

The First Session of the 109th Congress began January 4, 2005. No legislation is carried over from the previous Congress. Bills not enacted into law must be reintroduced. Information related to federal legislation -- text of bills, hearing testimony, committee reports, floor debates in the *Congressional Record*, roll call of floor votes, and the like -- is available on the internet at: **thomas.loc.gov**.

Fiscal Year 2005 ended September 30 and Fiscal Year 2006 began October 1. Two of the annual must-pass appropriations bills have not yet been passed by Congress. Stop-gap funding continues through December 31, 2005.

I. SUMMARY

1. Confirmation of Judicial Nominees

Because of a no-filibuster pledge announced on May 23 by 14 Senators (seven Democrats and seven Republicans), the U.S. Senate began giving federal judicial nominees up-or-down votes. On July 1, Justice Sandra Day O'Connor announced her retirement from the Court "effective upon the nomination and confirmation of her successor." President Bush nominated D.C. Circuit Court of Appeals Judge John G. Roberts, Jr. as the replacement. However, with the September 3rd death of Chief Justice William H. Rehnquist, President Bush proposed Roberts to serve as the new Chief Justice. On September 29, the U.S. Senate confirmed Roberts, 78-yes, 22 no.

Attention now turns to the O'Connor successor. On October 3, President Bush nominated White House Counsel Harriet Miers. However, Ms. Miers subsequently withdrew her name. On October 31, the president nominated Judge Samuel Alito, who currently serves on the Third Circuit, United States Court of Appeals. It is anticipated that confirmation hearings for Judge Alito will begin January 9, 2006, with a final Senate vote projected for January 20th.

In the confirmation process, NCHLA's concern is focused on the principle: Support for *Roe v. Wade* should not be a condition for determining a nominee's fitness for judicial office. *It is critical that postcards and e-mails continue to be sent to your two U.S. Senators.* For information on the End the Roe Litmus Test Postcard Signing Day, see: **nchla.org/docdisplay.asp?ID=134**. To send an e-mail to your Senators, visit: **EndRoe.org**. Just enter your ZIP code and follow the easy directions.

Note: On October 3 the U.S. Supreme Court opened its fall term. The Court heard a case on assisted suicide (October 5), and is scheduled to hear cases on parental notice and clinic protest (both on November 30). Early in December the Court is expected to announce whether it will accept an appeal in partial-birth abortion ban case (federal law) from the Nebraska U.S. District Court (*Gonzales v. Carhart*, Docket No. 05-380).

2. Stem Cell Research Proposals; Cord Blood Bill Signed into Law

Funding for Destructive Embryonic Stem Cell Research: *On May 24, the U.S. House of Representatives voted 238-yes, 194-no, 2-not voting to pass H.R. 810, a bill that authorizes the use of federal funds to encourage the destruction of live human embryos for stem cell research (Roll Call 204).* This measure would overturn President Bush's policy that limits research to embryonic stem cell lines existing as of August 9, 2001. Prior to the House vote on H.R. 810, President Bush announced that if a measure like H.R. 810 were to reach his desk, he would veto it. H.R. 810 has been placed on the Senate calendar.

On February 28 Sen. Arlen Specter (R-PA) introduced S. 471, a bill identical to H.R. 810. On October 19, Sen. Specter held a hearing on stem cell research and human cloning. He announced later that he has abandoned plans to attach S. 471 to appropriations legislation this year.

On July 29, Senate Majority Leader Bill Frist (R-TN) announced his intention to oppose the president and support H.R. 810/S. 471. Cardinal William Keeler, chairman of the Bishops' Committee for Pro-Life Activities, criticized Sen. Frist's statement. See: www.usccb.org/comm/archives/2005/05-168.shtml.

Cord Blood/Bone Marrow for Research and Treatment Bill Signed into Law: *On May 24, immediately after passage of H.R. 810, the House voted to suspend the rules and pass the Stem Cell Therapeutic and Research Act (H.R. 2520), 431-yes, 1-no, 2-not voting (two-thirds vote required).* This measure authorizes funding for programs to promote the use of cord blood stem cells and bone marrow in research and treatment. Both of these sources represent a promising and ethically acceptable alternative to embryonic stem cells.

On June 27, Sen. Hatch introduced the Bone Marrow and Cord Blood Therapy and Research Act (S.1317). In Committee, in consultation with House leaders, S. 1317 was revised to incorporate the provisions of H.R. 2520. Sen. Hatch stated "he expects the House to pass the legislation once the full Senate passes it" (*CQToday*, 6/30/05, p. 13).

On December 15, Sen. Frist asked for a unanimous consent request to consider H.R. 2520. Sen. Tom Harkin (D-IA) objected. He wanted to consider H.R. 2520 only in connection with H.R. 810, the House-passed bill promoting embryonic stem cell research.

On December 16, Sen. Frist again moved for consideration of H.R. 2520. This time there was no objection. The text of the House-passed H.R. 2520 was struck from the bill and the text of Senate Amendment 2688 (identical to the text of S. 1317) was inserted in its place. As amended, H.R. 2520 passed without objection.

On December 17 the House suspended the rules and passed H.R. 2520, 413-yes, 0-no.

On December 20, President Bush signed H.R. 2520 into law (Public Law 109-129).

After attending President Bush's signing, Richard Doerflinger, Deputy Director of the USCCB

Secretariat for Pro-Life Activities, issued a statement in which he expressed gratitude to Congress and the President for enacting the life-saving legislation without further delay. “In the last days of this session . . . Congress agreed on the kind of stem cell treatments that can begin saving patients’ lives here and now.” Mr. Doerflinger concluded his remarks: “As Christians celebrate the birth of Jesus, how appropriate that we can also celebrate the medical miracles made possible by cord blood retrieved immediately after live births.” Enactment of this bill is “a wonderful Christmas present to patients in need.” For Mr. Doerflinger’s full remarks, see: www.usccb.org/comm/archives/2005/05-290.shtml.

Package of Senate Measures: Sen. Bill Frist attempted unsuccessfully to secure a unanimous consent agreement to proceed on a package of stem cell and related bills. He has agreed to make the stem cell issue a priority in early 2006.

Opposition to S. 471 should remain the focus of action. At NCHLA’s Action Center you can find an Action Alert and a form to send e-mail directly to your two Senators. See: nchla.org/actiondisplay.asp?ID=233.

3. Human Cloning Funding Prohibition Defeated in Committee

On June 16, during markup of the Fiscal Year 2006 Labor/Health and Human Services Appropriations Bill (H.R. 3010), Rep. Dave Weldon (R-FL) offered an amendment to deny National Institutes of Health funds to any entity involved in human cloning. *The Weldon Amendment failed, 29-yes, 36-no, 1-not voting.*

4. Conscience Protection

In 2004 the Hyde/Weldon Conscience Protection Amendment became law. During Senate debate, it was agreed that before April 30, 2005, Sen. Barbara Boxer (D-CA) would be allowed a vote on a proposal to overturn the law. However, on April 21, 2005, Sen. Boxer announced that she would not pursue the matter at that time. Subsequently, Sen. Arlen Specter (R-PA), Chairman of the Senate Appropriations Subcommittee on Labor, Health and Human Services, reported out the Fiscal Year 2006 Labor/Health and Human Services Appropriations Bill (H.R. 3010) with language that guts the Hyde/Weldon Conscience Protection Law. On October 27, the Senate passed the measure. Because the House version of H.R. 3010 contained the language of the Hyde/Weldon Conscience Protection Amendment as it now exists in law, the matter had to be resolved in conference committee. On November 11, the Office of Management and Budget stated that the Administration “strongly supports” the conscience protection amendment and that the “President’s senior advisors would recommend that he veto the bill [H.R. 3010] if the final version contains the Senate’s language.” In conference the Senate yielded to the House and the Hyde/Weldon Conscience Protection Amendment remained in the final bill (House Report 109-300, filed November 16). On November 17, the House rejected the conference report on H.R. 3010, though this action had no relation to the conscience language. H.R. 3010 is one of the appropriations bills not yet enacted into law.

5. Terri Schiavo Dies

On Thursday, March 31, Terri Schindler Schiavo died as the result of court-ordered starvation and dehydration. From March 18, it was not lawful to give Terri Schiavo any food or water. On March 21, after a rare weekend session, Congress passed, and the president signed into law (Public Law 109-3), a measure (S. 686) that gave the parents of Terri Schiavo standing to file suit in U.S. District Court for a *de novo* review of their daughter's case. The court denied the parents' motion. All appeals were unsuccessful. Cardinal William Keeler, chairman of the Bishops' Committee for Pro-Life Activities, issued a statement mourning Terri Schiavo's tragic death. The Cardinal cited the teaching of Pope John II that "the administration of food and water, even when provided by artificial means, should be considered 'morally obligatory' as long as it provides nourishment and alleviates suffering for such patients." For the Cardinal's full statement, see: www.usccb.org/comm/archives/2005/05-075.shtml.

