

The Second Session of the 107<sup>th</sup> Congress convened January 23, 2002. After the fall 2002 elections, Congress returned November 12 for a short lame-duck session, with the Senate adjourning for the year on November 20, the House on November 22. The First Session of the 108<sup>th</sup> Congress will convene January 7, 2003. No legislation is carried over. 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**.

Before adjourning, Congress had approved only two of the 13 must-pass annual appropriations bills. With the new fiscal year having started October 1, Congress passed five Continuing Resolutions (CRs), the latest of which (H.J. Res. 124) extends the government's spending authority through January 11, 2003.

## **I. SUMMARY**

Law: In 2002, both House and Senate passed the Born-Alive Infants Protection Act (H.R. 2175) and on August 2, 2002, President Bush signed the measure into law (Public Law 107-207).

Pro-Life Policy Upheld: In the first part of the year, the White House was considering whether it should release \$34 million appropriated for the United Nations Population Fund (UNFPA). The UNFPA supports China's coercive population control program. On July 22, 2002, the U.S. State Department announced that the UNFPA would be denied U.S. funding. Thereafter, the Senate Appropriations Committee sought to rewrite the Kemp-Kasten Amendment which gives the president legislative authority to make this decision.

Pro-Choice Policies Rejected: The conference report on the Bankruptcy Reform Bill (H.R. 333) contained language that unfairly penalized nonviolent protesters at abortion clinics. On November 14, 2002, the House rejected the conference report and then re-passed the bill without the offending language. The Senate did not take up the new bill.

The Senate voted to overturn the law banning the use of military health care facilities for abortions; the House voted to uphold the policy. In conference committee on the FY 2003 Defense Authorization Bill (S. 2514), the existing law was kept in place.

Pro-Life Initiatives that Passed the House: Five major pro-life legislative initiatives passed the House (either in 2001 or 2002) but were not brought up for votes in the Senate: the Partial-Birth Abortion Ban Act (H.R. 4965); the Abortion Non-Discrimination Act (H.R. 4691, S. 2008); the Human Cloning Ban (H.R. 2505, S. 1899); the Child Custody Protection Act (H.R. 476); and the Unborn Victims of Violence Act (H.R. 503, S. 480).

Pro-Life Policies Unsuccessfully Attacked: In its markup of the FY 2003 Foreign Operations Appropriations Bill (S. 2779), the Senate Appropriations Committee approved language overturning the Mexico City Policy and negating the Kemp-Kasten Amendment. The corresponding House appropriations bill (H.R. 5410) upheld these policies. In the stalled appropriations process, neither bill reached the floor of its respective chamber.

Pro-Choice Initiatives Stalled: Pro-choice advocates placed priority on passing a measure (S. 104, H.R. 1111) that would mandate all health insurance plans to provide coverage for prescription contraceptive drugs and devices, including those that can act as abortifacients. However, efforts to bring the bill to the Senate floor were not successful. Efforts to pass the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also did not succeed. The U.N. committee that monitors nations' treaty compliance interprets the section on family planning to include abortion.

Executive Branch Actions: In addition, the Executive branch was active throughout the year: On May 24, 2002, the Department of Justice appealed a ruling enjoining Attorney General John Ashcroft from enforcing his November 6, 2001 memorandum on the use of controlled substances for assisted suicide; on July 10, 2002, the President's Council on Bioethics issued its report, *Human Cloning and Human Dignity: An Ethical Inquiry*; on September 27, 2002, HHS Secretary Tommy Thompson issued the final regulation revising the definition of "child" in the State Children's Health Insurance Program (S-CHIP) to mean "an individual under the age of 19 including the period from conception to birth;" and, as mentioned above, the State Department denied funding to the UNFPA.

## **II. FEDERAL POLICIES**

A detailed report on federal policies follows.

Legislation introduced in 2001 could be carried over to 2002. More detailed information on issues and on what transpired in 2001 can be found online in "Legislative Report: 2001" by clicking the "Related Information" button.

### **1. Abortion Non-Discrimination Act**

Background: A campaign is underway to force Catholic hospitals and other health care institutions to perform or promote abortion. Recent attempts in New Hampshire, Alaska, New York and elsewhere to force health care organizations to provide, refer or pay for abortions demonstrate the need to strengthen conscience protection. In response to these threats, 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.

House: On May 9, 2002, Rep. Michael Bilirakis (R-FL) introduced the Abortion Non-Discrimination Act (H.R. 4691). This bill had 97 cosponsors and was referred to the Energy and Commerce Committee.

Hearings: On July 11, 2002, a day of hearings was held in the Health Subcommittee. Three witnesses testified, including Professor Lynn Wardle, who provided a comprehensive review of conscience clause legislation. Text of testimony can be found at: [energycommerce.house.gov/107/hearings/07112002Hearing632/wardle1089.htm](http://energycommerce.house.gov/107/hearings/07112002Hearing632/wardle1089.htm). H.R. 4691 bypassed committee markup and was brought directly to the House floor.

Floor: On September 25, 2002, the U.S. House of Representatives passed the Abortion Non-

Discrimination Act (H.R. 4691).

The Rule (H.Res. 546) governing debate on H.R. 4691 provided for one hour of debate, no amendments, with one motion to recommit with or without instructions. *The Rule passed 229-yes, 194-no, 9-not voting (Roll Call 410)*. On this critical vote, 201 Republicans and 28 Democrats voted “yes.” (“Yes” is a pro-life vote.)

Rep. Sherrod Brown (D-OH) offered a motion to recommit with instructions that would have gutted the bill. *That motion failed, 191-yes, 230-no, 11 not voting (Roll Call 411)*. One hundred and ninety-nine Republicans and 31 Democrats voted “no.” (“No” is a pro-life vote.)

*The House then passed H.R. 4961, 229-yes, 189-no, 2-present, 12 not voting (Roll Call 412)*. Hailing the House action, Richard Doerflinger, Deputy Director of the USCCB Secretariat for Pro-Life Activities, stated: “Today 192 Republicans and 37 Democrats helped ensure that health professionals will be free to choose *not* to destroy innocent human life. . . . The House has said it will stand against renewed efforts by abortion advocates to force their agenda on conscientiously opposed doctors, nurses and hospitals.” Mr. Doerflinger added: “We urge the Senate to do the same.”

Prior to the vote, the White House issued a Statement of Administration Policy strongly supporting passage of H.R. 4691.

Placed in a special format, these three votes can be found by clicking the “Related Information” button.

Senate: On March 12, 2002, Sen. Judd Gregg (R-NH) introduced the Abortion Non-Discrimination Act (S. 2008). This measure had one cosponsor and was referred to the Committee on Health, Education, Labor, and Pensions. No further action was taken.

On September 30, 2002, the House-passed version (H.R. 4691) was placed on the Senate legislative calendar, but no action was taken before adjournment.

## **2. Adoption Information Act**

H.R. 3006 requires all Title X family planning clinics to provide adoption information to people inquiring about family planning services. This measure was referred to committee. No further action was taken.

