NATIONAL
FAMILY
PLANNING &
REPRODUCTIVE
HEALTH
ASSOCIATION

Weathering the Storm

Federal Legislative and Regulatory Action On Reproductive Health in 2005

January 13, 2006
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Dear Colleagues:

Congratulations to family planning supporters across America! We have survived another challenging year – bruised but not beaten, and reinvigorated by the 40th anniversary celebration of the 1965 landmark Supreme Court decision in *Griswold v. Connecticut.*

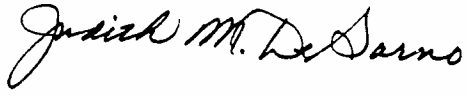
Weathering the Storm: Federal Legislative and Regulatory Action on Reproductive Health in 2005 is the National Family Planning and Reproductive Health Association's review of major federal actions that affected family planning and reproductive health and rights in the United States and abroad this past year. The title reflects both the current political challenges as well as our sincere belief that NFPRHA, our members, and our collective mission will not only survive but flourish in the coming years.

The American public is with us: in the spring of 2005, NFPRHA commissioned a poll to examine American's views regarding family planning. In overwhelming numbers, Americans support public funding for birth control and reproductive health services. Eighty-eight percent of voters believe women should have access to contraception and 80 percent of self-identified pro-life voters believe the same. It is clear that efforts to destroy reproductive rights and eliminate access to care are being driven by a very loud, but very small minority of the conservative right. This is a battle that can, must, and will be won.

For 35 years, NFPRHA has worked to ensure access to voluntary family planning and reproductive health care services and to support reproductive freedom for all. NFPRHA represents the interests of birth control clinics, and the women they serve, to federal policymakers. Our members include private non-profit clinics; state, county and local health departments; the Planned Parenthood Federation of America and many of its affiliates; family planning councils and hospital-based clinics. These member organizations provide reproductive health care at more than 4,000 clinics nationwide, to nearly five million low-income women each year.

Like you, we anticipate many legislative struggles in the coming year and look forward to working with you to overcome whatever challenges arise. We also pledge to work with you to educate legislators and the media about public support for family planning and to create opportunities at all levels to expand access to basic preventive health services both in the United States and around the world.

Sincerely,



Judith M. DeSarno
President and CEO

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The Promise of *Griswold* on Hold

The first session of the 109th Congress began with expanded Republican majorities in both Houses imbued with an "all-things-are possible" optimism and a President who announced that he had "capital to spend" and intended to use it to aggressively advance his agenda. The session ended on December 23 after a series of setbacks for the GOP leadership and the President, leaving them unable to pass their full tax cutting plan, overhaul Social Security or cut social programs to the extent that he had proposed.

Further, the public was quickly losing any confidence it might have once had in the war in Iraq, and two destructive hurricanes caused Americans to question the government's ability to deal with disasters and the competence of Bush appointees. Congressional interference in the Terri Schiavo case was deemed inappropriate at best by most Americans, and the involuntary departure from the second highest leadership post in the House of Representatives by House Majority Leader Tom DeLay (R-TX) amid ethics charges was troubling, to say the least. With these distractions as a backdrop, reproductive health programs and legislation were not top priorities for either party. Nevertheless, anti-choice and anti-family planning legislators continued their efforts to chip away at access to birth control and abortion services – making few gains but ceding little ground.

Faced with a Congress poised to erode reproductive rights and a growing concern that one or more Supreme Court retirements were imminent, NFPRHA members and friends seized upon the 40th anniversary of the landmark Supreme Court decision in *Griswold v. Connecticut* on June 7 to both celebrate the 1965 decision that changed the lives of generations of American women and educate Capitol Hill staff and the press. The *Griswold* decision affirmed the right of marital privacy against a state restriction on counseling and use of contraception, thereby laying the constitutional foundation for widespread access to birth control and women's right to choose abortion – rights that contributed in no small measure to women's ability to participate more fully in all aspects of American society.

Forty years after *Griswold*, the right to privacy is at risk. With increased numbers of anti-choice members of Congress and state legislatures, the Supreme Court could once again be positioned to change the lives of generations of women. The June announcement that the Court's key swing vote, Sandra Day O'Connor, would retire, opens up the possibility that newly installed Chief Justice John Roberts could preside over the Court's sharp turn to the right, particularly if a conservative anti-choice nominee joins him on the bench.

The stakes in the fight to replace O'Connor are difficult to overstate and dwarfed all other reproductive rights concerns for the latter half of the year. The importance of a moderate voice on the Court hit home on November 30, when the Supreme Court heard its first abortion case in five years. In *Ayotte v. Planned Parenthood of Northern New England* the court considered two key questions: must an abortion restriction include a medical emergency exception, and can doctors and women continue to challenge dangerous abortion restrictions and ask the courts to strike them down before they can harm women.

Conservatives were positively ebullient over the President's second choice to fill O'Connor's position -- Samuel Alito -- a well-credentialed conservative Third Circuit Court judge. Upon closer scrutiny, mainstream opposition to Alito began to build, in part fueled by two memos from 1985 that surfaced in which he effectively declared *Roe* v. *Wade* a constitutional abomination that should be abandoned. A 1985 Reagan-era job application emerged in which he stated, "I personally believe very strongly" that "the Constitution does not protect a right to an abortion," sentiments confirmed in a second memo Alito wrote in 1985 as a Justice Department lawyer in which he detailed his strategy to bring about "the eventual overruling of *Roe* v. *Wade*." But just how much trouble the Alito nomination will encounter – that is, will Senate Democrats and moderate Republicans be willing to filibuster the nomination – is entirely unclear as we enter 2006.

Debate on Science v. Politics Rages on With Plan B as Exhibit A

Aside from the Supreme Court and the specter of life without *Roe*, the reproductive health issue that garnered the most public attention this year was emergency contraception (EC). Press reports that a small number of pharmacists were refusing to fill birth control prescriptions not only struck a chord with American women, but also with members of Congress, who wasted no time in introducing a number of legislative vehicles designed to ensure that pharmacists objecting to birth control do not stand in the way of women's access to these essential products. Emergency contraception stayed front-page news because of the Food and Drug Administration's (FDA) foot-dragging on Barr Pharmaceuticals' application to allow Plan B to be sold over the counter (OTC).

Despite the media attention and near-universal condemnation by the medical community of the FDA's politically driven lethargy, no action had been taken by year's end – two years after the agency's scientific advisory panels overwhelmingly recommended the approval of the product for OTC use. The agency's inactions prompted Susan Wood, the FDA's Director of the Office of Women's Health, to resign and hit the lecture circuit to convey that evidence-based science had been discarded in favor of political considerations. Wood's assertions that it was not business-as-usual at the FDA were backed up by a Government Accountability Office (GAO) report issued in October, confirming what many already suspected, that the delays to date have been baseless and indefensible and a radical departure from the accepted approval process.

Budget Reconciliation and Labor-HHS Bill Provide One-Two Punch to Public Health

While the Supreme Court nominations and EC occupied the public spotlight, conservatives in Congress continued to lob bombs at reproductive rights. The traditional venue for these funding and policy battles has been the annual health spending bill. In 2005, though, the biggest congressional battle affecting women's health took place in the context of the budget reconciliation bill, where President Bush and congressional Republicans sought to capitalize on the 2004 election by trimming mandatory spending programs – threatening to cut up to $50 billion from programs including Medicaid that serve America's most vulnerable citizens.

Defeating the reckless measure, which critics charged would bring pain to the poor to help finance tax cuts for the wealthy, became one of NFPRHA's top priorities for the year. After

delaying the vote in the wake of Hurricane Katrina and widespread criticism that the federal government had failed to perform its most basic functions, House leaders engineered a narrow 212-206 victory on the conference report shortly before dawn on December 19, followed by a cliffhanger in the Senate on December 21 that ended in a 51-50 roll call, with Vice President Cheney casting the tie breaking vote. However, Senate approval of the bill delivered less than final victory for Republican supporters. Democrats maneuvering in advance of the Senate vote succeeded in forcing minor changes that require the House to vote again on the bill before it can be sent to President Bush for his signature, leaving a vote on final approval until 2006.

The budget reconciliation conference measure that awaits final House approval calls for $40 billion in cuts over five years to a variety of programs helping low-income Americans and slashes nearly $5 billion out of projected spending on the Medicaid program alone. Importantly, it also gives states the option to drop family planning coverage for certain women, as well as impose co-payments for prescription contraceptives.

On top of these devastating cuts to Medicaid that almost certainly will be ratified in early 2006, public health programs funded through the Labor, Health and Human Services, and Education (Labor-HHS) spending bill did not fare well. The Title X family planning program was level-funded at $286 million – a departure from the small, but still meaningful increases that had become the norm. Other public health programs that provide contraceptive services such as the Maternal and Child Block Grant and the Social Services Block Grant suffered a similar fate. Adding to the inadequate funding level for many domestic discretionary programs was an across-the-board reduction of one percent to pay for Katrina-related relief. For Title X, this translates into a three million dollar program reduction that clinics can ill afford.

Another notable setback for reproductive health was the extension of the Weldon federal refusal law for a second year. This policy rider prohibits all federal funding through the Labor-HHS spending bill to any state, locality, or program that "discriminates" against an entity or individual because it does not provide, pay for, provide coverage of, or refer for abortions. NFPRHA has been especially concerned that the provision could have ramifications for Title X agencies if they enforce the program requirement that entitles women to referrals for abortions if requested. The extension of the Weldon language was particularly disheartening given that NFPRHA lost its legal challenge to the Weldon law in federal district court in the District of Columbia earlier in the year. However, a notice of appeal has been filed and the fight will continue in 2006.

Although no changes were made to the underlying Title X legislation during the appropriations process, the Department of Health and Human Services continued to craft policies designed to shift the cash-strapped domestic family planning program away from its historic role as a provider of primary reproductive health care services toward a new role as purveyor of the Administration's social agenda –focusing on activities such as abstinence-unless-married education, marriage promotion, and increased statutory rape reporting as a back-door mechanism to deprive some teens of services.

The good news was that no new anti-choice legislation was enacted by Congress this year. However, the conservative agenda was still in evidence. Stand-alone legislation, such as the Child Interstate Abortion Notification Act and the Unborn Child Pain Awareness Act, continued

to be championed. These bills have the dual purpose of playing to the conservative base and painting pro-choice Americans as cruel and unconcerned about children and fetuses.

The later bill is a misguided effort to force doctors to read a script to women who are considering having an abortion which says that Congress has determined that an unborn child feels pain by 20 weeks of age. While the stated purpose of the bill is to diminish the suffering that a fetus must endure as part of a post-20-week abortion, the real purpose of the bill is to discourage women from choosing an abortion by stressing that a 20-week-old fetus feels pain – a proposition called into question by an article in the *Journal of the American Medical Association* reviewing recent medical studies.

With these few highlights and lowlights in mind, what follows is a more nuanced and detailed recap of the year's events -- with the happy reminder that at year's end -- even though few major pro-family planning initiatives caught fire, at times such as these, the absence of defeat surely can be considered a victory!

NFPRHA Celebrates *Griswold* Anniversary
Poll Shows Overwhelming Support for Birth Control Access

June 7, 2005 marked an important milestone in family planning: the 40th Anniversary of *Griswold v. Connecticut*, the Supreme Court case which invalidated Connecticut laws prohibiting counseling and use of contraception by married couples. This landmark decision did much more than just allow married Connecticut women legal access to contraceptive services. This ruling established a constitutional right to privacy and laid the ground work for later rulings expanding reproductive rights. The case changed the course of history in this country, giving women dignity and control over their lives and futures. NFPRHA marked this event in style with two major events.

On June 6, family planning supporters gathered on Capitol Hill for a briefing entitled "*Griswold* and the Right to Privacy." This panel of prominent scholars of birth control history, medicine and law explored the social and political history leading up to the *Griswold* decision and its impact on American society. Panelists included: Linda Gordon from New York University; the author of the Moral Property of Women, a review of the history of birth control and the intense controversies about reproductive rights; Walter Dellinger, the former acting Solicitor General for the 1996-1997 term of the Supreme Court, currently a partner at O'Melveny & Myers; Reva Siegel, a constitutional law professor from Yale University; and Gary Gross, M.D. at ABCD Boston Family Planning. Katherine Roraback, one of the key lawyers involved in the Connecticut cases leading to *Griswold*, also joined the panel to offer her insights.

The panelists each provided inspiring personal and professional perspectives regarding the importance of the decision and what a difference it made in women's lives. Each panelist brought it back to the present, acknowledging the special importance of the decision for low-income women who are now served in public health programs like Title X and Medicaid. They noted that even in 1965, women with financial means, had access to birth control so the decision was actually most important to low-income women. Walter Dellinger commented that although access to birth control revolutionized American life, unfortunately, for women who are "hostage to geography, youth, and poverty," significant barriers still remain.

NFPRHA also hosted a benefit luncheon on June 7 at the Four Seasons Hotel in Washington, DC. Honorees included: Representative Rosa DeLauro (D-CT); Catherine Roraback, key attorney on the *Griswold* case; Planned Parenthood of Connecticut; and Marcia Greenberger, co-president of the National Women's Law Center. In accepting their awards, honorees saluted the courage of those present and acknowledged those who paved the way. Ms. Roraback admitted that she felt strange being honored in the absence of her friends and colleagues on the case and sad that they were not still alive to mark the anniversary with her.

Resolution to Mark Griswold Anniversary Introduced

In conjunction with the anniversary, NFPRHA worked with pro-family planning Senators and Representatives to "officially" celebrate the anniversary. As a result, Senators Barack Obama (D-IL) and Olympia Snowe (R-ME) introduced a resolution (S Res 162) on June 7, 2005 to mark the 40th anniversary of the Supreme Court decision in *Griswold v. Connecticut*. Senators Durbin

(D-IL), Clinton (D-NY), Obama (D-IL), Snowe (R-ME), Reid (D-NV), and Cantwell (D-WA) also marked the anniversary with congressional statements. In the House, Representative DeLauro sponsored a similar resolution (H Res 311).

NFPRHA Poll Gives Added Reason to Celebrate

NFPRHA released a poll on June 7 confirming that there was good reason to celebrate. The national public opinion survey of registered voters conducted by the Republican polling firm American Viewpoint showed that Americans overwhelmingly support access to contraception, making it clear that many lawmakers are out of touch with the nation on birth control and reproductive rights. Most Americans think that improving women's access to contraception is a more effective way to reduce the number of abortions than enacting more restrictive abortion laws.

The poll found that:

- Eighty-eight percent of voters, including four in five Republicans, and eight in ten self-identified "pro-lifers" say that women should have access to contraception.
- Eighty-six percent support Title X (ten), the government public health program that funds state and local family planning agencies that provide contraception to low-income women. Two-thirds of voters (66 percent) would support an increase in funding for Title X.
- More than three in five voters (62 percent) do *not* think that support for Title X funding violates a lawmaker's pro-life position.
- Three in five voters (60 percent) think that providing more access to contraception is more effective in reducing the number of abortions over enacting more restrictive abortion laws.

This evidence of overwhelming public support was then used to inform key federal lawmakers across the political spectrum that family planning is not only a non-controversial vote, but a popular one. Our collective challenge as advocates and providers is to continue to spread this information as broadly and effectively as possible.

Congress Flat-Funds Domestic Family Planning Program
Abstinence-Only Education Gets $11 Million Boost

Within a month of celebrations marking the 40th anniversary of the landmark Supreme Court decision in *Griswold v. Connecticut* that paved the way for widespread use of contraception, Congress made it painfully clear that the fight for better access to birth control is far from over. One traditional battleground tends to be the spending bill that funds programs administered by the Departments of Labor, Health and Human Services, and Education (known as the Labor-HHS bill). This year was no exception. In June and July respectively, the House and Senate appropriations committees set the stage for final passage of the FY 2006 health spending bill that flat-funded the Title X national family planning program at $286 million. Already chronically under-funded, this vital health care safety net program will actually experience a decrease in funding due to a one percent across-the-board cut passed as part of the Defense Appropriations bill in the final hours of the session.