6. Military Abortion Policy Upheld in House

Current law bans the use of military health care facilities for the performance of abortion, except to save the mother's life or in cases of rape or incest. During debate on the National Defense Authorization Act for Fiscal Year 2006 (H.R. 1815), Rep. Susan Davis (D-CA) offered an amendment to allow military health care facilities outside the U.S. to be used to perform abortions on request. *On May 25, the House rejected the Davis Amendment, 194-yes, 233-no, 6-not voting (Roll Call 216).*

On August 18, in *Roe v. the United States*, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of the law that prohibits the use of federal funds to pay for abortions under the military health care plan, except to save the mother's life.

7. Mexico City Policy

On April 5, during consideration of the State Department Reauthorization Bill (S. 600), Sen. Barbara Boxer (D-CA) offered an amendment to repeal the Mexico City Policy. *The amendment passed, 52-yes, 46-no, 2-not voting (Roll Call 83).* President Bush has stated that if the Boxer amendment remains in S. 600, he would veto the bill.

The Senate version of the Fiscal Year 2006 Foreign Operations Appropriations Bill (H.R. 3057), approved on July 20, also contained language that would overturn the Mexico City Policy and weaken the Kemp-Kasten Amendment (see UNFPA below). The president has stated that if these provisions remained in H.R. 3057, he would veto the bill. However, in conference the offending language was removed and on November 14 the president signed H.R. 3057 into law (Public Law 109-102).

8. UNFPA Funding

On June 16, during consideration of the Fiscal Year 2006 Science, State, Justice, Commerce Appropriations Bill (H.R. 2862), Rep. Carolyn Maloney (D-NY) offered an amendment that would

exempt U.S. funds given to the United Nations Population Fund (UNFPA) from any regulations in U.S. law. The Kemp-Kasten Amendment law gives the president authority to deny funds to an organization such as the UNFPA that “supports or participates in the management of a program of coercive abortion or involuntary sterilization.” *The Maloney amendment was rejected, 192-yes, 233-no, 8-not voting (Roll Call 266).*

The Senate version of the Fiscal Year 2006 Foreign Operations Appropriations Bill (H.R. 3057) contained language that would weaken the Kemp-Kasten Amendment but that language was removed in conference. On November 14 the president signed H.R. 3057 into law with the Kemp-Kasten Amendment intact (Public Law 109-102).

On September 17, the U.S. State Department announced that the UNFPA was not eligible to receive the \$34 million appropriated for them for Fiscal Year 2005. See: www.state.gov/r/pa/prs/ps/2005/53375.htm

9. CIANA Passes House

On April 27, the House passed the Child Interstate Abortion Notification Act (CIANA) (H.R. 748), 270-yes, 157-no, 8-not voting (Roll Call 144). Incorporating the provisions of the Child Custody Protection Act, CIANA protects parental rights in cases where a minor girl crosses state lines to obtain an abortion. Focus is now on the Senate.

10. Peaceful Clinic Protest

Since 2002, Sen. Charles Schumer (D-NY) had blocked passage of the Bankruptcy Reform Bill by insisting on an amendment that would unfairly penalize peaceful protesters at abortion clinics. *On March 9, during consideration of the Bankruptcy Abuse Prevention and Consumer Protection Act (S. 256), the Schumer Amendment was defeated, 46-yes, 53-no, 1-not voting (Roll Call 28).* The measure then passed the House and on April 20, was signed into law (Public Law 109-8).

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

The U.S. Food and Drug Administration (FDA) is considering an application submitted by Barr Research Laboratories requesting that Plan B (Morning-after Pill) be sold over-the-counter to people 16 and older and remain prescription-only for those under 16 years of age. Plan B is a levonorgestrel-only pill that has both contraceptive and abortifacient properties. The Barr Research Laboratories’ original proposal was submitted April 16, 2003.

On August 26, 2005, the FDA began soliciting public comments on some narrow technical questions. Can the age criterion be used to decide if a drug should be prescription or over-the-counter? As a practical matter, how would the over-the-counter drug be regulated and enforced? If the drug is issued both ways (prescription and over-the-counter), can the drug be marketed in the same package? The 60-day comment period ended November 1, 2005.

In an October 27 letter to the FDA, Mark Chopko, USCCB General Counsel, opposed permitting

OTC sale of the Plan B pill to minors. Plan B “is one instance of a drug in which over-the-counter availability, either generally or to a subpopulation, would be injurious to many – children and adults, as well as health care providers and professionals.” For Mr. Chopko’s detailed arguments, see: www.usccb.org/comm/archives/2005/05-244.shtml.

12. Hearing on Fetal Pain

On November 1, the House Constitution Subcommittee held a hearing titled “Pain of the Unborn.” Experts from the medical and legal fields addressed issues related to the Unborn Child Pain Awareness Act (H.R. 356), introduced January 25 by Rep. Chris Smith (R-NJ).

13. Hearing on *Roe* and *Doe*

On June 23, a hearing on the consequences of the twin U.S. Supreme Court abortion decisions, *Roe v. Wade* and *Doe v. Bolton*, was held by the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Property Rights. Sen. Sam Brownback (R-KS) presided. Witnesses included Norma McCorvey and Sandra Cano, the actual names of the plaintiffs in *Roe* and *Doe*, respectively. Both women called for the overturning of the decisions. To view testimony from the hearing see: judiciary.senate.gov/hearing.cfm?id=1553.

II. REVIEW OF LEGISLATION

The following legislative issues are reviewed in detail in this report:

- Assisted Suicide
- Bankruptcy Reform: Peaceful Clinic Protest
- Child Custody Protection Act/CIANA
- Confirmation of Judicial Nominees
- Contraceptive/Abortifacient Composite Bills
- “Emergency Contraception” Education
- “Emergency Contraception” Hospital Mandates
- Human Cloning Ban
- Hyde/Weldon Conscience Protection Amendment
- Informed Choice Act
- Mandated Contraceptive/Abortifacient Coverage
- Mexico City Policy
- Military Abortions
- Morning-After Pill: Over-the-Counter Use
- Partial Birth Abortion Ban Act
- *Roe* and *Doe* Hearing
- RU-486 Suspension and Review Act
- Stem Cell Research
- Terri Schiavo Dies
- Umbilical Cord Blood and Bone Marrow Banks
- Unborn Child Pain Awareness Act
- UNFPA Funding

1. 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.

U.S. District Court Injunction: On April 17, 2002, U.S. District Judge Robert E. Jones issued a permanent injunction enjoining enforcement.

Ninth Circuit Appeals: On May 26, 2004, the U.S. Court of Appeals for the Ninth Circuit ruled 2-1 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." 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.

U. S. Supreme Court: On November 9, 2004, the federal government appealed the case to the U.S. Supreme Court (Docket 04-623). On February 22, 2005, the Court announced that during the upcoming October term the Ninth Circuit's decision will be reviewed. The case has been renamed *Gonzales v. Oregon*. Oral arguments were heard on October 5, 2005.

2. Bankruptcy Reform: Peaceful Clinic Protest

Background: Since 2002, efforts to pass the Bankruptcy Reform Bill 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).

Senate: On February 1, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (S. 256) was introduced. Sen. Schumer again insisted on adding an amendment that would unfairly penalize peaceful protesters at abortion clinics. *On March 8, 2005, during consideration of S. 256 the Senate rejected the Schumer amendment, 46-yes, 53-no, 1-not voting (Roll Call 28).* "No" was a pro-life vote.

S. 256 passed the Senate and then was sent to the House.

House: On April 14, 2005, the House debated and passed S. 256. During debate, no amendments could be offered.

Law: On April 20, 2005, President Bush signed S. 256 into law (Public Law No. 109-8). The Schumer provision did not become law.

3. Child Custody Protection Act/CIANA

Background: The Child Custody Protection Act (CCPA) would make 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 would not apply when the abortion is necessary to save the minor's life. The measure would prevent 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. In 2004, hearings were held in both the House and Senate, but no further action was taken.

In 2005, an expanded version of the CCPA was introduced in the House, the Child Interstate Abortion Notification Act (CIANA). During a House hearing on CIANA, Rep. Steve Chabot (R-OH), Chairman of the House Judiciary Subcommittee on the Constitution, described CIANA as building on CCPA. In addition to the provisions of CCPA, CIANA also requires that "an abortion provider in a state without a parental involvement law notify a parent, or if necessary a legal guardian, before performing an abortion on a minor girl who is a resident of a different state."

