercise of religion for everyone: *"Just as gay and lesbian Americans 'cannot be treated as social outcasts or as inferior in dignity and worth,' neither can Americans 'with a deep faith that requires them to do things passing legislative majorities might find unseemly or uncouth' 'They are members of the community too.' And under our Constitution, the government can't force them to march for, or salute in favor of, or create an artistic expression that celebrates, a marriage that their conscience doesn't condone."*

He concluded: *"America is wide enough for those who applaud same-sex marriage and those who refuse to. The Constitution does not require a choice between gay rights and freedom of speech. It demands both."*

Joyce Ostrander seriously injured in accident

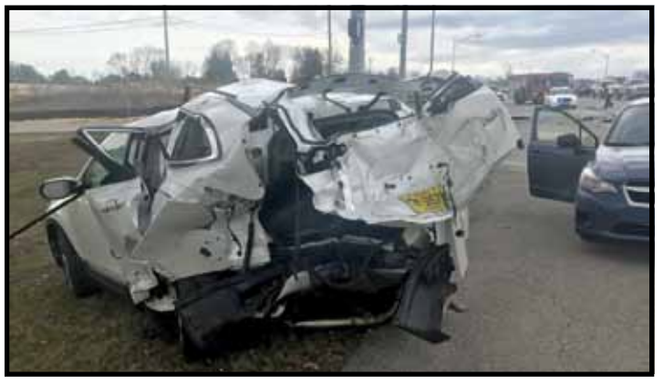
She has been The Family Foundation's Legislative Director since 2013. On March 4, her role there came to an abrupt end.

After lobbying in Frankfort until late in the afternoon on March 4, Joyce headed home to prepare for a speaking engagement at a Wednesday-night church service in Madison County. Just a mile from The Family Foundation's office and her husband, she was forcefully "rear-ended" while stopped at a stoplight.

An indication of things to be diagnosed in the weeks to come, four hours later at the hospital she could not understand or remember why she was there or what had happened to her. Doctors worked to assess the damage to her spleen, broken bones and brain in order to stabilize her, but could not at that time evaluate the long-term effects of her injuries

According to witnesses, the car that hit her was accelerating when the collision took place. This was confirmed in the police officer's accident report when he was told by the driver that her "brakes failed," and she then demonstrated that fact by pushing several times *on the accelerator.* The car slammed into Joyce's stopped car at over 50 miles per hour. The unlicensed driver had evidently panicked at the last moment and pushed hard on the accelerator instead of the brake.

The force crushed Joyce's car into the car stopped in front of her pushing both cars through the intersection with Joyce's vehicle spinning out of control and off of the road.



In the days to come she would be diagnosed with a serious Traumatic Brain Injury, as well as damage to her neck and back. Unbeknownst to her at that time, she had lost much of the executive function of her brain.

Joyce Ostrander

"She still is as sweet as ever and her personality is unchanged. She just cannot do more than one thing at a time," said Kent Ostrander, her husband. "As you can imagine, her days volunteering at The Family Foundation are over: Overseeing 10 to 15 bills each Session (each with various talking points), managing three other lobbyists who work for The Foundation, and engaging a majority of the 138 legislators along with the numerous witnesses that are needed in committee hearings, is just not possible."

Like most who have suffered similar brain injuries, Joyce is recovering slowly day-by-day, hoping to be regain a great deal over the next 12 to 18 months.

During her eight years of service, Joyce's work contributed to the passage of over 35 pro-family pieces of legislation and the "killing" of numerous "bad" bills.

Nov. 3 election is critical

The June 23 Primary resulted in a number of high-quality candidates.

We Kentuckians know this truth, but now more than ever before we need to "live this truth." And the truth is: "In God We Trust." After viewing an American victory from a British warship in 1814, Francis Scott Key penned the Star Spangled Banner's lyrics and concluded the last verse with "and this be our motto: in God is our trust." The motto first appeared on United States coins in 1864 during the Civil War. Congress acted multiple times since then to affirm and broaden its usage. Finally, an Act of Congress in 1956 made "In God We Trust" the official United States National Motto.

In March of 2019 the Kentucky General Assembly passed House Bill 46, the National Motto Bill, sponsored by Rep. Brandon Reed (R-Hodgenville). The bill passed by a vote of 72-25 in the House and 29-8 in the Senate. It was signed into law on March 25. HB 46 requires each public school in Kentucky to place the National Motto in a "prominent location."

