

**National Committee for a Human Life Amendment**

The First Session of the 111<sup>th</sup> Congress began January 6. Bills are not carried over from the previous year. Information related to federal legislation—text of bills, hearing testimony, committee reports, floor debates in the *Congressional Record*, roll call of floor votes, and the like—is available on the Library of Congress website: [thomas.loc.gov](http://thomas.loc.gov).

This report is divided into two sections: “Highlights,” a summary overview of important developments; and “Review of Legislation,” a more detailed presentation on legislative, executive, and judicial actions.

The 12 Fiscal Year 2010 appropriations bills must be signed into law by October 1, the start of the new fiscal year, or a temporary Continuing Resolution (CR) must be passed. With the October 1 deadline approaching and no bills yet signed into law, Congress passed the Fiscal Year 2010 Legislative Branch Appropriations Bill (H.R. 2918), to which it appended a Continuing Resolution section that extended government authority to spend money until October 31. On October 29, Congress extended that date to December 18.

**I. HIGHLIGHTS****A. Authorization Bills****1. Health Care Reform**

Among the several health care reform proposals that have been put forward, Congressional focus has been placed on three bills—two in the Senate, one in the House. Two Senate committees have approved two different bills and three House committees have approved different version of a common bill.

On October 29, House leaders presented their version of a single House bill. *On Saturday, November 7, that measure is expected to be taken up and voted on.* Senate leaders continue to prepare a single bill for Senate floor consideration.

None of the bills has acceptable provisions prohibiting abortion funding or mandates for abortion coverage, and none fully protects conscience rights in health care.

On October 8, the U.S. Conference of Catholic Bishops sent a letter to Congress expressing disappointment over the lack of progress made on the bishops’ three priority concerns for health care reform. The letter was sent by the chairmen of the three committees with primary concern for health care reform. On the pro-life priority, the bishops stated, “It is essential that the legislation clearly apply to this new program longstanding and widely supported federal restrictions on abortion funding and mandates, and protections for rights of conscience. No current bill meets this test. . . . If acceptable language in these areas cannot be found, we will have to oppose the health care bill vigorously.” For full text of the letter, see: [www.usccb.org/sdwp/national/2009-10-08-healthcare-letter-congress.pdf](http://www.usccb.org/sdwp/national/2009-10-08-healthcare-letter-congress.pdf).

Senate: Two committees are working on different bills.

Committee on Health, Education, Labor and Pensions (HELP): On July 15, the Senate HELP Committee marked up its bill, the Affordable Health Choices Act (S. 1679). The committee rejected amendments to exclude federal funding or mandated coverage for abortion, to protect conscience rights, and to maintain current state laws limiting and regulating abortion.

Committee on Finance: On September 16, committee chairman Sen. Max Baucus (D-MT) released his chairman's Mark, America's Healthy Future Act. The bill was presented only in conceptual or descriptive form. On September 22, the Finance Committee began markup. Sens. Orrin Hatch (R-UT) and Michael Enzi (R-WY) submitted amendments to correct flaws in the chairman's Mark on abortion and conscience rights.

On September 30, the committee rejected, 10-yes, 13-no, Hatch Amendment #C14 to restrict the use of federal funding to support abortion. The committee also rejected, 10-yes, 13-no, Hatch Amendment #C13 to prevent governmental bodies from discriminating against health care providers who decline to perform, refer for, or pay for abortions. This amendment reflects current law (called the Weldon Amendment) and is identical in wording to an amendment already accepted by the House Energy and Commerce Committee during its consideration of the House's health care reform bill, H.R. 3200.

The committee did not consider Enzi Amendment #C15 that, following current law, would have protected the conscience rights of health care providers in contexts broader than abortion.

On October 13, the committee approved America's Healthy Future Act, 14-yes, 9-no, with the text of the bill (S. 1796) being reported October 19.

Floor: Based on the two committee bills, Senate Democratic leadership is attempting to develop a single bill that can be brought to the Senate floor.

House: Three committees have produced different versions of a common bill, America's Affordable Health Choices Act (H.R. 3200).

Committees on Education and Labor and on Ways and Means: On July 17, these two committees favorably reported H.R. 3200. During markup the committees rejected amendments to exclude federal fund or mandated coverage for abortion.

Committee on Energy and Commerce: After a hiatus, the Committee on Energy and Commerce resumed its markup on July 30. Reps. Bart Stupak (D-MI) and Joseph Pitts (R-PA) were prepared to offer amendments to exclude abortion mandates, prevent federal funding of abortion, uphold state laws that regulate abortion, and protect the conscience rights of health care providers. On July 29, Cardinal Justin Rigali, chairman of the bishops' Committee on Pro-Life Activities, sent a letter to the committee, urging support of the Stupak/Pitts amendments.

On July 30 and 31, the committee voted on four amendments: (1) A “compromise” amendment offered by Rep. Lois Capps (D-CA) and backed by committee chair, Rep. Henry Waxman (D-CA), was narrowly approved, 30-yes, 28-no. The amendment yielded some ground to pro-life concerns about mandated abortion coverage in private plans, preemption of state abortion laws, and retention of federal conscience laws. However, it weakened the application of the Hyde Amendment funding restrictions and had provisions to ensure that abortion is included in a public (government-run) plan. (2) An amendment by Rep. Joseph Pitts (R-PA) to exclude any mandate for abortion coverage was defeated, 29-yes, 30-no. (3) An amendment by Rep. Bart Stupak (D-MI) to provide for protection of conscience rights was approved by voice vote. (4) Another amendment by Rep. Stupak to prevent the use of funds to pay for any abortion or cover the costs of any health plan that includes coverage for abortion was defeated, 27-yes, 31-no.

On July 31, the House Energy and Commerce Committee favorably reported H.R. 3200, 31-yes, 28-no.

On August 11, Cardinal Justin Rigali sent a letter to the House of Representatives in which he commented on the version of H.R. 3200 approved by the House Energy and Commerce Committee. Most Americans do not want abortion in their health coverage. “By what right, then, and by what precedent, would Congress make abortion coverage into a nationwide norm, or force Americans to subsidize it as a condition for participating in a public health program?” See: [nchla.org/datasource/idocuments/ RigaliHCRLtr081109.pdf](http://nchla.org/datasource/idocuments/RigaliHCRLtr081109.pdf).

Floor: Democratic leadership needed to resolve the differences between the three committee-passed versions of the Affordable Health Care for America Act. On October 29, the leadership’s bill was introduced, H.R. 3962. This bill retains the unacceptable features on abortion and conscience protection that were in the earlier committee bills. *On Saturday, November 7, the measure is expected to be taken up and voted on.*

On September 28, Reps. Bart Stupak (D-MI) and Joseph Pitts (R-PA) sent to Speaker Rep. Nancy Pelosi (D-CA) and Rules Committee Chairwoman Rep. Louise Slaughter (D-NY) a letter signed by 183 Members, requesting that the rule governing House floor debate on health care reform allow Members to vote on a Stupak/Pitts amendment on government funding for abortion. On October 23, Rep. Alan Mollohan (D-WV) announced that he and 28 other Democratic Representatives had sent a letter to Speaker Nancy Pelosi (D-CA) requesting that the Hyde Amendment be included in the House’s health care reform bill.

Action Resources: For an NCHLA Action Alert urging pro-life constituents to contact their Representatives and Senators, see: [nchla.org/actiondisplay.asp?ID=279](http://nchla.org/actiondisplay.asp?ID=279). E-mails can be sent through NCHLA’s Grassroots Action Center.

The U.S. Conference of Catholic Bishops has issued a Nationwide Bulletin Insert (English and Spanish versions) for immediate use by parishes. See: [www.usccb.org/healthcare/hc-bulletin-insert-10-23-09-final.pdf](http://www.usccb.org/healthcare/hc-bulletin-insert-10-23-09-final.pdf). The USCCB also has prepared an ad/flyer for local use. See: [www.usccb.org/healthcare/SavingLivesFlyer.pdf](http://www.usccb.org/healthcare/SavingLivesFlyer.pdf).

More Information: For fact sheets helpful in critiquing the health care reform bills, see:

1. “Myths and Facts: The Capps Amendment to H.R. 3962,” at: [www.usccb.org/prolife/issues/healthcare/capps\\_3962.pdf](http://www.usccb.org/prolife/issues/healthcare/capps_3962.pdf).
2. “Abortion and Conscience Problems in Health Care Reform Bills,” at: [www.usccb.org/prolife/issues/healthcare/capps\\_102309.pdf](http://www.usccb.org/prolife/issues/healthcare/capps_102309.pdf).
3. “Current Policy on Federal Abortion Funding,” at: [www.usccb.org/prolife/issues/healthcare/abortion\\_funding\\_102309.pdf](http://www.usccb.org/prolife/issues/healthcare/abortion_funding_102309.pdf).

For general information, see: [www.usccb.org/healthcare](http://www.usccb.org/healthcare).

## **2. Foreign Relations Authorization Act: Office for Global Women’s Issues**

On May 20, the House Foreign Affairs Committee marked up the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011 (H.R. 2410). The bill contained a provision in Section 334 to establish an Office for Global Women’s Issues. Rep. Chris Smith (R-NJ) offered an amendment to this section so that the new Office would not be used to promote abortion throughout the world. *However, in a party line vote, the Smith Amendment was defeated, 17-yes, 22-no.*

On June 9, the House Rules Committee rejected a motion to put the detailed Smith Amendment in order during floor consideration of H.R. 2410, but approved an amendment with generic language restating the applicability of existing laws. On June 10, the House approved the amendment with the generic language and passed H.R. 2410.

The bill was referred to the Senate Committee on Foreign Affairs.

## **3. Pregnant Women Support Act Reintroduced in House and Senate**

On April 22, Rep. Lincoln Davis (D-TN) reintroduced the Pregnant Women Support Act in the House (H.R. 2035). And on May 13, Sen. Robert Casey, Jr. (D-PA) reintroduced the identical bill in the Senate (S. 1032). In a letter first to the House and then to the Senate, Cardinal Justin Rigali, Chairman of the Bishops’ Committee on Pro-Life Activities, urged the Representatives and Senators to support and cosponsor the measure. The Cardinal observed that it is a tragedy that over a million abortions take place each year in this country; steps should be taken to reduce abortions. The Cardinal noted that the bill provides many kinds of life-affirming support for pregnant women and their unborn children, but does not raise the separate issue of seeking to reduce pregnancies through government promotion of contraceptives. For the Cardinal’s full letter, see: [www.usccb.org/prolife/issues/women/PWSASenate09.pdf](http://www.usccb.org/prolife/issues/women/PWSASenate09.pdf).

## **4. Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act**

This measure was first introduced in 2006. On July 23, Rep. Tim Ryan (D-OH) introduced the current version of this legislation, the Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act (H.R. 3312). According to the statement of findings,

the bill has three purposes: reduce the need for abortion, prevent unintended pregnancy, and support pregnant women, new parents, and their children.

In a June 24 *Life Issues Forum* news column, Susan Wills, Assistant Director for Education and Outreach at the Bishops' Secretariat of Pro-Life Activities, quoted Rep. Ryan saying that the bill is "about access to birth control." Ms. Wills correctly argues that contraception is already widely available in society—in 2006, public expenditures totaled \$1.85 billion. According to the Guttmacher Institute, virtually all teenagers who are sexually active and do not want to become pregnant are already using contraception. The reality is that contraceptives do not work well in real life. "Numerous studies in the United States and Europe have found that greater access to contraception fails to reduce unintended pregnancies and abortions." The real abortion-reduction bill, Ms. Wills concludes, is the Pregnant Women Support Act.

## **5. SCHIP Unborn Child Amendment Excluded from Law**

The authorization for the State Children's Health Insurance Program (SCHIP) for low-income children was set to expire March 1, 2009. Since 2002, a federal regulation has defined SCHIP coverage to include children from conception to birth, allowing states to provide prenatal care and other health services to the child and the child's pregnant mother. Fourteen states have chosen this coverage option under the "unborn child rule."

It is common to include successful regulations or waivers in reauthorizations. *However, on January 29, during consideration of a bill to reauthorize SCHIP (H.R. 2), the Senate voted, 39-yes, 59-no, to reject an amendment by Sen. Orrin Hatch (R-UT) to codify the unborn child rule in law.* On February 4, President Obama signed the SCHIP bill into law.