## **3. Assisted Suicide**

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

Judicial: On November 7, 2001, the state of Oregon filed a lawsuit challenging the authority of U.S.

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

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

Speaking for the Secretariat for Pro-Life Activities, Cathy Cleaver defended the Ashcroft memorandum for restoring the uniform enforcement of the longstanding Controlled Substances Act and called the assisted suicide law in Oregon a fraud. "The law was supposed to be an answer to the problem of incurable pain. But according to the Oregon Health Division, *not one* of the 27 people who died from assisted suicide in 2001 cited uncontrollable pain as their primary reason for wanting to die." For Ms. Cleaver's full statement, click on the "Related Information" button. Assistant Attorney General Robert McCallum defended the department's interpretation of the Controlled Substances Act stating: "A just and caring society should do its best to assist in coping with the problems that afflict the terminally ill. It should not abandon or assist in killing them. Doctors should not use controlled substances to assist suicide." *New York Times* (4/18/02, A16).

On May 24, 2002, the Department of Justice announced it will appeal the ruling.

#### **4. Bankruptcy Reform: Clinic Protest**

For several months, the Bankruptcy Reform Bill (H.R. 333) was stalled in conference committee because of Senate language promoted by Sen. Charles Schumer (D-NY) unfairly penalizing non-violent protesters. However, House conferees eventually signed off on a purported compromise proposal and on July 26, 2002, the conference report was filed (H. Rept. 107-617). Immediately, a group of pro-life Members objected to the report, noting that the bill language still unfairly and severely punished nonviolent protesters. It was anticipated by some that the conference report on H.R. 333 would be on the House floor September 12, but consideration was postponed. House Majority Leader Dick Armey (R-TX) noted that the Senate language was extraneous to the bill and that the House must "find a way to come to terms" with the Senate's action (*CR H62401*, 9/12/02). Supporters of the bill hired Kenneth Starr to develop arguments against the position of pro-life Members. Starr was expected to argue that the language in the bankruptcy bill "merely mirrors a 1994 law (PL 103-259) [FACE] that made it a crime to block access to abortion clinics" (*CQ Daily Monitor* 10/21/02).

After the elections, House leadership called up the conference report without amendment. *On November 14, 2002, the rule governing consideration of the conference report was rejected, 172-yes, 243-no, 17-not voting (Roll Call 478)*. Thereafter, the leadership resubmitted the Bankruptcy Reform Bill (H.R. 5745) but without the language that unfairly penalizes nonviolent protesters; on November 15, 2002, that measure passed the House and was sent over to the Senate, where it died.

On November 13, 2002, Gail Quinn, Executive Director of the USCCB's Secretariat for Pro-Life

Activities had sent a letter to Members of Congress urging the rejection of the rule on the conference report. “We hope the House will reject the Rule on the Conference Report so this unfair and discriminatory provision can be removed.” The full text of this letter along with a legal memorandum written by Michael Moses of the USCCB’s Office of General Counsel can be found in the *Congressional Record* (11/14/2002, H8745-6). Mary Ann Glendon of Harvard Law School also submitted a legal opinion letter. She concluded: “A large and nondischargeable debt, beyond one’s capacity to pay, especially in the hands of a hostile and motivated creditor, is a financial death sentence. This is what even peaceful pro-life protestors have to fear if proposed par. 523(a)(20) is added to the existing aggressive judicial interpretation of FACE [Freedom of Access to Clinic Entrances Act] and similar laws. I believe that any more optimistic interpretation of the bill is wishful thinking” (CR 11/14/2002, H8743-5). It is anticipated that the Bankruptcy Reform Bill will be introduced in the 108<sup>th</sup> Congress; pro-life Members think it will be easier to keep the discriminatory Schumer language out of the bill.

## **5. Born-Alive Infants Protection Act**

Background: This measure defines the words “person,” “human being,” “child,” and “individual” to include “every infant member of the species homo sapiens who is born alive at any stage of development.” The purpose of this legislation is to ensure that all infants who are born alive are treated as persons for purposes of federal law. The Born-Alive Infants Protection Act was first introduced in Congress in 2000. That year the House approved the measure 380-yes, 15-no, but objections were made to proceeding in the Senate. Subsequently, major pro-choice groups formally withdrew their opposition to the bill.

House: On March 12, 2002, the House bill, H.R. 2175, was considered on the House floor under suspension of the rules and was passed by voice vote.

On March 14, 2002, H.R. 2175 was read the second time and placed on the Senate’s calendar.

Senate: On July 18, 2002, the Senate passed H.R. 2175 without amendment by Unanimous Consent.

The text of the Born-Alive Infants Protection Act had been attached in the House and Senate to separate freestanding patients’ rights bills (H.R. 2563 and S. 1052) but no further action was taken on these measures. The June 29, 2001 Senate vote attaching the Born-Alive Infants Protection Act (S. 1050) to S. 1052 was 98-yes, 0-no, 2-not voting.

Law: On August 5, 2002, President Bush signed H.R. 2175 into law (Public Law 107-207). At the signing ceremony the president stated: “The Born Alive Infants Protection Act is a step toward the day when every child is welcomed in life and protected in law.” Hadley Arkes, the architect of the act, characterizes the law as “sparse” in language but “truly momentous.” This legislation “provides a predicate that can be built into the foundation now of every subsequent act of legislation touching the matter of abortion: that the child marked for abortion is indeed a person who comes within the protection of the law” (*National Review*, 7/31/2002). Applauding enactment of this measure, Cathleen Cleaver, Director of Planning and Information for the USCCB’s Secretariat for Pro-Life Activities, stated, “This new law ensures that the lethal mentality of *Roe* does not claim new victims – vulnerable human beings struggling for their lives *outside* the womb.”

## **6. Child Custody Protection Act**

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

House: On February 6, 2001, Rep. Ileana Ros-Lehtinen (R-FL) reintroduced the Child Custody Protection Act (H.R. 476). The bill had 98 cosponsors. On September 6, 2001, the Judiciary Subcommittee on the Constitution (Chairman Steve Chabot, R-OH) held hearings. On February 7, 2002, the subcommittee marked up and approved H.R. 476. On March 20, 2002, the full Judiciary Committee also marked up the bill. Three amendments were rejected and the measure was approved, 19-yes, 6-no.

On April 17, 2002, H.R. 476 was taken to the House floor. *The House rejected a motion by Rep. Sheila Jackson-Lee (D-TX) to recommit the bill to committee with instructions, 173-yes, 246-no, 16-not voting (Roll Call 96).* The Jackson-Lee motion would have weakened H.R. 476 by exempting various individuals from the bill. *Then the House approved H.R. 476, 260-yes, 161-no, 14-not voting (Roll Call 97).*

Cathy Cleaver, Director of Planning and Information for the USCCB's Secretariat for Pro-Life Activities, issued a statement on the House action. Click on the "Related Information" button.

The measure was then sent to the Senate, where it was read twice and referred to the Judiciary Committee. No further action was taken.

