

# **PRO-LIFE LEGISLATION IN CONGRESS: FINAL REPORT**

**National Committee for a Human Life Amendment**

**December 9, 2006**

The Second Session of the 109th Congress commenced January 3, 2006, and adjourned December 9, 2006. Legislation was carried over from the First Session. 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**.

## **I. HIGHLIGHTS**

### **1. Judicial Confirmations**

A 2005 Senate agreement brokered by the “gang of 14” held throughout 2006. The Senate debate on use of the filibuster to block confirmation of federal judicial nominees had grown only more intense throughout the early months of 2005. Support for abortion was a key issue. On May 23, 2005, the logjam was broken. Seven Republicans agreed not to change Senate rules by a special vote and seven Democrats agreed not to filibuster nominees except in “extraordinary circumstances.”

On October 31, 2005, President Bush nominated Judge Samuel A. Alito, Jr. as Justice Sandra Day O’Connor’s replacement. A filibuster on the Alito nomination was handily rejected. On January 31, 2006, the Senate voted 58-yes, 42-no to confirm Samuel Alito as U.S. Supreme Court Associate Justice.

### **2. Military Abortion Law**

During consideration of the Fiscal Year 2007 National Defense Authorization Act (H.R. 5122), Rep. Susan Davis (D-CA) offered an amendment that would have allowed privately funded abortions to be performed at military facilities for any reason. On May 10, 2006, the House defeated the Davis amendment, 191-yes, 237-no.

### **3. Parental Notice**

On July 25, 2006, the U.S. Senate passed the Child Custody Protection Act (CCPA) (S. 403), 65-yes, 34-no. The bill would make it a federal crime for a person 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. However, when Majority Leader Bill Frist (R-TN) moved to request a conference with the House on the House-passed Child Interstate Abortion Notification Act (CIANA) (H.R. 748), Sen. Richard Durbin (D-IL), the Assistant Minority Leader, objected.

CIANA included the provisions of the CCPA but also specified that an abortion provider in a state without a parental involvement law must notify a parent or legal guardian before performing an abortion on a minor girl who is a resident of a different state.

While the question of conferencing S. 403 and H.R. 748 remained unresolved, S. 403 was sent to the House and held at the desk.

On September 26, 2006, the House took up S. 403 in accord with a rule by which the Senate text of S. 403 was substituted with a new text based on the House-passed H.R. 748. Elements added to the House-passed H. R. 748 included the Senate-passed incest provisions, as well as a new physical health exception in the CIANA section of the bill. The House approved the new S. 403, 264-yes, 153-no, 15-not voting.

S. 403, with CIANA as its short title, was returned to the Senate, where a cloture petition was filed. The cloture petition would limit debate and allow a vote on final passage. To be successful, cloture requires a three-fifths vote of 60. On September 29, 2006, the cloture motion was defeated, 57-yes, 42-no, 1-not voting.

#### **4. Plan B Morning-after-Pill**

On August 24, 2006, the U.S. Food and Drug Administration (FDA) approved over-the-counter (OTC) distribution of the Plan B morning-after-pill for “consumers” – men and women – 18 years and older. The potent drug would remain available prescription-only for women 17 years and under. Plan B is a product of Duramed, a subsidiary of Barr Pharmaceuticals. Deirdre McQuade, Director of Planning and Information for the Bishops’ Secretariat for Pro-Life Activities, objected to the approval. See: [www.usccb.org/comm/archives/2006/06-158.shtml](http://www.usccb.org/comm/archives/2006/06-158.shtml).

The USCCB opposed the OTC use of Plan B because of the abortifacient potential of Plan B, implications for informed consent, public health concerns, and the potential for coercing pharmacists to provide the drug. See: [www.usccb.org/prolife/issues/contraception/morningafterpill.htm](http://www.usccb.org/prolife/issues/contraception/morningafterpill.htm). For additional commentary, see Ms. Susan Wills, “Plan B: Politics vs. Science?” *National Review Online* (8/15/06) at: [article.nationalreview.com?q=NDk3YjllZDAzMzViMTY1NzljMTkzZGVjMThhNDkzNmM=](http://article.nationalreview.com?q=NDk3YjllZDAzMzViMTY1NzljMTkzZGVjMThhNDkzNmM=).

#### **5. Right to Life Act**

The House Judiciary Subcommittee on the Constitution had scheduled a December 12, 2006 hearing on the Right to Life Act (H.R. 552). In this bill, Congress declared that the right to life guaranteed by the Constitution is vested in each human being. However, when Congress adjourned on December 9, the hearing became moot.

#### **6. RU-486 Suspension and Review Act: Holly’s Law**

The RU-486 Suspension and Review Act (H.R. 1079, S. 511) 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 reviewed the process by which the FDA approved the drug. If it was determined that the drug's approval was in accordance with the Federal Food, Drug and Cosmetic Act, the approval would be reinstated after 30 days. This bill was also known as Holly's Law in memory of Holly Patterson, an 18-year-old California woman who died after

taking RU-486 at a Planned Parenthood clinic. On May 17, 2006, Monty Patterson, the father of Holly, presented testimony at a House hearing exploring the dangers of RU-486. At the end of the year, the House and Senate bills were pending in committee.

## **7. Embryonic Stem Cell Veto Sustained**

On July 18, 2006, the Senate by unanimous votes approved two measures: the Fetus Farming Prohibition Act (S. 3504), a measure that would prohibit the solicitation or acceptance of tissue from human fetuses gestated for research purposes; and the Alternative Pluripotent Stem Cell Therapies Enhancement Act (S. 2754), a measure that would authorize federally funded research using pluripotent stem cells obtained without creating, harming, or destroying human embryos. The Senate also passed the Stem Cell Research Enhancement Act (H.R. 810), 63-yes, 37-no. This measure, which the House had approved in 2005, authorized the use of federal funds to support embryonic stem cell research that destroys the young human embryo.

S. 3504 and S. 2754 were immediately taken up by the House under suspension of the rules. S. 3504 passed 425-yes, 0-no. However, S. 2754 was not passed, having failed to receive the two-thirds vote needed under suspension of the rules. The vote was 273-yes, 154-no, 6-not voting.

On July 19, 2006, President Bush signed S. 3504 into law and vetoed H.R. 810.

H.R. 810 was sent back to the House, the chamber from which it originated. The House immediately took up the question of overriding the president's veto. The attempt failed, 235-yes, 193-no, 5-not voting, the tally falling 51 votes short of required two-thirds.

## **8. U.S. Supreme Court Actions**

Partial-Birth Abortion Bans: On November 8, 2006, the Court held a hearing on the federal partial-birth abortion ban cases from the District of Nebraska (*Gonzales v. Carhart*) and from the Northern District of California (*Gonzales v. Planned Parenthood*), with a decision expected in 2007.

Parental Notice: The Court sent a New Hampshire parental notice law back to the lower court, which must determine legislative intent and, consistent with intent, either prohibit specific unconstitutional applications or declare the statute *in toto* invalid (*Ayotte v. Planned Parenthood*).

Assisted Suicide: The Court ruled the Attorney General had exceeded his authority in determining that assisting suicide is not a legitimate medical purpose for prescribing, dispensing, or administering federally controlled substances (*Gonzales v. Oregon*). On August 3, 2006, Sen. Sam Brownback (R-KS) introduced the Assisted Suicide Prevention Act (S. 3788), a measure that would make it unlawful to dispense, distribute, or administer a controlled substance for the purpose of assisting suicide or causing the death of a person. That measure was pending in committee at year's end.

Peaceful Clinic Protest: In a legal dispute going back to 1986, the Court ruled in favor of Joseph Scheidler and others that their protests at abortion clinics were not unlawful (*Scheidler et al. v. National Organization for Women, Inc., et al.*).

## **9. Unborn Child Pain Awareness Act**

The Unborn Child Pain Awareness Act (H.R. 356, H.R. 6099, S. 51) would require an abortion provider to notify a woman who wanted to have an abortion 20 weeks after fertilization that there was “substantial evidence that the process of being killed in an abortion will cause the unborn child pain” and that she had the option of obtaining anesthesia for her unborn child to reduce or eliminate pain. The bill allowed an exception on physical health grounds. On December 6, 2006, Rep. Nathan Deal (R-GA) moved to suspend the rules and pass H.R. 6099. With the vote 250-yes, 162-no, 20-not voting, the motion did not pass, failing to receive the two-thirds support needed under suspension of the rules.

