The March for Life and Congressional Action: Good News and Bad

The good news is that the March for Life, held January 22, was again a great success, with huge crowds of joyful young people and many associated side events throughout Washington, DC. Some long-time observers and participants thought it might have been the largest crowd ever. In any case, I stood at the corner of Constitution Avenue and First Street, where the marchers turn right to go to the Supreme Court, for about two hours, and the marchers continued past, ten abreast in an unbroken line, for the entire time, some of them no doubt encouraged by the election in November of congressional majorities in both houses officially committed to the pro-life position.

And that leads to the bad news. The bad news is the event that did not happen. Congressional leadership had promised to hold a vote on the Pain-Capable Unborn Child Protection Act on the day of the march. The bill, H. R. 36, prohibits abortions if “the probable post-fertilization age … of the unborn child is 20 weeks or greater.”¹ The same bill had passed the House during the previous Congress;² thus, it was assumed that—with increased Republican and, at least putatively, pro-life numbers in the House—it would pass again. Passage of the bill on the day of the march was intended to demonstrate congressional support for the pro-life cause.

However, the vote never happened. In an unanticipated development, several prominent pro-life congresswomen expressed concerns about the bill, objecting to at


least some aspects of its rape exception. The exception provides that if “the pregnancy is the result of rape . . . [and] the rape has been reported at any time prior to the abortion to an appropriate law enforcement agency,” performance of an abortion would not violate the bill. Thus, the bill required that the woman report the rape.

Without the active support of the pro-life congresswomen, the bill could not go forward and was withdrawn.

Congressional leaders continue to say they are committed to passing a ban on abortions at or after twenty weeks’ gestation. Efforts are under way to revise the bill in order to craft a version that all pro-life members of the House will actively, strongly, and publicly support. Among items to consider is whether there should even be a rape exception in the bill. After all, a woman who has suffered a rape would have up to twenty weeks to have an abortion, which should be sufficient time to make that decision. There is no apparent reason why this option should be available after twenty weeks, and a competent politician could, one would hope, make that point effectively in the press.

Another question is whether the findings section of the bill that eventually emerges should be expanded. The current version limits findings to those associated with fetal pain. Should findings about the documented risks to women from late-term abortions be added? Such findings (a) have the virtue of being true, (b) would be made pursuant to the Supreme Court–recognized legislative interest in the health of women undergoing abortion, and (c) would demonstrate that Congress is concerned about the health of the woman, thus avoiding the untrue charge of anti-life forces that pro-lifers do not care about the woman’s health. Presumably adding such findings would make public advocacy of the bill, as well as its defense, easier for House members to undertake.

Still, although failure to pass the Pain-Capable Unborn Child Protection bill on the day of the March for Life was a big disappointment for the marchers and other pro-life Americans, the House did pass another bill that is very important. Though denigrated by the anti-life media as a kind of consolation prize, the No Taxpayer Funding of Abortion and Abortion Insurance Full Disclosure Act (H.R. 7)

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4 The rape exclusion is contained in section 3(a) of the bill, which adds section 1532(b)(2)(B) to chapter 74 of Title 18 of the United States Code.

5 For the Court’s recognition of the legislative interest in protecting women’s health, see generally Planned Parenthood v. Casey, 505 US 833 (1992), and Gonzales v. Carhart, 550 US 124 (2007).
is a vital piece of pro-life legislation. The bill extends the principles of the Hyde amendment throughout the federal government. As readers will recall, the Hyde amendment—which prohibits federal funds from paying for abortions or for insurance covering abortion except in cases of rape, incest, or risk to the mother’s life—is a restriction on funding connected to the Department of Health and Human Services (HHS) and thus applies to Medicaid funding. The amendment is a rider rather than a permanent law, and it is attached yearly to the federal appropriations bill, whereby Congress allocates funds for federal agencies and attaches conditions on the use of those funds. The amendment has been attached to the annual appropriations bill in one form or another since 1976, and it was upheld as constitutional by the Supreme Court in *Harris v. McRae*.  

