

A Serious Threat

The Freedom of Choice Act would jeopardize human life and freedom of conscience in the United States

BY PATRICK E. KELLY

On Jan. 6, a new U.S. Congress will be sworn in and will immediately take up new legislative business. Two weeks later, on Jan. 20, President-elect Barack Obama will take the oath of office as the 44th president of the United States.

In the months and years that lie ahead, a very real danger exists that this new Congress will introduce a radical piece of legislation known as the Freedom of Choice Act (FOCA). If passed, and signed into law by the new president, this single piece of legislation would usher in a massive expansion of abortion "rights," the scale of which has not been seen since the U.S. Supreme Court's ruling in *Roe v. Wade*.

CAMPAIGN PROMISES

In the early days of the 2008 presidential campaign, then-candidate Barack Obama told an audience at a Planned Parenthood gathering that on the "fundamental issue" of "choice" he "will not yield," just as, he said, "Planned Parenthood will not yield." During the question-and-answer session that followed, he was asked what he would do at the federal level to ensure access to abortion and to ensure that his judicial nominees uphold *Roe v. Wade*. He responded, "The first thing I'd do as president is sign the Freedom of Choice Act."

FOCA is the most radical piece of abortion legislation ever considered by the U.S. Congress. Its goal is to create a fundamental right to

abortion and to sweep away the more than 300 federal, state or local regulations that currently exist. By establishing abortion as a "fundamental right," FOCA would create an unlimited legal right to abortion that would go far beyond what the U.S. Supreme Court ever contemplated in the *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992) decisions. The language of FOCA is dangerously expansive, barring all current abortion restrictions and prohibiting any in the future.

The progress made by the pro-life movement over the past 35 years in limiting and reducing abortions through modest regulations could vanish overnight.

FOCA prohibits any state or federal government entity from "denying or interfering" with abortion rights or "discriminating" against the exercise of these rights. In effect, even the most reasonable restrictions on abortion would be off-limits as unlawful interference. This means that the progress made by the pro-life movement over the past 35 years in limiting and reducing abortions through modest regulations could vanish overnight.

On the federal level, FOCA

would allow the federal government to use tax dollars to actively promote abortion both domestically and overseas. Not only would it immediately overturn the Partial Birth Abortion Ban Act of 2003, but it would invalidate the Hyde Amendment, which currently restricts federal funding of abortion. Likewise, FOCA would reverse the Mexico City Policy, which prohibits U.S. taxpayer dollars from going overseas to non-governmental organizations that perform or promote abortion, and it would allow abortions to be performed in U.S. military hospitals.

Additionally, FOCA would deprive U.S. citizens of the rights they now possess to enact modest abortion regulations. For instance, it would invalidate all state laws related to pre-abortion counseling, parental notification for children under the age of 18 and restrictions on late-term abortions. It would outlaw informed-consent precautions that disclose to women the physical and emotional risks of abortion, and laws allowing pregnant women to view ultrasounds before they choose abortion. FOCA would even remove laws mandating that abortion procedures be performed by licensed physicians, as well as laws that protect women from unsafe abortion clinics. And tragically, it would actually nullify state laws that protect infants who are born alive after failed abortion attempts.

By saying that government may not "discriminate" against the right

to an abortion, FOCA opens the door to require that taxpayers in every state fund abortion. Abortion facilities would be deregulated, and abortion-on-demand would become a right that government is obliged to not only provide, but to actively promote.

DRAWING A LINE IN THE SAND

The language of FOCA says that abortion should remain “safe and legal.” Paradoxically, however, it also talks of “reducing the need for abortion.” In response, Cardinal Justin Rigali, chairman of the U.S. bishop’s Committee on Pro-Life Activities, sent a letter to every member of Congress in September 2008, urging opposition to FOCA. He reminded them that we cannot “reduce abortions by promoting abortion.”