House: On February 10, 2005, Rep. Ileana Ros-Lehtinen (R-FL) introduced the Child Interstate Abortion Notification Act (H.R. 748). The bill has 129 cosponsors and was referred to the Judiciary Subcommittee on the Constitution.

Committee: On March 3, 2005, the Judiciary Subcommittee on the Constitution held a hearing on H.R. 748. Subcommittee Chairman Rep. Steve Chabot noted that approximately 80% of the public favors parental notification laws; and that of the 44 states that have enacted such laws, 23 currently enforce statutes requiring the consent or notification of at least one parent or a court authorization before a young girl can obtain an abortion. Marcia Carroll, from Lancaster, PA, gave compelling testimony on how their 16-year-old daughter was taken across the state line to have an abortion in New Jersey. Once she learned what happened, she stated, "I was so devastated that this could have been done that I called the local police department to see what could be done. They were just as shocked and surprised as I was that there was nothing that could be done in this horrible situation." For the full statement of witnesses, see:

judiciary.house.gov/hearings.aspx?ID=90.

Floor: On April 27, 2005, the House began consideration of H.R. 748. During debate, three attempts were made to weaken CIANA: two hostile amendments were offered as well as a motion to recommit with instructions.

The first amendment offered by Rep. Robert Scott (D-VA) exempted certain persons from the provisions of the bill. *On April 27, 2005, the House rejected the Scott amendment 179-yes, 245-no, 11-not voting (Roll Call 141).* “No” was a pro-life vote.

The second amendment offered by Rep. Sheila Jackson-Lee (D-TX) also would exempt certain persons from the provisions of the bill. *On April 27, 2005, the House rejected the Jackson-Lee amendment 177-yes, 252-no, 6-not voting (Roll Call 142).* “No” was a pro-life vote.

Rep. Nadler offered a motion to recommit with instructions. *On April 27, 2005, the House rejected the Nadler motion 183-yes, 245-no, 7-not voting (Roll Call 143).* “No” was a pro-life vote.

Finally, on April 27, 2005, the House passed H.R. 748, 270-yes, 157-no, 8-not voting (Roll Call 144). “Yes” was a pro-life vote.

On April 28, 2005, H.R. 848 was received in the Senate but was not referred to committee or placed directly on the Senate calendar.

Senate: On January 24, 2005, Sen. John Ensign (R-NV) introduced the Child Custody Protection Act (S. 8). The bill has 37 cosponsors and was referred to the Judiciary Committee. On February 16, 2005, Sen. Ensign introduced an identical bill, S. 396. It has no cosponsors and also was referred to the Judiciary Committee. On February 17, 2005, Sen. Ensign introduced a third identical bill, S. 403. This measure has 37 cosponsors and was placed directly on the Senate calendar.

Judicial: A challenge to a state parental notification law, *Ayotte v. Planned Parenthood*, is to be considered by the Supreme Court (Docket No. 04-1144). In 2003 New Hampshire enacted a parental notice law which was challenged in federal court by abortion advocates. On December 29, 2003, two days before the statute was even to take effect, U.S. District Judge Joseph A. DiClerico ruled that the state law was unconstitutional and permanently enjoined its enforcement. That ruling was appealed by the State of New Hampshire. On November 24, 2004 a three-judge panel of the First Circuit Court of Appeals upheld the ruling of the lower court, in part citing the lack of a "health exception."

New Hampshire appealed the circuit court ruling and on May 23, 2005 the U.S. Supreme Court agreed to hear the case. Oral arguments are scheduled to be heard on November 30, 2005.

4. Confirmation of Judicial Nominees

In its 1973 *Roe v. Wade* and *Doe v. Bolton* rulings, the U.S. Supreme Court created a new “right” to abortion. The Court made abortion legal nationwide through the full nine months of pregnancy, with no meaningful limitations. The Court has used *Roe* even to justify partial-birth abortion.

Legal scholars, including many who support abortion, have roundly criticized *Roe* as bad constitutional law. The Court created a new fundamental right not found in the U.S. Constitution, overriding the will of the people and usurping the role of the legislative and executive branches of

government. Supreme Court Justice Byron White called *Roe* “an exercise in raw judicial power.” The eminent constitutional scholar John Hart Ely said that *Roe* “is not constitutional law and gives almost no sense of an obligation to try to be.” Edward Lazarus, former clerk to Supreme Court Justice Harry Blackmun, the author of *Roe*, says that when Senators oppose a judicial appointment because of the nominee’s opposition to *Roe*, “they not only endorse but make a litmus test out of one of the most intellectually suspect constitutional decisions of the modern era.”

Abortion advocates have announced plans to spend \$10 million a year to keep *Roe v. Wade* the law of the land, and to block judicial nominees suspected of not supporting this goal.

Roe v. Wade is deeply flawed on both moral and legal grounds. It is the Dred Scott decision of the 20th century, and it too will be reversed. It makes no sense to say that support for bad constitutional law should be any kind of qualification for serving as a federal judge.

Roe v. Wade is at the center of the Senate debate on confirming judicial nominees.

The U.S. Constitution provides that the president nominates and the U.S. Senate confirms judges to serve on the federal courts. A number of President Bush’s nominees have been subjected to filibusters, thereby requiring a 3/5 vote for confirmation, rather than a majority. Arguing that the U.S. Constitution does not specify a supermajority for confirmation, Sen. Bill Frist (R-TN), Senate Majority Leader, stated his intention to move to prevent the use of the filibuster to block a vote on a judicial nominee. Sen. Frist called this the “constitutional option,” while opponents dubbed it the “nuclear option.” With Vice President Dick Cheney presiding over the Senate, Sen. Frist would make a point of order that judicial nominees should not be filibustered. Only a majority vote would be required to resolve the question.

In the week before Memorial Day recess, the impasse was broken, at least temporarily. On May 23, 2005, a group of 14 Senators - 7 Democrats, 7 Republicans - signed a “memorandum of understanding” that the seven Republicans would not support the “nuclear option” and that the 7 Democrats would not filibuster three nominees - Priscilla Owen, Janice Brown, and William Pryor - and would filibuster future nominees only under “extraordinary circumstances.” “The deal leaves the definition of that term up to each senator” (*CQToday*, May 24, 2005).

On July 1, 2005, Justice Sandra Day O’Connor announced her retirement from the Court “effective upon the nomination and confirmation of her successor” (Supreme Court press release). President Bush nominated D.C. Circuit Court of Appeals Judge John G. Roberts, Jr. as the replacement. However, with the September 3, 2005 death of Chief Justice William H. Rehnquist, President Bush proposed Roberts to serve as the new Chief Justice. On September 29, 2005 the U.S. Senate confirmed Roberts, 78-yes, 22 no (Roll Call 245).

Attention now turns to the O’Connor successor. On October 3, 2005, President Bush nominated White House Counsel Harriet Miers. However, Ms. Miers subsequently withdrew her name. On October 31, 2005, the president nominated Judge Samuel Alito, who currently serves on the Third Circuit, United States Court of Appeals. It is anticipated that confirmation hearings for Judge Alito will begin January 9, 2006, with a final Senate vote projected for January 20th.

In this debate, NCHLA's concern is focused on the principle: Support for *Roe v. Wade* should not be a condition for determining a nominee's fitness for judicial office. It is critical that postcards and e-mails with this message continue to be sent to your two U.S. Senators. For information on the End the Roe Litmus Test Postcard Signing Day, see: nchla.org/docdisplay.asp?ID=134. To send an e-mail to your Senators, visit: EndRoe.org. Just enter your ZIP code and follow the easy directions.

5. Contraceptive/Abortifacient Composite Bills

Background: Bills called the Prevention First Act or the Title X Family Planning Services Act authorize \$643 million for Title X family planning programs for Fiscal Year 2006 include among their provisions several separately introduced bills, including the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC), Compassionate Assistance for Rape Emergencies Act, and the Emergency Contraception Education Act. These individual measures are discussed elsewhere in this report.

House: On April 19, 2005, Rep. Louise Slaughter (D-NY) introduced the Prevention First Act (H.R. 1709). The bill has 114 cosponsors and was referred to three different House committees: Energy and Commerce, Education and the Workforce, and Ways and Means.

Senate:

Prevention First Act. On January 24, 2005, Sen. Harry Reid (D-NV) introduced the Prevention First Act (S. 20). The companion bill to H.R. 1709, the measure has 23 cosponsors and was referred to the Senate Health, Education, Labor and Pensions Committee.