The House approved HR 3010, its version of the FY 2006 Labor-HHS bill on June 24 by a vote of 250-151 (Roll Call 321), with a total funding level lower than the year before. Not surprisingly, the House bill provided no increase for Title X. The Senate approved its far more generous version of the bill (HR 3010) on October 27 on a 94-3 vote (Roll Call 281). Amazingly, despite the Senate's considerably higher overall funding level, Title X funding was short-changed -- a sharp and disappointing departure from the small increases that supporters have come to expect, particularly given the pro-family planning views of both the Chair and Ranking Member of the Senate Labor-HHS Appropriations subcommittee. With both the House and Senate versions of the bill flat-funding the family planning program, odds of a funding increase plummeted.

The gap between the House and Senate spending levels led to thorny negotiations within the House-Senate conference committee. After heated negotiations, they finally reported a bill that they hoped could pass both chambers. However, on November 17, in an embarrassing setback for GOP leaders, the House unexpectedly defeated the House-Senate conference agreement on the Labor-HHS spending bill by a vote of 209-224 (Roll Call 598). A revolt by 22 Republicans – including moderates balking at insufficient funding levels and conservatives opposed to most spending on social programs – led to the House rejection of the conference agreement. Not a single Democrat voted for the bill.

While the House vote was definitely a high point for health care advocates, in the end, the final version of the bill, approved by the House on December 14 on a 215-213 "do-over" vote (Roll Call 628) and by the Senate on December 21 by unanimous consent looked remarkably similar to the earlier conference agreement. The revised bill boosted funding for rural health by $90 million and deleted a provision that would have barred Medicare coverage of erectile dysfunction drugs. Although these changes were relatively minor, they ultimately were sufficient to win over Senator Arlen Specter (R-PA), Chairman of the Labor-HHS appropriations subcommittee, who had threatened to vote against the conference report because it shortchanged NIH and other programs.

The paltry funding level included in the final Labor-HHS bill ensures that the Title X program and other sources of federal funding for family planning services will fall even further short of meeting the enormous need for publicly supported services. Today, almost 17 million women need publicly supported contraceptive care—a number which grew by 400,000 alone between 2000 and 2002 with a rising uninsured population. Title X clinics have continued to serve over five million of these women at 4,500 clinics nationwide, providing preventive health care that helps women plan the number and timing of their pregnancies and enjoy improved health. Were it not for Title X, many of these women would have no other source of health care.

Title X was not alone among public health programs left to languish this year. The Maternal and Child Health Block Grant (MCH Block Grant) ended up with $700 million, a $24 million cut over last year. The Social Services Block Grant, which some states tap as a source for family planning funds, will again receive $1.7 billion. As expected, the Administration's priorities did not go without. Funding for community health centers fell short of the President's $100 million requested increase, but Congress was nevertheless quite generous with a $66 million increase over last year.

Congress Adjourns Without Reauthorizing Ryan White CARE Act

Much to the dismay of American AIDS activists, Congress allowed the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act to expire in September and adjourned for the year without addressing the act's reauthorization. Despite wide-spread support for the program, reauthorization stalled over a combination of Hurricane Katrina relief, disagreements concerning various provisions of the CARE Act and pressure from Senator Tom Coburn to correct what he considers to be imbalances in funds distribution. Congress is expected to take up the measure again in the new year.

Enacted in 1990, the CARE Act provides primary health care, pharmaceutical treatments, and support services for low-income people living with HIV/AIDS. These programs, which are administered by the HIV/AIDS Bureau (HAB) of the Health Resources and Services Administration (HRSA), provide services to more than 500,000 people affected by HIV across the United States. The CARE Act has been previously reauthorized and amended twice, in 1996 and in 2000. Although the CARE Act has expired, Congress continues to fund the program – the funding level for FY 2006 at just over $2 billion, minus a 1% across-the-board rescission.

FY 2006 Funding for Selected Public Health Programs
Labor HHS-Education Spending Bill
($ in millions)

Program	FY 2006 Final*	FY 2005 Final	FY 2006 Senate Approved	FY 2006 House Approved	FY 2006 President's Request
Title X Family Planning	$286 *(+/- $0)*	$286	$286	$286	$286
Community Based Abstinence Ed. (within ACF)	$115 *(+ $11)*	$104	$106	$115	$143
Adolescent Family Life Program (historically the earmark for ab-only has been $13 million)	$31 *(+/- $0)*	$31	$31	$31	$31
Abstinence Grants to States	$50 *(+/- $0)*	$50	$50	$50	$50
Adoption Awareness Training (within Agency for Children and Families)	$13 *(+/- $0)*	$13	$13	$13	$13
Social Services Block Grant	$1,700 *(+/- $0)*	$1,700	$1,700	$1,700	$1,700
MCH Block Grant	$700 *(- $24)*	$724	$710	$700	$724
Ryan White	$2,083 *(+ $10)*	$2,073	$2,083	$2,083	$2,083
Community Health Centers	$1,800 *(+ $66)*	$1,734	$1,889	$1,834	$2,038
Embryo Adoption Awareness Campaign	$2 *(+ $1)*	$1	$2	$1	$1
CDC HIV/AIDS, STD, and TB	$956 *(- $5)*	$961	$956	$956	$956

**does not reflect 1% reduction to certain discretionary programs included in the Defense Appropriations bill*

Senate Compromise on Refusal Clause Rebuked by House
Judge Rules Against NFPRHA in Lawsuit; Appeal Filed

Adding to the disappointing funding levels in HR 3010, the FY 2006 Labor, Health and Human Services and Education (Labor-HHS) spending bill was the insistence by House leaders that the federal refusal law authored by Congressman Dave Weldon (R-FL) be continued for a second year. The refusal law allows any healthcare corporation to refuse to comply with any federal, state, or local law that ensures women have access to abortion services – including referrals. Clearly intended to have a chilling effect on the coverage, provision or referral for abortion services across the country, it could interfere with a state's ability to administer its Medicaid programs, as well as with a state's enforcement of its own pro-choice constitution and laws. In addition, the refusal law threatens to act as a back-door gag on Title X clinics complying with the long-standing requirement that referrals for abortion services be given upon patient request and undermines state laws designed to ensure that women have access to abortions in emergency circumstances. The law also is certain to have a chilling effect on any abortion-related requirements given the stiff financial penalty for violators: if a state violates the law, its entire appropriation provided through the Labor-HHS bill is withheld.

Senators Go to Bat for Compromise Conscience Protection

When it became apparent that the House-passed Weldon language had been inserted in the catchall spending bill at the end of the legislative session in 2004, Senator Barbara Boxer (D-CA) and other women senators signed a letter of protest and threatened to filibuster the omnibus bill, charging that the new refusal clause provision denied women access to reproductive health services. But rather than force a hasty vote on an arcane issue in the context of a must-pass bill, Senator Boxer secured a promise from Senate Majority Leader Bill Frist (R-TN) to schedule an up or down vote on legislation to repeal the Weldon language before April 30, 2005.

Senator Boxer ultimately made a strategic decision not to introduce the bill and force a vote by the full Senate after receiving assurances from Senators on the Labor-HHS appropriations subcommittee that they would work to fix the problem in the context of the FY 2006 bill. Boxer announced her decision not to push for a vote in a floor statement delivered on April 25. She cited the pending lawsuits challenging the language -- one filed by NFPRHA and one by the State of California -- and pledged to "work with members on both sides of the aisle" to develop language that "underscores our commitment to a real conscience clause that protects the religious and moral concerns of doctors and hospitals, without undermining our commitment to the health of women all over America."

NFPRHA and other concerned organizations supported efforts by Senators Specter (R-PA) and Harkin (D-IA), the Chair and Ranking Member of the Labor-HHS Appropriations Subcommittee, to craft a "real" conscience provision that made clear that individuals with a moral or religious objection could opt out of providing abortion-related services. That language, crafted by Senators Specter and Harkin, made clear that individuals have a right to opt out of providing abortion services, but that Title X's referral requirement would not be impacted.

The two Senators spoke out forcefully in support of their compromise language during conference negotiations. However, House GOP leaders deemed the retention of the Weldon language non-negotiable and forced the Senate to recede to the House.

Perhaps fearing that Senators Specter and Harkin would prevail, on November 9, Senator Rick Santorum (R-PA) re-introduced S 1983, the so-called "Abortion Non-Discrimination Act (ANDA)." The legislation is similar to both the federal refusal clause provision contained in the Labor-HHS bill and legislation of the same name championed by the U.S. Conference of Catholic Bishops and approved by the House in 2002.

NFPRHA Loses First Round in Lawsuit and Files Appeal

While Congress was considering what to do with the problematic Weldon language, NFPRHA's lawsuit (*NFPRHA v. Alberto Gonzales and Christian Medical Association and the American Association of Pro-Life Obstetricians and Gynecologists,* Civil Action 04-020148) challenging the federal refusal law was pending before United States District Court Judge Henry Kennedy. After oral argument in January, Judge Kennedy issued a long-awaited ruling on September 28. The judge ruled against NFPRHA on the merits and denied our request for a preliminary injunction. However, the ruling does not impose any new obligations on Title X agencies with regard to referrals for abortion. NFPRHA filed notice of appeal in the D.C. Circuit Court of Appeals on October 24.

NFPRHA's suit argued that the refusal clause provision was unconstitutionally vague because it failed to define either the kinds of entities subject to its conditions or the types of discrimination it precludes. The NFPRHA brief contended that the provision left our members caught between their pre-existing obligations under Title X grant requirements to refer for abortion services upon patient request and their newly minted obligations under the Weldon amendment to avoid "discrimination" against health care providers that refuse to provide referrals for abortion services under any circumstances. NFPRHA further argued that the federal refusal clause presented an overwhelming predicament for its members by placing them in the midst of regulatory and statutory crossfire that may ultimately carry sweeping and severe penalties for non-compliance. NFPRHA also argued that the Weldon amendment was constitutionally flawed because it represented both an improper exercise of Congress' spending power and an impermissible delegation of legislative authority to executive agencies.

In this first round, however, the court rejected NFPRHA's argument that the language was unconstitutional on its face, ruling that NFPRHA had not established that "no set of circumstances exists under which the Act would be valid." The court also rejected NFPRHA's arguments that Congress had exceeded its spending power and that the law is inherently coercive because the penalties for non-compliance are so high.

The court agreed that the law may be vague, stating that "there are undoubtedly more than a few uncertainties in the statute." However, the court went on to say that the consequences of this vagueness for clinics were not sufficiently clear for them to rule on that basis. The Court also determined that the case did not meet the standard for invalidating a statute because of its

vagueness because it was not shown that the enactment is impermissibly vague in all of its applications.

Although the decision fell far short of the desired outcome, it did offer some hope for a future remedy. The court was clear that NFPRHA has standing to sue on behalf its members. In addition, the decision acknowledged that "The court has no doubt that the Weldon Amendment 'creates serious problems for NFPRHA members at all levels' …and there may well be other occasions for NFPRHA to challenge particular applications of the Amendment."

In addition, the ruling states that while "Weldon may not provide the level of guidance that NFPRHA or its members would prefer, may create a conflict with pre-existing agency regulations, and may impose conditions that NFPRHA members find unacceptable, none of these reasons provides a sufficient basis for the court to invalidate an act of Congress in its entirety." The decision is posted on NFPRHA's website at *www.nfprha.org*.

California Files Challenge to Weldon Law

At the beginning of 2005, California Attorney General Bill Lockyer and Superintendent of Public Instruction Jack O'Connell filed a second challenge to the Weldon law. The California suit alleged that the enforcement of state laws on emergency services could be construed to constitute "discrimination" under the Weldon amendment. If so, enforcement of the statutes would threaten California's receipt of some $49 billion in federal funds for vital health services, in addition to labor and education programs unrelated to the abortion care targeted by the amendment.

The complaint, filed in U.S. District Court for the Northern District of California, alleges the Weldon amendment exceeds Congress' power under the Spending Clause of the U.S. Constitution, infringes on state sovereignty in violation of the 10th Amendment to the U.S. Constitution and violates women's constitutional right to emergency abortion care. The complaint asks the court either to strike down the amendment and permanently prohibit its enforcement, or declare that enforcement of state laws requiring provision of emergency medical services, including abortion care, does not violate the amendment. Lawyers anticipate a hearing on the case in June 2006.

Renewed Commitments to Old Threats Present Lingering Concerns for Title X

The good news in 2005 was that – with the exception of the Weldon federal refusal clause – none of the possible restrictions affecting the Title X family planning program were pursued by congressional opponents this year. The bad news is that the potential for further mischief will continue as long as anti-family planning conservatives still run the show in Congress.

A stark indicator that Title X remains on the social conservatives' radar screen came in September when the Republican Study Committee (RSC), a 110-member caucus of House Conservative Republicans, proposed a 23-page list of suggested spending cuts to offset Hurricane Katrina recovery efforts. The package, dubbed "Operation Offset," was released by RSC Chairman Representative Mike Pence (IN) and Representative Jeb Hensarling (TX) on September 21. The proposals ranged from paring foreign aid accounts to eliminating subsidized loans for graduate students. Leaving no stone unturned, they also proposed that Title X be reduced by one-third – the estimated cost of serving teens who receive contraceptive services "without any parental involvement or consent."

Bill to Require Parental Notification for Contraceptives Introduced in House and Senate

In a June 21 press event, Senator Tom Coburn (R-OK) and Representative Todd Akin (R-MO) announced the revival of the "Parent's Right to Know Act," (S 1279/HR 3011). The bill would require Title X-funded health clinics to notify the parents of any minors seeking contraception at least five days before dispensing the contraceptives. No action on the legislation was taken in either chamber in 2005.

Coming just prior to the Senate mark-up of the Labor-HHS bill, advocates were concerned that a Senate fight over teen confidentiality was on the horizon – a fight that would have represented a departure from the Senate's historic role as the more moderate, more pro-family planning chamber. In the past, conservatives in the House had led the charge to restrict access to confidential services– a policy change opposed by major medical organizations including the American Medical Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists and the American Association of Family Physicians. Their united opposition contributed to the failure of three attempts in the House in the mid-1990s to impose mandatory parental consent and notification for services at Title X clinics.

HHS IG Releases Report on Statutory Rape Reporting at Title X Clinics

Although conservatives in the House have not pursued parental consent amendments in recent years, they have pursued more low-profile efforts to undermine Title X. One such effort was a congressional request from Representative Mark Souder (R-IN), Chair of the House Subcommittee on Criminal Justice, Drug Policy, and Human Resources, who expressed concern that organizations receiving Title X funds "may not be fully complying with State laws requiring the reporting of potential sexual abuse, including statutory rape." In response to Souder's request, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) issued a report, "Federal Efforts to Address Applicable Child Abuse and Sexual Reporting

Requirements for Title X Grantees" on April 25. The OIG found that "OPA has informed and periodically reminds Title X grantees of their responsibilities." OIG also noted that the Office of Population Affairs, which administers the Title X program, includes State reporting requirements in its reviews and site visits of grantees. The report is available on the OIG website at http://www.oig.hhs.gov/oei/reports/oei-02-03-00530.pdf

HHS Report Responds to Congressional Inquiry on Title X Clinics that Use Non-Federal Dollars to Provide Abortion Services

Another back-door effort to undermine Title X by inferring that clinics use non-federal dollars to provide abortion services yielded little grist for conservatives this year. Congressional appropriators announced in early January that they had received an HHS report compiled in response to a request from then-Representative (now Senator) David Vitter (R-LA). Vitter inserted the request in the FY 2004 Labor, Health and Human Services, and Education (Labor-HHS) appropriations bill. The language directed HHS to collect information regarding the number of family planning sites funded under Title X that also provided abortions with non-federal funds. All reporting was voluntary. Of the 86 Title X service grantees, 46 responded: thirty-four indicated that no clinic sites also provided abortions with non-Federal funds, nine indicated that some clinic sites also provide abortions with non-Federal funds, and three indicated that this information was unknown or no numerical response was provided.