## **II. REVIEW OF LEGISLATION**

The Review of Legislation section contains detailed information on legislative action. This section also contains reports on executive and court developments that have important implications for legislative policy.

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## 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 applied to any state, including Oregon, which has had a physician-assisted suicide law in effect since 1997. This memorandum overturned 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. On February 22, 2005, the Court announced that during the upcoming October term the Ninth Circuit's decision would be reviewed. The case was renamed *Gonzales v. Oregon* (Docket 04-623). Oral arguments were heard on October 5, 2005.

On January 17, 2006, the Court, in a 6-3 ruling, affirmed the decision of the lower court that the attorney general had exceeded his authority. In his dissent, Justice Scalia argued that the Court distorted the meaning of the Controlled Substances Act and disregarded settled principles of legal interpretation. He concluded: "If the term 'legitimate medical purpose' has any meaning, it surely excludes the prescription of drugs to produce death."

Senate: On May 25, 2006, Sen. Sam Brownback (R-KS), Chairman of the Constitution, Civil Rights and Property Rights Subcommittee of the Senate Judiciary Committee, held an oversight hearing titled, "The Consequences of Legalized Assisted Suicide and Euthanasia." The hearing focused on Oregon's assisted suicide law. Testimony of all witnesses can be found at: [judiciary.senate.gov/hearing.cfm?id=1916](http://judiciary.senate.gov/hearing.cfm?id=1916). On August 3, 2006, Sen. Brownback introduced the Assisted Suicide Prevention Act (S. 3788). The measure had three cosponsors and was referred to the Senate Judiciary Committee. S. 3788 would make it unlawful to dispense, distribute, or administer a controlled substance for the purpose of assisting suicide or causing the death of a person. The bill acknowledged that alleviating pain is a legitimate medical purpose for controlled substances, even if such use may increase the risk of death. With regard to penalties, it remained within the discretion of state authorities to take action with regard to state professional

licenses or state prescribing privileges. The bill was pending in committee at year's end.

## 2. CCPA/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. 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.

The Child Interstate Abortion Notification Act (CIANA), which passed the House in 2005, includes the provisions of the CCPA but also specified that an abortion provider in a state without a parental involvement law must provide 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.

Also see the Parental Notification entry in this report.

House: On February 10, 2005, Rep. Ileana Ros-Lehtinen (R-FL) introduced the CIANA (H.R. 748). On March 3, 2005, the Judiciary Subcommittee on the Constitution held a hearing. On March 17, 2005, the measure was approved by voice vote in Subcommittee, and on April 13, 2005, was approved, 20-yes, 13-no, in full Committee. *On April 27, 2005, during floor consideration, the House rejected two hostile amendments as well as a motion to recommit with instruction to weaken the bill and then approved the measure, 270-yes, 157-no, 8-not voting (Roll Call 144).*

On April 28, 2005, H.R. 748 was received in the Senate and on July 11, 2005 was read the second time and placed on the Calendar for General Orders.

Senate: On January 24, 2005, Sen. John Ensign (R-NV) introduced the CCPA (S. 8). The bill had 41 cosponsors and was referred to the Judiciary Committee. On February 16, 2005, Sen. Ensign introduced an identical bill, S. 396. It had no cosponsors and also was referred to the Judiciary Committee. On February 16, 2005, Sen. Ensign introduced a third identical bill, S. 403. This measure with 43 cosponsors was placed directly on the Senate calendar.

Floor: The Senate approved a unanimous consent agreement to take up S. 403. *On July 25, 2006, the U.S. Senate passed the CCPA (S. 403), 65-yes, 34-no, 1-not voting (Roll Call 216).*

Prior to final passage, Sen. Frank Lautenberg (D-NJ) offered an amendment promoting sex education for teenagers (SA 4689). *The amendment was narrowly defeated, 48-yes, 51-no, 1-not voting (Roll Call 214).*

According to the unanimous consent agreement, Sen. Barbara Boxer (D-CA) and Sen. John Ensign (R-NV) each were to offer competing amendments related to incest. However, the two Senators worked to produce just one amendment (SA 4694) with the following provisions: 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. *The Boxer/Ensign amendment was overwhelmingly approved, 98-yes, 0-no, 2-not voting (Roll Call 215).*

Sen. Dianne Feinstein's (D-CA) amendment specifying a clergy and grandparent exemption was not offered.

After final passage, when Majority Leader Bill Frist (R-TN) made a routine request for "unanimous consent" to go to conference with the House, to resolve differences between the Senate-passed and House-passed bills, Sen. Richard Durbin (D-IL), the Assistant Minority Leader, objected.

Deirdre McQuade, pro-life spokesperson for the Bishops' Conference, commended the Senate passage of S. 403 but criticized Democratic leadership's last minute objection to a conference committee. "I urge the Senate to work with the U.S. House of Representatives to iron out differences in the House and Senate versions of the bill." Ms. McQuade noted that a 2005 poll showed 82% support for the position that "no one should be able to take a minor girl across state lines for an abortion without her parents' knowledge." For the full comments, see: [www.usccb.org/comm/archives/2006/06-152.shtml](http://www.usccb.org/comm/archives/2006/06-152.shtml).

In a July 19, 2006 letter, Cardinal William Keeler, Chairman of the Bishops' Committee for Pro-Life Activities, urged U.S. Senators to support S. 403. "S. 403 affirms parents' right to protect their minor daughter from those who have no legal responsibility for her, and who unilaterally decide that a secret abortion is what she needs." The Cardinal argued, "No one else – boyfriends, in-laws, counselors, friends – can substitute for the fundamental role of parents." The Cardinal added, "Many states have wisely chosen to protect parents' rights in this area, and the intent of their protective laws should not be thwarted." For full text of the Cardinal's letter, see: [nchla.org/docdisplay.asp?ID=146](http://nchla.org/docdisplay.asp?ID=146).

Cloture Vote: While the question of conferencing S. 403 and H.R. 748 remained unresolved, S. 403 was sent to the House and held at the desk.

Subsequently, the House took up S. 403 in accord with a rule by which the Senate text of S. 403 was substituted with a new text based on the House-passed H.R. 748. Elements added to H. R. 748 included the Senate-passed incest provisions, as well as a new physical health exception in the CIANA section of the bill. The notification requirements did not apply if, in the "reasonable medical judgment" of the physician, delay occasioned by notification "would cause a substantial and irreversible impairment of a major bodily function of the minor arising from continued pregnancy, not including psychological or emotional conditions," though in this case, within 24 hours a parent must be notified in writing that the abortion was performed and why. *On September 26, 2006, the House approved the amended S. 403, 264-yes, 153-no, 15-not voting (Roll Call 479).*

S. 403, with CIANA as its short title, was returned to the Senate, where a cloture petition was filed. The cloture petition would limit debate and allow a vote on final passage. To be successful,

cloture required a three-fifths vote of 60. *On September 29, 2006, the cloture motion was defeated, 57-yes, 42-no, 1-not voting (Roll Call 263).*

### **3. 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. 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* was 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 simple 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 could make a point of order that judicial nominees should not be filibustered. Only a majority vote would be required to resolve the question.

The impasse was broken, at least temporarily. On May 23, 2005, a group of 14 Senators - seven Democrats, seven Republicans - signed a “memorandum of understanding” that the seven Republicans would not support the “nuclear option” and that the seven Democrats would not filibuster three nominees - Priscilla Owen, Janice Brown, and William Pryor - and would filibuster future nominees only under “extraordinary circumstances.”

On July 1, 2005, U.S. Supreme Court Associate Justice Sandra Day O’Connor announced her retirement “effective upon the nomination and confirmation of her successor.” On October 3, 2005, President Bush nominated White House Counsel Harriet Miers. However, Ms. Miers subsequently withdrew her name. On October 31, 2005, President Bush nominated Judge Samuel A. Alito, Jr. as Justice O’Connor’s replacement. Samuel Alito served on the Third Circuit United States Court of Appeals. In January 2006 the confirmation process began in earnest. The Senate Judiciary Committee held five days of hearings and voted 10-yes, 8-no to approve the nomination. A filibuster was attempted but handily rejected. On January 30, 2006, the Senate voted 72-yes, 25-no to invoke cloture and end debate (Roll Call 1). *On January 31, 2006, the Senate voted 58-yes, 42-no to confirm Samuel Alito as U.S. Supreme Court Associate Justice (Roll Call 2).* On the same day Justice Alito took the oath of office.

