NAF's Report on Federal and State Action on Abortion Issues August 2000

News from the States:

In the Courts:

8/3– A federal judge ruled that a 1999 law designed to regulate **Louisiana** abortion clinics as outpatient surgery centers doesn't cover them due to drafting ambiguity. U.S. District Judge Ivan L.R. Lemelle said that lawmakers' efforts to remove a 20-year exemption for clinics from state inspection were unsuccessful, because the law required outpatient surgery centers to have registered nursing services available whenever a patient was in the center. The abortion clinics that challenged the law, however, use licensed practical nurses, not registered nurses. State officials argued that their efforts to qualify clinics as outpatient surgery centers were aimed at protecting patients in outpatient settings. Before the 1999 law, abortion clinics had to meet the standards set for doctors' offices where minor surgeries are performed, which are regulated much less stringently. Having the legislation dismissed on a technicality rendered the victory, albeit important, a narrow one for abortion clinics. The clinics contended that the regulations were unconstitutional because they would drive up costs and make it harder for women to obtain abortion services. They also argued that abortion clinics should not be considered outpatient surgery centers because only 20 percent of their time is spent performing abortions. Most of their time is actually spent providing other family planning services, including administering pregnancy tests and providing birth control counseling.

8/15 -- The **New Jersey** Supreme Court held New Jersey's Parental Notification Act unconstitutional, finding that it would neither foster family communication nor protect the rights and safety of young women in the state. Due to litigation, the law has never been permitted to take effect.

8/16 – A federal lawsuit was filed against the **City of St. Petersburg**, Bayfront Medical Center and BayCare Health System over the operation of a public hospital under religious doctrines. The suit charges that direct and indirect support of the hospital with taxpayer funds violates the separation of church and state. The medical facility operates under the religious tenets of the Roman Catholic Church, creating an unconstitutional religious entanglement for the city-owned hospital. One of the plaintiffs commented that, "Other communities are facing this problem as well, so this case could set an important national precedent." Under the religious directives, patients are restricted from receiving a variety of legal medical procedures, including abortion, sterilization, emergency contraception and artificial insemination. The directives also may limit the full implementation of patients' wishes identified in living wills to the extent they do not comport with Catholic doctrine. The suit, filed in the U.S. District Court for the Middle District of **Florida**, asks that the court find reliance on the religious directives at the public hospital to be unconstitutional and prohibit the facility from being run according to religious dictates in the future.

8/17 -- A U.S. District Court in **Colorado** held unconstitutional a law that would have prevented pregnant teens from getting an abortion unless they notify a parent. The judge struck the law because it lacked an exception for situations in which an abortion is necessary to protect the teen's health.

8/17 -- The 5th U.S. Circuit Court of Appeals struck down **Louisiana's** so called "partial-birth abortion" law. Courts in **Florida, Virginia, West Virginia, Kentucky, Alaska** and **New Jersey** have overturned similar laws since the U.S. Supreme Court ruling in June.

8/17 – The Fourth U.S. Circuit Court of Appeals panel ruled 2-1 to reinstate regulations on abortion clinics in **South Carolina**. This ruling overturns an earlier decision declaring 1996 regulations to be unconstitutional and in violation of equal protection clauses. The state regulations apply to clinics performing a minimum of five abortions per month, and include airflow standards, doorway widths and a requirement that a registered nurse assist in the procedure. The Center for Reproductive Law and Policy disputed Judge Niemeyer's opinion that the $23 to $75 increased cost per abortion due to compliance is modest, noting the closing of the only abortion clinic in Beauford, South Carolina was a result of increased costs.

8/29 – A federal judge temporarily blocked **Louisiana** from issuing antiabortion "Choose Life" license plates. The statute requires that proceeds from the sale of the plates be put into a "Choose Life Fund," available to qualifying nonprofit organizations that provide counseling to expectant mothers. None of the funds can be distributed to organizations that counsel women to consider abortion, provide referrals to abortion clinics, provide abortions or advertise for abortion services. The judge based his decision on free speech provisions of the Constitution, which require license plate designs to be neutral.

In Other News:

8/9 – Health Department officials in South Dakota say that the first state-mandated inspections of facilities that perform abortions are expected before the end of the year. The agency is gathering information on the 730 abortions performed in 1999 and will include it in a report that probably will be released in September.

8/14 -- The Woman's Health Information Act, an initiative that would require doctors to delay abortion requests for 24 hours to ensure that a woman has been fully informed about abortion alternatives qualified for the November ballot in **Colorado**. The Secretary of State said the initiative appeared to have the 62,438 valid signatures needed. Opponents have 30 days to challenge the ruling.