NOW – Nov. 3 – is the time to Vote

NOW – Nov. 3 – Kentuckians need to live by their national motto! The best way to do that is by being "Salt and Light" with the values of this God. Practically, that means to pray for godly men and women, to vote for godly men and women and to support the godly men and women that are already in office.

Registering to Vote

Clearly, one cannot vote unless he/she is registered . So, between now and Oct. 5, if you are not registered, you must contact your County Clerk and sign up. And, you can get several Voter Registration Forms to sign up other church members. BUT . . . they must be returned to your County Clerk by Mon., Oct. 5. **OR,** you can go online and register to vote by October 5: ***govoteky.com***

The bottom line is this: Much is happening across America in these days and there is considerable unrest. It is critical that godly people make godly decisions. Such voters are indeed the "Salt of the earth." And with that comes this fact: "If the salt has lost its savor, it's worth nothing than to be thrown out and tramples underfoot by men." To learn more about the candidates in their own words, go to our ***www.votekentucky.us*** website. *(See right for information on our candidate website.)*

Available online Sept 22

Kentucky Candidate Information Survey

Kentucky's best nonpartisan candidate website!
This site is perfect for churches, Sunday Schools:

www.VoteKentucky.us

KCIS has candidates in their own words
KCIS has state, federal and judicial races
KCIS is nonpartisan
KCIS covers numerous issues
KCIS will be on the website on Sept. 15

"Like" & "Share" on Facebook with others
You can download and copy KCIS for friends

Search Facebook: **@VoteKentucky**

Gov. Andrew Beshear: *Why I must call him "Abortion Andy"*

This is NOT name-calling in order to demean. It is an accurate assessment of who he is and how he has set policy. In truth, the bottom line is: "Better is open rebuke than love that is concealed. Faithful are the wounds of a friend." **– Proverbs 27:5-6a**

Jesus openly and forcefully labeled the religious rulers of His time (the Pharisees, the scribes and the Sadducees) as "whitewashed sepulchers," "brood of vipers," and "hypocrites." [1] I think we would all agree that it was *NOT* because He was trying to "be mean" or that He had an anger problem, but rather to confront them with *THE TRUTH* in such a way that they might "awaken" from their deception – from their spiritual slumber. (Clearly, Jesus spoke out against angry and vicious name-calling.[2])

Would Jesus' words have hurt their feelings? Yes.

Because they were hurt, would they have become angry? Would they retaliate? Yes, . . . and they did!

Were these "nice" things to say? No. They were forceful and strong . . . but they were the truth about how the Heavenly Father regarded their form of "righteousness."

In reality, these leaders were beautifully dressed on the outside with splendid vestments, as well as their outward sanctimonious posture of "righteousness," but their religiosity engendered nothing but spiritual death on the inside. Thus, they were white-washed tombs – external beauty, death inside.

Jesus said the same truth another way, affirming they had a form of religion, but that form poisoned others who would follow their lead. Hence, they were a "brood of vipers." [3]

Here we are in 2020, in the midst of COVID-19. Our Governor, Andy Beshear, has passionately articulated his care for all who reside in Kentucky . . . except for those inside of the womb. Though some question his motives and suggest political grandstanding, let's not go there. Let's believe the best about our Governor.

But here is the problem: He has care for the born and, at the same time, has absolutely no regard for those preborn. How can I make that claim? Consider these facts:

Gov. Beshear has worked hard *FOR* the abortion industry.

I. He vetoed Senate Bill 9, the "Born Alive Infant Protection Act." This bill guaranteed that a newborn child would receive medical care, even if he/she was born alive as the result of a botched abortion. The Governor wrote in his April 24 veto proclamation: *"I am vetoing Senate Bill 9 because existing Kentucky law already fully protects children from being denied life-saving care and treatment when they are born."* But that is not really true. Yes, Kentucky Law says a born alive infant "shall be fully recognized as a human person," but then turns the force of that statement to require that a birth certificate, and then, if the child were to die, a death certificate, must be given. It does *NOT MANDATE* that medical care be given. Some *MAY INFER* that birth and term "human person" means the baby *MUST BE GIVEN* medical care . . . but it doesn't. Look at the other end of life: a living human being may be given a "Do Not Resuscitate" order by their medical surrogate, which basically means, "Allow them to die." So, a mother could easily encourage the abortion staff to "Allow the child to lay unattended until he/she passes away" – exactly like Virginia's pro-choice Governor (and medical doctor) has proposed.