The law states that nothing should be inferred "regarding the legality or illegality" of the unborn child rule. This places the unborn child option in an uncertain legal situation, subjecting it to rescission by any President or HHS Secretary.

## **B. Appropriations Bills**

The process of completing passage of the Fiscal Year 2009 appropriations bills was an early order of business for the 111<sup>th</sup> Congress. The Omnibus Appropriations Bill, 2009 (H.R. 1105) retained most pro-life riders but resumed funding the United Nations Population Fund (UNFPA) at an increased level and exempted the UNFPA from the restrictions of the Kemp-Kasten Amendment, despite the organization's continued support of China's coercive population control program.

For Fiscal Year 2010, support for the UNFPA has continued. Other key developments include: (1) funding for family planning, domestic and international, continues to increase, without regard to the role family planning organizations play in performing and promoting abortion; (2) efforts are being made to reverse the Dornan Amendment that prevents all congressionally appropriated funds from being used to perform elective abortions in the District of Columbia; (3) funding for abstinence-only education programs is being eliminated; (4) one Senate committee has reported out legislation that eliminates the restriction on abortion coverage in the federal employee health

benefits program; (5) another Senate committee has voted to codify President Obama's January 23 memorandum overturning the Mexico City Policy, which had denied U.S. funds to organizations that perform or promote abortion as a method of family planning in poor nations.

## **1. Fiscal Year 2009 Omnibus Appropriations**

Funding for nine of the Fiscal Year 2009 appropriations bills had been extended temporarily to March 6, 2009 and needed to be funded for the remainder of Fiscal Year 2009 (through September 30). The 111<sup>th</sup> Congress passed these nine bills as part of the Omnibus Appropriations Act, 2009 (H.R. 1105). On March 11, the president signed H.R. 1105 into law.

### UNFPA Funding

For Fiscal Year 2009, \$50 million dollars was appropriated for the United Nations Population Fund (UNFPA), a 25% increase over the \$40 million appropriated for Fiscal Year 2008. The Kemp-Kasten Amendment law provides that no funds "may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization." This policy gives the president the authority to deny U.S. funding to the UNFPA because of its continued support of China's coercive population control program. H.R. 1105 retained the Kemp-Kasten Amendment but exempted the UNFPA from the policy's reach.

House: Rep. Chris Smith (R-NJ) was not allowed to offer an amendment that would both apply the Kemp-Kasten Amendment to the UNFPA and restore the Mexico City Policy. On February 25, the House passed H.R. 1105.

Senate: Sen. Roger Wicker (R-MS) offered an amendment that would apply the Kemp-Kasten Amendment to the UNFPA. *On March 5, the Senate rejected the Wicker amendment, 39-yes, 55-no, 5-not voting.*

On March 24, the U.S Department of State issued a press release stating it intended to contribute \$50 million to UNFPA in Fiscal Year 2009. During a March 24 confirmation hearing for Ambassador-at-Large for Women's Global Issues, Melanne Verveer stated that the Secretary of State had made a determination the UNFPA does not violate the Kemp-Kasten Amendment.

## **2. Fiscal Year 2010 State/Foreign Operations Appropriations**

UNFPA Funding: The House Fiscal Year 2010 State/Foreign Operations Appropriations Bill (H.R. 3081), passed on July 9, approved \$60 million for the UNFPA, a \$10 million increase over 2009 and \$20 million increase over 2008. The Senate Fiscal Year 2010 State/Foreign Operations Appropriations Bill (S. 1434), reported out of committee on July 9, funds the UNFPA at the 2009 level of \$50 million.

Mexico City Policy: On July 9, during markup of the Fiscal Year 2010 State/Foreign Operations Appropriations Bill (S. 1434), the committee approved, 17-yes, 11-no, 1-present, an amendment by Sen. Frank Lautenberg (D-NJ) that would codify President Obama's January 23 overturning

of the Mexico City Policy (MCP) and prevent any future president from reinstating the policy. The House-passed version of this appropriations bill (H.R. 3081) has no language codifying the overturning of the MCP. No floor action on S. 1434 has taken place.

Two efforts to *restore* the MCP were not successful. During passage of the Omnibus Appropriations Act for Fiscal Year 2009 (H.R. 1105), Rep. Chris Smith (R-NJ) was not allowed to offer an amendment to restore the policy. Also, on January 28, during the debate on a bill to reauthorize the State Children's Health Insurance Program (SCHIP) (H.R. 2), *an amendment by Sen. Mel Martinez (R-FL) to restore the MCP was rejected, 37-yes, 60-no.*

International Family Planning: In its Fiscal Year 2010 State/Foreign Operations bill, the House appropriates \$648 million for international family planning. The Senate bill, as reported from committee, appropriates \$628 million. These are significant increases over the \$545 million and \$461 million appropriated, respectively, for Fiscal Years 2009 and 2008.

### **3. Fiscal Year 2010 Labor/HHS Appropriations**

#### Abstinence Education Funding

House: As reported from the Appropriations Committee on July 22, the Fiscal Year 2010 Labor/Health and Human Services Appropriations Bill (H.R. 3293) eliminated distinct funding for abstinence education for adolescents and replaced it with what the committee called "a new evidence-based teenage pregnancy prevention initiative" (House Report 111-220, p. 176). In a July 16 letter to the committee, Cardinal Justin Rigali, chairman of the bishops' Committee on Pro-Life Activities, had urged the retention of distinct funding for abstinence education. "Forcing all federally funded programs to promote a 'comprehensive' approach would undermine the abstinence message, by requiring that *all* programs simultaneously promote the misleading message that sexual activity is 'safe' for minors when contraceptives are used." On July 24, H.R. 3293 passed the House.

Senate: As reported from the Appropriations Committee on August 4, the Senate version of the Fiscal Year 2010 Labor/HHS Appropriations Bill (H.R. 3293) also eliminated distinct funding for abstinence education and replaced it with "a new program to fund evidence-based efforts to reduce teen pregnancy" (Senate Report 111-66, p. 6). H.R. 3293 has not been considered on the Senate floor.

#### Defunding Planned Parenthood

House: During floor consideration of H.R. 3293, Rep. Mike Pence (R-IN) offered an amendment to deny U.S. funds to Planned Parenthood, which in 2008 received almost \$350 million in taxpayer dollars while performing over 300,000 abortions. *On July 24, the Pence Amendment was defeated, 183-yes, 247-no, 9-not voting.*

#### 4. Fiscal Year 2010 Financial Services Appropriations

##### D.C. Abortion Funding Ban

House: Every year since 1989 (except for Fiscal Years 1994 to 1996), Congress has approved the Dornan Amendment to prevent the use of *all* congressionally appropriated funds for elective abortion in the District of Columbia. The appropriations subcommittee with responsibility for D.C. funding reported out the Fiscal Year 2010 Financial Services Appropriations Bill (H.R. 3170) with language that reversed the Dornan Amendment. The restriction on abortion funding would no longer apply to *all* funds appropriated under the act, but only to the “federal” funds, leaving the “local” funds available to pay for elective abortion.

On July 7, during markup of H.R. 3170, the House Appropriations Committee voted, 26-yes, 33-no, to reject an amendment by Reps. Todd Tiahrt (R-KS) and Lincoln Davis (D-TN) to restore the Dornan Amendment.

On July 14, the House Rules Committee rejected a request by Reps. Tiahrt and Davis to allow a floor vote on their amendment. Rep. Bart Stupak (D-MI), Co-Chair of the Pro-Life Caucus, helped organize a major effort to defeat the rule. *The rule passed by just a few votes, 216-yes, 213-no, 5-not voting.*

Rep. Tiahrt offered a motion to recommit the bill to committee with instructions to restore the D.C. abortion funding ban. Rep. Jose Serrano (D-NY) made a point of order against the Tiahrt motion on the grounds that, contrary to House rules, it “adds further legislation” (CR H8267, 7/16/09). The chair sustained the point of order. Rep. Tiahrt appealed the ruling of the chair. Rep. Serrano moved to table the appeal. *The House agreed with Serrano motion to table, 225-yes, 195-no, 13-not voting.*

*An effort to defeat H.R. 3170 on final passage also failed, 219-yes, 208-no.*

Senate: On July 9, during its markup of its Fiscal Year 2010 Financial Services Appropriations Bill (S. 1432), the Senate Appropriations Committee rejected an amendment by Sen. Sam Brownback (R-KS) to restore the D.C. abortion funding ban, 13-yes, 15-no. S. 1432 has not been considered on the Senate floor.

##### FEHB Program Abortion Coverage

Senate: As reported from committee, with no fanfare or notice, S. 1432 deleted the longstanding restrictions on abortion coverage in the Federal Employees Health Benefits (FEHB) program. The House-passed Fiscal Year 2010 Financial Services Appropriations Bill (H.R. 3170) retained the FEHB program restrictions.

## **C. Executive**

### **1. Mexico City Policy Overturned**

On January 23, 2009, President Obama signed a Memorandum overturning the Mexico City Policy (MCP), thereby restoring U.S. funding to organizations that perform and promote abortion in developing nations.

The MCP specifies that federal funds for family planning are available only to nongovernmental organizations that agree not to perform or promote abortion as a method of family planning in other countries. This policy was initiated by President Reagan in 1984 and was in place until rescinded by President Clinton on Jan. 22, 1993. On Jan. 22, 2001, President George W. Bush moved to reinstate the Mexico City Policy in full. Since then, abortion advocates have been conducting a campaign to reverse that action.

Since President Obama's action, efforts have been made either to restore the MCP or to codify the Obama order in law. One effort in the House and another in the Senate to restore the policy failed, but an amendment to codify the policy was approved in Senate committee.

### **2. NIH Issues Final ESCR Guidelines**

On March 9, President Obama issued an Executive Order overturning the limits President Bush had placed on government funding of destructive embryonic stem cell research. On April 23, the National Institutes of Health (NIH) published draft guidelines to implement the Obama directive. And on July 7, they published the final guidelines. Federal taxpayer funds will now support research on human embryonic stem cells that are derived by killing human embryos acquired from fertility clinics. Parents can relinquish their embryonic children for such research when they no longer want them for reproduction.

Cardinal Justin Rigali, chairman of the Catholic bishops' Committee on Pro-Life Activities, called the final guidelines "even broader" than the proposed draft. For example, parents of the embryonic children need not be informed of all other options but "only about the options that happen to be available at their particular fertility clinic." The Cardinal concluded: "This debate now shifts to Congress. . . . I hope Americans concerned about this issue will write to their elected representatives, urging them not to codify or further expand this unethical policy."

Reps. Diana DeGette (D-CO) and Michael Castle (R-DE) have already announced that they intend to move forward with broader legislation to "promote all forms of ethical stem cell research," which in their view includes cloning and the creation of embryos solely to destroy them. News reports in October, 2009 indicated that introduction of a bill was imminent.

Through the NCHLA Grassroots Action Center, you can send messages to your Representative and two Senators opposing the DeGette/Castle legislation. See: [www.nchla.org/actiondisplay.asp?ID=272](http://www.nchla.org/actiondisplay.asp?ID=272).

### **3. Obama Administration Issues Proposal to Rescind Current Conscience Protection Regulations**

On March 6, the Obama Administration issued a proposed rule to rescind the December 19, 2008 Bush Administration final regulation entitled “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.” According to the proposed rule, it is important “to review this [2008] regulation to ensure its consistency with current Administration policy and to reevaluate the necessity” for regulations to implement existing conscience protection laws.

The proposed rule on the rescission was formally published in the *Federal Register* on March 10. The 30 day comment period ended April 9, 2009. No final rule has been issued.

For resources and background information, see: [www.usccb.org/conscienceprotection](http://www.usccb.org/conscienceprotection).

## **II. REVIEW OF LEGISLATION**

The Review of Legislation section contains detailed information on legislative action, along with reports on executive actions and court developments that have important implications for legislative policies. Bills are divided into two general kinds: appropriations and authorization. Please note that some issues relate to both kinds of bills.

Authorization bills provide the fundamental authority – the policies and procedures – by which various government agencies and programs operate. The authorization can be for an indefinite period, or for one or several years. Some authorization bills set a ceiling on the amount of money that can be spent, while others are open-ended.

