

National Committee for a Human Life Amendment

In January 2008 the Second Session of the 110th Congress was convened. Legislation was carried over from the First Session. For the end-of-year status of carry-over legislation, please consult the final legislative report for 2007.

Information related to federal legislation -- text of bills, hearing testimony, committee reports, floor debates in the *Congressional Record*, roll call of floor votes, and the like -- is available on the Library of Congress website: **thomas.loc.gov**.

This legislative report is divided into two main sections: Highlights (general overview) and Review of Legislation (detailed information).

Congress adjourned on October 3, 2008, but returned after the elections for a lame-duck session. Congress technically stayed in session through the end of 2008.

I. HIGHLIGHTS**1. Fiscal Year 2009 Appropriations Bills**

When Fiscal Year 2009 began October 1, 2008, Congress had passed only three of the twelve must-pass Fiscal Year 2009 appropriations bills. These three bills were part of a measure (H.R. 2638) that also included a Continuing Resolution extending funding for the nine other appropriations bills until March 6, 2009. By that date Congress again will have to provide appropriations for these nine bills for the remainder of Fiscal Year 2009, that is, through September 30, 2009. The President signed H.R. 2638 into law on September 30, 2008 (Public Law 110-329).

2. Freedom of Choice Act

The Freedom of Choice Act (FOCA) was again introduced in Congress (H.R. 1964, S. 1173). According to this bill, a government may not “deny or interfere with a woman’s right to choose” to bear a child or terminate a pregnancy, nor may it “discriminate against the exercise” of this right “in the regulation or provision of benefits, facilities, services, or information.” A person whose fundamental right to choose has been violated may seek relief through civil action, including against a government. The Act applies to *all* actions taken by Federal, State and local governments “before, on, or after the date of enactment of this Act.”

FOCA is a radical bill. If enacted, it would eliminate a broad range of existing abortion laws, significantly impede the ability of the government to regulate abortion, and override nearly 40 years of jurisprudential experience on abortion. Examples of the kinds of laws FOCA would overthrow include: informed consent laws; parental involvement laws; laws promoting maternal health; abortion clinic regulations; government programs and facilities that pay for or promote childbirth and other health care services without subsidizing abortion; conscience protection laws; laws prohibiting a particular abortion procedure (e.g., partial birth abortion); laws requiring

that abortions only be performed by a licensed physician; and so on. FOCA would go well beyond *Roe*, imposing on the country an abortion regime that would be far worse. “It is difficult to recall any other single piece of legislation that, in a single stroke, would have such a comparable destructive impact on the government’s ability to regulate abortion.” Michael Moses, Office of General Counsel, U.S. Conference of Catholic Bishops, *Memorandum*, August 15, 2008. See: www.nchla.org/docdisplay.asp?ID=190. A summary fact sheet for general use (“The ‘Freedom of Choice Act’: Most Radical Abortion Legislation in U.S. History”) can be found at: www.nchla.org/docdisplay.asp?ID=194.

In a September 19, 2008 letter to Members of Congress, Cardinal Justin Rigali, Chairman of the USCCB Committee on Pro-Life Activities, raised grave concerns about any possible consideration of FOCA. The bill would remove from the states the freedom they now have to place modest restraints on the abortion industry and would run counter to any efforts by government to reduce abortion. The Cardinal declared: “We can’t reduce abortions by promoting abortion.” For full text of the letter, see: www.usccb.org/prolife/FOCARigaliltr.pdf.

3. Conscience Protection Regulation

Proposed Regulation Leaked: In a July 15, 2008 story, the *New York Times* reported that it had obtained a copy of a draft conscience regulation that was being circulated internally by the Department of Health and Human Services. Abortion advocates immediately attacked the reported regulation. In a July 18, 2008 letter to Congress, Cardinal Justin Rigali, Chairman of the USCCB Committee on Pro-Life Activities, responded to the claims of the critics, pointing out the need for a greater understanding of the existing conscience protection laws as well as the need to ensure that the laws are observed. For a press release and link to text of the Cardinal’s letter, see: www.usccb.org/comm/archives/2008/08-106.shtml.

Proposed Regulation Published: On August 26, 2008 the Department of Health and Human Services (HHS) published a proposed regulation implementing three existing federal conscience protection laws. For the text of these laws, see: nchla.org/docdisplay.asp?ID=189. For the proposed regulation, see: www.nchla.org/docdisplay.asp?ID=185. For an HHS press release, see: www.hhs.gov/news/press/2008pres/08/20080821a.html.

The U.S. Conference of Catholic Bishops’ spokesperson, Deirdre McQuade, welcomed the proposed regulation, noting that the enforcement of federal laws protecting the freedom of conscience “is long overdue.” See: www.usccb.org/comm/archives/2008/08-118.shtml.

The proposed regulation does not change the basic scope of the federal laws, but clarifies key terms and offers practical steps for better enforcement in an area of fundamental civil rights.

On September 12, 2008 the U.S. Conference of Catholic Bishops submitted its formal comments to HHS. The Secretary was commended for promulgating the proposed regulations. “It is critically important, as the Secretary has recognized, that statutory rights of conscience be enforced.” The USCCB urged that abortion “be defined to include any drug, procedure, or other act that the objector reasonably believes may result in the destruction of the embryo *in utero* at any time between conception and natural birth.” For the full statement, see:

www.usccb.org/ogc/pl-hhs-conscience2.pdf. For press release, “USCCB Applauds Proposed Conscience Regulations from HHS,” see: www.usccb.org/comm/archives/2008/08-136.shtml.

Regulation Promulgated: On December 18, 2008, HHS issued the final regulation protecting conscience rights. See, “HHS Issues Final Regulation to Protect Health Care Providers from Discrimination,” at: www.hhs.gov/news/press/2008pres/12/20081218a.html. On December 19, 2008, the regulation was formally published in the *Federal Register* (Vol. 73, No. 245, 78072-78101). The regulation takes effects 30 days after this publication date. USCCB spokesperson, Deirdre McQuade, expressed thanks to HHS Secretary Leavitt for issuing this regulation, and added: “We urge the incoming Congress and Administration to honor this much-needed implementation of longstanding laws.” See: “Bishops Welcome HHS Regulation Protecting Conscience Rights in Health Care,” at: www.usccb.org/comm/archives/2008/08-203.shtml.

4. Indian Health Service Reauthorization

Congress considered legislation to reauthorize the Indian Health Service (IHS) for 10 years. On February 26, the Senate passed its version of the reauthorization bill, the Indian Health Care Improvement Act Amendments (S. 1200). Prior to final passage, the Senate voted, 52-yes, 42-no, to approve an amendment by Sen. David Vitter (R-LA) that incorporates the Hyde Amendment abortion funding policy into the bill (no federal funds for abortion, except when the mother’s life is endangered or in cases of rape or incest). The Vitter Amendment corrects an awkward and anomalous procedure in current law, whereby the IHS authorizing legislation specifies by reference that the abortion funding policy in the appropriations bill for the Department of Health and Human Services at any time will apply to the IHS during that time. The Vitter Amendment places the Hyde abortion funding policy directly in the authorizing law, thus removing the policy from the uncertainty and possible alterations in an unrelated and changeable appropriations bill.

Rep. Joseph Pitts (R-PA) was prepared to offer the same amendment to the House companion bill (H.R. 1328), but the House did not act on the measure before adjournment.

5. Measures Signed into Law

(a) GINA: On May 21, the President signed the Genetic Information Nondiscrimination Act (GINA) (H.R. 493) into law (Public Law 110-233). This measure prevents misuse of genetic information “to discriminate in health insurance and employment” (Sec. 2).

In a February 12, 2007 letter to Congress, Cardinal Justin Rigali, Chairman of the Bishops’ Committee on Pro-Life Activities, had raised a concern that the bill may not address discrimination against families “based on the preimplantation or prenatal genetic testing of their child, or genetic testing performed on an adoptive child before an adoption is completed.” See: www.usccb.org/comm/archives/2007/07-032.shtml.

Before passage of its bill, the House included needed corrections proposed by Rep. Bart Stupak (D-MI), applying GINA’s protections to the “Genetic Information of a Fetus or Embryo” and

referencing existing federal law's definition of a dependent, which includes children placed for adoption. The Senate's version of H.R. 493 incorporated the improved House language.