## **7. Crisis Pregnancy Center Support**

A House resolution, H.Res. 302, commends crisis pregnancy centers for their unique, positive contribution to the lives of women, men, and babies. This resolution was referred to committee. No further action was taken.

## **8. "Emergency Contraception" Education**

Background: On March 6, 2002, measures were introduced in both the House and Senate that authorize \$10 million for each of the fiscal years 2003 through 2007 for the Department of Health and Human Services (HHS) to promote public education on emergency contraception. "Emergency contraception" is defined as a drug or device used after sexual relations and prevents ovulation, fertilization, or implantation "of an egg in a uterus." The use of this kind of language serves to obfuscate the fact that one of the principal effects of "emergency contraceptives" (ECPs), popularly called "morning-after-pills," is to abort a newly conceived human life by preventing implantation in the womb. (See fuller discussion below under "Morning-After Pill" in schools.)

House: Rep. Louise Slaughter (D-NY) and three other Members introduced H.R. 3887. The measure had 90 cosponsors. H.R. 3887 was referred to the House Committee on Energy and Commerce. No further action was taken.

Senate: Rep. Patty Murray (D-WA) and three other senators introduced S. 1990. The measure had nine cosponsors. S. 1990 was referred to the Senate Health, Education, Labor, and Pensions Committee. No further action was taken.

## **9. “Emergency Contraception” Hospital Mandate**

At a March 21, 2002 press conference, Rep. Connie Morella (R-MD) and others announced their intention to introduce legislation requiring hospitals receiving federal funds to tell sexual assault victims about “emergency contraception” and to provide it upon her request. The information to be supplied includes the explanation – incorrect – that “emergency contraception does not cause an abortion.” On April 9, 2002, Rep. Morella introduced H.R. 4113. The measure had 65 cosponsors. It was referred to the Subcommittee on Health of the House Energy and Commerce Committee. No further action was taken.

In a March 21 statement, Rev. Michael Place, president of the Catholic Health Association, stated that Catholic health ministry “is committed to providing personal support and quality medical care for any woman who is a victim of sexual assault.” The *Ethical and Religious Directives for Catholic Health Care Services* (4<sup>th</sup> ed., 2001) say that a woman who has been raped “should be able to defend herself against a potential conception from the sexual assault.” The *Directives* continue: “If, after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum” (#36). See: [www.usccb.org/bishops/directives.htm](http://www.usccb.org/bishops/directives.htm). In regard to the proposed legislation, Rev. Place stated, “It would seem that the real purpose of this proposed legislation is to pursue the narrow agenda of the pro-abortion lobby; namely, eroding the protection of human life by defining life as beginning only with implantation and infringing on the religious freedom of Catholic health care and others of good will who wish to care for women and others in accord with their beliefs or deeply held values.” See: [www.chausa.org/NEWSREL/R020321A.ASP](http://www.chausa.org/NEWSREL/R020321A.ASP).

## **10. 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 a human 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.

House: On July 31, 2001, the House approved the Human Cloning Prohibition Act (H.R. 2505), a genuine ban on human cloning. That measure was placed on the Senate calendar.

A day of hearings was recently held on May 15, 2002, in the Criminal Justice, Drug Policy and Human Resources Subcommittee (Chairman Souder, R-IN) of the House Government Reform Committee. The Department of Justice testified that the task of enforcing a general ban on human cloning “does not seem to pose insuperable challenges to law enforcement,” but that enforcing a modified ban “would be problematic.” The testimony then examined ways that S. 2076 and S. 2439 – two bills that allow human cloning for experimentation – exemplify this concern. Also at the hearing, Dr. Panayiotis Zavos, an ardent proponent of “reproductive cloning” (bringing human

clones to live birth) urged the committee, "Let's do it here" in America and let us "forge ahead in this brave new world" as leaders.

Senate: Thirty-one senators have signed onto the Brownback/Landrieu Human Cloning Prohibition Act (S. 1899), a measure that genuinely bans human cloning. S. 1899 is identical to H.R. 2505. (S. 1899 supercedes the earlier Senate bill, S. 790.) Four opposition bills with 15 sponsors would allow the creation of human clones for deadly experimentation. On May 1, 2002, the sponsors of two of these bills, S. 1758 and S. 1893, introduced a third common bill, S. 2439. The fourth opposition bill, S. 2076, was introduced April 9. Subsequently, Sen. Mark Dayton (D-MN) withdrew his name as a cosponsor of S. 2076. All these bills were referred to committee.

Five days of hearings were held in the Senate during 2002.

A vote had been promised in the Senate for early in 2002. After returning from the Memorial Day recess, Senate leaders began working on a unanimous consent agreement to bring the debate to the Senate floor. On Tuesday, June 11, it appeared an agreement might be reached. However, the following day negotiations broke down when Senate Majority Leader Tom Daschle (D-SD) insisted on a process that would put the Brownback/Landrieu bill (S. 1899) at a distinct disadvantage. Talking to reporters, Sen. Brownback stated, "I'm not going to agree by UC [unanimous consent] to a stacked situation against me and against a compromise position that most people could agree with" (*CQ Daily Monitor*, 6/13/02). Earlier it was reported that Sen. Brownback was proposing some modifications to his bill, e.g., replacing the permanent ban on all human cloning with a two-year moratorium.

Sen. Daschle no longer considered himself bound by his pledge to bring the cloning issue to the Senate floor. "It is up to others to decide how to pursue it" (*CQ Daily Monitor*, 6/13/02). In a June 12 press release, Sen. Brownback stated: "We will seek all possible avenues in our attempt to stop human cloning and get the current leadership to take this issue up fairly."

Efforts to pass the Brownback/Landrieu bill pressed ahead. On June 13, during Senate floor consideration of the terrorism insurance measure (S. 2600), Sen. Brownback and Sen. John Ensign (R-NV) offered amendments to ban patents on human organisms (the Ensign Amendment, virtually identical in wording, was a friendly second degree amendment to the Brownback Amendment). A patent may not be obtained for "(A) an organism of the human species at any stage of development produced by any method. . . . (B) a living organism made by human cloning; or (C) a process of human cloning." (Senate Amendments 3843, 3844).

On June 14, Sen. Daschle filed a cloture motion on S. 2600. Invoking cloture would prevent Sens. Brownback and Ensign from advancing the patenting ban because amendments not germane to the underlying bill may not be considered under cloture. During debate Sen. Edward Kennedy (D-MA) argued that the patenting ban "will eviscerate" important medical research (*CR*, 6/14/02, S5579). Sen. Dianne Feinstein (D-CA) stated that the cloned reality is only an unfertilized egg, no different from a clump of blood cells, and "is not capable of becoming a human being" (*CR*, 6/14/02, S5580).

On June 17, Sen. Brownback offered a cloture motion on his amendment. If the Daschle cloture motion on the underlying bill failed, a successful cloture motion on the Brownback amendment would open the way for the amendment's consideration. The senator also submitted for the record a

letter from the pro-cloning Biotechnology Industry Organization (BIO), which stated, “BIO opposes patents on cloned human embryos” (CR, 6/17/02, S5626).