However, authorization bills do not provide the money. That is the function of the annual appropriations bills, currently 12 in number. Within annual budget targets, these bills “appropriate” the actual amount of money to be spent on various authorized agencies and programs each fiscal year (October 1 to September 30). This amount may well be below the authorized ceiling. Congress also passes short-term and supplemental appropriations bills. Sometimes Congress appropriates funds for programs or agencies whose authorization has lapsed. And sometimes Congress attaches policy riders to the appropriations bills. A number of policies prohibiting government funding of abortion exist as riders or amendments that must be enacted into law each year as part of an appropriations bill.

Typically, appropriations bills are first passed by the House and then the Senate. Each bill is developed in its own subcommittee.

## **A. Appropriations Bills**

### **1. Fiscal Year 2009 Omnibus Appropriations Bill—UNFPA: Support for Coercive Population Control**

Background: When Fiscal Year 2009 began October 1, 2008, Congress had passed only three of the twelve must-pass Fiscal Year 2009 appropriations bills. These three bills were part of a measure (H.R. 2638) that also included a Continuing Resolution extending funding for the nine other appropriations bills until March 6, 2009. By that date Congress again will have to provide appropriations for these nine bills for the remainder of Fiscal Year 2009, that is, through September 30, 2009.

On February 25, 2009, 180 Members of the House of Representatives sent a letter to House leadership urging the retention of pro-life riders. For a copy of the text of the letter and the signatories see: [www.nchla.org/datasource/ldocuments/2RiderLtr25.09.pdf](http://www.nchla.org/datasource/ldocuments/2RiderLtr25.09.pdf).

House: On late February 23, 2009, the House Appropriations Committee released its Omnibus Appropriations Act, 2009 (H.R. 1105). The bill retained the Hyde Amendment and a number of abortion-related funding policies. However, \$50 million was appropriated for the United Nations Population Fund (UNFPA), a 25% increase over the \$40 million appropriated in Fiscal Year 2008. For Fiscal Year 2008, President Bush invoked the Kemp-Kasten Amendment (no funds “may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization”) and denied the funding to the UNFPA because of its continued support of China’s coercive population control program. The monies were redirected to other programs. However, H.R. 1105 exempts the UNFPA from the Kemp-Kasten Amendment.

On February 24, 2009, Rep. Chris Smith (R-NJ) testified before the House Rules Committee, requesting that two amendments be made in order during floor consideration: (1) an amendment to apply the Kemp-Kasten Amendment to the UNFPA, and (2) an amendment to restore the Mexico City Policy. The Rules Committee voted for a closed rule, under which the Smith amendments could not be offered.

On February 25, 2009, the House passed H.R. 1105 with the UNFPA provision intact.

Senate: Sen. Roger Wicker (R-MS), with 10 cosponsors, offered Senate Amendment 607 that would strike from H.R. 1105 the House language related to the UNFPA and replace it with language from the FY 2008 law, restoring the application of the Kemp-Kasten Amendment to the UNFPA. *On March 5, 2009, the Senate rejected the Wicker amendment, 39-yes, 55-no, 5-not voting (Roll Call 81).*

The Senate did not complete action on H.R. 1105 by the March 6, 2009 deadline and Congress passed a Continuing Resolution to extend funding for the federal government to March 11. On March 10, 2009, the Senate passed H.R. 1105.

Law: On March 11, 2009, the president signed H.R. 1105 into law (Public Law 111-008)

On February 5, 2009, Cardinal Justin Rigali, Chairman of the Bishops' Committee for Pro-Life Activities, wrote a letter to all Senators and Representatives, urging them "*not* to use this legislation to weaken or rescind longstanding provisions that protect U.S. taxpayers from being forced to fund and promote the destruction of innocent human life." Cardinal Rigali drew special attention to the need to retain the Hyde amendment and similar laws that "protect taxpayers from being compelled to subsidize and promote abortion," the Dickey/Wicker amendment (no federal funds for research in which human embryos are created, harmed and destroyed), the Hyde/Weldon conscience protection amendment, and the Kemp-Kasten amendment (gives the president authority to stop U.S. funding of organizations that support or help manage programs of coercive abortion or involuntary sterilization).

The Cardinal describes these and similar laws as "modest, common-sense policies that are widely supported even among people who disagree on the legal status of abortion." He concludes: "In a society that wants to reduce abortions, it makes no sense for government to force its citizens to fund and promote abortion." For full text of letter, see: [www.nchla.org/docdisplay.asp?ID=225](http://www.nchla.org/docdisplay.asp?ID=225).

Executive: On January 24, 2009, the day after overturning the Mexico City Policy, President Obama said that he intended to work with Congress to restore U.S. funding to the UNFPA.

On March 24, 2009, the U.S Department of State issued a press release stating, "The Department of State will contribute \$50 million to UNFPA in 2009, as provided in the Omnibus Appropriations Act." The release also stated that "we look forward to working closely" with the UNFPA. See: "U.S. Government Support for the United Nations Population Fund (UNFPA)," at: [www.state.gov/r/pa/prs/ps/2009/03/120841.htm](http://www.state.gov/r/pa/prs/ps/2009/03/120841.htm).

On March 24, 2009, during confirmation hearing for Ambassador-at-Large for Women's Global Issues, Melanne Vermeer stated that "a determination was made by the Secretary of State . . . that it [UNFPA] does not meet the threshold [of the Kemp-Kasten Amendment prohibition]. It does not fund or support organizations that are supportive of coerced abortions or manage programs dealing with coerced abortions." It would appear the Department of State is not relying on the exemption from the Kemp-Kasten Amendment Congress put in the Omnibus bill but on its own determination that the UNFPA does not violate the Kemp-Kasten Amendment as such. This accords with the practice during the Clinton Administration years. Except for President Clinton, all previous presidents in applying the Kemp-Kasten Amendment have determined that the UNFPA supports China's coercive population control program and for that reason have denied funding to the UNFPA. In 2008, the State Department had determined: "By providing financial and technical resources through its sixth cycle China Country Program to the National Population and Family Planning Commission and related entities, UNFPA continues to provide support for and participates in the management of the Chinese program of coercive abortions and involuntary sterilization."

For background information on this human rights issue, see: [www.nchla.org/issues.asp?ID=11](http://www.nchla.org/issues.asp?ID=11).

## **2. Fiscal Year 2010: House Proposes Increased Funding for the UNFPA**

In its Fiscal Year 2010 State/Foreign Operations Appropriations Bill (H.R. 3081), passed on July 9, the House approved \$60 million for the UNFPA, a \$10 million increase over 2009 and \$20 million increase over 2008. The Senate Fiscal Year 2010 State/Foreign Operations Appropriations Bill (S. 1434), reported out of committee on July 9, funds the UNFPA at the 2009 level of \$50 million.

For Fiscal Year 2010 the House bill appropriates \$648 million for family planning, the Senate bill, as reported from committee, \$628 million. These are significant increases over the \$545 million and \$461 million appropriated, respectively, for Fiscal Years 2009 and 2008.

See “Mexico City Policy” under authorization bills for details on a Senate subcommittee vote to *codify* President Obama’s overturning of the Mexico City Policy in the foreign operations appropriations bill, S. 1434.

## **3. D.C. Abortion Funding Ban: Fiscal Year 2010 Financial Services Appropriations**

Every year since 1989 (except for Fiscal Years 1994 to 1996), Congress has approved the Dornan Amendment to prevent the use of *all* congressionally appropriated funds for elective abortion in the District of Columbia. Under the U.S. Constitution, Art. 1, Sec. 8, Congress has responsibility to appropriate all funds for the District.

House: On June 25, the House Appropriations subcommittee with responsibility for D.C. funding reported out the Fiscal Year 2010 Financial Services Appropriations Bill (H.R. 3170) with language that reverses the Dornan Amendment. The restriction on abortion funding would no longer apply to *all* funds appropriated under the act, but only to the “federal” funds, leaving the “local” funds available to pay for elective abortion.

Full Committee: On July 7, during markup of H.R. 3170, the House Appropriations Committee voted, 26-yes, 33-no, 1-not voting, to reject an amendment by Reps. Todd Tiahrt (R-KS) and Lincoln Davis (D-TN) to restore the ban on all public funding of elective abortions in the District of Columbia. For the roll call on the vote, see: [nchla.org/datasource/idocuments/7Hous.app.commDCvt7b.09.pdf](http://nchla.org/datasource/idocuments/7Hous.app.commDCvt7b.09.pdf).

In a July 14 letter to the House, Cardinal Justin Rigali, chairman of the Bishops’ Committee on Pro-Life Activities, urged Members to oppose any effort to enact H.R. 3170 without restoring current law on D.C. abortion funding. See: [nchla.org/datasource/idocuments/dcletterfullhouse.pdf](http://nchla.org/datasource/idocuments/dcletterfullhouse.pdf).

Floor: On July 14, the House Rules Committee rejected a request by Reps. Tiahrt and Davis to allow a floor vote on their amendment. Eight additional cosponsors were added to the amendment: Reps. Heath Shuler (D-NC), Jim Jordan (R-OH), Bart Stupak (D-MI), Chris Smith (R-NJ), Jerry Costello (D-IL), Joseph Pitts (R-PA), Jim Marshall (D-GA), and Michele Bachmann (R-MN). The action of the Rules Committee flies in the face of a February 25 letter to House leadership signed by 180 House Members requesting that the Rules Committee “report a

rule that allows for consideration of any deleted [pro-life] riders on the floor of the House of Representatives.” See: [www.nchla.org/datasource/documents/2RiderLtr25.09.pdf](http://www.nchla.org/datasource/documents/2RiderLtr25.09.pdf).

Rep. Stupak, Co-Chair of the Pro-Life Caucus, helped organize a major effort to defeat the rule. Toward the end of the voting, a majority of those present had voted to reject the rule. After a small number of Members changed their votes, the vote was called. The effort to defeat the rule fell short, 216-yes, 213-no, 5-not voting (Roll Call 553). See: [clerk.house.gov/evs/2009/roll553.xml](http://clerk.house.gov/evs/2009/roll553.xml). Thirty-nine Democrats voted against the rule.

Rep. Tiahrt offered a motion to recommit the bill to committee with instructions to restore the D.C. abortion funding ban. Rep. Jose Serrano (D-NY) made a point of order against the Tiahrt motion on the grounds that, contrary to House rules, it “adds further legislation” (CR H8267, 7/16/09). The chair sustained the point of order. Rep. Tiahrt appealed the ruling of the chair. Rep. Serrano moved to table the appeal. The House agreed with motion to table, 225-yes, 195-no, 13-not voting (Roll Call 570). See: [clerk.house.gov/evs/2009/roll570.xml](http://clerk.house.gov/evs/2009/roll570.xml).

The only option remaining was to urge Members to vote against the bill. The vote on final passage of H.R. 3170 was, 219-yes, 208-no, 1-present, 5-not voting (Roll Call 571). See: [clerk.house.gov/evs/2009/roll571.xml](http://clerk.house.gov/evs/2009/roll571.xml). Thirty-eight Democrats voted “no.”

#### **4. Fiscal Year 2010: Senate Rejects D.C. Abortion Funding Ban and Deletes Restriction on FEHB Program Abortion Coverage**

D.C. Abortion Funding Ban: On July 9, 2009, during its markup of the Fiscal Year 2010 Financial Services Appropriations Bill (S. 1432), the Senate Appropriations Committee voted down an amendment offered by Sen. Sam Brownback (R-KS) to restore the D.C. abortion funding ban. The amendment was rejected, 13-yes, 15-no, 1-present. The roll call on the vote is not yet available, but it is reported that Sens. Ben Nelson (D-NE) and Mark Pryor (D-AR) voted for the amendment. Senate floor action on S. 1432 is not yet scheduled.

FEHB Program Abortion Coverage: As reported from committee, with no fanfare or notice, S. 1432 deleted the longstanding restriction on abortion coverage in the Federal Employees Health Benefits (FEHB) program. Fiscal Year 2009 appropriations law currently in effect reads: “Sec. 613. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions. Sec. 614. The provisions of section 613 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.” The House-passed Fiscal Year 2010 Financial Services Appropriations Bill (H.R. 3170) contains this same language. For background information on abortion funding restrictions in the FEHB program, see: [nchla.org/issues.asp?ID=26](http://nchla.org/issues.asp?ID=26).

Senate floor action on S. 1432 is not yet scheduled.

