

Elections Make Drive for Reproductive Health and Rights An Even Steeper Uphill Battle

By Susan A. Cohen

The 2002 congressional elections resulted in a clear power shift in Washington that will radically alter the political agenda for the next two years. Whether or not the voters made their decisions based on issues such as abortion rights or sex education, the far right is claiming a mandate for its agenda based on the outcome. And they are busy compiling their wish list of policy and program priorities.

This is the first time in a half-century that both houses of Congress as well as the executive branch rest firmly in the hands of the same party. In this instance, it means leaders—emphatically including the president's top aides and the president himself—who have put reproductive health programs and policies supporting reproductive rights high on their target lists. Still, a question remains as to how fast and how far they will be able to go. The new Republican power structure, which now faces the full responsibility of governing, must tread carefully into this uncharted political territory. They run the risk of overreaching, and they must balance the competition between business interests and social conservatives for control of the policy agenda, all against the backdrop of positioning for the 2004 presidential election.

Meanwhile, advocates of reproductive health and rights are by definition on the defensive and in danger of losing real ground. Their challenge in the coming period is to strategically highlight the extreme nature of the threats to sex education, family planning and the right of women to obtain a safe, legal abor-

tion and then to use the opening to offer positive alternatives.

The Landscape

Unquestionably, legislative support for prochoice causes has eroded between the 107th Congress and the 108th. The House of Representatives is now slightly more Republican and more hostile to reproductive health programs and reproductive rights policies than the last one. About one-third of the House remains solidly prochoice, but the elections depleted the ranks of members whose votes may go one way or the other depending on the question presented and concomitantly increased the number of lawmakers who are consistently antichoice.

The new Senate, meanwhile, remains relatively closely divided, even with the net loss of three dependable prochoice votes. Depending on the specifics of the issue, the timing and the context, it is still quite possible to envision prochoice and pro-family planning advocates eking out a bare majority on certain issues. But, in most cases, majority support may not be enough to trump a hostile process. With 51 Republicans and 48 Democrats (and independent Sen. Jim Jeffords [VT] continuing to caucus with the Democrats), Republicans now chair and dominate the committees; in almost all cases they are socially conservative and antiabortion. The Republican, antichoice leadership has the power to decide what bills to take up, in what form and when.

In short, opponents of reproductive health and rights now largely control

the Senate agenda and will frame its major debates. From time to time, the required 41 senators will unite in a filibuster to prevent debate on a particular matter from moving forward, which at a minimum can offer an opportunity to air an alternative view and occasionally even can yield some legislative or political compromise. This is a tactic that senators may be expected to use only sparingly, however, else it could backfire. As a result, and in sharp contrast to the situation in the last Congress, the Senate no longer can be counted on to apply a brake on the conservative social agenda of the Republican Party leadership.

Pent-Up Hostility

The centerpiece of that agenda, at least in the short-term and on the legislative front, remains enactment of the Partial-Birth Abortion Ban Act, twice vetoed by President Clinton. In *Stenberg v. Carhart* in 2000, the U.S. Supreme Court ruled a similar Nebraska law unconstitutional because it criminalized abortion procedures prior to fetal viability and regardless of the implications for the woman's health. Nevertheless, the House for the sixth time reaffirmed its support for the legislation last summer. Last year's prochoice Senate leadership declined to place the measure on the Senate schedule. The current leadership guarantees its consideration. Well over half the Senate supports the bill, and the president stands eager to sign it into law.

Two other antiabortion bills that the House passed during the last Congress are lined up behind this one and may also be sent to the president soon. The Child Custody Protection Act would make it a crime for any person to help a minor cross state lines to obtain an abortion as a way of avoiding her state's parental consent or notice law. The Unborn Victims of Violence Act, meanwhile, is part of a stepped-up antiabortion campaign to "personify"

the fetus in the public's mind and in the law. It would create a separate criminal offense for injury or death to the fetus when a pregnant woman is harmed during the commission of a federal crime; the perpetrator could be charged with murder of the fetus even if unaware that the woman was pregnant. (The Bush administration's unprecedented executive action to make fetuses eligible beneficiaries under the State Children's Health Insurance Program as a means of expanding prenatal care to low-income women is a similar example of the "personification" campaign—see related story, page 3.)

Finally, a sweeping new antiabortion bill that the House passed without fanfare at the end of the last congressional session also could see Senate action this year. Purportedly designed to protect "conscientious objection" to abortion across the country, the Abortion Non-Discrimination Act would prevent government agencies at any level from enforcing any law or policy that would require a person *or an entity* to provide abortion services or referrals, to provide medical training in abortion, or to pay for or reimburse the cost of an abortion. The measure would jeopardize the federal Title X guarantee that women confronting problem pregnancies will be offered nondirective counseling about all of their options and referrals on request. Policies such as those in California and New York City requiring hospitals to provide training in abortion for obstetrics and gynecology residents (while allowing individual residents to opt out) would be rendered moot. And a state could not mandate insurance coverage of abortion or abortion referrals for its own citizens, because the "conscience" of an insurance company or commercial health plan would trump a woman's right to information about her medical options.