Advocates remain concerned that the report will fuel efforts by conservatives in Congress to limit Title X funding to certain types of providers. Title X funds are prohibited from being used to provide abortions. However, in the past Vitter supported efforts to prohibit private organizations from receiving Title X funds to provide contraception and other preventive health care services if they provide abortions with their own non-Title X funds.

Advocates have long opposed such efforts because such a policy would prohibit many entities that now receive Title X funds from being able to continue to provide contraceptive services to low-income women. Further, advocates have argued that it is unfair to single out family planning services for discriminatory treatment – while such efforts would prohibit certain private entities from receiving Title X funds if they perform abortions with their own funds, it would not prevent these same health care providers from receiving other types of federal dollars.

Funding for Abstinence-Unless-Married Education Grows Despite Mounting Evidence that Programs Do Not Work

Another big winner in the battle for limited public health dollars in FY 2006 was abstinence-unless-married education. Congress gave two thumbs up to increased federal funding for these restrictive programs, following up on last year's whopping $30 million increase with an $11 million boost in the final health spending bill. The FY 2006 Labor, Health and Human Services (Labor-HHS) bill (HR 3010) provided $178 million in total funding for the three separate streams of funding. Community-Based Abstinence Education programs (CBAE) received $114.5 million for FY 2006, followed by $50 million for state programs funded through the Maternal and Child Health (MCH) Block Grant and $13 million is slated for abstinence education out of the Adolescent Family Life Program administered by the Office of Population Affairs.

Overall federal funding for abstinence programs grew despite the lack of evidence that they have positive long-term effects on the most important indicators such as teen pregnancy and sexually transmitted infections. A long overdue congressionally-mandated interim evaluation of Section 510 state abstinence programs from Mathematica Policy Research was released in June that shed little light on the merits of funded programs. Evaluators chose four atypical programs serving third to eighth grade students that looked at attitudes and intentions rather than behavior. The evaluation found that participants were more likely to be supportive of abstinence than of sexual activity, but there was little difference in other key indicators, including refusal skills and ability to communicate with parents. The final report is due in 2006.

More damaging, though, was a December 2004 report compiled by staff of Representative Henry Waxman (D-CA), Ranking Member on the House Government Reform Committee, which found that two-thirds of the federally funded abstinence-unless-married programs they reviewed contained misleading or inaccurate information. Since then, the body of evidence showing that abstinence-only programs do not work has continued to grow. New research on virginity pledges from Yale University's Hannah Bruckner and Columbia University's Peter Bearman published in the April 2005 issue of the *Journal of Adolescent Health* found that young adults ages 18-24 who have taken virginity pledges to abstain from sex until marriage compared with those who did not, had the same STI rates. Pledgers were also significantly less likely to use a condom at first intercourse than nonpledgers.

A number of evaluations of federally-funded abstinence-unless-married education programs in states confirmed that they have little or no impact on participating students. A 2005 Texas A&M evaluation of five federally funded abstinence-unless-married programs in more than two dozen schools across Texas found that students in almost all high-school grades were more sexually active after abstinence education. Researchers did not conclude that the programs encouraged teenagers to have sex, only that the abstinence messages did not interfere with the usual trends in sexual activity among adolescents.

Likewise, a review of programs in Ohio conducted by Case Western University School of Medicine found that participants in abstinence-only programs show no decrease in STD rates, are less likely to use a condom, and are more likely to engage in non-vaginal forms of intercourse,

such as oral and anal sex. The report also found that these programs contain false or misleading information about contraceptives, abortion, and risks related to sexual activity.

Community-Based Abstinence Programs Receive $11 Million Increase

Once again, the entire increase in abstinence funds for FY 2006 is slated for the community-based abstinence-only education (CBAE) grants, now administered by the Administration for Children and Families within HHS. Congressional support for CBAE historically has been linked to the program's more restrictive rules which direct grants to community and faith-based organizations. CBAE grants target programs to adolescents aged 12-18 and are required to adhere to *all* components of the eight-point federal abstinence education program definition.

The 8-Point Definition for Abstinence-Only Programs:

1. *has as its exclusive purpose, teaching the social, physiological, and health gains to be realized by abstaining from sexual activity;*
2. *teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;*
3. *teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;*
4. *teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;*
5. *teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;*
6. *teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;*
7. *teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and*
8. *teaches the importance of attaining self-sufficiency before engaging in sexual activity.*

HHS also requires that information given to program participants about contraception be limited to *failure rates.*

HHS Limits Flexibility in How States Spend Abstinence Funds in MCH Block Grant

The second major source of federal abstinence education funds, established under Section 510 of the Social Security Act, provides $50 million per year to states via an earmark in the MCH Block Grant to fund abstinence-only programs. Unlike CBAE recipients, states traditionally have been afforded (and exercised) some flexibility in how they spend these funds – allowing them to pick and choose among the eight points in the federal definition while still ensuring that the programs are not inconsistent with the federal definition. In a step back from this limited flexibility, new HHS grant rules published in the spring specify "to the extent possible," that states are "strongly encourage[d]…to develop programs that place equal emphasis on each element of the abstinence education definition."

Tighter Federal Restrictions Lead Maine to Reject Abstinence-Only Funds

Reacting to the new HHS guidance on the MCH Block Grant funds, Maine's Health and Human Services' Public Health Department announced in September that it would reject federal abstinence-only funds. Governor John Baldacci's (D) decision means that Maine will become the third state to turn down funds, joining California and Pennsylvania. Maine's decision to reject the federal funds was bolstered by a 2002 state law, An Act to Expand Family Life Education Services (LD 1603) signed by then-Governor Angus King (I), which requires family life education to be medically accurate, inclusive of information on both abstinence and contraception, age-appropriate, and taught in kindergarten through twelfth grade. Maine accepted federal abstinence funds annually from 1998 through FY 2004. In FY 2004, Maine received almost $175,000 through the federal MCH program. The state did not apply for $165,000 in funds for FY 2005 and did not seek $161,000 for fiscal year 2006.

Organizations Challenge Federal Abstinence-Only Programs in Court

Adding to the steady stream of controversy, the Sexuality Information and Education Council of the United States (SIECUS) and Advocates for Youth filed a petition with HHS under the Information Quality Act challenging the scientifically inaccurate information contained in the curricula of some federally funded abstinence education programs. The Information Quality Act was originally enacted in 2000 to help businesses combat environmental measures by permitting information-based challenges to federal regulations. It allows "affected persons" to seek the correction of information disseminated by federal agencies.

SIECUS and Advocates for Youth called on HHS to cease sponsorship of programs that fail to provide medically accurate information on the effectiveness of birth control and the risks of contracting sexually transmitted diseases. The Information Quality Act requires agencies to respond to complaints and make changes when the Office of Management and Budget decides their regulations lack "quality, objectivity, utility and integrity." However, it is unclear whether agency decisions can be challenged in court.

Further recognition of the problems with some federally funded abstinence-only programs came with the decision by HHS to suspend federal funding for the Silver Ring Thing, a nationwide ministry that promotes abstinence-unless-married, because of concerns that tax dollars were being used to promote religion. The American Civil Liberties Union (ACLU) filed a lawsuit in May challenging the misuse of more than one million dollars awarded by the federal government to the Silver Ring Thing since August 2003.

The complaint cites numerous violations, among them that the Silver Ring Thing's flagship three-hour program features members testifying about accepting Jesus Christ, quoting from Bible passages, and providing audience members with the Silver Ring Thing Bible. Within 24 hours of the filing of the lawsuit, the Silver Ring Thing substantially altered and removed religious content from its website. Officials at HHS ordered the group to submit a "corrective action plan" if it hopes to receive a grant this year. HHS expressed concern that the program "may not have included adequate safeguards to clearly separate in time or location inherently religious activities from the federally-funded activities..."

Scientifically Inaccurate Information Appears on New Government Website

HHS also came under fire over a controversial website launched by the Office of Population Affairs (OPA). The website, *4parents.gov*, was intended to help parents talk with their teens about sex and relationships while encouraging them to remain abstinent until marriage. The website, produced by the National Physicians Center for Family Resources, a reactionary group that has criticized federal agencies for claiming that condoms are highly effective at preventing STDs and that has wrongly linked abortion to breast cancer, immediately drew criticism from health experts. In addition to pointing out that the site contained inaccurate and biased information about condom effectiveness, pregnancy, and abortion, they criticized the site for inaccuracies regarding homosexuality and omissions of information about other topics parents of teens might need, such as how to address alcohol or tobacco use.

NFPRHA and other public health organizations sent a letter to HHS Secretary Michael Leavitt expressing concern about the website and requesting that it be taken down and subject to a formal review of its content. In July, Representative Henry Waxman (D-CA) sent a letter to Secretary Leavitt outlining the findings of a group of medical experts who had reviewed the material at Waxman's request and urging Leavitt to take the website down and "start from scratch." Although HHS responded by removing some of the inaccurate material from the site, the website continues to focus on abstinence-unless-married education as the only truly effective strategy for dealing with adolescents.

Press reports on the website attracted the attention of the Senate Appropriation Committee, which was sufficiently alarmed by its content to add the following language to the Senate report to accompany the FY 2006 Labor-HHS bill: "It has come to the Committee's attention that an independent study reviewed 4parents.gov, the Department's website created to help parents counsel their teenagers about risky health behaviors. While noting positive aspects about the website, the study found numerous examples of inaccurate information. The Committee is aware that this web site was designed by outside contractors, not by the Department's public health experts. The Committee directs the Department to review the findings of the study, undertake a review of the website by Departmental public health and scientific experts, and make any necessary changes to conform with scientific evidence. The Committee also directs the Department to include scientifically accurate information about underage drinking and tobacco use."

Further concern about the content of federal abstinence-only programs was expressed by Senator Frank Lautenberg (D-NJ), who succeeded in adding language to the FY 2006 Labor-HHS spending bill that sought to ensure that no funds could be used for "abstinence education that includes information that is medically inaccurate." Unfortunately, this language was dropped in conference because House conservatives were unwilling to accept additional Senate language that defined ''medically inaccurate'' as "information that is unsupported or contradicted by peer reviewed research by leading medical, psychological, psychiatric, and public health publications, organizations and agencies."

HHS Conference on Abstinence-Only Evaluation Spearheaded by DASPA

The Administration's strong support for abstinence-unless-married education had many outlets in 2005, including a government-sponsored national conference billed as a two-day focus on program evaluation. The Baltimore conference was sponsored by two HHS agencies -- the Office of Population Affairs and the Administration for Children and Families. The conference was the brainchild of Alma Golden, M.D., Deputy Assistant Secretary for Population Affairs (DASPA) at HHS. As DASPA, Golden oversees both the Title X Family Planning Program and the abstinence-focused Adolescent Family Life program. While the stated goal of the conference was to learn about and improve evaluation techniques, the underlying premise of the meeting was that abstinence-unless-married programs work and evaluations need to support that belief.

The pro-abstinence-only message was delivered by a number of HHS and White House officials. Keynote speaker Claude Allen, Assistant to the President for Domestic Policy, said that adults need to set the bar high and that holding kids accountable gives them the tools they need to make good choices. Allen claimed that abstinence-only education is about ending "self-bigotry," labeling as "bigotry" the idea that children cannot control their sexual impulses. He was interrupted as he was about to begin his speech by a group protesting abstinence-only programs. After police escorted the protestors out of the conference, Allen said that attendees already knew the truth, that abstinence works 100 percent of the time, and that the protestors did not want to know the truth.

HHS Acting Assistant Secretary for Health Cristina Beato sounded a similar note, comparing comprehensive sex education to telling children not to drink while also telling them to "have a light beer and get behind the wheel." Another HHS headliner was Wade Horn, Assistant Secretary for Children and Families. Horn expressed the President's belief in abstinence education, despite the "over the top" rhetoric of opponents. Horn said that as many as 14,000 children contract an STD in the United States each day – considerably more than the figure of 8,000 cited on the HHS-run *4parents.gov* website. Horn concluded by saying that the goal should not be to determine whether abstinence-only programs work, but rather to determine the best way to get kids to make that choice.

Support for REAL Act Grows

In an effort to support comprehensive sex education and counter growing funding for unproven abstinence-only programs, Representative Barbara Lee (D-CA) and Senator Lautenberg introduced the Responsible Education About Life (REAL) Act (HR 2553, S 368) on May 23 and February 10, respectively. The measure would provide $206 million in funding to states for comprehensive sexuality education programs that include medically accurate information about abstinence, contraception, and disease prevention. The language in REAL is similar to the Family Life Education Act introduced in the House in the 108th Congress in 2004

Conservatives Continue to Discredit Condoms by Citing HPV Risk

Throughout 2005, human papillomavirus (HPV) continued to be a rallying cry for a small but influential group of conservative legislators seeking to downplay condom effectiveness and promote an abstinence-unless-married agenda. HPV is a group of viruses with more than 100 different strains, more than 30 of which are sexually transmitted and can cause genital warts or are the source of cervical and anal cancers.

Although there is evidence that condoms reduce the rate of HPV-related disease including cervical cancer, then-Representative, now Senator Tom Coburn (R-OK), inserted language in the FY 2001 Labor, Health and Human Services and Education (Labor-HHS) spending bill requiring the Centers for Disease Control and Prevention (CDC) to conduct HPV surveillance studies and public education. The language also calls on the Food and Drug Administration (FDA) to reexamine condom labels to determine their effectiveness or ineffectiveness against preventing STDs, including HPV. Since Coburn retired from the House, his concerns with HPV and condoms have been taken up by Representative Mark Souder (R-IN), Chairman of the House Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources.

In a letter to HHS Secretary Michael Leavitt in January, both Souder and newly elected Senator Coburn criticized the FDA for not taking prominent action on condom labels in response to the five-year-old legislative language. Representative Henry Waxman (D-CA) followed with his own letter urging the FDA to examine new evidence on condoms and HPV. The HPV issue even played a small role in the confirmation of Lester Crawford to be commissioner of the FDA. Crawford's controversial nomination initially was held up by Senators Patty Murray (D-WA) and Hillary Clinton (D-NY) over the FDA's inaction on emergency contraception. On June 15, Senator Coburn jumped into the fray and announced he would block the nomination vote over the condom labeling issue.

Coburn lifted his objection to the vote on Crawford in return for a promise from Secretary Leavitt that the FDA would actively pursue the condom label issue. When the agency had not acted by September, however, Souder aired his concerns on HPV during a hearing he chaired entitled "Women and Cancer: Where Are We in Prevention, Early Detection, and Treatment of Gynecologic Cancers?" Billed as a hearing to discuss a range of gynecologic cancers and proposed legislation known as Johanna's law, a bill to fund outreach and education programs, much of the hearing focused on cervical cancer and HPV.

Souder criticized the FDA for not mandating new condom warning labels stating that they do not protect against HPV. Representatives Waxman, Elijah Cummings (D-MD), Diane Watson (D-CA), and Dutch Ruppersberger (D-MD) pointed out the public health benefits of cervical cancer screening programs and questioned the wisdom of condom label changes sought by conservatives in Congress, particularly in light of new research showing that they reduce transmission of HPV.

Following the hearing, Souder posed a series of questions to the FDA concerning HPV and condom labels. The FDA responded to Souder's questions by discussing the scientific evidence and the agency's efforts to comply with the law directing the FDA to examine condom labeling.