*On September 29, 2005, the U.S. Senate had voted 78-yes, 22-no to confirm John G. Roberts, Jr. as Chief Justice of the U.S. Supreme Court (Roll Call 245).*

In a March 10-14, 2006 Zogby poll, respondents were asked, “Do you agree or disagree that

nominees to the U.S. Supreme Court should be confirmed only if their position on abortion is pro-choice?” Only 18% agreed and an overwhelming 71% disagreed. The very large field of respondents (30,117) reduced the margin of error to +/- 0.6 percentage points.

In this debate, NCHLA’s concern was focused on the principle: Support for *Roe v. Wade* should not be a condition for determining a nominee’s fitness for judicial office.

#### **4. Contraceptive/Abortifacient Composite Bills**

Background: Bills officially titled “A bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women’s health care” had the short title Prevention First Act or sometimes Title X Family Planning Services Act of 2005. These bills were a composite of seven parts, either bills separately introduced on their own or sections designated acts: Title X Family Planning Services Act of 2005; Family Planning State Empowerment Act; Equity in Prescription Insurance and Contraceptive Coverage Act (separately introduced); Emergency Contraception Education Act (separately introduced); Compassionate Assistance for Rape Emergencies Act (separately introduced); Preventing Teen Pregnancy Act; Truth in Contraception Act. In a lengthy introductory statement of findings, the bills set forth a variety of claims about the benefits of increased access to contraception. In these bills, contraception is defined to include methods that can act as abortifacients. The bills would coerce insurance plans to cover “emergency contraception” and outpatient contraceptive services and would coerce hospitals to provide “emergency contraception” services in cases of sexual assault. Hospitals also were required to tell the woman that “emergency contraception” does not cause an abortion. Abstinence-only programs were excluded from receiving funds under these bills.

For a trenchant commentary on the Prevention First bill, see Susan E. Wills, “‘Prevention First’: Dumb Plan or Dumbest Plan?” *Life Issues Forum* (May 5, 2002) at: [www.usccb.org/prolife/publicat/lifeissues/050406.htm](http://www.usccb.org/prolife/publicat/lifeissues/050406.htm).

See elsewhere in this report: “Emergency Contraception” Education, “Emergency Contraception” Hospital Mandates, and Mandated Contraceptive/Abortifacient Coverage.

House: On April 19, 2005, Rep. Louise Slaughter (D-NY) introduced the Prevention First Act (H.R. 1709). H.R. 1709 was identical to S. 20 and, except for the title, identical to S. 844. The bill had 136 cosponsors and was referred to three different House committees: Energy and Commerce, where it was referred to the Subcommittee on Health; Education and the Workforce, where it was referred to the Subcommittee on Employer-Employee Relations and to the Subcommittee on 21<sup>st</sup> Century Competitiveness; and Ways and Means. No further action was taken.

Senate: On January 24, 2005, Sen. Harry Reid (D-NV) introduced the Prevention First Act (S. 20). S. 20 was identical to H.R. 1709 and, except for title, identical to S. 844. The measure had 25 cosponsors and was referred to the Senate Health, Education, Labor and Pensions Committee. No further action was taken.

On April 19, 2005, Sen. Hillary Clinton (D-NY) introduced a bill sometimes referred to as the Title X Family Planning Services Act of 2005 (S. 844). Except for the title, S. 844 was identical to both S. 20 and H.R. 1709. Senate Minority Leader Harry Reid (D-NV) was one of the bill's two cosponsors. On April 20, 2005, S. 844 was read the second time placed on the Senate calendar under General Orders. No further action was taken.

## **5. Contraceptive/Abortifacient Mandate**

Background: The Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC) required 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.

EPICC was first introduced in Congress in 1997. The basic content of this measure was included in the larger composite bill called the Prevention First Act or sometimes the Title X Family Planning Services Act of 2005 (H.R. 1709, S. 20, S. 844). See elsewhere in this report: Contraceptive/Abortifacient Composite Bills.

EPICC 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) would be preempted by federal law, unless the state laws provide for even stronger mandated coverage.

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

For a critique of contraceptive/abortifacient mandates, see "Fact Sheet: Contraceptive Mandates" at: [www.usccb.org/prolife/issues/abortion/contfac2.htm](http://www.usccb.org/prolife/issues/abortion/contfac2.htm).

Senate: On June 9, 2005, Sens. Olympia Snowe (R-ME) and Harry Reid (D-NV) introduced EPICC (S. 1214). The bill had 19 other cosponsors. The measure was referred to the Senate Health, Education, Labor and Pensions Committee. No further action was taken.

House: On December 22, 2005, Rep. Nita Lowey (D-NY) introduced EPICC (H.R. 4651). The bill had 11 cosponsors. The bill was referred to the Subcommittee on Health of the House Energy and Commerce Committee and to Subcommittee on Employer-Employee Relations of the House Education and Workforce Committee. No further action was taken.

## 6. “Emergency Contraception” Education

Background: The Emergency Contraception Education Act authorized 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 107<sup>th</sup> and 108<sup>th</sup> Congresses. The basic text of H.R. 3326 also has been incorporated into a larger composite bill called the Prevention First Act or sometimes the Title X Family Planning Services Act of 2005 (H.R. 1709, S. 20, S. 844). See Contraceptive/Abortifacient Composite Bills.

H.R. 3326 authorized \$10 million for each of the Fiscal Years 2006 through 2010. “Emergency contraception” was defined as a drug or device (as specified in the Federal Food, Drug, and Cosmetic Act) or a drug regimen that is used after sexual relations and “prevents pregnancy, by preventing ovulation, fertilization of an egg, or *implantation of an egg in a uterus* (emphasis added).” In the statement of findings, this definition was phrased as follows: “Emergency contraception, also known as post-coital contraception, is a responsible means of preventing pregnancy that works like other hormonal contraception to delay ovulation, prevent fertilization or *prevent implantation* (emphasis added).” The language in the main section of the bill and in the preliminary findings conceded in fact that “emergency contraceptives” are sometimes abortifacient. Attempting to obscure this meaning, the findings also stated: “Emergency contraception does not cause abortion and will not affect an established pregnancy.” In this way, the bill asserted the legal fiction that only an established pregnancy can be called an abortion. 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 no longer egg or sperm.

House: On July 18, 2005, Rep. Louise Slaughter (D-NY) introduced the Emergency Contraception Education Act (H.R. 3326). The bill had 95 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee. No further action was taken.

## 7. “Emergency Contraception” Hospital Mandates

Background: A measure called the Compassionate Assistance for Rape Emergencies Act (H. R. 2928, S. 1264) 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 107<sup>th</sup> and 108<sup>th</sup> Congresses. Another bill would require military hospitals to provide the drugs for any reason (H.R. 2635).

The basic contents of H.R. 2928 and S. 1264 were incorporated into a larger composite bill called the Prevention First Act or sometimes the Title X Family Planning Services Act of 2005 (H.R. 1709, S. 20, S. 844). See Contraceptive/Abortifacient Composite Bills.

H.R. 2928 provided that federal funds may not be made available to a hospital unless the hospital (1) promptly gives sexual assault victims written and oral information about emergency contraception, including information that “emergency contraception does not cause an abortion,” (2) promptly offers emergency contraception and promptly provides it on the victim’s request, (3) the information is provided in language that is easily understood, and (4) these services are not denied because of inability to pay. “Sexual assault” means coitus in which the woman does not consent or lacks the legal capacity to consent. “Emergency contraception” is defined as “a drug, drug regimen, or device that is (A) used postcoitally; (B) prevents pregnancy by delaying ovulation, preventing fertilization of an egg, or preventing implantation of an egg in a uterus; and (C) is approved by the Food and Drug Administration.”

As with the Emergency Contraception Education Act described elsewhere in this report (H.R. 3326), 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.

House: On June 15, 2005, Rep. Steven Rothman (D-NJ) introduced the Compassionate Assistance for Rape Emergencies Act (H.R. 2928). The measure had 117 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. No further action was taken.

On May 25, 2005, Rep. Michael Michaud (D-ME) introduced a bill with the official title, “To amend title 10, United States Code, to require emergency contraception to be available at all military health care treatment facilities “(H.R. 2635). In the bill “Emergency contraception” was defined as “a drug, drug regimen, or device that is (i) approved by the Food and Drug Administration to prevent pregnancy; and (ii) used postcoitally.” The bill had 11 cosponsors and was referred to the Subcommittee on Military Personnel of the House Armed Services Committee. No further action was taken.

