PRO-LIFE LEGISLATION IN CONGRESS 2004: FINAL REPORT

National Committee for a Human Life Amendment **December 14, 2004**

On December 8, 2004, the Second Session of the 108th Congress adjourned. On January 4, 2005, the First Session of the 109th Congress will be called to order. Legislation will not carry over. Information related to federal legislation is available on the internet at the Library of Congress web site: **thomas.loc.gov**.

I. LEGISLATIVE HIGHLIGHTS

Legislative highlights for 2004 include:

- Culminating a four-year debate, Congress passed the Hyde/Weldon Conscience Protection Amendment as part of the end-of-year omnibus appropriations bill (Public Law 108-447). Countering a campaign to force health care providers to perform abortions, the conscience protection amendment prohibits discrimination against health care providers who decline to provide, pay for, provide coverage of, or refer for abortion.

- President Bush signed the Unborn Victims of Violence Act into law (Public Law 108-212). Any person who injures or kills a child in utero during the commission of certain federal crimes would be guilty of two separate offenses – harm to the mother and harm to the child.

- Efforts to repeal or modify the law governing abortions in the military were rebuffed in both House and Senate.

- An amendment in the Senate to overturn the president's Mexico City Policy was rejected in conference on the omnibus appropriations bill. An authorization bill with a similar Senate amendment faltered and remained unpassed at year's end. The Mexico City Policy remained in force.

- Senate efforts to negate the Kemp-Kasten Amendment were set aside in conference on the omnibus appropriations bill. With the Kemp-Kasten Amendment intact, the president retained the authority to deny funding to the United Nations Population Fund (UNFPA) if it continued to support China's coercive population control program. Earlier in 2004, the president had invoked the Kemp-Kasten Amendment to deny the UNFPA Fiscal Year 2004 funds.

- In conference on the omnibus appropriations bill, the Senate receded to the House position affirming the ban on patenting a human organism first included in Fiscal Year 2004 appropriations law.

- The omnibus appropriations bill continued nearly $10 million in funding for National Cord Blood Stem Cell Bank Program established in Fiscal Year 2004.

- The Senate persisted in bottling up the Human Cloning Prohibition Act, despite the growing need for its passage demonstrated by the first verified case of human cloning in South Korea. Members of Congress urged the president to expand his policy of funding research on embryonic stem cells, but the president reaffirmed his position. Two days of hearings were held in the Senate on adult and embryonic stem cell research.

- The Bankruptcy Reform Act was stalled because the Senate insisted on including a provision discriminating against peaceful clinic protest.

- Hearings were held in House and Senate on abortion's impact on women and on the Child Custody Protection Act.

- The Unborn Child Pain Awareness Act was introduced in both House and Senate. Abortion providers would be required to notify women who want an abortion 20 weeks after fertilization that their unborn child feels pain and that they have the option of obtaining anesthesia for their unborn child to reduce or eliminate pain.

- The Food and Drug Administration informed Barr Research laboratories that its application for over-the-counter distribution of the Plan B morning-after-pill was not approved. Barr Research resubmitted a revised application.

- The Partial-Birth Abortion Ban Act signed into law in 2003 was declared unconstitutional in three federal courts. The rulings were appealed.

- In 2001, U.S. Attorney General John Ashcroft issued a memorandum in which he determined that assisting suicide is not a "legitimate medical purpose" for prescribing, dispensing, or administering federally controlled substances. The memorandum was declared unconstitutional in lower federal courts. The case was appealed to the U.S. Supreme Court.

II. REVIEW OF LEGISLATION

A. Appropriations Bills

Four of the 13 must-pass annual appropriations bills were signed into law as separate measures. The Fiscal Year 2005 Foreign Operations Appropriations Bill (H.R. 4818) became the vehicle into which the remaining nine appropriations bills were consolidated as the Fiscal Year 2005 Omnibus Appropriations bill. In this form, H.R. 4818 passed both House and Senate on November 20, 2004. However, the measure needed a technical correction in its enrollment. On November 20, 2004, the House passed House Concurrent Resolution 528 making this correction. The Senate passed House Concurrent Resolution 528, but with an amendment. On December 6, 2004, the House approved the Senate amendment to the resolution, clearing the Fiscal Year 2005 Omnibus Appropriations Bill (H. R. 4818) for the president. On December 8, 2004, the president signed H.R. 4818 into law (Public Law 108-447).

Issues considered below include:

- Hyde/Weldon Conscience Protection Amendment
- Mexico City Policy
- Patenting Human Organisms Ban
- Umbilical Cord Blood Banks
- UNFPA Funding

1. Hyde/Weldon Conscience Protection Amendment: Fiscal Year 2005 Labor/HHS Appropriations

Background: For background on conscience protection, see discussion of "Conscience Protection: ANDA" under Authorization Bills. A provision known as the Hyde/Weldon Conscience Protection Amendment has the same purpose as the Abortion Non-Discrimination Act (ANDA).

House: The Hyde/Weldon Conscience Protection Amendment was considered in the context of the Fiscal Year 2005 Labor/Health and Human Services Appropriations Bill (H.R. 5006).

Committee: On July 14, 2004, during markup of the H.R. 5006, Rep. Dave Weldon (R-FL) offered this amendment, with the strong support of Rep. Ralph Regula (R-OH), chairman of the appropriations subcommittee with responsibility for the Labor/HHS Appropriations Bill. Rep. Nita Lowey (D-NY) offered a gutting substitute amendment, which was defeated by voice vote. The Hyde Conscience Protection Amendment was then approved, also by voice vote.

Floor: The Hyde/Weldon Conscience Protection Amendment was included in H.R. 5006 when it passed the House on September 9, 2004. No effort was made to strike the provision from the bill. The text of the amendment is added to the language of the existing Hyde Amendment. The new text reads:

> Sec. 508 (d) (1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.
>
> (2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

On September 3, 2004, Msgr. William Fay, General Secretary of the USCCB, Rev. Michael Place, President and CEO of the Catholic Health Association, and Dr. John Lane, President of the Catholic Medical Association, sent a joint letter to the House, urging support of the amendment. "Hospitals and other health care providers have 'a right to choose *not* to be involved in destroying life.'" See: **nchla.org/docdisplay.asp?ID=128**.

Senate: As in the House, the Hyde/Weldon Conscience Protection Amendment was considered in the context of the Fiscal Year 2005 Labor/HHS Appropriations Bill (S. 2810).

Committee: On September 15, 2004, the Senate Labor, Health and Human Services and Education Appropriations Subcommittee reported out S. 2810; the Hyde/Weldon Conscience Protection Amendment was not included. The full Senate did not vote on S. 2810. The Fiscal Year 2005 Labor/HHS Appropriations Bill became part of the Fiscal Year 2005 Omnibus Appropriations Bill (H.R. 4818).

Conference Committee: In conference, the Hyde/Weldon Conscience Protection Amendment was included in the final version of H.R. 4818. The language is the same as that passed by the House (see above) and is also located in Section 508 (d)(1) and (2). The language is appended to the Hyde Amendment, which is found in Section 507 (a), (b), and (c) and Section 508 (a), (b), and (c). On November 20, 2004, the Conference Report on H.R. 4818 was passed by both House and Senate.

During the course of the November 20, 2004 debate in the Senate, Sen. Barbara Boxer (D-CA) stated that in the new Congress she would introduce legislation to repeal the conscience provision. She secured agreement from the Majority and Minority Leaders that by April 30, 2005, the Senate would consider her bill, with at least four hours of debate and an up-or-down vote with no amendments.

In the final debates, opponents characterized the amendment with gross falsehoods. The Bishops' Secretariat for Pro-Life Activities prepared a short fact sheet on what the amendment does, does not do, and why it is needed. This concise analysis can be found on NCHLA's web site at: **nchla.org/docdisplay.asp?ID=129**.

Law: On December 8, 2004, H.R. 4818 was signed into law (Public Law 108-447).

Applauding enactment of the amendment into law, Cathy Cleaver Ruse, Director of Planning and Information for the USCCB Secretariat for Pro-Life, emphasized the need for this action. A federal law protecting "health care entities" from performing abortions has been misinterpreted to protect only residency training programs. The new law also protects individual physicians, hospitals, health plans, nurses and others. Reacting to threatened legal action against the new law, Ruse said she was not surprised. When abortion activists fail to achieve a goal the democratic way, they turn to the courts. "The irony here is that the champions of 'choice' say doctors should have no choice when it comes to abortion." On December 8, 2004, California Attorney General Bill Lockyer announced that he intended to file a lawsuit challenging the constitutionality of the Hyde/Weldon Conscience Protection Amendment. For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-242.htm**.

On December 13, 2004, the National Family Planning and Reproductive Health Association also announced its intentions to file a federal lawsuit against the Hyde/Weldon Amendment. NFPRHA is a pro-abortion association that includes Planned Parenthood. In reaction, Ruse again noted the contradiction, "A 'pro-choice' group is suing so that health care providers will have no choice but to participate in abortion." See: **www.usccb.org/comm/archives/2004/04-244.htm**.

For more information on both ANDA and the Hyde/Weldon Conscience Protection Amendment, see: **www.usccb.org/prolife/issues/abortion/andaindex.htm**. For a legislative briefing page on conscience protection, see: **nchla.org/issues.asp?ID=39**.

2. Mexico City Policy: Fiscal Year 2005 Foreign Operations Appropriations

Background: The Mexico City Policy provides that no U.S. population assistance funds can be given to a foreign private, nongovernmental, or multilateral organization unless it certifies that (1) it will not perform abortions (except to save the mother's life or in cases of rape or incest), and that (2) it will not violate other countries' abortion laws, or lobby to change those laws. The Mexico City Policy is so named because it was first announced by the Reagan Administration at a population conference in Mexico City in 1984. The policy was in effect until overturned by President Clinton on January 22, 1993.

On January 22, 2001, President Bush issued an executive memorandum directing the Administrator for the U.S. Agency for International Development (USAID) to reinstate the Mexico City Policy in full. The USAID issued its rule on February 15. However, to avoid a Congressional review of this rule, President Bush issued an executive memorandum on March 28, 2001 that included the content of the USAID rule. Presidential executive memoranda are not subject to Congressional review. On August 29, 2003, the president extended the Mexico City Policy to cover population funds not only at USAID but in all programs under the U.S. State Department.

Abortion advocates in Congress have been seeking ways to negate President Bush's reinstatement of the Mexico City Policy. In the 107th Congress (2001-2002) the Global Democracy Promotion Act was introduced by Sen. Barbara Boxer (D-CA) in the Senate (S. 367) and by Rep. Nita Lowey (D-NY) in the House (H.R. 755). This bill undercuts the Mexico City Policy by removing the policy's funding restrictions from foreign nongovernmental organizations.