Title X Family Planning Services Act. On April 19, 2005, Sen. Hillary Clinton (D-NY) introduced the Title X Family Planning Services Act (S. 844). S. 844 is similar to both S. 20 and H.R. 1709. Senate Minority Leader Harry Reid (D-NV) is one of the bill's two cosponsors. S. 844 has been placed directly on the Senate calendar.

6. "Emergency Contraception" Education

Background: The Emergency Contraception Education Act authorizes 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. Similar legislation also was introduced in the 107th and 108th Congresses.

House: On July 18, 2005, Rep. Louise Slaughter (D-NY) introduced the Emergency Contraception Education Act (H.R. 3326). The bill has 81 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee.

The basic text of H.R. 3326 also has been incorporated into a larger composite bill called the Prevention First Act introduced in both House and Senate (H.R. 1709, S. 20).

H.R. 3326 authorizes \$10 million for each of the Fiscal Years 2006 through 2010. “Emergency contraception” is 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.

7. “Emergency Contraception” Hospital Mandates

Background: A measure called the Compassionate Assistance for Rape Emergencies Act would require hospitals to provide “emergency contraceptives” (also called “morning-after” pills). Hospitals would be required to provide “morning-after” pills to victims of rape. Similar legislation was introduced in the 107th and 108th Congresses. Another bill would require military hospitals to provide the drugs for any reason.

House:

Hospital Mandate. On June 15, 2005, Rep. Steven Rothman (D-NJ) introduced the Compassionate Assistance for Rape Emergencies Act (H.R. 2928). The measure has 104 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee and also to the House Ways and Means Committee.

The basic contents of H.R. 2928, and its Senate companion bill, S. 1264 (see below), also have been incorporated into a larger composite bill called the Prevention First Act introduced in both House and Senate (H.R. 1709, S. 20).

H.R. 2928 provides 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 (H.R. 3326, see above), 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 that is implanted, and not a newly conceived human being resulting from union of egg and sperm.

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

Military Hospital Mandate. On May 25, 2005, Rep. Michael Michaud (D-ME) introduced H.R. 2635. The bill would require that “emergency contraception” be available at all military health care facilities. The bill has seven cosponsor and was referred to the Subcommittee on Military Personnel of the House Armed Services Committee.

Senate:

Hospital Mandate. On June 16, 2005, Sen. Jon Corzine (D-NJ) introduced the Compassionate Assistance Rape Emergencies Act (S. 1264). The bill has 10 cosponsors and was referred to the Senate Health, Education, Labor and Pensions Committee. The measure includes the provisions of H.R. 2928, the House companion bill, but also includes provisions related to prevention of sexually transmitted diseases in victims of sexual assault.

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.

Again in May 2005 South Korean researchers announced further work on human cloning, this time reporting that 11 embryonic stem lines had been created through the technique (*Wall Street Journal*, May 20, 2005).

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

Senate: On March 17, 2005, Sens. Sam Brownback (R-KS) and Mary Landrieu (D-LA) introduced the Human Cloning Prohibition Act (S. 658). Thirty-one other Senators have added their names as cosponsors. The measure was referred to the Committee on Health, Education, Labor, and Pensions. The bill prohibits any person or entity, public or private, to perform or attempt to perform human cloning, to participate in an attempt to perform human cloning, to ship or receive an embryo produced by human cloning or any product derived from such an embryo, or to import an embryo produced by human cloning. Not later than four years after enactment, the Government Accountability Office shall send to Congress a study assessing the need for amendment to the human cloning prohibition. On introduction Sen. Brownback stated, "Let there be no doubt. Science affirms that the young human, at his or her earliest moments of life, is a human. It is wrong to treat another person as a piece of property that can be bought and sold, created and destroyed, all at the will of those in power. . . . The essential question is whether or not we will allow human beings to be produced, to preordained specifications, for their eventual implantation or destruction, depending upon the intentions of the technicians who created them." (*Congressional Record*, March 17, 2005, S3011)

On July 11, 2005, Sen. Brownback also introduced the Human Chimera Prohibition Act (S. 1373; also see earlier S. 659). The bill has four cosponsors and has been referred to the Senate Judiciary Committee. In general, a human chimera is a being containing both human and non-human components. S. 1373 prohibits creating human chimeras, transferring a human embryo into a non-human womb or transferring a non-human embryo into a human womb, or transporting a human chimera for any purpose.

On April 21, 2005, Sen. Orrin Hatch (R-UT) introduced an opposition bill, the Human Cloning Ban and Research Protection Act (S. 876). The bill has 12 cosponsors and was referred to the Judiciary Committee. This legislation is similar to a bill introduced in the previous Congress.

In its definitions, S. 876 employs abstract circumlocutions defining the reality created through cloning as something other than a living human embryo. Human cloning is defined as "implanting or attempting to implant the product of nuclear transplantation into a uterus or the functional equivalent of a uterus." A new term "unfertilized blastocyst" was crafted, referring to "an intact cellular structure that is the product of nuclear transplantation."

In S. 876, the ban on human cloning refers 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 provides: "Nothing in this section shall be construed to restrict practices not expressly prohibited in this section." That is, cloning-for-biomedical-research is permitted.

Under "Ethical Requirements for Nuclear Transplantation Research," S. 876 sets forth what it calls 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."

Floor: In early 2006 human cloning bills may be taken up in the Senate as part of a larger package of stem cell research bills. In this package Senate Majority Leader Bill Frist (R-TN) wants to include the Brownback/Landrieu Human Cloning Prohibition Act (S. 658) and the Brownback Human Chimera Prohibition Act (S. 1373).

House: On March 17, 2005, Reps. Dave Weldon (R-FL) and Bart Stupak (D-MI) introduced the Human Cloning Prohibition Act (H.R. 1357). The bill has 122 other cosponsors and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee. H.R. 1357 is similar to S. 658; it does not require a study on the law's implementation.

On April 26, 2005, Rep. Mary Bono (R-CA) introduced an opposition bill, the Human Cloning Ban and Research Protection Act (H.R. 1822). This bill is the House version of S. 876 and has five cosponsors. It was referred to the Health Subcommittee of the House Energy and Commerce Committee.

Committee: On June 16, 2005, during markup of the Fiscal Year 2006 Labor/Health and Human Services Appropriations Bill (H.R. 3010), Rep. Dave Weldon (R-FL) offered an amendment to deny National Institutes of Health funds to any entity involved in human cloning. The Weldon Amendment failed, 29-yes, 36-no, 1-not voting.

United Nations: On March 8, 2005, the United Nations General Assembly voted 84 in favor, 34 against, 37 abstaining to approve a nonbinding declaration banning all forms of human cloning. Six absent nations stated that if present they would have voted in favor. That declaration held in part that "Member States are called upon to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life." Member States were also urged to adopt "without delay" legislation implementing the declaration. See:

www.un.org/apps/news/story.asp?NewsID=13576&Cr=cloning&Cr1=cloning&Kw2=&Kw3=. Applauding the historic UN action, President Bush stated: "I look forward to working with Members of Congress to enact legislation to ban all human cloning in the United States." The United States was one of the countries taking the lead in securing adoption of the Declaration on Human Cloning. For full information about the U.S. position at the UN, see:
www.un.int/usa/cloning.htm.

Helpful Websites:

- 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. Hyde/Weldon Conscience Protection Amendment

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 but languished in the Senate. In 2004, a comparable measure, the Hyde/Weldon Conscience Protection Amendment, was passed by the House as part of the Fiscal Year 2005 Labor/Health and Human Services Appropriations Bill. The amendment was incorporated into the conference report on the Fiscal Year 2005 Omnibus Appropriations Bill (H.R. 4818), which was signed into law on December 8, 2004 (Public Law 108-447).

Judicial: On December 13, 2004, the National Family Planning and Reproductive Health Association (NFPRHA) filed a lawsuit in U.S. District Court in Washington, D.C., claiming that the Hyde/Weldon Conscience Protection Amendment was unconstitutional (*NFPRHA v. Gonzales*). On December 20, 2004, Judge Henry Kennedy denied a motion for a temporary restraining order. On January 5, 2005, a hearing was held to consider NFPRHA’s motion for a preliminary injunction. On September 28, 2005, the court denied the motion. In his decision, Judge Kennedy rejected NFPRHA’s argument that the Hyde/Weldon Amendment was unconstitutional. “The court cannot conclude . . . that the Weldon Amendment overreaches Congress’ spending powers, exceeds the permissible boundaries of legislative delegation, meets the rigorous void-for-vagueness test, or is otherwise constitutionally infirm on its face.”