In a statement praising the Senate's action, U.S. Catholic Conference spokesperson, Deirdre McQuade, expressed special gratitude to Rep. Stupak "for ensuring that this bill's protection against discrimination will cover the families of unborn children with adverse prenatal diagnoses, as well as children being adopted." For the full statement, see: www.usccb.org/comm/archives/2008/08-057.shtml.

(b) PEPFAR: On July 30, 2008, the President signed a reauthorization for the President's Emergency Plan for AIDS Relief (PEPFAR) into law (Public Law 110-293). Before reaching this successful conclusion, the bill had to undergo significant improvements.

On January 18, 2008, the House Foreign Affairs Committee proposed a seriously flawed reauthorization bill. Instead of retaining the program's exclusive focus on the threat of HIV/AIDS, the bill referred to a "dual threat" to women's lives from HIV/AIDS *and* pregnancy.

Bishop Thomas Wenski, Chairman of the USCCB Committee on International Justice and Peace, and Mr. Ken Hackett, President of Catholic Relief Services, wrote to the Committee, voicing their strong support for PEPFAR and welcoming improvements in the draft bill, such as a major increase in funding. However, they criticized the bill for integrating HIV/AIDS programs with "reproductive health" and family planning programs, eliminating the specific allocation of funds for prevention programs focused on abstinence and fidelity, and eliminating a provision requiring grantees to pledge their opposition to prostitution and sex trafficking.

By the day of markup on February 27, 2008, White House officials and members from both parties reached agreement on a compromise bill, the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (H.R. 5501). All references to "reproductive health" were removed. HIV/AIDS programs were not called upon to facilitate access to family planning, but could facilitate access to HIV/AIDS services for the clients of family planning programs "supported by the U.S. government" (that is, programs currently covered by the Mexico City policy against promoting abortion). A compromise provision allocating funds for abstinence and fidelity programs was included, and the pledge against prostitution and sex trafficking was retained. This improved bill was approved by the House on April 2, 2008 by a vote of 308-yes, 116-no.

On March 13, 2008, the Senate Foreign Affairs Committee marked up a measure that was similar to the House bill but eliminated *all* references to family planning programs. A final "manager's amendment" further strengthened "conscience" protection for faith-based grantees, and clarified the bill's allocation for abstinence and fidelity programs. On July 16, 2008, the Senate passed its version of H.R. 5501, 80-yes, 14-no. On July 24, 2008, the House accepted the Senate bill and the measure was sent to the President for his signature.

6. Foreign Aid Policies

(a) UNFPA: Fiscal Years 2008 and 2009 Funding

Fiscal Year 2008: On June 26, 2008, the U.S. Department of State informed Congress of its determination that the United Nations Population Fund (UNFPA) continued to support China's coercive population control program and as a result thus will again be ineligible to receive the nearly \$40 million appropriated for the UN agency for Fiscal Year 2008. The State Department was applying the Kemp-Kasten Amendment as contained in the Consolidated Appropriations Act, 2008 (Public Law, 110-161), according to which U.S. funding is denied "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." See a June 27, 2008 press release at: 2001-2009.state.gov/r/pa/prs/ps/2008/jun/106348.htm.

Fiscal Year 2009: However, Congressional committees prepared legislation that would fund the UNFPA in Fiscal Year 2009. On July 16, 2008, the House Appropriations Subcommittee on State, Foreign Operations marked up the Fiscal Year 2009 State, Foreign Operations Appropriations Bill (not numbered). The subcommittee's bill gave the UNFPA a special exemption from the Kemp-Kasten Amendment and awarded the UN agency \$60 million for Fiscal Year 2009. During markup Rep. Dave Weldon (R-FL) offered an amendment to block the UNFPA exemption but his amendment failed. Rep. Weldon later stated: "For years we have sought to protect women and children in China because it was morally wrong to support China's forced abortion program. . . . This is a despicable policy change."

On July 17, 2008, the Senate Appropriations Committee approved its Fiscal Year 2009 State/Foreign Operations Appropriations Bill (S. 3288). Like the House subcommittee, it provided funding for the UNFPA, though at the lower level of \$45 million.

(b) Mexico City Policy

When the Senate Appropriations Committee approved the Fiscal Year 2009 State/Foreign Operations Appropriations Bill (S. 3288) on July 17, 2008, it included a provision to overturn the Mexico City Policy, the Administration policy that denies U.S. funding to overseas organizations that perform or promote abortion as a method of family planning.

(c) Continuing Resolution

Funding for the Fiscal Year 2009 State/Foreign Operations Appropriations Bill was included in the Continuing Resolution (H.R. 2638) that extended Fiscal Year 2008 funding to March 6, 2009. The President signed H.R. 2638 into law on September 30, 2008 (Public Law 110-329). Pro-life policies were unchanged but would be open to reconsideration in early 2009.

(d) Resolution Opposing China's Coercive Population Control Policy

On July 30, 2008, the House overwhelmingly approved a resolution (H.Res. 1370) calling on China immediately to end human rights abuses so as to ensure "the Beijing 2008 Olympic Games take place in an atmosphere that honors the Olympic traditions of freedom and openness." In committee Rep. Chris Smith (R-NJ) had successfully added an amendment to the resolution that urged China "to abandon its coercive population control policy." The July 30,

2008, floor debate on H.Res. 1370 can be found in the *Congressional Record*, H7344-5. For links to *Congressional Record*, see: thomas.loc.gov/home/r110query.html.

7. Speeches Question Abortion Industry Tax Support

On July 9, 2008, Rep. Chris Smith (R-NJ) and 10 other House Members spoke for 60 minutes under a Special Order, asking the question why federal funds are being used to subsidize the abortion industry. “Indeed, America’s biggest abortion chain is Planned Parenthood. Each year, approximately 290,000 children are aborted in Planned Parenthood clinics. Each year Planned Parenthood gets more than \$335 million in taxpayer funds,” stated Rep. Smith. The Special Order speeches can be found at *Congressional Record*, July 9, 2008, H6320-6. For links to *Congressional Record*, see: thomas.loc.gov/home/r110query.html.

8. Annual Budget Resolution

On March 13, 2008, during consideration of the annual Budget Resolution (S. Con. Res. 70), the Senate voted on amendments related to the Child Custody Protection Act (CCPA) and the State Children’s Health Insurance Program (SCHIP).

CCPA: The CCPA would make it a federal crime for a person to transport a minor girl across state lines for an abortion with the intent of circumventing the parental involvement laws of the girl’s home state. On January 22, 2008, Sen. John Ensign (R-NV) introduced the CCPA (S. 2543); the bill had 28 cosponsors. Sen. Ensign proposed an amendment to S. Con. Res. 70 to increase funding to enforce the CCPA in the event the bill was enacted into law. The Ensign Amendment failed on a tied vote, 49-yes, 49-no.

SCHIP: SCHIP provides health insurance for low-income children. S. Con. Res. 70 made reference to the possibility of funding SCHIP through 2013 and of covering more children. Sen. Wayne Allard (R-CO) offered an amendment to define “child” to include “the period from conception to birth.” Sen. Allard was trying to codify a 2002 “unborn child” regulation that allows states to provide prenatal care and other health services to an unborn child and the child’s pregnant mother. The Allard Amendment was defeated, 46-yes, 52-no.

II. REVIEW OF LEGISLATION

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

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

However, authorization bills do not provide the money. That is the function of the annual

appropriations bills, currently 12 in number. Within annual budget targets, these bills “appropriate” the actual amount of money to be spent on various authorized agencies and programs each fiscal year (October 1 to September 30). This amount may well be below the authorized ceiling. Congress also passes short-term and supplemental appropriations bills. Sometimes Congress appropriates funds for programs or agencies whose authorization has lapsed. And sometimes Congress attaches policy riders to the appropriations bills. A number of policies prohibiting government funding of abortion exist as riders or amendments that must be enacted into law each year as part of an appropriations bill.

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

A. Appropriations Bills

1. Annual Budget Resolution

On March 13, 2008, during consideration of the annual Budget Resolution (S. Con. Res. 70), the Senate voted on a variety of diverse amendments, including amendments related to the Child Custody Protection Act (CCPA) and the State Children’s Health Insurance Program (SCHIP).

Child Custody Protection Act: The CCPA would make it a federal crime for a person to transport a minor girl across state lines for an abortion with the intent of circumventing the parental involvement law of the girl’s home state. In 2006, the Senate passed the CCPA, 65-yes, 34-no, but the measure never became law.