So, a mother could easily encourage the abortion staff to "Allow the child to lay unattended until he/she passes away" – exactly like Virginia's pro-choice Governor (a medical doctor) has proposed.

Even *IF* a pro-life judge would rule that existing law requires medical care be given, a pro-choice judge wouldn't. And more, if that legal intent is already in the law, what harm is there in allowing Senate Bill 9 to become law and "spelling it out" that medical care *MUST* be given? That is commonly done by the legislature! Bluntly, Gov. Beshear vetoed Senate Bill 9, and in an attempt to justify his veto, he misrepresented the truth to Kentucky citizens.

Kent Ostrander is the executive director of The Family Foundation

II. Gov. Beshear also said in his veto proclamation that *"bills similar to Senate Bill 9 have been struck down as unconstitutional in the majority of states in America when challenged."* What is he talking about??? What bills have been stricken? He *MAY* be saying that when Attorney Generals have stood up against their Governors on abortion clinics being open during COVID-19, *MOST* have not prevailed. That is true. But no pieces of legislation similar to Senate Bill 9 have been overturned. FACT: It's the legislature's job to legislate . . . and legislating is not unconstitutional. It is the legislature's prerogative! Again, at best Gov. Beshear offered only a half-truth.

Bluntly, Gov. Beshear vetoed Senate Bill 9, and in an attempt to justify his veto, he misrepresented the truth to Kentucky citizens.

III. By vetoing Senate Bill 9, Gov. Beshear also vetoed the amendment to it that expanded authority for the Attorney General to investigate the abortion industry. This is particularly important because two University of Louisville School of Medicine professors have testified under oath that they *PERFORM ALL* of the surgical abortions at the Louisville abortion clinic. (The owner of the clinic, too old and too frail to do surgeries, now only does the medicinal abortions. But why are U of L School of Medicine professors doing them?) Shouldn't the Attorney General be able to investigate the clinic's cozy relationship with U of L, particularly since Kentucky Law [**KRS 311:715 (1**] requires that *"Public agency funds shall not be used for the purpose of obtaining an abortion or paying for the performance of an abortion"?*

By the way, one of the two professors testified *"I was hired, you know, by the University of Louisville in order to provide not only general obstetric and gynecological care but also to, you know, fulfill this family planning position and provide abortion services. But, you know, I guess it's sort of I guess like a joint endeavor, I guess. You know, that – I consider it part of my – part of my job. That's what the University of Louisville hired me to do."* Is this state university paying for abortions in some way? Shouldn't the Attorney General have the power to investigate thoroughly?

"I was hired . . . in order to provide not only general obstetric and gynecological care but also to, you know, fulfill this family planning position and provide abortion services . . . I consider it part of my – part of my job. That's what the University of Louisville hired me to do."

U of L School of Medicine Professor

IV. During the beginning of the COVID-19 crisis, Gov. Beshear required all non-essential medical procedures be suspended and medical offices closed. This meant that many heart surgeries, cancer surgeries, and treatments that were not considered "essential" to life *HAD TO BE DELAYED*. The goal was to save Personal Protective Equipment (PPE) for medical workers treating the virus. *BUT* . . . when inquiries were made, on several different occasions, staff at the abortion clinic reported that the Governor had allowed them to remain open. This was particularly complicating because the Governor repeatedly asked for donations of PPE on his daily afternoon COVID-19 reports, while PPE was being used by the abortionists and their aides.

And, with similar preferential treatment, officials in the Beshear Administration allowed the clinic to break other rules imposed on everyone else – 1) no six-foot social distancing, 2) large groups of patients (more than 10) and their friends/family being grouped in the small waiting room, 3) and out of state patients being driven into Louisville to the clinic and then driven home, etc. *The abortion clinic has been given special privileges not available to other medical clinics and personnel*. (By the way, the clinic's owner and his wife both maxed their giving to Gov. Beshear's campaign last year.)

V. Gov. Beshear authorized the Planned Parenthood in Louisville to start doing abortions and they began in late March — *DURING THE COVID-19 CRISIS*. Heart surgeries and cancer treatments are postponed and yet the Governor authorizes a new abortion clinic to open? What kind of leadership is this?

Heart surgeries and cancer treatments are postponed and yet the Governor authorizes a new abortion clinic to open.