Senate: On June 16, 2005, Sen. Jon Corzine (D-NJ) introduced the Compassionate Assistance Rape Emergencies Act (S. 1264). The bill had 11 cosponsors and was referred to the Senate Health, Education, Labor and Pensions Committee. No further action was taken. The measure included the provisions of H.R. 2928, the House companion bill, but also included provisions related to prevention of sexually transmitted diseases in victims of sexual assault.

On September 26, 2006, Sen. Hillary Clinton (D-NY) also introduced the Compassionate Assistance Rape Emergencies Act (S. 3945). This measure had 10 cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

## 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. The cloning techniques used to create human embryos for experimentation 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. In addition to bills banning human cloning, opposition bills allowing the creation of human clones for purposes of research and destruction also have been introduced.

In February 2004 *Science* magazine reported what seemed to be the first ever verified case of deriving a stable human embryonic stem cell line from a human embryo generated by cloning. The research in question was carried out by Dr. Hwang Woo Suk and associates in Seoul, South Korea. In May 2005 *Science* magazine further reported that the same researchers had created 11 human embryonic stem cell lines from 185 human embryos generated by cloning. However, subsequently a South Korean academic panel discredited both these reports as fabrications. See the January 10, 2006 Summary of Final Report in news reports on the University of Seoul website: [www.useoul.edu](http://www.useoul.edu). No embryonic stem cell lines were produced from human clones.

A May 19-23, 2006 International Communications Research poll showed overwhelming opposition to human cloning, whether to provide children for infertile couples (83% against) or to produce embryos that would be destroyed in medical research (81% against). See: [www.usccb.org/comm/archives/2006/06-109.shtml](http://www.usccb.org/comm/archives/2006/06-109.shtml).

Today the debate on human cloning is linked to the question of deriving embryonic stem cells from cloned embryos. For additional discussion, see section on “Stem Cell Research.”

Senate: The following major bills were introduced.

(1) *Genuine Ban on Human Cloning:* On March 17, 2005, Sens. Sam Brownback (R-KS) and Mary Landrieu (D-LA) introduced the Human Cloning Prohibition Act (S. 658), a genuine ban on human cloning. Thirty-one other Senators added their names as cosponsors. However, on February 10, 2006, Sen. Jim Talent (R-MO) withdrew his name. The measure was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken. 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.

(2) *False Ban on Human Cloning:* On April 21, 2005, Sen. Orrin Hatch (R-UT)

introduced an opposition bill, the Human Cloning Ban and Stem Cell Research Protection Act (S. 876). This measure allowed the creation of human clones for experimentation, requiring the destruction of the cloned embryos after 14 days. The bill had 12 cosponsors and was referred to the Judiciary Committee. No further action was taken. This legislation was similar to a bill introduced in the previous Congress.

In its legal definitions, S. 876 employed abstract circumlocutions defining the reality created through cloning as something other than a living human embryo. A human clone is not a clone unless it is implanted in a uterus. "The term 'human cloning' means implanting or attempting to implant the product of nuclear transplantation into a uterus or the functional equivalent of a uterus." Thus the prohibition on human cloning only referred to the implantation of the human clone in a uterus. A new term was devised to describe the human clone who has not been implanted in a uterus, namely, "unfertilized blastocyst." "The term 'unfertilized blastocyst' means an intact cellular structure that is the product of nuclear transplantation."

The "ban" on human cloning referred only to implanting "the product of nuclear transplantation" into a uterus. S. 876 did not ban creating human clones for experimentation and subsequent death. The bill explicitly provided: "Nothing in this section shall be construed to restrict practices not expressly prohibited in this section." That is, cloning-for-biomedical-research was permitted.

S. 876 had a section requiring oversight reports on enforcement of human cloning bans (federal, state, international). The bill also had a title on ethical requirements. According to what in this title was called the "Fourteen-Day Rule," cloned humans must be killed after 14 days. "An unfertilized blastocyst shall not be maintained after more than 14 days from its first cell division, not counting any time during which it is stored at temperatures less than zero degrees centigrade."

(3) *False Ban on Human Cloning*: On July 27, 2005, Sen. Dianne Feinstein (D-CA) introduced the Human Cloning Ban Act (S. 1520), a measure similar to S. 856 except that it dropped the section related to oversight reports on enforcement actions, as well as the title related to ethical requirements. S. 1520 had 29 cosponsors and was referred to the Senate Judiciary Committee. No further action was taken.

(4) *Human Chimera Ban*: On July 11, 2005, Sen. Brownback also introduced the Human Chimera Prohibition Act (S. 1373; also see earlier S. 659). The bill had four cosponsors and was referred to the Senate Judiciary Committee. No further action was taken. In general, a human chimera is a being containing both human and non-human components. S. 1373 prohibited 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.

House: The following major bills were introduced.

(1) *Genuine Ban on Human Cloning*: On March 17, 2005, Reps. Dave Weldon (R-FL) and Bart Stupak (D-MI) introduced the Human Cloning Prohibition Act (H.R. 1357), a genuine

ban on human cloning. The bill had 148 other cosponsors and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee. No further action was taken. H.R. 1357 was similar to S. 658; however, it did not require a study on the law's implementation.

(2) *False Ban on Human Cloning*: On April 26, 2005, Rep. Mary Bono (R-CA) introduced an opposition bill, the Human Cloning Ban and Stem Cell Research Protection Act (H.R. 1822), a measure that allowed the creation of human clones for experimentation and then destruction. This bill was the House version of S. 876 and had five cosponsors. It was referred to the Health Subcommittee of the House Energy and Commerce Committee. No further action was taken.

(3) *False Ban on Human Cloning*: On September 28, 2005, Rep. Mary Bono (R-CA) introduced the Human Cloning Ban Act (H.R. 3932), a measure that also allowed for the creation of human clones for experimentation and then destruction. H.R. 3932 was the companion bill to S. 1520. H.R. 3932 had three cosponsors and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee. No further action was taken.

Hearing: On March 7, 2006, Rep. Mark Souder (R-IN), Chairman of the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the House Government Reform Committee, chaired a hearing, "Human Cloning and Embryonic Stem Cell Research after Seoul: Examining Exploitation, Fraud and Ethical Problems in the Research." For copies of testimony, see: [reform.house.gov/CJDPHR/Hearings/EventSingle.aspx?EventID=40390](http://reform.house.gov/CJDPHR/Hearings/EventSingle.aspx?EventID=40390). In his testimony, Richard Doerflinger, Deputy Director of the Secretariat for Pro-Life Activities, U.S. Conference of Catholic Bishops, examined the scientific, political, and moral lessons from the fraudulent human cloning research conducted by Dr. Hwang Woo Suk and associates.

#### Helpful Websites:

- Resources on cloning from U.S. Conference of Catholic Bishops: [www.usccb.org/prolife/issues/bioethic](http://www.usccb.org/prolife/issues/bioethic)
- Alternatives to stem cell research that destroys human embryos: [www.stemcellresearch.org](http://www.stemcellresearch.org)
- Background from Americans to Ban Cloning: [www.cloninginformation.org](http://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. 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, Judge Kennedy ruled against NFPRHA on the merits and denied the motion (*NFPRHA v. Gonzales*, Civil Action 04-02148). On October 24, 2005, NFPRHA appealed to the U.S. Court of Appeals for the District of Columbia.

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. The Alliance of Catholic Health Care and nine other intervenors were denied a motion to intervene. That motion was appealed. The State of California and the federal government, the principals in the case, briefed cross-motions, in anticipation of a summary judgment. *State of California ex. rel. Bill Lockyer, et al., v. United States, et al.* (Civ. No. C-05-00328 JSW (N.D.Ca)).

For more information on both ANDA and the Hyde/Weldon Conscience Protection Amendment, see: [www.usccb.org/prolife/issues/abortion/andaindex.htm](http://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/virtual\\_4d\\_mini.html](http://www.gehealthcare.com/usen/ultrasound/4d/virtual_4d_mini.html)

House: On January 4, 2005, Rep. Cliff Stearns (R-FL) introduced the Informed Choice Act (H.R. 216). The bill had 30 cosponsors and was referred to the Health Subcommittee of the House Committee on Energy and Commerce. No further action was taken. The Secretary of Health and Human Services would be authorized to make grants to nonprofit tax-exempt organizations for the purchase of ultrasound equipment that is to be used to provide free examinations to pregnant women needing such services. The measure specified eligibility requirements and limitations on grant amounts. \$3 million was authorized for Fiscal Year 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 had two cosponsors and was referred to the Senate Health, Education, Labor and Pensions Committee. No further action was taken.