On January 25, 2005, California Attorney General Bill Lockyer filed a lawsuit in U.S. District Court, Northern District of California, also challenging the constitutionality of the Hyde/Weldon amendment. On the floor of the House the same day, Rep. Dave Weldon (R-FL) commented on the amendment and this lawsuit: frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H176&dbname=2005_record.

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

On February 23, 2005, Msgr. William Fay, General Secretary of the USCCB, Sister Carol Keehan, Chairperson of the Board of Trustees of the Catholic Health Association, and Dr. Steven White, President of the Catholic Medical Association, sent a joint letter to U.S. Senators, urging defeat of the Boxer provision. See: nchla.org/datasource/idocuments/hydeweldonletter2c.pdf.

On April 21, 2005, Sen. Boxer declined the offer for a vote on her legislation. Senate Majority

Leader Bill Frist considered his obligation to allow for Sen. Boxer's provision fulfilled. Sen. Boxer signaled that she intended to work with Sen. Tom Harkin (D-IA) to weaken or overturn the Hyde/Weldon Conscience Protection Amendment during committee action on the Labor/HHS appropriations bill in the fall. Subsequently, Sen. Arlen Specter (R-PA), chairman of the Senate Appropriations Subcommittee on Labor, Health and Human Services, reported out the Fiscal Year 2006 Labor/Health and Human Services Appropriations Bill (H.R. 3010) with language that guts the Hyde/Weldon Conscience Protection Law. On July 14, H.R. 3010 was placed on the Senate calendar. On October 27, 2005, the Senate passed H.R. 3010 with the weakened conscience protection language.

House: During floor debate, no attempt was made to strike the Hyde/Weldon Conscience Protection Amendment from the Fiscal Year 2006 Labor/HHS Appropriations Bill (H.R. 3010). However, Rep. Nita Lowey (D-NY) stated that she objected to the "Weldon refusal clause" and that she would work "to remove this provision from the final bill" (*Congressional Record*, H5028, 6/23/05).

Conference Committee: On November 11, 2005, the Office of Management and Budget stated that the Administration "strongly supports" the conscience protection amendment and that the "President's senior advisors would recommend that he veto the bill [H.R. 3010] if the final version contains the Senate's language." In conference the Senate yielded to the House and the Hyde/Weldon Conscience Protection Amendment remained in the final bill (House Report 109-300, filed November 16, 2005). On November 17, 2005, the House rejected the conference report on H.R. 3010, though this action had no relation to the conscience language. H.R. 3010 is one of the appropriations bills not yet enacted into law.

For more information on both ANDA and the Hyde/Weldon Conscience Protection Amendment, see: www.usccb.org/prolife/issues/abortion/andaindex.htm.

10. Informed Choice Act

Background: The Informed Choice Act promotes the use of ultrasound equipment in the care of pregnant women. This same measure was introduced in the House and Senate in 2002 and 2003. Demonstration of a high-level definition ultrasound of the unborn child can be located at: www.gehealthcare.com/usen/ultrasound/4d/about.htm.

House: On January 4, 2005, Rep. Cliff Stearns (R-FL) introduced the Informed Choice Act (H.R. 216). The bill has 28 cosponsors and was referred to the Health Subcommittee of the House Committee on Energy and Commerce. The Secretary of Health and Human Services is 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 specifies eligibility requirements and limitations on grant amounts. \$3 million is authorized for Fiscal Year 2005 and such sums as necessary for Fiscal Year 2006 through 2008.

Senate: On April 11, 2005, Sen. Jim Bunning (R-KY) introduced the companion bill; S. 755. The bill has one cosponsor and was referred to the Senate Health, Education, Labor and Pensions

Committee.

11. Mandated Contraceptive/Abortifacient Coverage

Background: The Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC) was first introduced in Congress in 1997. This bill requires all health insurance plans (1) to provide benefits for prescription contraceptive drugs or devices if benefits are provided for other prescription drugs or devices, and (2) to provide benefits for outpatient contraceptive services ("consultations, examinations, procedures, and medical services" related to use of contraception) if benefits are provided for other outpatient services. Some of the mandated contraceptive drugs and devices also can act as abortifacients, including so-called "post-coital" or "emergency" contraceptives which can act primarily in this way.

Senate: On June 9, 2005, Sens. Olympia Snowe (R-ME) and Harry Reid (D-NV) again introduced EPICC (S. 1214). The bill has 15 other cosponsors. The measure was referred to the Senate Health, Education, Labor and Pensions Committee. The basic content of S. 1214 also has been included in the larger composite bill called the Prevention First Act introduced in both House and Senate (H.R. 1709, S. 20).

S. 1214 has no conscience protection for individuals or entities who object to the mandated coverage on moral or religious grounds. State laws on contraceptive mandates (and any related state conscience clauses) are preempted by federal law, unless the state laws provide for even stronger mandated coverage.

However, the bill does seek to ensure that the mandate will be enforced. The bill prohibits discrimination against individuals who would use services required by the mandate or discrimination against health professionals that would provide the services. The bill also prohibits incentives for individuals not to use the mandated services or incentives for health professionals to withhold the services.

12. Mexico City Policy

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 April 5, 2005, during consideration of the State Department Reauthorization Bill (S. 600), Sen. Barbara Boxer (D-CA) offered an amendment (No. 278) to repeal the Mexico City Policy. *The amendment passed, 52-yes, 46-no, 2-not voting (Roll Call 83).* "No" is a pro-life vote. If all Senators were voting, the result presumably would have been, 53-yes, 47-no.

In 2003, the Senate approved an identical Boxer amendment, 53-yes, 43-no, 4-not voting. If all Senators were voting at that time, the result may have been 57-yes, 43-no. Thus, even though pro-life still lost the vote in 2005, pro-life strength on this difficult issue has increased by four votes.

President Bush has stated that if the Boxer amendment remains in S. 600, he would veto the bill.

Pope John Paul II played a prominent role in the creation of the Mexico City Policy. At the 1984 population conference in Mexico City, the Holy See, representing John Paul II, was the prime sponsor of language rejecting the use of abortion as a method of family planning. That language was adopted as part of the final document. Ironically, just prior to the Senate vote approving the Boxer amendment, the Senate voted 98-0 to approve a resolution (S. Res. 95) paying tribute to the Holy Father. The connection of the two votes was not lost on observers. "Asked about the juxtaposition of votes, Ueland, Frist's chief of staff, said, 'Everything happens for a reason.'" (*CQToday*, April 6, 2005, p. 33)

In a Life Issues Forum article (release April 8, 2005), entitled, "The U.S. Senate's Divided Mind on Pope John Paul II," Richard Doerflinger notes, "In short, the Mexico City policy was one of Pope John Paul II's signal contributions to international policy and the defense of the most vulnerable." He also states, "The upshot of the recent Senate votes, then, was that the Democrats, as well as several Republicans, voted to say that the Pope has a wonderful legacy, but the influence of that legacy urgently needs to be eliminated from our laws." Mr. Doerflinger concludes with the plea, "Substance, not empty style, is what Catholics and other pro-life Americans want to see in their elected representatives."

The Senate version of the Fiscal Year 2006 Foreign Operations Appropriations Bill (H.R. 3057), approved on July 20, 2005, also contains language that overturns the Mexico City Policy and weakens the Kemp-Kasten Amendment (see UNFPA below). The president has stated that if these provisions remain in H.R. 3057, he would veto the bill. However, in conference the offending language was removed. On November 14, 2005 the president signed H.R. 3057 into law (Public Law 109-102).

13. 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 2006 (H.R. 1815), Rep. Susan Davis (D-CA) offered an amendment to allow military health care facilities outside the U.S. to be used to perform abortion for any reason. *On May 25, 2005, the U.S. House of Representatives rejected the Davis Amendment, 194-yes, 233-no, 7-not voting (Roll Call 216).* “No” is a pro-life vote.

In 2004, the House defeated a similar amendment, 202-yes, 221-no, 11-not voting. Compared to the 2004 vote, the 2005 vote shows a net gain for pro-life.

Judicial: On August 18, 2005, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of the law that prohibits the use of federal funds to pay for abortions under the military health care plan, except to save the mother’s life (*Roe v. the United States*).

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

Executive: 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 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. The FDA was especially concerned about the safe over-the-counter use of Plan B by women less than 16 years of age. 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 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).

The FDA solicited public comments on some narrow technical questions related to the Barr modified proposal. Can the age criterion be used to decide if a drug should be prescription or over-the-counter? As a practical matter, how would the over-the-counter drug be regulated and enforced? If the drug is issued both ways (prescription and over-the-counter), can the drug be marketed in the same package? The 60-day comment period ended on November 1, 2005.