Experts agree that the modest restrictions on abortion that currently exist in state and federal law have been effective in reducing abortion rates and saving lives. They suggest that the current patchwork of such

laws is responsible for tens of thousands of fewer abortions annually.

These modest restrictions not only save lives, but they are also favored by a majority of Americans. According to a recent nationwide survey conducted for the Knights of Columbus by the Marist College Institute for Public Opinion, 92 percent of Americans believe there

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should be some restrictions on abortion. According to the poll, 75 percent of Americans, including 84 percent of practicing Catholics, favor

parental notification when someone under the age of 18 is planning to have an abortion. And a large majority of Americans — whether describing themselves as pro-life or pro-choice — favor restrictions on late-term abortions. Clearly then, FOCA is out of step with American public opinion.

In November, during their annual fall meeting in Baltimore, the U.S. Conference of Catholic Bishops (USCCB) stated their univocal opposition to FOCA. Speaking at the direction and request of the entire body of bishops, USCCB president Cardinal Francis George of Chicago said, “A good state protects the lives of all.” He then turned his attention to the threat posed by FOCA. “The danger,” he explained, “is that a bad court decision [Roe] will be enshrined in bad legislation that is more radical than the 1973 Supreme Court decision itself.”

Cardinal George warned that FOCA would have lethal conse-

COLUMBIA CONVERSATION

When Does Life Begin?

An Interview with
Dr. Maureen L. Condic

BY COLUMBIA STAFF

When addressing ethical and political questions about the value and protection of innocent human life in its earliest stages, many argue that the answer to when life begins is either unknowable or unresolved. Yet, according to Dr. Maureen L. Condic, a senior fellow at the Westchester Institute for Ethics & the Human Person and an associate professor of neurobiology and anatomy at the University of Utah School of Medicine, such claims are scientifically unfounded and only confuse the debate.



Dr. Condic is the author of “When Does Human Life Begin?: A Scientific Perspective.” A detailed and authoritative report, known as a white paper, it was published by the Westchester Institute in October. She discussed with *Columbia* the findings of her paper,

which can be downloaded free at www.westchesterinstitute.net.

COLUMBIA: There are many who claim that the question of when human life begins is a matter of personal, private or religious belief. What does modern science say?

DR. CONDIC: The question of when human

life begins is intimately related to a number of complex and emotionally-charged topics, including abortion and human embryonic stem-cell research. Because the issues surrounding human embryos are so thorny and difficult, personal opinions can vary considerably — a fact that leads some to conclude the question of when life begins cannot be conclusively resolved. However, this question is first and foremost a matter of biology: When does a new individual of the species *Homo sapiens* come into existence? Multiple scientific studies have examined the earliest stages of human life, and there is only one answer that is consistent with the scientific facts: A new human life commences at the moment of sperm-egg fusion, an event that occurs in less than a second.

Part of the confusion surrounding the question of when human life begins is that, for many people, the biological facts of human life are not as important as the ethical or social questions surrounding the embryo. Some people willingly concede that a human life begins at the moment of sperm-egg fusion, and yet still question what *value* society ought to place on human life at this early stage. As noted by Father Richard John Neuhaus in the foreword to my white paper, the question of



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quences for prenatal human life, adding, "FOCA would have an equally destructive effect on the freedom of conscience of doctors, nurses and health care workers whose personal convictions do not permit them to cooperate in the pri-

vate killing of unborn children." Several bishops at the meeting speculated that FOCA could force Catholic hospitals to close their doors rather than cooperate in evil. Cardinal George echoed these concerns, warning that FOCA could not only threaten Catholic health care, but Catholic Charities as well.

Turning to the issue of November's election, Cardinal George said the Catholic bishops of the United States hope to work with President-elect Barack Obama and members of the new Congress for the "common

good of all." He warned, however, that the results of the recent election should not be "misinterpreted" as a referendum for pro-abortion policies. To the contrary, the cardinal argued, any attempt to aggressively push pro-abortion legislation would "permanently alienate tens of millions of Americans, and would be seen by many as an attack on the free exercise of their religion."