*However, on June 18, the Senate successfully invoked cloture on S. 2600, 65-yes, 31-no, 4-not voting (three-fifths vote required for passage) (Roll Call 156).* It was reported in the press that some Senators switched from “no” to “yes” when White House lobbyists advised them that family groups would not score the vote. The Family Research Council protested. It had given notice it would score the vote. Cloture being invoked, the Brownback-Ensign Amendment was then set aside during consideration of S. 2600.

In an early September report, Sen. Arlen Specter said he might have 60 votes to pass his bill (S. 2439) and Sen. Tom Daschle (D-SD), the Senate Majority Leader, might schedule his bill for floor consideration. However, no further action was taken.

For background information on the cloning debate, see “Cloning and Embryo Research” at USCCB Secretariat for Pro-Life Activities’ web site:

**[www.usccb.org/prolife/issues/bioethic/factsheets.htm](http://www.usccb.org/prolife/issues/bioethic/factsheets.htm)**

Executive: On July 10, the President’s Council on Bioethics presented to President Bush its report, *Human Cloning and Human Dignity: An Ethical Inquiry*. For a copy of the report, see:

**[www.bioethics.gov/topics/cloning\\_index.html](http://www.bioethics.gov/topics/cloning_index.html)**. A majority of Council members recommended a ban on cloning-to-produce-children with a four-year moratorium on cloning-for-biomedical-research. A minority agreed with the ban on cloning-to-produce-children but favored the use of cloned embryos for research. In response to the report, Richard Doerflinger, Deputy Director of the Secretariat for Pro-Life Activities, USCCB, stated: “A four-year moratorium on all human cloning will offer ample time to discuss all viewpoints on a permanent policy. Without further delay, the U.S. Senate should join President Bush, the House of Representatives, and the President’s Council on Bioethics in supporting *at least* a temporary ban on all human cloning.” For the full text of this statement, see: **[www.usccb.org/comm/archives/2002/02-134.htm](http://www.usccb.org/comm/archives/2002/02-134.htm)**.

## **11. Mandated Contraceptive/Abortifacient Coverage**

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

Senate: On January 22, 2001, Sens. Olympia Snowe (R-ME) and Harry Reid (D-NV) again introduced the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC) (S. 104). Forty-two other Senators signed onto this bill. S. 104 was referred to the Committee on Health, Education, Labor, and Pensions.

S. 104 has no conscience protection for individuals or entities who object to the mandated coverage

on moral or religious grounds. State laws on contraceptive mandates (and any related state conscience clauses) are preempted by federal law, unless the state laws provide for even *stronger* mandated coverage.

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

Hearings: A hearing was held on September 10, 2001. See Senate Hearing 107-391 available from the Government Printing Office at: [bookstore.gpo.gov](http://bookstore.gpo.gov).

Backers of S. 104 were eager for the bill to become law. They had plans to offer S. 104 as an amendment to larger health measures. But that tactic was not successful. Backers then gave consideration to promoting S. 104 either as a freestanding bill or as an amendment to another bill, e.g., a must-pass appropriations bill. It was anticipated that a new version of the bill would contain a gravely deficient “conscience” clause crafted by pro-abortion groups. However, no further action was taken.

On July 25, 2002, Gail Quinn, Executive Director of the Bishops’ Secretariat for Pro-Life Activities, sent a letter to all U.S. Senators, urging them “not to approve this misguided legislation.” The Secretariat also published a fact sheet that dispels myths about a contraceptive mandate and exposes important consequences. One myth is that the contraceptive mandates will reduce the abortion rate. However, once contraception is more widely available, abortion rates may actually rise. In Maryland, the first state to enact a contraceptive mandate, the number of abortions rose by 1,226 the year after the mandate took effect. For more information, see: [www.usccb.org/prolife/issues/abortion/confac2.htm](http://www.usccb.org/prolife/issues/abortion/confac2.htm).

House: On March 20, 2001, Reps. James Greenwood (R-PA) and Nita Lowey (D-NY) offered the companion bill in the U.S. House of Representatives (H.R. 1111). That measure had 143 other cosponsors. H.R. 1111 was referred to subcommittees of the Education and Workforce Committee and the Energy and Commerce Committee. No further action was taken.

## **12. Mexico City Policy**

This policy provides that no U.S. population assistance funds can be given to a foreign private, nongovernmental, or multilateral organization unless it certifies that (1) it will not perform abortions (except to save the mother’s life or in cases of rape or incest), and that (2) it will not violate other countries’ abortion laws, or lobby to change those laws. Efforts by pro-abortion proponents to overturn the Mexico City Policy were not successful in 2001.

A measure called the Global Democracy Promotion Act was designed to negate the application of the Mexico City Policy to foreign nongovernmental organizations. In the Senate, this bill was introduced by Sen. Barbara Boxer (D-CA) and had 33 cosponsors (S. 367). In the House, the bill was introduced by Rep. Nita Lowey (D-NY) and had 131 cosponsors (H.R. 755). S. 367 was the subject of a hearing and was placed on the Senate calendar in 2001. H.R. 755 was referred to

committee. No further action was taken in 2002.

On June 4, 2002, pro-abortion advocates held a Capitol Hill briefing on the European perspective of the Mexico City Policy.

On July 18, 2002, the Senate Appropriations Committee approved the FY 2003 Foreign Operations Appropriations Bill (S. 2779), allocating \$450 million for international family planning and negating the Mexico City Policy. On September 12, 2002, the House Appropriations Committee approved its version of the FY 2003 Foreign Operations Appropriations Bill (H.R. 5410), allocating \$425 million for international family planning, but with no language negating the Mexico City Policy. The FY 2003 Foreign Operations Appropriations Bill was one of the 11 appropriations bills that did not become law and is covered by the CR that funds the government through January 11, 2003.

### **13. Military Health Care Facilities**

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: On May 10, 2002, during markup of the FY 2003 Defense Authorization Bill (H.R. 4546), the House Armed Services Committee, voting 24-yes, 34-no, 2-not voting, rejected an amendment by Rep. Loretta Sanchez (D-CA) to allow abortions to be performed for any reason in U.S. military health care facilities outside the United States.

*On May 10, 2002, the House voted to defeat the Sanchez Amendment, 202-yes, 215-no (Roll Call 153).*

Senate: During consideration of the FY 2003 Defense Authorization Bill (S. 2514), Sens. Patty Murray (D-WA) and Olympia Snowe (R-ME) offered an amendment (Senate Amendment 3927) to strike from law the restriction on the use of any military health care facilities for abortion. *On June 21, 2002, the amendment was approved, 52-yes, 40-no, 8-not voting (Roll Call 160).* When the Senate last acted on the Murray/Snowe Amendment in 2000, the Senate narrowly voted to table the proposal, 50-yes, 49-no, 1-not voting. Of those voting last time, only Sen. Ted Stevens (R-AK) switched his vote – from opposition to Murray/Snowe to support. Seven of the eight Senators not voting in 2002 voted against the Murray/Snowe Amendment in 2000. The elections in the fall 2000 are the primary reason for the shift from opposition to the amendment to support.