For statements by the FDA, see: www.fda.gov/bbs/topics/news/2005/NEW01223.html

In an October 27, 2005 letter to the FDA, Mark Chopko, USCCB General Counsel, opposed permitting OTC sale of the Plan B pill to minors. Plan B “is one instance of a drug in which

over-the-counter availability, either generally or to a subpopulation, would be injurious to many – children and adults, as well as health care providers and professionals.” For Mr. Chopko’s detailed arguments, see: www.usccb.org/comm/archives/2005/05-244.shtml.

Supporters of Plan B claim that changing its status to OTC would decrease the number of abortions. A recent study coauthored by a Planned Parenthood doctor and published in the January 5, 2005 edition of the Journal of the American Medical Association casts serious doubt upon this contention. Commenting on the study’s findings, Cathy Cleaver Ruse, Esq., Director of Planning and Information for the United States Conference of Catholic Bishops’ Secretariat for Pro-Life Activities remarked: “Proponents have repeatedly claimed that making the drug available without a prescription would reduce abortion numbers by as many as half; now their own study debunks that claim.” For her complete remarks see: www.usccb.org/comm/archives/2005/05-003.shtml

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.

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. A revised bill was passed by the 108th Congress. 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 federal courts: the District of Nebraska, Southern District of New York, and the Northern District of California. In all three courts the PBA Ban Act was struck down.

The full transcripts of proceedings in all three cases can be found at: www.usccb.org/prolife/issues/pba/pbaban.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. Oral argument was heard for the Nebraska case on April 14, 2005.

In the Nebraska case on July 8, 2005, a three-judge panel of the U. S. Court of Appeals for the Eighth District upheld the ruling of the lower court that the Partial-Birth Abortion Ban Act was unconstitutional because it did not contain a “health exception” as required by the *Stenberg v.*

Carhart decision.

On September 23, 2005, the Nebraska case was appealed to the U.S. Supreme Court and renamed *Gonzales v. Carhart* (Docket No. 05-380). Early in January 2006 the Court is expected to announce whether it will accept this appeal

16. *Roe* and *Doe* Hearing

On June 23, 2005 a hearing on the consequences of the twin U.S. Supreme Court abortion decisions, *Roe v. Wade* and *Doe v. Bolton*, was held by the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Property Rights. Sen. Sam Brownback (R-KS) presided. Witnesses included Norma McCorvey and Sandra Cano, the actual names of the plaintiffs in *Roe* and *Doe*, respectively. Both women called for the overturning of the decisions.

Ms. Cano stated that *Doe* was based on lies and deceit. Ms. Cano had sought legal assistance to get a divorce and to get her children from foster care. "I did not seek an abortion nor do I believe in abortion." At one point in the proceedings she fled to Oklahoma to avoid the pressure the attorney was exerting on her to have an abortion. She said it took her until 1988 to get her records unsealed so that she could find out how the lawyers and the legal system could do this to her. "I want the case which was supposedly to benefit me, be either overturned or retried. If it is retried, at least I will have an opportunity to speak for myself in court, something that never happened before."

Ms. McCorvey states that she sought an abortion but admits "I made up the story that I had been raped to help justify my abortion." She never actually had the abortion. "I gave up my baby for adoption since the baby was born before the legal case was over. I am glad today that that child is alive and that I did not elect to abort." Ms. McCorvey recounted her story of how she went from abortion activist to pro-life advocate. Today she confesses that abortion "is a tragic choice for every child that is killed and every woman and man who participates in killing their own child, whether they know it at the time or not." She concludes, "Some things should never be allowed, even if we want to do them. Murder is one, child abuse is another and allowing abortionists to harm women is another." *Roe* is "a bad Supreme Court decision with bad effects and needs to be reversed. I also support a constitutional amendment to protect all human life."

To view testimony from the hearing see: judiciary.senate.gov/hearing.cfm?id=1553.

17. RU-486 Suspension and Review Act

Background: Previously introduced in 2003, 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 requires 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 is 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 March 3, 2005, Rep. Roscoe Bartlett (R-MD) introduced the RU-486 Suspension and Review Act of 2005 (H.R. 1079). The bill has 77 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee. For Rep. Bartlett's introductory remarks on the measure see:

frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_record&page=E357&position=all.

Senate: On March 3, 2005, Sen. Jim DeMint (R-SC) introduced the companion bill (S. 511). The measure has 11 cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. For Sen. DeMint's introductory remarks see:

frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_record&page=S2020&position=all.

18. Stem Cell Research

The federal government funds research involving both adult and embryonic stem cells. Although no guidelines exist for adult stem cells, by directive of President Bush only embryonic stem cells (ESC) derived before August 9, 2001 are eligible for federally funded research. Opponents of this policy have sought to relax the guidelines by expanding funding to include stem cells derived from human embryos after that date.

House: On February 15, 2005, Rep. Michael Castle (R-DE) and Rep. Diana DeGette (D-CO) introduced the Stem Cell Research Enhancement Act of 2005 (H.R. 810).

H.R.810 would overturn the Bush guidelines and permit stem cells derived from human embryos after August 2001 to be eligible for federal research money. A virtually identical bill was introduced in the 108th Congress, but never made it out of committee.

On May 16, 2005, the results of a poll commissioned by the USCCB Secretariat for Pro-Life Activities were released showing that a majority of Americans, 52 percent, oppose federal funding of embryonic stem cell research. For further information about the poll see:

usccb.org/comm/archives/2005/05-123.shtml.

On May 17, 2005, Cardinal William Keeler, Chairman of the Bishops' Pro-Life Committee sent a letter to Congress urging the defeat of H.R. 810. "To insist now on a broader policy of promoting ESC research, using federal funds to encourage more destruction of human embryos, would fly in the face of medical evidence and violate even the most minimal standards of respect for early

human life.” For the full text of Cardinal Keeler’s letter see:
usccb.org/prolife/issues/bioethic/stemcell/keeler517.pdf.

On May 24, 2005, the House passed H.R. 810, 238-yes, 194-no, 2-not voting (Roll Call 204). “No” was a pro-life vote.

Prior to the vote on H.R. 810, President Bush announced that if a measure like H.R. 810 were to reach his desk, he would veto it. A Statement of Administration Policy on H.R. 810 has called the bill “seriously flawed legislation.” See:

www.whitehouse.gov/omb/legislative/sap/109-1/hr810sap-h.pdf. The House vote fell short of the two-thirds supermajority needed for an override.

Reacting to the vote on H.R. 810, Richard Doerflinger, Deputy Director of the Bishops’ Pro-Life Committee said that: “The floor debate showed an appalling degree of ignorance and confusion on the issue among those voting for this bill, indicating the educational challenge to be addressed before the House votes on this issue again. Some even said that embryonic stem cells have a proven ability to cure patients and that adult stem cells do not, whereas exactly the opposite is true.” Mr. Doerflinger further noted, “It is always wrong for government to promote the destruction of innocent human life. Society must focus its efforts on promoting medical research that all Americans can live with.” Additional comments by Mr. Doerflinger can be found at:
usccb.org/comm/archives/2005/05-132.shtml.

Do No Harm: The Coalition of Americans for Research Ethics has developed several educational resources showing how supporters of embryonic stem cell research are letting politics trump scientific reality. For these resources and other information on current therapeutic uses of adult stem cells see: **stemcellresearch.org**.

Immediately after passage of H.R. 810, the House passed with near unanimous support a measure promoting the development of stem cell therapies from cord blood and other ethically acceptable sources. See below, “Umbilical Cord Blood and Bone Marrow Banks.”

On July 1, 2005, Rep. Roscoe Bartlett (R-MD) introduced the Respect for Life Pluripotent Stem Cell Act (H.R. 3144). The measure has 22 cosponsors and was referred to the Energy and Commerce Subcommittee on Health. The bill authorizes funds for research on methods to derive stem cells without harming or destroying the human embryo.

Senate: After passage by the House, H.R. 810 was read once and was placed on the Senate legislative calendar. On February 28, 2005, Sen. Arlen Specter (R-PA) introduced a bill identical to H.R. 810, S. 471. The measure has 40 cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

On July 29, 2005, Senate Majority Leader Bill Frist (R-TN) announced his intention to oppose the president and support H.R. 810/S. 471. Cardinal William Keeler, chairman of the Bishops’ Committee for Pro-Life Activities, criticized Sen. Frist’s statement. The Senator’s position “is not pro-life” and “rests on a utilitarian view that undermines human dignity and human respect.” The

Cardinal concludes, “My own central concern is that neither sound ethics nor good government can rest on the principle that ‘the end justifies the means.’” See: www.usccb.org/comm/archives/2005/05-168.shtml.