HOW WE GOT HERE

Versions of FOCA have appeared in Congress over the years, going back to 1989. These versions were introduced at various times throughout the 1990s and early 2000s when some congressional leaders were concerned that the Supreme Court might overturn *Roe v. Wade* or significantly limit the abortion "right" it granted.

The most recent version of FOCA was introduced on April 19, 2007, the day after — and as a direct result of — the Supreme Court's ruling in *Gonzales v. Carhart*, the deci-

COLUMBIA CONVERSATION

whether [an embryo has] the same rights and value as human beings at more mature stages of development is one that is open to discussion. However, the question of whether a human being *exists* following sperm-egg fusion is a matter of *science*, and is clearly resolved by the scientific data.

In your white paper, you make a distinction between *scientific* and *arbitrary* criteria to determine when the life of a new human being begins. How do such criteria differ? Why is it important to answer the question about human life scientifically?

In most cases, human beings originate from the fusion of two, pre-existing human cells: a sperm from the father and an egg from the mother. Sperm and egg are living cells that in turn originate from other cells that precede them in the testes and ovaries of the parents. This continuity of life, with living cells generating new types of living cells in an ongoing progression, has led many to believe that any decision about when the life of a new individual human being commences must be arbitrary — that is, we simply point to some place along the progression of life and decide more or less at random, "This is when life begins." However, if we make such an arbitrary deci-

sion, then the important question of what is a human being and what is not becomes entirely a matter of personal taste and the power to impose this taste on others. Just as in the case of slavery, where powerful slave-owners could decide whether an individual was a person or mere property, if we accept an arbitrary definition of when life begins, deciding who is a human being and who is not reduces the issue to a question of power.

Central to the majority opinion of the 1973 U.S. Supreme Court case *Roe v. Wade* is the claim that "those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus" about when life begins, adding there is "a wide divergence of thinking on this most sensitive and difficult question." Does such a widespread disagreement really exist?

The critical question for determining whether there is a consensus about when human life begins is this: Would any knowledgeable scientist or physician contest either the information presented in my paper or the logic of the argument itself? The data I present is entirely uncontested. Multiple studies by independent groups published in reputable journals are all in

complete agreement. Clearly, the facts regarding when life begins have been demonstrated beyond the possibility of any reasonable objection. Similarly, the logic underlying the interpretation of this data is standard across the entire scientific profession and accepted by all scientists. Therefore, the evidence, the analysis and the conclusions they support should be universally accepted by all experts in the field.

Does this mean that there is a "consensus" on when life begins? As noted earlier, many people elect to ignore scientific evidence in favor of their own personal, political or religious convictions regarding when life begins. This is true even among scientists and physicians. Consequently, I would imagine some "experts" will object to my conclusions for personal reasons — thereby lending the impression that a consensus does not exist. However, such detractors would be unable to raise substantive, *scientific* objections, and therefore the data, the argument and the conclusions would stand. Again, many conflate the question of "When does human life begin?" with the more nuanced and difficult question of "When does human life have value?" On this ethical question, we are indeed far from a consensus. But on the question of biology, there can be no substantive disagreement.

sion that upheld the federal ban on partial-birth abortion. This version took particular aim at the Court's *Gonzales* ruling, saying that it threatened *Roe* and "failed to protect a woman's health." Senator Barbara Boxer (D-Calif.) introduced the Senate version of the bill, and it quickly garnered 19 influential co-sponsors, including then-Senator Barack Obama. A companion version of the bill was introduced in the House of Representatives by Congressman Jerry Nadler (D-N.Y.). It garnered 108 co-sponsors.

