

The Second Session of the 105th Congress adjourned Oct. 21. The First Session of the 106th Congress is set to begin on Jan. 6, 1999. Additional information on federal legislation can be found on the internet at <http://thomas.loc.gov>.

A. Authorization Bills

1. Partial-Birth Abortion Ban Veto Override. On July 23, the House voted 296 yes, 132 no, 7 not voting to override President Clinton's veto of the Partial-Birth Abortion Ban Act (HR 1122). This vote exceeded the required two-thirds level of support by a margin of 10. On September 18, the Senate considered a motion to override and was not successful. *Voting 64 yes, 36 no, the Senate fell three votes short of the 67 votes needed.* Despite the overwhelming bipartisan support of Congress, this measure does not become law.

2. The Smith Amendment/Mexico City Policy/UNFPA Funding. The State Department Authorization Bill (HR 1757) that contains the Smith Amendment with the modified Mexico City Policy cleared Congress April 28 but was not immediately sent to the President. The President threatened to veto the bill because of the pro-life Smith Amendment. On Oct. 21, Congress sent HR 1757 to the President with the Smith Amendment included. Without delay, the President vetoed the bill, again restating his continuing intention to “veto such [pro-life] provisions.” By vetoing, however, the President also rejected the vehicle for authorizing U.S. back payments to the United Nations, and again demonstrated that promotion of abortion in other countries overrides all other foreign policy considerations.

The Smith Amendment contains the scaled-back Mexico City Policy. This policy would prevent U.S. funding of foreign, non-governmental organizations that (1) perform abortions, except to save the mother's life or in cases of rape or incest; (2) violate the abortion laws of any foreign country; or (3) lobby to change those abortion laws. Under the compromise in HR 1757, the President could waive the first exclusion, but if he did so, the amount of funds for population control activities would be reduced from the current level of \$385 million to \$356 million (the FY 1996 funding level). A proviso was added to ensure that this funding cap could not be circumvented by using funds from other programs (such as Child Survival) for family planning.

The Smith Amendment also contains a provision that ends U.S. funding for the United Nations Population Fund (UNFPA) as long as the UNFPA supports China's coercive population control policy.

As discussed below, the Smith Amendment was debated in this Congress in relation to appropriations legislation, such as the supplemental appropriations bill for the International Monetary Fund (IMF) and the FY 1999 Foreign Operations Appropriations Bill.

3. The Child Custody Protection Act. This bill, introduced in both House and Senate (HR 3682,

S 1645), makes it a federal offense to transport a minor girl across state lines for an abortion if this action evades the parental involvement laws of the minor's home state. The prohibition does not apply if the abortion is necessary to save the life of the minor. On July 14, the White House issued a statement that the Administration "strongly opposes" the bill in its current form. If the bill is not amended, the President's senior advisers would recommend that "he veto it."

House: HR 3682 cleared committee without the addition of hostile amendments. *On July 15, the House voted 158 yes, 269 no, 8 not voting to reject a motion to recommit HR 3682 to committee with instructions to amend and then approved the measure 276 yes, 150 no, 9 not voting.*

Senate: On July 16, the Senate Judiciary Committee approved S 1645 in a form that agreed with the House-passed version and rejected hostile amendments. On September 11, the Senate agreed 97 yes, 0 no to invoke cloture and proceed with consideration of the bill. Following that vote, discussions took place about the amendments to be offered to the bill. Opponents sought to add nongermane amendments. As a result, a second cloture petition was filed and came to a vote on September 22. *The motion failed, 54 yes, 45 no, 1 not voting.* A cloture motion requires a 60 vote margin to succeed. If the motion had been approved, the Senate could have voted on all germane amendments, including all those sought by opponents, and then voted on final passage of the bill. The motion having failed, the measure was effectively stopped in this session of Congress. This is unfortunate. The measure received strong bipartisan support in the House and is overwhelmingly approved in public opinion polls.

4. Lethal Drug Abuse Prevention Act. On June 5, U.S. Attorney General Janet Reno ruled that the federal Controlled Substances Act allows physicians to prescribe federally regulated drugs for assisted suicide in any circumstance where assisted suicide is allowed by state law. On Aug. 3, the Justice Department reiterated the Administration's position. The Lethal Drug Abuse Prevention Act (S 2151, HR 4006) reinstates a uniform federal policy against the use of federally regulated drugs to cause patients' deaths.