As a yearly rider that applies only to HHS funding streams, the Hyde amendment thus does not apply to Obamacare, or the Patients Protection and Affordable Care Act, which is funded outside the HHS appropriations process. H.R. 7 remedies these shortcomings by putting the principles of the Hyde amendment into permanent law, prohibiting federal funds (that is, taxpayer dollars) from paying for abortion or abortion-covering insurance, regardless of the funding stream involved (“no funds authorized or appropriated by federal law”). In addition, it has a provision specifically amending Obamacare to prevent the current practice of using federal tax credits (another form of taxpayer dollars) from paying for insurance that includes abortion.

If anyone doubts the hatred anti-lifers have for the principles of the Hyde amendment and for any extension into other areas, one need only consider what has happened with a bill one would imagine would receive bipartisan support, a bill designed to help the victims of trafficking. The Senate bill, the Justice for Victims of Trafficking Act (S. 178), would apply to all victims, whether trafficked for sexual or labor purposes, and would provide assistance to them. But one thing it would not do

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7 448 US 297 (1980).

8 Sec. 101 of the bill amends Title 1 of the *United States Code*. See secs. 301 and 302 of the amended text. See also sec. 308, which provides for an exception where rape, incest, or risk to the mother’s life is involved.

9 See sec. 201 of the bill, “Clarifying Application of Prohibition to Premium Credits and Cost-Sharing Reductions.” For more on the current practice, see my Winter 2014 Washington Insider under “GAO Report.”

10 Anti-life politicians and their allies also hate, of course, the actual Hyde amendment and its prohibition of Medicaid funds being used for abortion, and would like to repeal or eliminate it. For instance, on January 22, more than twenty members of the House wrote to the director of the Office of Management and Budget, asking for its elimination and the elimination of other pro-life riders: “Now is the time to be bold: we fully support the elimination of the Hyde Amendment and related abortion funding restrictions from the Fiscal Year 2016 Budget. These budget riders have a far-reaching impact on women enrolled in Medicaid and Medicare, federal employees and their dependents, Peace Corps Volunteers, Native American women, women in federal prisons, women in immigration detention centers and residents of the District of Columbia.” Letter on file with the author.
is pay for abortions. Because of that, most Senate Democrats, under the leadership of Harry Reid, filibustered the bill.

Thus, it is very good news indeed that the House passed H.R. 7 on the day of the March for Life and sent it to the Senate.

**RHENDA: A Model for Restricting Religious Freedom**

As discussed in the Winter 2014 Washington Insider, the District of Columbia City Council passed the Reproductive Health Non-Discrimination Amendment Act (RHENDA) in December. It is based on a model bill by the pro-abortion group National Women’s Law Center, which has tried to get it introduced in various states and failed. Thus, DC is the front line of a fight that is likely to be renewed with vigor in the states if RHENDA is successful.

To summarize, RHENDA does not permit a pro-life organization (including the Archdiocese of Washington) to ensure that its employees comport with its mission, and it requires pro-life organizations to provide insurance coverage for abortion. Donald Cardinal Wuerl, archbishop of Washington, wrote about the threat RHENDA poses to religious freedom in his Lenten letter “Silencing the Church’s Voice.”

In January, the new mayor of DC, Muriel Bowser, despite the advice of the outgoing mayor, signed the bill but did not transmit it to Congress, as required for it to become law. Instead, in February, she proposed to the DC City Council an “emergency” revision of RHENDA that would eliminate the insurance coverage issue (but did not address the employee conduct issue). However, the revision would be only a temporary measure.

The revision was passed, and RHENDA was transmitted to Congress in early March, triggering a thirty-legislative-day review period that expires May 17. On March 18, Senators Ted Cruz and James Lankford introduced a “resolution of disapproval” in the Senate. On March 20, Cardinal Wuerl and five bishops who chair important committees of the United States Conference of Catholic Bishops sent a letter to the House of Representatives asking it to take action as well. Congresswoman Diane Black (R-TN) introduced House Joint Resolution 43 disapproving RHENDA on April 13.

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13 A leading proponent of RHENDA on the DC City Council, Phil Mendelson, gave assurances to James Landford, chair of the Senate oversight committee, that revision would become permanent: “Emergency legislation [such as the revision] is not permanent, as you may know, but I can assure you that permanent legislation will be enacted before the temporary measure expires, preventing any gap in the law.” Letter of March 20, 2015, on file with the author.