## 5. Fiscal Year 2010: Labor/HHS Appropriations

House: As reported from committee on July 22, the Fiscal Year 2010 Labor/Health and Human Services Appropriations Bill (H.R. 3293) retained longstanding abortion funding prohibitions and related policies

Abstinence Funding: However, the bill eliminated distinct funding for abstinence education for adolescents and replaced it with what the committee called “a new evidence-based teenage pregnancy prevention initiative” (House Report 111-220, p. 176). On July 16, Cardinal Justin Rigali, chairman of the bishops’ Committee on Pro-Life Activities, had sent a letter to the Appropriations Committee, urging the retention of the Hyde Amendment and other abortion funding restriction riders, the Weldon conscience protection amendment, and distinct funding for abstinence education. With respect to the latter, the Cardinal noted, “Forcing all federally funded programs to promote a ‘comprehensive’ approach would undermine the abstinence message, by requiring that *all* programs simultaneously promote the misleading message that sexual activity is ‘safe’ for minors when contraceptives are used.” For full text of letter, see: [nchla.org/datasource/documents/rigalilhhsappropshousecomm.pdf](http://nchla.org/datasource/documents/rigalilhhsappropshousecomm.pdf).

Defund Planned Parenthood: For floor consideration of H.R. 3293, the rule allowed for a vote on an amendment by Rep. Mike Pence (R-IN) to defund Planned Parenthood. “None of the funds made available under this Act shall be available to Planned Parenthood for any purpose under title X of the Public Health Service Act.” The amendment was co-sponsored by Reps. Anh Cao (R-LA), Trent Franks (R-AZ), Doug Lamborn (R-CO), Lee Terry (R-NE), Joseph Pitts (R-PA), Chris Smith (R-NJ), and Robert Latta (R-OH). Rep. Pence argued that Planned Parenthood is the largest recipient of family planning (Title X) money and is also the largest abortion provider in America—over 300,000 abortions performed last year while receiving almost \$350 million in taxpayer dollars. “We cannot reduce the number of abortions in America while increasing Federal funding to the Nation’s leading abortion provider.” (CR, H8783, 7/24/09) *On July 24, the Pence Amendment was defeated, 183-yes, 247-no, 9-not voting (Roll Call 643)*. See: [clerk.house.gov/evs/2009/roll643.xml](http://clerk.house.gov/evs/2009/roll643.xml).

H.R. 3293 funds Fiscal Year 2010 Title X family planning programs at \$317 million, a \$10 million increase over the current fiscal year.

### Senate

Committees: On July 28, the appropriations subcommittee approved the Senate Fiscal Year 2010 Labor/HHS Appropriations Bill (not yet numbered). According to reports, the subcommittee’s markup follows the House: Longstanding abortion funding prohibitions and related policies are retained; distinct funding for abstinence education was eliminated and replaced with funding for teen pregnancy prevention. According to a subcommittee press release: “The bill includes \$104 million for a new program to fund evidence-based efforts to reduce teen pregnancy.” Full committee markup took place on July 30. The committee report confirms that the distinct abstinence education program was replaced with “a new program to fund evidence-based efforts to reduce teen pregnancy” (Senate Report 111-66, p. 6).

Floor: Floor action has not yet been scheduled.

## **B. Authorization Bills**

Issues considered below include:

1. Conscience Protection Regulations
2. Foreign Relations Authorization Act: Office for Global Women's Issues
3. Health Care Reform
4. Human Cloning
5. Mexico City Policy: Promotion of Abortion Overseas
6. Morning-After Pill (Plan B): Over-the-Counter Use
7. Pregnant Women Support Act
8. Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act
9. Right to Life Act and Life at Conception Act
10. Sanctity of Human Life Act
11. SCHIP: Unborn Child Rule
12. Stem Cell Research

### **1. Conscience Protection Regulations**

Background: On December 18, 2008, the Department of Health and Human Services (HHS) issued a final regulation protecting conscience rights. See HHS press release at: [www.hhs.gov/news/press/2008pres/12/20081218a.html](http://www.hhs.gov/news/press/2008pres/12/20081218a.html). On December 19, 2008, the regulation was formally published in the *Federal Register* (Vol. 73, No. 245, 78072-78101) See: [edocket.access.gpo.gov/2008/pdf/E8-30134.pdf](http://edocket.access.gpo.gov/2008/pdf/E8-30134.pdf). The regulation took effect 30 days after this publication date. The regulation does not expand conscience rights but faithfully implements three existing federal conscience protection laws. The regulation has nothing to do with withholding information about medical conditions and procedures, but is about coerced participation (performance and/or referrals) in procedures such as abortion. The regulation respects different views on abortion; it allows both patients and medical professionals to act according to their conscience. The regulation maximizes access to health care; without respect for conscience rights, many doctors, nurses, and hospitals could be forced out of the health care system. Catholic hospitals alone care for 1 in 6 patients in the U.S. every year. USCCB spokesperson, Deirdre McQuade, expressed thanks to HHS Secretary Leavitt for issuing this regulation, and added: "We urge the incoming Congress and Administration to honor this much-needed implementation of longstanding laws." See: "Bishops Welcome HHS Regulation Protecting Conscience Rights in Health Care," at: [www.usccb.org/comm/archives/2008/08-203.shtml](http://www.usccb.org/comm/archives/2008/08-203.shtml).

In September 2008 the USCCB Office of General Counsel had filed formal comments strongly supporting the regulation. See: [www.usccb.org/ogc/pl-hhs-conscience2.pdf](http://www.usccb.org/ogc/pl-hhs-conscience2.pdf).

In his January 16, 2008 letter to then President-elect Barack Obama, Cardinal Francis George, president of the U.S. Conference of Catholic Bishops, pressed arguments for retaining the conscience regulation. See: [www.usccb.org/comm/archives/2009/09-018.shtml](http://www.usccb.org/comm/archives/2009/09-018.shtml).

Congress: Some members of Congress announced plans to rescind the Bush Administration regulations by legislative action. On January 15, 2009, Rep. Diana DeGette (D-CO) introduced the Protecting Patients and Health Care Act (H.R. 570), a measure that declares the Bush Administration regulations “shall have no force or effect.” H.R. 570 has 25 cosponsors and was referred to the Committee on Energy and Commerce. Bills with similar intent were introduced late in 2008 in both House and Senate (S. 20, H.R. 7310).

Judicial: On January 15, 2009, three federal law suits were filed in the District of Connecticut against the Bush Administration regulation by pro-abortion organizations and the attorneys general of six states (CT, joined by IL, CA, NJ, MA, RI, and OR), with the help of the American Civil Liberties Union. *Planned Parenthood v. Leavitt*; *National Family and Reproductive Health Association (NFPRHA), et. al. v. Leavitt*; *Connecticut v. the United States*. These suits claim that the regulation invalidly expands the scope of the statutes it implements; they also make constitutional arguments, including the claim that by protecting conscience rights for health care providers the regulation offers an unconstitutional “establishment of religion.” For background on these three cases, see: [www.clsnet.org/clrfPages/litigation/litigation\\_Overview.php](http://www.clsnet.org/clrfPages/litigation/litigation_Overview.php).

Obama Administration: On March 6, 2009, the Obama Administration issued a proposed rule to rescind the December 19, 2008 Bush Administration final regulation entitled “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.” According to the proposed rule, it is important “to review this [2008] regulation to ensure its consistency with current Administration policy and to reevaluate the necessity” for regulations to implement existing conscience protection laws.

Four particular areas for comments were listed: (1) information, with examples, on the need for regulations; (2) information, with examples, on whether the December regulation reduces access to information and health care services, particularly for poor women; (3) comments on whether the December regulation is sufficiently clear to minimize the potential for harm resulting from any ambiguity and confusion caused by the regulation; and (4) comments on whether the goals of the December regulation might also be accomplished through non-regulatory means, such as outreach and education.

The proposed rule on the rescission was formally published in the *Federal Register*, Vol. 74, No. 45 (March 10, 2009), 10207-11. For a copy, see: [www.gpo.gov/fdsys/pkg/FR-2009-03-10/pdf/E9-5067.pdf](http://www.gpo.gov/fdsys/pkg/FR-2009-03-10/pdf/E9-5067.pdf). The public had 30 days to comment. The comment period ended April 9, 2009.

On March 10, 2009, 36 Senators sent a letter to President Obama, urging him to preserve the current conscience protection rule. Health care professionals have the right to provide care based on “medical expertise and ethical standards.” Protecting these rights will serve the best interests of patients. See: [www.nchla.org/datasource/documents/Sn.Con.Let3.10.09.pdf](http://www.nchla.org/datasource/documents/Sn.Con.Let3.10.09.pdf). On April 3,

2009, 120 Representatives also sent a letter to the president in support of the conscience rule. See: [www.nchla.org/datasource/documents/HouseConscienceLetter040309.pdf](http://www.nchla.org/datasource/documents/HouseConscienceLetter040309.pdf).

On March 23, 2009, the U.S. Conference of Catholic Bishops' Office of General Counsel submitted well-argued, incisive comments on the rescission proposal. The comments are organized around five themes: (1) the policy of the executive branch should be to satisfy its constitutional obligation to faithfully execute federal conscience protection laws; (2) in the present environment, there is a critical need for regulatory enforcement of the conscience protection statutes enacted by Congress; (3) considerations of access to health care services, particularly for the poor, militate in favor of keeping the conscience regulation, not rescinding it; (4) the existing regulation only reduces ambiguity and confusion regarding existing statutory protections of conscience; (5) the administration should consider outreach that is designed to dispel common misconceptions about the existing constitutional, statutory, and regulatory law in this area, and should certainly avoid feeding those misconceptions itself. The conclusion states: "It is the Administration's constitutional duty to enforce the laws enacted by Congress, including conscience protection statutes at issue here. Congress has made its policy choice—a choice that respects and advances this Nation's founding principles of religious liberty and diversity, and that tends to increase patients' ready access to basic health care, regardless of their location or socio-economic status. The Administration's regulatory actions should faithfully enforce that existing policy choice." For the full text of this excellent document, see: [www.usccb.org/conscienceprotection/hhs\\_comments\\_conscience\\_09final.pdf](http://www.usccb.org/conscienceprotection/hhs_comments_conscience_09final.pdf).

Also, see the well-written presentation in popular Q & A format, "Questions and Answers: Defending the Conscience Rights Regulation," at: [www.usccb.org/conscienceprotection/q\\_and\\_a.shtml](http://www.usccb.org/conscienceprotection/q_and_a.shtml).

A March 23-25, 2009 public opinion poll showed that 87 percent of those surveyed believe it is important to "make sure that healthcare professionals in America are not forced to participate in procedures and practices to which they have moral objections." See: [www.usccb.org/comm/archives/2009/09-077.shtml](http://www.usccb.org/comm/archives/2009/09-077.shtml).

For resources and background information, see: [www.usccb.org/conscienceprotection](http://www.usccb.org/conscienceprotection).

## **2. Foreign Relations Authorization Act: Office for Global Women's Issues**

Background: While cited as the Foreign Relations Authorization Act, the measure in question, H.R. 2410, is described in its title as a bill "To authorize appropriations for the Department of State, and the Peace Corps for fiscal years 2010 and 2011, to modernize the Foreign Service, and for other purposes." The last free-standing two-year authorization for this general purpose was for fiscal years 2002 and 2003.

House Committee: On May 20, 2009, the House Foreign Affairs Committee marked up the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011 (H.R. 2410). The bill contained a provision in Section 334 to establish an Office for Global Women's Issues. Rep. Chris Smith (R-NJ) offered an amendment to this section so that the new Office would not be used to promote abortion throughout the world. "If abortion is promoted by the Office for

Global Women's Issues, it will profoundly undermine both the mission and message of what would otherwise be a truly noble initiative," Rep. Smith stated. "My amendment ensures that won't be the case." See: [nchla.org/datasource/documents/5SMITNJ032.20.09.pdf](http://nchla.org/datasource/documents/5SMITNJ032.20.09.pdf)

Throughout Section 334 language described the purpose of the Office as coordinating "efforts of the United States Government regarding gender integration and women's empowerment in United States foreign policy." Wherever this language occurred, the Smith Amendment replaced it with "efforts of the United States Government regarding the full integration of women and girls and women's empowerment in United States foreign policy."

