

PRO-LIFE LEGISLATION IN CONGRESS 2003: FINAL REPORT

National Committee for a Human Life Amendment

December 9, 2003

Updated January 22, 2004

The First Session of the 108th Congress convened January 7, 2003, with the House adjourning December 8, the Senate December 9. The Second Session of this Congress is set to begin January 20, 2004. Legislation can be 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**.

I. LEGISLATIVE HIGHLIGHTS

Legislative highlights for 2003 include:

- President Bush signed the Partial-Birth Abortion Ban Act into law. Court challenges against the law have been launched.
- Both House and Senate rebuffed attempts to overturn existing law that restricts the use of military health care facilities for abortions.
- A genuine ban on human cloning passed the House but awaits action by the Senate.
- On an authorization bill, the House voted to uphold the Kemp-Kasten Amendment, while the Senate in another authorization bill voted to undercut the administration's Mexico City Policy. The Senate bill has stalled; the White House has threatened a veto.
- The Conference Report on the Fiscal Year 2004 Omnibus Appropriations Bill passed the House on December 8, 2003, the Senate on January 22, 2004. The Conference Report retains the Kemp-Kasten Amendment; respects the president's Mexico City Policy; contains language banning the patenting of human beings; and appropriates \$10 million for a National Cord Blood Stem Cell Bank Program.
- Important measures introduced in both House and Senate include: The Abortion Non-Discrimination Acts; the Unborn Victims of Violence Act; the Child Custody Protection Act; the RU-486 Suspension and Review Act; Cord Blood Stem Cell Acts.

II. REVIEW OF LEGISLATION

The information in this section is divided into five appropriations issues and nineteen authorization issues.

Appropriations issues:

- Final Fiscal Year 2003 Appropriations Measures
- Kemp-Kasten Amendment: Fiscal Year 2004 Foreign Operations Appropriations
- Mexico City Policy: Fiscal Year 2004 Foreign Operations Appropriations
- Patenting Human Beings: Fiscal Year 2004 Commerce/Justice/State/Judiciary Appropriations
- Umbilical Cord Blood Banks: Fiscal Year 2004 Labor/HHS Appropriations

Authorization issues:

- Abortion Non-Discrimination Act (ANDA)
- Adoption Information Act
- Bankruptcy Reform: Clinic Protest
- Child Custody Protection Act
- “Emergency Contraception” Education
- “Emergency Contraception” Hospital Mandate
- Human Cloning Ban
- In Utero Surgery
- Informed Choice Act
- Kemp-Kasten Amendment: Funding UNFPA
- Mexico City Policy
- Military Health Care Facilities
- Parental Notification
- Partial-Birth Abortion Ban Act
- RU-486 Regulation
- RU-486 Suspension and Review Act
- Stem Cell Research
- Umbilical Cord Blood Banks
- Unborn Victims of Violence Act

A. Appropriations Bills

At adjournment, only six of the thirteen must-pass annual appropriations bill for Fiscal Year 2004 had been signed into law. On December 8, 2003, the House passed the conference report for an Omnibus Appropriations Bill (H.R. 2673) containing the other seven bills. The Senate delayed action, approving the conference report on January 22, 2004.

1. Final Fiscal Year 2003 Appropriations Measures

Before adjourning in November 2002, Congress had approved only two of the 13 must-pass annual appropriations bills for Fiscal Year 2003. Congress passed eight Continuing Resolutions to keep the government running into 2003. On February 13, 2003, both House and Senate approved the remaining 11 bills as part of the Consolidated Appropriations Resolution, 2003 (H. J. Res. 2), which the president signed into law on February 20, 2003 (Public Law No. 108-7).

As the bill was being negotiated, the White House sent a message to the Hill that the president would veto the measure if it did not include all current laws prohibiting the use of federal funds for abortion. In the final bill, all pro-life riders were protected.

2. Kemp-Kasten Amendment: Fiscal Year 2004 Foreign Operations Appropriations

Background: Law since 1985, the Kemp-Kasten Amendment denies federal funding to organizations or programs that, as determined by the president, support or participate in a

program of coercive abortion or involuntary sterilization. Invoking this amendment, the Reagan and previous Bush Administrations denied funding to the United Nations Population Fund (UNFPA) for its support of China's coercive population control program. The Clinton Administration resumed the funding. In 2002, the current Bush Administration again cut off the funding for the UNFPA.

For Fiscal Year 2003, the Kemp-Kasten Amendment was retained, with no more than \$34 million appropriated for the UNFPA. However, the Consolidated Appropriations Resolution, 2003 (H. J. Res. 2) would make available to the UNFPA the \$34 million from Fiscal Year 2002 if the president were to determine that the UNFPA is no longer in violation of Kemp-Kasten. The administration was reprogramming that money for Afghanistan and Pakistan, but Sen. Patrick Leahy (D-VT) put a hold on that effort.

Fiscal Year 2004: The Fiscal Year 2004 Foreign Operations Appropriations Bill (H.R. 2800) was incorporated into the Omnibus Appropriations Bill (H.R. 2673). As reported from conference committee, H.R. 2673 contained the Kemp-Kasten Amendment. On December 8, 2003, the House approved the conference report. The Senate deferred action, approving the report on January 22, 2004.

For more information, see Authorization Bills below.

For a legislative briefing page, "Funding UNFPA - China's Coercive Population Control Program," click on the "Related Information" button.

3. Mexico City Policy: Fiscal Year 2004 Foreign Operations Appropriations

As reported from the Senate Appropriations Committee, the Fiscal Year 2004 Foreign Operations Appropriations Bill (S. 1426) contained a provision (Sec. 691) negating the Mexico City Policy. An October 24, 2003 Statement of Administration Policy released by the Office of Management and Budget stated that the Administration "strongly opposes Section 691" of S. 1426 and the "President would veto the bill if it were presented to him with such a provision." On October 30, 2003, the Senate passed H.R. 2800, the House version of the Fiscal Year 2004 Foreign Operations Appropriations Bill (its text was substituted with that from S. 1426), with Section 691 included. Subsequently, H.R. 2800 was incorporated into the Omnibus Appropriations Bill (H.R. 2673). In conference committee on H.R. 2673, the provision negating the Mexico City Policy was removed. On December 8, 2003, the House approved the conference report. The Senate deferred action on H.R. 2673, approving the measure January 22, 2004.

For more information, see Authorization Bills below.