## 11. 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 it will not perform or promote abortion as a method of family planning. 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. 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.

Senate: On April 5, 2005, during consideration of the State Department Fiscal Years 2006-2007 Authorization 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 increased by four votes.

On April 26, 2005, S. 600 was returned to the Senate calendar. No further action was taken.

President Bush stated that if the Boxer amendment remained in S. 600, he would have vetoed the bill.

House: On February 8, 2006, Rep. Rob Simmons (R-CT) introduced the Ensuring Access to Contraceptives Act of 2006 (H.R. 4736). The measure had 53 cosponsors and was referred to the House Committee on International Relations. No further action was taken. The bill had the intent of removing nongovernmental organizations from the requirements of the Mexico City Policy. With respect to determining eligibility for funding to provide contraceptives in developing countries, nongovernmental organizations should not be required to meet eligibility standards that are more restrictive than the criteria used for foreign governments.

## 12. Military Abortions

Background: Current law governing abortion in the military has two restrictions: one on the use of funds, the other on the use of facilities (10 USC 1093). Funds may not be used to pay for

abortions, except to save the life of the mother. Facilities may not be used to perform abortions, except to save the life of the mother and in cases of rape or incest.

House: During consideration of the Fiscal Year 2007 National Defense Authorization Act (H.R. 5122), Rep. Susan Davis (D-CA) offered an amendment that would have allowed privately funded abortions to be performed at military facilities for any reason. During floor debate, Rep. Robert Andrews (D-NJ) offered the amendment on behalf of Rep. Davis. On May 10, 2006, the House defeated the Davis amendment, 191-yes, 237-no, 4-not voting (Roll Call 136).

Congress has rejected this type of amendment since 1995.

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

Executive: On August 24, 2006, the U.S. Food and Drug Administration (FDA) approved over-the-counter (OTC) distribution of the Plan B morning-after-pill (MAP) for “consumers” – men and women – 18 years and older. The potent drug would remain available prescription-only for women 17 years and under. See: [www.fda.gov/bbs/topics/NEWS/2006/NEW01436.html](http://www.fda.gov/bbs/topics/NEWS/2006/NEW01436.html). Plan B, a product of Duramed, a subsidiary of Barr Pharmaceuticals, is a levonorgestrel-only MAP that has not only contraceptive but also abortifacient properties. Deirdre McQuade, Director of Planning and Information for the Bishops’ Secretariat for Pro-Life Activities, objected to the OTC approval of Plan B. “Without the benefit of a doctor’s supervision, many women will be unaware of this abortifacient action and the other risks posed by Plan B.” Ms. McQuade urged health care providers “not to confuse FDA approval with a right to access and refuse to stock this potent drug for distribution on demand.” For Ms. McQuade’s full statement, see: [www.usccb.org/comm/archives/2006/06-158.shtml](http://www.usccb.org/comm/archives/2006/06-158.shtml).

The USCCB’s opposition to OTC sales of Plan B is based on four primary reasons: (1) the abortifacient potential of Plan B (two of its four main actions could interfere with the survival of the early embryo); (2) problems for informed consent (OTC availability would reinforce the lack of awareness that Plan B can be an abortifacient); (3) public health concerns (possible routine use of this potent drug, higher risk of ectopic pregnancy and sexually transmitted diseases); (4) the heightened prospect of coercing pharmacists to provide the drug against their conscientious objection. See the Bishops’ Secretariat for Pro-Life Activities’ web page at: [www.usccb.org/prolife/issues/contraception/morningafterpill.htm](http://www.usccb.org/prolife/issues/contraception/morningafterpill.htm).

On July 31, 2006, the U.S. Food and Drug Administration (FDA) had announced a framework for working with Duramed to resolve the remaining policy issues for the potential approval of OTC use of Plan B. The controversy over the approval goes back several years.

On April 16, 2003, Women’s Capital Corporation submitted to the FDA an application to allow the MAP called Plan B to be sold OTC without a prescription. Later in 2003, Barr Pharmaceuticals acquired Plan B. On May 6, 2004, Steve Galson, Acting Director of the FDA’s Center for Drug Evaluation and Research, informed Barr that the OTC application was not approved. The FDA was especially concerned about the safe OTC use of Plan B by women less than 16 years of age. Barr subsequently submitted a modified proposal. In 2005, the FDA

solicited public comments on some technical questions related to the 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. In its July 31, 2006 letter to Duramed Research, the FDA said that it received approximately 47,000 comments. For Summary Report of Comments, see: [www.fda.gov/cder/drug/infopage/planB/default.htm](http://www.fda.gov/cder/drug/infopage/planB/default.htm).

Supporters of Plan B claimed that changing its status to OTC would decrease the number of abortions. A study coauthored by a Planned Parenthood doctor and published in the January 5, 2005 edition of the *Journal of the American Medical Association* cast serious doubt upon this contention. Commenting on the study's findings, Cathy Cleaver Ruse, Esq., then 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](http://www.usccb.org/comm/archives/2005/05-003.shtml). Also see, Susan E. Wills, "Plan B: Politics vs. Science?" *National Review Online* (August 15, 2006) at: [article.nationalreview.com?q=NDk3YjllZDAzMzViMTY1NzljMTkzZGVjMThhNDkzNmM=](http://article.nationalreview.com?q=NDk3YjllZDAzMzViMTY1NzljMTkzZGVjMThhNDkzNmM=). Ms. Wills argues that proponents of the widespread use of Plan B need to come to grips with the findings of science, namely, that studies show that the widespread use of "emergency contraception" (EC) like Plan B does not reduce rates of unintended pregnancy or abortion, that the repeated use of Plan B is not as safe as advertised, and that Plan B has at least four different modes of action, two of which are potentially abortifacient, depending on when sexual activity occurs and Plan B is taken in a woman's fertility cycle.

#### **14. Parental Notification**

On June 17, 2005, Rep. Marilyn Musgrave (R-CO), introduced the Parental Notification and Intervention Act (H.R. 2971). The measure had five cosponsors and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee. No further action was taken. The bill would make it unlawful to perform an abortion on an unemancipated minor under 18, to permit the facilities of an entity to perform an abortion on such minor, or to assist in the performance of an abortion on such minor, unless: there is clear and convincing evidence of physical abuse by the parent; there is written notification to the parents that an abortion has been requested; there is a 96-hour waiting period after the notice has been received by the parents; and there is compliance with provisions allowing any parent to seek a court injunction against the abortion. Exceptions were made for cases where a grave physical disorder or disease would cause the death of the unemancipated minor. Parental notice required the use of certified mail which is personally delivered to any parent. The term "parent" included a legal guardian. This legislation also was introduced in 2003.

Also, see elsewhere in this report: CCPA/CIANA.

Judicial: In 2003 New Hampshire passed the Parental Notification Prior to Abortion Act. The

performance of an abortion upon an unemancipated minor would require at least 48 hours written notice to a parent. An exception was made when the physician certifies that the abortion “is necessary to prevent the minor’s death.” The Act included judicial bypass. Planned Parenthood of Northern New England and others challenged the law. On December 29, 2003, two days before the statute was to take effect, U.S. District Judge Joseph A. DiClerico declared the law unconstitutional and enjoined its enforcement. The law judge based his ruling on the determination that the law lacked a health exception and that the life exception was too narrowly drawn. On November 24, 2004, the U.S. Court of Appeals for the First Circuit affirmed the district court actions and agreed with its basic arguments. The case was appealed to the U.S. Supreme Court. On May 23, 2005, the Court agreed to hear the case, now named *Ayotte v. Planned Parenthood* (No. 04-1144). Oral arguments were heard on November 30, 2005.