Majority Leader Sen. Bill Frist (R-TN) was attempting to secure a unanimous consent agreement to proceed on a package of stem cell and related bills. He has abandoned the effort for this year but has agreed to make the stem cell issue a priority in early 2006.

Six, maybe seven, measures would be part of the package. Not all have yet been filed as formal bills. The House-passed Stem Cell Research Enhancement Act (H.R. 810) that overrides Administration policy, or the Senate identical bill (S. 471), would be primary, though the package includes some morally acceptable bills that the president could sign into law, e.g., the House-passed bill that promotes cord blood/bone marrow research and treatment (H.R. 2520), the Senate identical bill (S. 1317), or the Human Cloning Prohibition Act (S. 658) and the Human Chimera Prohibition Act (S. 1373) introduced by Sen. Sam Brownback (R-KS).

Opposition to S. 471 should remain the focus of action. At NCHLA’s Action Center you can find an Action Alert and a form to send e-mail directly to your two Senators. See: nchla.org/actiondisplay.asp?ID=233.

Presidential Council on Bioethics: On May 10, 2005, the President’s Council on Bioethics released a White Paper titled “Alternative Sources of Human Pluripotent Stem Cells.” This paper investigates the scientific, ethical and practical aspects of four current proposed methods of deriving stem cells without destroying human embryos. See: bioethics.gov/reports/white_paper/alternative_sources_white_paper.pdf.

19. Terri Schiavo Dies

On Thursday, March 31, 2005, Terri Schindler Schiavo, a Florida woman at the heart of a controversy over withholding nutrition and hydration from people with cognitive disabilities, died as the result of a court-ordered starvation and dehydration. From March 18, 2005, onward it was not lawful to give her any food or water.

As options to save her were being exhausted at the state level, Congress began to act to help Terri Schiavo. Two general legislative approaches were pursued. The first was an effort to extend federal habeas corpus protection to her. Later this approach was replaced by one designed to take her case out of state court and move it into federal court.

In addition to legislation, Congress sought to preserve her life by issuing a subpoena for her to appear at a hearing.

Extension of Federal *Habeas Corpus* Protection

House: On March 8, 2005, Rep. Dave Weldon (R-FL) along with 138 cosponsors introduced the Incapacitated Persons Legal Protection Act of 2005 (H.R. 1151). The bill would

extend federal *habeas corpus* protection to an incapacitated person in situations where the person's life was endangered and no valid advanced medical directive was in effect. H.R. 1151 was referred to Subcommittee on the Constitution of the House Judiciary Committee. No further action was taken.

Senate: On March 7, 2005, Sen. Mel Martinez (R-FL) introduced the identical legislation in the Senate (S. 539). The measure had 14 cosponsors. S. 539 was read twice and placed on the Legislative Calendar. No further action was taken.

Removal of Case from State to Federal Court: First Bills

House: On March 16, 2005, Rep. James Sensenbrenner (R-WI) introduced the Protection of Incapacitated Persons Act of 2005 (H.R. 1332). The bill had 13 cosponsors and was passed by voice vote on the same day. H.R. 1332 did not mention Terri Schiavo by name, but was intended as more general legislation. The bill would allow the removal of the case from state court to federal court, and would direct the federal court to conduct a *de novo* review, essentially rehearing the case from the beginning. After passage by the House, H.R. 1332 was sent to the Senate on March 17, 2005, where it was read twice and referred to the Judiciary Committee. No further action was taken.

On March 17, 2005, the House adjourned with the next scheduled session to take place on Monday, March 21, 2005.

Senate: On March 17, 2005, Sen. Mel Martinez along with 19 cosponsors introduced S. 653, specifically allowing the parents of Terri Schiavo to have her case heard in the United States District Court for the Middle District of Florida. S. 653 also directed the court to perform a *de novo* review of the case.

On a voice vote, S. 653 was passed by the Senate that day and was sent to the House, where it was received on March 20, 2005. No further action was taken on S. 653.

On March 17, 2005, the Senate adjourned with the next scheduled session on Monday, March 21, 2005.

Although both the House and Senate had each acted, neither had passed a common bill that the President could sign.

Removal of Case from State to Federal Court: Law

By order of a state court in Florida, Terri Schiavo's feeding tube was removed in the early afternoon of Friday, March 18, 2005. The judge rejected a subpoena issued by the U. S. House of Representatives Committee for Government Reform that was intended to protect her well being so that she could appear as a witness at a special hearing the following week.

Due to the urgency of the situation, extensive negotiations continued between members of the

House and Senate and resulted in an agreement on the language of a single bill. Although originally scheduled to be in recess, the House and Senate held special sessions to address the issue.

Senate: On March 20, 2005, a slightly modified version of S. 653 was introduced by Sen. Bill Frist (R-TN) as S.686. A change was made to reduce ambiguity in the instructions given to the federal district court. The new bill was passed by voice vote and it was sent to the House for consideration.

House: On March 21, 2005, shortly after midnight, the House passed S. 686, 203-yes, 58-no, 174- not voting (Roll Call 90). Two-thirds of those voting were required for passage. Since the House and Senate versions of the bill were identical, the measure went directly to the President for his signature.

Executive: In the early morning of March 21, 2005, President Bush signed S. 686 into law (Public Law 109-3).

Federal Judiciary

Prior to the passage of S. 686 into law, an Emergency Petition for Temporary Injunction and Petition for a Writ of Habeas Corpus were filed on March 18 in U.S. District Court, Middle District of Florida. On the same day, these petitions were denied by a judge finding in part that the federal district court lacked jurisdiction in the matter and that there was “not a substantial likelihood” of success based on federal constitutional claims. The decision was immediately appealed to the U. S. Court of Appeals for the Eleventh Circuit located in Atlanta, GA.

On March 21, 2005, following the passage of S. 686, the Court of Appeals issued an order overturning the decision and sending the case back to the district court. The parents of Terri would be permitted to “raise any claim or claims they wished to pursue under the special legislation signed into law by President Bush earlier today...” Although a request by her parents to temporarily restore “food, fluids, and medical treatment necessary to sustain her life” was denied, the appeals court said that in light of the new law the matter could be raised in the district court.

Also on March 21, 2005, another suit was filed in the Middle District of Florida to protect Terri Schiavo’s life. A motion was made for a temporary restraining order that would allow Ms. Schiavo to be transported to a hospital for treatment. A hearing on the motion was held the same day.

On March 22, 2005, the judge denied the motion for a temporary restraining order and this decision was immediately appealed to the U.S. Court of Appeals for the 11th Circuit. A revised version of the initial suit was also filed in district court.

On March 23, 2005, a three-judge panel on the court of appeals voted 2 to 1, to uphold the decision of the lower court not to grant a temporary restraining order to protect Terri Schiavo. A petition was then made to have the appeals court consider the case, en banc, before all 12 active judges of the court. According to procedure each of the 12 active judges voted on the matter. The vote was 10 to 2 to deny the request to reconsider the case before the full court.

The matter was then appealed to the U.S. Supreme Court. On March 24, Justice Kennedy refused to overturn the ruling by the appeals court.

On March 24, 2005, a second motion for a temporary restraining order and a second revised version of the suit were filed back in district court. A hearing was held on the new request for a temporary restraining order.

On March 25, 2005, a district court judge again denied the motion for a temporary restraining order and this decision was quickly appealed. A three-judge panel on the court of appeals also denied the request. Another brief was then quickly filed in appeals court asking for a reversal of the district court decision.

On March 29, 2005, the appeals court granted permission for an emergency petition to be filed asking for a rehearing of the case *en banc* and for consideration of emergency action to be taken for Ms. Schiavo. On that same day, however, the judges voted 9 to 2 to deny a rehearing *en banc*. One judge was unable to take part in the voting because he was recovering from a surgical procedure. The motion requesting emergency action to protect Terri Schiavo was also denied.

On March 30, 2005, after a further appeal to the Supreme Court, Justice Kennedy again denied a request to overturn the actions of the lower courts.

Terri Schiavo Dies

On Thursday, March 31, 2005, Terri Schindler Schiavo died as the result of court-ordered starvation and dehydration.

What happened to Terri Schiavo is tragic.

Cardinal William Keeler, chairman of the Bishops' Committee for Pro-Life Activities, issued a statement mourning Terri Schiavo's tragic death. The Cardinal cited the teaching of Pope John Paul II that "the administration of food and water, even when provided for artificial means, should be considered 'morally obligatory' as long as it provides nourishment and alleviates suffering for such patients." The Cardinal went on to state, "Ours is a culture in which human life is increasingly devalued and violated, especially where that life is most weak and fragile." He concluded, "May the soul of Theresa Marie Schindler Schiavo rest in the peace and mercy of God. And may God have mercy on our society which failed to protect this innocent human life." For the Cardinal's full statement, see: www.usccb.org/comm/archives/2005/05-075.shtml.