4. Patenting Human Beings: Fiscal Year 2004 Commerce/Justice/State/Judiciary Appropriations

House: On July 22, 2003, during consideration of the Fiscal Year 2004 Commerce/Justice/State/Judiciary Appropriations Bill (H.R. 2799), Rep. Dave Weldon (R-FL)

offered an amendment to ban the use of appropriated funds “to issue patents on claims directed to or encompassing a human organism.” As Rep. Weldon stated, “This amendment simply mirrors the current patent policy concerning patenting humans. . . . It [the Patent Office] does not issue patents on human beings nor should it” (CR H7274). The amendment would reaffirm this policy in law and set up a firm barrier to abuses. Rep. Weldon cited a recent European report of scientists creating the first male-female hybrid human embryos. According to a news story, the scientists wanted to patent this research. Rep. Weldon noted that his amendment would have no bearing on stem cell research or patenting genes. “It only affects patenting human organisms, human embryos, human fetuses or human beings.” *The Weldon Amendment was agreed to by voice vote.*

In a July 22 letter to Congress in support of the Weldon Amendment, Gail Quinn, Executive Director of the Bishops’ Secretariat for Pro-Life Activities, observed that the amendment reaffirms an internal policy that has guided the U.S. Patent and Trademark Office (USPTO) since 1987. “Whatever one’s views about prenatal human life, we should all agree that no member of the human species is an ‘invention,’ or mere property to be licensed, bought and sold.” Ms. Quinn also cited a case in which the U.S. Supreme Court overturned a USPTO policy against patenting any living organism on the grounds that the policy’s distinction between organisms and inanimate objects could not be found in any statutory authority. “Congress’s silence may invite a similar result regarding the distinction between humans and patentable animals.”

Senate: The Fiscal Year 2004 Commerce/Justice/State/Judiciary Appropriations Bill reported from Senate committee (S. 1585) did not contain a version of the Weldon Amendment. On September 5, 2003, S. 1585 was placed on the Senate calendar. The Biotechnology Industry Organization (BIO) mounted a campaign against the Weldon amendment. On November 5, 2003, Rep. Weldon submitted remarks in the *Congressional Record* refuting the allegations of BIO and others. See the “Related Information” button. On November 14, 2003, Sen. Sam Brownback (R-KS) offered language that affirmed the Weldon Amendment and clarified exactly what that amendment does and does not do.

Conference Committee: The Fiscal Year 2004 Commerce/Justice/State/Judiciary Appropriations Bill was included in the conference report on the Omnibus Appropriations Bill (H.R. 2673). The Weldon Amendment was retained in the conference report, which the House approved December 8, 2003. The Senate deferred action, approving the report January 22, 2004.

In 2002, Sens. Sam Brownback and John Ensign (R-NV) offered an amendment to the terrorism insurance measure (S. 2600) to ban patents on human organisms. A successful cloture motion on S. 2600 prevented consideration of the Brownback-Ensign Amendment.

5. Umbilical Cord Blood Banks: Fiscal Year 2004 Labor/HHS Appropriations

To establish a National Cord Blood Stem Cell Bank Program, the Senate included a provision for \$10 million in the Fiscal Year 2004 Labor/HHS Appropriations Bill (H.R. 2660). This provision was not included in the House version. Subsequently, the Fiscal Year 2004 Labor/HHS Appropriations Bill was included in the conference report on the Omnibus Appropriations Bill

(H. R. 2673). The conference report includes \$10 million “to establish a National Cord Blood Stem Cell Bank Program within HRSA [Health Resources and Services Administration]” (*Congressional Record*, 11/25/03, H12562). The House approved the conference report on December 8, 2003. The Senate deferred action, approving the measure January 22, 2004.

For more information on this issue, see Authorization Bills below.

B. Authorization Bills

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. In 2002, ANDA passed the House and that bill was placed on the Senate calendar. No further action was taken.

Senate: On July 14, 2003, Sens. Judd Gregg (R-NH) and Ben Nelson (D-NE) introduced the Abortion Non-Discrimination Act (S. 1397). The measure has 11 other original sponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

Applauding the introduction of S. 1397, Gail Quinn, Executive Director of the USCCB Secretariat for Pro-Life Activities, stated, “This modest bill protects health care providers who choose not to get involved in the destruction of innocent human life.” She added, “We are encouraged by ANDA’s bipartisan support and hopeful that Congress will act swiftly to pass this bill.” For Ms. Quinn’s full statement, see: www.usccb.org/comm/archives/2003/03-147.htm.

On August 15, 2003, Cardinal Bevilacqua, Chairman of the USCCB Committee for Pro-Life Activities, sent a letter to all U.S. Senators, urging them to support and cosponsor S. 1397. “This is a bipartisan proposal that protects a basic right, the right to choose not to participate in abortions.” Noting that both House and Senate overwhelmingly approved a federal nondiscrimination statute (42 USC 238n) protecting health care entities in 1996, Cardinal Bevilacqua observed, “The new bill makes it clear that this protection extends to the full range of such [health care] entities, including hospitals, health plans, and individual health professionals other than physicians. It also applies this protection to entities being pressured to pay for abortions against their will.”

House: On December 8, 2003, Rep. Michael Bilirakis (R-FL) introduced the Abortion Non-Discrimination Act (H.R. 3664). This measure has 13 cosponsors and was referred to the House Energy and Commerce Committee. This legislation is nearly identical to the measure introduced in the Senate. Similar legislation was passed in the House in 2002.

For more information on this issue, visit the web site of the Bishops' Secretariat for Pro-Life Activities: www.usccb.org/prolife/issues/abortion/andaindex.htm.

A legislative briefing page on ANDA, including an NCHLA Action Alert, can be found by clicking on the "Related Information" button.

2. Adoption Information Act

On March 12, 2003, Rep. Jo Ann Davis (R-VA) introduced the Adoption Information Act (H.R. 1229). The measure has 52 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee. H.R. 1229 requires federally funded Title X family planning clinics to give each person receiving services a pamphlet with a list of adoption centers in the state in which the services are being provided. Each person must be informed what is in the pamphlet and that it was prepared by the U.S. Department of Health and Human Services. The person must be given an opportunity to read the pamphlet.

This legislation was introduced in 2002, but no action was taken.

3. Bankruptcy Reform: Clinic Protest

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

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

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

4. Child Custody Protection Act

Background: The Child Custody Protection Act makes it a federal crime to transport a minor girl across state lines to obtain an abortion with the intent of circumventing the parental involvement law of the girl's home state. The prohibition does not apply when the abortion is necessary to

save the minor's life. The measure prevents the abridgement of the right of a parent secured under state law. In 1998, 1999, and 2002, this legislation passed the House but was stalled in the Senate.