VI. By authorizing an abortion license for Planned Parenthood (PP) in Louisville, he has allowed the notorious Dr. Deborah Nucatola to begin having influence in Kentucky. What influence? We don't know exactly . . . but she is the one who was caught on video talking about being careful as to how to abort an unborn child in a way that she could protect the vital organs to allow her to illegally harvest and sell them for research. Now, Dr. Nucatola is the Medical Director for **"Planned Parenthood of Indiana and Kentucky."** (Because Kentucky's PP was doing poorly, it merged with PP of Indiana, and most recently with PP of the Great Northwest, allowing West Coast power, money and influence to target Indiana and Kentucky.)

VII. Gov. Andy Beshear came by his position supporting abortion honestly: His parents have been strong supporters of Planned Parenthood for decades. In fact, after being Attorney General (1980-83) and then Lt. Governor (1983-1987), Steve Beshear lost his 1987 bid for Governor primarily because his ardent support of Planned Parenthood was revealed to the public. In Kentucky, back in the 1980s, many Democrats were still pro-life. When he ran for Governor in 2007, he didn't mention his pro-abortion or pro-Planned Parenthood bent. So, our current Governor, young Beshear, is simply leading in the only direction he has ever known – with a pro-choice/pro-abortion resolve.

So, our current Governor, young Beshear, is simply leading in the only direction he has ever known – with a pro-choice/pro-abortion resolve.

All of this is magnified by Gov. Beshear's focus on saving lives from COVID-19, while totally authorizing abortion at full speed ahead. The magnitude of life lost is staggering. Using the Governor's own "Age of Death Chart" from COVID-19 and assuming a 90-year life span, from March 1 thru Aug. 31 – the 933 victims of Covid-19 amass a total of 13,035 of "Years of Life Lost." But over the same time period, because of Gov. Beshear's pro-abortion policies, the 2,125 abortions total 191,250 "Years of Life Lost." *Over 190 thousand "Years of Life Lost"! (Note: Calculations were done using only the COVID-19 and abortion numbers from March 1 thru Aug. 31 – exactly six months.)*

Please note that this is *NOT* an "anti-Beshear, election polemic" – he is not due to run for re-election for three years. It is *NOT* a "sully his name" strategy – in fact, many are pleased that he is first and foremost *FOR* abortion, so calling him "Abortion Andy" would be a badge of honor in those circles. And, it is *NOT* an "angry outburst" trying to "get even" with a leader who has hurt the feelings of pro-life citizens. We are all commanded to respect those in authority and at the same time, speak the truth. And, this is simply the truth. It is the truth by virtue of what Gov. Beshear has actually done, as outlined above—It is the truth by virtue of the fruit of his life.

Stepping back from the details and considering the full picture, it is important to recognize that Jesus' firm handling of the Pharisees, scribes and Sadducees actually "worked" – it made an impact and it changed the world, at least for some. Nicodemus came to him for counsel, albeit by night, and, from their interaction, we all understand more clearly the need to be "born again." [4] Thank you, Nicodemus! And it worked also with Joseph of Arimathea.[5]

Pray for Gov. Andy Beshear – we're commanded to do so.[6] (I do and will continue to do so daily.) But until he turns on the abortion issue . . . until he repents and sets his new course in a "life direction," he will be "Abortion Andy" to me, . . . and I hope to all who see him clearly. For his sake, for Kentucky's sake, and for the sake of all the children poised to come into this world, let him be known as "Abortion Andy" in order that he may pause, consider and turn from the path he has set for himself.

Understand that using a name such as "Abortion Andy" is Biblical. It is true. And, most importantly, it may make a difference in Gov. Beshear's life. Just ask Nicodemus or Joseph of Arimathea.

[1] Matt. 23:13-15,23, 25,27,29,33 [2] Matt. 5:33 [3] Matt. 23:10-12, 22
[4] John 3:1-21 [5] Matt. 27:59, Mark 15:43-46, Luke 23:50 [6] I Tim. 2:1-4

The Father's heart for children

Read this NOT to create new law and punishment, but to understand the Father's heart (intensity) FOR children.

Leviticus 20:1-5 The Lord said to Moses, [2] *"Say to the Israelites: 'Any Israelite or any foreigner residing in Israel who sacrifices any of his children to Molek is to be put to death. The members of the community are to stone him. [3] I myself will set my face against him and will cut him off from his people; for by sacrificing his children to Molek, he has defiled my sanctuary and profaned my holy name.*

[4] If the members of the community close their eyes when that man sacrifices one of his children to Molek and if they fail to put him to death, [5] I myself will set my face against him and his family and will cut them off from their people together with all who follow him in prostituting themselves to Molek.'"