During the course of debate on S. Con. Res. 70, Sen. John Ensign (R-NV) proposed an amendment (No. 4335) to increase funding for the Department of Justice to enforce the CCPA in the event the bill was enacted into law. “So what we want to do is set up a reserve fund so that if the law is passed, we will have the money there to enforce it” (*CR 3/13/08, S2069*). Sen. Barbara Boxer (D-CA) offered an amendment (No. 4368) that would increase funding to enforce laws protecting children generally. Sen. Boxer described her amendment “as a substitute for the Ensign amendment” (*CR 3/13/08, S2069*).

In itself, the Boxer Amendment was not especially controversial. It was voted on first and passed, 90-yes, 5-no, 5-not voting (Roll Call 90). Sen. Ensign made note of the fact that he voted for the Boxer Amendment.

The Ensign Amendment was voted on second and failed on a tied vote, 49-yes, 49-no, 2-not voting (Roll Call 71).

State Children’s Health Insurance Program: SCHIP provides health insurance for low-income children. In 2007, efforts to reauthorize SCHIP for five years resulted in a stalemate. At year’s end, a bill was signed into law to extend funding at current levels to March 1, 2009.

Since 2002, regulations have defined SCHIP coverage to include children from conception to birth, allowing states the option of providing prenatal care and other health services to the child

and the child's pregnant mother. Attempts in 2007 to incorporate this option into the authorizing legislation were not successful. On August 2, 2007, Sen. Wayne Allard (R-CO) offered an amendment for this purpose but it narrowly failed, 49-yes, 50-no, 1-not voting (Roll Call 302).

S. Con. Res. 70 made reference to the possibility of funding SCHIP through 2013 and to covering more children. Similar to his effort in 2007, Sen. Allard offered an amendment to define child to include "the period from conception to birth" (Amend. No. 4233). Sen. Boxer offered an amendment to expand coverage for "pregnant women" (Amend. No. 4379).

The Boxer Amendment places a pregnant woman under the definition of child. Sen. Allard said that his amendment would codify the unborn child rule "and will not include a pregnant woman in the definition of a child" (CR 3/13/08, S2084).

The Senate passed the Boxer Amendment, 70-yes, 27-no, 3-not voting (Roll Call 80), but failed to approve the Allard Amendment, 46-yes, 52-no, 2-not voting (Roll Call 81).

For background on the unborn child and pregnant woman coverage options, see the October 29, 2007 policy letter (fact sheet attached) from Bishop Nicholas DeMarzio, Chairman of the Bishops' Domestic Policy Committee, at: nchla.org/datasource/idocuments/10SenSCHIPLetwsign29.07.pdf.

2. UNFPA: Fiscal Years 2008 and 2009 Funding

Background: From the mid-1980's to the present, the annual appropriations bills for foreign affairs have contained language called the Kemp-Kasten Amendment, a provision that denies funding "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." At issue is the support the United Nations Population Fund (UNFPA) gives to China's coercive population control program. Presidents Reagan, G. H. W. Bush, and G. W. Bush have determined that the UNFPA was involved with the China program and denied funding. President Clinton interpreted the law to mean "direct" support or participation and resumed the funding, even though the law applies to all support or participation without resort to a distinction between "direct" and "indirect." For the legislative history of this amendment, see: nchla.org/datasource/idocuments/KempK8503.pdf. Also see NCHLA's Fact Sheet on the UNFPA at: nchla.org/factdisplay.asp?ID=21.

Fiscal Year 2008 UNFPA Funding: On June 26, 2008, the U.S. Department of State informed Congress of its determination that the United Nations Population Fund (UNFPA) continued to support China's coercive population control program and as a result again will be ineligible to receive the nearly \$40 million appropriated for the UN agency for Fiscal Year 2008. The State Department was applying the Kemp-Kasten Amendment as contained in the Consolidated Appropriations Act, 2008 (Public Law, 110-161), according to which U.S. funding is denied "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: Provided further, That any determination made under the previous proviso must be made no later than six months after the date of enactment of this Act, and must be accompanied by a

comprehensive analysis as well as the complete evidence and criteria utilized to make the determination.” The latter proviso was added in Fiscal Year 2008. As a result, Deputy Secretary of State, John Negroponte, sent to Congress a detailed report accompanying the determination. That report documented that China’s family planning laws employ coercive elements, noting that major riots broke out in May 2007 in Guangxi Province after family planning officials harshly enforced family planning laws, including use of physically forced abortions and imposition of heavy social fees, destruction of homes, and confiscation of property. The report documents the efforts that were made to determine UNFPA’s participation in the China program and concluded that UNFPA continues to provide support for and to participate in the management of the program. The report notes that during its evaluation of the UNFPA’s work, the State Department learned of other organizations that conduct activities in China and was analyzing what legal action might be appropriate in these cases. In a June 27 press release, the State Department stated: “This Administration first determined that Kemp-Kasten Amendment restrictions applied to the UN Population Fund in 2002. Since that time, the United States has continuously called on China to end its program of coercive abortion and involuntary sterilization. We also repeatedly have urged China and the UN Population Fund to restructure the organization’s program in China in a way that would allow the United States to provide funding. We will continue these consultations. Since no key changes have taken place, these restrictions are being applied again.” See: 2001-2009.state.gov/r/pa/prs/ps/2008/jun/106348.htm.

Fiscal Year 2009 Funding: On July 16, 2008, the House State, Foreign Operations Appropriations Subcommittee marked up the Fiscal Year 2009 State, Foreign Operations Appropriations Bill (not numbered). Subcommittee Chairwoman Nita Lowey (D-NY) submitted a bill to the subcommittee that retained the Kemp-Kasten Amendment but, at the same time, gave the UNFPA a special exemption from the amendment and awarded the UN agency \$60 million for Fiscal Year 2009. This amount represents a 50% increase over the \$40 million Congress appropriated to the UNFPA in Fiscal Year 2008. During markup Rep. Dave Weldon (R-FL) offered an amendment to block the UNFPA being made exempt from the Kemp-Kasten Amendment but his amendment failed. Rep. Weldon later stated: “For years we have sought to protect women and children in China because it was morally wrong to support China’s forced abortion program. Now the Democrat Majority in the House has voted to change existing law and send millions of dollars to UNFPA and turn a blind eye to the egregious human rights violations that UNFPA promotes in China. This is a despicable policy change.”

On July 17, 2008, the Senate Appropriations Committee approved its Fiscal Year 2009 State/Foreign Operations Appropriations Bill (S. 3288). Like the House, it provided funding for the UNFPA, though at the lower level of \$45 million.

3. The Mexico City Policy

Background: First announced by the Reagan Administration at a population conference in Mexico City in 1984, the Mexico City Policy (MCP) provides that no U.S. population assistance funds can be given to a foreign nongovernmental organization unless it certifies that it will not perform or promote abortion as a method of family planning. The policy was overturned by President Clinton on January 22, 1993 and restored by President Bush on January 22, 2001.

Abortion advocates in Congress have been seeking ways to negate President Bush's reinstatement of the policy.

For NCHLA's "Mexico City Policy" Fact Sheet, see: nchla.org/factdisplay.asp?ID=38. For the Bishops' Secretariat for Pro-Life Activities Fact Sheet, "The Mexico City Policy (MCP): False Criticisms and the Facts," see: nchla.org/datasource/ldocuments/10MCP.FS.USCCB26.07.pdf.

Committee: On July 17, 2008, the Senate Appropriations Committee approved its Fiscal Year 2009 State/Foreign Operations Appropriations Bill (S. 3288). The bill contained language that would overturn the MCP. The corresponding House bill marked up in subcommittee did not address the MCP.

4. Continuing Resolution

Funding for the Fiscal Year 2009 State/Foreign Operations Appropriations Bill was included in the Continuing Resolution (H.R. 2638) that extended Fiscal Year 2008 funding to March 6, 2009. The President signed H.R. 2638 into law on September 30, 2008 (Public Law 110-329). Pro-life policies were unchanged but would be open to reconsideration in early 2009.