House: On April 10, 2003, Rep. Ileana Ros-Lehtinen (R-FL) introduced the Child Custody Protection Act (H.R. 1755). The bill has 97 cosponsors and was referred to the House Judiciary Subcommittee on the Constitution.

Senate: On April 10, 2003, Sen. John Ensign (R-NV) introduced the companion bill in the Senate (S. 851). The bill has 23 cosponsors and was referred to the Senate Judiciary Committee.

5. "Emergency Contraception" Education

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

Similar bills were introduced in the 107th Congress. No further action was taken.

On December 16, 2003, two FDA advisory committees are scheduled to hold hearings on whether "emergency contraceptives" should be available over the counter. See: www.fda.gov/oc/advisory/accalendar/cder12541d121603.html.

House: On April 11, 2003, Rep. Louise Slaughter (D-NY) introduced H.R. 1812; the measure has 91 cosponsors. The bill was referred to the Subcommittee on Health of the Committee on Energy and Commerce.

Senate: On April 11, 2003, Sen. Patty Murray (D-WA) introduced S. 896; the measure has nine cosponsors. The bill was referred to the Committee on Health, Education, Labor, and Pensions.

6. “Emergency Contraception” Hospital Mandate

On June 19, 2003, Rep. Jim Greenwood (R-PA) introduced the Compassionate Assistance for Rape Emergencies Act (H.R. 2527). The measure has 73 cosponsors and was referred to the Subcommittee on Health of the Committee on Energy and Commerce and to the Committee on Ways and Means. A similar measure was introduced in the 107th Congress; no further action was taken.

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

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

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

7. 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. A genuine ban on human cloning passed the House in 2001 but action stalled in the Senate.

House: On February 5, 2003, Reps. Dave Weldon (R-FL) and Bart Stupak (D-MI) introduced the Human Cloning Prohibition Act of 2003 (H.R. 534) (supercedes the earlier H.R. 234). H.R. 534 had 139 other cosponsors; it was referred to the House Judiciary Committee. This bill is a genuine ban on human cloning and is similar to the measure passed in the last Congress 265-yes, 162-no. H.R. 534 would prohibit any person or entity, in relation to interstate commerce, from: (1) performing or attempting to perform human cloning; (2) participating in such an attempt; (3) shipping or receiving an embryo produced from human cloning; or (4) importing such an embryo

or any product derived therefrom. Rep. Weldon stated: "Human cloning hasn't cured any diseases, it will commercialize women's eggs and wombs, it poses serious risks to the cloned child to be, and violates human dignity." Most oppose cloning human babies ("reproductive" cloning). However, creating human clones only for experimentation, an action wrong in itself, only opens the door to bringing human clones to live birth. As Rep. Weldon also stated: "Indeed, those who perform experimental research cloning will only make reproductive cloning easier, and increase the likelihood that even more rogue scientists will produce cloned babies." On December 27, 2002, the Raelians, a religious sect that believes human beings are clones of aliens from outer space, announced that it had cloned the first human baby. That claim is unsubstantiated and is considered by many as untrue. However, the Raelians and others are in a race to produce the first cloned human baby. See, "Race for Scoop May Be Fueling Cloning Claims," *Wall Street Journal* (1/6/03), A13.

On February 13, 2003, Rep. Jim Greenwood (R-PA) introduced an opposition bill, called the Cloning Prohibition Act (H.R. 801). This measure had 10 cosponsors and was referred to the Subcommittee on Health of the House Energy and Commerce Committee. H.R. 801 amends the Federal Food, Drug, and Cosmetic Act. Cloning is referred to as "human somatic cell nuclear transfer technology." This technology cannot be used to initiate a pregnancy but it can be used to "clone molecules, DNA, *cells*, or tissues" (emphasis added). That is, it can be used to create human clones for experimentation and then death. H.R. 801 provides for regulation of this experimentation.

In a February 25, 2003 letter to Congress, Cardinal Bevilacqua offers a critique of H.R. 801:

"Some supporters of cloning for research purposes seek to hide this reality by tricks of language. They say they oppose 'human cloning' but support 'somatic cell nuclear transfer' or 'SCNT,' hoping no one will notice that SCNT is simply the scientific name for the cloning procedure. They even say they support only the use of cloning to produce stem cells,' evading the fact that they want to create live human embryos who will then be destroyed for their stem cells. The fact that supporters of such cloning must resort to these evasions to make their case only underscores how abhorrent the practice is to all of us when it is confronted squarely."

The full text of Cardinal Bevilacqua's letter can be found by clicking on the "Related Information" button.

Committee Markup: On February 12, 2003, the House Judiciary Committee marked up H.R. 534. All hostile amendments were rejected and the measure was approved 19-12.

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

The Greenwood Substitute Amendment was rejected, 174-yes, 231-no, 1-present, 28 not voting (Roll Call 37). The motion to recommit to committee with instructions also was defeated, 164-yes, 237-no, 33 not voting (Roll Call 38).

When the relatively high number of non-voting Members is taken into account, these votes are virtually the same as the House votes on a human cloning ban in 2001. For the Roll Call on the 2001 votes, click on the “Related Information” button.

For a formatted version of the three votes, click on the “Related Information” button.

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

Senate: On January 29, 2003, Sens. Sam Brownback (R-KS) and Mary Landrieu (D-LA) introduced the companion bill in the Senate (S. 245). S. 245 has 27 other cosponsors. The measure has been referred to the Senate Health, Education, Labor, and Pensions Committee.

On February 5, 2003, Sens. Orrin Hatch (R-UT) and Dianne Feinstein (D-CA) introduced an opposition bill, the Human Cloning Ban and Stem Cell Research Protection Act (S. 303). This measure has nine other cosponsors and was referred to the Senate Judiciary Committee.

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

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

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

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

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

Executive: In its July 2002 report, “Human Cloning and Human Dignity: An Ethical Inquiry,” the President’s Council on Bioethics referred to “the temptation to solve the moral questions by artful redefinition or by denying to some morally crucial element a name that makes clear that

there is a moral question to be faced” (p. xiv). The report adopted the terms “cloning-to-produce-children” and “cloning-for-biomedical-research” and defined “cloned human embryo” as “the immediate (and developing) product of the initial act of cloning, accomplished by successful SCNT [somatic cell nuclear transfer], whether used subsequently in attempts to produce children or in biomedical research” (p. xv).