Senate: On September 23, 2004, the Senate approved the Fiscal Year 2005 Foreign Operations Appropriations Bill (S. 2812). Section 599C would prevent the president from enforcing the administration's Mexico City Policy. This provision is virtually identical to the Global Democracy Promotion Act (S. 367). Notwithstanding any other law, regulation, or policy – such as the Mexico City Policy – foreign nongovernmental organizations shall not be ineligible for government funding because of the health services they provide and shall not be subjected to restrictions on use of their funds for advocacy and lobbying.

On September 23, 2004, the White House issued a Statement of Administration Policy firmly stating that the president would veto the Foreign Operation Bill if it contained the provision overturning the Mexico City Policy.

Conference Committee: The Fiscal Year 2005 Foreign Operations Appropriations Bill (H.R. 4818) became the vehicle for the end-of-year Fiscal Year 2005 Omnibus Appropriations Bill. In

conference on H.R. 4818, the Senate provision negating the administration's Mexico City Policy was dropped.

Law: On December 8, 2004, H.R. 4818 was signed into law (Public Law 108-447). The Mexico City Policy remained in force.

Also see "Mexico City Policy" under Authorization Bills for other action.

For additional information on the Mexico City Policy, see NCHLA's "Mexico City Policy" Fact Sheet at: **nchla.org/factdisplay.asp?ID=20**. Also see the Bishops' Secretariat for Pro-Life Activities at: **www.usccb.org/prolife/issues/abortion/index.htm.**

3. Patenting Human Organisms Ban: Fiscal Year 2005 Commerce/Justice/State Appropriations

Background: Based on Article I, Section 8, of the U.S. Constitution, broad criteria for patentable inventions are set forth in Title 35 of the U.S. Code, Section 101. For access to text of Section 101, see: **uscode.house.gov/search/criteria.php**. Following a doctrine that naturally occurring products are not patentable, the U.S. Patent and Trade Office (USPTO) for many years barred patenting living subject matter. However, in *Diamond v. Chakrabarty* (June 16, 1980), a case involving patenting genetically altered bacteria, the U.S. Supreme Court held in a 5-4 decision that microorganisms, even genetically altered ones, were patentable. In connection with a ruling on a case involving the patenting of genetically modified oysters, the USPTO presented its position that inventions covering human beings are not within the scope of Section 101, and published its findings in its *Official Gazette* (April 21, 1987). "A claim directed to or including within its scope a human being will not be considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution." The reference is to the Thirteenth Amendment that prohibits slavery and involuntary servitude; claiming a property right in another human being is forbidden. A 1998 USPTO advisory reaffirmed the 1987 position. Human beings may not be patented, though other living things produced by man, including human stem cells, can be. Some question whether the USPTO's understanding of the law would be sustained in a court challenge without further clarification in the law by Congress. In the *Chakrabarty* decision, the Court sought to interpret the law Congress had already passed; it did not constitutionally limit the ability of Congress to pass new laws on the matter. In June 20, 2002, testimony before the President's Council on Bioethics, USPTO representative Karen Hauda stated, "Given the uncertain outcome of legal challenges to the exclusion of humans from patent-eligible subject matter, legislation may be required to ensure their exclusion." See: **www.bioethics.gov/transcripts/jun02/ june21session5.html**.

On April 3, 2001, the USPTO awarded a patent (U.S. Patent 6,211,429) to the University of Missouri for methods of cloning mammals and for the "living, cloned products produced by each of the methods." To search patent number, see: **www.uspto.gov/patft/index.html**. Apparently inadvertently, humans were not excluded. The University of Missouri 2001 patent was brought to the public's attention in 2002. On June 13, 2002, during Senate floor consideration of the terrorism insurance measure (S. 2600), Sen. Brownback (R-KS) offered an amendment to ban

patents on "(A) an organism of the human species at any stage of development produced by any method. . . . (B) a living organism made by human cloning; or (C) a process of human cloning." Opponents prevented the amendment from coming to a vote.

On July 22, 2003, during consideration of the Fiscal Year 2004 Commerce/Justice/ State/Judiciary Appropriations Bill (H.R. 2799), Rep. Dave Weldon (R-FL) offered an amendment to ban the use of appropriated funds to issue patents on human organisms. As Rep. Weldon stated, "This amendment simply mirrors the current patent policy concerning patenting humans. . . . It [the Patent Office] does not issue patents on human beings nor should it" (*Congressional Record* H7274). The amendment would reaffirm this policy in law and set up a firm barrier to abuses. Rep. Weldon noted that his amendment would have no bearing on stem cell research or patenting genes. "It only affects patenting human organisms, human embryos, human fetuses or human beings." See: **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2003_record&page=H7274&position=all**. Also see November 5, 2003 statement by Rep. Weldon: **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2003_record&page=E2234&position=all**. The Weldon Amendment was approved by voice vote and was included in the final Omnibus Appropriations Bill (H.R. 2673), which was signed into law January 23, 2004 (Public Law 108-199): "None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism" (Sec. 634).

In a November 18, 2003 letter to Congress, Cardinal William Keeler urged support for the Weldon Amendment "to prevent the commodifying and marketing of fellow human beings." See: **www.usccb.org/prolife/issues/bioethic/cloning/patent112103.htm**.

House: On July 7, 2004, the House passed the Fiscal Year 2005 Commerce/Justice/State Appropriations Bill (H.R. 4754), with the ban on patenting human organisms included: "None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism" (Sec. 623). This language is identical to the law included in the Fiscal Year 2004 bill.

Senate: On September 15, 2004, the Senate version of the Fiscal Year 2005 Commerce/Justice/State Appropriations Bill (S. 2809) was reported out of committee, but without the provision banning the patenting of human organisms. S. 2809 was not considered on the Senate floor.

Conference: The Fiscal Year 2005 Commerce/Justice/State Appropriations Bill was included in the Fiscal Year 2005 Omnibus Appropriations Bill (H.R. 4818). In conference committee on H.R. 4818, the Senate receded to the House position on the patenting ban. The House language was included in the final bill (Sec. 626).

Law: On December 8, 2004, the president signed H.R. 4818 into law (Public Law 108-447).

4. Umbilical Cord Blood Banks: Fiscal Year 2005 Labor/HHS Appropriations

Background: In 2003, the conference report on the Fiscal Year 2004 Omnibus Appropriations Bill (H.R. 2673) included $10 million to establish a National Cord Blood Stem Cell Bank Program within the Health Resources and Services Administration. This program would fund a network of cord blood banks with two aims: (1) build an inventory of the highest quality cord blood units for use as donor grafts, and (2) ensure an integrated system for locating a suitably matched cord blood unit or adult volunteer bone marrow donor. One million dollars was to be used to commission a study with the Institute of Medicine, the conferees specifying ten areas to be examined in this new field. The study was to be completed within 12 months. See House Report 108-401 to H.R. 2673 at: **thomas.loc.gov/cgi-bin/cpquery/T?&report =hr401&dbname=cp108&**. H.R. 2673 was signed into law January 23, 2004 (Public Law 108-199). For more background on umbilical cord blood banks, see "Umbilical Cord Blood Banks" under Authorization Bills.

Law: The Fiscal Year 2005 Omnibus Appropriations Bill (H.R. 4818) appropriated $9,941,000 for the National Cord Blood Stem Cell Bank Program as that program was described in House Report 108-401 for H.R. 2673. H.R. 4818 was signed into law on December 8, 2004 (Public Law 108-447).

5. UNFPA Funding: Fiscal Year 2005 Foreign Operations Appropriations

Background: On August 15, 1985, what came to be called the Kemp-Kasten Amendment was enacted into law for the first time: "None of the funds made available in this bill nor any unobligated balances from prior appropriations 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." From then to the present, this amendment has continued to be part of the annual foreign operations appropriations law. Relying on this amendment, the Reagan and Bush Administrations denied funding to the United Nations Population Fund (UNFPA) for its support of China's coercive population control program. In 1993, the Clinton Administration reinterpreted the amendment to mean that "direct" support for coercion was in violation of the law and released funding to the UNFPA. Throughout most of the years of the Clinton Administrations, Congress fought over funding the UNFPA. In 2002, the Bush Administration again invoked the Kemp-Kasten Amendment and denied all funding to the UNFPA. Thereafter, abortion proponents expressed their intent to amend the Kemp-Kasten Amendment. For the legislative history of the amendment from its origins in Fiscal Years 1984 and 1985 up to Fiscal Year 2003, see: **nchla.org/docdisplay.asp?ID=116**.

Executive: On July 16, 2004, the Bush Administration announced its determination to deny to the UNFPA the $34 million earmarked for its activities for Fiscal Year 2004. Richard Boucher, spokesman for the U.S. Department of State, stated that the U.S. has "continuously called on China to end its program of coercive abortion" and has "repeatedly urged China and the UN Population Fund to restructure the organization's programs in a way that would allow the United States to provide funding." Mr. Boucher concluded: "However, since no key changes have taken place, these [Kemp-Kasten Amendment] restrictions are being applied again." See: **www.state.gov/r/pa/prs/ps/2004/34433.htm**.

House: On July 9, 2004, during markup of the Fiscal Year 2005 Foreign Operations Appropriations Bill by the full House Appropriations Committee, Rep. Nita Lowey (D-NY) offered a motion to allow the $25 million designated for the United Nations Population Fund (UNFPA) to be used in country programs in Afghanistan, Iraq, Jordan, Kenya, Pakistan, and Tanzania. The motion was rejected, 26-yes, 32-no.

YES (26) (pro-abortion): Reps. Bishop, Boyd, Clyburn, Cramer, Dicks, DeLauro, Edwards, Farr, Frelinghuysen, Hoyer, Jackson, Kaptur, Patrick Kennedy, Kilpatrick, Kirk, Lowey, Moran, Obey, Olver, Pastor, Price, Rothman, Roybal-Allard, Sabo, Serrano, Visclosky.

NO (32) (pro-life): Reps. Aderholt, Berry, Bonilla, Crenshaw, Cunningham, Doolittle, Emerson, Goode, Granger, Hobson, Istook, Kingston, Knollenberg, Kolbe, Latham, Jerry Lewis, Mollohan, Nethercutt, Northup, John Peterson, Regula, Harold Rogers, Sherwood, Simpson, Tiahrt, Vitter, Walsh, Wamp, Dave Weldon, Wicker, Wolf, Bill Young.

ABSENT (7): Reps. Culberson, Fattah, Hinchey, LaHood, Murtha, Sweeney, Taylor.

On July 15, 2004, the House passed H.R. 4818. The bill would contribute $25 million to the UNFPA in Fiscal Year 2005, but the bill also contained the Kemp-Kasten Amendment that would allow the president to deny the funding.