FDA Issues Proposed Condom Guidance

Pressure from House and Senate conservatives finally succeeded in dislodging new condom labeling guidance. The FDA's new recommendations, issued on November 14 in the form of a "Special Controls Guidance," are non-binding on manufacturers. Although many public health experts remained unconvinced that revising condom labels was among the nation's top public health concerns, the guidance reflects a good faith effort to address specific legislative mandates imposed in 2000 to update information to consumers about the risks and benefits of condoms for STD protection.

The proposed labeling makes clear that, when used correctly and consistently, the male condom is a safe and effective means of greatly reducing, but not eliminating, the risk of pregnancy, HIV and other sexually transmitted infections. The proposed label does not characterize condoms as being totally ineffective against HPV, and in fact makes clear that condoms reduce the risk of the worst outcomes of HPV infection - genital warts and cervical cancer.

The new warning that condoms containing the spermicide nonoxynol-9 (N-9) never be used for anal intercourse is strongly supported by the research. However, the proposed label also warns that condoms containing N-9 can cause vaginal irritation, which can increase the risk of HIV transmission. Based on available research, this warning overstates the risk for most women by failing to make clear that the increased risk of HIV/AIDS associated with the use of N-9-containing condoms is related to frequency of sex (more than three times per day). It also may raise concerns about the safety of N-9-containing spermicides used in conjunction with barrier methods such as the diaphragm, which remains an important contraceptive option for women.

Even before the proposed guidelines were published, Senator Coburn was blasting the agency for "embracing exaggerated claims of condom effectiveness." A similar statement was issued by Representative Mark Souder, who issued a press release on November 14, indicating that he was "discouraged by the FDA's misleading recommendation that condom use may lower a user's risk of developing HPV-related diseases, such as genital warts and cancer."

Promising HPV Vaccine on the Horizon

The re-emergence of the HPV/condom labeling issue came at a time when scientific studies increasingly show that condoms offer more protection against STDs than previously demonstrated. In addition, two promising vaccines to prevent infection from the two major strains of HPV responsible for cervical cancer are expected in 2006.

In December, Merck filed for priority FDA review of its application for the experimental vaccine Gardasil. In October, Merck had announced that in clinical trials, its vaccine was 100 percent effective in preventing infection with HPV strains 16 and 18, which together cause about 75 percent of cervical cancer cases, and HPV strains 6 and 11 which together cause 90 percent of genital warts. The priority review could take approximately six months.

GlaxoSmithKline's (GSK) HPV vaccine, called Cervarix, is slightly further back in development, but has also been shown to be 100 percent effective in preventing HPV strains 16 and 18 in early clinical trials. GSK plans to submit an application for approval in Europe and elsewhere in 2006. GSK said it plans to recommend Cervarix for girls as young as age 10, while Merck has said it will recommend the vaccine for 12-year old girls and plans to lobby states to include the vaccine in the list of required vaccinations for school-age children.

Despite press reports suggesting considerable political opposition to a vaccine if approved in the United States, it is unclear whether abstinence-only proponents will mount any type of significant opposition to the breakthrough vaccine. The Abstinence Clearinghouse, a small abstinence-only education group, made headlines by announcing its opposition to the vaccine in the spring, but other conservative groups did not follow suit and have remained far more reticent to denounce the product – presumably recognizing how truly radical it would be to oppose the first anti-cancer vaccine.

Pro-family planning members of Congress are eager to avoid a Plan-B type politicization of science in regard to the vaccine. With that recent history in mind, Senator Hillary Clinton (D-NY) wrote to the CDC in October to urge that decisions on vaccines to prevent HPV be "based on science not politics."

As Christmas Approached, VP Cheney Played Scrooge, Casting Tie-Breaking Vote on Bill to Slash $5 Billion from Medicaid

Fresh from an election victory in 2004, Republican leaders in both chambers and the White House were eager to enact a budget savings package in 2005 demonstrating their party was serious about fiscal discipline and deficit reduction. President Bush set the stage by advocating for major structural changes to Medicaid in his FY 2006 budget submitted to Congress in February 2005, proposing to give states additional flexibility and reducing costs to the Federal government. Although the Bush budget was short on details, the vague language was clearly similar in purpose to past proposals that left Medicaid requirements on eligibility, benefits and payment rates all up for grabs.

Up until the final minutes of the session, it was unclear whether a devastating legislative package would be shot down or embraced by a Congress eager to adjourn for its holiday recess. GOP leaders succeeded in passing a draconian package in December to reduce federal spending by nearly $40 billion over five years – including nearly $5 billion in Medicaid. However, because the Senate made some minor changes to the bill, the House still needs to approve the final package in early 2006 – giving opponents one more shot at defeating the measure.

President Bush Set the Stage for Major Cuts to Medicaid; Congressional Budget Resolution Ups the Ante

The path leading up to the late December approval of massive reductions in domestic spending had many twists and turns. The saga began in earnest on March 17 when the Senate and House approved respective versions of a federal budget plan (S Con Res 18/H Con Res 95). Known as the "budget resolution," this document serves as a fiscal blueprint that sets limits on taxes and program spending. This year's resolution issued precise directives (known as "reconciliation instructions") to various committees to cut entitlement programs (i.e., Medicaid and Medicare) under their jurisdiction. In response, both the Senate and House proposed enormous cuts to Medicaid that were double what the president proposed.

The Senate first proposed to cut $15 billion from Medicaid over five years, while the House proposed $20 billion in cuts over five years. The magnitude of the proposed changes and the importance of Medicaid for low-income women and families prompted advocates to rally the troops as never before. Women's health advocates were especially incensed at the proposed changes, given that women represent the majority of adult beneficiaries (71 percent are age 19 and over) and receive the bulk of benefits.

During Senate consideration of its version of the budget resolution, advocates scored a major victory with passage of a bipartisan amendment sponsored by Senators Gordon Smith (R-OR) and Jeff Bingaman (D-NM) to eliminate the cuts to Medicaid. The amendment was approved 52-48 on March 17 (Roll Call 58). The amendment also called for the creation of a bipartisan Medicaid Commission to develop comprehensive recommendations on how to reform the program.

Moderate Republicans in the House also weighed in against proposed Medicaid cuts. On April 13, Representative Heather Wilson (R-NM) and 43 of her House Republican colleagues sent a letter to House Budget Committee Chair Jim Nussle (R-IA) urging the House not to adopt a budget report that included cuts to Medicaid and calling for the creation of a bipartisan commission. In addition, on the eve of final passage of the budget plan, the House voted 348-72 (Roll Call 134) on April 26 in favor of a procedural motion to instruct budget negotiators not to cut Medicaid.

Despite what appeared to be a growing bipartisan consensus against the Medicaid cuts, House and Senate negotiators came to agreement on a budget resolution bill that called for $35 billion in cuts to domestic programs over five years, including $10 billion in cuts to Medicaid. Without any Democratic support in either chamber, on April 28, the final budget resolution (H Con Res 95) passed the House on a narrow 214-211 vote (Roll Call 149) and passed the Senate on a 52-47 vote (Roll Call 114). The Senate Finance and House Energy and Commerce Committees were left with the dirty deed of drafting bills for each chamber specifying how the Medicaid cuts would be made by the deadline of September 16. Then, for a brief few weeks, Hurricane Katrina changed everything.

Budget Reconciliation – Katrina Almost Brought Out the Best in Congress

Immediately following Katrina, Congress pushed back consideration of the budget reconciliation measures until October and there was talk that consideration would be permanently placed on hold. For obvious reasons, it struck many Americans as cruel to be considering legislation that would slash funding for vital services programs uniquely positioned to help millions of low-income Americans.

Recognizing that the political environment had shifted dramatically, a bipartisan group of Senators led by Senators Grassley (R-IA) and Baucus (D-MT), the chair and ranking member of the Senate Finance Committee, introduced S 1716, the "Emergency Health Care Relief Act of 2005" on September 14. The bill sought to provide immediate access to Medicaid coverage for Hurricane Katrina victims. Although the bill was unrelated to the budget reconciliation process, the fact that Senators Grassley and Baucus were the lead sponsors provided a glimmer of hope that just maybe Congress would not cut Medicaid this year. Grassley was widely quoted as saying that he would have trouble moving the budget reconciliation bill out of his committee without having a chance to vote on the Katrina relief package.

Tragically, however, the empathy for America's poor decreased in direct proportion to the increasing costs of hurricane recovery efforts. Not long after the hurricanes subsided, conservatives in Congress trotted out various proposals to offset recovery efforts by making even deeper cuts to Medicaid and other domestic programs.

The collective amnesia of Congress was reflected in the Senate vote on November 3 to approve its budget reconciliation bill (S 1932) by a vote of 52-47 (Roll Call 303). The bill cut $35 billion from domestic programs over five years, including $4.3 billion from Medicaid. Five Republicans voted against the measure and two Democrats voted for it. The House voted 217-215 (Roll Call 601) on November 18 to approve its budget reconciliation bill (HR 4241) that cut

$50 billion from domestic programs over five years, including over $11 billion from Medicaid. The measure had been pulled from the House floor the week before because the Republican leadership did not have the votes to pass it. The bill passed without a single Democratic vote and without the help of 14 Republicans.

Aside from the differences in the size of the cuts, the House and Senate bills differed dramatically on a number of provisions that made for a thorny conference and almost brought down the bill. In general, the Senate bill had far less impact on program beneficiaries. The $4.3 billion in cuts to Medicaid in the Senate bill would largely hit health care companies. In the House bill, a good portion of the $11.4 billion in Medicaid cuts came from allowing states to impose increased cost-sharing requirements on beneficiaries. But, in the end, negotiators finally agreed to a bill providing for $40 billion in cuts to domestic programs over five years, including $5 billion to Medicaid. Adding to the sting of defeat, the $5 billion in cuts to Medicaid are largely the result of cost shifts and reductions in benefits. However, thanks largely to enormous grassroots pressure, conservatives had to move mountains to pass the conference agreement in each chamber and they have yet to succeed in passing the final measure.

The House narrowly approved what was assumed to be the final bill (S 1932) on December 19 on a vote of 212-206 (Roll Call 670). No Democrats voted for the bill, but nine Republicans bucked the leadership and voted against it. The Senate approved the bill on December 21 in a harrowing 51-50 vote (Roll Call 363), with Vice President Dick Cheney flying in from the Middle East to cast a dramatic tie-breaking vote. All Democratic Senators and Independent Jim Jeffords (VT) opposed the measure, along with five Republican Senators: Olympia Snowe (ME), Susan Collins (ME), Lincoln Chafee (RI), Mike DeWine (OH), and Gordon Smith (OR).

However, a ray of hope still exists to defeat the reconciliation bill. Small changes maneuvered by Senate Democrats to the bill mean that the revised bill will need to be approved by the House after members return in January 2006. At this point, a vote is expected in early February.

Family Planning to be Optional for Some Women

In addition to funding cuts to Medicaid, the bill also includes problematic policy changes that will impact eligibility for a range of services including family planning and how much patients will pay for those services. The bill specifically impacts family planning services by allowing states to create new "benchmark" plans as alternatives to the traditional Medicaid plan for “optional” categories of beneficiaries (i.e. pregnant women above 133 percent of federal poverty level). Under those plans, states could elect to cover family planning, but it would no longer be a mandatory benefit. Fully 41 percent of parents and pregnant women are counted as optional categories of Medicaid beneficiaries.

In addition, the final bill adopted the more onerous provisions from the House-passed version that will allow states to require Medicaid beneficiaries to pay more out-of-pocket expenses for health care (co-pays and premiums) or reduce the services for which many beneficiaries are covered. Thankfully, family planning services were exempted from the new provision allowing increased co-pays. However, women could now be charged a nominal co-pay for prescription contraceptives. This is definitely a step in the wrong direction. Until now, states were required

to include family planning services in all benefit packages and cost-sharing requirements were prohibited for all family planning services.

New Requirement for Proof of Citizenship Could Threaten Coverage for Most Vulnerable

The conference agreement also contains an egregious new requirement that would require all U.S. citizens applying or reapplying for Medicaid to produce a passport or birth certificate to prove they are U.S. citizens. The new requirement would be imposed on all citizens regardless of an individual's physical or mental condition. People currently enrolled would lose coverage if they could not provide such documents when they were recertified. Public health advocates are gravely concerned that large numbers of citizens could lose coverage because they lack documentation – low-income populations do not usually travel abroad and, therefore, lack passports and many do not have immediate access to birth certificates.

Budget Bill Funds Administration's Marriage Promotion Initiative

In addition, the bill reauthorizes the Temporary Assistance for Needy Families (TANF) program. Among the provisions included in the reauthorization is a $750 million grant through 2010 to fund programs promoting marriage and responsible fatherhood. Some of the money will be spent on counseling efforts similar to the programs now operating in seven pilot centers around the country. But most of the money will be distributed to a broad spectrum of programs including high school marriage education classes and church marriage counseling services. The Bush Administration has enthusiastically pushed this initiative as a way to fortify the American family and reduce poverty. The effort has been criticized by those who say that it is an inappropriate use of government funds.

Unclear What the Future will Hold

Regardless of the outcome of the final vote on the 2005 budget reconciliation bill, major changes to Medicaid are considered inevitable. Structural changes to achieve even more savings will remain a topic of discussion next year. The Administration's Medicaid Commission, formed as per instructions in the FY 2006 budget agreement, was charged with submitting two reports to Health and Human Services Secretary Leavitt. The first report submitted September 1 outlined recommendations to cut $11 billion in Medicaid spending during the next five years. The second report, due December 31, 2006 is expected to outline long-term recommendations on the future of Medicaid. Thus, Congressional hearings will likely be held on Medicaid reform throughout 2006 and NFPRHA members will be mounting an all-out effort to help maintain the integrity of the Medicaid program.

The Medicaid Commission got off to a rocky start. The Administration rejected a bipartisan Congressional request for charging the National Academy of Sciences' Institute of Medicine (IOM) with the responsibility for making recommendations about the future of Medicaid. In addition, invitations to join the Commission were rejected by House and Senate Democrats, National Governors Association, and key Republican leaders. However, the Commission quickly got started, meeting twice over the summer before submitting the first report to Congress. Former Tennessee Governor Don Sundquist chairs the Commission and former

Maine Governor Angus King serves as vice-chair. The push back from all sides certainly sheds a much more partisan light on the work of the Commission and will likely diminish its bearing on the policy discussion.

Two Years and Counting – Plan B OTC Application Still Pending

The year began and ended with no decision by the U.S. Food and Drug Administration (FDA) on Barr's application to make Plan B emergency contraception (EC) available over-the-counter (OTC)– but there were fireworks along the way that kept the issue on the front burner. The Plan B saga contributed to the resignation of key FDA personnel, including the newly appointed FDA Commissioner Lester Crawford and Susan Wood, Assistant Commissioner for Women's Health and Director of FDA's Office of Women's Health. In addition, a government report released in mid-November gave added credibility to charges of politics trumping science at the FDA by confirming that the FDA's rejection of the initial application was not typical of the regular review process.

FDA Delay on Plan B Application Kicks Off the New Year; Lawsuit Filed

The FDA's inaction on Plan B continued throughout 2005 despite the scientific consensus regarding the safety and efficacy of the product for OTC use. The case for approval had been gathering steam since December 16, 2003, when a joint FDA advisory panel voted 23-4 in favor of approval of Barr Pharmaceuticals' application to switch Plan B from prescription to non-prescription status. FDA staff concurred with the FDA advisory panel recommendation supporting the OTC switch for Plan B. Nevertheless, Steve Galson, FDA's Acting Director of the Center for Drug Evaluation and Research (CDER) issued a "not approvable" letter in response to Barr's application on May 6, 2004. Galson claimed that more data were needed to prove that younger teens could safely use the product and indicated that an age restriction to keep the product available through prescription for women age 15 and under might clear the path for OTC approval.