In his January 28, 2003, State of the Union Address, President Bush urged Congress to ban all human cloning. “And because no human life should be started or ended as the object of an experiment, I ask you to set a high standard for humanity and pass a law against all human cloning.” On February 26, 2003, just prior to the recent House vote, the Administration issued a strong statement in support of H.R. 534. See:

www.whitehouse.gov/omb/legislative/sap/108-1/hr534sap-hr.pdf

Helpful Websites:

Resources on cloning from U.S. Conference of Catholic Bishops:

www.usccb.org/prolife/issues/bioethic

Alternatives to stem cell research that destroys human embryos:

www.stemcellresearch.org

Background from Americans to Ban Cloning:

www.cloninginformation.org

8. In Utero Surgery

On September 25, 2003, Sen. Sam Brownback (R-KS) chaired a hearing before the Science, Technology, and Space Subcommittee of the Senate Commerce, Science and Transportation Committee on the “Scientific and Medical Advances in the Field of In Utero Surgery.”

9. 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.

Demonstration of a high-level definition ultrasound of the unborn child can be located at:

www.gemedicalsystems.com

House: On January 7, 2003, Rep. Cliff Stearns (R-FL) introduced the Informed Choice Act (H.R. 195). The bill has 50 cosponsors and was referred to the Health Subcommittee of the House Energy and Commerce Committee. The Secretary of Health and Human Services is authorized to make grants to nonprofit tax-exempt organizations for the purchase of ultrasound equipment that is to be used to provide free examinations to pregnant women needing such services. The measure specifies eligibility requirements and limitations on grant amounts. \$3 million is authorized for Fiscal Year 2003 and such sums as are necessary for Fiscal Year 2004 through 2006.

Senate: On February 11, 2003, Sen. Jim Bunning (R-KY) introduced a companion bill in the Senate (S. 340). The bill has two cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

10. Kemp-Kasten Amendment: Funding UNFPA

Background: On August 15, 1985, what came to be called the Kemp-Kasten Amendment was enacted into law for the first time: “None of the funds made available in this bill nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.” From then to the present, this amendment has continued to be part of the annual foreign operations appropriations law. Relying on this amendment, the Reagan and Bush Administrations denied funding to the United Nations Population Fund (UNFPA) for its support of China’s coercive population control program. In 1993, the Clinton Administration reinterpreted the amendment to mean that “direct” support for coercion was in violation of the law and released funding to the UNFPA. Throughout most of the years of the Clinton Administrations, Congress fought over funding the UNFPA. It was only for Fiscal Year 1999 that Congress blocked all funding by law. In 2002, the Bush Administration again invoked the Kemp-Kasten Amendment and denied all funding to the UNFPA. Thereafter, abortion proponents expressed their intent to amend the Kemp-Kasten Amendment.

House: On May 7, 2003, during markup by the House International Relations Committee of the Foreign Relations Authorizations Act Fiscal Years 2004 and 2005 (H.R. 1950), Rep. Joseph Crowley (D-NY) offered an amendment to undercut the Kemp-Kasten Amendment. The Crowley Amendment narrowly passed, 23-yes, 22-no.

The intent of the Crowley Amendment is to undermine the ability of the Bush Administration to deny funding to the UNFPA. A U.S. law protecting human rights would be superceded by a law that exempts from compliance an organization with a long history of complicity in human rights violations.

According to the wording of the amendment, beginning with Fiscal Year 2004, funds appropriated for the UNFPA may be expended “only if the President certifies to the Congress that the United Nations Population Fund (UNFPA) does not directly support or participate in coercive abortion or involuntary sterilization.” The phrase “directly supports or participates in coercive abortion or involuntary sterilization” is defined as “knowingly and intentionally working with a purpose to continue, advance, or expand the practice of coercive abortion or involuntary sterilization, or playing a primary and essential role in a coercive or involuntary aspect of a country’s family planning program.” By permanent law, the Crowley Amendment seeks to narrow the circumstances under which the Kemp- Kasten Amendment could be used to deny funding to the UNFPA.

The certification authority of the president may not be delegated. In the original debates on the Kemp-Kasten Amendment, abortion proponents added the requirement “as determined by the

President of the United States” in the belief that this would limit the administration’s ability to deny funding to the UNFPA. The law then and now does not say the president may not delegate his authority, though in the early debates the intent was expressed by some in Congress that the President should delegate his authority only to the Secretary of State. In 1985, President Reagan delegated his authority to the Secretary of State, who in turn delegated the authority to the administrator of the U.S. Agency for International Development. A court subsequently held the delegation to be a fair reading of the text of the law. The Crowley Amendment would change the law and explicitly deny the president the right to delegate the authority.

The Clinton Administration reinterpreted the Kemp-Kasten Amendment to mean “direct” support or participation and on this basis resumed funding the UNFPA. It promises to be difficult, if not impossible, for the Bush Administration to deny funding to the UNFPA based on the same or similar standard.

The Crowley Amendment also would authorize a total of \$100 million for the UNFPA for Fiscal Years 2004 and 2005.

House Floor: During consideration of H.R. 1950, Reps. Chris Smith (R-NJ), James Oberstar (D-MN), and Henry Hyde (R-IL) offered an amendment to remove the Crowley Amendment. *On July 15, 2003, the House approved the Smith/Oberstar/Hyde Amendment, 216-yes, 211-no, 8-not voting (Roll Call 362).* The Kemp-Kasten Amendment remains in law and the president retains the authority to determine whether the UNFPA should receive U.S. funding.

In reacting to the House vote, Gail Quinn, Executive Director of the Bishops’ Secretariat for Pro-Life Activities, stated:

Coerced abortion has been condemned throughout the international community as a crime against humanity, and as an act of violence against women. It is disappointing that almost half the members of the House were tempted to treat this human rights violation as something that can be ignored or finessed when pursuing business-as-usual with population control groups. In the end, however, the House took the right action, and we hope the Senate will do so as well.”

Prior to the vote, Cardinal Bevilacqua, Chairman of the Bishops’ Committee for Pro-Life Activities, had written to the House urging support for the Smith/Oberstar/Hyde Amendment. See: www.usccb.org/comm/archives/2003/03-143.htm.

For a legislative briefing page, “Funding UNFPA - China's Coercive Population Control Program,” click on the “Related Information” button.