B. Authorization Bills

Issues considered below include:

1. Child Interstate Abortion Notification Act
2. Coercive Population Control Policy
3. Conscience Protection Regulation
4. Freedom of Choice Act
5. Genetic Information Nondiscrimination Act
6. Human-Animal Hybrid Prohibition Act
7. Indian Health Service Reauthorization
8. Maternal Mortality Resolution
9. Patients First Act
10. PEPFAR Reauthorization
11. Pregnant Women Support Act
12. Right to Life Act/Life at Conception Act
13. Sanctity of Human Life Act
14. Stem Cell Research
15. Subsidizing the Abortion Industry

1. Child Interstate Abortion Notification Act

Background: The Child Interstate Abortion Notification Act (CIANA) included the provisions of the Child Custody Protection Act (CCPA), a measure that would make it a federal crime to transport a minor girl across state lines for an abortion with the intent of circumventing the parental involvement law of the girl's home state. (Also see Annual Budget Resolution under

Appropriations Bills.) It also specified that an abortion provider in a state without a parental involvement law must give 24 hour notice to a parent or legal guardian before performing an abortion on a minor girl who is a resident of a different state. The House passed CIANA in 2005, 270-yes, 157-no, and again in 2006, 264-yes, 153-no. The 2005 bill contained an exception for the life of the mother. The 2006 bill added an exception for physical health.

House: On February 15, 2007, Rep. Ileana Ros-Lehtinen (R-FL) reintroduced CIANA (H.R. 1063). The bill had 136 cosponsors and was referred to two subcommittees of the House Judiciary Committee: Subcommittee on Crime, Terrorism, and Homeland Security and Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

H.R. 1063 dropped the exception for physical health. The measure retained amendments added to the Child Custody Protection Act by the Senate in 2006: a parent who commits incest with the minor may not bring a civil action under the bill; and a person who commits incest with a minor and transports the minor across a state line to obtain an abortion shall be fined or imprisoned.

Committee: On July 10, 2008, the minority on the Judiciary Committee held a forum on CIANA. Participants included Rep. Lamar Smith (R-TX), Ranking Member of the Judiciary Committee; Rep. Trent Franks, Ranking Member of the Constitution Subcommittee; Rep. Ileana Ros-Lehtinen, primary sponsor of H.R. 1063; Dr. Teresa Collett; Ms. Missy Smith; Dr. Michael New.

2. Coercive Population Control Policy

On July 30, 2008, the House voted 419-yes, 1-no, 1-present, to approve a resolution (H. Res. 1370) calling on China immediately to end human rights abuses so as to ensure “the Beijing 2008 Olympic Games take place in an atmosphere that honors the Olympic traditions of freedom and openness.”

On July 24, 2008, during markup of H. Res. 1370, the Foreign Affairs Committee had approved by voice vote an amendment by Rep. Chris Smith (R-NJ) urging China “to abandon its coercive population control policy.” A new “whereas” and resolve were added as part of H.Res. 1370. The “whereas:”

Whereas the Chinese Government limits most women to having one child and strictly controls the reproductive lives of Chinese citizens by systematic means that include mandatory monitoring of women’s reproductive cycles, mandatory contraception or sterilization, mandatory birth permits, coercive fines for failure to comply, forced abortions, and involuntary sterilization, and this coercive policy adversely affects Chinese women and has led to widespread sex-selection; and

The resolve:

Resolved, That the House of Representatives—

(13) calls on the Government of the People’s Republic of China to abandon its coercive

population control policy which includes forced abortion and involuntary sterilization; and

During floor debate, Rep. Smith affirmed the importance of including the new language to the resolution:

The Chinese government massively violates Chinese women with a state policy of mandatory monitoring of all Chinese women's reproductive cycles, mandatory birth permits, mandatory contraception or sterilization, and ruinous fines up to 10 times the annual salary of both husband and wife if they don't comply with the one-child-per-couple policy. . . . As a direct result of this egregious human rights violation, tens of millions of girls are missing today, dead, due to sex-selective abortions, creating a huge gender disparity, a new dark manifestation of genocide which is perhaps more appropriately called gendercide.

Rep. Mike Pence (R-IN) added a specific piece of evidence supporting the reality of the coercive policy:

And make no mistake about it. China's policy requires that unpermitted babies be aborted. Article 25 of the Henan Province Population and Family Planning Regulations read: "Under any of the following conditions, necessary remedial measures shall be taken and pregnancy terminated under the guidance of family planning technical service workers: Pregnancy out of wedlock, pregnancy without a certificate, or where the party already has one child."

Quotes can be found in the July 30, 2008 *Congressional Record*, H7344-5. For links to *Congressional Record*, see: thomas.loc.gov/home/r110query.html.

3. Conscience Protection Regulation

Proposed Regulation Leaked: In a July 15, 2008 story, "Abortion Proposal Sets Condition on Aid," the *New York Times* reported that it had obtained a copy of draft conscience regulations that were being circulated internally by the Department of Health and Human Services. Abortion advocates immediately attacked the reported regulations. In the House, Reps. Henry Waxman (D-CA) and others began circulating a letter for Member's signatures to urge President Bush not to issue the regulations. Ultimately 104 Members signed this letter. However, 132 House Members signed a letter urging President Bush to issue the regulations. For a copy of this letter, see: nchla.org/datasource/idocuments/071608HHSletter.pdf. For the list of signers, see: nchla.org/datasource/idocuments/8HHSsig5.08.pdf.

In a July 18, 2008 letter to Congress, Cardinal Justin Rigali, Chairman of the USCCB Committee on Pro-Life Activities, responded to the claims of the critics. The Cardinal pointed out the need for a greater understanding of the conscience protection provisions that have long been a part of federal law, and the need for regulation to ensure that the laws are observed. For a press release and link to text of the Cardinal's letter, see: www.usccb.org/comm/archives/2008/08-106.shtml.

Proposed Regulation Published: On August 26, 2008, the Department of Health and Human Services (HHS) published in the *Federal Register* (Vol. 73, No. 155, 50274-85) a proposed rule

implementing three existing federal conscience protection laws:

1. The Church Amendments passed in the 1970's, protecting conscience rights in various federally funded health care programs, including the right to refuse participation in abortion, sterilization, and any medical or research activity that is contrary to a person's moral or religious convictions.

2. An amendment to the Public Health Service Act passed in 1996, preventing federal, state or local governments from discriminating against health professionals, hospitals and training programs that choose not to be involved in abortion or abortion training.

3. The Weldon conscience protection amendment attached to the annual Labor/HHS Appropriations bills since 2004, ensuring that the protections of the 1996 law extend to the full range of institutional and individual health care providers.

For the text of these laws, see: nchla.org/docdisplay.asp?ID=189. For the proposed regulation, see: nchla.org/docdisplay.asp?ID=185.

An HHS press release noted that many are unaware of the conscience protection secured by federal law, citing an action by the American College of Obstetricians and Gynecologists (ACOG) that has "the potential to force physicians to either violate their conscience by referring patients for abortions (or taking other objectionable actions) or risk losing their board certification." See: www.hhs.gov/news/press/2008pres/08/20080821a.html.

The U.S. Conference of Catholic Bishops' spokesperson, Deirdre McQuade, welcomed the proposed regulation, noting that the enforcement of federal laws protecting the freedom of conscience "is long overdue." For full statement, see: www.usccb.org/comm/archives/2008/08-118.shtml.

The proposed regulation did not change the basic scope of the federal laws, but clarified key terms and offered practical steps for better enforcement in an area of fundamental civil rights:

1. It clarified important terms. For example: The "participation" in morally objectionable activity that individuals may not be coerced into included participation by counseling or referral. Or: "Health care entities" receiving protection include the full range of institutional and individual providers. Etc.

2. It required federal grantees to provide regular written assurances to HHS that they will comply with these protective laws in dealings with their employees.

3. It treated the violation of conscience as a violation of civil rights, and provides a mechanism for protecting one's rights by appeal to the HHS Office of Civil Rights.

The formal comment period on the proposed regulation ended September 25, 2008. On September 12, 2008, the U.S. Conference of Catholic Bishops submitted its formal comments to HHS. The Secretary was commended for promulgating the proposed regulations. "It is critically important, as the Secretary has recognized, that statutory rights of conscience be enforced." The USCCB urged that abortion "be defined to include any drug, procedure, or other act that the objector reasonably believes may result in the destruction of the embryo *in utero* at any time between conception and natural birth." For the full statement, see: www.usccb.org/ogc/pl-hhs-

conscience2.pdf. For press release, “USCCB Applauds Proposed Conscience Regulations from HHS,” see: www.usccb.org/comm/archives/2008/08-136.shtml.

