

## Congress and Reproductive Health: Major Actions in 2001 and a Look Ahead

By Susan A. Cohen

The 2001 legislative session in Congress may be notable more for what did not happen than for what did. Despite threatened incursions, opponents of reproductive rights made no new inroads to further restrict abortion, minors as well as adult women retain the right to confidential family planning services, and emergency contraception is still appropriately considered a method of contraception and treated accordingly in U.S. government programs. Title X family planning funds continue to flow to entities that provide the broad range of contraceptive methods, rather than to sectarian organizations that seek exemption from such a requirement, and to be allocated to nonprofit community-based organizations that use their own funds to provide abortion services. Indeed, the most important policy setback for reproductive health and rights supporters in 2001 came not from Congress but from President Bush, who unilaterally reimposed the “global

gag rule” affecting overseas family planning assistance.

On the positive side, in addition to staving off direct negative attacks, supporters in Congress managed to increase funding for family planning and reproductive health programs both at home and abroad. At the same time, however, proponents of abstinence-only education for young people scored a significant funding increase as well.

With the release of the president’s FY 2003 budget request on February 4, the administration has made plain its determination to accelerate funding for abstinence-only education and its more-open hostility toward family planning. The questions now are whether “politics as usual” has completely replaced the vaunted “spirit of bipartisanship” that had a brief day in the sun in the immediate aftermath of the terrorist attacks, and how that will affect the disposition of these and

other reproductive rights issues this midterm election year.

### Family Planning v. Abstinence-only Education

For FY 2002, which began October 1, 2001, the administration had asked that the Title X national family planning program be continued at the same level as in the preceding fiscal year. Nonetheless, Congress boosted Title X funding modestly in FY 2002, by \$11 million to \$265 million. Aside from the social services block grant, which is a significant contributor to subsidized services in some states, other sources of federal family planning support received modest increases as well (see chart).

The Title X increase was partly reflective of Congress’s ongoing commitment to the program and its effectiveness. Equally, however, it was to provide some counterweight to the mounting pressure from the president and conservatives in Congress to ramp up support for abstinence-only education in the interest of achieving “parity” with the amount the United States presumably spends on contraceptive services for teenagers (see related story, page 1). In this year’s appropriations cycle, Rep. Ernest J. Istook (R-OK) attempted to more than triple spending for grants to community-based organizations to promote the most restrictive form of abstinence-only education, but the full House rejected this move, 311-106, on October 11, perhaps largely because of Istook’s bad timing, so soon after September 11. Still, he had already succeeded in doubling the account from \$20 million to \$40 million; from all sources, then, the United States will be spending \$100 million in FY 2002 promoting abstinence at the exclusion of information about contraception (see chart).

For FY 2003, the president is recommending that Istook’s program be raised from \$40 million to \$73 mil-

ACTUAL AND REQUESTED FUNDING LEVELS FOR SELECTED DOMESTIC REPRODUCTIVE HEALTH PROGRAMS (IN MILLIONS)

PROGRAM	FY 2001	FY 2002	FY 2003 REQUEST
ABSTINENCE-ONLY EDUCATION GRANTS TO STATES	\$ 50	\$ 50	\$ 50
TO COMMUNITY-BASED ORGANIZATIONS	20	40	73
ADOLESCENT FAMILY LIFE ACT PORTION SET ASIDE FOR ABSTINENCE-ONLY EDUCATION	24	29	31
	10	10	10
COMMUNITY HEALTH CENTERS	1,164	1,344	1,459
MATERNAL AND CHILD HEALTH BLOCK GRANT	714	732	732
SOCIAL SERVICES BLOCK GRANT	1,725	1,700	1700
TITLE X FAMILY PLANNING	254	265	265

lion in order to achieve “full parity,” while holding funding for Title X to the FY 2002 level. This debate likely will also occupy an important place on the congressional agenda this year as Congress reexamines its 1996 welfare-reform legislation, which must be reauthorized by the end of September and which sets forth the infamous eight-point definition of abstinence education that now controls all of the federal government’s major abstinence-promotion efforts. In preparation, Rep. Barbara Lee (D-CA) introduced the Family Life Education Act in December, which is intended to help broaden and refocus the discussion on more-comprehensive sexuality education that also includes education about contraception. A companion bill is expected to be introduced early this year in the Senate. Along the same lines, Rep. Jane Harman (D-CA), also in December, introduced the Preventing Teen Pregnancy Act, which is designed to direct federal funds to programs that have been tested and demonstrated to delay teens’ initiation of sex, reduce their sexual risk-taking practices, or reduce teen pregnancy.

Rep. David Vitter (R-LA), unlike Istook, bowed to pressure from senior appropriators last year and decided not to press ahead on his much-anticipated attempt to prohibit private family planning clinics from being eligible for Title X funds if they provide abortion services with other funds (see related story, page 4). Similarly, House leaders, however reluctantly, dissuaded Rep. Melissa A. Hart (R-PA) at the end of the session from offering her amendment to deny federal funding to schools that offer emergency contraception in their school-based health centers. Both yielded in the interest of expediency, but both also vowed to pursue their agendas in 2002.

Meanwhile, Congress renewed last year the requirement that insurance plans covering federal employees cover the broad range of contrac-

tive methods; the Bush administration in its FY 2002 budget request had urged Congress to eliminate the requirement. Indeed, this year the president gave up without a fight and is recommending continuation of contraceptive coverage in FY 2003. The effort to extend contraceptive coverage to all Americans, through the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC), got a small jumpstart when the Senate Health, Education, Labor and Pensions Committee held a hearing on September 10, but world events pushed it off the congressional calendar the following day (“Federal Law Urged As Culmination of Contraceptive Insurance Coverage Campaign,” *TGR*, October 2001, page 10).