On January 18, 2006, Associate Justice Sandra Day O’Connor delivered the opinion for a unanimous Court. The judgment of the Court of Appeals was vacated and the case was remanded for further consideration. Justice O’Connor began: “We do not revisit our abortion precedents today, but rather address a question of remedy.” The lower courts employed the blunt remedy of declaring the statute facially unconstitutional. The Court wanted the lower courts to investigate a narrower remedy. Without question, states can pass parental involvement laws. Forty-four states have done so, though only four states, including New Hampshire, do not have an exception for health. In this case, the state did not dispute, and the Court’s precedents hold, “that a State may not restrict access to abortions that are ‘necessary, in appropriate medical judgment, for preservation of the life or health of the mother.’” The cite is to the Court’s 1992 *Planned Parenthood v. Casey* decision, which was quoting the Court’s 1973 *Roe v. Wade* decision. In the New Hampshire case, the state also did not take real issue with the position that in “some very small percentage of cases, pregnant minors, like adult women, need immediate abortions to avert serious and often irreversible damage to their health.” So, the Court inquired, what is the remedy? How resolve the question of a constitutional flaw in a statute? In the Court’s opinion, only a few applications of the statute presented a constitutional problem. In devising a solution, the Court contended, the lower courts should remain faithful to legislative intent. The lower courts can prohibit the statute’s unconstitutional application, but, the Court asked, would legislative intent allow such a solution or would legislative intent show that the legislature would prefer no law at all? On remand the lower courts must determine legislative intent and, consistent with intent, either prohibit unconstitutional applications or declare the statute *in toto* invalid.

## **15. Partial-Birth Abortion Ban Act**

Background: This legislation would ban 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 approved by the 104th and 105th Congresses, but the measures 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](http://www.usccb.org/prolife/issues/pba/pbaban.htm)**.

In 2004, U.S. Attorney General John Ashcroft appealed the California ruling on August 3, the New York and Nebraska rulings on September 27 and September 28, respectively.

On April 14, 2005, oral argument was heard in the Nebraska case, and 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. Reaching this judgment, the Court declined to address the district court's other argument that the law imposes an undue burden on a woman's right to have an abortion. On September 23, 2005, the Nebraska case was appealed to the U.S. Supreme Court (*Gonzales v. Carhart*, Docket No. 05-380). On February 21, 2006, the Court announced that it would hear the case.

On January 31, 2006, the U.S. Court of Appeals for the Ninth Circuit upheld the ruling of the Northern District of California court, presenting three reasons for its ruling: the law lacked a "health" exception, imposed an undue burden on a woman's right to choose a previability abortion, and was impermissibly vague. On June 19, 2006, the U.S. Supreme Court announced that it would take up the California case (*Gonzales v. Planned Parenthood*, Docket No. 05-1382).

On November 8, 2006, the Court heard oral arguments on the Nebraska and California cases. A decision is expected in 2007.

Also on January 31, 2006, the U.S. Court of Appeals for the Second Circuit upheld the ruling of the Southern District of New York court, arguing that the federal partial-birth abortion ban law lacked a "health" exception. The Second Circuit had requested more briefs in light of the U.S. Supreme Court's parental notice *Ayotte* decision (see Parental Notification section), but suspended all action on the case after the Supreme Court agreed to hear the Nebraska case.

## **16. Peaceful Clinic Protest**

In 1986, the National Organization for Women (NOW), and others, brought a suit against Joseph Scheidler, and others, claiming that their protests at abortion clinics were unlawful. NOW sought damages and a nationwide injunction. In 1994 and 2003, the Court issued earlier rulings in this case. On February 28, 2006, in a unanimous 8-0 decision (Justice Alito did not participate in the case), the Court held that Congress did not intend to create a freestanding physical violence offense in the Hobbs Act (in Title 18 of the U.S. Code). The Court reversed the Court of Appeals

and remanded the case for judgment to Joseph Scheidler and the other petitioners. *Scheidler et al. v. National Organization for Women, Inc., et al.* (Docket 04-1244).

## **17. Pregnant Women Support Act**

On September 21, 2006, Rep. Lincoln Davis (D-TN) introduced the Pregnant Women Support Act (H.R. 6145). The measure had 27 cosponsors; it was referred to four committees: the Health Subcommittee of the Energy and Commerce Committee; the Education Reform Subcommittee and the 21st Century Competitiveness Subcommittee of the Education and Workforce Committee; the Ways and Means Committee; and the Department Operations, Oversight, Nutrition and Forestry Subcommittee of the Agriculture Committee. On October 13, 2006, Executive Comment was requested from the U.S. Department of Agriculture. No further action was taken. According to the bill's main title, H.R. 6145 is intended to "provide for programs that reduce the need for abortion, help women bear healthy children, and support new parents." The bill had 13 titles: Collecting and Reporting Abortion Surveillance Data (Title I), Disclosure of Information for Abortion Services (Title II), Medicaid and Schip Coverage of Pregnant Women and Unborn Children (Title III), Health Insurance Coverage for Pregnant Women and Newborns (Title IV), Increasing Women's Knowledge About Their Pregnancy (Title V), Services Regarding Positive Test Diagnosis of Down Syndrome or Other Prenatally Diagnosed Conditions (Title VI), Identification and Treatment of Domestic Violence Against Pregnant Women (Title VII), Public Awareness Campaign (Title VIII), Support for Pregnant and Parenting Students (Title IX), Support for Pregnant and Parenting Teens (Title X), Federally-Funded Homes for Pregnant and Parenting Women; Adoption Counseling; Parenting Skills (Title XI), Expansion of Adoption Credit and Adoption Assistance Programs (Title XII), Providing Support to New Parents (Title XIII).

On the occasion of the introduction of Rep. Davis' bill, Deirdre McQuade, spokeswoman for the Bishops' Secretariat for Pro-Life Activities, stated, "Given the staggering 1.3 million abortions in the United States each year, the Pro-Life Secretariat applauds constructive initiatives to support women and their children, both born and unborn." She added, "We look forward to working with Congressman Davis to accomplish these goals through initiatives that respect the dignity and lives of both mothers and their children."

On September 13, 2006, Rep. Tim Ryan (D-OH) introduced a competing bill, the Reducing the Need for Abortion and Supporting Parents Act (H.R. 6067). The measure had 24 cosponsors and was referred to three committees: the Health Subcommittee of the Energy and Commerce Committee; the Education Reform Subcommittee and the 21st Century Competitiveness Subcommittee of the Education and Workforce Committee; and the Ways and Means Committee. No further action was taken. H.R. 6067 had 18 titles, some similar to those in the Davis bill, but others that increase federal funding for family planning and promote contraceptive use as part of teenage sex education programs.

## **18. The Right to Life Act**

On February 2, 2005, Rep. Duncan Hunter (R-CA) introduced the Right to Life Act (H.R. 552).

The measure had 101 cosponsors and was referred to the House Judiciary Subcommittee on the Constitution. The bill's purpose was to "implement equal protection for the right to life of each born and preborn human person." The measure provided that pursuant to the duty and authority of Congress, including Congress' power to make necessary and proper laws under Art. 1, Sec. 9 of the U.S. Constitution and Congress' power under the 14<sup>th</sup> Amendment to the Constitution, Sec. 5, 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" included "each and every member of the species homo sapiens at all stages of life, including, but not limited to, the moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being." The House Judiciary Subcommittee on the Constitution had scheduled a December 12, 2006 hearing on H.R. 552. However, the 109<sup>th</sup> Congress adjourned prior to that date and the hearing was not held.

### **19. RU-486 Suspension and Review Act: Holly's Law**

Introduction: On September 28, 2000, the Federal Food and Drug Administration (FDA) approved the use of mifepristone (brand names Mifeprex and Early Option, commonly called RU-486) for the termination of early pregnancies (49 days or less, counting from beginning of last menstrual period). According to the FDA's approved regimen, the woman takes three 200 mg pills by mouth, followed two days later by two 200 mg pills of misoprostol (brand name Cytotec). After 14 days the woman returns for a follow-up visit to determine if the pregnancy has been terminated.

RU-486 is an artificial steroid that blocks progesterone, a hormone needed to continue a pregnancy. Taken alone, RU-486 causes a complete abortion only about 60% of the time. Misoprostol is a prostaglandin that causes uterine contractions and thereby increases the effectiveness of RU-486.

In its approval of RU-486, the FDA employed a special process normally reserved for the expedited approval of life-saving drugs for such diseases as AIDS or cancer. Also, the manufacturer of misoprostol rejects the use of the drug to induce abortion. Misoprostol is an anti-ulcer drug.