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

4. Freedom of Choice Act

House: On April 19, 2007, Rep. Jerrold Nadler (D-NY) introduced the Freedom of Choice Act (FOCA) in the House (H.R. 1964); the measure had 109 cosponsors and was referred to the Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

Senate: On April 19, 2007, Sen. Barbara Boxer (D-CA) introduced the companion bill in the Senate (S. 1173); the measure had 19 cosponsors and was referred to the Judiciary Committee.

FOCA prohibits any government interference with the “fundamental right to choose” to bear a child or to terminate a pregnancy: “A government may not – (1) deny or interfere with a woman’s right to choose – (A) to bear a child; (B) to terminate a pregnancy prior to viability; or (C) to terminate a pregnancy after viability where termination is necessary to protect the life or health of the woman; or (2) discriminate against the exercise of the rights set forth in paragraph (1) in the regulation or provision of benefits, facilities, services, or information” (Sec. 4 (b)). Provision is made for an aggrieved individual to engage in a civil action even against a government. “An individual aggrieved by a violation of this section may obtain appropriate relief (including relief against a government) in a civil action” (Sec. 4 (c)). And the provisions of the Act apply even retroactively to actions taken by Federal, State and local governments. “This Act applies to every Federal, State, and local statute, ordinance, regulation, administrative order, decision, policy, practice, or other action enacted, adopted, or implemented before, on, or after the date of enactment of this Act” (Sec. 6).

FOCA is a radical bill. If enacted, it would eliminate a broad range of existing abortion laws, significantly impede the ability of the government to regulate abortion, and override nearly 40

years of jurisprudential experience on abortion. Examples of the kinds of laws FOCA would overthrow include: informed consent laws; parental involvement laws; laws promoting maternal health; abortion clinic regulations; government programs and facilities that pay for or promote childbirth and other health care services without subsidizing abortion; conscience protection laws; laws prohibiting a particular abortion procedure (e.g., partial birth abortion); laws requiring that abortions only be performed by a licensed physician; and so on. FOCA would go well beyond *Roe*, imposing on the country an abortion regime that would be far worse. “It is difficult to recall any other single piece of legislation that, in a single stroke, would have such a comparable destructive impact on the government’s ability to regulate abortion.” Michael Moses, Office of General Counsel, U.S. Conference of Catholic Bishops, *Memorandum*, August 15, 2008. See: nchla.org/docdisplay.asp?ID=190. A summary fact sheet for general use (“The ‘Freedom of Choice Act’: Most Radical Abortion Legislation in U.S. History”) can be found at: nchla.org/docdisplay.asp?ID=194.

In a September 19, 2008 letter to Members of Congress, Cardinal Justin Rigali, Chairman of the USCCB Committee on Pro-Life Activities, raised grave concerns about any possible consideration of FOCA. The bill would remove from the states the freedom they now have to place modest restraints on the abortion industry and would run counter to any efforts by government to reduce abortion. The Cardinal declared: “We can’t reduce abortions by promoting abortion.” For full text of the letter, see: www.usccb.org/prolife/FOCArigaliltr.pdf.

In conjunction with the U.S. Conference of Catholic Bishops, NCHLA launched a Fight FOCA Postcard Campaign. The target date for signing postcards was January 24-25, 2009. At nchla.org, various program materials were available: postcards (English and Spanish), educational flier (English and Spanish), parish instructions manual (with selected material translated into Spanish), as well as other educational and promotional materials (ads, fact sheets, legal memorandum).

5. Genetic Information Nondiscrimination Act

Background: First introduced in the mid 90’s, the Genetic Information Nondiscrimination Act (GINA) was designed to prevent employers and health insurance companies from discriminating against individuals and their families based on the results of genetic tests. The measure passed the Senate in 2005.

In a February 12, 2007 letter to the House Committee on Education and Labor, Cardinal Justin Rigali, Chairman of the Bishops’ Committee on Pro-Life Activities, drew attention to an “apparently unintentional loophole.” As introduced, the bill seems not to address discrimination against families “based on the preimplantation or prenatal genetic testing of their child, or genetic testing performed on an adoptive child before an adoption is completed.” The Cardinal cited the example of an insurance company misusing knowledge of a child’s genetic defect “to raise a woman’s premiums, cancel her insurance, or even pressure her to have an abortion or cancel adoption plans for a child with special needs, because the company does not wish to cover the additional needs of a child who will develop an illness or disability.”

The Cardinal urged that the resolution of this practical problem not become “a victim of the

politics of abortion,” noting that groups supporting “abortion rights,” such as the ACLU, have cited discrimination based on prenatal testing to illustrate the need for this legislation. The Cardinal also observed that in 2005, when this legislation passed the Senate, sponsors disclaimed any intention of excluding these situations. The understanding also was expressed that the intent would be clarified later, but this did not happen because the House did not act on the bill. *Congressional Record* (2/16/05), S1480. For the full text of the Cardinal’s letter, see: www.usccb.org/comm/archives/2007/07-032.shtml.

House: On January 16, 2007, Rep. Louise Slaughter (D-NY) introduced the GINA (H.R. 493). The measure had 224 cosponsors and was referred to three committees: Education and Labor; Energy and Commerce, the Subcommittee on Health; and Ways and Means, the Subcommittee on Health.

Committee: On February 14, 2007, the Committee on Education and Labor marked up its sections of the bill and reported the bill in amended form. Rep. Tim Walberg (R-MI) offered an amendment to amend the definition of “family member” to include the child to be born or to be placed for adoption. That amendment was rejected, 20 -yes, 27-no. Two Democrats voted “yes,” Reps. Dale Kildee (D-MI) and Jason Altmire (D-PA); two Republicans voted “no,” Reps. Michael Castle (R-DE) and Judy Biggert (R-IL); two Republicans were absent, Reps. Bob Inglis (R-SC) and Todd Platts (R-PA). All other Members voted along party lines, the Democrats “no,” the Republicans “yes.”

Floor: H.R. 493 was considered on the House floor under Suspension of the Rules (no amendments, two-thirds vote for passage). The House included in its bill needed corrections proposed by Rep. Bart Stupak (D-MI), applying GINA’s protections to the “Genetic Information of a Fetus or Embryo” and referencing existing federal law’s definition of a dependent, which includes children placed for adoption. During floor debate, Rep. Bart Stupak (D-MI) pointed out the concerns about genetic discrimination from testing embryos and fetuses and about genetic discrimination against children in the process of adoption. He stated: “Together with Chairman Dingell, Ms. DeGette and Mr. Smith, we were able to close this loophole. . . . I am proud to have worked with so many Members to correct the concerns I had on this bill.” *Congressional Record* (4/25/07), H4099.

On April 25, 2007, the House passed H.R. 493, 420-yes, 3-no (Roll Call 261).

Senate: On January 22, 2007, Sen. Olympia Snowe (R-ME) introduced the Senate companion bill (S. 358). The measure had 45 cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

Committee: On January 31, 2007, the Committee on Health, Education, Labor, and Pensions reported out a substitute version of S. 358. On April 10, 2007, a committee report was filed (No. 110-48). The loophole in the bill was not corrected.

Floor: On March 29, 2007, S. 358 was placed on the Senate calendar. On April 30, 2007, the House-passed H.R. 493 was read the second time and also was placed on the Senate calendar. At year’s end, it was reported that Sen. Tom Coburn (R-OK) had placed a “hold” on GINA,

blocking further Senate action. “One-Man Gridlock: Meet Tom Coburn, Senate’s ‘Dr. No’,” *Wall Street Journal*, 12/21/07, A1.

On April 23, 2008, Sens. Olympia Snowe (R-ME), Ted Kennedy (D-MA), and Michael Enzi (R-WY) introduced Senate Amendment 4573 as a substitute text for the House-passed H.R. 493. This substitute text included the House language making the needed corrections that apply GINA’s protections to the “Genetic Information of a Fetus or Embryo” and that reference existing federal law’s definition of a dependent, which included children placed for adoption. During floor debate the following day, Sen. Sam Brownback (R-KS) pointed out in a special way “a provision in the bill that was added on the House side by Representative Bart Stupak from Michigan, that would prevent the use of genetic information from unborn children and children in the process of being adopted” (*Congressional Record*, 4/24/08, S3370).

On April 24, 2008, the Senate passed its version of GINA (H.R. 493), 95-yes, 0-no (Roll Call 113).