Senate: On September 23, 2004, the Senate approved the Fiscal Year 2005 Foreign Operations Appropriations Bill (S. 2812). S. 2818 included language that would gut the Kemp-Kasten Amendment. An organization or program can be denied funds by the president only if they "*directly* support a program of coercive abortion or involuntary sterilization" (emphasis added). The bill adds that its version of the Kemp-Kasten Amendment shall not be used to deny funding "solely because the government of a country engages in coercive abortion or involuntary sterilization." Section 560 (b) would require the Fiscal Year 2004 UNFPA monies be directed to various USAID family planning related programs in specific countries, thereby denying the president the ability to redirect the UNFPA monies to combating trafficking in women and children. An amendment offered on the floor by Sen. Jeff Bingaman (D-NM) and approved would also require that the money slotted for the UNFPA not be used for any other purpose and "remain available until September 30, 2006." For Fiscal Year 2005, the contribution to the UNFPA would be $34 million.

On September 23, 2004, in a Statement of Administration Policy, the White House firmly stated that the president strongly opposed the language on UNFPA funding.

Conference Committee: In conference on H.R. 4818 (in the form of the Fiscal Year 2005 Omnibus Appropriations Bill), the Kemp-Kasten Amendment was preserved in its traditional form: "That none of the funds made available in this Act nor any unobligated balances from prior appropriations 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" (Division D, Title II). If the UNFPA continues to support China's coercive population control program, the president would continue to have the

authority to deny the organization U.S. funding. The conference report also provided that $25 million of the $34 million Fiscal Year 2005 funds appropriated for the UNFPA but not made available "because of the operation of any provision of law" (Section 560(b)) shall be transferred to the Child Survival and Health Programs Fund; and that Fiscal Year 2004 funds for UNFPA shall be made available for anti-trafficking programs and for USAID family planning, maternal, and reproductive health activities in various specified countries

Law: On December 8, 2004, H.R. 4818 was signed into law (Public Law 108-447).

Between-sessions Hearing: On December 14, 2004, after adjournment, the House Committee on International Relations held a hearing on "China's One Child Policy and Human Rights Abuses." The hearing was chaired by Rep. Chris Smith (R-NJ). Witnesses included officials from the U.S. Department of State, Amnesty International, Mr. Harry Wu, Mr. John Aird, Ms. Ma Dongfang, who has been granted asylum in the United States. The hearing documented that, despite news reports to the contrary, China's coercive one-child population control policy continues. Opening his carefully documented testimony, Mr. Aird noted that in recent years foreign media has sometimes asserted that rampant coercive family planning measures in China have become rare. But this is not so. "Articles in Chinese professional journals and statements by high Chinese officials indicate that the program remains coercive, that the current birth rate in China is below the level acceptable to people in rural China, that local family planning officials are still accountable for the attainment of their population targets, and that program enforcement must continue for at least the next fifty years." Mr. Aird observes that in the last four or five years journalists have reported "instances of violent family planning measures more extreme than any reported previously in the one-child policy's 25-year history." Various horrendous examples were provided by Mr. Aird and the other witnesses. The full statements of the December 14, 2004 witnesses are available at: **wwwc.house.gov/international_relations/fullhear.htm**.

For NCHLA Fact Sheet, "Funding UNFPA: China's Coercive Population Control Program," see: **nchla.org/factdisplay.asp?ID=21**. For resources from the Bishops' Secretariat for Pro-Life Activities, see: **www.usccb.org/prolife/issues/abortion/intissues.htm**.

B. Authorization Bills

Issues considered below include:

1. Adoption Information Act
2. Assisted Suicide
3. Bankruptcy Reform: Clinic Protest
4. Child Custody Protection Act
5. Conscience Protection: ANDA and Hyde/Weldon Amendment
6. "Emergency Contraception" Education
7. "Emergency Contraception" Hospital Mandate
8. Human Cloning Ban
9. Impact of Abortion on Women
10. Informed Choice Act

11. Mexico City Policy
12. Military Abortions
13. Morning-After Pill: Over-the-Counter Use
14. Parental Notification
15. Partial-Birth Abortion Ban Act
16. RU-486 Regulation
17. RU-486 Suspension and Review Act
18. Stem Cell Research
19. Umbilical Cord Blood Banks
20. Unborn Child Pain Awareness Act
21. Unborn Victims of Violence Act

1. Adoption Information Act

On March 12, 2003, Rep. Jo Ann Davis (R-VA) introduced the Adoption Information Act (H.R. 1229). The measure had 55 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee. No further action was taken. This legislation was first introduced in 2002. H.R. 1229 requires federally funded Title X family planning clinics to give each person receiving services a pamphlet with a list of adoption centers in the state in which the services are being provided. Each person must be informed what is in the pamphlet and that it was prepared by the U.S. Department of Health and Human Services. The person must be given an opportunity to read the pamphlet.

2. Assisted Suicide

Background: On November 6, 2001, U.S. Attorney General John Ashcroft issued a memorandum in which he determined that assisting suicide is not a "legitimate medical purpose" for prescribing, dispensing, or administering federally controlled substances. This applies to any state, including Oregon, which has had a physician-assisted suicide law in effect since 1997. This memorandum overturns the June 5, 1998 opinion issued by then-Attorney General Janet Reno.

Judicial: On November 7, 2001, the state of Oregon filed a lawsuit challenging the authority of U.S. Attorney General Ashcroft to issue his memorandum and also filed a motion to temporarily prevent the federal government from implementing the order. A restraining order was issued. On November 20, 2001, U.S. federal judge Robert E. Jones extended the restraining order for at least four months.

U.S. District Court Injunction: On April 17, 2002, U.S. District Judge Jones issued a permanent injunction enjoining Attorney General John Ashcroft from enforcing his memorandum. According to Judge Jones, the federal Controlled Substances Act does not explicitly reference the use of controlled substances for assisted suicide and thus physicians in the state of Oregon are free to assist people in committing suicide under the state law. For text of the order and permanent injunction in *Oregon v. Ashcroft*, see: **news.corporate.findlaw.com/hdocs/docs/deathwithdignityact/orashcrft41702opn.pdf**.

Ninth Circuit Ruling: The federal government appealed the ruling. The case was transferred to the U.S. Court of Appeals for the Ninth Circuit. On May 26, 2004, the Appeal Court ruled in a 2-1 decision that in issuing his directive Attorney General Ashcroft exceeded his authority and that the injunction by Judge Jones is continued in force. In his dissent, Judge Wallace argued that nothing in the Controlled Substances Act or legislative history "authorizes the majority to deny deference to the Ashcroft Directive." For a copy of the May 26 decision: **www.ca9.uscourts.gov/ca9/newopinions.nsf/F63C3857EBE8263588256E9F007CAC71/$file/0235587.pdf?openelement**. On July 12, 2004, the federal government appealed the decision, petitioning for panel rehearing and for rehearing by the entire Ninth Circuit court of appeals (en banc). On August 11, 2004, the Ninth Circuit denied the government petitions for rehearing.

Criticizing the Ninth Circuit's action, Cathy Cleaver Ruse, spokeswoman for the USCCB's Pro-Life Secretariat, observed that the issue is not the Attorney General controlling Oregon law. "Rather, it's about whether Oregon should be able to ignore federal law and at the same time co-opt the federal government into facilitating assisted suicide by providing federal prescribing licenses and federally controlled drugs." For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-099.htm**

U. S. Supreme Court: On November 9, 2004, the federal government appealed the case to the U.S. Supreme Court (Docket 04-623). A response is expected no later than January 10, 2005.

Cathy Cleaver Ruse applauded the Justice Department's vigorous defense of the law, noting, "Suicide among the elderly and those suffering from serious illness or disability is not a 'medical practice' but a tragic public health problem deserving a thoughtful, caring response." For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-224.htm**.

3. Bankruptcy Reform: Clinic Protest

Background: In the 107th Congress, efforts to pass the Bankruptcy Reform Bill (H.R. 333) floundered due to the Senate's insistence on including the Schumer Amendment that unfairly penalized nonviolent protesters. In opposing the Schumer Amendment, Mary Ann Glendon of Harvard Law School argued: "A large and nondischargeable debt, beyond one's capacity to pay, especially in the hands of a hostile and motivated creditor, is a financial death sentence. This is what even peaceful pro-life protestors have to fear if proposed par. 523(a)(20) is added to the existing aggressive judicial interpretation of FACE [Freedom of Access to Clinic Entrances Act] and similar laws" (*Congressional Record,* 11/14/2002, H8743-5).

House: On February 27, 2003, the Bankruptcy Abuse Prevention and Consumer Protection Act (H.R. 975) was introduced in the House. During debate on the House floor, Rep. Jerrold Nadler (D-NY) offered a substitute bill that, in the words of Rep. James Sensenbrenner (R-WI), "essentially reinstates the so-called Schumer amendment" (*Congressional Record,* 3/19/2002, H2092). On March 19, 2003, the House voted to reject the entire Nadler substitute amendment and approved H.R. 975 without any language unfairly penalizing peaceful pro-life protesters.

Senate: On March 21, 2003, H.R. 975 was read the second time and placed on the Senate calendar. Sen. Charles Schumer (D-NY) again insisted the Senate include his amendment in any bankruptcy reform bill.

Conference Committee: On January 28, 2004, during consideration of a farm bankruptcy bill already passed by the Senate (S. 1920), the House substituted the text of S. 1920 with the text of the House-passed H.R. 975. The House passed the amended S. 1920 and requested a conference with the Senate to resolve differences. It was hoped that in the context of the amended S. 1920, the Senate would yield to the House on clinic protest penalties. This did not occur. Only the House appointed conferees.

Subsequently, a new version of the farm bankruptcy bill (S. 2864), with no reference to general bankruptcy reform or clinic protest penalties, was passed by Congress and signed into law. It is anticipated that a new general bankruptcy reform bill will be introduced in the 109th Congress and that the question of unfairly penalizing peaceful pro-life protesters will again arise.

4. Child Custody Protection Act

Background: The Child Custody Protection Act makes it a federal crime to transport a minor girl across state lines to obtain an abortion with the intent of circumventing the parental involvement law of the girl's home state. The prohibition does not apply when the abortion is necessary to save the minor's life. The measure prevents the abridgement of the right of a parent secured under state law. In 1998, 1999, and 2002, this legislation passed the House but was stalled in the Senate.

House: On April 10, 2003, Rep. Ileana Ros-Lehtinen (R-FL) introduced the Child Custody Protection Act (H.R. 1755). The bill had 110 cosponsors and was referred to the House Judiciary Subcommittee on the Constitution. On July 20, 2004, the House Judiciary Subcommittee on the Constitution held a hearing on H.R.1755. For the testimony and a webcast of the hearing, see: **www.house.gov/judiciary/constitution.htm**. No further action was taken.

Senate: On April 10, 2003, Sen. John Ensign (R-NV) introduced the companion bill in the Senate (S. 851). The bill had 24 cosponsors and was referred to the Senate Judiciary Committee. The full Senate Judiciary Committee held a hearing on June 3, 2004: "The Child Custody Protection Act: Protecting Parents' Rights and Children's Lives." Sen. Jeff Sessions (R-AL) presided. For a list of the witnesses and testimony submitted, see: **judiciary.senate.gov/hearing.cfm?id=1214**. No further action was taken.