The Senate passed H.R. 4546 with the text of S. 2514 as a substitute amendment.

Conference Committee: In conference committee, the Murray-Snowe Amendment was rejected and pro-life policy remained in law.

### **14. “Morning-After Pill” in Schools: Schoolchildren’s Health Protection Act**

Background: There is no federal statute prohibiting the distribution of the “morning-after-pill” in

schools. In addition, courts have determined that state parental consent statutes do not apply to the distribution of contraceptives in federal programs. According to one report, at least 180 schools distribute the “morning-after-pill” to students. One of the principal effects of the “morning-after-pill” is to abort a newly conceived human life by preventing implantation in the womb. These pills are also called “emergency contraceptive” pills (ECPs) because they are taken after intercourse. The regimen approved by the FDA for ECPs identifies six brands of ordinary birth control pills containing estrogen and progestin and requires that a high dose be taken within 72 hours of “unprotected intercourse,” followed by a second high dose 12 hours later. Preven, marketed by Gynetics and approved by the FDA in September 1998, is a kit containing the pills plus a pregnancy test to rule out existing pregnancy from earlier intercourse. In 2000, both the House and Senate approved an amendment prohibiting the use of federal funds to distribute or prescribe postcoital emergency contraception in any elementary or secondary school, but the amendment was dropped in conference committee at the insistence of the Clinton Administration. For more information on ECPs, see USCCB Secretariat for Pro-Life Activities: “Emergency ‘Contraception’ and Early Abortion,” at: [www.usccb.org/prolife/issues/abortion/fact1098.htm](http://www.usccb.org/prolife/issues/abortion/fact1098.htm) and Susan E. Wills, “Emergency Contraception—Boon or Bane?” at: [www.usccb.org/prolife/programs/rlp/01wil.htm](http://www.usccb.org/prolife/programs/rlp/01wil.htm).

Senate: On January 22, 2001, Sen. Jesse Helms (R-NC) introduced the Schoolchildren’s Health Protection Act (S. 74) and on the following day the measure was placed on the Senate’s legislative calendar. This measure prohibits the use of federal funds to distribute or prescribe postcoital “emergency contraception” in any elementary or secondary school to an unemancipated minor without written parental consent. The Senate approved a similar amendment in 2000 but it did not become law. On May 9, 2001, Sen. Jesse Helms (R-NC) offered the text of S. 74 as an amendment (Senate Amendment 573) to the Better Education for Students and Teachers Act (S. 1). On June 7, Sen. Sam Brownback (R-KS) was added as a cosponsor to SA 573. However, SA 573 was never brought up for consideration.

House: It had been the intention of Rep. Melissa Hart (R-PA) to offer a House version of the Helms Amendment to the House education bill, the No Child Left Behind Act (H.R. 1), but she was asked by House leadership not to do so. She was promised that she could offer the amendment to the FY 2002 Labor/HHS Appropriations Bill later in the year. However, when that measure was being prepared for floor consideration in October 2001, forces opposed to the Hart Amendment threatened to defeat the rule. Rep. Hart withdrew her amendment, with the promise from leadership that she could offer the amendment as freestanding measure at a later date.

On February 27, 2002, Rep. Hart introduced the Schoolchildren’s Health Protection Act (H.R. 3805) as a freestanding bill. The measure had 59 cosponsors and was referred to the Committee on Education and the Workforce. No further action was taken.

## **15. Parental Consent**

On May 21, 2002, Rep. Kevin Brady (R-TX) introduced the State’s and Parental Rights Improvement Act of 2002 (H.R. 4783). The bill had 11 cosponsors and was referred to the Energy and Commerce Subcommittee on Health. The measure authorized states to require consent or notification by a parent or guardian for minors to purchase prescription drugs or devices under the Federal health care grant-in-aid program. Title X regulations prohibit family planning clinics from informing parents if their children receive any contraceptives. At a July 11 subcommittee hearing,

Mr. John Heisler, a member of the McHenry County, IL Board, testified on a 1997 case where a 12-year-old grade school girl had been driven to a Title X funded county clinic on several occasions by a 37-year-old teacher who had been having sexual relations with her for 18 months. The girl was given injections of the drug Depo-Provera, without the parent's being notified. Testimony of panelists can be found at:

[energycommerce.house.gov/107/hearings/07112002Hearing632/hearing.htm](http://energycommerce.house.gov/107/hearings/07112002Hearing632/hearing.htm). No further action was taken on H.R. 4783.

## **16. 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 previously approved by the 104<sup>th</sup>, 105<sup>th</sup>, and 106<sup>th</sup> Congresses. The first two bills were vetoed by President Clinton, the House overriding the vetoes and the Senate failing, though by increasingly narrow margins. Action on the third bill 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.

House: On June 19, 2002, Rep. Steve Chabot (R-OH), Chairman of the House Judiciary Subcommittee on the Constitution, was joined by a bipartisan group of cosponsors in reintroducing the Partial-Birth Abortion Ban Act (H.R. 4965). In response to the Court's *Carhart* ruling, Rep. Chabot stated that the new bill uses a more precise definition of partial-birth abortion and incorporates Congress's factual findings that a partial-birth abortion is never necessary to preserve the health of a woman. In regard to the health question, the Supreme Court in *Carhart* was required to accept the erroneous factual findings of the lower trial court. Congress, however, possesses an independent authority to reach findings of fact.

H.R. 4965 contains an extensive section on "Findings." "A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion . . . is a gruesome and inhumane procedure that is never medically necessary and should be prohibited" (Sec. 2(1)). For these reasons, Congress and at least 27 states banned the procedure. In *Stenberg v. Carhart*, the U.S. Supreme Court was required to rely on the very questionable factual finding of the district court that partial-birth abortion was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures. However, the great weight of evidence demonstrates that a partial-birth abortion is never necessary to preserve the woman's health, poses significant health risks to the woman, and is outside the standard of medical care. Under well-settled jurisprudence, Congress "is not bound to accept the same factual findings that the Supreme Court was bound to accept in *Stenberg* under the <clearly erroneous<standard" (Sec. 2(8)). Thus, relying on a full range of factual findings, Congress finds that "partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned" (Sec. 2 (14) (O)).

H.R. 4965 adds a new section to the U.S. Code, Title 18, Chapter 74 – Partial-Birth Abortions, Sec. 1531. The bill provides that a physician who performs a partial-birth abortion shall be fined or imprisoned not more than two years, or both, except when a partial-birth abortion is necessary to save a mother’s life “endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself” (1531 (a)). The term “partial-birth abortion” is defined (1531(b) (1)) as an abortion in which “(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and (B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus” (1531 (b) (1) (A) (B)). Under certain conditions, the father or maternal grandparents may obtain relief in a civil action (1531(c)). A defendant accused under this section may seek a hearing before the State Medical Board (1531 (d)). A woman upon whom a partial-birth abortion is performed may not be prosecuted (1531(e)).