In the RU-486 Suspension and Review Act, Congress finds that mifepristone used with misoprostol for chemically induced abortion "has caused a significant number of deaths, near deaths, and adverse reactions." The Act would withdraw the approval of RU-486 and determine that misoprostol "shall be considered misbranded" if the drug's label says the drug may be used by itself or in conjunction with another drug for the medical termination of pregnancy. The Comptroller General of the United States shall review the process by which RU-486 was approved. If it is determined the process was in accord with regulations, then the suspension of approval of the drug would no longer have effect.

The RU-486 Suspension and Review Act 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. The Alameda County Coroner's report indicated that Patterson's death was due

to septic shock following an incomplete RU-486 chemically induced abortion. Monty and Helen Patterson, Holly's parents, in an open letter, urged passage of the bill. See: [www.lifesite.net/ldn/2003/nov/031106a.html](http://www.lifesite.net/ldn/2003/nov/031106a.html).

To date, 10 known deaths have resulted from taking RU-486. More than 950 adverse event cases have been associated with the drug's use. In "Stop the bloodshed and pass Holly's law," *Washington Times* (Feb. 5, 2006), Susan E. Wills reported that FDA adverse event reports "chronicle fatalities, near-fatalities, hospitalizations of up to a week, heart attacks, ruptured ectopic pregnancies, failed and incomplete abortions, serious-to-lethal infections, women who lost consciousness at home and required sutures to close head wounds, and hemorrhaging so extreme some women required replacement of half to all their blood volume." Ms. Wills also cited a *New England Journal of Medicine* study that calculates the risk of death from infection following RU-486 abortions as ten times the mortality rate from all causes in surgical abortions in early pregnancy. See: [www.washingtontimes.com/commentary/20060204-103041-7209r.htm](http://www.washingtontimes.com/commentary/20060204-103041-7209r.htm).

In a March 29, 2006 press conference on Capitol Hill in support of Holly' Law, Deirdre A. McQuade, Director of Planning and Information at the Bishops' Secretariat for Pro-Life Activities, stated, "It is time to take a close second look at this potent, risky and poorly scrutinized abortion drug. Women deserve better from their federal government. We urge Congress to bring this measure to a vote at the earliest possible opportunity." See: [www.usccb.org/comm/archives/2006/06-064.shtml](http://www.usccb.org/comm/archives/2006/06-064.shtml).

For more information on the abortion drug RU-486, see: [www.usccb.org/prolife/issues/ru486/index.htm](http://www.usccb.org/prolife/issues/ru486/index.htm). Also see: [www.ru486facts.org](http://www.ru486facts.org).

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 had 86 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee. No further action was taken. Rep. Bartlett's introductory remarks can be found in the *Congressional Record*, March 3, 2005, E357.

On May 17, 2006, the Criminal Justice, Drug Policy and Human Resources Subcommittee of the House Committee on Government Reform held a hearing titled, "RU-486: Demonstrating a Low Standard for Women's Health." Chairman Mark Souder (R-IN) presided. Monty Patterson, father of Holly Patterson, was one of six witnesses who testified. For copies of all testimony, see: [reform.house.gov/CJDPHR/Hearings/EventSingle.aspx?EventID=43922](http://reform.house.gov/CJDPHR/Hearings/EventSingle.aspx?EventID=43922).

Senate: On March 3, 2005, Sen. Jim DeMint (R-SC) introduced the companion bill (S. 511). The measure had 12 cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken. For Sen. DeMint's introductory remarks see: [frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005\\_record&page=S2020&position=all](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_record&page=S2020&position=all).

## 20. Stem Cell Research

A stem cell is a basic body cell that can reproduce itself but, more importantly, has the ability to differentiate itself into one or more specialized cell types. Sources for stem cells include early embryos (5-7 days postconception), fetal tissues, umbilical cord blood, placental tissues, and most or all body tissues. Stem cells are commonly divided into embryonic and adult (all postnatal sources). Derivation of embryonic stem cells from the early embryo necessarily results in the death of the embryo, and thus is a morally unacceptable form of experimentation on a human being. 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 embryonic stem cells (able to form most or all tissues of the adult body) have proven very difficult to use and to date have produced no therapeutic benefits in humans. Adult stem cells (full extent of their ability to form other tissues of the body are only beginning to be understood) are much more manageable and to date have produced therapeutic benefits in treating humans for at least 70 different diseases. For updated information, see: [www.stemcellresearch.org](http://www.stemcellresearch.org).

By directive of President Bush only embryonic stem cells (ESC) existing as of August 9, 2001 were 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.

The immoral character of destructive embryonic stem cell research is only compounded when the embryonic stem cells are to be derived from human embryos cloned for just this purpose. For further discussion, see section on "Human Cloning Ban."

A May 19-23, 2006 telephone poll conducted by International Communications Research showed that 48% of Americans oppose federal funding of stem cell research that requires destroying human embryos, while only 39% support such funding. When respondents were informed that scientists disagree on whether stem cells from embryos or from adult tissues may end up being most successful in treating diseases, 57% favored funding only the research that does not harm the donor, only 24% favored all stem cell research, including the type that involves destroying embryos. See: [www.usccb.org/comm/archives/2006/06-109.shtml](http://www.usccb.org/comm/archives/2006/06-109.shtml).

Based on a study in the August 23, 2006 issue of *Nature*, researchers with Advanced Cell Technology (ACT) were reported to have developed a way ethically to create embryonic stem cell lines from single cells derived from the 8 to 10 cell embryo without destroying the embryo. However, Richard Doerflinger, Deputy Director of the Bishops' Secretariat for Pro-Life Activities, said that the reality of what happened differed from news reports. "Researchers did not safely remove single cells from early embryos, but destroyed 16 embryos in a desperate effort to obtain an average of six cells from each one." He noted, "This experiment left no embryos alive, and solves no ethical problem." He further observed, "From the resulting 91 cells, they still only managed to make two cell lines. Their study shows nothing about the safety of removing only one cell, which in fact is something they never did. . . ." For Mr. Doerflinger's full remarks, see: [www.usccb.org/comm/archives/2006/06-164.shtml](http://www.usccb.org/comm/archives/2006/06-164.shtml).

Arthur Caplan, head of the bioethics center at the University of Pennsylvania, cautioned that ACT is a company “not moved by moral arguments but by market arguments.” “Embryos preserved in stem-cell creation: Firm hails end to moral debate,” *The Washington Times* (August 24, 2006, A20). According to the *Wall Street Journal*, ACT Chief Executive William Caldwell said “he believes an embryo-safe method of deriving stem cells may help spark large-company interest in this area.” “Study Indicates Embryos Survive Cell Extraction,” *Wall Street Journal* (August 24, 2006, B4). At a September 6, 2006 hearing before the Labor, Health and Human Services, and Education Subcommittee of the Senate Appropriations Committee, Sen. Tom Harkin (D-IA), was reported to have said “he suspected the wording [of an ACT press release on the research] was intentionally misleading to raise the company’s long-suffering stock price.” “Senators Denounce Scientist’s Stem Cell Claims,” *Washington Post* (September 7, 2006, A4).

House: Several major bills were introduced.

(1) *Destructive Embryonic Stem Cell Research*: On February 15, 2005, Rep. Michael Castle (R-DE) and Rep. Diana DeGette (D-CO) introduced the Stem Cell Research Enhancement Act (H.R. 810). This measure would overturn President Bush’s policy that limits federally funded embryonic stem cell research to stem cell lines existing as of August 9, 2001 and would allow federal funding for research on embryonic stem cells derived from human embryos donated from in vitro fertilization clinics. The process of derivation destroys the young human embryos. A virtually identical bill was introduced in the 108<sup>th</sup> Congress, but never made it out of committee. 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 called the bill “seriously flawed legislation.” See: [www.whitehouse.gov/omb/legislative/sap/109-1/hr810sap-h.pdf](http://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.

On June 6, 2005, H.R. 810 was read the second time and was placed on the Senate calendar under General Orders.

(2) *Pluripotent Stem Cells*: On June 6, 2006, Rep. Roscoe Bartlett (R-MD) introduced the Alternative Pluripotent Stem Cell Therapies Enhancement Act (H.R. 5526). The Secretary of the Department of Health and Human Services shall conduct and support basic and applied research to develop techniques for the isolation, derivation, production, or testing of stem cells that, like embryonic stem cells, are capable of producing all or almost all of the cell types, but are not derived from a human embryo. The measure, identical to S. 2754, had 17 cosponsors and was referred to the House Committee on Energy and Commerce. No further action was taken. In 2005, Rep. Bartlett introduced two related measures, the Respect for Life Embryonic Stem Cell Act (H.R. 2574) and the Respect for Life Pluripotent Stem Cell Act (H.R. 3144). See related bill, S. 1557.