5. Conscience Protection: ANDA

Background: A campaign is underway to force Catholic hospitals and other health care institutions to perform or promote abortion. The Abortion Non-Discrimination Act (ANDA) clarifies and strengthens conscience protection language found in current federal law (42 U.S.C. 238n). It expands the definition of the term "health care entity" and extends protection to entities refusing to provide coverage of, or pay for, abortion. In 2002, ANDA passed the House; no action was taken in the Senate.

Senate: On July 14, 2003, Sens. Judd Gregg (R-NH) and Ben Nelson (D-NE) introduced the Abortion Non-Discrimination Act (S. 1397). The measure had 13 other sponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

House: On December 8, 2003, Rep. Michael Bilirakis (R-FL) introduced the Abortion Non-Discrimination Act (H.R. 3664). This measure had 15 cosponsors and was referred to the House Energy and Commerce Subcommittee on Health. No further action was taken. H.R. 3664 is nearly identical to the measure introduced in the Senate.

Also, under Appropriations Bills, see Hyde/Weldon Conscience Protection Amendment, which is similar to ANDA and on December 8, 2004 was signed into law as part of the Fiscal Year 2005 Omnibus Appropriations Bill (H.R. 4818) (Public Law 108-447).

For more information on both ANDA and the Hyde/Weldon Conscience Protection Amendment, see: **www.usccb.org/prolife/issues/abortion/andaindex.htm**. For a legislative briefing page on conscience protection, see: **nchla.org/issues.asp?ID=39**.

6. "Emergency Contraception" Education

Background: Measures called Emergency Contraception Education Acts (H.R. 1812, S. 896) were introduced in both the House and Senate. These bills authorized $10 million for each of the Fiscal Years 2004 through 2008 for the Department of Health and Human Services (HHS) to promote education on "emergency contraception" (also called "morning-after" pills) in the public and private sectors. Entities involved include nonprofit organizations, consumer groups, institutions of higher education, Federal, State, or local agencies, clinics, the media, and health care providers. "Emergency contraception" was defined as a drug or device (as specified in the Federal Food, Drug, and Cosmetic Act) or a drug regimen that is used after sexual relations and "prevents pregnancy, by preventing ovulation, fertilization of an egg, or *implantation of an egg in a uterus* (emphasis added)." In the statement of findings, this definition was phrased as follows: "Emergency contraception, also known as post-coital contraception, is a responsible means of preventing pregnancy that works like other hormonal contraception to delay ovulation, prevent fertilization or *prevent implantation* (emphasis added)." The language in the main section of the bill and in the preliminary findings conceded in fact that "emergency contraceptives" are sometimes abortifacient. Attempting to obscure this meaning, the findings also stated: "Emergency contraception does not cause abortion and will not affect an established pregnancy." In this way, the bill asserted that only an established pregnancy can be aborted. The destruction of human life from conception to the time of implantation was not considered to be abortifacient. The bill bolstered this erroneous notion by referring to the "implantation of an *egg* in a uterus" (emphasis added), avoiding the biological fact that at conception the egg and sperm join and generate a new human life neither egg nor sperm.

Similar bills were introduced in the 107th Congress.

House: On April 11, 2003, Rep. Louise Slaughter (D-NY) introduced H.R. 1812; the measure had 97 cosponsors. The bill was referred to the Subcommittee on Health of the Committee on Energy and Commerce. No further action was taken.

Senate: On April 11, 2003, Sen. Patty Murray (D-WA) introduced S. 896; the measure had 12 cosponsors. The bill was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.
The text of the Emergency Contraception Education Act was incorporated into the Putting Prevention First Act (H.R. 4192, S. 2336), which was referred to committee with no further action.

7. "Emergency Contraception" Hospital Mandate

House: On June 19, 2003, Rep. Jim Greenwood (R-PA) introduced the Compassionate Assistance for Rape Emergencies Act (H.R. 2527). The measure had 101 cosponsors and was referred to the Subcommittee on Health of the Committee on Energy and Commerce and to the Committee on Ways and Means. No further action was taken. A similar measure had been introduced in the 107th Congress.

H.R. 2527 provided that federal funds may not be made available to a hospital unless the hospital (1) promptly gives sexual assault victims written and oral information about emergency contraception, including information that "emergency contraception does not cause an abortion," (2) promptly offers emergency contraception and promptly provides it on the victim's request, (3) the information is provided in language that is easily understood, and (4) these services are not denied because of inability to pay. "Sexual assault" means coitus in which the woman does not consent or lacks the legal capacity to consent. "Emergency contraception" is defined as "a drug, drug regimen, or device that is (A) used postcoitally; (B) prevents pregnancy by delaying ovulation, preventing fertilization of an egg, or preventing implantation of an egg in a uterus; and (C) is approved by the Food and Drug Administration."

As with the Emergency Contraception Education Act, this measure recognized as fact that emergency contraception can act by preventing implantation, but falsely asserted that this action is not abortifacient. The bill claimed it is an egg, and not a newly conceived human being resulting from union of egg and sperm, that is implanted.

All hospitals receiving federal funds would be required to convey erroneous information as fact and to act on this erroneous information.

Senate: On August 1, 2003, Sen. Jon Corzine (D-NJ) introduced the Compassionate Assistance Rape Emergencies Act (S. 1564) in the Senate. The measure had seven cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

The text of the Compassionate Assistance Rape Emergencies Act was incorporated into the Putting Prevention First Act (H.R. 4192, S. 2336), a measure referred to committee with no further action.

8. Human Cloning Ban

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.
A February 2004 issue of *Science* magazine published a report of the first verified case of human cloning that occurred in Seoul, South Korea. Thirty human embryos were created and developed to the blastocyst stage (5-7 days). In attempting to establish embryonic stem cell lines, inner cell masses were harvested from 20 of the blastocyst stage human embryos. Only one stem cell line was established. The prospect of research cloning producing any therapeutic benefits is speculative. Experts warn it could take years for this research to produce actual therapies. By contrast, adult stem cell research, which is ethically acceptable, is already producing effective therapies for the very diseases being touted as future beneficiaries of research cloning.

Commentators warn that the cloning techniques used to create human embryos for research (and destruction) could also be used to create human embryos for transfer to the womb and subsequent live birth. In either case, cloning is wrong and should be banned.

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

House: On February 5, 2003, Reps. Dave Weldon (R-FL) and Bart Stupak (D-MI) introduced the Human Cloning Prohibition Act of 2003 (H.R. 534) (supercedes the earlier H.R. 234). H.R. 534 would prohibit any person or entity, in relation to interstate commerce, from: (1) performing or attempting to perform human cloning; (2) participating in such an attempt; (3) shipping or receiving an embryo produced from human cloning; or (4) importing such an embryo or any product derived therefrom.

On February 13, 2003, Rep. Jim Greenwood (R-PA) introduced an opposition bill, called the Cloning Prohibition Act (H.R. 801). H.R. 801 would have amended the Federal Food, Drug, and Cosmetic Act. Cloning was referred to as "human somatic cell nuclear transfer technology." This technology cannot be used to initiate a pregnancy but it can be used to "clone molecules, DNA, *cells*, or tissues" (emphasis added). That is, it can be used to create human clones for experimentation and then death.

Floor Vote: *On February 27, 2003, the U.S. House of Representatives passed the Weldon-Stupak Human Cloning Prohibition Act (H.R. 534), 241-yes, 155-no, 38-not voting (Roll Call 39).* The rule governing debate had been agreed to by voice vote.

The Greenwood Substitute Amendment was rejected, 174-yes, 231-no, 1-present, 28 not voting (Roll Call 37). The motion to recommit to committee with instructions also was defeated, 164-yes, 237-no, 33 not voting (Roll Call 38). For a formatted version of the three votes, see: **nchla.org/docdisplay.asp?ID=61**.

On April 3, 2003, H.R. 534 was read the second time and placed on the Senate calendar.

Senate: On January 29, 2003, Sens. Sam Brownback (R-KS) and Mary Landrieu (D-LA) introduced the companion bill in the Senate (S. 245). S. 245 had 27 other cosponsors. The measure was referred to the Senate Health, Education, Labor, and Pensions Committee. No further action was taken.

On February 5, 2003, Sens. Orrin Hatch (R-UT) and Dianne Feinstein (D-CA) introduced an opposition bill, the Human Cloning Ban and Stem Cell Research Protection Act (S. 303). This measure had 10 other cosponsors and was referred to the Senate Judiciary Committee. No further action was taken.

In its definitions, S. 303 employed abstract circumlocutions defining the reality created through cloning as something other than a living human embryo. Human cloning was defined as "implanting or attempting to implant *the product of nuclear transplantation* into a uterus or the functional equivalent of a uterus" (emphasis added). A new term "unfertilized blastocyst" was crafted, referring to "*an intact cellular structure* that is the product of nuclear transplantation" (emphasis added).

The ban on human cloning referred only to implanting "the product of nuclear transplantation" into a uterus and not to creating human clones for experimentation and death. Under the heading, "Protection of Research," the text provided: "Nothing in this section shall be construed to restrict practices not expressly prohibited in this section." That is, cloning-for-biomedical-research was permitted.

Under "*Ethical* Requirements for Nuclear Transplantation Research" (emphasis added), the bill set forth what it called the "Fourteen-Day Rule." Cloned humans must be killed after 14 days. "An unfertilized blastocyst shall not be maintained after more than 14 days from its first cell division, not counting any time during which it is stored at temperatures less than zero degrees centigrade."

Hearings: On January 29, 2003, Sen. Brownback chaired a hearing on human cloning before the Science, Technology and Space Subcommittee of the Senate Commerce Science and Transportation Committee. This same subcommittee held another hearing on March 27, 2003.

On March 19, 2003, Sen. Hatch chaired a hearing on human cloning before the Judiciary Committee.

Executive: In his January 28, 2003, State of the Union Address, President Bush urged Congress to ban all human cloning. "And because no human life should be started or ended as the object of an experiment, I ask you to set a high standard for humanity and pass a law against all human cloning." On February 26, 2003, just prior to the recent House vote, the Administration issued a strong statement in support of H.R. 534. See: **www.whitehouse.gov/omb/legislative/sap/108-1/hr534sap-hr.pdf**.

Helpful websites: NCHLA briefing page on legislative action to ban human cloning – **nchla.org/issues.asp?ID=7**; resources on cloning from U.S. Conference of Catholic Bishops –

www.usccb.org/prolife/issues/bioethic; alternatives to stem cell research that destroys human embryos – **www.stemcellresearch.org**; background from Americans to Ban Cloning – **www.cloninginformation.org.**

9. Impact of Abortion on Women

House: On June 9, 2004, Rep. Joseph Pitts (R-PA) introduced the Post-Abortion Depression Research and Care Act (H.R. 4543). The measure was referred to the Energy and Commerce Subcommittee on Health; it had 33 cosponsors. The bill authorized funds for research and for delivery of essential services with respect to post-abortion depression and post-abortion psychosis.