8/24 – The **California** Senate passed landmark consumer information legislation designed to inform health plan enrollees of the reproductive services offered by different hospitals and health care providers. AB 525, which passed the state assembly in February, requires health plans to place a prominent statement in their provider directories, provide evidence of coverage and disclosure forms, and post information on their websites informing consumers that some hospitals and health providers do not offer a full range of reproductive health services. Designed to ensure that women have the

information necessary to make the best health care choices for themselves and their families, the bill also requires that health plans provide a toll-free number where consumers can obtain more information about how to access the health care they need. AB 525 is the first legislation in the country to address certain losses of health-plan-covered services, such as those that religiously controlled entities generally refuse to provide including sterilization, abortion or emergency contraception.

Around the World:

8/3 – Many gynecologists in **Kenya** are calling for legalization of abortion as a matter of urgency. According to Dr. John Nyamu, the director of Reproductive Health Services, a woman's health cannot be complete without tackling the problem of abortion, the leading cause of maternal mortality and morbidity and an important part of reproductive health care services. According to Dr. Nyamu, laws in Kenya, which permit abortion only for the preservation of a woman's health, are out-dated and need revision to permit abortion for reasons such as contraceptive failure, conception following rape and incest, as well as malformed fetuses. Currently, he says, abortion ranks number one among the top five major causes of maternal mortality in Kenya.

8/21 –The **Mexico City** legislature passed a law easing several restrictions on abortion. This legislative action was in response to the attempt to restrict abortion laws in a northern state. The new abortion law reduces the maximum penalty for abortion, permits abortion when a woman's health is in danger, and permits abortion in cases of fetal impairment. The exceptions previously recognized under the law, rape, danger to a woman's life, and accident all remain in effect. In an effort to divert international attention from the issue, Mexican authorities banned Canadian antiabortion activists who were protesting outside a Mexico City hospital where they said abortions were performed, from returning to the city for five years.

8/29 – Gov. Ramon Martin, in the northern state of **Guanajuato, Mexico**, vetoed a bill banning abortion in cases of rape after an opinion poll found most people opposed it. An existing state code had allowed abortions in rape cases, but the legislators voted to eliminate it, arguing "it opens the possibility of doing violence to the marvelous process of gestation, and the killing of an innocent." In most of Mexico's 31 states, abortion is allowed in cases of rape or when the life of the mother or the baby is in danger. In other cases, abortion is illegal, punishable by one to five years in jail for the mother and 10 for the doctor who performs it.

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Congress of the United States

House of Representatives

Washington, DC 20515-3214

July 27, 2000

Mr. Stephen Ricchetti
Deputy Chief of Staff
The White House
First Floor, West Wing
Washington, DC 20500

Dear Mr. Ricchetti:

We are writing to respectfully request a meeting with you to discuss the Administration's strategy concerning the upcoming appropriations negotiations, specifically concerning international family planning and the gag rule language that remains in the House bill.

We have been very encouraged by the Administration's budget request that included $541.6 million for international family planning funds in US AID and $25 million for UNFPA without restrictions and the successful White House event in April. But, as you know, the anti-choice extremists in the House prevailed in a close vote that would have removed the onerous gag rule by 221-206.

The "global gag rule" on foreign non-governmental organizations (NGOs) and anyone else receiving US family planning aid, bars them from using whatever other money they might have for the purpose of advocacy work for or against legal abortion or for performing legal abortions in their own countries. This law would be unconstitutional in our own country. It flies in the face of a fundamental part of U.S. foreign policy – the promotion of democracy and popular participation. The law forces foreign NGOs to choose between desperately-needed and lifesaving U.S. help for family planning, and their right and responsibility to speak out before their own governments on a prominent social issue.