House: On July 14, the House Judiciary Subcommittee on the Constitution held hearings on HR 4006, and, on July 22, marked up the bill, *reporting it to the full committee with the vote 6 yes, 5 no.* On Aug. 4, the full House Judiciary Committee marked up the measure; five hostile amendments were rejected and the bill was approved by voice vote.

Senate: On July 31, the Senate Judiciary Committee held hearings on physician-assisted suicide. *On September 24, the Judiciary Committee approved S 2151, with an amendment, voting 11 yes, 6 no.*

Neither House nor Senate took up the measure before adjournment. Sen. Don Nickles (R-OK) attempted to have language added to the end-of-session Omnibus Appropriations bill, but this effort was not successful. Passage of this measure will be pursued in the 106th Congress.

5. Human Cloning Ban. The Human Cloning Prohibition Act (S 1601), introduced by Sens. Chris Bond (R-MO) and Bill Frist (R-TN), was brought directly to the Senate floor. *On February 11, the U.S. Senate voted 42 yes, 54 no, 4 not voting, not to proceed with S 1601.* Successful

cloture votes require support of three-fifths of all Senators--60 "yes" votes. A number of Senators wanted more time to study the issue. This measure bans the use of the cloning procedure itself ("somatic cell nuclear transfer") to produce human embryos. S 1599 is the companion bill referred to committee. The opposition bills, introduced by Sens. Dianne Feinstein (D-CA) and Edward Kennedy (D-MA)--S 1602 and S 1611--would permit cloning but ban the transfer of the cloned embryos to a woman's uterus, allowing the embryos to be subjected to experimentation and destroyed instead.

House: On February 12, the House held hearings on this matter. No further action was taken.

6. Abortions in Military Hospitals. Current law prohibits the use of Department of Defense health facilities for the performance of abortions except to save the mother's life and in cases of rape or incest (10 USC 1093). *On May 20, during consideration of the FY 1999 Defense Authorization Bill (HR 3616), the House rejected an amendment offered Rep. Nita Lowey (D-NY) to strike this policy from law, voting 190 yes, 232 no, 11 not voting.* On June 25, during consideration of the FY 1999 Defense Authorization Act (S 2057), the Senate rejected an amendment offered by Sen. Patty Murray (D-WA) also to strike the policy from law, voting 44 yes, 49 no, 7 not voting. The pro-life policy remains in law.

B. Appropriations Bills

Fiscal Year 1999 began October 1, 1998. All thirteen of the annual appropriations bills must be signed into law by that date. Because this deadline was not met, Congress passed six successive Continuing Resolutions that extended existing spending authorities to a later date, the last resolution to midnight Oct. 21. Congress negotiated the FY 1999 Omnibus Appropriations Act (HR 4328) that included the eight appropriations bills not passed, emergency appropriations, and numerous legislative provisions. This measure passed the House on Oct. 20, the Senate on Oct. 21. The President immediately signed the bill into law.

1. FY 1999 Treasury/Postal Appropriations Bill

House: During House Appropriations Committee consideration of the FY 1999 Treasury/Postal Appropriations Bill (HR 4104), two amendments affecting pro-life policies were offered. The DeLauro Amendment to strike the ban on use of funds to pay for abortions under the Federal Employees Health Benefits (FEHB) program, except to save the life of the mother and in cases of rape or incest, was narrowly defeated. The Lowey Amendment to *mandate* coverage in FEHB plans "for all prescription contraceptive drugs or devices," including abortifacients, and for related "outpatient services," narrowly passed.

On June 25, an effort to bring HR 4104 to the House floor with a rule protecting the Lowey Amendment from a point of order (legislating on an appropriations bill) was rejected. On July 16, the House again brought HR 4104 to the floor but now under an open rule.