On September 29, 2004, the House Energy and Commerce Subcommittee on Health held a hearing on Improving Women's Health: Understanding Depression After Pregnancy. A part of this hearing explored abortion's impact on women. Michaelene Fredenburg, President of the Life Resource Network, presented especially moving testimony. Expressing gratitude to Chairman Michael Bilirakis (R-FL) for holding the hearing, Cathy Cleaver Ruse, spokesperson for the U.S. Bishops' Secretariat for Pro-Life Activities, observed that abortion is "an unchecked and unstudied experiment on women," concluding, "We cannot continue as a culture to turn a blind eye to the impact of abortion on women. Women deserve better than this." For the full release, see: **www.usccb.org/comm/archives/2004/04-188.htm**.

Senate: On March 3, 2004, Sen. Sam Brownback (R-KS) chaired a hearing on abortion's impact on women before the Subcommittee on Science, Technology and Space of the Senate Committee on Commerce, Science and Transportation. Testimony of witnesses can be found online at: **commerce.senate.gov/hearings/witnesslist.cfm?id=1083**. In a statement applauding the hearing, Cathy Cleaver Ruse, spokesperson for the U.S. Bishops' Secretariat for Pro-Life Activities, noted that some of the testimony was from previously "pro-choice" women whose own abortions changed their minds. She thanked Sen. Brownback "for shedding light on the reality of women's experience with abortion." For the full statement, see: **www.usccb.org/comm/archives/2004/04-043.htm**.

10. Informed Choice Act

Background: The Informed Choice Act promoted the use of ultrasound equipment in the care of pregnant women. This same measure was introduced in the House and Senate in 2002. Demonstration of a high-level definition ultrasound of the unborn child can be located at: **www.gehealthcare.com/rad/us/4d/thennow.html**.

House: On January 7, 2003, Rep. Cliff Stearns (R-FL) introduced the Informed Choice Act (H.R. 195). The bill had 53 cosponsors and was referred to the Health Subcommittee of the House Energy and Commerce Committee. No further action was taken. The Secretary of Health and Human Services was authorized to make grants to nonprofit tax-exempt organizations for the purchase of ultrasound equipment that is to be used to provide free examinations to pregnant women needing such services. The measure specified eligibility requirements and limitations on grant amounts. $3 million was authorized for Fiscal Year 2003 and such sums as necessary for

Fiscal Year 2004 through 2006. For Rep. Stearn's comments on introduction of H.R. 195, see: **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2003_record&page=H8020&position=all**.

Senate: On February 11, 2003, Sen. Jim Bunning (R-KY) introduced a companion bill in the Senate (S. 340). The bill had two cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

11. Mexico City Policy

Background: For background on the Mexico City Policy, see "Mexico City Policy" under Appropriations Bills.

Abortion advocates in Congress have been seeking ways to negate President Bush's reinstatement of the Mexico City Policy. In the 107th Congress (2001-2002) the Global Democracy Promotion Act was introduced by Sen. Barbara Boxer (D-CA) in the Senate (S. 367) and by Rep. Nita Lowey (D-NY) in the House (H.R. 755). This bill undercuts the Mexico City Policy by removing the policy's funding restrictions from foreign nongovernmental organizations.

Senate: On July 9, 2003, during consideration of the State Department Authorization Bill (S. 925), Sen. Barbara Boxer (D-CA) offered the Global Democracy Promotion Act in the form of an amendment. Sen. Richard Lugar (R-IN) offered a motion to table the Boxer Amendment. *The Lugar motion to table failed, 43-yes, 53-no, 4-not voting (Roll Call 267).* The Boxer Amendment was then adopted without a recorded vote.

At the end of 2003, S. 925 was pending on the Senate calendar. In 2004, no further action was taken. The White House had indicated the President would veto the bill if the amendment was not removed.

For additional information on the Mexico City Policy, see NCHLA's "Mexico City Policy" Fact Sheet at: **nchla.org/factdisplay.asp?ID=20**. Also see the Bishops' Secretariat for Pro-Life Activities at: **www.usccb.org/prolife/issues/abortion/index.htm.**

12. Military Abortions

Background: Current law governing abortion in the military has two restrictions: one on the use of funds, the other on the use of facilities (10 USC 1093). Funds may not be used to pay for abortions except to save the life of the mother. Facilities may not be used to perform abortions except to save the life of the mother and in cases of rape or incest. Abortion advocates have placed a special priority on repealing the prohibition on use of facilities.

House: During consideration of the National Defense Authorization Act for Fiscal Year 2005 (H.R. 4200), Rep. Susan Davis (D-CA) offered an amendment to allow military health care facilities outside the U.S. to be used to perform abortions for any reason. *On May 19, 2004, the*

U.S. House of Representatives rejected the Davis Amendment, 202-yes, 221-no, 11-not voting (Roll Call 197). "No" is a pro-life vote.

In 2003, the House defeated a similar amendment, 201-yes, 227-no, 7-not voting. Compared to the 2003 vote, the 2004 vote manifests a net loss of three votes for the pro-life position. Three Members switched from a pro-life to a pro-abortion vote: Reps. Bill Thomas (R-CA), John McHugh (R-NY), Tim Ryan (D-OH). In Kentucky's 6th district, Rep. Ernie Fletcher (R), who voted pro-life in 2003, was replaced by Rep. Ben Chandler (D), who voted pro-abortion in the recent 2004 vote. One Member – Rep. Doug Bereuter (R-NE) – switched from a pro-abortion to a pro-life vote.

<u>Senate</u>: On May 19, 2004, during consideration of the Senate's version of the defense authorization bill (S. 2400), Sen. Patty Murray (D-WA) introduced Senate Amendment 3194, which, like the Davis Amendment in the House, allowed military health care facilities outside the U.S. to be used to perform abortions for any reason.

On June 7, 2004, Sen. Barbara Boxer (D-CA) also introduced an amendment (Senate Amendment 3367) to fund abortions for rape and incest. On March 4, 2004, Sen. Boxer had introduced a bill (S. 2166) "to exempt abortions of pregnancies in cases of rape and incest from a limitation on use of Department of Defense funds." Current law that prohibits the use of funds to pay for abortions in the military, except to save the mother's life, would be modified to add exceptions for rape and incest. S. 2166 had seven cosponsors and was referred to the Senate Committee on Armed Services.

On June 22, 2004, the Senate by unanimous consent accepted the Boxer Amendment as part of 26 en bloc amendments to S. 2400. Sen. Carl Levin (D-MI), the manager of S. 2400 for the Democrats, had proposed the Boxer Amendment for inclusion in the en bloc amendments.

The Murray Amendment was not considered. On June 23, 2004, the Senate passed S. 2400 and made S. 2400 the text for H.R. 4200, the corresponding measure passed by the House.

<u>Conference Committee</u>: On October 9, 2004, the Conference Report on H.R. 4200 was approved by both House and Senate. The Boxer Amendment was not included in this final version of the bill. Current law remained unchanged.

Also in the section on "Parental Notification," see Sen. Sam Brownback's (R-KS) bill on parental involvement in abortions for dependent children of Armed Forces personnel.

13. Morning-After Pill: Over-the-Counter Use

<u>Executive</u>: On April 16, 2003, Barr Research laboratories submitted to the U.S. Food and Drug Administration (FDA) an application to allow the morning-after pill called Plan B to be sold over-the-counter (OTC) without a prescription. Plan B is a levonorgestrel-only pill that has both contraceptive and abortifacient properties. On December 16, 2003, two FDA advisory committees held hearings on this application and recommended that the Plan B pills be available over the counter. The recommendation was not binding.

On December 5, 2003, the U.S. Conference of Catholic Bishops had submitted a statement to the FDA in opposition to the Barr Research proposal:

- The pill can have an abortifacient effect. Over-the-counter availability will lead to a greater assault on human life at its earliest stages, and evidence shows it will not reduce abortions at later stages.
- Many women who would be deeply concerned about any abortifacient effect are unaware of how this drug works. Over-the-counter availability without medical counseling risks violating their right to informed consent.
- Plan B's manufacturer says it should not be used routinely, but over-the-counter availability encourages just such use. This exposes women to the serious risks of birth control pills, without medical supervision.
- Plan B is associated with a heightened risk of ectopic pregnancy, a potentially fatal condition. The common side-effects of the morning-after pill (nausea and abdominal pain) are also the symptoms of an ectopic pregnancy and could therefore mask the presence of this potentially life-threatening condition.
- The potential for harm is especially grave in the case of minor girls. They (and the males sexually involved with them) will obtain the pills without ever seeing a physician or notifying parents.
- Over-the-counter availability of the pill would likely increase the pressure already being placed on pharmacies and pharmacists to violate their consciences**.**

For text of the full statement, see: **www.usccb.org/ogc/ec-fda.htm**

On February 13, 2004, the FDA announced it would delay a decision for 90 days, stating it needed more time to review additional data.

On May 6, 2004, Steve Galson, Acting Director of the FDA's Center for Drug Evaluation and Research, informed Barr Research laboratories that its application was not approved. "Based on a review of the data, we have concluded that you have not provided adequate data to support a conclusion that Plan B can be used safely by young adolescent women for emergency contraception without the professional supervision of a practitioner licensed by law to administer the drug." On March 11, 2004, Barr Research had amended its proposal to allow over-the-counter distribution of Plan B only to women 16 years and older. The FDA considered this amendment incomplete.

Barr Research laboratories can resubmit either its original application or its amended March 11 proposal. It would be required to submit more data on safety and in the case of the March 11 proposal also include details on marketing Plan B for different age groups in a single packaging configuration. The FDA was especially concerned about the safe over-the-counter use of Plan B by women less than 16 years of age. Dr. Galson noted: "You propose OTC status for Plan B for both adults and children based primarily on an actual use study of 585 subjects. Only 29 of the 585 subjects enrolled in the study were 14-16 years of age, and none was under 14 years of age."

For the full text of Dr. Galson's letter, see:
www.fda.gov/cder/drug/infopage/planB/planB_NALetter.pdf

Responding to the FDA's May 6 decision, Cathy Cleaver Ruse, Director of Planning and Information for the USCCB's Secretariat for Pro-Life Activities, stated, "We are pleased that the voice of reason prevailed . . . A drug which can destroy human embryos and increases health risks to women and girls does not belong on the drugstore shelf." Plan B is an "overdose" of birth-control pills, which require a prescription. "It would be senseless to place a potentially dangerous 'overdose' of a prescription drug on the shelf next to the bandaids," Ruse commented. For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-086.htm**

According to news stories, Barr Research Laboratories subsequently submitted a modified proposal, allowing over-the-counter sale of Plan B only to women 16 and older (*Washington Post*, June 23, 2004, A6).