Where the duties of the Ambassador were described in broad terms as "design, support, and as appropriate, implement, limited projects regarding women's empowerment internationally," the Smith Amendment dropped the broad general reference to "projects regarding women's empowerment internationally" and in its place substituted a list of 15 generally accepted specific policies, programs, and activities. As Rep. Smith summarized: "The Office would promote activities designed to expand educational opportunities and job training for women; push equal pay for equal work for women; push microfinancing and microenterprise programs for women; push property and inheritance rights for women; improve maternal health and expand pregnancy care centers; combat forced abortions, forced sterilization, sex and labor trafficking and other forms of violence against women; seek an end to genital mutilation; stop child marriage; and promote changes in male attitudes and behavior that are detrimental to women."

The Smith Amendment also added a new policy section: "It is the policy of the United States Government not to lobby sovereign countries, including through multilateral mechanisms, to change their domestic laws and policies to legalize, fund, or promote abortion except in cases of forcible rape, incest, or to save the life of the mother."

However, in a party line vote, on May 20, 2009 the Committee voted to defeat the Smith Amendment, 17-yes, 22-no. See: [nchla.org/datasource/documents/5VoteSmithAmend20.09.pdf](http://nchla.org/datasource/documents/5VoteSmithAmend20.09.pdf)

During the course of committee debate, Rep. Gerald Connolly (D-VA) stated, "The notion that somehow the United States promotes abortion overseas is fallacious. It's a false premise." (*CQToday*, 5/21/09, p. 3) However, in April 22, 2009 testimony before this same committee, Secretary of State Hillary Clinton, responding to questions from Rep. Chris Smith, stated the opposite. "It is my strongly held view that you are entitled to advocate and everyone who agrees with you should be free to do so anywhere in the world, and so are we [the Administration and its allies]." The Secretary defined "reproductive health" to include access to abortion. "We are now an Administration that will protect the rights of women, including their rights to reproductive health care." See YouTube clip at: [www.youtube.com/watch?v=-gEA97EnxE4](http://www.youtube.com/watch?v=-gEA97EnxE4).

On May 20, 2009, H.R. 2410 was voted out of committee by voice vote.

House Floor: On June 9, 2009, the House Rules Committee rejected a motion to put the Smith Amendment in order during floor consideration of H.R. 2410. Among the amendments put in order was the Manager's Amendment that would add a new generic paragraph stating that

nothing in Sec. 334 “shall be construed as affecting” existing laws against abortion or laws against the use of U.S. funds to change the abortion laws of other countries. On June 10, 2009, during floor debate, the House approved the Manager’s Amendment and passed H.R. 2410.

Senate: H.R. 2410 now awaits consideration by the Senate.

### **3. Health Care Reform**

Among the several health care reform proposals that have been put forward, Congressional focus has been placed on three bills—two in the Senate, one in the House. Two Senate committees have approved two different bills and three House committees have approved different version of a common bill.

On October 29, House leaders presented their version of a single House bill. *On Saturday, November 7, that measure is expected to be taken up and voted on.* Senate leaders continue to prepare a single bill for Senate floor consideration.

None of the bills has acceptable provisions prohibiting abortion funding or mandates for abortion coverage, and none fully protects conscience rights in health care.

On October 8, 2009, the U.S. Conference of Catholic Bishops sent a letter to Congress expressing disappointment over the lack of progress made on the bishops’ three priority concerns for health care reform. The letter was sent by the chairmen of the three committees with primary concern for health care reform: Bishop William Murphy, Committee on Domestic Justice and Human Development; Cardinal Justin Rigali, Committee on Pro-Life Activities; Bishop John Wester, Committee on Migration. The bishops stated: “If final legislation does not meet our principles, we will have no choice but to oppose the bill.” On the pro-life priority, the bishops reaffirm, “It is essential that the legislation clearly apply to this new program longstanding and widely supported federal restrictions on abortion funding and mandates, and protections for rights of conscience. No current bill meets this test. . . . If acceptable language in these areas cannot be found, we will have to oppose the health care bill vigorously.” For full text of the letter, see: [www.usccb.org/sdwp/national/2009-10-08-healthcare-letter-congress.pdf](http://www.usccb.org/sdwp/national/2009-10-08-healthcare-letter-congress.pdf).

Senate: Two committees are working on different bills.

Committee on Health, Education, Labor and Pensions (HELP): On July 15, the Senate HELP Committee marked up its bill, the Affordable Health Choices Act (S. 1679). The committee rejected amendments to exclude federal funding or mandated coverage for abortion, to protect conscience rights, and to maintain current state laws limiting and regulating abortion.

Committee on Finance: On September 16, 2009, committee chairman Sen. Max Baucus (D-MT) released his chairman’s Mark, America’s Healthy Future Act in conceptual form. On September 22, 2009, the Finance Committee began markup. Sens. Orrin Hatch (R-UT) and Michael Enzi (R-WY) have submitted amendments to correct flaws in the chairman’s Mark on abortion and conscience rights. See: [www.nchla.org/datasource/documents/SenFinCmteHCRamdts.pdf](http://www.nchla.org/datasource/documents/SenFinCmteHCRamdts.pdf).

On September 30, 2009, the committee rejected, 10-yes, 13-no, Hatch Amendment #C14 to restrict the use of federal funding to support abortion.

The committee also rejected, 10-yes, 13-no, Hatch Amendment #C13 to prevent governmental bodies from discriminating against health care providers who decline to perform, refer for, or pay for abortions. This amendment reflects current law (called the Weldon Amendment) and is identical in wording to an amendment already accepted by the House Energy and Commerce Committee during its consideration of the House's health care reform bill, H.R. 3200.

The committee did not consider Enzi Amendment #C15 that, following current law, would have protected the conscience rights of health care providers in contexts broader than abortion.

On October 13, 2009, the committee approved America's Healthy Future Act, 14-yes, 9-no, with the text of the bill (S. 1796) being reported October 19. See: [finance.senate.gov/sitepages/ Americas Healthy Future Act.html](http://finance.senate.gov/sitepages/Americas_Healthy_Future_Act.html).

Floor: Based on the two committee bills, Senate Democratic leadership is attempting to develop a single bill that can be brought to the Senate floor.

House: Three committees have produced different versions of a common bill, the America's Affordable Health Choices Act (H.R. 3200). On July 17, 2009, the Committees on Education and Labor and on Ways and Means favorably reported the bill. On July 31, 2009, the House Committee on Energy and Commerce also favorably reported the measure.

Committee on Education and Labor: During committee markup, Rep. Mark Souder (R-IN) offered Amendments 31 (no abortion mandate) and 32 (no funding for abortion). Amendment 31 provided that nothing in the bill would require a group health plan to provide coverage for or access to abortion, except to save the mother's life or in cases of rape or incest. For the text see: [nchla.org/datasource/idocuments/Souder31.pdf](http://nchla.org/datasource/idocuments/Souder31.pdf). Amendment 32 provided that no funds appropriated through the bill may be used to pay for abortion or to pay any part of the costs of a health benefits plan that includes coverage for abortion, except to save the mother's life or in cases of rape or incest. For the text, see: [nchla.org/datasource/idocuments/Souder32.pdf](http://nchla.org/datasource/idocuments/Souder32.pdf). *Each amendment failed, 19-yes, 29-no.* For the vote details, see: [nchla.org/datasource/idocuments/7EdLaborMembersHCRVts17a.09.pdf](http://nchla.org/datasource/idocuments/7EdLaborMembersHCRVts17a.09.pdf).

Committee on Ways and Means: During committee markup, Rep. Sam Johnson (R-TX) offered an amendment to exclude an abortion mandate. No part of the bill would impose any requirement to cover or provide access to abortion or permit such a mandate by the Health Benefits Advisory Committee, the Secretary of HHS, the Health Choices Commissioner, or other governmental entity, except to save the mother's life or in cases of rape or incest. For the text, see: [nchla.org/datasource/idocuments/Johnson\\_Abortion.pdf](http://nchla.org/datasource/idocuments/Johnson_Abortion.pdf). *The Johnson Amendment was defeated, 18-yes, 23-no.* Rep. Eric Cantor (R-VA) offered an amendment to ensure that no public funds would go to plans that pay for abortion. *The Cantor Amendment was defeated, 19-yes, 22-*

no. For the vote details, see: [nchla.org/datasource/idocuments/7WayMeanComHCRVts17b.09.pdf](http://nchla.org/datasource/idocuments/7WayMeanComHCRVts17b.09.pdf).

Committee on Energy and Commerce: After a hiatus, the Committee on Energy and Commerce resumed its markup on July 30, 2009. Reps. Bart Stupak (D-MI) and Joseph Pitts (R-PA) were prepared to offer amendments to exclude abortion mandates, prevent federal funding of abortion, uphold state laws that regulate abortion, and protect the conscience rights of health care providers. On July 29, 2009, Cardinal Justin Rigali, chairman of the bishops' Committee on Pro-Life Activities, sent a letter to the committee, urging support of the Stupak/Pitts amendments. See: [nchla.org/datasource/idocuments/ltrhousenrgycomm.pdf](http://nchla.org/datasource/idocuments/ltrhousenrgycomm.pdf).

(1) Capps Amendment: On July 30, 2009, Rep. Lois Capps (D-CA) offered a “compromise” amendment that was backed by committee chair, Rep. Henry Waxman (D-CA). See: [nchla.org/datasource/idocuments/hr3200\\_capps\\_1.pdf](http://nchla.org/datasource/idocuments/hr3200_capps_1.pdf). The amendment yielded some ground to pro-life concerns about mandated abortion coverage in private plans, preemption of state abortion laws, and retention of federal conscience laws. However, it weakened the application of the Hyde Amendment funding restrictions and had provisions to ensure that abortion is included in the public (government-run) plan. *The Capps amendment passed by the narrow margin, 30-yes, 28-no*. Six Democrats voted against the amendment: Reps. Bart Stupak (D-MI), Mike Ross (D-AR), Jim Matheson (D-UT), Charlie Melancon (D-LA), John Barrow (D-GA), and Baron Hill (D-IN). Rep. Mike Doyle (D-PA), who was one of 20 Democrats who signed a letter stating they would vote against any health care reform bill that did not exclude abortion, voted in favor of the Capps amendment. All Republican members of the committee voted against the Capps amendment, except Rep. Tim Murphy (R-PA), for whom no vote is listed.

(2) Pitts Amendment—Exclude Abortion Mandate: Also sponsored by Reps. Stupak and Roy Blunt (R-MO), this amendment excluded any mandate for abortion coverage, except to save the mother's life and in cases of rape or incest. See: [nchla.org/datasource/idocuments/hr3200\\_pitts\\_1.pdf](http://nchla.org/datasource/idocuments/hr3200_pitts_1.pdf). At first the Pitts amendment passed, 31-yes, 27-no. See: [nchla.org/datasource/idocuments/hr3200\\_pitts\\_1\\_rc.pdf](http://nchla.org/datasource/idocuments/hr3200_pitts_1_rc.pdf). Rep. Waxman moved to reconsider the vote. *On the second vote, the Pitts Amendment failed, 29-yes, 30-no*. On both votes, all Republicans voted “yes” as did the six Democrats who voted against the Capps amendment. Reps. Waxman and Bart Gordon (D-TN) “yes” on the first vote, “no” on the second. Presumably, Rep. Waxman's first “yes” vote with the majority gave him the option to move to reconsider the vote.

(3) Stupak Amendment—Protection of Conscience Rights: Also sponsored by Reps. Pitts and Lee Terry (R-NE), this amendment provided for protection of conscience rights. After dropping a section that would accommodate conscience protection beyond the abortion context, the amendment was approved by voice vote. See: [nchla.org/datasource/idocuments/hr3200\\_0730\\_stupak\\_1.pdf](http://nchla.org/datasource/idocuments/hr3200_0730_stupak_1.pdf).

On July 31, 2009, the House Energy and Commerce Committee continued markup.

(4) Stupak Amendment—Prevent Abortion Funding: Also sponsored by Rep. Pitts, this amendment specified that no funds authorized by the Act may be use to pay for any abortion or

cover the costs of any health plan that includes coverage for abortion, except to save the mother's life or in cases of rape or incest. See: [nchla.org/datasource/documents/hr3200\\_stupak\\_1.pdf](http://nchla.org/datasource/documents/hr3200_stupak_1.pdf). *The Stupak amendment failed, 27-yes, 31-no.* All Republicans voted "yes," except Rep. John Shimkus (R-IL), who voted "no." All Democrats voted "no," except Reps. Stupak, Ross, Matheson, Melancon, and Barrow, who voted "yes," and Rep. Hill, who did not vote.