Abortion Funding Restrictions. One part of the pro-life funding restriction (Section 515-the exceptions for life of the mother, rape or incest) was struck on a point of order. Rep. Rosa

DeLauro (D-CT) offered an amendment to strike the main provisions of the pro-life policy (Section 514-no funds for abortions under FEHB plans). *This amendment failed 183 yes, 239 no, 13 not voting.*

Mandated Contraceptive/Abortifacient Coverage. Rep. Nita Lowey (D-NY) redrafted her amendment *mandating* prescription contraceptive coverage, including abortifacients, in FEHB plans, but excluding from the mandate five specific “religious plans” (SelectCare, PersonalCaresHMO, Care Choices, OSF Health Plans, Yellowstone Community Health Plan). Rep. Chris Smith (R-NJ) objected to the Lowey Amendment on a point of order but was overruled by the Chair. The Lowey Amendment was then agreed to, 224 yes, 198 no, 13 not voting. Thereafter Rep. Chris Smith offered an amendment to exclude the mandated coverage in FEHB plans for abortifacients only. That amendment failed 198 yes, 222 no, 15 not voting. The House then passed HR 4104.

Senate: On July 28, the Senate began consideration of its version of the FY 1999 Treasury/Postal Appropriations Bill (S 2312).

Abortion Funding Prohibition. On July 29, the Senate agreed by voice vote to an amendment by Sen. Mike DeWine (R-OH) that prohibits abortion coverage in FEHB plans, except to save the mother’s life or in cases of rape or incest.

Mandated Contraceptive/Abortifacient Coverage. Also on July 29, Sens. Harry Reid (D-NV) and Olympia Snowe (R-ME) offered an amendment similar to the Lowey Amendment. Exemption from the coverage mandate was expanded beyond the five specific “religious plans” also to include “any other existing or future religious based plan whose religious tenets are in conflict with the requirements in this Act” (Amendment No. 3370). The exemption extends to religious beliefs but not to moral values. This amendment was amended by the authors with a new section: “Nothing in this section shall be construed to require coverage of abortion or abortion related services” (Amendment No. 3371). The term “contraceptive drug or device” is defined to mean a drug or device “intended for preventing pregnancy.” The term “abortion” is not defined. The Senate agreed to the Reid/Snowe amendments by voice vote. Upon returning from the August recess, the Senate passed S 2312 on September 3.

The differences between the Lowey Amendment and the final Reid/Snowe Amendment was a matter for resolution in the conference committee on the Treasury/Postal Appropriations Bill. At one point, the conferees dropped the Lowey Amendment completely, though later it was restored. Efforts were made to improve the conscience protection in the Amendment. However, conscience protection is granted to plan sponsors on religious but not moral grounds. Individual doctors can object only to prescribing contraceptives/abortifacients for both moral and religious reasons but nurses and other health personnel are given no conscience protection. This is a step backwards from current law that extends conscience protection to both individuals and institutions.

The Treasury/Postal Appropriations bill was included in the end-of-session Omnibus Appropriations bill. The ban on funding abortions through the FEHB program became law. The

Lowey Amendment with its inadequate conscience protection also became law.

2. FY 1999 Labor/Health and Human Services Appropriations Bill

On July 24, the House Appropriations Committee completed its action on the Labor/HHS Appropriations Bill (HR 4274). On September 3, the Senate Appropriations Committee also approved a bill (S 2440). Neither the full House nor Senate approved a bill. This measure was included as a part of the end-of-session Omnibus Appropriations bill.

Revisions to Hyde Amendment to Cover Abortion Funding through Medicare

The Hyde Amendment had been interpreted by the Health Care Financing Administration (HCFA) as not covering federal funds in the Medicare program, because those funds are paid into a trust fund controlled by separate authorizing legislation. Thus, elective abortions had been subsidized for the people on disability covered by Medicare. In a June 22, 1998 letter to Sen. Don Nickles (R-OK), Donna Shalala, Secretary of Health and Human Services, reversed the reported HCFA interpretation and stated that “the Medicare trust funds will be administered consistent with the Hyde criteria.” The Labor/HHS Appropriations Bill as reported from the House committee also clarifies that the Hyde Amendment funding prohibition extends to government trust funds: “Sec. 509. (a) None of the funds appropriated under this Act, *and none of the funds in any trust fund to which funds are appropriated under this Act*, shall be expended for any abortion. (b) None of the funds appropriated under this Act, *and none of the funds in any trust fund to which funds are appropriated under this Act*, shall be expended for health benefits coverage that includes coverage of abortion.” (New language in italics.) This provision was included in the end-of-session Omnibus Appropriations bill and became law.