House: On July 13, 2004, during floor consideration of Fiscal Year 2005 Agriculture Appropriations Bill (H.R. 4766), Rep. Carolyn Maloney (D-NY) offered House Amendment 690 that denied funds "to restrict to prescription use a contraceptive that is determined to be safe and effective for use without the supervision of a practitioner licensed by law to administer prescription drugs. . . ." Rep. Chris Smith (R-NJ) said that this amendment only restated current law. He pointed out that the FDA denied approval to over-the-counter use of Plan B based on science and safety concerns. The Maloney amendment was agreed to without objection.

For general information on the morning-after pill, see the Bishops' Secretariat for Pro-Life Activities web page at: **www.usccb.org/prolife/issues/contraception/morningafterpill.htm**

For a brief survey of the morning-after pill in public policy debates, see NCHLA briefing page at: **nchla.org/docdisplay.asp?ID=64**

14. Parental Notification

Background: Three bills related to parental notice were introduced in Congress. Also see, Child Custody Protection Act which makes it a federal crime to transport a minor girl across state lines to obtain an abortion with the intent of circumventing the parental involvement law of the girl's home state.

House: Two of these measures were introduced in the House, the Parental Notification and Intervention Act and the Parent's Right to Know Act.

Parental Notification and Intervention Act: On March 27, 2003, Rep. Marilyn Musgrave (R-CO) introduced the Parental Notification and Intervention Act of 2003 (H.R. 1489). The measure had 81 cosponsors and was referred to the Constitution Subcommittee of the House Committee on the Judiciary. No further action was taken. The bill made it unlawful to perform an abortion on an unemancipated minor under 18, to permit the facilities of an entity to perform an abortion on such minor, or to assist in the performance of an abortion on such minor, unless: there is clear and convincing evidence of physical abuse by the parent; there is written

notification to the parents that an abortion has been requested; there is a 96-hour waiting period after the notice has been received by the parents; and there is compliance with provisions allowing any parent to seek a court injunction against the abortion. Exceptions were made for cases where a grave physical disorder or disease would cause the death of the unemancipated minor. Parental notice required the use of certified mail which is personally delivered to any parent. The term "parent" included a legal guardian.

Parent's Right to Know Act: Title X Program: On June 12, 2003, Rep. Todd Akin (R-MO) introduced the Parent's Right to Know Act of 2003 (H.R. 2444). The bill had 93 cosponsors and was referred to the Energy and Commerce Subcommittee on Health. No further action was taken. H.R. 2444 would require parental consent or notification five business days before a minor receives a contraceptive drug or device in a federally-funded Title X family planning clinic. H.R. 2444 also required providers to certify their compliance to the Secretary of Health and Human Services.

For more information about parental notification in Title X programs, see the USCCB's fact sheet "Parental Notification Needed in Title X Program" at **www.usccb.org/prolife/issues/abortion/factistook-2.htm**.

Senate: *A bill "to provide for parental involvement in abortions of dependent children of members of the Armed Forces."* On May 23, 2003, Sen. Sam Brownback (R-KS) introduced S. 1104, a measure that prohibited a physician from using military health care facilities to perform an abortion on an unemancipated minor who is a child of a member of the military, unless: the physician gives 48 hours notice, actual or constructive, to a parent or guardian; a judge authorizes the minor to consent without notice, with various conditions being specified; or the physician concludes the medical condition of the minor "necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function" and certifies these medical indications in writing. The bill had one cosponsor. S. 1104 was read twice and placed on the Senate's legislative calendar. No further action was taken.

15. Partial-Birth Abortion Ban Act

Background: This legislation bans a particularly brutal and inhumane abortion method in which the child is removed from the womb feet-first and delivered except for the head. The abortionist thrusts scissors into the base of the child's skull, inserts a catheter through the opening, and suctions out the child's brain. This procedure is never medically necessary. Many recognize partial-birth abortion for what it is: infanticide.

The Partial-Birth Abortion Ban Act was previously approved by the 104th and 105th Congresses. The bills were vetoed by President Clinton. Action in the 106th Congress was stalled when the U.S. Supreme Court issued its *Stenberg v. Carhart* opinion (6/28/2000), in which it declared Nebraska's partial-birth abortion ban law unconstitutional.

In 2002, the House repassed the measure. In response to the Court's *Carhart* ruling, the bill contained a more precise definition of partial-birth abortion and incorporated Congress's factual findings that partial-birth abortion is never necessary to preserve the health of a woman.

House: On February 13, 2003, Rep. Steve Chabot (R-OH) introduced the Partial-Birth Abortion Ban Act of 2003 (H.R. 760). H.R. 760 was the same as the revised bill passed by the House in 2002.

Floor: *On June 4, 2003, after rejecting opposition amendments, the U.S. House of Representatives approved H.R. 760, 282-yes, 139-no, 13-not voting, 1-vacancy (Roll Call 242).* The roll call for the House votes can be found at: **nchla.org/issues.asp?ID=8**.

Senate: On February 14, 2003, Sen. Rick Santorum (R-PA) introduced the Partial-Birth Abortion Ban Act of 2003 (S. 3), the companion bill to H.R. 760.

Floor: *On March 13, 2003, after three days of debate, the U.S. Senate passed the Partial-Birth Abortion Ban Act (S. 3), 64-yes, 33-no, 3-not voting (Roll Call 51).* The Senate rejected four hostile amendments and adopted a nonbinding sense of the Senate motion affirming that the U.S. Supreme Court's 1973 *Roe v. Wade* decision is appropriate and should not be overturned.

Conference Committee: The House and Senate bills were identical except for the Senate-passed nonbinding sense of the Senate motion, which was dropped in conference committee.

On October 2, 2003, the House approved the conference report (S. 3), 281-yes, 142-no, 12-not voting (Roll Call 530). On October 21, 2003, the U.S. Senate also approved the conference report, 64-yes, 34-no (Roll Call 402).

Law: On November 5, 2003, President Bush signed the Partial-Birth Abortion Ban Act into law (Public Law 108-105).

Judicial: Abortion advocates challenged the law in the three different U.S. District Courts. On November 5, 2003, a federal judge in the District of Nebraska issued a temporary restraining order against the law. His order applied to Dr. Leroy Carhart and other doctors who filed suit against the law. On November 6, 2003, federal judges in the Southern District of New York and the Northern District of California issued temporary restraining orders blocking enforcement of the law, effective for the National Abortion Federation and Planned Parenthood, respectively. Trials began March 29, 2004.

In all three courts the PBA Ban Act was struck down. On June 1, 2004, Judge Phyllis Hamilton in California permanently enjoined enforcement of the Act because it posed an undue burden on a woman's ability to choose a second trimester abortion, was unconstitutionally vague, and lacked a health exception as set forth by the U.S. Supreme Court in *Stenberg v. Carhart*. On August 26, 2004, Judge Richard Casey in New York found that partial-birth abortion "is a gruesome, brutal, barbaric, and uncivilized medical procedure," that partial-birth abortions "subject fetuses to severe pain," that some reasons put forth for partial-birth abortions "are incoherent" or "merely theoretical." Nevertheless, he also found a division of medical opinion

exists about the need of partial-birth abortion to preserve women's health. Bound to follow the U.S. Supreme Court's *Stenberg* decision, this division of opinion means "the Constitution requires a health exception" and therefore the Act is unconstitutional. On September 8, 2004, Judge Richard Kopf in Nebraska also ruled the Act unconstitutional because it lacked a health exception, though he declined to rule on the Act's constitutionality "when the fetus is indisputably viable."

In March, Judge Hamilton ruled against the Justice Department in its petition to obtain the medical records of Planned Parenthood. Sen. Rick Santorum (R-PA), sponsor of the ban in the Senate, said that Hamilton "did not give a fair hearing to all of the evidence" (*CQ Today*, June 2, 2004).

Responding to the Casey ruling, Cathy Cleaver Ruse, spokesperson for the Bishops' Secretariat for Pro-Life Activities, stated, "Because of *Roe*, killing a child in the process of being born is called a constitutional right rather than an act of barbarism." Ruse criticized the fact that medical institutions refused to produce their records. "The crucial question of medical necessity was never answered in this trial. . . In essence, the abortion doctors said 'just trust us,' and no hard evidence was considered." Ruse said that the 'health exception' created by the Supreme Court was a farce. "It's the quintessential exception that swallows the rule – so broad that you could drive a truck, or a fully-formed unborn baby, right through it." Ruse applauded the Justice Department for its defense of the Act. For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-166.htm**. For Ruse's statements on the other two rulings, see: **www.usccb.org/comm/archives/2004/04-101.htm** and **www.usccb.org/comm/archives/2004/04-172.htm**.

U.S. Attorney General John Ashcroft appealed the California ruling on August 3, 2004, the New York and Nebraska rulings on September 27 and September 28, respectively. Cathy Cleaver Ruse, spokesperson for the Bishops Secretariat for Pro-Life Activities, commended the Justice Department for appealing the PBA cases. "There is no place in a civilized society for this cruel and inhumane practice." For the full statement, see: **www.usccb.org/comm/archives/2004/04-190.htm**.

The full transcripts of proceedings in all three cases can be found at: **www.usccb.org/prolife/issues/pba/pbaban.htm**.

For a legislative briefing page on partial-birth abortion, please visit: **nchla.org/issues.asp?ID=8**.

16. RU-486 Regulation

Background: On September 28, 2000, the Food and Drug Administration (FDA) approved a regimen for using the drug RU-486, also called mifepristone or Mifeprex, to cause abortions within 49 days since the beginning of the last menstrual period. Mifepristone may be used in combination with the prostaglandin misoprostol or Cytotec. The drugs disrupt the uterine lining and cause the unborn child's expulsion from the mother's uterus. Using RU-486 typically

involves three visits to a physician's office or clinic. Danco Laboratories in New York is distributing mifepristone in the U.S.

House: On January 29, 2003, Rep. David Vitter (R-LA) introduced the RU-486 Patient Health and Safety Protection Act (H.R. 486). This bill was identical to a measure Rep. Vitter introduced in the 107th Congress. H.R. 486 had 42 cosponsors and was referred to the Health Subcommittee of the House Energy and Commerce Committee. No further action was taken. This measure would require the federal government to modify its approval of RU-486: the drug could be prescribed only by a licensed physician who is qualified to handle complications from incomplete abortions or ectopic pregnancies, has been trained in surgical abortions, is certified for ultrasound use, has completed a program on the use of RU-486, and has privileges at a hospital one hour or less away.

