that this particular policy promoted healthy pregnancies or reduced costs; instead, the policy alienated a patient population, endangered university research funds, and embroiled MUSC in political controversy.

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To the editor: In *In the Matter of Baby K*,[1] the Fourth Circuit denied a Virginia hospital's petition that, despite EMTALA,[2] it was not be obliged to comply with Ms. Harrell's request to provide stabilizing treatment, including a tracheotomy, for her anencephalic infant. The court refused on the grounds that: (1) "the plain language of EMTALA requires stabilizing treatment"; and (2) neither the court nor the hospital "found any statutory language or legislative history evincing a Congressional intent to create an exception to the duty to provide stabilizing treatment when the required treatment would exceed the prevailing standard of medical care."[3] The U.S. Supreme Court declined to review the case, but such refusal "does not remotely imply approval or disapproval."[4]

The case has attracted medical and ethical comments,[5] but, to my knowledge, no conventional legal analysis. Here, I attempt to show how vulnerable *Baby K* is to attack in other circuits and in state courts.

Baby K can be challenged on two grounds: (1) the court's rejection of the hospital's request that it consider the Child Abuse Amendments of 1984;[6] and (2) the failure to find the relevant portions of EMTALA's legislative history, particularly the Senate Committee Report on the bill that became EMTALA: "The bill does not create an obligation of any hospital to treat any patient except in an emergency situation and *does not interfere with the practice of medicine*."[7]

A year before it considered EMTALA, Congress passed the Child Abuse Amendments of 1984. They passed after intense congressional consideration,[8] and excluded from the definition of *medical neglect* of handicapped infants those for whom treatment "would merely prolong dying ... or otherwise be futile."[9] Specific administrative interpretation applied to the treatment of anencephalics: "Withholding of medical treatment for an infant born with anencephaly, who will inevitably die within a short period of time, would not constitute a discriminatory act because the treatment would be futile and do no more than temporarily prolong the act of dying."[10] Thus, had the court looked, it would have found that the expressed intent of Congress was, and still is, that anencephalics need only be provided with "appropriate nutrition, hydration or medication."[11]

The legislative history of EMTALA shows that Congress did not intend by inference to qualify the purpose it had articulated in 1983. The bill which became EMTALA was solely concerned with keeping hospitals from making eligibility for emergency treatment contingent on passing a "wallet biopsy."[12] The bill, along with several unrelated bills, were inserted into COBRA 1985, and rushed through Congress without hearings in either house.[13]

The paradox of *Baby K*—that treatment not required by the Child Abuse Amendments had to be continued indefinitely under EMTALA—results from the court's failure to follow ordinary rules of statutory interpretation. The plain meaning rule, the sole legal basis for the court's result, is not a rule that forbids resort to aids to construction, "however clear the words may appear on superficial examination." And where the literal reading of a statute "would compel an odd or absurd result,"[14] such as requiring the repeated resuscitation of an infant for whom "aggressive treatment would serve no therapeutic or palliative purpose"[15] and overturning the principle that a patient "may not demand that physicians or others provide particular medical interventions,"[16] the court "must search for other evidence of congressional intent to lend the term its proper scope." Such a search can include "the circumstances of the enactment of particular legislation."[17]

Even if the decision in *Baby K* goes unchallenged, the means by which it was reached cannot be condoned. The evidence to the contrary should be exposed and explained, not ignored. The court's process of interpretation reminds one of Edmund Wilson's quip: "[B]y using such methods I should have little difficulty in proving that the Pentateuch was written by Ben-Gurion."[18]

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5. See, for example, *Journal of Law, Medicine & Ethics*, 23 (1995): 5–46.
6. 16 F.3d at 592 n.2.
7. S. Rep. 99-146, 99th Cong., 1st Sess., 454 (1985), reprinted in 1986 U.S.C.C.A.N. 413 (emphasis added).
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9. 42 U.S.C.A. § 5106g (West 1995); 45 C.F.R. § 84.55(f)(l)(ii)(B) (1994) (referring to "Principles of Treatment of Disabled Infants" prepared by "a coalition of major medical and disability organizations"); and 45 C.F.R. pt. 84, App. C at 372 (1994).
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13. H.R. Rep. No. 99-241, 99th Cong., 1st Sess., pt. 3 at 6 (1985); and S. Rep. 99-146, 99th Cong., 1st Sess., 460, 462, 489

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(1985), reprinted in 1986 U.S.C.C.A.N. 419, 421, 448.

14. *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 455 (1989). An *odd* result is enough to warrant suspicion of a superficiality plain meaning: "*positively absurd*" is not required. See *U.S. v. X-Citement Video, Inc.*, 115 S. Ct. 464 (1994).

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16. A.M. Capron, "Medical Futility: Strike Two," *Hastings Center Report*, 24, no. 5 (1994): at 42. See also *In re J.* (a minor), [1992] All E.R. 614, 623, 625 (emphatic judicial statements of the principle).

17. 491 U.S. at 545.

18. Edmund Wilson, *Israel and the Dead Sea Scrolls* (New York: Farrar Straus Giroux, rep. 1978): at 276.

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