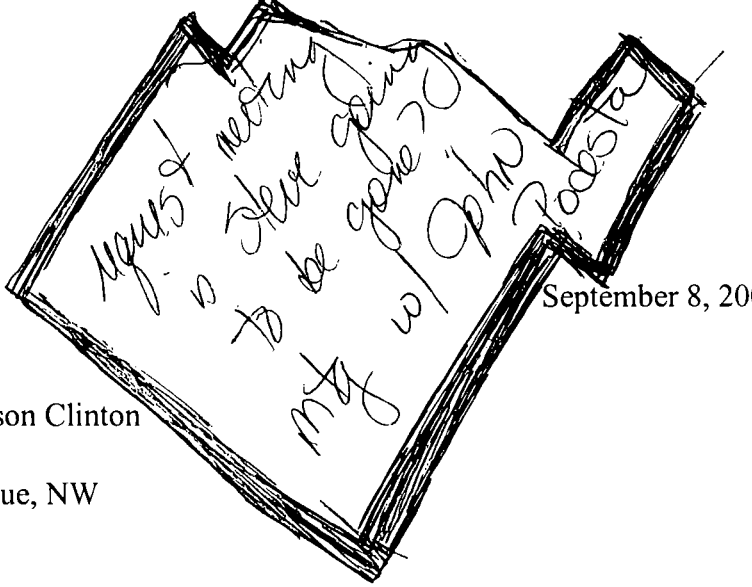
We hope you will work with us to make sure that this restrictive language is not signed into law again. In the final budget hours it will be up to the President to remain firm on international family planning without anti-democratic, anti-woman gag rule restrictions and we would like to meet with you to hear what the President's ultimate position will be on these issues.

We realize you have an extremely full schedule, but due to the timeliness of this matter, we hope we can work together to find a time in the near future for this meeting. Please feel free to contact Congresswoman Maloney for more information or to have your staff contact Kate Segal in Congresswoman Maloney's office at (202) 225-7944.

Thank you for your prompt attention to this matter.

Sincerely,

Carolyn B. Maloney
Nancy Pelosi
Louise M. Slaughter
Tammy Baldwin
DeLauro Hooley
Grace F. Napolitano
Cynthia McKinney
Lynn Woolsey
Barbara Lee
Stephanie Tubbs Jones
Carolyn Cheeks Kilpatrick



September 8, 2000

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

As you prepare to enter into negotiations with Congress over the FY2001 Labor-HHS appropriations conference report, the undersigned organizations are writing to bring to your attention several items of concern to the domestic family planning community. These items include funding for the Title X family planning program, funding and policies related to abstinence-until-marriage education, a Helms amendment on emergency contraception, and problematic language concerning the human papillomavirus embedded in breast and cervical cancer legislation. We urge you to continue your exceptional leadership on behalf of family planning by addressing the following concerns.

Title X Family Planning Program

For over three decades, the Title X family planning program has served as a vital source of family planning and related reproductive health care to millions of low-income Americans in need of subsidized services. Nationwide, 4,500 Title X-funded clinics provide 4.4 million women each year with the contraceptive supplies and services they need to avoid unintended pregnancy, as well as a broad package of preventive health care services that includes Pap tests and breast exams, testing and treatment for sexually transmitted diseases (STDs), and screening for anemia, high blood pressure, and diabetes. (Title X clinics are statutorily prohibited from funding abortion services.) Part of the public health safety net, Title X plays a particularly vital role in serving those who are uninsured and who have no place else to go for care.

While your Administration acknowledged the value of this program by requesting a $35 million increase for Title X, the conference agreement adopted the House position and level-funds the program. Only a significant funding increase will ensure that Title X clinics are able to continue providing high quality reproductive health services. Currently, clinics are struggling to meet rising costs associated with newer and longer-lasting methods of prescription contraceptives that, while extremely effective, are also expensive, and state of the art medical technologies **that** promise improved detection rates for cervical cancer and STDs. At the same time, a significant funding increase will enable clinics to reach out to additional women in need of subsidized care and to meet the needs of a rising uninsured population, which increased by 1.5 million women between 1994 and 1998.

Abstinence-Until-Marriage Education

While the Labor-HHS conference agreement level-funds the Title X program, it provides $30 million in advance funding for an abstinence-until-marriage education program to be funded through the Maternal and Child Health Block Grant (separate from an existing $50 million per year program established under the welfare reform act). This $30 million for FY 2002 funding is to be spent in accordance with the restrictive definition of abstinence-only education contained in the welfare reform law that prohibits discussion of contraception beyond failure rates. This $30 million commitment for FY 2002 comes on top of $20 million for this same program allocated through an "emergency" funding provision included in the FY2001 Military-Construction Appropriations Act.

Since 1996, funding for abstinence-until-marriage education tied to the welfare definition has risen over 3,000 percent. Yet to date there is no evidence that these programs are effective in delaying sexual activity. Instead, research shows that comprehensive sexuality education programs that stress both abstinence and the importance of contraception help teenagers to delay sexual activity and to use contraception more effectively when they do become sexually active. Increasing funding for scientifically unproven programs that censor information about contraception leaves young people vulnerable to unintended pregnancy and STDs, including HIV. We therefore urge you to reject the conferees' proposed level of advance funding for abstinence-until-marriage education.