Executive: On April 19, 2002, at the urging of the FDA, Danco Laboratories sent a letter to health care providers informing them that six women had become seriously ill after taking mifepristone with misoprostol, with two of the women dying. The illnesses included: three ruptured ectopic pregnancies (one death), two systemic bacterial infections (one death), and one heart attack. The abortifacient drug combination should not be used when ectopic pregnancies are present. Danco declined to release figures on how many women in the U.S. have had abortions with the abortifacient drug combination. In its "Mifepristone Questions and Answers" document released April 17, 2002, the FDA stated that it is unknown whether there is a causal relationship between the illnesses and the use of mifepristone and misoprostol. In the six cases where illnesses occurred, misoprostol was given vaginally, not orally, which is the approved regimen. FDA said the use of mifepristone with misoprostol was safe but not risk free, if used as directed. In response to the question whether FDA is considering withdrawing mifepristone from the market, the FDA stated: "As it does with all prescription drugs, FDA continues to monitor the safety and effectiveness of mifepristone." See:
www.fda.gov/cder/drug/infopage/mifepristone.

On November 15, 2004, the FDA announced that it would require Danco Laboratories to add new health warnings on its label for RU-486. This action was prompted by news of another women's death from sepsis associated with the use of RU-486. "FDA and Danco Laboratories have received reports of serious bacterial infection, bleeding, ectopic pregnancies that have ruptured, and death, including another death from sepsis that was recently reported to FDA." For FDA press release, see: **www.fda.gov/bbs/topics/news/2004/NEW01134.html**

Responding to the FDA announcement, Cathy Cleaver Ruse, spokeswoman for the Bishops' Pro-Life Secretariat, stated, "RU-486 doesn't need a better label, it needs to be shelved." She added, "Young women depend upon the safety of FDA-approved drugs. How many have to die before this killer drug is taken off the market?" Ruse noted that RU-486 drug trials in Canada were suspended in 2001 following the death of a woman from septic shock. For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-231.htm**.

On August 20, 2002, Concerned Women for America, the American Association of Pro-Life Obstetricians and Gynecologists, and the Christian Medical Association filed a formal legal petition with the FDA in which they outlined the numerous violations the FDA committed in

approving RU-486 and how these violations resulted in the injury and death of women. They requested that the approval of RU-486 be revoked. The petition, 92 pages in length, cites some 9,000 pages of documents released by the FDA on January 31, 2002 as the result of a Freedom of Information Act request filed by Judicial Watch. The petition can be found at: **www.cmdahome.org**. In an August 21, 2002 press release, “Bishops’ Official Applauds Petition Against FDA’s RU-486 Approval,” spokesperson Cathleen Cleaver Ruse stated, “For the good of women and children, Mifeprex should be withdrawn immediately.”

17. RU-486 Suspension and Review Act

Background: This legislation would suspend the approval of the drug mifepristone (marketed as Mifeprex and commonly known as RU-486) while the Comptroller General of the United States reviews the process by which the FDA approved the drug. RU-486 was approved under an FDA protocol reserved for drugs intended to treat life-threatening illnesses. The FDA included a protocol for administering RU-486 in its approval of the drug.

The bill required that the Comptroller General report the findings to Congress and the Secretary of Health and Human Services. If it was determined that the drug’s approval was in accordance with the Federal Food, Drug and Cosmetic Act, the approval would be reinstated after 30 days.

This bill was also known as “Holly’s Law” in memory of Holly Patterson, an 18-year-old California woman who died after taking RU-486 at a Planned Parenthood clinic. Planned Parenthood’s standard procedure for administration of RU-486 differs from the FDA-approved protocol. The Alameda County (CA) Coroner’s initial report indicates that Patterson’s death was due to septic shock following an incomplete drug-induced abortion.

Monty and Helen Patterson, Holly’s parents, submitted an open letter to the media, urging passage of the RU-486 Suspension and Review Act.

House: On November 6, 2003, Rep. Jim DeMint (R-SC) introduced the RU-486 Suspension and Review Act of 2003 (H.R. 3453). H.R. 3453 had 84 cosponsors and was referred to the Health Subcommittee of the House Energy and Commerce Committee. No further action was taken.

Senate: On November 21, 2003, Sen. Sam Brownback (R-KS) introduced the RU-486 Suspension and Review Act (S. 1930). The measure had eight cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

18. Stem Cell Research

Congressional Letters to President: On April 28, 2004, 206 Members of the U.S. House of Representatives (including three non-voting delegates) sent a letter to President George W. Bush urging him to relax the federal policy on funding embryonic stem cell research. On June 4, 2004, 58 U.S. Senators sent a similar letter. By presidential directive, only stem cell lines derived before August 9, 2001, can be used in federally funded research. On June 14, 2004, the White House reaffirmed this policy.

The signatories of the letters claim that more than 400,000 in vitro fertilization embryos, currently frozen, will likely be destroyed if not used for research. They state that only 19 of the 78 embryonic stem cell lines available on August 9, 2001 are available to researchers at this time and these 19 lines are contaminated with mouse feeder cells. They also claim that, because of the lack of funding, new scientists are not being attracted to this field and the research is moving overseas.

Responses: Do No Harm: The Coalition of Americans for Research Ethics responded immediately, questioning the letter's demand for federal research dollars. "Embryonic stem cells have yet to treat one human patient, and their success in animal models has been very limited. By contrast, clinical trials using adult stem cells are already underway and showing progress in treating patients." For the full statement, as well as additional information on stem cell research, see: **www.stemcellresearch.org/pr/pr_2004-04-28.htm**

Also, Richard Doerflinger, Deputy Director of the Bishops' Secretariat for Pro-Life Activities, sent a letter to Congress stating that the letter to President Bush "relies on demonstrably false factual claims." For example, the vast majority of the 400,000 frozen embryos in the U.S. are slated for later reproductive use; the number available for research is only about 11,000, and if all these are killed for their stem cells, only 275 cell lines could be produced, a number inadequate to treat any major disease.

Recent studies suggest that all human embryonic stem cell lines may develop generic abnormalities similar to those found in cancer cells. "This is a problem with embryonic stem cells in general, preventing their use in humans for the foreseeable future," Doerflinger noted.

Nations experiencing development in the biotechnology field, Doerflinger also observes, "are often those with laws *against* so-called 'therapeutic' cloning and/or destructive embryo research." The singular emphasis in the U.S. on embryo research "has let other countries take the lead in groundbreaking *adult* cell therapies."

Doerflinger concludes his letter: "I hope members of Congress who signed the letter to President Bush will study this issue further, and realize that they have been drawn into a political agenda that is not grounded in the facts. Accordingly I hope they will retract their signatures."

The full text of Doerflinger's letter can be found at:
www.usccb.org/prolife/issues/bioethic/scrhouse42804.htm

Some Representatives with pro-life voting records who signed the April 28 letter include: Reps. Don Young (R-AK), Ken Calvert (R-CA), Dana Rohrabacher (R-CA), Randy Cunningham (R-CA), Ginny Brown-Waite (R-FL), William Lipinski (D-IL), Philip English (R-PA), Mike Doyle (D-PA), Charles Stenholm (D-TX), and George Nethercutt (R-WA). Senators with pro-life voting records who signed the June 4 letter include: Sens. John McCain (R-AZ), Thad Cochran (R-MS), Trent Lott (R-MS), Gordon Smith (R-OR), Kay Bailey Hutchison (R-TX), and Orrin Hatch (R-UT).

Check to see if your representative or senators signed the letters. For the names of all signatories, see: **nchla.org/docdisplay.asp?ID=127**

Members who signed should be urged to reconsider their position and remove their signatures. This is especially true for those with voting records favorable to pro-life. For an Action Alert, see: **nchla.org/actiondisplay.asp?ID=214**

House: The letters to the president are part of a campaign to remove the Bush funding guidelines and to allow federal funding of embryonic stem cell research. The letters urge the president to expand his own guidelines. In Congress, three bills were introduced to accomplish the same purpose. The measure with the greatest support was H.R. 4682, the Stem Cell Research Enhancement Act introduced on June 24, 2004 by Rep. Michael Castle (R-DE) with 190 cosponsors. H.R. 4682 was referred to the Subcommittee on Health of the House Committee on Energy and Commerce. No further action was taken. The bill directs the Secretary of HHS to "conduct and support research that utilizes human embryonic stem cells" derived from in vitro fertilized human embryos no longer to be used for implantation and birth, regardless of the date a stem cell line was derived from a human embryo.

Senate: On September 29, 2004, the Senate Commerce, Science and Transportation Subcommittee on Science, Technology, and Space held a hearing on Embryonic Stem Cell Research: Exploring the Controversy. Chairman Sen. Sam Brownback (R-KS) presided. See: **commerce.senate.gov/hearings/witnesslist.cfm?id=1323**. Richard Doerflinger, Deputy Director of the USCCB's Pro-Life Office, was one of the witnesses. After reviewing the need for ethical safeguards in research and the moral status of the human embryo, Doerflinger warned that the campaign promoting embryonic stem cell research involves an ethical slippery slope. "Already the policy debate has moved from 'spare' embryos in fertility clinics, to specially creating embryos for destruction, to mass-production of embryos through cloning, to the gestation of these embryos for 'fetus farming' and the harvesting of body parts." For the full testimony, see: **www.usccb.org/prolife/issues/bioethic/embryo/test092904.htm**.

Earlier in the year on July 14, 2004, Sen. Sam Brownback (R-KS) chaired a hearing in the same committee on successes in adult stem cell research. The witnesses included three patients whose health had been significantly improved through adult stem cell therapies, two with spinal cord injuries and one with Parkinson's. See: **commerce.senate.gov/hearings/witnesslist.cfm?id =1268**.

Public Opinion: An August 13-17, 2004 public opinion poll conducted by International Communications Research suggests that people are divided on federal funding of stem cell research that requires destroying human embryos, with 43 percent in favor and 47 percent opposed. But when given a choice between funding all stem cell research (adult and embryonic) and funding only adult stem cell research to see if there is no need to destroy embryos for research, people clearly favor funding only adult stem cell research, 61 percent to 23 percent. The survey also showed that people overwhelmingly oppose the use of human cloning to create embryos for medical research, 80 percent to 13 percent. For more information, see "New Poll: Americans Prefer Funding Stem Cell Research that Does Not Require Destroying Human Embryos" at: **www.usccb.org/comm/archives/2004/04-163.htm**.

19. Umbilical Cord Blood Banks

Background: Measures were introduced in both the House and Senate to establish a National Cord Blood Stem Cell Bank Network.

Umbilical cord blood stem cells are obtained from the blood contained in the delivered placenta and umbilical cord, which are normally discarded after childbirth. Obtaining these stem cells presents no inherent moral concerns. Through freezing they can be preserved for many years. According to findings presented in the House measure, cord blood stem cell transplants can be used for bone marrow reconstitution to treat malignancies such as leukemia and lymphoma, genetic disorders such as sickle cell anemia, and acquired diseases. The findings also claim that cord blood stem cells do not have to be matched as closely as bone marrow transplants. This means patients will be more likely to find a suitable unrelated cord blood donor than a matched bone marrow donor. Supporters say a network of at least 150,000 units of ethnically balanced cord blood donors would provide appropriate matches for at least 90% of those seeking these stem cell transplants. Cord blood transplantation would complement conventional bone marrow transplantation. The cord blood can also be used for research on its stem cells, potentially leading to a greater understanding of, and perhaps therapies for, certain chronic diseases, such as Parkinson's, insulin-dependent diabetes, heart disease, and certain types of cancer.