In a statement praising the Senate’s action, Deirdre McQuade, Assistant Director for Policy and Communications at the Bishops’ Secretariat of Pro-Life Activities, expressed special gratitude to Rep. Stupak “for ensuring that this bill’s protection against discrimination will cover the families of unborn children with adverse prenatal diagnoses, as well as children being adopted.” For the full statement, see: www.usccb.org/comm/archives/2008/08-057.shtml.

House: *On May 1, 2008, the House, voting 414-yes, 1-no, approved the Senate-passed H.R. 493 (Roll Call 234).* Thereafter, the House and Senate approved technical corrections to the bill (H. Con. Res. 340).

Law: On May 21, 2008, the President signed H.R. 493 into law (Public Law 110-233).

6. Human-Animal Hybrid Prohibition Act

Background: The Human-Animal Hybrid Prohibition Act, would make it unlawful, with respect to interstate commerce, to “(1) create or attempt to create a human-animal hybrid; (2) transfer or attempt to transfer a human embryo into a non-human womb; (3) transfer or attempt to transfer a non-human embryo into a human womb; or (4) transport or receive for any purpose a human-animal hybrid.” The definition of the term “human-animal hybrid” referenced eight biological scenarios: (1) introducing non-human cell or cells (or parts thereof) into human embryos and thereby rendering “the embryo’s membership in the species *Homo sapiens* uncertain;” (2) fertilizing a human egg with non-human sperm; (3) fertilizing a non-human egg with human sperm; (4) introducing a non-human nucleus into a human egg; (5) introducing a human nucleus into a non-human egg; (6) an embryo containing at least haploid sets of chromosomes from both a human and a non-human life form; (7) a non-human life form engineered such that human gametes develop within the body of a non-human life form; (8) a non-human life form engineered such that it contains a human brain or a brain derived wholly or predominantly from human neural tissues. The term “human embryo” was defined as “an organism of the species *Homo sapiens* during the earliest stages of development, from 1 cell up to 8 weeks.” The bill’s findings noted, for example, that the creation of human-animal hybrids was now possible, that

their creation was grossly unethical because “they blur the line between human and animal, male and female, parent and child, and one individual and another individual,” and such experiments compromise human dignity and the integrity of the human species.

Senate: On November 15, 2007, Sen. Sam Brownback (R-KS), along with Sen. Mary Landrieu (D-LA), introduced the Human-Animal Hybrid Prohibition Act (S. 2358); the measure had 17 additional sponsors and was referred to the Committee on the Judiciary.

In his introductory statement, Sen. Brownback stated, “What is banned is the creation of hybrid creatures that blur the line between species. . . . This ban would only hinder the efforts of mad scientists and rogue researchers.” He noted, “The fundamental issue is the dignity of the human person, but it does quickly move into other issues, such as the creation of a sub-human servant class, or maybe even a super-human class that comes to dominate humanity.” For the Senator’s full statement, see: *Congressional Record*, 11/15/07, S14490-1.

House: On April 24, 2008, Rep. Chris Smith (R-NJ) introduced an identical bill (H.R. 5910); the measure has 13 cosponsors and was referred to the Committee on the Judiciary.

In an April 30, 2008 statement, Cardinal Justin Rigali, chairman of the Bishops’ Committee on Pro-Life Activities, commended Sen. Brownback and Rep. Smith for their leadership. “Their legislation offers an opportunity to rein in an egregious and disturbing misuse of technology to undermine human dignity.” The Cardinal explained that the threat is real. “The United Kingdom is preparing to authorize the production of cloned human embryos using human DNA and animal eggs, setting the stage for the creation of embryos that are half-human and half-animal.

Researchers in New York have boasted of implanting ‘mouse/human embryonic chimeras’ into female mice, and California scientists say they may produce a mouse whose brain is entirely made up of human brain cells.” For the Cardinal’s full statement, see:

www.usccb.org/comm/archives/2008/08-062.shtml. In the UK, the Human Fertilization and Embryology Bill received Royal Assent on November 13, 2008. The All Party Parliamentary Pro-Life Group tracked action on the bill at: hfebill.org.

7. Indian Health Service Reauthorization

Background: In current law, neither the authorizing legislation nor a rider to the annual Interior appropriations bill (the controlling funding bill) directly prevented the use of federal funds to pay for abortion in the Indian Health Service program. Rather, the authorizing legislation specified by reference that the abortion funding policy in the appropriations bill for the Department of Health and Human Services at any time applied to the Indian Health Service during that time (see 25 USC Sec. 1676). In the awkward and anomalous procedure, a funding policy in authorizing law depended on provisions found in an appropriations bill that must be repassed each year. It is preferred that funding policies be placed directly in the authorizing legislation.

Senate Floor: On January 22, 2008, the Senate began consideration of the Indian Health Care Improvement Amendments (S. 1200), a bill that would reauthorize the Indian Health Service for ten years. Sen. John Vitter (R-LA) introduced an amendment that would incorporate the language of the Hyde abortion funding policy (exceptions for life of mother, rape, incest) directly

into S. 1200. The amendment had four cosponsors, Sens. John Thune (R-SD), James Inhofe (R-OK), Sam Brownback (R-KS), and John McCain (R-AZ).

In a February 14, 2008 unanimous consent agreement on how to proceed with S. 1200's consideration, provision was made for the Democratic leadership to offer an amendment on the subject matter of the Vitter Amendment. Preliminary indications were that this amendment was unclear in meaning. However, the amendment never was offered and only the Vitter Amendment was voted on.

On February 26, 2008, the U.S. Senate approved the Vitter Amendment, 52-yes, 42-no, 6-not voting (Roll Call 30).

In a January 17, 2008 letter to the Senate, Cardinal Justin Rigali, Chairman of the Bishops' Committee for Pro-Life Activities, stated, "The Vitter Amendment offers an opportunity to reaffirm a basic and longstanding congressional policy of not requiring U.S. taxpayers to fund elective abortions." For full text of letter, see: nchla.org/docdisplay.asp?ID=177.

House: At time of adjournment, the House's IHS reauthorization bill (H.R. 1328) was pending floor action. Rep. Joseph Pitts (R-PA) was prepared to offer an amendment with the same language as the Vitter amendment. However, as in the Senate, pro-abortion advocates sought to block a vote on the amendment.

In a June 10, 2008 letter to the House, Cardinal Justin Rigali, Chairman of the Bishops' Committee on Pro-Life Activities, addressed a possible procedural attempt to block consideration of the Pitts amendment: "I urge you to oppose this effort to deprive Congress of its right and obligation to clarify federal policy on the government-subsidized killing of unborn children of Native American descent." The Cardinal concluded: "Please join me in urging that the Pitts amendment be allowed an opportunity for debate and vote, and in supporting the amendment itself, to reaffirm a basic and longstanding congressional policy of not requiring U.S. taxpayers to fund elective abortions." For full text of letter, see: nchla.org/datasource/idocuments/IHSHouse.pdf.

8. Maternal Mortality Resolution

Background: A House resolution affirmed the commitment to reduce maternal mortality both at home and abroad. While this is a goal of great importance to pro-life, concerns were raised whether some language in the resolution could be interpreted by some to include abortion as a means to reduce maternal mortality. After consultation, the resolution was amended and then agreed to by voice vote.

House: On March 5, 2008, Rep. Lois Capps (D-CA) introduced a Resolution on reducing maternal mortality both at home and abroad (H. Res. 1022). The measure had 122 cosponsors and was referred to the Committee on Energy and Commerce, Subcommittee on Health, and to the Committee on Foreign Affairs.

The final amended resolution referred not only to maternal well-being but also to child survival. The questionable reference to “global initiatives” that potentially included abortion was dropped. The reference to maternal health as a right also was dropped. That phrase was re-stated and expanded to include child survival in a broad social and global context. The text of the amended resolution:

Resolved, That the House of Representatives—

(1) affirms its commitment to promoting maternal health and child survival both at home and abroad through greater international investment and participation; and

(2) recognizes maternal health and child survival as fundamental to the well-being of families and societies, and to global development and prosperity.

Speaking during floor debate, Rep. Chris Smith (R-NJ) stated, “And so I am pleased that the resolution before us does not embrace abortion and, instead, properly links maternal health care and child survival to survival of all children, including the fragile and the vulnerable unborn baby” (*Congressional Record*, 5/19/08, H4126).

On May 21, 2008, H. Res. 1022, as amended, was agreed to under suspension of the rules.