Key 2020 SCOTUS cases:

The U.S. Supreme Court's 2019-2020 term was one for the record books—live audio of oral arguments was available for the first time in history; Justice Thomas, who never interrupts lawyers, asked questions during the new format; and decisions were released in July for the first time in over two decades. Despite everything, the Court managed to decide 57 cases and one-third of them were decided unanimously. Another third of cases saw two or fewer of the Court's nine justices dissent. Those 5-4 splits, which get the media attention, accounted for only 22 percent of cases. The five cases below were particularly relevant to The Family Foundation's mission:

"June Medical" Services LLC v. Russo (June 29, 2020) **[A Disappointment]**

In a 5-4 decision, the U.S. Supreme Court ruled that Louisiana's attempt to protect the health of women getting abortions was unconstitutional.

Pro-life court watchers were shocked that Chief Justice Roberts cast the deciding vote to strike down Louisiana's law requiring abortionists maintain admitting privileges at a nearby hospital, dashing hopes that the Court's new conservative majority would guarantee victory.

Roberts used the doctrine of *stare decisis* to justify following the Court's 2016 decision overturning an identical Texas law. He did so despite dissenting in the previous case and "continuing to believe that the case was wrongly decided."

Roberts has long been devoted to protecting the Court's image as nonpartisan and nonpolitical. Court watchers have cautioned that his focus on public opinion, a key guide of politics, creates the temptation of playing politics to avoid the appearance of politics. That may have played a role in this decision.

While pro-life advocates felt betrayed by Roberts, there is some good news. He refused to join the reasoning of the liberal justices, managing to undo 98 percent of the Court's flawed 2016 reasoning and correct the Court's misinterpretation of *Planned Parenthood v. Casey*'s "undue burden" standard.

With Roberts and the four conservative justices endorsing the "substantial obstacle test," states will have more freedom going forward. The test asks whether a state abortion regulation has the purpose or effect of imposing a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."

"Bostock" v. Clayton County, Georgia (June 15, 2020) **[A Disappointment]**

By a 6-3 vote, the U.S. Supreme Court ruled that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation and gender identity.

Justice Gorsuch's majority opinion claimed to be merely reading the law and analyzing its semantics and grammar, which left the Court with only one choice. It had to hold Congress to the language they chose to use, even if they did not have sexual orientation or gender identity in mind when they passed the law.

This application of the narrowest literalist conception of textualism (strict or rigid adherence to a text) alarmed many pro-family court watchers and the other conservative justices. Gorsuch's approach ignored the substantial context surrounding the law, which overwhelmingly supported a different reading.

As the dissenting justices emphasized, choosing the literal interpretation of words over their ordinary usage can undermine the rule of law because no one knows what to expect. In fact, for decades, Congress and the states understood there to be a difference between "sex" and "sexual orientation" or "gender identity."

Such a critical error in applying the law, especially by President Trump's most recent appointee, was very disappointing for pro-family court watchers. It ignores the context and all the potential consequences that comes from effectively redefining what most people understood the law to mean.

"Our Lady of Guadalupe" School v. Morrissey-Berru (July 8, 2020) **[Good News!]**

Joined by Justice Gorsuch, the 7-2 majority strengthened an important protection for religious organizations and institutions. It is one of the protections that Gorsuch had mentioned in and was made even more important by *Bostock v. Clayton County, Georgia*.

Justice Alito, the author of the majority opinion, emphasized that the Court's recognized "ministerial exception" arose out of the understanding that religious institutions should be able to choose and remove a minister without government interference.

This freedom is essential to a church or religious organization's ability to decide issues relating to their faith and doctrine. As Alito warns, without it, "a wayward minister's preaching, teaching, and counseling could contradict the church's tenets and lead the congregation away from the faith."

He went on to explain that religious education "is vital to many faiths" and religious teachers therefore perform "vital religious duties."

"Espinoza" v. Montana Department of Revenue (June 30, 2020) **[Good News!]**

In a 5-4 vote, the U.S. Supreme Court declared that states may not exclude religious schools from aid to private schools, simply because of religion. States are under no obligation to provide such aid to private schools and the Court does not weigh in on the wisdom of doing so. But if a state chooses to do so, it must not discriminate against religious schools.