Barr filed an amended application in July 2004 in response to Galson's concerns and submitted data showing that ready access to EC by young women poses no health risks and does not lead to unprotected sex or STDs. The FDA said they would make a decision on the revised application on January 20, 2005. However, on January 21, Barr announced that the FDA would delay its decision.

Within hours of the announcement by Barr, the Center for Reproductive Rights (CRR) filed a lawsuit against the FDA in a U.S. District Court for the Eastern District of New York, claiming that the agency "did not follow its own procedures or statutory and regulatory mandates when it first denied the application. CRR filed the lawsuit on behalf of the Association of Reproductive Health Professionals, the National Latina Institute for Reproductive Health and several individuals from a grassroots advocacy group, the Morning-After Pill Conspiracy. The suit is asking the court to order the FDA to make Plan B available without a prescription for women of all ages, saying that the FDA is holding Plan B to a different and higher standard than other over-the-counter drugs and failing to follow its own procedures and statutory and regulatory mandates. According to the FDA's own regulations, a drug should be approved for over-the-counter use when it is proven to be effective and safe for self-medication.

On December 22, oral arguments were held in the CRR case, *Tummino v. von Eschenbach*. New York federal judge Edward Korman refused the federal government's request to throw out the

lawsuit, finding that the Center for Reproductive Rights did have a standing to file this case against an action that "wreaks of unreasonable delay." The judge also stated that this action had "all the earmarks of an administrative agency filibuster" and accused the agency of attempting to avoid judicial review.

Delay on Plan B Application Holds Up Crawford Nomination to be FDA Chief

In April, Plan B made headlines again when Senators Hillary Clinton (D-NY) and Patty Murray (D-WA) announced they would place a 'hold' on the nomination of Lester Crawford to be FDA Commissioner until the FDA issues a decision on the Plan B application. Crawford, a veterinarian, had been serving as acting FDA Commissioner since March 2004. A "hold" is a request to delay floor consideration of a bill or nomination pending certain conditions. In this case, Murray and Clinton were motivated by Crawford's unwillingness and inability to explain why a decision on the Plan B application had been delayed or to give a clear sense of when a decision from the FDA was expected.

Shortly thereafter, Crawford himself became the story when Senator Mike Enzi (R-WY), Chairman of the Senate Health, Education, Labor, and Pensions (HELP) committee postponed nomination hearings for two months pending an investigation into allegations against Crawford of unprofessional and inappropriate behavior. The Department of Health and Human Services (HHS) Inspector General (IG) issued a report on June 8 that largely dismissed the allegations raised in an anonymous letter sent to Enzi in April. However, the report did include some indication that Crawford provided an unusual level of assistance to a female FDA staff member during her application to a senior agency position.

The Senate HELP Committee voted June 15 to approve Crawford's nomination but Senators Clinton and Murray did not lift their hold on the nomination until receiving assurances that a decision on Plan B would be forthcoming. After Chairman Enzi received a letter from HHS Secretary Michael Leavitt stating that a decision would be issued by September 1, the hold was lifted and the Senate voted 78-16 (Roll Call 190) on July 18 to approve Crawford's nomination to be FDA Commissioner.

FDA's Inaction Leaves Plan B OTC Application in Limbo

So much for promises -- on August 26, 2005, newly confirmed FDA Commissioner Crawford announced another delay on the Plan B application -- with no timetable for a final decision. Rather than issue the long-awaited (and promised) final decision – the FDA issued a notice asking the public to comment within 60 days on whether the agency in fact had the authority to approve the two-tiered application it had solicited. (NFPRHA's comments are available on its website at *www.nfprha.org*.)

The FDA's action led Susan Wood, Ph.D., Assistant Commissioner for Women's Health and Director of FDA's Office of Women's Health, to resign her position in protest. In a column published in the *New England Journal of Medicine* (*NEJM*, October 20, 2005), Wood explained the rationale behind her resignation. Referring to the FDA's indefinite delay on Plan B, Wood said, "I believed that in doing so, they were disregarding the scientific and clinical evidence and

the established review process and were taking an action that harms women's health by denying them appropriate access to a product that can reduce the rate of unplanned pregnancies and the need for abortions...As a scientist, as a career FDA employee, and as the director of the Office of Women's Health, whose mission is to be the champion for women's health at the FDA, I could not sanction this action by remaining at the agency."

Members of Congress also quickly condemned the FDA's action and insisted that the Government Accountability Office (GAO) release the findings from its ongoing investigation into the FDA's handling of the Plan B application.

FDA Commission Lester Crawford Resigns

FDA Commissioner Lester Crawford unexpectedly resigned on September 23, just two months after his long-delayed elevation to the top job. Crawford's tenure as acting commissioner had been marked by increasing controversy on a range of issues, including the agency's handling of the Plan B application – controversies outlined in a scathing editorial denouncing the agency generally and Crawford's handling of the Plan B application specifically published in the *New England Journal of Medicine* the day before his resignation. Although Crawford cited the need to spend more time with his family as the primary motivation, the *Wall Street Journal* reported that he may have been motivated by concerns about an undisclosed financial interest. Andrew von Eschenbach, Director of the National Cancer Institute, was tapped to be the FDA's acting chief.

Government Report Calls FDA Decision on EC 'Unusual'

Suspecting political interference from the beginning, Senators Hillary Rodham Clinton (D-NY) and Patty Murray (D-WA) requested in June that the Government Accountability Office (GAO) examine the FDA's decision process prior to the May 2004 rejection of the initial Plan B OTC switch application. GAO looked at how the decision was made, how it compared to the decisions for other OTC switch applications, and whether there were age-related marketing restrictions for prescription and OTC contraceptives. GAO did not consider any communications that may have occurred between the FDA and other executive agencies.

Perhaps in a grand finale of sorts, the GAO released its report on Plan B on November 14. The report said that the FDA's rejection of Barr Pharmaceuticals' application to allow Plan B to be sold OTC was "unusual" and "not typical" of FDA's regular review process. The GAO found evidence of uncharacteristic high-level management involvement and reported that the rationale for rejecting the application -- concerns that it could lead teens to engage in unsafe sex -- was unprecedented.

The GAO report found that the decision on the Plan B application was not typical of the other 67 proposed prescription-to-OTC switch decisions made by the FDA from 1994 to 2004. The Plan B OTC switch application was the only one during this time that was not approved after the advisory committees recommended approval. Other aspects of the review process that the GAO found to be unusual include:

- The letter to Barr Pharmaceuticals Inc. informing the company of the FDA decision that was signed by the acting director of CDER instead of by the directors of the offices that reviewed the application, because they disagreed with the decision.
- High-level officials at the FDA were more involved in the Plan B decision than in those of other OTC switch applications and there are conflicting accounts of whether the decision not to approve the Plan B application was made before the reviews were completed. Some FDA staff reported that they were told as early as January 2004 that the agency would reject the application.
- The rationale for Galson's decision was "novel and did not follow FDA's traditional practices… there are no age-related marketing restrictions for any prescription or OTC contraceptives that FDA has approved…FDA did not identify any issues that would require age-related restrictions in its review of the original application for prescription Plan B, and Plan B is available [by prescription] to women of any age."

Congressional Response to GAO Report was Swift and Hard-hitting

The day the GAO report was released, 18 Democratic House members sent a letter to Health and Human Services (HHS) Secretary Michael Leavitt urging him to "repudiate the FDA decision and ensure future FDA decisions are based on scientific merit, not political ideology."

In addition, House Government Reform ranking member Representative Henry Waxman (D-CA) asked Representative Tom Davis (R-VA), chair of the Government Reform Committee, to convene hearings on the FDA's decision on the Plan B OTC switch application. Waxman called the FDA's decision a "particularly egregious example of the politicization of science" noting that the GAO report showed that "the views of federal scientists were disregarded, their analyses dismissed, and their recommendations ultimately overruled as the agency made what appears to be a preordained decision to reject Plan B."

An FDA spokesman questioned the integrity of the investigative process claiming that the report mischaracterized facts. However, health professionals and advocates said that the report left no question that science was compromised. Plan B supporters argued that the report merely confirmed that the delays to date have been baseless and indefensible and a radical departure from the accepted approval process. They continued to lament that the inaction by the FDA has prevented millions of women from having access to medically safe emergency contraception that could have prevented unintended pregnancy.

State Efforts to Improve EC Access Surpasses Lackluster Federal Activity

Efforts to improve access to emergency contraception (EC) had mixed results in the states this year. Two self-described pro-choice governors, George Pataki (R-NY) and Mitt Romney (R-MA) actually vetoed pro-EC laws passed by their state legislatures this year and several states adopted restrictions on EC access. However, in Massachusetts, the legislature overrode the governor's veto, and the overall picture was an improvement over last year. As of mid-December, this means that nine states will require hospital emergency rooms to provide EC-related services to sexual assault victims (California, Illinois, Massachusetts, New Jersey, New Mexico, New York, South Carolina, Texas, and Washington); eight will allow pharmacists to dispense EC without a physician's prescription under certain conditions (Alaska, California, Hawaii, Maine, Massachusetts, New Hampshire, New Mexico, Washington), and one state (Illinois) will direct pharmacies that stock contraceptives to stock EC.

DOJ Omits EC from Assault Guidelines

While state actions on emergency contraception were mixed, the Bush Administration's antipathy toward EC was loud and clear. The Department of Justice (DOJ) issued its first-ever "National Protocol for Sexual Assault Medical Forensic Examination" (Protocol) -- a major step forward for assault victims. Amazingly, however, the Protocol omits any guidance for issuing EC to sexual assault victims who are at risk of pregnancy after rape. NFPRHA joined over 200 national, state, and local organizations and individuals in sending a letter on January 6, urging the Department of Justice to amend its medical guidelines regarding sexual assault.

Published in September 2004, advocates were outraged that the Protocol did not seize the opportunity to recommend that victims of sexual assault receive critical information about their reproductive health. The letter to DOJ noted that "the failure to include a specific discussion of emergency contraception in the first national protocol for sexual assault treatment is a glaring omission in an otherwise thorough document." Despite recognizing that pregnancy is "often an overwhelming and genuine fear" of sexual assault victims, the Protocol included only a single, vague sentence on pregnancy prevention: "[D]iscuss treatment options with patients, including reproductive health services."

NFPRHA and the other signers of this letter were joined by members of Congress in protesting the oversight. Representative Carolyn Maloney (D-NY) and 96 other members of Congress also sent a letter protesting the oversight and urging DOJ to revise its guidelines to include information about emergency contraception (EC).

Two Federal Bills Re-introduced to Improve EC Access

Emergency contraception continued to be a focus for a few pro-choice stalwarts in Congress, including Senators Jon Corzine (D-NJ), Olympia Snowe (R-ME), and Hillary Clinton (D-NY) and Representatives Steve Rothman (D-NJ) and Robert Simmons (R-CT). Together, they re-introduced the Compassionate Assistance for Rape Emergencies Act (HR 2928/S 1264) on June 15 and 16 respectively. The legislation requires hospitals to provide EC to sexual assault

survivors. The House bill was identical to legislation introduced last year and the Senate bill added an additional requirement that hospital emergency rooms provide post-exposure prophylaxis for sexually transmitted disease to individuals who are survivors of sexual assault.

The rationale for the bill is clear – an estimated 300,000 women are victims of sexual assault each year, and, of these, 25,000 become pregnant. As the bill sponsors noted, if emergency contraception (EC) were administered in the first 24 to 72 hours, up to 95 percent of these unintended pregnancies could be prevented.

Representative Louise Slaughter (D-NY), re-introduced a second measure on July 18 to get the word out about EC -- the Emergency Contraception Education Act (HR 3326). The legislation, first introduced in 2002, provides funding for an EC public education and awareness program directed at health care providers and consumers. No action was taken on the legislation this year.

Both bills are also included in "Prevention First" (S 20/HR 1709), omnibus prevention legislation seeking to expand access to preventive health care services that help reduce unintended pregnancy, infection with sexually transmitted diseases and the need for abortion.

Birth Control: We've Come a Long Way But Lackluster Federal Commitment to Improving Access Stymies Further Progress

Improving access to basic preventive health care services including contraception was an uphill battle in 2005. Funding cuts to public health programs like Medicaid and Title X coupled with inertia on legislative initiatives to expand access to birth control demonstrated a stunning lack of commitment by our federal policymakers to address a vital health care need. To their credit, a small band of elected officials continued to promote contraception as essential preventive health care, recognizing that many American women still face significant barriers in obtaining contraceptives.

"Prevention First" Birth Control Access Bill sees Senate Action

That support for birth control is good politics as well as good policy is a view long championed by Senate Minority Leader Harry Reid (D-NV), who introduced "Prevention First" (S 20) on January 24. Prevention First is an omnibus family planning bill designed to expand access to preventive health care services and education programs that help reduce unintended pregnancy, infection with sexually transmitted diseases (STDs), and the need for abortion. Its inclusion among the first ten bills introduced by Senate Democrats in 2005 signaled the importance the new leadership placed on increasing access to contraception. Representatives Louise Slaughter (D-NY), Diana DeGette (D-CO), Robert Simmons (R-CT) and Nancy Johnson (R-CT) introduced the bi-partisan companion bill (HR 1709) in the House on April 19. The legislation is almost identical to legislation first introduced in the 108th Congress.

Prevention First calls for an increase in funding for the Title X family planning program, gives states the option of expanding Medicaid–funded family planning services, requires private health plans to cover prescription contraceptives to the same extent they cover other prescription drugs, provides funding for an emergency contraception (EC) education campaign, requires emergency rooms to provide EC access to victims of sexual assault, and provides funding for teen pregnancy prevention programs.

Senators Reid and Clinton offered Prevention First as an amendment to the Senate budget resolution on March 17. Sadly, it failed on a 47-53 vote (Roll Call 75). Three Republican Senators voted for the amendment – Lincoln Chafee (RI), Susan Collins (ME), and Olympia Snowe (ME). Ben Nelson (NE) was the only Democratic Senator who opposed the measure.

Federal Efforts to Require Insurance Coverage of Birth Control Languish

A centerpiece of federal efforts to improve access to birth control for nearly a decade, The Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC) was introduced as part of the Prevention First initiative. EPICC was also introduced as a stand-alone measure (S 1214) on June 9 by Senate Minority Leader Harry Reid (D-NV) and Senator Olympia Snowe (R-ME). Representative Nita Lowey (D-NY) introduced the House version on December 22 (HR 4651). The legislation requires private health plans to cover FDA-approved prescription contraceptives and related medical services to the same extent that they cover prescription drugs and other outpatient medical services. The legislation simply seeks to establish parity for

prescription contraception within the context of coverage already provided by health plans. Sadly, EPICC has been introduced in every Congress since 1997 but has not become law and has not even been marked up by a House or Senate Committee.

Despite the lackluster response to contraceptive equity legislation at the federal level, the issue has proved popular at the state level. Arkansas and West Virginia enacted laws this year bringing the total number of states with some form of contraceptive coverage requirement to twenty three: Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Rhode Island, Vermont, Washington, West Virginia, Wisconsin.

In addition, on July 22, U.S. District Judge Laurie Smith Camp in Omaha, Nebraska, ruled that Union Pacific Railroad -- which employs about 49,000 workers nationwide, including 1,300 women -- illegally discriminated against female employees by not providing contraceptive coverage in its health plans. Although Smith Camp did not order the company to begin covering contraceptives, she said Union Pacific's policy violated the federal Civil Rights Act of 1964, which prohibits employers with 15 or more employees from discrimination based on gender or pregnancy.