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

(1) it will not perform abortions (except to save the mother's life or in cases of rape or incest), and that (2) it will not violate other countries' abortion laws, or lobby to change those laws. The Mexico City Policy is so named because it was first announced by the Reagan Administration at a population conference in Mexico City in 1984. The policy was in effect until overturned by President Clinton on January 22, 1993.

On January 22, 2001, President Bush issued an executive memorandum directing the Administrator for the U.S. Agency for International Development (USAID) to reinstate the Mexico City Policy in full. The USAID issued its rule on February 15. However, to avoid a Congressional review of this rule, President Bush issued an executive memorandum on March 28, 2001 that included the content of the USAID rule. Presidential executive memoranda are not subject to Congressional review.

Abortion advocates in Congress have been seeking ways to negate President Bush's reinstatement of the Mexico City Policy. In the 107th Congress (2001-2002) the Global Democracy Promotion Act was introduced by Sen. Barbara Boxer (D-CA) in the Senate (S. 367) and by Rep. Nita Lowey (D-NY) in the House (H.R. 755). This bill undercuts the Mexico City Policy by removing the policy's funding restrictions from foreign nongovernmental organizations. In a floor vote the House rejected the measure as an amendment to another bill. The Senate approved S. 367 in committee but took no action on the floor. The measure did not become law. Language negating the Mexico City Policy was kept out of the annual appropriations bills.

Additional information on the Mexico City Policy can be found at the following web sites:

The April 18, 2001, USCCB policy letter sent by Gail Quinn to Congress at:
www.usccb.org/prolife/issues/abortion/mexcit418.htm.

Two columns by Susan Wills in the USCCB's Secretariat for Pro-Life Activities' *Life Issues Forum* at: **www.usccb.org/prolife/publicat/lifeissues/02022001.htm** and **www.usccb.org/prolife/publicat/lifeissues/02162001.htm**.

NCHLA's "Mexico City Policy" Fact Sheet by clicking on "Related Information."

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

At year's end, S. 925 was pending on the Senate calendar. The White House has indicated the President would veto the bill if the amendment is not removed.

Court Action: On June 6, 2001, the Center for Reproductive Law and Policy filed a suit in federal district court challenging the constitutionality of President Bush's executive memorandum restoring the Mexico City Policy. On July 21, 2001, the U.S. District Court for the Southern

District of New York dismissed the case for lack of standing. This ruling was appealed. On September 13, 2002, the U.S. Court of Appeals for the Second Circuit affirmed the dismissal, but on constitutional grounds. The constitutionality of the Mexico City Policy was upheld in earlier cases, first by the U.S. Court of Appeals for the District of Columbia (1989) and then by the U.S. Court of Appeals for the Second Circuit in New York (1990) (this decision was referenced by the court in its September 13 ruling).

Administration: 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. See: www.whitehouse.gov/news/releases/2003/08/20030829-3.html.

12. 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.

Senate: During debate on the Fiscal Year 2004 Defense Authorization Bill (S. 1050), Sen. Patty Murray (D-WA) offered an amendment (Senate Amendment 691) that would strike from law the restriction on the use of military health care facilities for abortions. The Murray Amendment was ruled nongermane and objection was made to the amendment being brought up under unanimous consent. After negotiations, it was agreed the Murray Amendment could be brought to the floor. Sen. Sam Brownback (R-KS) had intended to offer a second-degree parental notification amendment but as part of the agreement withdrew his proposal with the promise of consideration at a later date. *On May 22, 2003, the Senate rejected the Murray Amendment, 48-yes, 51-no, 1-not voting (Roll Call 192).*

This represents a close but important victory for pro-life. Last year the Senate approved the Murray Amendment, 52-yes, 40-no.

On May 23, 2003, Sen. Sam Brownback (R-KS) introduced a bill (S. 1104) that prohibits military doctors from performing an abortion at a military facility on an unemancipated minor who is a child of a member of the military without parental notification. The bill was read twice and placed on the Senate's legislative calendar. S. 1104 has no cosponsors.

House: Rep. Loretta Sanchez (D-CA) offered a companion amendment to the House's version of the Fiscal Year 2004 Defense Authorization Bill (H.R. 1588). Her amendment would reverse the existing law only in regard to the use of military health care facilities outside the United States. After a debate, in which new pro-life Members participated, the House rejected the Sanchez Amendment by voice vote. A recorded vote was requested. *On May 22, 2003, the House rejected the Sanchez Amendment, 201-yes, 227, no, 7 not voting (Roll Call 215).* The margin of the pro-life victory increased significantly over 2002, when the vote was 202-yes, 215-no.

13. Parental Notification

Two bills related to parental notice have been introduced in the House.

A) Parental Notification and Intervention Act

On March 27, 2003, Rep. Marilyn Musgrave (R-CO) introduced the Parental Notification and Intervention Act of 2003 (H.R. 1489). The measure has 80 cosponsors and was referred to the Constitution Subcommittee of the House on the Judiciary. The bill makes 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 an 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 are made for cases where a grave physical disorder or disease would cause the death of the unemancipated minor. Parental notice requires the use of certified mail which is personally delivered to any parent. The term “parent” includes a legal guardian.

B) Title X Program

On June 12, 2003, Rep. Todd Akin (R-MO) introduced the Parent’s Right to Know Act of 2003 (H.R. 2444). This measure would require parental consent or notification five business day before a minor receives a contraceptive drug or device in a federally-funded Title X family planning clinic. H.R. 2444 also requires providers to certify their compliance to the Secretary of Health and Human Services.

The bill has 92 sponsors and was referred to the Energy and Commerce Subcommittee on Health.

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

14. Partial-Birth Abortion Ban Act

Background: This legislation bans a particularly brutal and inhumane abortion method in which the child is removed from the womb feet-first and delivered except for the head. The abortionist thrusts scissors into the base of the child’s skull, inserts a catheter through the opening, and suctions out the child’s brain. This procedure is never medically necessary. Many recognize partial-birth abortion for what it is: infanticide. In a recent survey, Planned Parenthood’s Alan Guttmacher Institute reported that from 1996 to 2000 the number of partial-birth abortions (what they call “D & X” abortions) increased threefold – from about 650 in 1996 to about 2,200 in 2,000. These figures are low. In 1997, Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, said that in the majority of cases the procedure is performed on health mothers with healthy babies and he estimated then that 4-5,000 were performed annually.

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

In 2002, the House repassed the measure. In response to the Court's *Carhart* ruling, the bill contained a more precise definition of partial-birth abortion and incorporated Congress's factual findings that partial-birth abortion is never necessary to preserve the health of a woman. 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. Even though the Partial-Birth Abortion Ban Act was placed on the Senate calendar in 2002, several Senators objected to a unanimous consent agreement to proceed.