As background to these bills, consult the May 2005 White Paper by the President’s Council on Bioethics, “Alternative Sources of Pluripotent Stem Cells,” which 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](http://bioethics.gov/reports/white_paper/alternative_sources_white_paper.pdf).

See below for House action following Senate action and a presidential veto.

Senate: Several major bills were introduced.

(1) *Destructive Embryonic Stem Cell Research*: On February 28, 2005, Sen. Arlen Specter (R-PA) introduced the Stem Cell Research Enhancement Act (S. 471), a bill identical to the House-passed H.R. 810. S. 471 had 41 cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

(2) *Pluripotent Stem Cells*: On July 29, 2005, Sen. Tom Coburn (R-OK) introduced the Respect for Life Pluripotent Stem Cell Act (S. 1557). The measure had two cosponsors and was referred to the Senate Committee on Health, Education, Labor, and Pensions. No further action was taken. According to S. 1557, the Director of the National Institutes of Health shall provide for the conduct and support of basic and applied research in isolating, deriving and using pluripotent stem cells without creating or harming human embryos. See companion bill, H.R. 3144.

(3) *Pluripotent Stem Cells*: On May 5, 2006, Sen. Rick Santorum (R-PA) introduced the Alternative Pluripotent Stem Cell Therapies Enhancement Act (S. 2754). The measure had five cosponsors and was referred to the Senate Committee on Health, Education, Labor, and Pensions. See related H.R. 5526.

(4) *Fetus Farming Ban*: On June 13, 2006, Sen. Rick Santorum (R-PA) introduced the Fetus Farming Prohibition Act (S. 3504). The measure had three cosponsors and was referred to the Senate Committee on Health, Education, Labor, and Pensions. S. 3504 prohibits the solicitation or acceptance of tissue from fetuses gestated for research purposes. It would be unlawful to “(1) solicit or knowingly acquire, receive, or accept a donation of human fetal tissue knowing that a human pregnancy was deliberately initiated to provide such tissue; or (2) knowingly acquire, receive, or accept tissue or cells obtained from a human embryo or fetus that was gestated in the uterus of a nonhuman animal.”

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.” See: [www.usccb.org/comm/archives/2005/05-168.shtml](http://www.usccb.org/comm/archives/2005/05-168.shtml).

In 2005, Sen. Frist attempted to secure a unanimous consent agreement to proceed on a package of stem cell and related bills. Eventually he agreed to make the stem cell issue a priority in early 2006. Finally, on June 29, 2006, the U.S. Senate approved a unanimous consent agreement to consider three bills related to stem cell research: (1) The Fetus Farming Prohibition Act (S. 3504); (2) The Alternative Pluripotent Stem Cell Therapies Enhancement Act (S. 2754); and

(3) The Stem Cell Research Enhancement Act (H.R. 810), passed by the House in 2005. After debate, the bills would be voted on without amendments in the following order: S. 3504, S. 2754, H.R. 810. Each bill would require 60 votes to pass.

Cardinal William Keeler, Chairman of the Bishops' Committee for Pro-Life Activities, sent a policy letter to the U.S. Senate strongly urging opposition to H.R. 810 and support for S. 2754 and S. 3504. For text of letter, see: [www.usccb.org/comm/archives/2006/06-141.shtml](http://www.usccb.org/comm/archives/2006/06-141.shtml).

On Tuesday, July 18, 2006, the Senate voted on the package of three bills. All three received the needed 60 votes. The Fetus Farming Prohibition Act (S. 3504) and the Alternative Pluripotent Stem Cell Therapies Enhancement Act (S. 2754) passed by the votes, 100-yes, 0-no (Roll Calls 204 and 205). *The Stem Cell Research Enhancement Act (H.R. 810) passed, 63-yes, 37-no (Roll Call 206).*

Additional House Action: On July 18, 2006, S. 3504 and S. 2754 were immediately taken up by the House under Suspension of the Rules. Under this procedure, measures require a two-thirds vote; they cannot be amended. S. 3504 passed 425-yes, 0-no, 8-not voting (Roll Call 379). However, S. 2754 was not passed, having failed to receive the needed two-thirds. *The vote was 273-yes, 154-no, 6-not voting (Roll Call 380).* The backers of H.R. 810 decided to use the vote on S. 2754 to promote their agenda. The vote on S. 2754 was more about H.R. 810 than the merits of S. 2754.

Executive: On Wednesday, July 19, 2006, President Bush signed S. 3504 into law and vetoed H.R. 810. The president's remarks were well argued. See the White House's web page at: [www.whitehouse.gov/news/releases/2006/07/print/20060719-3.html](http://www.whitehouse.gov/news/releases/2006/07/print/20060719-3.html). Responding to the House defeat of S. 2754, the president directed the Secretary of HHS and the Director of NIH "to use all the tools at their disposal to aid the research for stem cell techniques that advance promising medical science in an ethical and morally responsible way." With regard to H.R. 810, the president stated: "If this bill would have become law, American taxpayers would, for the first time in our history, be compelled to fund the deliberate destruction of human embryos. And I'm not going to allow it. I have made it clear to Congress that I will not allow our nation to cross this moral line."

Richard Doerflinger, Deputy Director of the Bishops' Secretariat for Pro-Life Activities, commended the president "for his remarks and actions" on the stem cell legislation. See: [www.usccb.org/comm/archives/2006/06-149.shtml](http://www.usccb.org/comm/archives/2006/06-149.shtml).

Veto Override Attempt: A vetoed bill is sent back to the chamber from which it originated, in this case the House, which immediately took up the question of overriding the president's veto of H.R. 810. Two-thirds of those present and voting are required for an override. *On July 19, 2006, the attempt to override failed, 235-yes, 193-no, 5-not voting (Roll Call 388).* The attempt fell 51 votes short of two-thirds (in this case 286).

After the defeat of S. 2754, the House Rules Committee reported a rule (H.Res. 924) for the consideration of S. 2754. No further action was taken.

## 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](http://www.usccb.org/prolife/issues/pba/pbaban.htm). In response to this testimony, the Unborn Child Pain Awareness Act was introduced in Congress in 2004.

In the Act, a "pain-capable child" was defined as "an unborn child who has reached a probable stage of development of 20 weeks after fertilization." An abortion provider in or affecting interstate or foreign commerce, who knowingly performs an abortion on a pain-capable child, must comply with certain requirements related to informed consent on the part of the woman. The abortion provider or his or her agent was required to give the woman various kinds of information, including the Unborn Child Pain Awareness Brochure and secure the woman's signature to the Unborn Child Pain Awareness Decision Form. The brochure text included information that there is "a significant body of evidence that unborn children 20 weeks after fertilization have the physical structures necessary to experience pain," that there is "substantial evidence that the process of being killed in an abortion will cause the unborn child pain," that the woman "may request that anesthesia or other pain-reducing drug or drugs are administered directly to the pain-capable unborn child" if so desired. The provisions of the Act did not apply in the case of a medical emergency. A medical emergency was defined as a condition, which, in the reasonable medical judgment of the abortion provider, would require the abortion to avert the woman's death, or for which a delay in obtaining the abortion "would create a serious risk of substantial and irreversible impairment of a major bodily function." Medical emergency did not include emotional, psychological or mental disorders or conditions. An abortion provider who willfully failed to comply with the Act would be subject to civil penalties.

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 had 142 cosponsors, and was referred to the Subcommittee on Health of the House 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](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H175&dbname=2005_record).

On September 19, 2006, Rep. Smith introduced the measure in revised form as H.R. 6099. That measure had 120 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee.

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](http://judiciary.house.gov/oversight.aspx?ID=201).

Floor: On December 6, 2006, Rep. Nathan Deal (R-Ga) moved to suspend the rules and pass H.R. 6099. Under suspension of the rules, a measure could not be amended and required a

two-thirds vote for passage. *Receiving a vote of 250-yes, 162-no, 20-not voting, H.R. 6099 did not pass, failing to receive the necessary two-thirds support (Roll Call 526).*

Senate: On January 24, 2005, Sen. Sam Brownback (R-KS) introduced the companion bill in the Senate (S. 51). The measure had 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.**