For the key roll calls on the Capps, Pitts, and Stupak (abortion funding) amendments, see: [nchla.org/datasource/documents/7HCR.EandCvotes30.31d.09.pdf](http://nchla.org/datasource/documents/7HCR.EandCvotes30.31d.09.pdf).

*On July 31, 2009, the House Energy and Commerce Committee favorably reported H.R. 3200, 31-yes, 28-no.*

On August 11, 2009, Cardinal Justin Rigali sent a letter to the House of Representatives in which he commented on the version of H.R. 3200 approved by the House Energy and Commerce Committee. As amended, the bill will not preempt certain state laws regulating abortion and will have no effect on existing federal conscience protection rights. However, the Cardinal noted, the bill remains seriously deficient on two other fundamental issues: (1) The legislation delegates to the Secretary of Health and Human Services the power to make unlimited abortion a mandated benefit in the public health insurance plan. (2) The committee rejected an amendment to incorporate longstanding federal abortion funding policies in the bill. Instead they created a paper separation between federal funding and abortion. Federal funds will subsidize the public plan as well as private health plans that include abortion on demand, but anyone who purchases these plans is required to pay a premium to cover all abortions beyond those eligible for funding under the current Hyde Amendment. Further, those who purchase the public plan will be forced to pay directly and specifically for abortion coverage. Most Americans do not want abortion in their health coverage. "By what right, then, and by what precedent, would Congress make abortion coverage into a nationwide norm, or force Americans to subsidize it as a condition for participating in a public health program?" See: [nchla.org/datasource/documents/RigaliHCRLtr081109.pdf](http://nchla.org/datasource/documents/RigaliHCRLtr081109.pdf).

Floor: Democratic leadership needed to resolve the differences between the three committee-passed versions of the Affordable Health Care for America Act. On October 29, the leadership's bill was introduced, H.R. 3962. See: [docs.house.gov/rules/health/111\\_ahcaa.pdf](http://docs.house.gov/rules/health/111_ahcaa.pdf). This bill retains the unacceptable features on abortion and conscience protection that were in the earlier committee bills. H.R. 3962 has been referred to eight committees. *On Saturday, November 7, the measure is expected to be taken up and voted on.*

On June 25, 2009, 20 House Democrats sent a letter to Speaker Nancy Pelosi (D-CA) stating that mandated coverage for abortion in any health care reform plan is unacceptable and that "we cannot support any health care reform proposal unless it explicitly excludes abortion from the scope of any government-defined or subsidized health insurance plan." For the full text of letter and signatories, see: [nchla.org/datasource/documents/dem062509healthletter.pdf](http://nchla.org/datasource/documents/dem062509healthletter.pdf).

*It will be critical that Democratic leadership submit a Rule that allows a vote on a pro-life amendment.* On September 28, 2009, Reps. Bart Stupak (D-MI) and Joseph Pitts (R-PA) sent

to Speaker Rep. Nancy Pelosi (D-CA) and Rules Committee Chairwoman Rep. Louise Slaughter (D-NY) a letter signed by 183 Members, requesting that the rule governing House floor debate on health care reform allow Members to vote on a Stupak/Pitts amendment on government funding for abortion. For text of letter and signatories, see: [nchla.org/datasource/idocuments/StupakPittsLtr092809.pdf](http://nchla.org/datasource/idocuments/StupakPittsLtr092809.pdf)

On October 23, 2009, Rep. Alan Mollohan (D-WV) announced that he and 28 other Democratic Representatives had sent a letter to Speaker Nancy Pelosi (D-CA) requesting that the Hyde Amendment be included in the House's health care reform bill. See: [nchla.org/datasource/idocuments/10MollohanHCR.Let.23.09d.pdf](http://nchla.org/datasource/idocuments/10MollohanHCR.Let.23.09d.pdf).

Action Resources: For an NCHLA Action Alert urging pro-life constituents to contact their Representatives and Senators, see: [nchla.org/actiondisplay.asp?ID=279](http://nchla.org/actiondisplay.asp?ID=279). E-mails can be sent through NCHLA's Grassroots Action Center.

The U.S. Conference of Catholic Bishops has issued a Nationwide Bulletin Insert (English and Spanish versions) for immediate use by parishes. See: [www.usccb.org/healthcare/hc-bulletin-insert-10-23-09-final.pdf](http://www.usccb.org/healthcare/hc-bulletin-insert-10-23-09-final.pdf). The USCCB also has prepared an ad/flyer for local use. See: [www.usccb.org/healthcare/SavingLivesFlyer.pdf](http://www.usccb.org/healthcare/SavingLivesFlyer.pdf).

More Information: For fact sheets helpful in critiquing the health care reform bills, see:

1. "Myths and Facts: The Capps Amendment to H.R. 3962," at: [www.usccb.org/prolife/issues/healthcare/capps\\_3962.pdf](http://www.usccb.org/prolife/issues/healthcare/capps_3962.pdf).
2. "Abortion and Conscience Problems in Health Care Reform Bills," at: [www.usccb.org/prolife/issues/healthcare/capps\\_102309.pdf](http://www.usccb.org/prolife/issues/healthcare/capps_102309.pdf).
3. "Current Policy on Federal Abortion Funding," at: [www.usccb.org/prolife/issues/healthcare/abortion\\_funding\\_102309.pdf](http://www.usccb.org/prolife/issues/healthcare/abortion_funding_102309.pdf).

For general information, see: [www.usccb.org/healthcare](http://www.usccb.org/healthcare).

#### **4. Human Cloning**

Background: Cloning is a way of producing a genetic twin of an organism without sexual reproduction. The nuclear material from a cell of an organism's body is introduced into a female reproductive cell (an oocyte) whose nuclear material has been removed or inactivated. When stimulated, the development of a new embryo begins. The cloning techniques used to create human embryos for experimentation and destruction is the same technique used to create human embryos for transfer to the womb and subsequent live birth. In both cases, cloning is wrong and should be banned.

In 2001 and again in 2003, the U.S. House of Representatives passed the Human Cloning Prohibition Act, a genuine ban on human cloning. The Senate did not act.

The debate on human cloning is linked to the question of deriving embryonic stem cells from cloned embryos. Bills allowing the creation of human clones for purposes of research and destruction also have been introduced.

Also see section on “Stem Cell Research.”

For resources on cloning from U.S. Conference of Catholic Bishops, see: [www.usccb.org/prolife/issues/bioethic/cloning/index.shtml](http://www.usccb.org/prolife/issues/bioethic/cloning/index.shtml). Also see: [www.cloninginformation.org](http://www.cloninginformation.org) and [www.stemcellresearch.org](http://www.stemcellresearch.org).

House: On February 12, 2009, Rep. Bart Stupak (D-MI) introduced the Human Cloning Prohibition Act of 2009 (H.R. 1050). The bill has 58 cosponsors and was referred to the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. Like similar bills in earlier Congresses, H.R. 1050 makes it unlawful to perform or attempt to perform human cloning; to participate in such an attempt; and to ship, receive, or import the product of human cloning.

## **5. Mexico City Policy: Promotion of Abortion Overseas**

Administration: On late Friday afternoon, January 23, 2009, President Barack Obama signed a Memorandum overturning the Mexico City Policy (MCP), thereby restoring U.S. funding to organizations that perform and promote abortion in developing nations.

Cardinal Justin Rigali, chairman of the U.S. bishops’ Committee on Pro-Life Activities, responded immediately, calling the action “very disappointing.” He affirmed that “An Administration that wants to reduce abortions should not divert U.S. funds to groups that promote abortions.” See: [www.usccb.org/comm/archives/2009/09-022.shtml](http://www.usccb.org/comm/archives/2009/09-022.shtml).

In an earlier January 16, 2009 letter, Cardinal Francis George, president of the U.S. Conference of Catholic Bishops, had urged then President-elect Obama to retain existing policies, including the MCP. He stated:

The Mexico City Policy, first established in 1984, has wrongly been attacked as a restriction on foreign aid for family planning. In fact, it has not reduced such aid at all, but has ensured that family planning funds are not diverted to organizations dedicated to performing and promoting abortions instead of reducing them. Once the clear line between family planning and abortion is erased, the idea of using family planning to reduce abortions becomes meaningless, and abortion tends to replace contraception as the means for reducing family size. A shift toward promoting abortion in developing nations would also increase distrust of the United States in these nations, whose values and culture often reject abortion, at a time when we need their trust and respect.

For full text of the Cardinal’s letter, see: [www.usccb.org/comm/archives/2009/09-018.shtml](http://www.usccb.org/comm/archives/2009/09-018.shtml).

A January 30/February 1, 2009 USA Today/Gallup poll showed that the President’s action overturning the MCP was met with strong public disapproval. When asked whether they

approved or disapproved “allowing funding for overseas family planning groups that provide abortions,” *only 35% approved*. Deirdre McQuade, spokesperson for the Bishops’ Secretariat of Pro-Life Activities, noted that this finding only reinforces the point that “This is no time to divide our nation with policies that offend the pro-life values of most Americans.” See: [www.usccb.org/comm/archives/2009/09-030.shtml](http://www.usccb.org/comm/archives/2009/09-030.shtml).

U.S. Senate: During debate on the bill to reauthorize SCHIP (H.R. 2), Sen. Mel Martinez (R-FL), with 13 cosponsors, offered an amendment (SA 65) to restore the MCP. *On January 28, 2009, the Martinez Amendment was rejected, 37-yes, 60-no (Roll Call 19).*

Also, on July 9, 2009, during the Senate Appropriations Committee markup of the Fiscal Year 2010 State/Foreign Operations Appropriations Bill (S. 1434), Sen. Frank Lautenberg (D-NJ), with Sens. Pat Leahy (D-VT), Barbara Mikulski (D-MD), Patty Murray (D-WA), and Susan Collins (R-ME), offered an amendment that would codify President Obama’s action overturning the MCP and would prevent any future president from reinstating the policy. *The vote was 17-yes, 11-no, 1-present.*

Senate floor action on S. 1434 is not yet scheduled. However, the House has already passed its version of the Fiscal Year 2010 State/Foreign Operations Appropriations Bill (H.R. 3081), but without any corresponding language codifying the overturning of the MCP.

U.S. House: On January 28, 2009, Reps. Chris Smith (R-NJ), James Sensenbrenner (R-WI), Bart Stupak (D-MI), and Ileana Ros-Lehtinen (R-FL) introduced a bill to reinstate the MCP (H.R. 708). During consideration of the Omnibus Appropriations Bill, 2009 (H.R. 1105), Rep. Smith was not allowed to offer an amendment to restore the MCP.

For background information on the MCP, see: [www.nchla.org/issues.asp?ID=2](http://www.nchla.org/issues.asp?ID=2).

## **6. Morning-After Pill (Plan B): Over-the-Counter Use**

Background: On August 24, 2006, the U.S. Food and Drug Administration (FDA) approved over-the-counter (OTC) distribution of the Plan B morning-after-pill (MAP) for Aconsumers”—men and women—18 years and older. The potent drug would remain available prescription-only for women 17 years and under. See: [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108717.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108717.htm). The controversy over the approval goes back to 2003.

Plan B, a product of Duramed, a subsidiary of Barr Pharmaceuticals, is a levonorgestrel-only MAP that has not only contraceptive but also abortifacient properties. Deirdre McQuade, Director of Planning and Information for the Bishops’ Secretariat for Pro-Life Activities, objected to the OTC approval of Plan B. “Without the benefit of a doctor’s supervision, many women will be unaware of this abortifacient action and the other risks posed by Plan B.” Ms. McQuade urged health care providers “not to confuse FDA approval with a right to access and refuse to stock this potent drug for distribution on demand.” For Ms. McQuade’s full statement, see: [www.usccb.org/comm/archives/2006/06-158.shtml](http://www.usccb.org/comm/archives/2006/06-158.shtml).

For more background information, see the Secretariat for Pro-Life Activities' web page at: [www.usccb.org/prolife/issues/contraception/morningafterpill.shtml](http://www.usccb.org/prolife/issues/contraception/morningafterpill.shtml).