House: On February 13, 2003, Rep. Steve Chabot (R-OH) introduced the Partial-Birth Abortion Ban Act of 2003 (H.R. 760). This measure had 161 cosponsors and was referred to the Judiciary Committee. H.R. 760 is the same as H.R. 4965, the revised bill passed by the House in 2002 by the vote 274-yes, 151-no.

H.R. 760 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 Supreme Court 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)). Congress is entitled to reach its own factual findings "and to enact legislation based on these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence" (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)).

To the U.S. Code, Title 18, H.R. 760 adds 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 conditions 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.”.

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)).

On February 13, 2003, Rep. Steny Hoyer (D-MD) introduced an opposition bill, the Late Term Abortion Restriction Act (H.R. 809). This measure has 23 cosponsors and was referred to the Energy and Commerce Committee as well as the Judiciary Committee. The bill states that it is unlawful to perform an abortion after the fetus has become viable, and then adds an exception clause that allows physicians to determine whether the abortion is necessary “to preserve the life of the woman or to avert serious health consequences to the woman.” Under current Supreme Court jurisprudence, this “health” exception means late term abortions can be done for any reason. H.R. 809 restricts nothing.

On February 11, 2003, Rep. Chet Edwards (D-TX) introduced the Late Term Abortion Ban Act (H.R. 679), a measure similar to H.R. 809 but with the same “health” exception that plainly refers to “the physical or mental health of the woman.”

Hearings: On March 25, 2003, Rep. Chabot chaired a hearing before the Constitution Subcommittee of the House Judiciary Committee.

Markup: Following the hearing on March 25, 2003, the Constitution Subcommittee marked up H.R. 760, approving the measure 8-yes, 4-no. No amendments were offered at that time.

On March 26, 2003, the full Judiciary Committee marked up H.R. 760. Six hostile amendments were offered and all six were rejected.

Reps. Robert Scott (D-VA), Tammy Baldwin (D-WI), and Sheila Jackson-Lee (D-TX) offered an amendment to add a health exception; it was rejected 7-yes, 15-no.

Rep. Jerrold Nadler (D-NY) offered an amendment to strike language allowing the abortionist to be sued in civil court; it was defeated 11-yes, 15-no.

Rep. Baldwin offered an amendment to drop the criminal penalty, leaving only fines; this amendment was defeated 8-yes, 15-no.

Rep. Baldwin also offered an amendment to strike the bill's findings; this too was rejected 10-yes, 18-no.

Rep. Jackson-Lee offered an amendment to rename the bill the "Safe Abortion Procedures Ban Act of 2003"; this amendment was defeated 8-yes, 19-no.

Rep. Baldwin offered another amendment adding to the findings that banning partial-birth abortion would create health risk for women; this was defeated 10-yes, 16-no.

The committee then approved H.R. 760, 19-yes, 11-no.

Floor. On June 4, 2003, the U.S. House of Representatives approved the Partial-Birth Abortion Ban Act (H.R. 760). Four important votes occurred:

- Vote on Rule – The rule allowed one substitute amendment to H.R. 760 and a motion to recommit the bill to committee. *The rule was adopted, 280-yes, 138-no, 16-not voting, 1-vacancy (Roll Call 236).* "Yes" is a pro-life vote, though 14 Members who opposed H.R. 760 (pro-abortion) voted for the rule (pro-life).
- Vote on Substitute Amendment – Rep. Jim Greenwood (R-PA) offered a substitute amendment to H.R. 760, which would rename the bill the "Late Term Abortion Restriction Act" and would make it unlawful to perform abortions after viability unless, in the medical judgment of the physician, the abortion is necessary "to preserve the life of the woman or to avert serious adverse health consequences to the woman." Under jurisprudence established by the U.S. Supreme Court in *Roe v. Wade* and *Doe v. Bolton*, the "health" exception allows abortion on request. *The Greenwood Amendment was rejected, 133-yes, 287-no, 14 not voting, 1-vacancy (Roll Call 240).* "No" is a pro-life vote, though 42 Members who voted against H.R. 760 on final passage (pro-abortion) opposed this amendment (pro-life).
- Vote on Motion to Recommit – Rep. Tammy Baldwin (D-WI) offered a motion to recommit H.R. 760 to the Committee on the Judiciary with instructions to strike the exception for the life of the mother and substitute an exception for abortion "that is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." In its effect, this motion is indistinguishable from the Greenwood Amendment. *The motion to recommit was rejected, 165-yes, 256-no, 13-not voting, 1-vacancy (Roll Call 241).* "No" is a pro-life vote. One Member who voted against H.R. 760 on final passage (pro-abortion) voted against the motion to recommit (pro-life).

- Vote on Final Passage – *The House approved H.R. 760, 282-yes, 139-no, 13-not voting, 1-vacancy (Roll Call 242). “Yes” is a pro-life vote.*

The text of H.R. 760 was substituted for the text of the Senate passed bill, S. 3, and conferees were appointed. Rep. Nadler moved to instruct the House managers that the conference be open. With no objection, this was agreed to by voice vote.

Cardinal Bevilacqua, Chairman of the Bishops’ Committee for Pro-Life Activities, hailed passage of the House bill, noting, “In voting to ban this procedure, one of the most heinous acts ever perpetrated upon an unborn child, Congress is in harmony with the vast majority of Americans who find this violent act intolerable and want it stopped.” Remarking on the intent of abortion advocates to challenge the bill in court, the Cardinal observed, “Nothing in our Constitution demands that unborn children must be subjected to a procedure so violent and painful. . . . To cloak the act in the Constitution is a national disgrace.”

For the full statement by Cardinal Bevilacqua, see: www.usccb.org/comm/archives/2003/03-116.htm.

The roll call for the four June 4 House votes can be found by clicking on the “Related Information” button.

House PBA votes from 1995 to 2002 can be found by clicking on the “Related Information” button.

Senate: On February 14, 2003, Sen. Rick Santorum (R-PA) introduced the Partial-Birth Abortion Ban Act of 2003 (S. 3), the companion bill to the House introduced measure. S. 3 was placed directly on the Senate calendar. It had 45 cosponsors.