The class-action lawsuit -- which was filed by two female Union Pacific employees who were represented by Planned Parenthood of Western Washington -- sought to require the company to provide coverage for FDA-approved prescription contraceptives for women employees and the female family members of male employees covered by the company's policies. The judge ruled that the health plan policy was discriminatory because it covered many preventive health medications -- including drugs for erectile dysfunction - but not contraception. Future rulings will determine what Union Pacific must change about its current policies in order to comply with the Civil Rights Act.

Pharmacists' Refusals to Fill Birth Control Prescriptions Prompts Public Outrage and Federal Legislation

Illinois Governor Rod Blagojevich's (D) administrative rule requiring drug stores in the state that stock and dispense contraceptives to fill birth control prescriptions without delay immediately drew national attention to increasing reports of pharmacists refusing to fill birth control prescriptions for religious reasons. Under the rule, a pharmacy or drugstore must make arrangements to fill prescriptions for contraceptives in a timely manner if the pharmacist on duty refuses to fill the prescriptions for moral reasons. At least three lawsuits have been filed on behalf of Illinois pharmacists who object to the emergency rule. The emergency rule, which went into effect on April 1, was made permanent on August 16 by the Illinois Joint Committee on Administrative Rules, a bipartisan legislative oversight committee.

The rule clarifies that it does not conflict with the responsibilities of a pharmacist to make sure that any prescribed drug does not have adverse health consequences based on other drugs being used by a patient. The rule also clarifies that 'without delay' means that pharmacies should treat contraceptive prescription holders the same as other clients waiting for any other prescription; they cannot cause unnecessary delays to patients seeking contraceptives.

Responding to public outrage over the pharmacist "conscience" issue, Congress got into the act. On April 14, Senator Frank Lautenberg (D-NJ) and Representatives Carolyn Maloney (D-NY) introduced S 809/HR 1652, the "Access to Legal Pharmaceuticals Act" at a Capitol Hill press conference. The legislation seeks to strike a careful balance by allowing an individual pharmacist to refuse to dispense contraception, but requiring the pharmacy to ensure that the prescription is filled in a timely manner. Senator Barbara Boxer (D-CA) introduced a similarly themed bill the day before. Boxer's "Pharmacy Consumer Protection Act of 2005" (S 778) requires pharmacies accepting Medicare and Medicaid to fill all valid prescriptions "without unnecessary delay or other interference, consistent with the normal time frame for filling prescriptions."

At its annual meeting in Chicago, the American Medical Association's House of Delegates passed a resolution on June 20 saying that pharmacists should be required to fill all valid prescriptions or refer patients to another pharmacy or pharmacist immediately. The resolution states that if a pharmacist has moral or religious objections to dispensing certain medications, they should make an "immediate referral to an appropriate alternative dispensing pharmacy without interference." The resolution also expresses support for state and federal legislation that would require pharmacies to fill all prescriptions.

Later in the summer, the House Small Business Committee held a hearing, "Freedom of Conscience for Small Pharmacies." Committee Chair Don Manzullo (R-IL), a longtime opponent of family planning, called the July 25 hearing to listen to testimony on the issue of pharmacist's refusal to fill prescriptions for birth control. The hearing served as a platform to air Manzullo's opposition to Illinois Governor Blagojevich's emergency rule on pharmacist refusals, which Manzullo claimed was negatively impacting small businesses.

International Family Planning on a Treadmill

As was the case with domestic family planning, the status quo reigned supreme in 2005 with regard to international family planning programs despite valiant efforts by a number of pro-family planning members of Congress to alter policy restrictions that hamper the delivery of services funded through the State Department's Agency for International Development (USAID) and the United Nations Population Fund (UNFPA).

The major source of U.S. international family planning aid, the FY 2006 Foreign Operations Appropriations bill (HR 3057) contained $440 million for the programs administered by the USAID, an amount that is $15 million above the President's request but virtually identical to the FY 2005 funding level. The foreign aid spending bill also allocated $34 million for the U.S. contribution to UNFPA, however, advocates fully expect President Bush to withhold the U.S. contribution again this year.

Senate Affirms Opposition to Global Gag but Policy Stays in Effect

The Senate once again expressed its staunch opposition to the Global Gag Rule (also known as the Mexico City Policy) in both the foreign aid spending bill for FY 2006 and the State Department authorization bill. The gag policy prohibits U.S. aid to any foreign non-governmental organization that uses its own money to provide safe, legal abortions; offer abortion counseling or referrals, or publicly support a policy of legal abortion within its own country. Since President Bush imposed this policy as one of his first acts in office, women in developing countries have been harmed by clinic closures and reduced access to contraceptive supplies.

The Senate reaffirmed its historic opposition to the gag policy on April 5 by a 52-46 vote (Roll Call 83) during debate over the State Department authorization bill (S 600), delivering the first rebuke to President Bush on a reproductive rights-related issue in the 109th Congress. Even as the membership of the Senate has become increasingly conservative, it has maintained its perfect record of opposition since the policy's inception in 1984. Senator Barbara Boxer (D-CA) offered the amendment, which was cosponsored by Senator Olympia Snowe (R-ME). In her floor statement, Boxer noted that the policy is anti-democratic and anti-free speech and contrary to fundamental American values. Senator Sam Brownback (R-KS) defended the gag policy, arguing that it is necessary to ensure that U.S. funds are not used to pay for or promote abortion.

As in prior years, the House version of the foreign aid appropriations bill continued the gag policy, a position that again prevailed in the final bill. The State Department authorization bill was stalled at the end of the year, bogged down by a host of concerns unrelated to the gag rule.

Conservatives Weaken Program to Prevent Obstetric Fistula

International family planning was also an issue during House floor debate on the State Department Authorization bill (HR 2601). Long-standing family planning opponent Representative Chris Smith (R-NJ) offered a seemingly obscure amendment to address prevention of obstetric fistula. Obstetric fistula is a hole that develops between a woman's

vagina and her bladder or rectum during prolonged labor that can lead to incontinence and social ostracism and most commonly affects young girls in developing countries. The Smith amendment rewrote language authored by pro-family planning Representative Joe Crowley (D-NY) that had been adopted by the International Relations committee.

Smith's amendment, approved July 19 by a 223-205 vote (Roll Call 389), effectively downgraded the importance of *preventing* fistula by making it an optional activity, as opposed to required, at USAID's fistula treatment centers. Smith also revised the list of suggested prevention activities, deleting the reference to "contraceptive services" and substituting "family planning," for reasons he did not explain. He also added abstinence education and activities designed to delay marriage to the list of prevention activities. Smith did say that he was concerned that Roman Catholic hospitals, for example, would not be eligible for the funding if contraceptive services were required.

Status Quo on UNFPA Despite New Attempts in Congress to Release Funds

The foreign aid spending bill also allocated $34 million for the U.S. contribution to UNFPA. UNFPA funds help improve the lives and health of some of the poorest women in the developing world. For the past four years, President Bush has withheld UNFPA aid appropriated by Congress. On the assumption that the FY 2006 contribution to UNFPA will be blocked for a fifth year, the bill includes language for the second year requiring that any blocked UNFPA funds be redirected to USAID's family planning program.

As the basis for withholding U.S. funds to UNFPA, the Bush Administration has repeatedly alleged that UNFPA's China program is in violation of Kemp-Kasten, a provision of law named after its Congressional authors. The Kemp-Kasten provision prohibits U.S. funding to organizations that support forced sterilizations and coercive abortions. The final bill did not include Senate language revising the Kemp-Kasten provision which would have allowed funds to flow to UNFPA because of its stipulation that organizations providing voluntary family planning services should not be punished for working in countries where the government's family planning policies are coercive. The administration's allegations have been rejected by a State Department fact-finding team, the British Parliament, and a multi-faith panel of religious leaders.

Past failures to dislodge UNFPA funds did not stop pro-family planning members in Congress from exploring new strategies to release UNFPA funds this year. None were more dogged than Representative Carolyn Maloney (D-NY), who was able to force open the door to the possibility of providing a U.S. contribution to the UNFPA on March 15 with her efforts to add $3 million to the portion of the FY 2005 supplemental appropriations bill designated for tsunami relief and recovery efforts. The amendment did not earmark those funds specifically for UNFPA (due to House rules), but Maloney and her co-sponsors stated that this was their intent. The $3 million represented the amount that presumably would be the U.S. share of the $28 million worldwide appeal UNFPA was making for its relief activities in Indonesia, Sri Lanka and the Maldives. The amendment was passed on a voice vote and was subsequently dropped in the final version of the bill.

On the Senate side, Senator Hillary Rodham Clinton (D-NY) offered an amendment on April 21 to the Senate version of the FY 2005 supplemental appropriations legislation. The Clinton amendment sought to earmark $3 million of the emergency relief aid to UNFPA to train new midwives, provide safe delivery kits and support family planning and other basic reproductive health services in Indonesia, Sri Lanka and the Maldives. Senate Republican leaders dismissed her amendment on procedural grounds without a vote.

Representative Maloney took a second stab at securing funding for UNFPA in June, offering an amendment during floor debate on the FY 2006 Commerce-Justice-Science-State appropriations bill (HR 2862) to prevent the State Department from using appropriated funds to enforce the Kemp-Kasten provision. She argued that the Bush Administration is hiding behind a distorted interpretation of a long-standing anti-coercion law as an excuse for refusing to fund UNFPA. Sadly, the House voted 192-233 (Roll Call 266) to reject Maloney's amendment, with more than a dozen members with mixed voting records on international family planning opposing her amendment.

U.S. Government Requires Anti-Prostitution Pledge as Condition of AIDS funding

Controversial new policy directives were promulgated this year by USAID and the Centers for Disease Control and Prevention to require U.S. groups fighting AIDS overseas to pledge their opposition to sex trafficking and prostitution or do without federal funds. Under the new directive, a group looking for a federal grant or contract must first adopt a statement saying it opposes prostitution and sex trafficking. Then it must certify to the government that it has the policy. Only then is the organization eligible for funding.

For the first time, these conditions apply to *U.S.-based* nongovernmental organizations (NGOs) applying for U.S. global HIV/AIDS funds. Since 2003, the Administration has exacted this anti-prostitution pledge only from foreign NGOs because of concerns that forcing speech on U.S. groups in exchange for government support could violate the First Amendment. For this same reason, under USAID's family planning and reproductive health program, the Administration (so far) does not require U.S. NGOs themselves to comply with the Mexico City global gag rule, although they must enforce it against their indigenous partners.

The new rule drew loud criticism from the international development and reproductive health community, which argued it infringes on free speech rights and has the unintended effect of deterring prostitutes from seeking help by unnecessarily stigmatizing the very people organizations are trying to help. The policy requires organizations to condemn what sex workers do for a living, undermining the relationship of trust and mutual respect required to effectively conduct AIDS prevention work.

U.S.-based family planning groups quickly filed suit against USAID for the anti-prostitution policy. The first was filed in August by DKT International, which called the new policy an unconstitutional infringement of speech that is undermining international efforts to stem the spread of HIV/AIDS. DKT manages social marketing programs for family planning and AIDS prevention in 11 countries in Africa, Asia, and Latin America. The second challenge was filed in September by the Open Society Institute, along with its affiliate the Alliance for Open Society

International, also charging that the pledge requirement is unconstitutional because it requires private organizations to adopt the government's point of view in order to receive funding. The suit also alleges that the pledge requirement is unconstitutionally vague and, therefore, allows the law to be applied arbitrarily.

Abstinence Agenda Focus of Prevention Activities in Global AIDS program

The bulk of HIV prevention dollars supplied under the President's Emergency Plan for AIDS Relief (PEPFAR) focused on promoting abstinence and marriage, according to a comprehensive study released this year by the Sexuality Information and Education Council of the U.S. (SIECUS). The SIECUS PEPFAR Country Profiles examined U.S.-supported programs in the 15 PEPFAR focus countries to determine how U.S. HIV prevention policies, including abstinence and marriage promotion programs, are affecting the AIDS epidemic. The report found that of the $91.6 million dedicated to preventing the sexual transmission of HIV under PEPFAR in FY 2004, $50.5 million (56 percent) of those dollars went to abstinence-unless-married and faithfulness promotion programs, despite new evidence showing these programs are not stopping young people from engaging in sexual activity or slowing the spread of STDs in the U.S. To make matters worse, marriage is actually a risk factor in Africa and the Caribbean, not a preventive measure.

Since 2004, the U.S. has provided approximately $2 billion each year in HIV/AIDS-related funding to support prevention, treatment, and care in 15 focus countries. These countries include Botswana, Côte d'Ivoire, Ethiopia, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia, Haiti, Guyana, and Vietnam. Funds specifically designated for HIV-prevention are limited to a maximum of only 20 percent of all U.S. global AIDS funds, and of that, at least 33 percent of those funds are mandated by law to be spent on abstinence-unless-married programs.

Pro-Active Legislation Introduced

On a positive note, new bipartisan legislation was introduced by Representatives Betty McCollum (D-MN), Chris Shays (R-CT), James Oberstar (D-MN), and Jim Ramstad (R-MN) (HR 4188). Their bill is designed to strengthen U.S. international family planning programs through increased funding. Representative Nita Lowey (D-NY) also reintroduced the Global Democracy Promotion Act (HR 4465), her signature bill to repeal the global gag policy.

Anti-Choice Agenda Still in Evidence but Votes Less Frequent in 2005

Although its impact is widespread, the congressional war on reproductive rights has become such a fixture of the Congressional agenda that it takes some real fireworks to permeate the public's consciousness. This year's fireworks took place largely in the context of the Supreme Court nominations battles where abortion rights continue to be a central focus. However, with the Senate tipped more favorably toward legislation limiting abortion rights than in the past, and the 2006 mid-term elections on the horizon, conservatives may well look to score some major legislative wins in the coming year.

Parental Consent for Abortion Bill Imposes Barriers for Teens and Providers

Legislation to make it more difficult for teens to access abortion services – even with the consent of a parent – was approved 270-157 (Roll Call 144) by the House of Representatives on April 27. The Child Interstate Abortion Notification Act (CIANA, HR 748) introduced by Representative Ileana Ros-Lehtinen (R-FL) on February 10, is a harsher version of the Child Custody Protection Act (CCPA), a longstanding centerpiece of social conservatives' agenda. CCPA has passed the House three times. CIANA would make it a crime for an individual other than a parent to accompany a minor across state lines for an abortion and, in some circumstances, would require providers to give parents of young women up to age 19 notice *in person* if the minor is seeking an abortion out of state. Because CIANA has no health exception or judicial bypass, many legal experts consider it unconstitutional.

To date, the Senate has not shown the House's zeal for this legislation. Although Majority Leader Bill Frist (R-TN) said the Senate would consider the bill in 2005, the Senate never voted on the Child Custody Protection Act, nor did it consider CIANA. Senator John Ensign (R-NV) introduced a companion measure to CIANA early in the year that sparked rumors that the Senate would bypass the Judiciary Committee and take the bill straight to the floor for consideration.

CIANA contains all of the defects and dangers of CCPA, as well as posing a serious threat to health care providers' ability to provide timely, appropriate care to their patients. The bill would create a maze of requirements necessitating an encyclopedic knowledge of state laws for providers and patients. Among other things, the bill requires doctors to enforce and patients to comply with the parental involvement laws of the state in which they are practicing/seeking services, and the state where the patient resides; imposes a federal parental notification requirement for teens traveling to and from states without parental involvement laws in either state; requires doctors in some cases to notify a young woman's parents in person, in another state, before services can be provided; and, in some cases when a parent travels with the young woman, the doctor would still be required to wait at least 24 hours before providing services. Violators would be subject to fines and imprisonment.

Opponents of this measure believe that teens should be encouraged to seek parental advice and counsel when faced with an unintended pregnancy, and most teens do. However, when a young woman cannot involve a parent, the law should encourage her to seek out a trusted adult, and should not punish any adult trying to help. Both bills would isolate young women facing crisis

pregnancies. Major medical groups, including the American Academy of Pediatrics, the Society for Adolescent Medicine and the American College of Obstetricians and Gynecologists oppose both CIANA and CCPA.