For the first time, the majority of justices recognized that so-called Blaine Amendments, which prohibit aid to churches or religious entities, have "checkered" origins and involve a "shameful pedigree" of hostility to specific religious groups.

Such a recognition could be the death of Blaine Amendments, some form of which is contained in the state constitutions of Kentucky and 36 other states.

"Little Sisters of the Poor" Saints Peter and Paul Home v. PA (July 8, 2020) **[Good News!]**

In a 7-2 vote, the U.S. Supreme Court rejected a challenge to the Trump Administration's new rules expanding a religious or moral objection exemption to Obamacare's birth-control mandate.

The new rule expanded a previous exemption, by allowing private employers with religious or moral objections to opt out of providing coverage without the burdensome notice requirement.

Opinion: The 10-year court case is now before the KY Supreme Court. The answer will come soon.

Can slot machines just "move in"?

Martin Cothran is the senior policy analyst for The Family Foundation

In the culmination of a ten-year legal battle that pit The Family Foundation against the most powerful special interests in the state, the case over so-called "historical horse racing" finally landed squarely in the Kentucky Supreme Court on Aug. 14.

Stan Cave, who has single-handedly led the legal fight against an industry whose power has gone unquestioned in the state for as long as anyone can remember, and over the course of the battle faced-off against an all-star cast of the state's most prominent attorneys, pointed out to the seven justices that the machines now buzzing and beeping in a number of slot parlors across the state have little in common with anything which may be called pari-mutuel wagering on horse racing.

The definition of what constitutes pari-mutuel wagering was the key point in the hearing before the High Court since the law governing horse racing in the state specifically allows only pari-mutuel betting on horse racing. Pari-mutuel betting involves bettors competitively betting with or against each other on the same event or group of events. The result is winnings being determined by pari-mutuel payout odds as typically seen on tote boards. But historic racing machines do not do this. There, prizes are determined by mathematical formulas because players are not competing among each other.

No industry should be so powerful that it controls the very government agency that is supposed to be overseeing it.

This sounds like a technicality, but hides a larger reality: Any reading of the law that would allow historic racing would have to allow other casino-style games. Whatever standard the Supreme Court employs that could find historic racing permissible would be a standard under which almost any other casino game could pass.

The Supreme Court's decision is not just about historic racing, but about casino gambling in general.

This fight began in 2010, when the Horse Racing Commission and tracks argued that "Instant Racing," one brand of historic racing, was pari-mutuel wagering. But the case that ended up before the Court had to do with another brand of historic racing called "Exacta."

Why the switch? Because, as it turned out, Instant Racing was not pari-mutuel at all, but powered by a random-number generator, just like a slot machines. Once the unlawful scheme was unmasked, the Instant Racing machines were soon discontinued in Kentucky.

The irony was not lost on the Court. When attorneys for the Commission and the tracks rose to present their case, Justice Lisbeth Hughes pointed out to them that it seemed as if the Court had been misled when they argued this case in 2014.

Indeed, the Court had been misled, and the question was whether the horse racing industry was misleading it again.

Clearly, the Court felt burned by the tracks, and didn't seem excited to be burned again. Indeed, the Court was quite unfriendly to The Family Foundation's case in 2014, and the questions directed at Cave were somewhat hostile.

This time around it was different.

The Court's questions to Cave seemed to be directed at gaining more information or clarity. But the questions to the lawyers for the Commission and the tracks seemed skeptical.

Skepticism of the racing industry has been in short supply and certainly has not been practiced by the Kentucky Horse Racing Commission, the state agency tasked with the job of regulating the tracks. Instead of the Commission regulating the tracks, the tracks seem to be regulating the Commission. Conflicts of interest abound, with members of the industry with racing interests serving in the Commission's leadership.

When an audit was conducted in December 2018, it was found that, according to the Kentucky Center for Investigative Reporting, "Keeneland, Ellis Park, Kentucky Downs and two machine manufacturers paid more than $845,000 for testing services with virtually no direct oversight from the horse racing commission, according to a review by the office of the Auditor of Public Accounts."

Not only that but, said the story, "The commission didn't even have copies of the invoices from New Jersey-based Gaming Laboratories International until it gathered them for the auditor." Gaming Laboratories was the Commission's gambling consultant, being paid by the tracks, which told the Commission that the gambling was lawful.

No industry should be so powerful that it controls the very government agency that is supposed to be overseeing it. And no agency should be so powerful that it is above the law, a law whose interpretation in Kentucky has been delegated to the Supreme Court.