Floor: *On March 13, 2003, after three days of debate, the U.S. Senate passed the Partial-Birth Abortion Ban Act (S. 3), 64-yes, 33-no, 3-not voting (Roll Call 51). This vote is virtually identical to the last Senate vote on this bill in 1999.*

In the course of debate, five hostile amendments were offered. Four were rejected and one adopted. The following four were rejected:

- Murray Amendment – Sen. Patty Murray (D-WA) offered an amendment (Senate Amendment 258) that contained four separate bills: the Equity in Prescription Insurance and Contraceptive Coverage Act of 2003; the Emergency Contraception Education Act; the Compassionate Care for Female Sexual Assault Survivors Act; and Improved Coverage of Infants Under Medicaid and S-CHIP. Sen. Santorum raised a point of order against the amendment. Sen. Murray moved to waive the point of order, a motion that required 60 votes to be successful. *On March 11, the Murray motion failed, 49-yes, 47-no, 4-not voting (Roll Call 45).*

Background information on these four issues can be found in the final NCHLA legislative report for 2002. See “Legislative Report: 2002” by clicking on the “Related Information”

button.

- Durbin Substitute Amendment – Sen. Richard Durbin (D-IL) offered a Substitute Amendment (Senate Amendment 259) that struck the text of the Partial-Birth Abortion Ban Act and inserted in its place the Late Term Abortion Limitation Act. This amendment is virtually identical to the amendment Sen. Durbin offered during the 1999 debate on Partial-Birth Abortion. It still contained a health exception that gutted any limitation. *On March 12, the Senate voted to table the Durbin Amendment, 60-yes, 38-no, 2-not voting (Roll Call 46).*
- Boxer Motion to Commit with Instructions – Sen. Barbara Boxer (D-CA) offered a motion to commit S. 3 to committee with instructions to hold at least one day of hearings and to report the bill back after considering the constitutional issues raised in the *Carhart* decision. *On March 12, the Senate voted to reject the Boxer motion, 42-yes, 56-no, 2-not voting (Roll Call 47).*
- Feinstein Substitute Amendment – Sen. Dianne Feinstein (D-CA) offered a substitute amendment (Senate Amendment 261) that would strike the Partial-Birth Abortion Ban Act and insert in its place the Post-Viability Abortion Restriction Act. A health exception made the restriction meaningless. *On March 12, the Senate rejected this amendment, 35-yes, 60-no, 5-not voting (Roll Call 49).*

One amendment was adopted:

- Harkin Amendment – Sen. Tom Harkin (D-IA) offered a nonbinding sense of the Senate motion affirming that the U.S. Supreme Court’s 1973 *Roe v. Wade* decision is appropriate and should not be overturned. *On March 12, the Senate approved this motion, 52-yes, 46-no, 2-not voting (Roll Call 48).* It is anticipated this provision will be dropped in conference committee.

In her press release, “Senate Passes Partial-Birth Abortion Ban – President Vows to Sign,” Cathleen Cleaver Ruse, spokesperson for the U.S. bishops’ Secretariat for Pro-Life Activities, stated:

This historic vote sets the ban on track to be the first federal law limiting abortion since *Roe v. Wade*. This is a great success for those who have worked so hard for passage of this bill, but above all it is a victory for women and children, who bear the pain and anguish wrought by this inhumane procedure.

Cleaver Ruse added:

Today's vote is the beginning of the end for this cruel and dangerous procedure. . . . President Bush has vowed to sign it.

Conference Committee: The House and Senate bills were identical except for the Senate-passed

Harkin Amendment, requiring that matter to be resolved in a conference committee. On passage of its bill, the House named its conferees, though the Senate delayed appointing its conferees until September 17, 2003. On September 30, 2003, the conference committee approved a conference report on the Partial-Birth Abortion Ban Bill (using the S. 3 designation). The Harkin Amendment was dropped.

On September 12, 2003, Cardinal Anthony Bevilacqua, Chairman of the Bishops' Committee for Pro-Life Activities, sent a letter to the U.S. Senate, urging that the Harkin Amendment be dropped from S. 3. He argued that the claims in the Amendment "are question-begging and false, even in the eyes of judges and legal scholars who favor the public policy created by Roe." For full text of letter, see: www.usccb.org/prolife/issues/pba/pba91203s.htm. Also see: Richard Doerflinger, "Roe v. Wade and Infanticide," *Life Issues Forum* (9/16/03), located online at: www.usccb.org/prolife/publicat/lifeissues/091203.htm.

On October 2, 2003, the House approved the conference report (S. 3), 281-yes, 142-no, 12-not voting (Roll Call 530). On October 21, 2003, after four hours of debate, the U.S. Senate voted 64-yes, 34-no, also to approve the conference report on S. 3 (Roll Call 402).

Law: On October 28, 2003, the measure was sent to the president. Beginning with midnight the day the president receives the bill, he had ten days, excluding Sundays, to sign the measure. On November 5, 2003, President Bush signed the bill into law (PL 108-105). For the full text of the president's remarks at the signing ceremony, along with video and audio, see: www.whitehouse.gov/news/releases/2003/11/20031105-1.html. Archbishop Charles Chaput, Chairman of the Bishops' Committee for Pro-Life Activities, thanked the president for signing the ban into law. He also thanked the millions of Catholics and others of good will "who have worked for years to see this achievement." For the first time since a right to abortion was created by the Supreme Court in 1973, a federal law limits the performance of abortion.

Abortion advocates have challenged the law in the three different federal courts. On November 5, 2003, a federal judge in Nebraska issued a temporary restraining order against the law. His order applies only to the four doctors who filed suit against the law. On November 6, 2003, federal judges in New York and San Francisco issued temporary restraining orders blocking enforcement of the law. These orders are effective for members of the National Abortion Federation and for Planned Parenthood-affiliated clinics.

A legislative briefing page with current information on partial-birth abortion can be found by clicking on the "Related Information" button.

15. RU-486 Regulation

Background: On September 28, 2000, the Food and Drug Administration (FDA) approved a regimen for using the drug RU-486, also called mifepristone or Mifeprex, to cause abortions within 49 days since the beginning of the last menstrual period. Mifepristone may be used in combination with the prostaglandin misoprostol or Cytotec. The 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.

House: On January 29, 2003, Rep. David Vitter (R-LA) introduced the RU-486 Patient Health and Safety Protection Act (H.R. 486). This bill is identical to a measure Rep. Vitter introduced in the 107th Congress. H.R. 486 has 42 cosponsors and was referred to the Health Subcommittee of the House Energy and Commerce Committee. This measure would require the federal government to modify its approval of RU-486: the drug could be prescribed only by a licensed physician who is qualified to handle complications from incomplete abortions or ectopic pregnancies, has been trained in surgical abortions, is certified for ultrasound use, has completed a program on the use of RU-486, and has privileges at a hospital one hour or less away.