Title X Family Planning Programs

Parental Notification for Minors Receiving Contraceptives/Abortifacients.

On July 14, Rep. Ernest Istook (R-OK) offered a parental notification amendment to the Labor/HHS Appropriations Bill in the House Appropriations Committee. The Istook Amendment contains two parts. The main part requires written notice to a parent or legal guardian at least five business days before an unemancipated minor receives contraceptive drugs (including abortifacients) or devices in a family planning project funded under the federal Title X program. The committee approved this provision 32-24. Another part of the Istook Amendment requires federally-funded Title X family planning clinics to comply with state laws concerning notification or reporting of child abuse, child molestation, sexual abuse, rape or incest. Without such a requirement, criminal activity directed against a minor may go undisclosed. The House Committee approved this provision 56-0.

When the Labor/HHS Appropriations Bill was brought to the House floor on October 8, Rep. Jim Greenwood (R-PA) offered an amendment to replace the Istook Amendment with an abstinence counseling requirement. Reps. Ernest Istook (R-OK), Jim Barcia (D-MI), and Don Manzullo (R-IL) offered a substitute to the Greenwood Amendment that would restore the parental notification requirement while maintaining the language for abstinence counseling. The Istook/Barcia/Manzullo Amendment was approved 224 yes, 200 no, 11 not voting.

The Labor/HHS bill was included in the end-of-year Omnibus Appropriations bill. That part of the Istook Amendment that relates to reporting abuse was retained but the other two parts--parental notice for contraceptive drugs or devices and abstinence counseling--were dropped.

Prohibition on Collocation of Abortion Clinics and Family Planning Clinics.

Also in House committee on July 14, Rep. Todd Tiahrt (R-KS) offered an amendment that would require government funded Title X family planning clinics be physically and financially separate from abortion facilities. This amendment failed on a tie vote 26 yes, 26 no. Later Rep. Tiahrt decided not to bring his amendment to the floor for a vote.

Protection for Health Care Entities that do not Perform Abortions

Catholic hospitals and other health care entities that do not perform abortions face new threats: an Alaska Supreme Court decision that requires hospitals receiving public funds to perform abortions; and a policy by HCFA that Catholic health plans cannot serve patients in the new Medicare+Choice program because they do not provide abortions. As reported from House committee, HR 4274 contains the following provision that addressed the second problem: “None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare+Choice program if the Secretary denies participation in such program to an otherwise eligible entity . . . because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions. . . .” This provision was included in the end-of-session Omnibus Appropriations bill and became law.

3. FY 1999 Agriculture Appropriations: RU-486 Funding Ban

On June 24, during consideration of the FY 1999 Agriculture Appropriations Bill (HR 4101), the House voted 223 yes, 202 no, 9 not voting, to approve an amendment offered by Rep. Tom Coburn (R-OK) that provided: “None of the funds made available in this Act may be used by the Food and Drug Administration for the testing, development, or approval (including approval for production, manufacturing, or distribution) of any drug for chemical inducement of abortion.” On the same day, the House approved HR 4101. On July 16, the Senate approved HR 4101, but without language banning FDA funding for RU-486. The difference between the two bills on this matter was discussed in conference committee. On September 28, the Senate conferees voted 8 yes, 5 no, to exclude the Coburn Amendment. Subsequently, the Coburn Amendment was dropped from the bill and did not become law.

4. FY 1999 Commerce/Justice/State Appropriations: Funding for Prison Abortions

On Aug. 4, during House floor consideration of the FY 1999 Commerce/Justice/State Appropriations Bill (HR 4276), Rep. Diana DeGette (D-CO) offered a motion to strike Section 103 that prohibits paying for prison abortions, except to save the mother’s life or in cases of rape. This motion was defeated 148 yes, 271 no, 16 not voting. As a result, Section 103 remained in the bill. Other provisions were unchallenged: Section 104 that protects the conscience rights of prison employees and another provision that bans Legal Service Corporation funds from going to

organizations engaged in abortion-related litigation. HR 4276 was incorporated into the end-of-session Omnibus Appropriations bill. The pro-life provisions remain law.