Dream with me . . .

Why can't it be Kentucky?

Kent Ostrander is the executive director of The Family Foundation

I couldn't be more serious as I write this note. I've spent some 33 years in this public policy work with The Family Foundation. I've been doing what I believe I was created to do. As I reflect, it could possibly all be summed up in these following thoughts. . .

Let me ask you this question: If I asked you to tell me where I could go to see a full-blown, mature expression of Mormonism, where would you tell me to go? I'm talking about where the community would, generally, live by Mormon uprightness . . . the schools would have a Mormon "flavor" . . . . business would be conducted with Mormon integrity . . . government would make decisions with Mormon values.

If I asked you to tell me where I could go to see a full-blown, mature expression of Mormonism, where would you tell me to go?

Where would you tell me to go to find such?

I have no doubt that you are already saying to yourself, "Kent, that's silly! Just go to Utah."

That's my answer as well. That's what I would say!

But let me ask you the same question with just one twist: Where could I go to see a full-blown, mature expression of Christianity?

Don't tell me your church. I'm looking for community. I'm looking for schools. For businesses and for government. Where would you tell me to go?

If you are like the many of whom I have already asked *this* question, you are probably pondering – no answer quickly comes to mind. There may not be such a place.

So, let me ask you my final question to get to my point: Why couldn't that place of mature Christianity – community, s schools, businesses and government . . . Why couldn't it be ***KENTUCKY?***

Think about it . . .

Public policy is nothing more than a manifestation of the will of the people in a democracy (or, more accurately, a republic form of democracy). There are 6,000 Bible-oriented, evangelical churches in Kentucky! That doesn't even count the four Dioceses of Kentucky's large Catholic Church.

But let me ask you the same question with just one twist: Where could I go to see a full-blown, mature expression of Christianity?

I can give you many reasons as to why we have failed to attain the vision which I described above, but rather than get depressed with a list of all our problems and failures and apathies and ignorances, I'd rather simply ask you to dream . . .

Let's pretend that our Leader asked us to pray *"Let Your kingdom come, let Your will be done **ON EARTH** just as it is in heaven."* (emphasis added) Oh, yeah. He did say that.

Let's just imagine that He has "*good works, which God prepared beforehand, that we should walk in them.*" (But Paul of Tarsus, the apostle, DID say that.)

Let's ponder HOW we should get involved with God's truth. *"For the weapons of our warfare are not of the flesh but have divine power to destroy strongholds. We destroy arguments and every lofty opinion raised against the knowledge of God, and take every thought captive to obey Christ." (II Cor. 10: 4-5)* (Thoughts like "abortion is a constitutional right" or "pornography is free speech.")

Dream with me. I'm qualified to dream – I'm old. (Joel 2:28/Acts 2:17) Then let us rise up and build. Why ***CAN'T*** it be ***KENTUCKY?!***

The Kentucky *CITIZEN*

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This Fall . . .

We have to make some changes. Please think about helping.

Joyce Ostrander was an outstanding Legislative Coordinator for us. *(See article on page 3)* She developed quite a track record of legislation that she (we) boldly supported, many pieces of which were passed. But her record was more positive than that – legislators knew what she told them was true. That reputation is more valuable than anything money can buy and that any sweat equity can create.

Amazingly, she succeeded in the Frankfort environment even though she deeply dislikes conflict . . . never-the-less she went to Frankfort faithfully to do what the Lord was asking her to do. And, she did it as a volunteer – she was not paid.

Now her time lobbying in Frankfort is over. That leaves us needing to hire someone to fill her shoes. It won't be easy . . . but we will find that someone. The Lord will provide!

What can *YOU* do?

In the weeks/months to come we have *H-U-G-E* opportunities. Clearly, you cannot simply step forward and do the job that Joyce's accident has left vacant, but you can put your shoulder to the wheel. Here's where we need help . . .

Stan Cave has stood against the gambling devices. . . Will you volunteer to pray for the Kentucky Supreme Court, that the fear of God will guide them to make a righteous, nonpolitical decision?

And, . . . there are many individuals who have placed their hat in the ring for elected office . . . Will you "volunteer" to pray for the Nov. 3 elections? Will you "volunteer" to vote? Can you "volunteer" to make the information we create available to your church?

Can you offer to "Like/Share" us on Facebook? ***@The Family Foundation***

If you can help – *in any way* – please email us:

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