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

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

16. RU-486 Suspension and Review Act

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

protocol for administering RU-486 in its approval of the drug.

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

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

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

House: On November 6, 2003, Rep. Jim DeMint (R-SC) introduced the RU-486 Suspension and Review Act (H.R. 3453). H.R. 3453 has 76 cosponsors and has been referred to the House Committee on Energy and Commerce.

Senate: On November 21, 2003, Sen. Sam Brownback (R-KS) introduced the RU-486 Suspension and Review Act (S. 1930). The measure has eight cosponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

17. Stem Cell Research

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.

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. 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.

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.

Senate: On May 22, 2003, Sen. Arlen Specter (R-PA), Chairman of the Senate Appropriations Subcommittee on Labor, Health and Human Services and Education, held a hearing on stem cell research. Sen. Specter was advancing the view that the embryonic stem cell lines available for research under the Bush Administration guidelines are not sufficient. The NIH scientists called to testify disagreed as did a citizen witness with Parkinson's.

On June 12, 2003, Sen. Sam Brownback (R-KS) chaired a hearing on stem cell research before the Science, Technology and Space Subcommittee of the Senate Commerce, Science and Transportation Committee. Witnesses testified to how they had been cured through the use of adult stem cells.

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 a 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 Department of Health and Human Services 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.

18. Umbilical Cord Blood Banks

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

Umbilical cord blood stem cells are obtained from the blood contained in the delivered placenta and umbilical cord, which are normally discarded after childbirth. Obtaining these stem cells presents no inherent moral concerns. According to findings presented in the House measure, cord blood stem cell transplants can be used for bone marrow reconstitution to treat diseases such as leukemia and lymphoma, genetic disorders such as sickle cell anemia, and acquired diseases. The findings also claim that cord blood stem cells do not have to be matched as closely as bone marrow transplants. This means patients will be more likely to find a suitable unrelated cord blood donor than a matched bone marrow donor. Supporters say a network of at least 150,000

units of ethnically balanced cord blood donors is necessary.

House: On July 24, 2003, Rep. Chris Smith (R-NJ) introduced the Cord Blood Stem Cell Act of 2003 (H.R. 2852). This measure would establish a National Cord Blood Stem Cell Bank Network of at least 150,000 units of human cord blood stem cells. The network would prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients. Ten percent of collected cord blood would be reserved for research. H.R. 2852 also establishes a national cord blood stem cell registry and database to document storage, collection and distribution of cord blood stem cells. This database would also contain clinical outcomes related to the network and would be accessible to transplant physicians and other appropriate health care professionals. \$15 million is authorized for Fiscal Year 2004, \$30 million for Fiscal Year 2005 and such sums as are necessary for Fiscal Year 2006 through 2008 or until the 150,000 unit inventory is acquired.

This measure has 24 cosponsors and was referred to the House Energy and Commerce Subcommittee on Health.

Senate: A nearly identical bill, also called the Cord Blood Stem Cell Act of 2003 (S. 1717), was introduced in the Senate by Sen. Orrin Hatch (R-UT). S. 1717 authorizes \$15 million for Fiscal Year 2004, and such sums as are necessary for Fiscal Year 2005 through 2008.

This measure has five cosponsors and was referred to the Committee on Health, Education, Labor and Pensions.

On June 12, 2003, Sen. Sam Brownback (R-KS) chaired a hearing on stem cell research before the Science, Technology and Space Subcommittee of the Senate Commerce, Science and Transportation Committee. Witnesses included researchers as well as patients and family members whose diseases were cured using cord blood stem cell transplants.

For more information, see Appropriation Bills above.

19. Unborn Victims of Violence Act

Background: This legislation provides that any person who injures or kills a child in utero during the commission of already defined federal crimes (including those in military law) would be guilty of two separate offenses – harm to the mother and harm to the child. The death penalty would not be imposed. Abortions are excluded. Twenty-six states already have laws that recognize unborn children as crime victims. These laws have withstood challenges in the courts. In both 106th and 107th Congresses this legislation passed the House but was not considered by the Senate.

Recognizing the unborn as crime victims does not conflict with the *Roe v. Wade* abortion ruling. Going beyond the holdings of *Roe*, abortion advocates object to any reference to the unborn child as a separate existing being. In the past, they have introduced substitute proposals that would increase penalties for harm to the mother while completely ignoring the unborn child as a victim.

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

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

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

Senate: On May 7, 2003, Sen. Michael DeWine (R-OH) introduced the Unborn Victims of Violence Act (S. 1019) (supercedes the earlier S. 146). The measure has 39 cosponsors and has been placed directly on the Senate calendar.

Majority Leader Senator Bill Frist (R-TN) had said he hoped the Senate would consider S. 1019 during July. On July 23, noting that negotiations since June 26 had not produced an agreement on proceeding with the bill, Sen. Frist offered a unanimous consent request that at an agreed upon time the Senate move to immediate consideration of S. 1019, with two hours of debate and no amendments. Minority Whip Sen. Harry Reid (D-NV) objected. He said the Democrats were considering several amendments. Sen. Dianne Feinstein (D-CA) would offer a substitute. Sen. Patty Murray (D-WA) would offer an amendment on domestic relations. Another senator would offer an amendment dealing with intent. And there may be another one or two unspecified amendments. Sen. Frist noted that this was the first time he heard just what these amendments might be. "I look forward, again, to working to bring this bill to the floor as soon as possible. . . . We believe it is a critically important bill that does deserve prompt consideration" (CR S9741).

House: On May 7, 2003, Rep. Melissa Hart (R-PA), introduced the companion House bill (H.R. 1997); the measure has 135 cosponsors. The bill was referred to the Judiciary and Armed Services Committees.

Hearings: On July 8, 2003, the Subcommittee on the Constitution of the House Judiciary Committee held a hearing on H.R. 1997. Testimony can be accessed at: www.house.gov/judiciary/constitution.htm.

Markup: On July 15, 2003, the Subcommittee on the Constitution marked up H.R. 1997, approving the measure 6-yes, 3-no.

Congress should act quickly to pass the Unborn Victims of Violence Act. It is especially important that senators be urged to vote for the bill and to oppose all substitute amendments. For an Action Alert directed to the U.S. Senate and other important information, click on the “Related Information” button