House: On July 24, 2003, Rep. Chris Smith (R-NJ) introduced the Cord Blood Stem Cell Act of 2003 (H.R. 2852). This measure had 35 cosponsors and was referred to the House Energy and Commerce Subcommittee on Health. No further action was taken.

H.R. 2852 would establish a National Cord Blood Stem Cell Bank Network of at least 150,000 units of human cord blood stem cells. The network would prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients. Ten percent of collected cord blood would be reserved for research. H.R. 2852 also would establish a national cord blood stem cell registry and database to document storage, collection and distribution of cord blood stem cells. This database would also contain clinical outcomes related to the network and would be accessible to transplant physicians and other appropriate health care professionals. $15 million was authorized for Fiscal Year 2004, $30 million for Fiscal Year 2005 and such sums as would be necessary for Fiscal Year 2006 through 2008 or until the 150,000 unit inventory is acquired.

Senate: A nearly identical bill, also called the Cord Blood Stem Cell Act of 2003 (S. 1717), was introduced in the Senate by Sen. Orrin Hatch (R-UT). S. 1717 authorized $15 million for Fiscal Year 2004, and such sums as were necessary for Fiscal Year 2005 though 2008. This measure had eight cosponsors and was referred to the Committee on Health, Education, Labor and Pensions. No further action was taken.

For more legislative information, see "Umbilical Cord Blood Banks" under Appropriations Bills.

20. Unborn Child Pain Awareness Act

Background: In April 15, 2004 testimony at a partial-birth abortion trial in California, Dr. Sunny Anand, Director of the Pain Neurobiology Laboratory at Arkansas Children's Hospital Research Institute, stated, "The human fetus possesses the ability to experience pain from 20 weeks of gestation, if not earlier, and the pain perceived by the fetus is possibly more intense than that perceived by term newborns or older children." For Dr. Anand's full testimony, see "Day 10" testimony at: **www.usccb.org/prolife/issues/pba/pbaban.htm**.

House: On May 20, 2004, Rep. Chris Smith (R-NJ) introduced the Unborn Child Pain Awareness Act in the House (H.R. 4420); the measure had 115 cosponsors, and was referred to the Health Subcommittee of the Energy and Commerce Committee. No further action was taken. For Rep. Smith's introductory statement: **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H3497&dbname=2004_record**.

The Unborn Child Pain Awareness Act would require abortion providers to notify women who want to have an abortion 20 weeks after fertilization that the evidence suggests their unborn child feels pain and that they have the option to obtain anesthesia for their unborn child to reduce or eliminate pain. The abortion provider or an agent can provide the information. The required information must be in the form of an oral statement specified in the Act, though the abortion provider or agent are not prevented from also offering their own evaluation. The required information must also be given in the form of an Unborn Child Pain Awareness Brochure to be developed by the Department of Health and Human Services. The Secretary of DHHS also shall develop an Unborn Child Pain Awareness Decision Form, which must be signed by the woman and by the abortion provider. An exception is made for medical emergencies. An abortion provider who willfully fails to comply with the Act shall be subject to civil penalties.

Senate: On May 20, 2004, Sen. Sam Brownback (R-KS) introduced the companion bill in the Senate (S. 2466); the measure had 26 cosponsors, and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken. For Sen. Brownback's introductory statements: **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2004_record&page=S5985&position=all** and **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2004_record&page=S6443&position=all**.

21. Unborn Victims of Violence Act

Background: The Unborn Victims of Violence Act (UVVA) provides that any person who injures or kills a child in utero during the commission of certain federal crimes (including those in military law) would be guilty of two separate offenses – harm to the mother and harm to the child. The death penalty would not be imposed. Abortions are excluded. Twenty-nine states already have laws that recognize unborn children as crime victims. These laws do not conflict with the holdings of *Roe v. Wade* and have withstood challenges in the courts.

Going beyond the holdings of *Roe*, abortion advocates object to any reference to the unborn child as a separate existing being. In the past, they have introduced single-victim substitute proposals that would increase penalties for harm to the mother while completely ignoring the unborn child

as a victim. However, when there are two victims of crime, the law can and must acknowledge them both.

The importance of this issue was brought to the fore in a California case. On April 21, 2003 under California's unborn victim's law, prosecutors brought a double murder charge for the deaths of Laci Peterson and her unborn son, Conner. Prosecutors say that Laci and Conner were killed on or about December 23 or 24, 2002, during the eighth month of pregnancy. On April 13 and 14, 2003, their bodies were recovered and identified separately after washing up on the shore of San Francisco Bay. A Fox News/Opinion Dynamics Poll released April 25, 2003, shows that 84% of registered voters favor the double charge of homicide for the killings and only 7% favor a single charge. A Fox News/Opinion Dynamics Poll released July 2003 shows that 79% of registered voters agree that an attacker of a pregnant woman should be charged with murder if the fetus is killed.

Cathleen Cleaver Ruse, spokesperson for the Catholic Bishops' Secretariat for Pro-Life Activities, observed, "Laci Peterson's family, and the American people, see clearly that there were two victims of this tragedy," adding, "It's sad and ridiculous for anyone to suggest that Laci's family has only one loved one to mourn. It's time that our federal laws against violence embrace reality."

The UVVA was first introduced in Congress in 1999. The U.S. House of Representatives voted in favor of the bill in the 106th (1999) and 107th (2001) Congresses, though the Senate did not bring the bill to the floor for a vote.

House: On May 7, 2003, Rep. Melissa Hart (R-PA), introduced the Unborn Victims of Violence Act (H.R. 1997). At the request of the family, this measure was also known as "Laci and Conner's Law," in honor of Laci Peterson and her eight-month-old unborn son, Conner. The bill was referred to the Judiciary and Armed Services Committees.

On June 25, 2003, Rep. Zoe Lofgren (D-CA) introduced an opposition bill (H.R. 2247) that reduces an assault against mother and unborn child to a crime against the mother only.

Markup: On July 15, 2003, the Judiciary Subcommittee on the Constitution marked up H.R. 1997, approving the measure 6-yes, 3-no. On January 21, 2004, the full House Judiciary Committee marked up the bill, approving it 20-yes, 13-no. For House Report 108-420, see: **thomas.loc.gov/cgi-bin/cpquery/R?cp108:FLD010:@1(hr420):**.

Floor: On February 11, 2004, with the Armed Services Committee being discharged, H.R. 1997 was placed on the House calendar.

On February 26, 2004, the House approved H.R. 1997 with a decisive bipartisan vote, 254-yes, 163-no, 17-not voting (Roll Call 31). Prior to final passage, the House rejected a single-victim substitute amendment offered by Rep. Zoe Lofgren (D-CA), 186-yes, 229-no, 19-not voting (Roll Call 30).

After the House vote, Mrs. Sharon Rocha, the mother of Laci Peterson and the grandmother of Conner, issued a statement of gratitude for the House action and urged the Senate to approve the bill. For Mrs. Rocha's statement, both in print and audio, see: **nchla.org/issues.asp?ID=25.**

On March 11, 2004, H.R. 1997 was read the second time and placed on the Senate calendar.

Senate: On May 7, 2003, Sen. Michael DeWine (R-OH) introduced the Senate companion bill (S. 1019) (superceded the earlier S. 146). The measure was placed directly on the Senate calendar. An attempt on July 23, 2003 to bring S. 1019 to the floor was blocked by opponents; they said they wanted more time to prepare amendments. Efforts to bring the bill to the Senate floor in 2003 were not successful.

Floor: On March 12, 2004, Senate Majority Leader Senator Bill First (R-TN) announced a unanimous consent agreement for Senate consideration of the UVVA. The House-passed bill, H.R. 1997, would be considered, with two amendments allowed: a single-victim substitute by Sen. Dianne Feinstein (D-CA) and a lengthy domestic violence amendment by Sen. Patty Murray (D-WA). Neither amendment could be amended. The bill could not be filibustered.

Passage of the Murray amendment offered opportunities to create procedural problems. But, above all, the Feinstein single-victim substitute had to be defeated.

The texts of the Feinstein and Murray amendments – Senate Amendments 2858 and 2859, respectively – can be found in the *Congressional Record* (3/12/04) S2804-21. See: **frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2004_record&page=S2804&position=all**

On March 25, 2004, the U.S. Senate in a bipartisan vote approved the UVVA, 61-yes, 38-no, 1-not voting (Roll Call 63). Prior to final passage, the Feinstein single-victim substitute amendment was defeated, as was the Murray domestic violence amendment. *As expected, the vote on the Feinstein substitute was very close, 49-yes, 50-no, 1-not voting (Roll Call 61).* A point of order was raised against the Murray amendment, requiring 60 votes for passage. *The amendment fell short, 46-yes, 53-no, 1-not voting (Roll Call 62).* The roll call votes can be found online at: **www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_108_2.htm**.

The vote on the Feinstein substitute was the most important vote. Cathy Cleaver Ruse, spokesperson for the U.S. Bishops' Secretariat for Pro-Life Activities, expressed gratitude to the Senate for rejecting this amendment, and stated, "Abortion activists may recoil from the acknowledgment of a child's existence before birth, but their efforts to erase the child as a second victim in a violent crime are an insult to all women and families who have lost a loved one to violence."

Law: Because the bill text approved by House and Senate was the same, H. R. 1997 went directly to President Bush, who signed the bill into law at an April 1, 2004, White House ceremony (Public Law 108-212).

In his remarks, President Bush noted, "As of today, the law of our nation will acknowledge the plain fact that crimes of violence against a pregnant woman often have two victims. . . . any time an expectant mother is a victim of violence, two lives are in the balance, each deserving protection, and each deserving justice." For the president's full statement, with both sound and video, see: **www.whitehouse.gov/news/releases/2004/04/20040401-3.html#**

Cathy Cleaver Ruse, spokesperson for the U.S. Bishops' Secretariat for Pro-Life Activities, applauded the president's action, stating, "A woman who loses her child to a brutal attacker in a federal jurisdiction will no longer be told that she has lost nothing." Ruse observed how legal abortion is the exception to how the law treats the unborn child. "Outside the context of abortion, unborn children are often recognized by the law. . . . The 'logic' of Roe v. Wade is like the Emperor's new clothes, and the abortion lobby stands in fear of the day when this logic is revealed to be just as insubstantial." For Ruse's full statement, see: **www.usccb.org/comm/archives/2004/04-063.htm**

For more information, see NCHLA's legislative briefing page on the Unborn Victims of Violence Act at: **nchla.org/issues.asp?ID=25.**