9. Patients First Act

Background: The purpose of the Patients First Act was to “(1) intensify research that may result in improved understanding of or treatments for diseases and other adverse health conditions; (2) promote research and human clinical trials using stem cells that are ethically obtained and show evidence of providing clinical benefit for human patients; and (3) promote the derivation of pluripotent stem cell lines without the creation of human embryos for research purposes and without the destruction or discarding of, or risk of injury to, a human embryo.” The bill also directed a study of structural changes to the C.W. Bill Young Cell Transplantation Program that would help expand access to “new and future stem cell therapeutic products” for inclusion in the distribution of bone marrow and cord blood stem cells.

House: On June 21, 2007, Rep. Randy Forbes (R-VA) introduced the Patients First Act (H.R. 2807). The measure had 26 cosponsors and was referred to the Energy and Commerce Committee, Subcommittee on Health. No further action was taken.

10. PEPFAR Reauthorization

Background: First enacted into law in 2003 with bipartisan support, the President’s Emergency Plan for AIDS Relief (PEPFAR) was due for a second five-year reauthorization in 2008. The program has a proven record of success in saving lives.

House Committee: On January 18, 2008, the House Foreign Affairs Committee proposed a seriously flawed reauthorization bill, the Global HIV/AIDS, Tuberculosis and Malaria Reauthorization Act of 2008 (not numbered). Instead of retaining the program’s exclusive focus on the threat of HIV/AIDS, the bill referred to a “dual threat” to women’s lives from HIV/AIDS

and pregnancy.

Catholic health institutions deliver approximately 25% of all HIV and AIDS care worldwide. On February 6, 2008, Bishop Thomas Wenski, Chairman of the USCCB Committee on International Justice and Peace, and Mr. Ken Hackett, President of Catholic Relief Services, wrote to the Foreign Affairs Committee, voicing their strong support for “continuing and strengthening” PEPFAR and welcoming improvements in the draft bill, such as a major increase in funding. However, they said, some of the draft bill’s changes “are extremely troubling,” especially “provisions calling for the integration and coordination of HIV and AIDS prevention, care and treatment services with ‘reproductive health’ and ‘family planning’ services” and the elimination of “funding for effective, values-based prevention programs focusing on behavioral change.” These provisions jeopardize Catholic participation in PEPFAR. “Turning this essential program into a vehicle for other agendas on family planning and abortion is a serious threat to the consensus needed to enact strong and compassionate legislation this year.”

They also opposed the elimination of the “Prostitution Pledge.” Currently the PEPFAR program required groups receiving funding to have a policy explicitly opposing prostitution and sex trafficking. Organizations sign the so-called “Prostitution Pledge.” The draft bill would remove this requirement. However, prostitution is one of the highest risk factors in the transmission of HIV/AIDS. In a court challenge, the U.S. Court of Appeals for D.C. upheld the pledge: “It would make little sense for the Government to provide billions of dollars to encourage reduction of HIV/AIDS behavioral risk, including prostitution and sex trafficking, and yet to engage as partners in this effort organizations that are neutral toward or even actively promote the same practices sought to be eradicated.”

For the full February 6 letter and an informative fact sheet, see:
www.usccb.org/sdwp/international/2008-02pepfar_cong_ltr.pdf.

The first five-year PEPFAR authorization provided for \$15 billion. In his 2008 State of the Union Address, the President proposed \$30 billion over the next five years. The House Committee bill proposed \$50 billion. To require the inclusion of comprehensive family planning and “reproductive health” services in the program would allow vast amounts of money to flow to organizations that now are prohibited from receiving U.S. funds because of their refusal to agree to the Mexico City Policy’s requirements not to perform or promote abortion as a method of family planning. The Mexico City Policy applied to other sources of U.S. funds but not to PEPFAR.

The House Foreign Affairs Committee had a markup scheduled for February 27, 2008. On the preceding day White House officials and committee members from both parties reached agreement on a compromise bill. At the February 27 markup, the committee approved by voice vote, with no amendments offered, the new bill called the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (H.R. 5501).

All references to “reproductive health” were removed. HIV/AIDS programs are not called upon to facilitate access to family planning, but could facilitate access to HIV/AIDS

services for the clients of family planning programs “supported by the U.S. government” (that is, programs currently covered by the Mexico City policy against promoting abortion). A compromise provision allocating funds for abstinence and fidelity programs was included. The specification in current law that 33% of prevention funding be allocated to Abstinence and Be Faithful (AB of ABC) programs was not in the bill but new language required the Coordinator of U.S. global HIV/AIDS activities to provide “balanced funding for prevention activities for sexual transmission of HIV/AIDS” and to ensure that behavior change programs, including abstinence, “are implemented and funded in a meaningful and equitable way” (Sec. 403(a)). The pledge against prostitution and sex trafficking was retained.

Floor: On April 2, 2008, the House passed H.R. 5501, 308-yes, 116-no, 7-not voting (Roll Call 158).

Senate Committee: On March 13, 2008, the Senate Foreign Affairs Committee marked up the companion bill (S. 2731), which is similar to the House-passed bill but deletes all references to family planning programs. According to news reports, Sen. Barbara Boxer (D-CA) expressed disappointment that “the bill before us today does not acknowledge the important links between family planning and global AIDS programs” (*CQToday*, 3/14/08, p. 7). The Senator had intended to offer an amendment to expand these linkages but declined to do so when reassured by Committee Chairman Senator Joseph Biden (D-DE) that the bill did not prevent linkages between family planning groups and the provision of HIV/AIDS services and that the bill did not overturn the program’s exemption from the Mexico City Policy.

Floor: On March 13, 2008, the Senate Foreign Affairs Committee marked up the companion bill (S. 2731), which was similar to the House-passed bill but eliminated all references to family planning programs. A final “manager’s amendment” further strengthened “conscience” protection for faith-based grantees, and clarified the bill’s allocation for abstinence and fidelity programs. On July 16, 2008, the Senate substituted the text of the House’s H.R. 5501 with the text of the final version of S. 2731, and then passed H.R. 5501, 80-yes, 14-no. On July 24, 2008, the House accepted the Senate bill.

Law: On July 30, 2008, the President signed H.R. 5501 into law (Public Law 110-293).

Newspaper Commentary: In a *Washington Post* op-ed, the Rev. Sam Ruteikara, co-chair of Uganda’s National AIDS-Prevention Committee, lamented that in the fight against AIDS in Africa profiteering is trumping prevention. “AIDS is no longer simply a disease; it has become a multibillion-dollar industry.” He argues that before Western experts got involved Ugandans discovered that the way to reduce the AIDS epidemic was for people to stay with one partner. “We recognized that population-wide AIDS epidemics in Africa were driven by people having sex with more than one regular partner. Therefore, we urged people to be faithful.” As a result of this program, the proportion of Ugandans infected with HIV plunged from 21 percent in 1991 to 6 percent in 2002. “But international AIDS experts who came to Uganda said we were wrong to try to limit people’s sexual freedom.” And they had the financial power “to force their casual-sex agendas upon us.” The successful prevention programs in place began to be subverted. Uganda’s HIV rates have begun to edge back up. “International suppliers make broad, oversimplified statements such as ‘You can’t change Africans’ sexual behavior.’ While it is true that you can’t

change everybody, you don't have to. If the share of men having three or more sexual partners in a year drops from 15 percent to 3 percent, as happened in Uganda between 1989 and 1995, HIV infection rates will plunge. It is that simple." The Rev. Ruteikara concludes: "So hear my plea, HIV-AIDS profiteers. Let my people go. We understand that casual sex is dear to you, but staying alive is dear to us. Listen to African wisdom, and we will show you how to prevent AIDS." "Let My People Go, AIDS Profiteers," *Washington Post*, 6/30/08, A11. See: www.washingtonpost.com/wp-dyn/content/article/2008/06/29/AR2008062901477.html.