Despite its apparent support, the bill was never brought to the floor of the House or Senate. On May 3, 2007, just two weeks after FOCA was introduced, President George W. Bush sent a letter to both Senate Majority Leader Harry Reid and Speaker of the House Nancy Pelosi stating that there should be "no misunderstanding" of his position. The president's letter pledged that he would "veto any legislation that

weakens current federal policies and laws on abortion, or that encourages the destruction of human life at any stage." Certain of a presidential veto, supporters considered a congressional vote on FOCA to be futile.

Later this month, however, with a new Congress and a new president, the balance of power in Washington will shift. Both the House and the Senate will have heftier pro-choice majorities than before, and for the first time the White House will be occupied by a president who has pledged to sign FOCA. Even if the bill's sponsors decide it would not be politically expedient to introduce it immediately, the serious threat that FOCA poses to human life and to Catholic health care should be a wake-up call to all Catholics, especially Knights of Columbus.

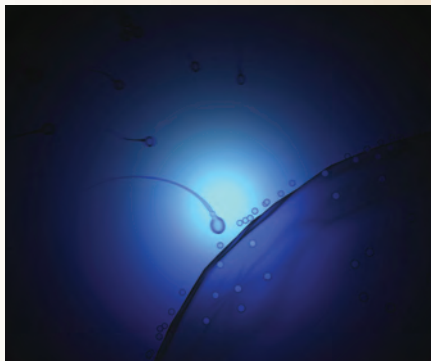
FOCA would deregulate the abortion industry in America, and it would not reduce the number of abortions. The already staggering number of 1.1 million abortions annually in

TAKE ACTION

Contact your elected representatives and urge them to oppose the Freedom of Choice Act. Congressmen and Senators can be reached by fax, e-mail or phone. Call the U.S. Capitol switchboard at (202) 224-3121 or call the members' local offices. Full contact information can be found online at www.senate.gov and www.house.gov.

the United States would go up, not down. By invalidating common-sense restrictions on abortion — restrictions that the majority of Americans favor — FOCA threatens the lives of women, their unborn children and the conscience rights of health care professionals and institutions. ■

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A new human life commences at the moment of sperm-egg fusion, an event that occurs in less than a second.

What happens at the "moment of conception" that demonstrates a new human being comes into existence? In other words, how do we know that a human embryo is a human being from the beginning?

The phrase "human being" is a very simple one, meaning "an entity of the type

"human." Another way of saying "human being" is "human organism." Thus, determining whether a human *being* has come into existence is a simple matter of biology, a question that is much easier to resolve than the question of whether a human *person*, who is the subject of human rights, has come into existence.

When does a human being come to exist? Following sperm-egg fusion, a single cell is generated, the human zygote or one-cell embryo. To decide if this cell is a human being, as opposed to merely a human cell, we need to consider the difference between a cell and an organism. The key feature of an organism is that all of the parts of the organism work together in a coordinated manner for the good of the entity as a whole. In the case of the one-cell human embryo, the scientific evidence clearly indicates that all parts of the zygote — those contributed by the mother and by the father — work together from the beginning in a highly coordinated way to promote the life, health and maturation of the embryo itself. The one-cell embryo functions like an organism to generate the structures and relationships that are required for its own, ongoing development — and it does this from the very moment

of sperm-egg fusion onward. The embryo functions from the beginning like an organism and is therefore a human being; a whole and complete member of the human species at the earliest stage of life.

If fertilization is an event, resulting in a unique, individual human being, what implication does this have with regard to political and ethical debates of our time?

All sound public policy must be based on the best available facts. Starting with the facts does not ensure that policy will be just and reasonable, but it is a necessary first step. For a long time, political debates over embryo-related issues have ignored the factual evidence regarding what the embryo is and when it comes to be. Ignoring the facts has provided a convenient foil for those who prefer to believe that the question of when life begins must be left up to individual choice. Clearly, we must move beyond the false neutrality of "Nobody knows when life begins" and substantively address the ethical issues surrounding human embryos. It is my hope that a clear presentation of the scientific evidence will help to ground future debates on scientific facts, rather than on mere opinion, preference and politics. ■