These bills will proceed even as the Bush administration and the new

Senate Republican majority synchronize their efforts to fill a host of federal judicial vacancies with reliably conservative judges, probably including some individuals who were rejected just last year. And though by no means certain, it is also widely expected that at least one of the current members of the U.S. Supreme Court will retire this year. Whenever vacancies on the high court occur, a battle royal over the new nominee undoubtedly will center on the fate of *Roe v. Wade*.

The Risk of Overreaching

Late last year, Concerned Women for America's Michael Schwartz was quoted as saying that he would be "stunned and seriously disappointed" if every piece of antiabortion legislation that was left pending by the last Congress is not law by the end of the 108th. Conducting an all-out antiabortion campaign over an extended period, however, carries risks for an administration that constantly seeks to reassure the public of its compassionate side. Moreover, it could further antagonize business interests, another key constituency of the Republican party and one that has its own hopes and expectations.

This tension was laid bare during the post-election session last year when antiabortion activists defeated major bankruptcy reform legislation, a high priority of the financial services industry, that had passed both houses of Congress by wide margins. They killed the bill over a small provision, which had been negotiated for over a year between prochoice Sen. Charles E. Schumer (D-NY) and antiabortion leader Rep. Henry J. Hyde (R-IL), that would have prevented antiabortion protesters from declaring bankruptcy to avoid paying court-ordered fines for violating federal law. In doing so, social conservatives consider that they have put Republican leaders on notice; according to a recent article in *National Journal*, business interests that have contributed millions of

dollars to Republicans over the years are "threatening retribution" against Republicans who abandoned the legislation. Both sides will continue to vie to set the political agenda.

On another front and in a different way, the administration's more overtly hostile actions towards family planning already could fall into the category of overreaching. Early on, the administration had cut off U.S. support for the International Planned Parenthood Federation and the United Nations Population Fund (UNFPA). But the last straw may have come in December at a meeting of 30 Asian/Pacific nations in Bangkok whose purpose was to discuss implementation of the International Conference on Population and Development Program of Action that was agreed to in Cairo in 1994, the core of which is to guarantee and promote reproductive health. The United States, a participant by virtue of its Pacific territories, essentially hijacked the meeting when it alone balked at merely reaffirming support for the consensus document.

The U.S. position as now articulated by the Bush administration is that supporting the Cairo program of action is tantamount to supporting the promotion of abortion. This, notwithstanding that the document explicitly states that abortion should not be promoted as a method of family planning and merely that where abortion is not against the law, it should be safe. Accordingly, U.S. efforts to redefine the Cairo consensus met a wall of resistance from all other participating country delegations, who concluded that the United States was using the abortion issue as a smoke screen to hide its fundamental hostility toward contraceptive services programs for pregnancy prevention and promotion of condom use to prevent HIV/AIDS.

The official U.S. statement delivered by Assistant Secretary of State

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Arthur E. Dewey only reinforces this view. The United States “promotes abstinence for the unmarried and fidelity for those who are married” as *primary* HIV prevention strategies, he said, since “condoms are simply not 100% effective.” The most stunning and revealing statement came on the meeting’s last day, however, when the U.S. delegation asserted that since “the United States supports innocent life from conception to natural death, the United States does not support, promote, or endorse abortions, abortion-related services or the use of abortifacients.” This is the first time, as a matter of official policy, that the United States has gone on record in a way that seems to support the most extreme faction of the far right movement, which consistently has taken the position that “artificial” contraceptives, including the IUD and the birth control pill, are really “abortifacients.”

Seizing the Opportunity

The Bush administration and its allies in control of Congress are intent on pursuing policies and programs both at home and abroad that

reflect their desire to eliminate abortion and encourage total abstinence for all unmarried people but that are not likely to result in either. With the spotlight on this agenda, reproductive health and rights advocates can draw attention to the kinds of policies and programs that have been demonstrated to work and that have widespread public support.

Comprehensive sex education certainly is one. Proponents will have new chances to convince an unaware or disbelieving public that the far right’s effort to fund the promotion of abstinence exclusively, at the expense of accurate information on the merits of other risk-reduction strategies, really is, as dubbed by Human Rights Watch, an “ignorance-only” campaign. This year, Congress will consider renewal of the nation’s welfare law, which currently authorizes \$50 million annually to provide the abstinence-unless-married message as the only acceptable way for people to prevent pregnancy and disease. And now, since the administration appears intent on going global with this message as its major HIV prevention strategy in developing countries, the stakes and the potential for raising the public consciousness will be even higher.

The far right’s intensified and increasingly explicit campaign against contraceptive services programs, both at home and abroad, provides another clear opening. Beyond the attacks on the international family planning program that have been underway from day one of this administration, social conservatives are now likely to reset their sights on the domestic program’s ability to provide confidential contraceptive services to teenagers and on creating a “wall of separation” between the Title X program and abortion.

President Bush said on January 22, 2001, that “one of the best ways to prevent abortion is by providing quality voluntary family planning services.” He took note of the United States’ long history in providing voluntary family planning services in order to enhance people’s ability “to make free and responsible decisions about the number and spacing of their children.” Now would be a good time for the administration and Congress to be reminded of the president’s statement, the reasons for U.S. involvement in family planning and the case for its continuing commitment to achieving this goal. ☉



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