11. Pregnant Women Support Act

Background: The Pregnant Women Support Act was first introduced in 2006. In its "Findings," the bill is described as an initiative "to gather more complete information about abortion, to reduce the abortion rate by helping women carry their pregnancies to term and bear healthy children, and by affirming the right of women to be fully informed about their other options when they seek an abortion" and "to support women facing unplanned pregnancies, new parents and their children by providing comprehensive measures for health care needs, supportive services and helpful prenatal information and postnatal services." The bill has 13 titles. Title I: Collecting and Reporting Abortion Surveillance Data. Title II: Disclosure of Information on Abortion. Title III: Medicaid and SCHIP Coverage of Pregnant Women and Unborn Children. Title IV: Health Insurance Coverage for Pregnant Women and Newborns. Title V: Increasing Women's Knowledge about Their Pregnancy. Title VI: Services Regarding Positive Test Diagnosis of Down Syndrome or Other Prenatally Diagnosed Conditions. Title VII: Improving Services for Pregnant Women Who are Victims of Domestic Violence, Dating Violence, and Stalking. Title VIII: Public Awareness Campaign. Title IX: Support for Pregnant and Parenting Students. Title X: Support for Pregnant and Parenting Teens. Title XI: Federally-Funded Homes for Pregnant and Parenting Women; Adoption Counseling; Parenting Skills. Title XII: Expansion of Adoption Credit and Adoption Assistance Programs. Title XIII: Providing Support to New Parents.

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

House: On July 26, 2007, Rep. Lincoln Davis (D-TN) introduced the Pregnant Women Support Act (H.R. 3192). The bill had 38 cosponsors and was referred to four committees: Energy and Commerce, Subcommittee on Health; Ways and Means; Education and Labor, Subcommittee on Healthy Families and Communities; Agriculture, Subcommittee on Department Operations, Oversight, Nutrition and Forestry. On April 25, 2008, the Agriculture subcommittee requested Executive Comment from the U.S. Department of Agriculture.

Senate: On December 4, 2007, Sen. Robert Casey, Jr. (D-PA) introduced a similar measure in the Senate (S. 2407). The bill was referred to Committee on Finance. On April 28, 2008, Sen. Ben Nelson (D-NE) added his name as a cosponsor to S. 2407

Deirdre McQuade, USCCB's Secretariat of Pro-Life Activities, expressed thanks to Rep. Davis and Sen. Casey for their "courageous leadership," stating, "we wholeheartedly support this constructive bill and urge the House and Senate to pass it for women, their families, and the common good." For full comments, see: www.usccb.org/comm/archives/2007/07-206.shtm.

12. Right to Life Act and Life at Conception Act

Background: The Right to Life Act and Life at Conception Act, commonly called Human Life Bills, represent one approach to address the tragedy the U.S. Supreme Court set in motion when in 1973 it created a constitutional right to abortion. The House had scheduled a hearing on the Right to Life Act in late 2006, but the 109th Congress adjourned before the hearing was held. For related information on Human Life Amendments, their history, texts, and votes, see: nchla.org/issues.asp?ID=46.

The measure introduced in the House was called the Right to Life Act and the corresponding measure introduced in the Senate was called the Life at Conception Act. Except for their short titles, the bills are identical.

According to their official titles, the Acts' purposes were "To implement equal protection under the 14th article of amendment to the Constitution for the right to life of each born and preborn human person."

In their main sections, the bills read as follows: "To implement equal protection for the right to life of each born and preborn human person, and pursuant to the duty and authority of the Congress, including Congress' power under article I, section 8, to make necessary and proper laws, and Congress' power under section 5 of the 14th article of amendment to the Constitution of the United States, the Congress hereby declares that the right to life guaranteed by the Constitution is vested in each human being." The terms "human person" and "human being" are defined as follows: "The terms 'human person' and 'human being' include each and every member of the species homo sapiens at all stages of life, including, but not limited to, the moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being."

In remarks introducing the Right to Life Act, Rep. Hunter noted that in its 1973 *Roe v. Wade* decision, the U.S. Supreme Court refused to determine when human life begins but also conceded, "If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment." Rep. Hunter stated that the Right to Life Act does what the Court refused to do and what Congress has the authority to do. The Act "recognizes the personhood of the unborn" for the purpose of enforcing four provisions of the U.S. Constitution: "(1) Sec. 1 of the Fourteenth Amendment prohibiting States from depriving any person of life; (2) Sec. 5 of the Fourteenth Amendment providing Congress the power to enforce, by appropriate legislation, the provision of this amendment; (3) the due process clause of the Fifth Amendment, which concurrently prohibits the Federal Government from depriving any person of life, and (4) Article 1, Section 8, giving Congress the power to make laws necessary and proper to enforce all powers in the Constitution." By prohibiting any State or Federal law that denies the personhood of the unborn, the Right to Life Act "effectively" would overturn *Roe v. Wade*. *Congressional Record* (1/22/07, E168).

House: On January 22, 2007, Rep. Duncan Hunter (R-CA) introduced the Right to Life Act (H.R. 618). The measure had 113 cosponsors and was referred to the Judiciary Committee, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

Senate: On June 11, 2008, Sen. Roger Wicker (R-MS) introduced the Life at Conception Act (S. 3111). The measure had 12 cosponsors and was referred to the Judiciary Committee.

13. Sanctity of Human Life Act

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

House: On November 13, 2007, Rep. Paul Broun (R-GA) introduced the Sanctity of Human Life Act (H.R. 4157). The measure had 61 cosponsors. On November 13, 2007, the bill was referred to the Judiciary Committee, and on February 25, 2008, to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

14. Stem Cell Research

Background: A stem cell is a basic body cell that can reproduce itself and has the ability to differentiate itself into one or more specialized cell types. Stem cells are commonly divided into embryonic and adult (postnatal sources). Derivation of embryonic stem cells (ESCs) from the early embryo necessarily results in the death of the embryo, and thus is morally unacceptable. The derivation of adult stem cells lacks this moral problem. In general, stem cells show promise in treating diseases by assisting in the regeneration of damaged tissue. The pluripotent ESCs have proven very difficult to use and have produced no therapeutic benefits in humans. Adult stem cells are much more manageable and to date have produced therapeutic benefits in treating humans for at least 73 different diseases.

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

Cardinal Justin Rigali, Chairman of the Bishops' Committee for Pro-Life Activities, stated that these studies "offer new hope for advancing stem cell research and therapies while fully respecting the dignity of human life." For the Cardinal's full statement, see: nchla.org/datasource/idocuments/112007USCCB.pdf.

In "Stem Cells: A Political History," *First Things* (Nov. 2008), 15-23, Joseph Bottum and Ryan T. Anderson review the history of the stem cell debate as it dominated popular scientific discussion from 2001, when President Bush announced his administration policy, to 2007, when the discovery of iPS cells was announced and the debate dropped from the news. What changed was the issue's "political salience." For six years, ESCs were "a weapon in a political battle" in which scientists encouraged politicians to make ESCR "a tool in the public fights over abortion, public religion, and high finance."

House: On May 8, 2008, the Subcommittee on Health of the House Energy and Commerce Committee held a hearing titled "Stem Cell Science: The Foundation for Future Cures."

15. Subsidizing the Abortion Industry

On July 9, 2008, Rep. Chris Smith (R-NJ) and 10 other House Members spoke for 60 minutes under a Special Order. Rep. Smith stated the question: "Why is Congress . . . subsidizing the abortion industry?"

The Special Order speeches can be found at *Congressional Record*, July 9, 2008, H6320-6. For link to *Congressional Record*, see: thomas.loc.gov/home/r110query.html.

Rep. Smith set the debate in his opening remarks, noting that most Americans probably do not know the extent tax dollars support the abortion industry:

Indeed, America's biggest abortion chain is Planned Parenthood. Each year, approximately 290,000 children are aborted in Planned Parenthood clinics. Each year Planned Parenthood gets more than \$335 million in taxpayer funds. . . . Tragically, as their business grows, and they now have some 850 clinics and they have embarked on a building binge . . . as the taxpayer funds go up, the number of abortions go up because more venues are then provided to destroy the unborn child. (CR H6320)

Rep. Smith was alluding to a recent article, "Planned Parenthood Hits Suburbia," *Wall Street Journal*, June 23, 2008, A1. Other Members also cited this article, which described Planned Parenthood as "flush with cash" and going "upscale" by setting up new clinics to "appeal to women of means." As Rep. Mike Pence (R-IN) noted, "It [Planned Parenthood] had an excess of revenue over expenses of \$56 million in 2005, and it had \$112 million in 2006, which has given rise to the building spree that was reported on page 1 of the Wall Street Journal" (CR H6322).

Other Members who participated in the Special Order were: Reps. Trent Franks (R-AZ), Doug Lamborn (R-CO), Paul Broun (R-GA), William Sali (R-ID), Michele Bachmann (R-MN), Jean Schmidt (R-OH), Jim Jordan (R-OH), Joseph Pitts (R-PA), and Jeb Hensarling (R-TX).