Hearings: On July 9, 2002, a day of hearings was held in the Judiciary Subcommittee on the Constitution. On July 11, the subcommittee marked up H.R. 4965 and without amendment approved the measure, 8-yes, 3-no. On July 17, the full committee approved the bill, 20-yes, 8-no. Six hostile amendments were offered and all were defeated.

Floor: *On July 24, 2002, after two hours of debate, the U.S. House of Representatives in a bipartisan vote overwhelmingly passed the Partial-Birth Abortion Ban Act (H.R. 4965), 274-yes, 151-no, 1-present, 9-not voting (Roll Call 343).*

The bill was considered under a closed rule (no amendments from the floor). *The rule was adopted, 248-yes, 177-no, 10-not voting (Roll Call 340).*

However, as allowed by the rule, Rep. Tammy Baldwin (D-WI) offered a motion to recommit H.R. 4965 to committee with instructions to add a health exception. Under the U.S. Supreme Court’s definition, health can be used to justify any abortion. H.R. 4965 states that the prohibition on partial-birth abortion does not apply to an abortion “that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.” Rep. Baldwin’s motion would replace this language with the phrase: “where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.” *The motion to recommit failed, 187-yes, 241-no, 7-not voting (Roll Call 342).*

After passage, House Majority Leader Dick Armey (R-TX) stated: “We now have a president who will sign this bill. It must not become another tombstone in the Senate’s legislative graveyard” (*CQ Daily Monitor*, 7/25/02).

Speaking for the U.S. bishops’ Secretariat for Pro-Life Activities, Cathy Cleaver applauded the House action and urged “the Senate leadership to allow a vote on this bill.”

Senate: On July 26, 2002, H.R. 4965 was read the second time and placed on the Senate legislative calendar. On September 26, Sen. Rick Santorum (R-PA) offered a unanimous consent request for

the Senate to proceed with consideration of H.R. 4965. Speaking for Sen. Dianne Feinstein (D-CA) and “a number of Senators” (CR S94121), the Majority Whip Senator Harry Reid (D-NV) objected. The Senate never took up H.R. 4965 and the session ended with no Senate action.

After the 2002 elections, Sen. Trent Lott (R-MS), who will be the next Senate Majority Leader, said that in the next Congress the Senate would take up and pass the Partial-Birth Abortion Ban Act and the president would sign it into law.

## **17. Post-Abortion Depression Research and Care Act**

Pending in a House committee was a measure (H.R. 2805) that would authorize funding for research and services for individuals with post-abortion depression and psychosis. No further action was taken.

## **18. RU-486**

Background: On September 28, 2000, the Food and Drug Administration (FDA) approved a regimen for using the drug RU-486, also called mifepristone or Mifeprex, to cause abortions within 49 days since the beginning of the last menstrual period. Mifepristone may be used in combination with the prostaglandin misoprostol or Cytotec. The woman first takes 600 milligrams of mifepristone by mouth. Two days later she takes 400 micrograms of misoprostol. The drugs disrupt the uterine lining and cause the unborn child’s expulsion from the mother’s uterus. Using RU-486 typically involves three visits to a physician’s office or clinic. Danco Laboratories in New York is distributing mifepristone in the U.S.

Legislation: On February 6, 2001, Rep. David Vitter (R-LA) introduced in the House the RU-486 Patient Health and Safety Protection Act (H.R. 482), a bill that would require the federal government to modify its approval of RU-486: the drug may be prescribed only by a licensed physician who is qualified to handle complications from incomplete abortions or ectopic pregnancies, has been trained in surgical abortions, is certified for ultrasound use, has completed a program on the use of RU-486, and has privileges at a hospital one hour or less away. The bill had 37 cosponsors and was referred to the Subcommittee on Health of the House Committee on Energy and Commerce. Also on February 6, 2001, Sen. Tim Hutchinson (R-AR) introduced the measure in the Senate (S. 251). That bill had four cosponsors and was referred to the Senate Committee on Health, Education, Labor, and Pensions. No further action was taken on either measure by the conclusion of the 107<sup>th</sup> Congress.

Executive: On April 19, 2002, at the urging of the FDA, Danco Laboratories sent a letter to health care providers informing them that six women had become seriously ill after taking mifepristone with misoprostol, with two of the women dying. The illnesses included: three ruptured ectopic pregnancies (one death), two systemic bacterial infections (one death), and one heart attack. The abortifacient drug combination should not be used when ectopic pregnancies are present. Danco declined to release figures on how many women in the U.S. have had abortions with the abortifacient drug combination. In its “Mifepristone Questions and Answers” document released April 17, 2002, the FDA stated that it is unknown whether there is a causal relationship between the illnesses and the use of mifepristone and misoprostol. In the six cases where illnesses occurred,

misoprostol was given vaginally, not orally, which is the approved regimen. FDA said the use of mifepristone with misoprostol was safe but not risk free, if used as directed. In response to the question whether FDA is considering withdrawing mifepristone from the market, the FDA stated: “As it does with all prescription drugs, FDA continues to monitor the safety and effectiveness of mifepristone.” See: [www.fda.gov/cder/drug/infopage/mifepristone](http://www.fda.gov/cder/drug/infopage/mifepristone).

On August 20, 2002, Concerned Women for America, the American Association of Pro-Life Obstetricians and Gynecologists, and the Christian Medical Association filed a formal legal petition with the FDA in which they outlined the numerous violations the FDA committed in approving RU-486 and how these violations resulted in the injury and death of women. They requested that the approval of RU-486 be revoked. The petition, 92 pages in length, cites some 9,000 pages of documents released by the FDA on January 31, 2002 as the result of a Freedom of Information Act request filed by Judicial Watch. The petition can be found at: [www.cmdahome.org](http://www.cmdahome.org). In an August 21, 2002 press release, “Bishops’ Official Applauds Petition Against FDA’s RU-486 Approval,” spokesperson Cathleen Cleaver stated, “For the good of women and children, Mifeprex should be withdrawn immediately.”

### **19. S-CHIP Coverage for Unborn Child**

In a proposed rule published March 5, 2002, the Department of Health and Human Services revised the definition of “child” in the State Children’s Health Insurance Program (S-CHIP) to mean “an individual under the age of 19 including the period from conception to birth.” *Federal Register*, Vol. 67, No. 43 (March 5, 2002), 9936-9. Under this definition, states may elect to extend eligibility to unborn children for health benefits coverage under S-CHIP. In 1997, Congress appropriated \$40 billion over 10 years to fund S-CHIP. The program is administered by the states to provide health care for children of low-income parents who do not qualify for Medicaid. Several states have already obtained waivers to include prenatal care in their programs. The proposed rule would bypass the need to go through the waiver process state by state. In support of the rule, HHS Secretary Tommy Thompson cited the “medically obvious” truth that “child health care must include the prenatal stage.” At issue are “the undeniable health needs throughout the life cycle” (“Letters to the Editor,” *Wall Street Journal*, February 14, 2002, A21). An estimated 10.9 million women of childbearing age (18-44) do not have health insurance.