Emergency Contraception

We also urge you to reject the Helms amendment, included in the Senate bill, which prohibits federal funds from supporting emergency contraception in school-based health clinics. During Senate consideration, emergency contraception was inaccurately portrayed as an abortifacient. Emergency contraception should not be confused with mifepristone (otherwise known as RU-486). Rather, it is simply a high dose of oral contraceptive pills that can be used within 72 hours of unprotected sex or contraceptive failure to prevent an unintended pregnancy. Emergency contraception, which has been deemed safe and effective by the Food and Drug Administration, does not interrupt or disrupt an already-established pregnancy, but prevents an unwanted pregnancy *before* it occurs.

Preventing those school-based health clinics that already provide prescription contraceptives to students from providing emergency contraception makes little sense. Such a policy deters teenagers who have had unprotected sex from accessing the services they need in order to avoid an unintended pregnancy. Additionally, when teens visit clinics for emergency contraception, health care professionals have an ideal opportunity to counsel them about the importance of delaying sexual activity, the risks of unprotected sex, and the importance of getting tested for STDs and HIV.

The clinics affected by the Helms amendment serve low-income, uninsured students who are unlikely to have alternative sources of health care. In these schools, educators, public health officials, and parents collaborate to set policy governing the delivery of family planning and

other health care services at school-based health clinics. In this respect, the Helms amendment also intrudes on local decision-making. While the amendment was not included in the Labor-HHS conference report, we remain concerned that conservative members will try to reinsert the language in an omnibus appropriations bill. If this occurs, we urge you to vigorously oppose any such efforts.

Human Papillomavirus

Finally, we understand that the Breast and Cervical Cancer Treatment Act may be folded into an omnibus appropriations bill. We support the enactment of this important legislation, which would provide states with the option to expand Medicaid coverage to low-income women diagnosed with breast or cervical cancer through the CDC's Breast and Cervical Cancer Screening Program. However, we strongly oppose language authored by Representative Tom Coburn (R-OK) included in the House version involving the human papillomavirus (HPV). The version of the bill approved by the Senate Finance Committee does not contain similar language.

We share the concerns raised in your Statement of Administration Policy that Representative Coburn's provision requiring condom labels to warn that condoms do not protect against HPV and that HPV can lead to cervical cancer may be counterproductive to public health efforts designed to reduce the transmission of HIV/AIDS. While it is true that condoms may not fully prevent HPV transmission, they are an effective method of preventing the transmission of many STDs. By confusing the public, such a warning label may have the unintended consequence of deterring condom use, placing people at greater risk for HIV. We also agree that it is inappropriate to require all federally-sponsored materials relating to condoms or sexually transmitted diseases (STDs) to provide information on condom effectiveness—regardless of their purpose or the audience they target. Finally, taking steps to make HPV a reportable disease is inappropriate given that most cases of HPV resolve on their own. In addition, only a very small proportion lead to cervical cancer, which is both detectable and treatable. Rather than generate unnecessary panic regarding HPV, women should be educated about the risks for all STDs and be encouraged to obtain regular pap tests, which can detect pre-cancerous cells and cancer at its earliest stages. We therefore urge you to ensure that this important legislation is passed into law without the misguided language on HPV.

Remove this language

Thank you again for eight years of exceptional leadership on family planning and reproductive health issues. Your unflagging commitment has made an enormous difference in the lives of women and families across the nation.

Sincerely,

American Academy of Pediatrics
American Association of University Women
American Civil Liberties Union
Americans for Democratic Action
Alan Guttmacher Institute
American College of Nurse-Midwives

American College of Obstetricians and Gynecologists
American Nurses Association
Association of Maternal and Child Health Programs
Center for Women Policy Studies
Center for Reproductive Law and Policy
Choice USA
National Abortion and Reproductive Rights Action League
National Council of Jewish Women
National Family Planning and Reproductive Health Association
National Network for Youth
National Partnership for Women and Families
National Women's Health Network
National Women's Law Center
NOW Legal Defense and Education Fund
Physicians for Reproductive Choice and Health
Planned Parenthood Federation of America
Religious Coalition for Reproductive Choice
Sexuality Information and Education Council of the United States
Society for Adolescent Medicine
Zero Population Growth

cc: John Podesta, Chief of Staff to the President
Jack Lew, Director of the Office of Management and Budget
Sylvia Mathews, Deputy Director, Office of Management and Budget