Judicial: On March 23, 2009, U.S. District Judge Edward Korman, U.S. District Court of the Eastern District of New York, overturned the FDA's August 24, 2006 determination that Plan B would be available OTC to men and women 18 years and older but would remain available prescription-only for women 17 years and under. The FDA was ordered "to permit Barr Pharmaceuticals, Inc. the Plan B drug sponsor, to make Plan B available to 17 year olds without a prescription, under the same conditions as Plan B is now available to women over the age of 18." *Tummino v. Torti*, Memorandum and Order (No. 05-CV-366(ERK)(VVP)). For text, see: [www.nyed.uscourts.gov/pub/rulings/cv/2005/05cv366mofinal.pdf](http://www.nyed.uscourts.gov/pub/rulings/cv/2005/05cv366mofinal.pdf).

Executive: On April 22, 2009, FDA announced that "the government will not appeal this decision" and that it had notified the manufacturer of Plan B [Duramed Research, Inc. of Bala Cynwyd, PA] that it may "market Plan B without a prescription to women 17 years of age and older." See: [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm149568.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm149568.htm).

Deirdre McQuade, Assistant Director for Policy and Communications at the Catholic bishops' Secretariat of Pro-Life Activities, said that the FDA's action "flies in the face of common sense." Although Plan B can prevent fertilization, it may also prevent the conceived embryo from implanting in the womb. "Without the benefit of a doctor's supervision, many teens will be unaware of this possible abortifacient action and the other risks posed by Levonorgestrel, particularly the risks from repeated use." For the full statement see: [www.usccb.org/comm/archives/2009/09-090.shtml](http://www.usccb.org/comm/archives/2009/09-090.shtml).

## **7. Pregnant Women Support Act**

Background: The Pregnant Women Support Act was first introduced in 2006. In its Findings, the bill is described as an initiative "to gather more complete information about abortion, to reduce the abortion rate by helping women carry their pregnancies to term and bear healthy children, and by affirming the right of women to be fully informed about their other options when they seek an abortion" and "to support women facing unplanned pregnancies, new parents and their children by providing for health care needs, supportive services and helpful prenatal information and postnatal services." The bill has 12 titles. Title I: Public Awareness and Assistance for Pregnant Women and New Parents. Title II: Increasing Women's Knowledge about their Pregnancy. Title III: Pregnancy as a Preexisting Condition. Title IV: Medicaid and SCHIP Coverage of Pregnant Women and Unborn Children. Title V: Disclosure of Information on Abortion Services. Title VI: Support for Pregnant and Parenting College Students. Title VII: Support for Pregnant and Parenting Teens. Title VIII: Improving Services for Pregnant Women Who are Victims of Domestic Violence, Dating Violence, and Stalking. Title IX: Life Support Centers for Pregnant Women, Mothers, and Children. Title X: Expansion of Adoption Credit and Adoption Assistance Programs. Title XI: Providing Support to New Parents. Title XII: Collecting and Reporting Abortion Data.

In pursuing its goals, the bill does not facilitate access to abortion or fund contraception programs.

House: On April 22, 2009, Rep. Lincoln Davis (D-TN) introduced the Pregnant Women Support Act (H.R. 2035). The bill has 39 cosponsors and was referred to four committees: Energy and Commerce; Ways and Means; Education and Labor (to three subcommittees); and Agriculture.

On April 24, 2009, Cardinal Justin Rigali, Chairman of the Bishops' Committee on Pro-Life Activities, wrote to the U. S. House of Representatives, urging all Representatives to support and cosponsor H.R. 2035. The Cardinal cited two statements that most can endorse: That over a million abortions take place each year in this country is a tragedy, and steps should be taken to reduce abortions; and no woman should undergo an abortion because she feels she has no choice or because alternatives were unavailable or unknown to her. For the Cardinal's full letter, see: [www.usccb.org/prolife/issues/women/PWSAHouse09.pdf](http://www.usccb.org/prolife/issues/women/PWSAHouse09.pdf)

Senate: On May 13, 2009, Sen. Robert Casey, Jr. (D-PA) introduced the identical measure in the Senate (S. 1032). The bill has one cosponsor and was referred to Committee on Health, Education, Labor, and Pensions.

On May 15, 2009, Cardinal Rigali wrote a letter to the U.S. Senate, urging all Senators to support and cosponsor S. 1032. For the Cardinal's full letter, see: [www.usccb.org/prolife/issues/women/PWSASenate09.pdf](http://www.usccb.org/prolife/issues/women/PWSASenate09.pdf).

## **8. Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act**

This measure was first introduced in 2006. On July 23, Rep. Tim Ryan (D-OH) introduced the current version of this legislation, the Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act (H.R. 3312). The bill has 42 cosponsors and was referred to five different committees: Energy and Commerce; Education and Labor; Ways and Means; Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security; and Agriculture. According to the statement of findings, the bill has three purposes: reduce the need for abortion, prevent unintended pregnancy, and support pregnant women, new parents, and their children. The bill has 18 titles.

In a June 24 *Life Issues Forum* news column, Susan Wills, Assistant Director for Education and Outreach at the Bishops' Secretariat of Pro-Life Activities, quoted Rep. Ryan saying that the bill is "about access to birth control." Ms. Wills correctly argues that contraception is already widely available in society—in 2006, public expenditures totaled \$1.85 billion. According to the Guttmacher Institute, virtually all teenagers who are sexually active and do not want to become pregnant are already using contraception. The reality is that contraceptives do not work well in real life. "Numerous studies in the United States and Europe have found that greater access to contraception fails to reduce unintended pregnancies and abortions." The real abortion-reduction

bill, Ms. Wills concludes, is the Pregnant Women Support Act. See: [www.usccb.org/prolife/publicat/lifeissues/072409.shtml](http://www.usccb.org/prolife/publicat/lifeissues/072409.shtml).

## **9. Right to Life Act and Life at Conception Act**

Background: The Right to Life Act and Life at Conception Act, commonly called Human Life Bills, represent one approach to address the tragedy the U.S. Supreme Court set in motion when in 1973 it created a constitutional right to abortion. For related information on Human Life Amendments, their history, texts, and votes, see: [www.nchla.org/issues.asp?ID=46](http://www.nchla.org/issues.asp?ID=46).

The measure introduced in the House is called the Right to Life Act and a similar measure introduced in the Senate is called the Life at Conception Act. According to their official titles, the Acts' purposes are "To implement equal protection under the 14<sup>th</sup> article of amendment to the Constitution for the right to life of each born and preborn human person."

In their main sections, the bills read as follows: "To implement equal protection for the right to life of each born and preborn human person, and pursuant to the duty and authority of the Congress, including Congress' power under article I, section 8, to make necessary and proper laws, and Congress' power under section 5 of the 14<sup>th</sup> article of amendment to the Constitution of the United States, the Congress hereby declares that the right to life guaranteed by the Constitution is vested in each human being." In the 111<sup>th</sup> Congress, the House, but not Senate, bill adds the sentence: "However, nothing in this Act shall be construed to authorize the prosecution of any woman for the death of her unborn child."

The terms "human person" and "human being" are defined, though with slightly different language. The Senate bill: "The terms 'human person' and 'human being' include each and every member of the species homo sapiens at all stages of life, including, but not limited to, the moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being." The House bill is the same, except that it drops the phrase, "but not limited to."

In remarks introducing the Right to Life Act, Rep. Duncan Hunter (R-CA) noted that in its 1973 *Roe v. Wade* decision, the U.S. Supreme Court refused to determine when human life begins but also conceded, "If the suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment." The Court has left to Congress the responsibility of protecting the unborn. "This bill accomplishes the simple, yet important goal, of protecting all unborn children from the moment of conception." The Act enforces four provisions of the U.S. Constitution: "(1) The due process clause (Sec. 1) of the Fourteenth Amendment, which prohibits states from depriving any person of life; (2) Sec. 5 of the Fourteenth Amendment, which gives Congress the power to enforce, by appropriate legislation, the provisions of this amendment; (3) The due process clause of the Fifth Amendment, which concurrently prohibits the federal government from depriving any person of life; and (4) Article 1, Section 8, which gives Congress the power to make laws necessary and proper to enforce all powers in the Constitution." The 2009 version of the Right to

Life Act adds a new provision “holding women harmless if they do proceed with an abortion.” Rep. Hunter said that this provision was to make clear to critics that the purpose of this bill is to protect the life of the unborn child, not to put women in jail for utilizing contraception. *Congressional Record* (2/4/09, E196).

House: On February 4, 2009, Rep. Duncan Hunter (R-CA) introduced the Right to Life Act (H.R. 881). The measure has 68 cosponsors and was referred to the Judiciary Committee, Subcommittee on Constitution, Civil Rights, and Civil Liberties.

Senate: On January 29, 2009, Sen. Roger Wicker (R-MS) introduced the Life at Conception Act (S. 346). The measure has nine cosponsors and was referred to the Judiciary Committee.

## **10. Sanctity of Human Life Act**

Background: The Sanctity of Human Life Act is a form of human life bill. It has as its official title, “To provide that human life shall be deemed to begin with fertilization.” The measure has two main sections, a Declaration (Sec. 2) and Definitions (Sec. 3). In the exercise of its powers under the U. S. Constitution, including under Art. 1, Sec. 8 and Art. 14, Sec. 5, Congress declares that “(A) the right to life guaranteed by the Constitution is vested in each human being, and is the paramount and most fundamental right of a person; and (B) the life of each human being begins with fertilization, cloning, or its functional equivalent, irrespective of sex, health, function or disability, defect, stage of biological development, or condition of dependency, at which time every human being shall have all the legal and constitutional attributes and privileges of personhood,” and Congress affirms that “the Congress, each State, the District of Columbia, and all United States territories have the authority to protect the lives of all human beings residing in its respective jurisdictions” (Sec. 2). The bill also defines the terms fertilization, cloning, human, and human being (Sec. 3).

House: On January 7, 2009, Rep. Paul Broun (R-GA) introduced the Sanctity of Human Life Act (H.R. 227). The measure has 54 cosponsors. The bill was referred to the Judiciary Committee.

## **11. SCHIP: Unborn Child Rule**

Background: First enacted into law in 1997, the State Children’s Health Insurance Program (SCHIP) provides health insurance for low-income children. The authorization for SCHIP was set to expire September 30, 2007. At year’s end, funding at the then current level was extended to March 1, 2009.

Since 2002, a federal regulation has defined SCHIP coverage to include children from conception to birth, allowing states to provide prenatal care and other health services to the child and the child’s pregnant mother. The regulation is commonly called the “unborn child rule.” See: *Federal Register*, Vol. 67, No. 191 (Oct. 2, 2002) at: [frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_register&docid=02-24856-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-24856-filed.pdf). Fourteen states have chosen this coverage option: AR, CA, IL, LA, MA, MI, MN, OK, OR, RI, TN, TX, WA, WI.

It is common to include successful regulations or waivers in reauthorizations. However, no matter the purpose, pro-abortion forces did not want any provision in the bill that mentioned the “unborn child.”

Senate: *On January 29, 2009, during consideration of a bill to reauthorize the State Children’s Health Insurance Program (SCHIP) (H.R. 2), the Senate voted, 39-yes, 59-no, to reject Senate Amendment 80 by Sen. Orrin Hatch (R-UT) and 26 cosponsors to codify the unborn child rule in law (Roll Call 26).*

During the debate, Sen. Barbara Boxer (D-CA) referred to the 2002 unborn child rule as “the divisive Bush regulation” and stated that it “only covers the unborn child but not the mother” (*Congressional Record*, S1032, 1/29/09). Sen. Hatch, however, correctly described his amendment as codifying “the 2002 HHS regulation which gives States the option of providing CHIP coverage to children before as well as after birth” and of providing “health services to the mother for 60 days after the birth of her child” and “health coverage to pregnant women for issues not relating to the pregnancy” (*Congressional Record*, S1031, 1/29/09).

On January 28, 2009, Bishop William Murphy, Chairman of the USCCB’s Committee on Domestic Justice and Human Development, had sent to the Senate a letter with fact sheet in support of the Hatch Amendment. See:

[www.nchla.org/datasource/tdocuments/012809SenSCHIPtr.pdf](http://www.nchla.org/datasource/tdocuments/012809SenSCHIPtr.pdf).