The proposed rule was open to public comment for 60 days (until May 6). On September 27, 2002, HHS Secretary Tommy Thompson issued the final regulation, which was published in the *Federal Register* on October 2, 2002 (Vol. 67, No. 191, 61956-74). The regulations took effect November 1, 2002. The regulation allows the states to provide the SCHIP benefits regardless of the mother’s immigration status. Some 7,783 comments for and against the regulation were received. All comments are summarized and discussed in detail – 16 pages in all in the *Federal Register*. Msgr. William Fay, General Secretary of the USCCB, stated that the rule “should be welcomed by all who care about the health of pregnant women and their children.” See: [usccb.org/comm/archives/2002/02-187.htm](http://usccb.org/comm/archives/2002/02-187.htm).

A debate continues on whether a law is also needed to extend the SCHIP coverage. Sen. Jeff Bingaman (D-NM) insists on the need for legislation (S. 724), while the White House holds that now the regulation is sufficient.

## 20. Stem Cell Research Involving the Destruction of Human Embryos

Background: Research on human stem cells came to the fore in the 1990s. A stem cell is a cell that contains the ability to reproduce the various kinds of body cells. Medical science is exploring ways that human stem cells could be used to repair damaged body cells and heal diseases. Adult stem cells are already being used as therapies and involve no inherent moral concerns. Research on embryonic stem cells is still speculative in nature and presents serious moral objections.

Since 1996, Congress has prohibited funding research “in which a human embryo or embryos are destroyed.” Despite the plain meaning of the law, the Clinton Administration decided to fund research on stem cells derived from human embryos if the derivation of the cells – and the inevitable killing of the embryos – was done with private funds. On August 25, 2000, funding guidelines for NIH grants were published in the *Federal Register*.

President Bush did not revoke the guidelines but spent several months conducting a study. On August 9, 2001, President Bush announced his administration’s support for funding research using embryonic stem cell lines already in existence; the use of subsequent cells lines was prohibited.

Legislation: A measure authorizing government support for embryonic stem cell research was pending in committee in the House (H.R. 2059) and in the Senate (S. 723). In these bills, the stem cells can be derived only from embryos obtained through in-vitro fertilization. On September 25, 2002, the Labor, Health and Human Services, and Education Subcommittee (Chairman Senator Tom Harkin, D-IA) of the Senate Appropriations Committee held another hearing on stem cell research. Witnesses complained that President Bush’s stem cell guidelines were hampering the progress of research. Sen. Arlen Specter (R-PA) is quoted as saying that he would press Congress to expand the president’s policy. It is time “to legislate in the field” but he would confer with other Senators “before proposing another bill” (*New York Times*, 9/26/02, A23).

Also pending before a House committee was the Responsible Stem Cell Research Act (H.R. 2096), which establishes a National Stem Cell Donor Bank through which human stem cells derived in ethical ways can be made available for research and therapy. Adult stem cells are an alternative that is ethical and already producing health benefits for patients. A recent study shows that one particular adult stem cell can turn into every single tissue of the body. “It might turn out to be the most important cell ever discovered.” *New Scientist* (1/23/02). See: [www.stemcellresearch.org](http://www.stemcellresearch.org). Despite these extraordinary advances, some continue in their attempts to discredit the promise that adult stem cells hold. For a refutation of these arguments, see, Richard Doerflinger, “March Madness on Cloning,” *Life Issues Forum*, at: [www.usccb.org/prolife/publicat/lifeissues/31502.htm](http://www.usccb.org/prolife/publicat/lifeissues/31502.htm).

Executive: On July 7, 2002, the *Chicago Tribune* published a story, “U.S. quietly OKs fetal stem cell work.” However, the funded project is in fact covered by the 1993 law, which removed from the president authority to block the funding. On January 22, 1993, President Clinton issued an Executive Order lifting a moratorium on the federal funding of research involving transplantation of fetal tissue obtained from induced abortions. Later in the year Congress passed a law (PL 103-43) approving the funding of such research and in that law forbade any official of the executive branch from imposing a policy that DHHS is prohibited “from conducting or supporting any research on the transplantation of human fetal tissue for therapeutic purposes” (42 USC 289g-1).

Also, on October 1, 2002, the Bush Administration established the Secretary's Advisory Committee on Human Research Protection. The charter of this committee recognizes for the first time that human embryos in experiments are human subjects along with human fetuses, children and adults. "New Status for Embryos in Research," *Washington Post* (10/30/2002). The Secretary's Advisory Committee is a successor to the National Human Research Protections Advisory Committee that had been set up by President Clinton and expired in September 2002.

## **21. Ultrasound Equipment Grants**

On February 5, 2002, Rep. Clifford Stearns (R-FL) introduced H.R. 3686, a measure authorizing federal grants to nonprofit tax-exempt organizations for the purchase of ultrasound equipment. The purpose of the grants is to provide free ultrasound examinations to pregnant woman needing such services. The measure specifies eligibility requirements and limitations on grant amounts. \$3 million is authorized for FY 2003 and such sums as are necessary for FY 2004 through 2006. H.R. 3686 had 45 cosponsors and was referred to the House Energy and Commerce Subcommittee on Health.

On March 4, 2002, Sen. Jim Bunning (R-KY) introduced a companion bill in the Senate (S. 1984). That measure had four cosponsors and was referred to the Senate Committee on Health, Education, Labor, and Pensions.

No further action was taken on these bills.

Demonstration of a high level definition ultrasound of the unborn child can be located at: [www.gemedicalsystems.com](http://www.gemedicalsystems.com).

## **22. U.N. Convention on the Elimination of All Forms of Discrimination Against Women**

On December 18, 1979, the U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). On July 17, 1980, President Carter signed the convention on behalf of the United States. However, treaties require the advice and consent of the U.S. Senate (two-thirds concurring). On September 29, 1994, the treaty was approved by the Senate Foreign Relations Committee but no further action was taken. In 2002, the committee again took up the treaty, with public hearings on June 13 (Senate Hearings 107-530), approval 12-yes, 7-no on July 30, and report to the Senate on September 6 (Executive Report 107-9). No further action was taken by the end of the 107<sup>th</sup> Congress. The treaty is automatically rereferred to the Foreign Relations Committee for possible consideration in the future.

The treaty does not explicitly mention abortion. The Senate Foreign Relations Committee in its Executive Report included an understanding that the treaty would not create a right to abortion or promote abortion. However, the U.N. committee that monitors nations' treaty compliance interprets Article 16 (e) on family planning to include abortion (also see Article 12). This interpretation has been enforced for many years and would control in any conflict with a contrary understanding. The CEDAW committee has urged nations by name to change laws that restrict abortion in some way, opposed the right to conscientious objection, promoted public funding of abortion, and has supported "mental health" exceptions in abortion laws. Approval of CEDAW would place on the

federal government and the states an obligation to promote a right to abortion that goes beyond *Roe v. Wade*. A nation that fails to implement CEDAW could be brought before the International Court of Justice for violating international law.