20. Umbilical Cord Blood and Bone Marrow Banks

Background: Measures were introduced in both the House and Senate to promote collection of and transplantation and research using umbilical cord blood or bone marrow both of which contain stem cells.

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. Similarly, bone marrow tissue contains adult stem cells and is obtained without destroying human lives. Bone marrow transplants treating diseases such as leukemia have been performed regularly for a number of years.

House: On February 2, 2005, Rep. Chris Smith (R-NJ) introduced the Cord Blood Stem Cell Act of 2005 (H.R. 596). This measure has 49 cosponsors and was referred to the House Energy and Commerce Subcommittee on Health.

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, and it would complement conventional bone marrow transplantation.

H.R. 596 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, 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. H.R. 596 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 2006, \$30 million for Fiscal Year 2007 and such sums as are necessary for Fiscal Year 2007 through 2010 or until the 150,000 unit inventory is acquired.

On May 23, 2005, Rep. Chris Smith (along with 78 cosponsors) introduced another bill, the Stem Cell Therapeutic and Research Act (H.R. 2520). The measure establishes a transplantation program similar to the one contained in H.R. 596 with the exception that bone marrow samples are also available. Cord blood samples not suitable for clinical use would be available for research. H.R. 2520 creates a database that tracks outcomes related to patients who have received a treatment using a "stem cell therapeutics product," defined as one using "bone marrow, cord blood or other such product." The bill authorizes \$28 million for Fiscal Year 2006 and \$32 million for each of Fiscal Years 2007 through 2010.

On May 24, 2005, in conjunction with debate on another measure (H.R. 810) (see Stem Cell Research above), the House voted to suspend the rules and pass H.R. 2520, 431-yes, 1-no, 2-not voting (two-thirds vote required) (Roll Call 205). The measure has been received by the Senate. No further action has been taken.

Senate: On March 17, 2005, Sen. Orrin Hatch (R-UT) introduced the Cord Blood Stem Cell Act of 2005 (S. 681). Very similar to the house bill by the same name, S. 681 authorizes \$15 million for Fiscal Year 2006, and such sums as are necessary for Fiscal Year 2007 through 2010. This measure

has 11 cosponsors and was referred to the Committee on Health, Education, Labor and Pensions.

On June 27, 2005, Sen. Hatch introduced a new bill, the Bone Marrow and Cord Blood Therapy and Research Act (S.1317). The measure was referred to the Committee on Health, Education, Labor, and Pensions and has 30 cosponsors. For enhanced Cord Blood Inventory, also aiming at a 150,000 unit inventory, S. 1317 authorizes \$15 million each year for Fiscal Years 2007 through 2010 (funds already appropriated for Fiscal Years 2004 or 2005 remain available). For a Bone Marrow and Cord Blood Transplantation Program, the bill authorizes \$34 million for Fiscal Year 2005 and \$38 million each year for Fiscal Years 2007 through 2010.

Committee: On June 29, 2005, the Committee on Health, Education, Labor and Pensions marked up S. 1317 and, after adopting a substitute amendment that incorporated the provisions of S. 681 and the House-passed H.R. 2520, approved the bill by voice vote. The final text of S. 1317 was worked out in consultation with House Members. Sen. Hatch stated “he expects the House to pass the legislation once the full Senate passes it” (*CQToday*, 6/30/05, p. 13).

Floor: On July 11, 2005, S. 1317 was placed on the Senate calendar. On October 24, 2005, the House-passed H.R. 2520 also was placed on the Senate calendar.

Senate Majority Leader Bill Frist (R-TN) has been trying to secure a unanimous consent agreement to bring a package of stem cell research bills to the floor. See Stem Cell Research above. A cord blood bill would be part of this package.

On December 15, 2005, Senate Majority Leader Bill Frist (R-TN) asked for a unanimous consent request to consider H.R. 2520. Sen. Tom Harkin (D-IA) objected. He wanted to consider H.R. 2520 only in connection with a bill promoting embryonic stem cell research (H.R. 810). Sen. Frist responded saying that H.R. 810 was controversial and would require substantial debate, but H.R. 2520 has broad bipartisan support and can help patients now. The passage of H.R. 2520 should not be delayed. Sen. Frist again pledged to bringing the package of bill to the Senate floor “early” next year.

On December 16, 2005, Sen. Frist again moved for consideration of H.R. 2520. This time there was no objection. The text of the House-passed H.R. 2520 was struck from the bill and the text of Senate Amendment 2688 (identical to the text of S. 1317, already pre-conferenced with the House) was inserted in its place. As amended, H.R. 2520 passed without objection.

House: On December 17, 2005, the House suspended the rules and passed H.R. 2520, 413-yes, 0-no (Roll Call 664).

Executive: On December 20, 2005, President Bush signed the measure into law (Public Law 109-129).

After attending the signing, Richard Doerflinger, Deputy Director of the USCCB Secretariat for Pro-Life Activities, issued a statement in which he expressed gratitude to Congress and the President for enacting the life-saving legislation without further delay. “In the last days of this

session . . . Congress agreed on the kind of stem cell treatments that can begin saving patients' lives here and now." Mr. Doerflinger concluded his remarks: "As Christians celebrate the birth of Jesus, how appropriate that we can also celebrate the medical miracles made possible by cord blood retrieved immediately after live births." Enactment of this bill is "a wonderful Christmas present to patients in need." For Mr. Doerflinger's full remarks, see: www.usccb.org/comm/archives/2005/05-290.shtml.

21. 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. The Unborn Child Pain Awareness Act was first introduced in Congress in 2004.

House: On January 25, 2005, Rep. Chris Smith (R-NJ) introduced the Unborn Child Pain Awareness Act in the House (H.R. 356); the measure has 127 cosponsors, and was referred to the Health Subcommittee of the Energy and Commerce Committee. For Rep. Smith's introductory statement:

frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H175&dbname=2005_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.

Hearing: On November 1, 2005, the House Constitution Subcommittee held an oversight hearing titled "Pain of the Unborn." Experts from the medical and legal fields addressed issues related to H.R. 356. For testimony, see: judiciary.house.gov/oversight.aspx?ID=201.

Senate: On January 24, 2005, Sen. Sam Brownback (R-KS) introduced the companion bill in the Senate (S. 51); the measure has 34 cosponsors, and was referred to the Committee on Health, Education, Labor, and Pensions. For Sen. Brownback's initial floor statement: frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_record&page=S512&position=all.

22. UNFPA Funding

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 Administration, 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. In 2004, the Kemp- Kasten Amendment was signed into law as part of the Fiscal Year 2005 Omnibus Appropriations Bill (Public Law 108-447).

Between-sessions Hearing: On December 14, 2004, after adjournment of the 108th Congress, 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.

House: On June 16, 2005, during consideration of the Fiscal Year 2006 Science, State, Justice, Commerce Appropriations Bill (H.R. 2862), Rep. Carolyn Maloney (D-NY) offered an

amendment that would exempt U.S. funds given to the United Nations Population Fund (UNFPA) from any regulations in U.S. law. The UNFPA supports China's coercive population control program and in this circumstance U.S. law allows the president to deny funding. *The Maloney amendment was rejected, 192-yes, 233-no, 8-not voting (Roll Call 266).*

Senate: The Senate version of the Fiscal Year 2006 Foreign Operations Appropriations Bill (H.R. 3057), approved on July 20, 2005, contained language that would overturn the Mexico City Policy (see above) and weakens the Kemp-Kasten Amendment. The president stated that if these provisions remained in H.R. 3057, he would veto the bill. The offending language was removed in conference. On November 14, 2005 the president signed H.R. 3057 into law with the Kemp-Kasten Amendment intact (Public Law 109-102).

Administration: On September 17, 2005, the U.S. State Department announced that the UNFPA was not eligible to receive the \$34 million appropriated for them for Fiscal Year 2005. Since 2002, "we have continuously called on China to end its program of coercive abortion. We have also 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." The Department's press release concludes: "However, since no key changes have taken place, these restrictions [the Kemp-Kasten Amendment] are being applied again." See: www.state.gov/r/pa/prs/ps/2005/53375.htm

In a statement of commendation for this action, Rep. Chris Smith (R-NJ) noted that the funds can be redirected elsewhere. "If only UNFPA would lobby the Chinese government to prohibit forced abortions as aggressively as they lobby the United States to overturn the law against coercion, there would be less suffering in China right now." Also see the September 12 *Time* magazine story, "Enemies of the State? How local officials in China launched a brutal campaign of forced abortions and sterilizations."

Resources:

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.

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.