International Day of the Unborn Child

March 25 marked the seventeenth annual observation of the International Day of the Unborn Child. President Carlos Menem of Argentina established the first such day in 1998 in Argentina. He wrote to the other presidents of Latin American countries, urging them to do likewise. He subsequently announced this initiative at the United Nations. In Latin America, where many nations observe this day for religious reasons, another eleven nations have established March 25 as the Day of the Unborn Child through law or civil practice.16

This widespread Latin American commitment to the human right to life of the unborn explains why anti-life forces seek to use international institutions to impose “abortion rights” there. That, in turn, accounts for the extraordinary—and wholly justified—public criticism on this point of the secretary general of the UN, Ban Ki-moon, by the archbishop of Asunción, Paraguay, Edmundo Valenzeula, when Ban visited that nation.17 The battle for life is being fought around the world. The results are important in the United States because, among other reasons, our courts are highly influenced by “international trends.”18

Assisted Suicide:
International and State Developments

On February 6, Canada’s Supreme Court, interpreting its fundamental or highest law, the Charter of Rights and Freedoms, issued an extraordinary decision, *Carter v. Canada*, establishing a right to assisted suicide.19 I use the word “extraordinary” advisedly and to make the point that the decision is wholly out of line with decisions of other Western courts.

As I detailed in my Winter 2013 Washington Insider, neither state courts interpreting state constitutions, nor the Supreme Court interpreting the US Constitution, nor the European Court of Human Rights interpreting the European Convention on Human Rights, nor the High Court in Ireland interpreting the Irish Constitution, nor any important court in the West has found a right to assisted suicide to be implied from the fundamental law. As the Irish court noted just two years ago, “This survey of contemporary case law from other jurisdictions shows that the preponderance of judicial opinion in the U.S., Canada, the United Kingdom and the European Court of Human Rights has been to uphold a ban on assisted suicide. . . . Experience has shown that it would be all but impossible effectively to protect the lives of vulnerable persons and to guard against the risk of abuses were the law [against assisted suicide] to be [overturned by implying a right to assisted suicide under constitutional provisions].”20

18 See, for example, discussion in *Lawrence v. Texas*, 539 US 558 (2003).
The reader will note that Canada was included on this list. The reason was simple: Canada had a high court decision in line with all the other courts against implying a right to assisted suicide. That decision was Rodriguez v. British Columbia (1993). The Carter decision changed all that and broke ranks with the judicial consensus against implying a right to assisted suicide. It remains to be seen what effect it will have on the deliberations of other national and international courts in future cases. Everything about the case—including its assessment of “changed facts”—cries out for it to be marginalized. But I fear it may not be. As noted above, courts, including ours, are influenced by what they see as “trends” affecting human rights. Of course, they should not be—what matters is what the law says, not what some other law allegedly says in some other country. Still, it would be tragic for the United States if the Supreme Court were to reconsider its highly influential decisions establishing that the Constitution does not provide a “liberty” right to assisted suicide. While we appear to be a long way from that happening, a case raising the issue could arise at any time. That, in turn, emphasizes the importance of electing politicians who will nominate and confirm justices to the Supreme Court who understand, as the Canadian court failed to do, that a judge’s job is not to make policy but to apply the law (as enacted by the citizens).

It should be noted that citizens favoring assisted suicide are very active this year. Measures to legalize assisted suicide have been introduced in twenty-two states in the first three months of 2015, compared with seven states at this time a year ago. Still, the vast majority of the states (thirty-eight) criminalize assisted suicide (and another five prohibit it in other ways), while only three states permit it.

In Memoriam: Dr. Jack Willke

In February, the pro-life movement lost a stalwart and a great man, Dr. Jack Willke. Willke was instrumental in spreading the pro-life message far and wide (indeed, globally) through speaking and writing (particularly in his book Handbook on Abortion, first published in 1971). He founded Cincinnati Right to Life and Ohio Right to Life, and served as president of National Right to Life for ten years. He also founded (with Brad Mattes) the Life Issues Institute and International Right to Life Federation (on whose board I serve as the US representative). His inseparable companion and coauthor was his wife, Barb, who was a nurse. She predeceased him by two years. A funeral Mass was held for him in Cincinnati on February 26.

William L. Saunders

21 In Carter, the Canadian court struck down provisions in the criminal code prohibiting assisted suicide for “competent adults who seek assistance as a result of a grievous and irremediable medical condition that causes enduring and intolerable suffering.” It gave the Canadian parliament one year to enact legislation complying with its decision.