### **23. Unborn Victims of Violence Act**

This legislation provides that an individual who injures or kills an unborn child during the commission of certain federal crimes—68 are referenced in the bill—will be guilty of a separate offense. Pro-abortion advocates object to any reference to the unborn child as a separate existing being. Twenty-four states already have laws that recognize unborn children as crime victims. These laws have withstood challenges in the courts. In the 106<sup>th</sup> Congress this legislation passed the House but did not go beyond the hearings' stage in the Senate.

The House measure, H.R. 503, passed in 2001 and was placed on the Senate calendar. The Senate companion bill, S. 480, was pending in committee. No further Senate action was taken on either bill.

### **24. UNFPA Funding**

Background: China initiated its one-child-per-couple population control program in 1979. From the beginning, the program included coercive abortion and compulsory sterilization. The United Nations Population Fund (UNFPA) has been strongly supportive of the program. Beginning in 1985, an appropriations rider (known as the Kemp-Kasten Amendment) banned U.S. support for organizations determined by the president to support coercive population programs. As a result, from 1986 to 1992, U.S. funding for the UNFPA was cut off. However, in 1993, President Clinton refused to determine that the UNFPA was violating the law and its funding was resumed; at that time the decision-making locus on this matter switched from USAID to the State Department. It is reported that in February 2001 President Bush's State Department made the determination that the UNFPA did not violate the Kemp-Kasten Amendment.

For FY 2002, Congress appropriated "no more" than \$34 million for the UNFPA. In addition, Congress retained the Kemp-Kasten Amendment. The president can decide to deny funding to the UNFPA. When signing into law the FY 2002 appropriations bill that provided funding for the UNFPA, the president stated that "the act provides additional discretion to determine the appropriate level of funding" for the UNFPA.

Executive: In a January 15, 2002, letter to the president, Bishop Wilton D. Gregory, President of the USCCB, cited evidence of UNFPA support for China's coercive policy: "In Sihui County, Guangdong Province, China, the family planning program administered by UNFPA and the Chinese Office of Family Planning involves the use of forced abortion and sterilization and the imposition of fines, destruction of homes and imprisonment of women and their family members for failure to comply with the program. One woman told investigators that when she refused to abort her four-and-a-half-month old unborn child, the Chinese authorities arrested her brother and sisters. After she went into hiding, the authorities destroyed her home with jack-hammers." The bishop went on to note: "Since the time of the Nuremberg trials, an international consensus has condemned coerced abortion and sterilization as a crime against humanity. Ending such oppression should be a human rights priority of the U.S. foreign policy."

In January, 2002, the White House was considering the question of releasing funds for the UNFPA but delayed a decision at that time. The current State Department budget does not ask for any money for the UNFPA in either 2002 or 2003. On February 27, 2002, the Senate Foreign Relations Subcommittee on International Operations and Terrorism (Chair Barbara Boxer, D-CA) held a hearing promoting U.S. funding of the UNFPA. On March 7, 2002, Rep. Carolyn Maloney (D-NY) introduced a measure (H.R. 3916) requiring the president to send the entire FY 2002 contribution to the UNFPA. On May 1, 2002, the U.S. State Department announced the selection of a three-member team that would visit China during the last two weeks in May to gather information to assist the administration in determining whether or not the UNFPA's China program is in violation of U.S. law (the Kemp-Kasten Amendment). The members of this team were: Ambassador William Brown, Ms. Bonnie Glick, Dr. Theodore Tong. That team returned May 27, 2002.

On July 22, 2002, U.S. State Department Spokesman Richard Boucher issued a statement on behalf of Secretary of State Colin Powell, denying any funding to the United Nations Population Fund (UNFPA). The Kemp-Kasten Amendment was cited as the basis for the decision. In applying the Kemp-Kasten Amendment, the Secretary relied on several sources of information, "including briefings supplied by UNFPA, Chinese law, the State Department's annual human rights report, and the report of a three-member independent assessment team that traveled to China in May 2002 at his request." For FY 2002, Congress had appropriated "not more than \$34 million" for the UNFPA. The Secretary believed the money should be used for its original purpose and proposed applying the money to the USAID's Child Survival and Health Program Fund. For the full statement, see: [www.state.gov/r/pa/prs/ps/2002/12035.htm](http://www.state.gov/r/pa/prs/ps/2002/12035.htm). For a letter by Bishop Wilton D. Gregory, President of the USCCB, thanking the president for this action, see: [www.usccb.org/prolife/issues/abortion/unfpa072302.htm](http://www.usccb.org/prolife/issues/abortion/unfpa072302.htm).

House: On May 9, 2002, during markup of a supplemental spending bill (H.R. 4775), the House Appropriations Committee voted 32-yes, 31-no to require the president to release the \$34 million to the UNFPA by July 10, 2002. Two members were absent for the vote. On May 15, 2002, the committee just as narrowly reversed itself, voting 32-yes, 30-no to support an amendment offered by Rep. Todd Tiahrt (R-KS) to restore the original FY 2002 UNFPA language with an addition only requiring the administration to make its report on UNFPA by July: "Not later than July 31, 2002, the President shall transmit to the Committees on Appropriations his determination whether UNFPA supports or participates in the management of a program of coercive abortion or involuntary sterilization." Subsequently, the Rules Committee stripped out all language referring to the UNFPA and the House-passed bill was silent on this matter.

On September 12, 2002, during markup of the FY 2003 Foreign Operations Appropriations Bill (H.R. 5410), the House Appropriations Committee approved \$25 million in funding for the UNFPA but left the Kemp-Kasten Amendment intact. This would leave the president free to determine for FY 2003 that the UNFPA again does not qualify for funding. It was anticipated that abortion advocates would attempt to increase funding and change the Kemp-Kasten Amendment on the House floor, but S. 5410 was never brought to the floor.

Senate: The supplemental appropriations bill in the Senate (S. 2551) contained language requiring the president to release the UNFPA money by July 10, 2002. The Senate substituted the text of the House-passed H.R. 4775 with the text from S. 2551 and on June 7, 2002, passed H.R. 4775.

In a June 4, 2002, message on the Senate bill, the White House opposed the Senate language on UNFPA, arguing that the president should have the flexibility to apply the Kemp-Kasten Amendment.

On July 18, 2002, the conference committee reported a bill that does not force the president to release the UNFPA funding. On August 2, 2002, the president signed this measure into law (PL 107-206).

However, pro-abortion advocates sought to rewrite the Kemp-Kasten Amendment in a very narrow fashion in the hope that it then would not apply to the UNFPA. On July 18, 2002, the Senate Appropriations Committee voted to approve the FY 2003 Foreign Operations Appropriations Bill (S. 2779), in which it included an appropriation of \$50 million for the UNFPA and limited the application of the Kemp-Kasten Amendment to any organization or program that “*directly* participates in the practice of coercive abortion or involuntary sterilization” (emphasis added). Also, the Secretary of State and not the President would make this determination.

The FY 2003 Foreign Operations Appropriations Bill is one of the 11 appropriations bills that did not become law and is covered by the CR funding the government through January 7, 2003.