Law: On February 4, President Obama signed the SCHIP bill into law (Public Law 111-003).

The law leaves the unborn child regulation in place but explicitly stated that nothing should be inferred “regarding the legality or illegality” of the regulation (Sec. 111). As the fact sheet above states, “This leaves the unborn child option in an uncertain legal situation, subject to rescission by any President or HHS Secretary.” The prospect is raised that states may in the future have only one way to provide prenatal care, by providing coverage for the pregnant woman, with adverse consequences for the health care of children.

## **12. Stem Cell Research**

Background: A stem cell is a basic body cell that can reproduce itself and has the ability to differentiate itself into one or more specialized cell types. Stem cells are commonly divided into embryonic and adult (postnatal sources). Derivation of embryonic stem cells (ESCs) from the early embryo necessarily results in the death of the embryo, and thus is morally prohibited. The derivation of adult stem cells, however, presents no such moral issue and these stem cells can be used for research and treatment.

In general, stem cells show promise in treating diseases by assisting in the regeneration of damaged tissue. The pluripotent ESCs have proven very difficult to use and have produced no therapeutic benefits in humans. Adult stem cells are much more manageable and to date have produced therapeutic benefits in treating humans for at least 73 different diseases. See:

[www.stemcellresearch.org](http://www.stemcellresearch.org). For additional valuable resources, see:

[www.usccb.org/prolife/issues/bioethic/stemcell/index.shtml](http://www.usccb.org/prolife/issues/bioethic/stemcell/index.shtml).

In November 2007, two major scientific studies were published in *Science* and *Cell* that show how to generate induced pluripotent stem cells (iPS cells) without human cloning or destroying human embryos. Scientists in Wisconsin and Japan have produced iPS cells by direct reprogramming of adult cells. The iPS cells have the properties of human embryonic stem cells. For an analysis of this breakthrough, see a paper by Maureen Condic, Ph.D., and Markus Grompe, M.D., at: [www.stemcellresearch.org/statement/pptalkingpointswb.pdf](http://www.stemcellresearch.org/statement/pptalkingpointswb.pdf). For a collection of statements by scientists on the importance of the iPS cell advance, see: [www.nchla.org/docdisplay.asp?ID=231](http://www.nchla.org/docdisplay.asp?ID=231).

Work on iPS cells continues to go forward. On March 26, 2009, a team of scientists from the University of Wisconsin-Madison reported in the online issue of *Science* that it had created iPS cells “completely free of viral vectors and exotic genes,” removing “a key safety concern about the potential use of iPS cells in therapeutic settings.” UW-Madison scientist James Thompson, who in 2007 co-discovered a way to make iPS cells, stated, “Given the rapid pace of the field, it won’t be surprising if there are several alternative methods for producing vector and transgene free cells very soon.” See: [www.news.wisc.edu/releases/15157](http://www.news.wisc.edu/releases/15157).

Under the Bush Administration, regulations were issued that permitted federal funding for research only on ESCs existing as of August 9, 2001. Proponents of ESCR sought to overturn this policy.

The 109<sup>th</sup> Congress passed the Stem Cell Research Enhancement Act (H.R. 810), which would overturn the President’s policy and would allow federal funding for research on ESCs derived from human embryos donated from in vitro fertilization clinics. On July 19, 2006, President Bush vetoed H.R. 810. The House failed to override, falling 51 votes short of the required two-thirds.

The 110<sup>th</sup> Congress again passed the Stem Cell Research Enhancement Act (S. 5—the Senate added a section on Alternative Human Pluripotent Stem Cell Research). On June 20, 2007, President Bush vetoed this bill. The Senate never attempted an override.

House: On February 4, 2009, Reps. Diana DeGette (D-CO) and Michael Castle (R-DE) introduced two bills, the Stem Cell Research Improvement Act (H.R. 872) and the Stem Cell Research Enhancement Act (H.R. 873). H.R. 872 has 16 other cosponsors; H.R. 873 has 109 other cosponsors. Both were referred to the Committee on Energy and Commerce.

Each of these bills contain virtually the same text as the first two sections of the Stem Cell Research Enhancement Acts introduced in the House in previous Congresses: (1) a general section overturning the Bush Administration regulations (the government shall fund research using human embryonic stem cells regardless of the date on which the cells were derived from a human embryo) and (2) an “ethical requirements” section (the stem cells be derived from excess human embryos donated from in vitro fertilization clinics, prior to donation it be determined the embryos would never be implanted and would otherwise be discarded, and the donated embryos be donated with informed consent and without any financial or other inducement). However,

with regard to the third and fourth sections of the bill, Guidelines and Reporting Requirements, H.R. 873 replicates the language of the previous bills but H.R. 872 amplifies these two sections and adds a fifth section on Sense of Congress.

On the evening of March 4, 2009, nine House Members spoke on the floor during a Special Order in opposition to ESCR and in favor of adult stem cell research. Rep. Chris Smith (R-NJ) stated that “human embryo-destroying stem cell research is not only unethical, unworkable and unreliable, it is now demonstrably unnecessary. Recent spectacular breakthroughs in noncontroversial adult stem cell research and clinical application to effectuate cures with the mitigation of disease or disability have been well documented.” He noted, “But perhaps the greatest breakthrough of all, Madam Speaker, was the discovery of a process that turns every day ordinary skin cells into pluripotent embryo-like stem cells.” See *Congressional Record*, 3/4/09, H2957-64. Others participating in this Special Order were Reps. Zach Wamp (R-TN), Virginia Foxx (R-VA), Jeff Fortenberry (R-NE), Randy Forbes (R-VA), Jim Jordan (R-OH), John Fleming (R-LA), Gus Bilirakis (R-FL), Michele Backmann (R-MN), and Mark Souder (R-IN).

Senate: On February 26, 2009, Sens. Tom Harkin (D-IA) and Arlen Specter (R-PA) introduced the Stem Cell Research Enhancement Act (S. 487). The measure has nine additional sponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

S. 487 contains the same language as H.R. 873, but adds a section on Alternative Human Pluripotent Stem Cell Research (identical to the language used in S. 5, the Senate’s version of the Stem Cell Research Enhancement Act passed in 2007).

In his introductory remarks, Sen. Harkin noted that President Obama promised to overturn the Bush Administration regulations and expected “he will do so soon.” However, he said S. 487 was necessary so that ESCR would not depend on an executive order that could be reversed in the future (*Congressional Record*, 2/26/09, S2562).

Administration: On March 9, 2009, President Barack Obama issued an Executive Order overturning the Bush Administration ESCR guidelines (the August 9, 2001 policy permitting federal funding for research on embryonic stem cells existing as of that date and the June 20, 2007 Executive Order Expanding Approved Stem Cell Lines in Ethically Responsible Ways.) The federal government may “support and conduct” embryonic stem cell research “to the extent permitted by law.” The president also directed the Secretary of Health and Human Services through the Director of the National Institutes of Health to issue, within 120 days, guidelines implementing the order. See: [www.whitehouse.gov/the\\_press\\_office/Removing-Barriers-to-Responsible-Scientific-Research-Involving-Human-Stem-Cells](http://www.whitehouse.gov/the_press_office/Removing-Barriers-to-Responsible-Scientific-Research-Involving-Human-Stem-Cells).

In his remarks, the president emphasized that science should not serve “a political agenda” and not be based on “ideology.”

Critiques: However, Cardinal Justin Rigali, chairman of the Bishops’ Committee on Pro-Life Activities, called the president’s order “a sad victory of politics over science and ethics.” For the first time, federal tax dollars will be used to encourage researchers to destroy live human embryos for stem cell research. See: [www.usccb.org/comm/archives/2009/09-052.shtml](http://www.usccb.org/comm/archives/2009/09-052.shtml).

Op-ed pieces took the president to task for claiming that science is the arbiter of values or failing to recognize the ways politics interacts with science. “Science is a glorious thing, but it is no substitute for wisdom, prudence or democracy.” “Yuval Levin, “Science Over All? The Temptation in Obama’s Stem Cell Policy,” *Washington Post* (3/10/09, A13). “The claim of taking science out of politics is false and misguided on two counts. First, the Obama policy is itself blatantly political. It . . . pays no more than lip service to recent scientific breakthroughs that make possible the production of cells that are biologically equivalent to embryonic stem cells without the need to create or kill human embryos. . . . Second and more fundamentally, the claim about taking politics out of science is in the deepest sense antidemocratic. The question of whether to destroy human embryos for research purposes is not fundamentally a scientific question; it is a moral and civic question about the proper uses, ambitions and limits of science.” Robert P. George and Eric Cohen, “The President Politicizes Stem-Cell Research,” *Wall Street Journal* (3/10/09, A13).

In “Science’s Rightful Place,” *Life Issues Forum* (3/10/09), Richard Doerflinger observes that the president’s newly announced stem cell policy “ignores his pledge to take science seriously—because science is moving on, and embryonic stem cells are becoming ‘obsolete’”—the latter judgment being that of a former director of NIH, Dr. Bernadine Healy in the March 4 issue of *U.S. News and World Report*. The reality. That embryonic stem cells are fraught with difficulties (tumors, tissue rejection). And the hope. “Adult stem cells, obtained without harming the donor, are benefiting more and more real patients, reversing the symptoms of multiple sclerosis and Parkinson’s disease in the latest published trials.” And the technique for reprogramming ordinary adult cells into induced pluripotent stem (iPS) cells “looks better with each passing month.” Mr. Doerflinger concludes: “Science and ethics are pointing the way forward together. The only thing standing in the way now is an ideology favoring embryo destruction. . . .”

Guidelines: On April 23, 2009, the National Institutes of Health (NIH) published draft guidelines to implement the Obama directive. See: [nchla.org/docdisplay.asp?ID=245](http://nchla.org/docdisplay.asp?ID=245). On July 7, 2009, NIH published the final guidelines. See: [nchla.org/datasource/idocuments/7NIHescGuidelns7.09.pdf](http://nchla.org/datasource/idocuments/7NIHescGuidelns7.09.pdf). Federal taxpayer funds will now support research on human embryonic stem cells that are derived by killing human embryos acquired from fertility clinics. Parents can relinquish their embryonic children for such research when they no longer want them for reproduction.

Cardinal Justin Rigali, chairman of the Catholic bishops’ Committee on Pro-Life Activities, called the final guidelines “even broader” than the proposed draft. For example, parents of the embryonic children need not be informed of all other options but “only about the options that happen to be available at their particular fertility clinic.” Also, stem cell lines already in existence or produced in foreign countries may be eligible for funding “even if they were obtained in ways that violate one or more of the NIH’s own informed consent requirements.”

The Cardinal noted that thousands of comments opposing destructive embryonic stem cell research “were simply ignored.” Also comments by the bishops’ conference and others

against specific abuses in the draft “were not addressed.” For example, researchers will be allowed to insert human embryonic stem cells into non-primate animal embryos.

The Cardinal concluded: “This debate now shifts to Congress. . . . I hope Americans concerned about this issue will write to their elected representatives, urging them not to codify or further expand this unethical policy.” For the Cardinal’s full statement, see: [www.usccb.org/comm/archives/2009/09-155.shtml](http://www.usccb.org/comm/archives/2009/09-155.shtml).

Reps. Diana DeGette (D-CO) and Michael Castle (R-DE) have already announced that they intend to move forward with broader legislation to “promote all forms of ethical stem cell research,” which in their view includes cloning and the creation of embryos solely to destroy them. News reports in October, 2009 indicated that introduction of a bill was imminent.

For the Cardinal’s earlier statement in response to the guidelines in draft form, see: [www.usccb.org/comm/archives/2009/09-087.shtml](http://www.usccb.org/comm/archives/2009/09-087.shtml).

On May 22, 2009, the U.S. Conference of Catholic Bishops submitted formal comments to NIH on the draft guidelines. See: [www.usccb.org/prolife/NIHcomments.pdf](http://www.usccb.org/prolife/NIHcomments.pdf).

Through the NCHLA Grassroots Action Center, you can send messages to your Representative and two U.S. Senators opposing the DeGette/Castle legislation. See: [www.nchla.org/stemcell](http://www.nchla.org/stemcell). For the full NCHLA Action Alert, see: [www.nchla.org/actiondisplay.asp?ID=272](http://www.nchla.org/actiondisplay.asp?ID=272).