



CRS Issue Statement on Abortion, Family Planning, and Reproductive Health

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Congress has maintained a longstanding interest in abortion since 1973 when the U.S. Supreme Court first recognized that a woman has a constitutional right to choose whether to terminate her pregnancy. Since the Court's decision in *Roe v. Wade*, there have been numerous efforts in Congress to restrict the availability of abortion through proposed constitutional and statutory amendments, and through funding restrictions attached to appropriations and authorizations measures. Legislation that addresses government interference with abortion, the abridgement of state parental consent and notification requirements, fetal pain, and the funding of international family planning organizations is expected in the 111th Congress.

The 2008 election and the increased Democratic majority in Congress appear to have focused greater attention on the Freedom of Choice Act ("FOCA"), a measure that would codify the Court's decision in *Roe* by stating that a government may not deny or interfere with a woman's right to choose to bear a child, to terminate a pregnancy prior to viability, or to terminate a pregnancy after viability where termination is necessary to protect the life or health of the woman. The FOCA would authorize an aggrieved individual to obtain appropriate relief, including relief against a government, in a civil action. The incoming President has indicated that he would sign the FOCA if it was approved by Congress.

A new rule that implements existing federal health care conscience protection laws could result in congressional activity. The rule, issued by the Department of Health and Human Services in December 2008, has proven controversial because some believe that it would make it more difficult to obtain health care services and information related to abortion and contraception. Legislation that would appear to have halted the new rule was introduced in the 110th Congress. The Protecting Patients and Health Care Act was introduced in the House and Senate, but was not considered by either chamber. Rescission of the rule through administrative action is likely. However, the 111th Congress could also respond to the rule with legislation that amends the underlying conscience protection laws.

Congress may also consider proposals designed to prevent the abridgement of state parental consent and notification requirements. The Child Interstate Abortion Notification Act ("CIANA"), which would prohibit the knowing transport of a minor across state lines with the intent that the minor obtain an abortion, has been introduced in the past two Congresses and is expected to be reintroduced in the 111th Congress. The CIANA would also require a physician performing an abortion on a minor from another state to notify the minor's parents before the abortion could be performed.

Concern over the possible pain experienced by a fetus during an abortion is likely to result in the reintroduction of the Unborn Child Pain Awareness Act ("UCPAA"). The UCPAA would require an abortion provider or his agent to notify a pregnant woman of the fetus's ability to experience pain prior to an abortion. The measure would also require the abortion provider or his agent to present the pregnant woman with a brochure that describes the availability of pain-reducing drugs that could be administered to the fetus to reduce the experience of pain. Questions remain, however, over a fetus's neurological capacity to experience pain. A clinical review in the *Journal of the American Medical Association* found that the fetal perception of pain is unlikely before the third trimester and that there is little to no evidence on the effectiveness of direct fetal anesthetic or analgesic techniques.

Congress will likely consider abortion and abortion-related matters in the context of appropriations for various federal agencies. Longstanding funding restrictions related to abortion, for example, have been included in some annual foreign operations appropriations measures. Two

issues in particular—the Mexico City policy involving funding for foreign non-governmental organizations, and restrictions on funding for the U.N. Population Fund (UNFPA) because of its alleged activities in China—have remained controversial and continue to be prominently featured in the family planning and abortion debate. These policies may be reevaluated in light of the election and the increased Democratic majority in Congress.

Finally, the 111th Congress will likely consider a variety of issues involving family planning and reproductive health. Legislation related to family planning and Title X of the Public Health Service Act, including appropriations measures that could affect the funding of Title X family planning initiatives, is expected.

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