### Overseas Family Planning Aid

The president announced on January 22, 2001, his first full day in office and the anniversary of the Supreme Court’s 1973 *Roe v. Wade* decision, that he was restoring the Reagan-Bush era “Mexico City” global gag rule policy affecting the disbursement of U.S. family planning funds overseas. A year later, the policy remains in effect; it bars the transfer of family planning aid to any foreign nongovernmental organization that uses non-U.S. funds to provide abortion services or information or advocates for abortion-law reform.

The Global Democracy Promotion Act, introduced shortly after the president’s action by Rep. Nita M. Lowey (D-NY) and Sen. Barbara Boxer (D-CA) to negate the gag rule requirement, has acquired a large bipartisan group of cosponsors (“Global Gag Rule: Exporting Antiabortion Ideology at the Expense of American Values,” *TGR*, June 2001, page 1). Boxer chaired a hearing of the Senate Foreign Relations Committee on the gag rule’s impact in July, and the Senate subsequently incorporated her bill’s operative language into its version of the FY 2002 foreign aid appropria-

tions bill. A recalcitrant House and administration, combined with the post-September 11 drive for political unity, prompted the Senate to back down in conference. (Rep. Lee forced a debate on the gag rule by the full House in May, but the House voted 218–210 to retain the president’s policy.)

In exchange for yielding on the gag rule, however, Senate negotiators did exact from the House significantly increased funding levels for international family planning. The U.S. Agency for International Development’s family planning and reproductive health program rose from its FY 2001 level of \$425 million (which the president proposed be continued) to \$446.5 million in FY 2002. At the time this year’s budget request was released, though, the administration had not yet decided or made clear what its intentions are for overseas family planning in FY 2003.

Surprisingly, the only real controversy concerning international family planning in 2001 was over how much of an increase to provide the United Nations Population Fund (UNFPA). Ultimately, Congress appropriated “up to” \$34 million for UNFPA, \$12.5 million more than last year’s level, subject to the usual requirement that none of the U.S. contribution be used in UNFPA’s program in China. (Congress dropped the long-standing provision that annually had deducted one dollar from the total appropriated for UNFPA for every dollar UNFPA spends in China—approximately \$3.5 million.)

Having signed the bill into law, however, the administration—under pressure from social conservatives led by longtime UNFPA antagonist Rep. Chris Smith (R-NJ)—now says that it might allocate considerably less money to UNFPA in FY 2002 or none at all. On top of that, the president’s budget for FY 2003 recommends no money for UNFPA, though

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it holds \$25 million “in reserve” until some undetermined time when it apparently may change its mind. Senior appropriators are not waiting for the administration, however, having reiterated their position that Congress’s intent that the full \$34 million be contributed to UNFPA in FY 2002 is clear. They are girding for a possible confrontation with the administration over the release of the full amount for FY 2002 as well as the funding level for FY 2003.

### **Abortion Policy and Politics**

In April, by a vote of 252–173, the House passed the Unborn Victims of Violence Act, the only freestanding antiabortion bill to pass the House all year. The legislation would establish separate criminal penalties for an individual who harms an “unborn child,” either knowingly or unknowingly, in the course of committing a federal crime. The Senate has not scheduled action on it. Meanwhile, the Child Custody Protection Act, which would criminalize the transport of a minor across state lines for the purpose of her having an abortion in contravention of her own

state’s parental notification or consent law, is still pending before the House Judiciary Committee but has yet to be introduced in the Senate. And the Partial-Birth Abortion Ban Act, which remains the centerpiece of the president’s and the antiabortion movement’s *rhetorical* agenda, has not yet been introduced in either the House or Senate in the 107th Congress. A House Judiciary Committee spokesman acknowledged that the U.S. Supreme Court’s decision striking down a virtually identical Nebraska law in 2000 created a “real impediment” to drafting a bill that would serve the proponents’ political goals and at the same time pass constitutional muster.

Finally, in the waning hours of last year’s session, the National Conference of Catholic Bishops prevailed on House Majority Leader Dick Armey (R-TX) to slip into a noncontroversial health bill an overarching federal “conscience clause” that would be unprecedented in its scope and breadth. The stated goal is to prevent “discrimination” against any health care entity receiving federal or state funds on the basis of its refusal to provide abortion services or referrals or to provide reimbursement or insurance

coverage for these activities. If it were to become law, the proposal could vitiate the Title X requirement that pregnant women be provided with abortion referrals on request after receiving nondirective pregnancy counseling about their medical options. At the state level, it could block states from requiring that abortions or abortion referrals be available under their Medicaid programs.

Faced with an uproar by moderate Republicans and the chairman of the relevant committee on procedural grounds, Armey backed off, though clearly this issue will reemerge in 2002. The leading antiabortion agenda goal for this year, however, is likely to be banning cloning (see related story, page 13). In many ways, this is a continuation of the debate over embryonic stem cell research—the only issue related to abortion politics last year that did garner high-profile and prolonged attention following the saga of the president’s decision-making process around his own policy on the subject (“Bush Okays Some Stem Cell Research Funding; Debate Continues,” *TGR*, August 2001, page 12). ☉