The bill is considered unconstitutional by legal experts for several reasons. It arguably violates a basic principal of federalism by requiring a state to uphold the laws of another state, or, when applied to the young woman, by requiring her to travel to another state with the heavy baggage of her home state's law. In addition, it lacks a judicial bypass provision or a health exception.

So-called "Unborn Child Pain Awareness Act" Introduced; At House Hearing, Star Witness Agrees that the Legislation is Unnecessary

A relatively new addition to the anti-choice agenda is the so-called "Unborn Child Pain Awareness Act" (HR 356/S 51). Introduced for the second year in a row by Representative Chris Smith (R-NJ) and Senator Sam Brownback (R-KS), the bill would require a doctor performing an abortion at 20 or more weeks to read a statement to a woman saying that Congress has determined that the fetus will experience pain and then to offer to give the fetus anesthesia – an unprecedented intrusion into the doctor-patient relationship. The legislation also requires a woman to sign a form if she refuses anesthesia.

The bill's transparent goal is to inflame the abortion debate by making pro-choice advocates and supporters in Congress appear extreme and lacking in concern for the fetus. In addition, the clear hope is that the mandated statement will dissuade women from having abortions. Pro-choice groups disagreed on whether to take the anti-choice "bait" and oppose the legislation. Some organizations felt strongly that it would be impossible to stay silent on legislation containing a reprehensible, congressionally drafted script intended to sway women's reproductive health decisions; while others recognized the political and public relations pitfalls of opposing and instead argued that the focus should be on fixing the most egregious language in the bill.

While the legislation is no laughing matter, pro-choice advocates experienced a light-hearted moment at a House Judiciary Subcommittee hearing held on November 1. Representative Steve Chabot (R-OH), chairman of the Subcommittee on the Constitution called the hearing and K.S. Anand, MBBS, D.Phil., a renowned medical expert on fetal pain was tapped as the star witness for bill supporters. His prepared testimony focused on debunking a review of the medical evidence published in the *Journal of the American Medical Association* in August 2005 that concluded that fetal perception of pain is unlikely before 29-30 weeks of gestation. However, when asked directly whether he thought this legislation was needed, he responded with a resounding "no." Anand said that some type of continuing medical education on the topic would be useful for providers but that he did not think that legislation was the way to properly address the issue.

Several state legislatures have considered the issue of fetal pain in 2005. Measures were introduced in 19 states and adopted in Arkansas, Georgia and Minnesota. These statutes require that a woman seeking an abortion be told that the fetus is capable of feeling pain after 20 weeks' gestation (which is equivalent to 22 weeks after her last menstrual period), notwithstanding the conclusion of most experts that the fetus is not sufficiently developed to have the capacity to feel

pain before 29 or 30 weeks. In Arkansas and Minnesota, this information is provided only to women having an abortion at least 20 weeks' gestation, who then would be given the option to have anesthesia administered directly to the fetus, while in Georgia the information is given to all women having an abortion.

Anti-Choice Riders Continue to Limit Access to Abortion Services

Anti-choice policy provisions (known as 'riders') designed to restrict access to abortion services for many of America's most vulnerable women were carried over for another year in several FY 2006 appropriations bills. These riders prohibit federal funds from being used for abortion services in all but the most dire circumstances. The Hyde amendment to the Labor, Health and Human Services (Labor-HHS) spending bill continues to prohibit Medicaid and Medicare funding for abortions, except in cases of rape, incest, and the endangerment of the woman's life.

The District of Columbia spending bill goes a step further, banning the Washington, D.C. government, unlike all other states, from using locally raised revenue to pay for Medicaid abortion services. These long-standing Medicaid restrictions come on top of a newer, broader anti-choice provision authored by Representative Dave Weldon (R-FL). Weldon's language is designed to withhold all federal funds through the Labor-HHS bill to states, localities, or health care entities that enforce virtually any requirement with regard to abortion services or referrals (see separate story).

The Treasury, Postal, and General Government spending bill continues to ensure that government health plans cover contraception, but prohibits coverage of abortion services. The Commerce, Justice, State, and Judiciary spending bill bans abortions for women in federal correctional facilities, prohibits the Legal Services Corporation, which provides legal aid to the poor, from undertaking any abortion-related litigation , and prohibits the use of federal funds to pay for abortions for Peace Corps volunteers, except when the woman's life is in danger.

Sadly, the only restriction challenged this year was the ban on abortions at U.S. military hospitals contained in the Department of Defense Authorization bill (HR 1815). One of President Clinton's first acts after taking office in 1993 was to lift this ban. However, the new Republican-controlled Congress reinstituted the ban in 1996, which remains in effect today even as scores of soldiers become pregnant during overseas duty and even in the wake of revelations of sexual assault in the armed forces. The ban affects access to abortions at military hospitals overseas for women in the military and military dependents, even if they pay for it themselves.

An amendment offered by Representatives Susan Davis (D-CA) and Jane Harman (D-CA) on May 25 to allow military personnel and their dependents overseas to use their own funds to obtain abortion services in overseas military hospitals was defeated by a vote of 194-233 (Roll Call 216). Pro-choice members sought to offer two additional amendments to the Department of Defense Authorization Bill but the House Rules Committee would not allow them to be offered. One was an amendment by Representative Chris Shays (R-CT) to provide federally funded abortion care in the case of rape or incest; the other amendment was by Representative Michael Michaud (D-ME), to make emergency contraception available on all military bases as a pharmaceutical agent covered under the pharmacy benefits program.

Brownback Withdraws Parental Notification Amendment to Defense Bill

Senator Sam Brownback (R-KS) filed an amendment to the Department of Defense (DOD) authorization bill (S 1042) that would impose a parental notification requirement on teenage military dependents (minors) seeking abortion services at Defense Department facilities. Brownback agreed to withdraw the amendment in light of some confusion about what he was trying to accomplish.

Brownback attempted to offer the same amendment during consideration of the DOD authorization bill in 2003 and was similarly dissuaded from doing so then. His motives have puzzled even those who generally support him on such issues. Even Senator John Warner (R-VA), the Chairman of the Armed Services Committee with an anti-choice record, took issue with Brownback during debate, questioning whether the amendment was necessary.

Current law only allows abortions at DOD facilities in the cases of life endangerment, rape, or incest so Brownback's amendment effectively applies only in the cases of rape or incest (the amendment does have a life endangerment exception). Further, current military law already requires parental notification for minors seeking abortions so his amendment appears to be largely redundant.

However, the changes it would impose are problematic, including the imposition of an extremely narrow judicial bypass and a troubling provision that seeks to define the beginning of pregnancy as fertilization – a significant departure from the common medical definition of pregnancy as beginning with implantation. NFPRHA opposes parental involvement mandates for all women, and believes that -- at the very least -- military families and their dependents should have the same access to reproductive health services as civilian women.

Abortion Rights Cases Before the Supreme Court
Bush Asks High Court to Review Procedure Ban Case; Ayotte Ruling Could Impact Access

Lawsuits blocking enforcement of the federal abortion procedures ban, the so-called "Partial-Birth" Abortion Ban Act, continue to prevail in the lower courts; however, the Bush Administration is decidedly unwilling to let these decisions stand. The abortion procedures ban was signed into law by President Bush in November 2003. Three separate legal challenges to the federal law were filed immediately and federal judges in all three cases ruled in 2004 that the law was unconstitutional and could not be enforced.

The Department of Justice appealed all three lower court rulings. On July 8, 2005, the U.S. Court of Appeals for the Eighth Circuit upheld the decision by Nebraska-based U.S. District Judge Richard Kopf to strike down the federal ban on so-called "partial-birth" abortion. The Center for Reproductive Rights defended the lower court decision on behalf of the Nebraska physicians in oral arguments on April 12, 2005 and the Administration asked the Supreme Court to review the Eighth Circuit ruling *(Gonzales v. Carhart)* in September 2005. The Supreme Court is expected to decide whether to hear the case in January 2006.

The U.S. Court of Appeals for the Second Circuit heard oral arguments in the National Abortion Federation's case on October 6. Oral arguments defending the lower court ruling on behalf of Planned Parenthood were heard in the U.S. Court of Appeals for the Ninth Circuit on October 20. Decisions are imminent in both cases.

The federal law banned abortions as early as 12 to 15 weeks, in pregnancy and did not include an exception to protect a woman's health. The three district court judges struck down the federal law because it did not include a constitutionally required health exception and banned several safe, common and medically appropriate pre-viability abortion procedures. They had issued temporary injunctions halting enforcement of the law during consideration of the lawsuits so the federal law has never taken effect.

Planned Parenthood Federation of America (PPFA) challenged the law in California on behalf of doctors who either perform or make referrals for abortions for PPFA. The American Civil Liberties Union (ACLU) and Wilmer Cutler Pickering Hale and Dorr LLP filed suit in New York on behalf of physicians who are members of the National Abortion Federation (NAF). A third challenge was filed by the Center for Reproductive Rights in Nebraska on behalf of LeRoy Carhart, M.D., and three other physicians.

In 2000 *(Stenberg v. Carhart)*, the Supreme Court struck down a Nebraska state law similar to the federal ban because it did not include an exception to protect a woman's health. Instead of including the constitutionally required health exception, Congress added more than a dozen pages of Congressional "findings" attempting to make the case that such a procedure is never medically necessary to protect a woman's health.

Supreme Court Argument in Ayotte Has Broader Ramifications for Abortion Access

The United States Supreme Court heard oral arguments on November 30 in *Ayotte v. Planned Parenthood of Northern New England*. The *Ayotte* case has the potential to be a landmark ruling that could dramatically impact abortion rights. The Bush Administration has filed a friend-of-the-court brief and the Supreme Court granted the Solicitor General's request to present a separate oral argument.

The case concerns a 2003 New Hampshire law that subjects doctors to criminal and civil penalties if they do not notify the parent of a teen 48 hours before performing an abortion. Two critical issues are at stake in the *Ayotte* case: whether health exceptions for abortion statutes are constitutionally required; and whether an abortion statute can be challenged as unconstitutional before it takes effect, and by whom. The parental notification provision itself is not at issue. Under the 1992 *Casey* decision, states are allowed to enact and enforce anti-abortion restrictions so long as they provide protections for women's life and health and do not place an "undue burden" on women's ability to exercise their rights prior to the ability of a fetus to survive outside the womb.

The New Hampshire law at issue in *Ayotte* includes an exception allowing an emergency abortion when necessary to *prevent the woman's death*, but contains no exception where it is necessary to *protect the woman's health*. The law was struck down by two lower courts and a federal appeals court for lacking a health exception. In defending the law, New Hampshire Attorney General Kelly Ayotte is asking the Supreme Court to find that the minor's health is already protected, either through a judicial bypass option in the law or through other state laws, including one law that protects doctors who provide emergency health care.

A second question is whether anti-abortion laws passed by states may be challenged in court as unconstitutional before they take effect. Historically, nearly all abortion cases since *Roe* began as "facial" challenges, where the law or statute has been challenged as unacceptable on its face before it has taken effect. In order to declare a law unconstitutional on its face, the Supreme Court usually requires the plaintiff to prove that the law would be unconstitutional in all its possible applications. Abortion, however, is one of the few areas of the law where the Court has been willing to invalidate a law, even when it imposes almost no burden to the majority of women, if it poses an "undue" burden to at least some women.

Ayotte is arguing for a new standard – based on *United States v. Salerno*, a case concerning bail in criminal cases - that would force women like those in New Hampshire to wait until they have been injured before the law can be struck down. If *Ayotte*'s proposed standard is accepted by the Court, it would be a dramatic departure from the way abortion cases have traditionally been litigated. Further, using the *Salerno* standard in abortion cases would mean that courts could only set aside a law if it found the entire law unconstitutional, not just certain provisions.

The *Ayotte* challenge was brought by three New Hampshire clinics and a physician and argued on their behalf by Jennifer Dalven, Deputy Director of the New York-based Reproductive Freedom Project of the American Civil Liberties Union. A friend-of-the-court brief has also been

filed by the Center for Reproductive Rights on behalf of 30 health, research and women's organizations, including NFPRHA.

Supreme Court Vacancies Focus Attention on Right to Privacy
Sandra Day O'Connor Announces Retirement, Second Vacancy Created by Death of William Rehnquist

For months, groups across the political spectrum, as well as many Senators, had speculated that at least one Supreme Court Justice would retire when the Court's term came to an end in late June. The ailing Chief Justice William Rehnquist seemed the likely candidate, although other possibilities included Justice John Paul Stevens and Justice Sandra Day O'Connor. In the end, it was Justice O'Connor who announced on July 1 that she would retire after 24 years on the bench. A second vacancy was created shortly thereafter by the death of Chief Justice Rehnquist. The two retirements virtually guaranteed at least one bruising Senate confirmation struggle in order to maintain an ideological balance on the court likely to preserve the constitutional right to privacy articulated under *Griswold*, *Roe* and subsequent Supreme Court decisions.

Even before Justice O'Connor's announcement, judicial nominations to the lower courts had been a huge source of ongoing partisan controversy in the Senate. The President and his conservative allies in the Senate conveyed that they were ready to rumble early in the year when the White House re-nominated 20 candidates for the federal bench who had not been confirmed in 2004. The list included 12 appellate court and eight district court nominees -- including three opposed by NFPRHA -- who had been previously filibustered by the Senate: William Pryor, nominated to the U.S. Court of Appeals for the Eleventh Circuit; Janice Rogers Brown, nominated to the U.S. Court of Appeals for the District of Columbia Circuit; and Priscilla Owen, nominated to the U.S. Court of Appeals for the Fifth Circuit. In 2004, President Bush had incensed many Senate Democrats by appointing Pryor to the Eleventh Circuit Court of Appeals while the Senate was in recess. Also among the list of recycled nominees was White House Counsel Brett Kavanaugh, nominated to the U.S. Court of Appeals for the District of Columbia Circuit, considered by many to be the mastermind behind the Administration's attempts to pack the federal courts with right-wing ideologues.

Senate Threatens to Go "Nuclear"

By nominating a handful of previously filibustered nominees as his opening move of the 109th Congress, President Bush was in effect asking for a showdown over the fate of the filibuster – the 200-year-old procedural mechanism that has long protected the voice of the minority and is considered by some to be part of the Senate's honored tradition of consensus building and negotiation. In late 2004, Senate Republicans threw down the gauntlet by suggesting a rule change that quickly became known as the "nuclear option." Under the proposed rule, the use of the filibuster on judicial nominees would be prohibited. Instead, an up or down vote would be required, allowing nominees to be confirmed with a simple majority of 51 votes – rather than the supermajority of 60 votes it has historically taken to end a filibuster. The proposed change reflected Republican frustration over the perception that Democrats would be able to sustain filibusters even though 55 of the 100 Senate seats were held by Republicans in the 109th Congress.

For months Senate Majority Leader Bill Frist worked to convince fellow Senate Republicans to support the rule change and eliminate the judicial filibuster. Frist went so far as to deliver a taped message to Christian conservatives on April 24 saying Democrats are "against people of faith" for blocking President Bush's nominees. Some Senate Republicans, however, expressed doubts and worried that invoking the nuclear option would put the Senate in turmoil. Finally, on May 23, a bipartisan group of 14 Senators, who became known as the "Gang of 14," reached an eleventh-hour deal which effectively avoided the nuclear option.

Although the compromise has been interpreted quite differently by participants in the deal, the filibuster appeared to be preserved as an option for future judicial nominees, including Supreme Court nominees, under "extraordinary circumstances." The "Gang of 14" included seven Republicans and seven Democrats: Lincoln Chafee (R-RI), Susan Collins (R-ME), Mike DeWine (R-OH), Lindsey Graham (R-SC), Daniel Inouye (D-HI), Mary Landrieu (D-LA), Joe Lieberman (D-CT), John McCain (R-AZ), Ben Nelson (D- NE), Mark Pryor (D-AR), Ken Salazar (D-CO), Olympia Snowe (R-ME), and John Warner (R-VA).