5. FY 1999 District of Columbia Appropriations

On Aug. 6, during House floor consideration of FY 1999 District of Columbia Appropriations Bill (HR 4380), Delegate Eleanor Holmes Norton (D-DC) offered an amendment that would allow local D.C. tax dollars to be used to pay for abortion-on-demand. Section 132 of the bill expresses current law that “none of the funds” appropriated could be used to pay for abortions except to save the mother’s life or in cases of rape or incest. The Norton Amendment would limit the prohibition to *federal* funds, and thus allow the unlimited use of *local* funds. The House rejected the Norton Amendment 180 yes, 243 no, 1 present, 11 not voting. HR 4380 was incorporated into the end-of-session Omnibus Appropriations bill. The pro-life funding restriction remains law.

6. FY 1999 Foreign Operations Appropriations: Smith Amendment/Mexico City Policy/UNFPA Funding

Senate Action. On September 2, the Senate approved its version of the FY 1999 Foreign Operations Appropriations Bill (S 2334). The bill provides up to \$435 million in international population control spending, including money for the United Nations Population Fund (UNFPA). In January 1998, the UNFPA approved a new four-year \$20 million program in China, thereby continuing its support for China’s coercive population control program. Unlike the corresponding House bill, S 2334 did not contain the pro-life provisions of the Smith Amendment.

House Action. On September 10, the House Appropriations Committee marked up the FY 1999 Foreign Operations Appropriations Bill (HR 4569). Rep. Roger Wicker (R-MS) offered the language of the Smith Amendment with the modified Mexico City Policy (same as the provisions in HR 1757 described above). This amendment was adopted by voice vote. On September 17, the House took up the Foreign Operations Appropriations Bill on the floor. Under the rule, Rep. Nancy Pelosi (D-CA) could have offered an amendment to nullify the Mexico City Policy and Rep. Chris Smith (R-NJ) an amendment to retain the policy. The Pelosi amendment was never offered and the bill passed with the Smith Amendment which contains the modified Mexico City Policy.

The House bill allots up to \$385 million for population control efforts, the same as last year’s spending levels, but does not provide funding for the UNFPA. Under the modified Mexico City Policy, the President could waive that part of the policy that prohibits a foreign, non-governmental organization from receiving U.S. funds if it performs abortions, except in cases of rape or incest or where the mother’s life is endangered. (The other prohibitions would remain in place, namely, that the organization may not violate the abortion laws of a foreign country or lobby to change those laws.) If the President waives the performance exclusion, the amount of funds for population control for FY 1999 would be reduced from \$385 million to \$356 million (the FY 1996 appropriations level). The House bill also includes the pro-life provision that prohibits U.S. funding of the UNFPA as long as that agency continues to support China’s coercive population control policies.

The President continues to threaten to veto any bill that contains the Smith Amendment with the Mexico City Policy. The Foreign Operations Appropriations bill was part of the end-of-session Omnibus Appropriations bill. The Mexico City Policy was excluded. However, a general ban on the federal funding of the UNFPA was incorporated into the measure and became law. Earlier this year, the UNFPA signed a new four year \$20 million contract with the China.

In late 1997, House Republican leaders offered the President the compromise Mexico City Policy and linked an extension of a line of credit to the IMF, authorization for U.N. back payments, and reorganization of the State Department to acceptance of the compromise language. However, money for the IMF was included in the end-of-year Omnibus Appropriations bill as were parts of HR 1757 that relate to State Department reorganization; these issues will no longer be linked to passage of the Smith Amendment/Mexico City Policy.

Other Issues: On Sept. 17, the House adopted by voice vote an amendment by Rep. Todd Tiahrt (R-KS) that ensures that population control funds are used only in programs certified to be voluntary. After some modifications, this amendment was incorporated into the HR 4569 and became law when that bill became part of the end-of-year Omnibus Appropriations bill.

Efforts to eliminate the clause that requires natural family planning organizations to offer a broad range of family planning methods were not successful.