

November 30, 2006

TO: Interested Parties**FROM:** Rachel Laser, Senior Policy Advisor**SUBJECT:** Messaging on the H.R. 6099 (Unborn Child Pain Awareness Act)

H.R. 6099, the Unborn Child Pain Awareness Act, is on the House of Representatives' calendar for a vote as early as next week.

This Act would require every abortion provider to offer to every woman seeking any type of abortion starting at 22 weeks gestational age a brochure containing information about the capacity of her fetus to feel pain during an abortion (a scientifically unsettled fact for that gestation point). The woman must then fill out a form requesting or refusing pain medication for the fetus and affirm that she has read: "There is substantial evidence that the process of being killed in an abortion will cause the unborn child pain..." Abortion providers who fail to comply with the bill's requirements would face potentially serious civil actions by the Attorney General, their State medical licensing authority, the pregnant woman, or the parent or legal guardian of a minor. The bill also defines pregnancy as starting at fertilization (instead of the current medically accepted definition that pregnancy begins with the implantation of a fertilized egg into the woman's uterus).

H.R. 6099 follows in a line of similar legislation that social conservatives have devised in their attempt to regulate (rather than ban) abortion and win what we call "the battle of reasonableness" in the abortion debate. These efforts include the Unborn Victims of Violence Act, the Partial-Birth Abortion Ban Act and the Child Custody Protection Act. These bills, while having very narrow applicability and only a miniscule effect on the abortion rate, nevertheless helped those on the right to dominate the abortion debate.

Third Way has been recommending a new framework for progressives—reducing the number of abortions in America, while protecting the right to have one. This framework acknowledges the moral complexities associated with abortion issues, while still maintaining a commitment to abortion rights. It also frames conservatives as those who seek to reduce abortions through bans and jail. It also helps expose conservative hypocrisy in erecting challenges to birth control, an undeniably potent method of preventing unintended pregnancies and reducing abortions.

The goal of abortion reduction also provides a framework for approaching H.R. 6099. We are fully cognizant of the daunting policy challenge that this bill poses. Progressives seek to preserve the right to an abortion without coercion or penalties, but they do not want to undermine their commitment to the ethical and humane treatment of developing life.

Given the ethical, moral and policy complexities of H.R. 6099, Third Way is taking no formal position on the bill. We provide the talking points below to underscore the point that this bill—like several of its predecessors—does nothing to address the root causes of abortion in America.

- **The conservatives' last chance at an abortion initiative in this Congress still does nothing to reduce the number of abortions in America:** Conservatives have one last chance before Congress switches hands to place sound abortion policy over politics. H.R. 6099 misses this opportunity. It does not address any of the root causes of abortion—unintended pregnancies and the need for increased social supports for pregnant women and parents. Instead, it makes it more emotionally challenging for women who have already decided to have an abortion. Moreover, it would apply only to a miniscule number of abortions. According to the Centers for Disease Control and Prevention, a mere 1.4% of abortions occur at 21 weeks' gestation or later (and this bill applies starting at 22 weeks' gestation).¹
- **President Bush and this Congress have made an insignificant dent in reducing the number of abortions:** Every year in America, more than one in every five pregnancies end in abortion, totaling 1.3 million abortions—a number that most Americans would agree is far too high. Since the early 1990s, the rate of decline in abortions has actually slowed.² And President Bush just appointed Dr. Eric Keroack, who has a history of opposition to contraception, to be the HHS official in charge of the nation's only dedicated family planning program, Title X.
- **H.R. 6099 exposes social conservatives' opposition to birth control and fertility clinics:** The bill's definition of pregnancy starting at fertilization makes clear conservatives' opposition to fertility clinics and even basic birth control. Under the bill's definition of pregnancy, a fertility clinic would be guilty of terminating endless pregnancies (in disposing of unused frozen fertilized eggs). Moreover, birth control ranging from the pill to the IUD to emergency contraception, all of which can work at times by preventing the implantation of a fertilized egg, could be considered abortion-inducing drugs. Ironically, fertility clinics enable babies to be born and birth control prevents unintended pregnancies and thus reduces abortions.

¹ Strauss LT, Gamble SB, Parker WY, Cook DA, Zane SB, Hamdan S. Abortion surveillance--United States, 2003. MMWR Surveill Summ. 2006 Nov 24;55(11):1-32.

² Guttmacher Institute "Estimates of U.S. Abortion Incidents" 2005.