The compromise, while beneficial in that it preserved the filibuster –at least in theory, included some bitter pills. The agreement allowed for some of the most ardently anti-choice nominees for the lower courts to have an up or down vote. Senate Republicans wasted no time in keeping their end of the deal. On May 25, Texas Supreme Court Justice Priscilla Owen was confirmed for a seat on the Fifth Circuit Court of Appeals (Texas, Louisiana, and Mississippi). On June 9, Janice Rogers Brown was approved for a seat on the D.C. Circuit Court of Appeals. The very next day, the Senate confirmed William Pryor, who has called *Roe v. Wade* "the worst abomination of constitutional law in our history" was confirmed to the U.S. Court of Appeals for the 11th Circuit (Alabama, Georgia, Florida), although for the first time, three Republican senators voted against a Bush appellate court nominee.

Following the agreement to avert a showdown, Senators in both camps continued to debate the meaning of what circumstances might reasonably prompt the use of a filibuster, speculating on how long the agreement would hold. Senate Minority Leader Harry Reid (D-NV) expressed his belief that the agreement "took the nuclear option off the table." According to Reid, "The nuclear option is gone for our lifetime. We don't have to talk about it any more." However, many Republicans – including Majority Leader Frist, asserted that, in spite of the agreement, a rules change to allow a simple majority to force a vote on all nominees was still possible. Many of the other signatories to the agreement later said they would be willing to vote to change the rules to forbid filibusters on judicial nominees.

Roberts Dazzles Committee Despite Problematic Views on Choice

On July 19, President Bush nominated D.C. Circuit Court Judge John G. Roberts to replace Justice O'Connor, a frequent swing vote on the Court. Roberts, a former clerk to then-Associate Justice Rehnquist, an aide to President Reagan, and a Deputy Solicitor General under the first President Bush, was immediately embraced by conservatives, who proclaimed the President had "hit one out of the park" with this nomination. Roberts had only been a federal judge on the D.C. Circuit for two years, with little public record to indicate his judicial philosophy. As a result, clues had to be gleaned from documents during Roberts' tenure in the Reagan and Senior

Bush Administrations. The current Bush Administration, however, refused to turn over many important documents, especially from Roberts' time at the Solicitor General's Office.

What emerged from the limited public record made available showed a portrait of a conservative hostile to reproductive rights. A draft article Roberts wrote in 1981 as a lawyer in the Reagan Administration about judicial restraint questioned the validity of the "right to privacy" recognized in the Supreme Court's 1965 decision in *Griswold v. Connecticut.* In 1991, while Deputy Solicitor General, he co-authored a brief in *Rust v. Sullivan* in which he argued that *Roe* was wrongly decided and should be overturned. In 1993, he voluntarily submitted an amicus brief in *Bray v. Alexandria Women's Health Clinic* in support of Operation Rescue and six individuals who had obstructed access to reproductive health care clinics. Although Roberts's supporters argued that any actions taken as a government lawyer could not be assumed to reflect his personal views, opponents argued that Roberts was a political appointee picked for his job at least in part because of his ideological compatibility with the Administration.

Opponents and supporters of the Roberts nomination spent August preparing for the upcoming Senate Judiciary Committee hearings, but the death of Chief Justice William Rehnquist in September dramatically changed the Roberts fight. Instead of naming a new nominee to replace the late Chief Justice, President Bush withdrew Roberts from consideration as Associate Justice and re-nominated him to fill Rehnquist's post. The move took the wind out of many Democrats, with the fight no longer about replacing the pragmatic and moderate swing-vote of Sandra Day O'Connor with an ideologue bent on rolling back women's rights; in many minds, the fight was now about swapping a conservative for a conservative.

Judge Roberts' performance during hearings before the Senate Judiciary Committee was considered impressive by supporters and detractors alike. Committee members across the political spectrum acknowledged his obvious qualifications and skillful performance. However, some Democrats expressed concern that he repeatedly dodged Senators' questions on key substantive areas, including reproductive rights, and complained that the Administration had failed to turn over key documents from Roberts' tenure in the Reagan and Bush Administrations that could have shed light on his views on civil rights and women's rights.

As expected, Judge Roberts refused to say whether he would overturn *Roe v. Wade*, or even whether he supported the central tenets of *Roe*. Roberts argued that some of the troubling views expressed in legal documents he authored during his tenure in the Reagan and Bush Administrations could not reasonably be ascribed to him but simply represented the work of a staff attorney arguing the views of his superiors. When asked whether he thought *Roe* was settled law, Roberts recognized that overruling precedent is a jolt to the legal system, and that it is not enough to think that a prior decision was wrongly decided. However, Roberts refused to say whether he supports the constitutional right to privacy or whether applying the rules on upholding past precedents would lead him to uphold *Roe*.

When asked by Senator Kohl whether he supports the holding in *Griswold v. Connecticut*, Roberts said he agreed with the Court's conclusion that "marital privacy extends to contraception." However, when Senator Feinstein asked whether the right of privacy extends to single people, as the Court held in *Eisenstadt v. Baird*, Roberts answered that he did not "have

any quarrel with that conclusion." Senator Schumer posed a written question asking whether saying that Roberts had "no quarrel" was the same as saying he supports the *Eisenstadt* decision. Roberts' response was that "what I meant during my oral testimony when I stated that I have no quarrel with a particular decision of the Supreme Court is that I would treat the decision as precedent like any other opinion of the Court consistent with principles of stare decisis." In other words, Roberts was not assuring Senators that he agreed with those decisions or would uphold them; he was just acknowledging the obvious fact that they are court precedents.

The Judiciary Committee paved the way for the lopsided floor vote when it endorsed the Roberts nomination by a vote of 13-5 on September 22. Three Democratic Senators – including Ranking Minority Member Patrick Leahy (VT), Herbert Kohl (WI), and Russ Feingold (WI) – voted in favor of Roberts, saying that it was a close call but that Roberts deserved the benefit of the doubt despite his failure to answer key questions and the Administration's failure to make available key documents from Robert's tenure in the Office of the Solicitor General.

After three days of floor debate, on September 29, the Senate voted 78-22 (Roll Call 245) to confirm John Roberts to be the Chief Justice of the United States Supreme Court. All 55 Senate Republicans voted for John Roberts' confirmation, and the Democrats splintered evenly with 22 Democrats opposing the Roberts nomination. NFPRHA opposed the Roberts nomination, and applauded the Senators who voted "no."

While the vote in favor of confirmation was a foregone conclusion, speculation on the impact of the lopsided vote on the next confirmation battle and the possible candidates to fill the seat of retiring Supreme Court Justice Sandra Day O'Connor-- the key swing vote on many issues whose replacement could shift the ideological balance of the court --continues to be Washington's favorite parlor game. Despite concerns about Roberts, many Democrats chose to hold their fire for the next nomination, recognizing the inevitability of Roberts' confirmation and believing that the "real" fight would be for the O'Connor seat.

Conservatives Topple Miers Nomination

In a surprising move, on October 3, President Bush announced the nomination of White House Counsel Harriet Miers to the Supreme Court to replace retiring Justice Sandra Day O'Connor. The 60-year-old Miers, who had never been a judge, had been leading the White House effort to help Bush choose nominees to the Supreme Court, had been an adviser to the President since the 1980s, serving as his personal attorney and assisting then-Governor Bush during the 2000 presidential campaign with the ensuing litigation. In 2001, Miers was selected by President Bush to serve as his Staff Secretary, responsible for every piece of paper that comes across the President's desk. Two years later, she became the Deputy Chief of Staff for Policy before taking over as White House Counsel when Alberto Gonzalez became Attorney General.

The absence of a public record initially raised concerns from liberals and conservatives alike. Clearly devastated by the nomination, conservatives quickly mobilized to attack Miers, questioning whether she was qualified for the Supreme Court given her lack of knowledge about constitutional law, criticizing her lack of judicial experience, and first and foremost, her insufficient public record of support for baseline conservative issues, including abortion. White

House officials and Administration allies scrambled to reassure conservatives that Miers was the kind of nominee they want, a "strict constructionist" in the mold of Justices Scalia and Thomas. The Administration even went so far as to argue publicly that Miers' faith was one reason she should be confirmed, completely contradicting their position during the Roberts hearings that religion should play no factor in considering a nomination.

Although reproductive health advocates were concerned by some of the information that surfaced about Miers following the nomination, all of the mainstream reproductive rights held their fire and did not take a position. Also contributing to the public outcry were fawning personal notes written by Miers to the President in which she repeatedly expressed admiration for the President and his family, and called him the smartest person she has ever known. The notes fueled charges of cronyism and further damaged the President's credibility not only within his own party, but across the political spectrum.

In the end, President Bush reluctantly accepted her decision to withdraw, publicly blaming it on Senate requests for the release of internal White House documents that the Administration has insisted were protected by executive privilege. Most, however, attributed her withdrawal to the growing clamor from conservative activists who were profoundly disappointed that the President did not nominate a proven conservative certain to carry out their political agenda from the bench.

Battle Lines Drawn With Alito Nomination

After caving to the demands of his conservative base to abandon Miers, President Bush nominated Samuel Alito to replace retiring Justice Sandra Day O'Connor, just four days after Miers' withdrawal in late October. In stark contrast to Miers, Alito was promptly and warmly embraced by conservatives. In his 15 years on the Third Circuit Court of Appeals, Alito authored numerous opinions that are far outside the mainstream on the issues Americans care most about, including the right to privacy. His opinions, in combination with earlier writings during his tenure in the Reagan-era Justice Department, have convinced reproductive rights advocates that Judge Alito would irrevocably change the face of the Court and place in jeopardy decades of progress in protecting individual rights and freedoms.

For example, Alito was the lone dissenter in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. His dissent in that case argued for upholding the spousal notification requirement, claiming that there was no showing that it would create an undue burden on women. The Supreme Court, including Justice O'Connor, rejected that view, saying that "women do not lose their constitutionally protected liberty when they marry." Alito also wrote a decision weakening the Family and Medical Leave Act, a law which protects workers' rights for people in times of family and medical emergencies, and supported government invasion of privacy when he wrote an opinion supporting the warrantless strip search of a ten-year-old girl.

As more information about Alito's record has surfaced, it has become increasingly clear why conservatives eagerly applauded the nomination. Despite impressive credentials, his record leaves no doubt that he is far outside the mainstream of American public opinion on issues including privacy and abortion rights. Senate confirmation hearings began January 9, with a Judiciary Committee vote tentatively planned for January 20.

Documents released by the Ronald Reagan Presidential Library set off a firestorm in November that continues to be a source of great contention between supporters and opponents of the Alito nomination. The released documents included a 1985 job application Alito completed for a promotion in the Reagan Justice Department. In the application, Alito wrote that he was "particularly proud" of his contributions to recent cases that argued "the Constitution does not protect a right to an abortion," a legal position "in which I personally believe very strongly."

Alito wrote these words just a few short months after co-authoring the government's brief in *Thornburgh v. American College of Obstetricians and Gynecologists*, in which the government urged the Supreme Court to overturn *Roe v. Wade*. The amicus brief in *Thornburgh* argued that *Roe* "is so far flawed that this Court should overrule it and return the law to the condition in which it was before that case was decided." A separate 1985 memo written by Alito regarding the *Thornburgh* case advocates support for a wide array of abortion restrictions. In this recently released memo, he uses such terms as "abortionist" and "the unborn" and asks, "What, for example, is the objection to informing a woman that certain methods of birth control are 'abortifacients,' i.e.: they do not prevent fertilization but terminate the development of the fetus after conception."

Since the job application became public, Alito and some of his supporters have tried to downplay its significance. Alito explained to Senator Dianne Feinstein (D-CA) that "I was an advocate seeking a job, it was a political job and that was 1985. I'm now a judge … I'm not an advocate, I don't give heed to my personal views, what I do is interpret." Indeed, conservative supporters of Alito — overjoyed by his nomination —rallied to his defense following the release of the Reagan documents, saying that his personal views should not be on trial during this process. Some of the individuals shopping this interpretation are in fact the same right-wing leaders who torpedoed the nomination of Harriet Miers because they believed she was insufficiently conservative.

NFPRHA opposes the Alito nomination, and supported an ad – along with other members of a national coalition of public interest organizations concerned about an Alito confirmation – that focused on some of the extremist decisions Alito has made as a judge, including rulings making it easier for corporations to discriminate and voting to approve the strip search of a ten-year-old girl. The 30-second ad ran in November nationally on cable news channels, and on local stations in Maine and Rhode Island.

What's in Store for 2006?

Congress will return in January 2006 in election mode – which could argue for more aggressive anti-choice, anti-family planning rhetoric and actions designed to please the conservative base or a more hands-off approach that reflects the low approval ratings for both Congress and the White House. Our money is on the more aggressive agenda. While abortion fatigue may have set in among the Democrats and pro-choice Republicans, we have little reason to expect less vigilance from anti-choice forces in Congress.

In the Senate, the first order of business will be the nomination of Samuel Alito, where the epic battle over the future of the Supreme Court began on January 9 when the Judiciary Committee started hearings. Whether the few remaining pro-choice Republicans will join Senate Democrats in opposing Alito, and whether Majority leader Bill Frist is willing to invoke the nuclear option will determine whether the court takes a sharp turn to the right in the coming months.

Another legislative priority at the federal level will be the defeat of insurance legislation that would roll back or eliminate state consumer protections and other state mandates related to insurance coverage of women's health services such as contraception and ob-gyn visits. If enacted, this problematic new legislation would dramatically alter the health insurance market by allowing business and trade associations to band their members together to offer lower cost group health coverage on a national or statewide basis. In doing so, however, the bill effectively would dismantle many state regulations designed to protect consumers and encourage the establishment of barebones plans that offer only limited coverage. The most recent federal legislation, The Health Insurance Marketplace Modernization and Affordability Act of 2005," was introduced in December by Senator Mike Enzi (R-WY), Chairman of the Senate Health, Education, Labor and Pensions Committee (HELP Committee). The Enzi bill could be considered by the Committee as early as February of 2006.

With anti-choice conservatives maintaining control of both houses of Congress and the White House, our hopes for a pro-active agenda remain focused on advances in reproductive rights that can be characterized as "prevention." As always, however, much of our effort will be directed at holding the line on policy restrictions and funding cuts that could impact access to family planning services. On the funding front, victory will be an increase to Title X funding with no additional restrictions, maintaining the status of family planning as a mandated benefit under the Medicaid program, boosting funding for international family planning programs, and holding the line on abstinence-only funding.

At the agency level, there may be some surprises in store. The Senate quietly confirmed John Agwunobi, M.D., M.B.A, M.P.H., to be Assistant Secretary for Health at HHS on December 22. Deputy Assistant Secretary Cristina Beato was nominated in 2004 but the nomination languished after allegations that she had embellished her résumé. Agwunobi, brings an impressive résumé to the job. He was named Florida's Secretary of Health by the President's brother, Governor Jeb Bush, in October 2001. A pediatrician, Agwunobi is especially interested in maternal and child health and addressing the health care needs of underserved populations. It will be interesting to see how he handles being at the helm when massive cuts to public health programs are on the table.

Reproductive rights supporters plan to push harder for an agenda focused on prevention of unplanned pregnancy. A renewed focus on the Prevention First omnibus prevention bill will be key to this strategy, along with other less ambitious bills designed to advance the prevention agenda. The clock is expected to continue to tick on the Plan B application. Any forward movement by the Food and Drug Administration would be a welcome, but unexpected surprise.