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Why Fight FOCA Now?

The ‘mythical’ bill that could derail decades of progress in the fight against abortion.

By Susan E. Wills

Writing for *Time* magazine, Amy Sullivan recently ridiculed the United States Conference of Catholic Bishops [USCCB] for its “crusade against a mythical abortion bill,” the Freedom of Choice Act. As someone who helps handle pro-life activities for the Conference, allow me to defend our actions — and to demonstrate that her account is rife with inaccuracies and non sequiturs.

The main focus of Sullivan’s article is a nationwide campaign encouraging Catholic laypeople to send postcards to their elected representatives, but Sullivan shows no sign of having read those postcards. She writes that the cards are directed toward the White House, but in fact the sole target is Congress. The message is not limited to FOCA, either; the cards urge members of Congress: “Please oppose FOCA *or any similar measure, and retain laws against federal funding and promotion of abortion.*” These laws are vulnerable right now, and may be weakened or rescinded by Congress as it finalizes the omnibus appropriations bill that passed the House this week.

More broadly, Sullivan’s article boils down to four arguments. All four are based on either untruths or faulty logic.

A MYTHICAL THREAT?

Argument number one is that because FOCA has not yet come before the current Congress, it is “mythical” and unworthy of concern. As mentioned above, of course, FOCA isn’t our only worry: The pending appropriations measures can become vehicles for some aspects of FOCA.

But even if it were the case that no FOCA provision would come into existence until the whole bill went through the legislative process, ignoring FOCA until it’s actually introduced could be a recipe for failure. President Obama didn’t wait to announce his desire to sign FOCA — not only in a 2007 speech to Planned Parenthood, but also as part of his later statement for the 35th anniversary of *Roe v. Wade* — and this commitment was

reaffirmed by his spokesperson shortly after the November election. Congress has a stronger majority in support of “abortion rights” now than it’s had at any time since 1993. The risk to pro-life laws is apparent, so it makes sense for constituents to tell Congress on Day One how they feel about being forced to fund and promote abortion.

It’s especially important to contact Congress early and often because controversial legislation can move fast. In the last Congress, supporters of federal funding for embryonic-stem-cell research introduced a bill on that issue and, without a single hearing or committee markup, simply brought it to the House floor six days later under a closed rule and approved it. When a slightly different bill was later brought to the Senate floor, again without committee hearing or markup, it was immediately sent to the House and approved, avoiding a conference committee. Later in that Congress, a major bill on children’s health insurance was introduced in the House and referred to five committees; it received hearings and markup in none of these committees, but was brought to the House floor and approved the next day. And recently, Congress voted on a thousand-page, nearly-trillion-dollar economic-stimulus package without committee consideration.

If sponsors craft a bill that can garner majority support, FOCA could move from a back room to final approval in days or weeks. It takes months of preparation, planning, printing, and distribution of materials to get tens of millions of individually signed postcards into the hands of members of Congress. (Sullivan’s contention that the bishops announced this campaign after January 22, by the way, is another howler — it was planned and widely known in the Catholic community in November.)

NO NEED TO PUSH FOR ‘ABORTION RIGHTS’?

Some argue that “abortion rights” are safe for the next four years, and that therefore there’s no reason for the abortion movement to push for FOCA now.

Sullivan claims to find evidence for this assertion in a recent 55-page “wish list” sent to the Obama transition team by 63 abortion-rights groups. She writes that the list did not include FOCA among its “top 15” priorities. Not true. Those first 15 items are not the top priorities overall, just the steps the authors think can be completed in the “first 100 days.” And even those 15 include government funding for abortion and the elimination of conscience protections for health-care personnel — part and parcel of FOCA. The document then features FOCA itself as “important legislation” needed to “improve access to abortion care.” That’s on page 15 of the 55-page text.

FOCA is critical to the abortion industry, even with President Obama in the White House. The constitutional basis for *Roe* is shaky, and in recent years, the Supreme Court has been more open to allowing some restrictions on the practice, such as parental-involvement laws and a ban on partial-birth abortion. Abortion-rights advocates are anxious to put abortion on a more plausible legal foundation — to use the legislature, rather than the courts, to bat down laws the American people want. FOCA was most recently introduced immediately after the Supreme Court upheld the federal ban on partial-birth abortion in

April of 2007. Sponsors urged enactment of FOCA to undo this supposed erosion of *Roe*, even though 70 percent of the public supported the law the court upheld.

Sullivan also points out that when FOCA was last seriously taken up in Congress, in 1993, it failed. What she leaves out is that it failed *after* Catholics sent in millions of postcards opposing it, in the Conference's first-ever such campaign on a pro-life issue. Incidentally, for those who think lay Catholics have lost interest in the abortion issue, this year's campaign has received a far larger response from rank-and-file Catholics.

IT'S NOT THAT BAD?

Although some opponents of FOCA have slightly mischaracterized its effects — and we thank Ms. Sullivan for admitting that the USCCB's materials are accurate — FOCA supporters themselves are misleading, at best, when they describe the bill as a simple codification of *Roe*.

FOCA sponsor Sen. Barbara Boxer has said of FOCA that it would eliminate “*any* law, regulation or local ordinance that impinges on a woman's right to choose” and that it “prohibits federal and state governments from discriminating against women who exercise their right to choose. . . . That means poor women cannot be denied the use of Medicaid. . . . That means that abortions cannot be prohibited in public hospitals.”

The latest version of FOCA creates a “fundamental right” to abortion, which no government (federal, state, or local) can “deny” or “interfere with.” It thus endangers a broad range of laws enacted over the last 35 years and upheld under *Roe*. At risk are laws on informed consent, parental involvement in a minor daughter's abortion decision, taxpayer funding, clinic licensing, clinic safety, and partial-birth abortion.

Another provision of FOCA forbids the government to “discriminate” against the choice of abortion in regulating or providing “benefits, facilities, services, or information” to the public. Public hospitals and public health programs offering maternity services would be “discriminating” if they did not also provide abortions.

Law professor Michael Stokes Paulsen writes that FOCA “likely would eviscerate state ‘conscience’ laws protecting the rights of medical providers and individuals not to provide or assist in providing abortions. FOCA would also invalidate state *constitutional* provisions (including state constitutional protections of the freedom of speech or the free exercise of religion) protecting pro-life conscience in such fashion.”

Sullivan says it's a “false claim” that abortions could increase by 100,000 annually as a result of FOCA. On the contrary, the figure is a modest estimate, based on Michael New's exhaustive analyses of the impact of state abortion laws in reducing abortions.

New isn't the only one to arrive at results like these. Researchers at the Guttmacher

Institute, which began as part of Planned Parenthood (the two are no longer formally affiliated), have found that among low-income women, abortion rates are more than *twice* as high in states that fund abortions through Medicaid. According to its sponsors, FOCA would (among many other things) make sure that every state funds abortions through Medicaid.

WHY WORRY ABOUT ABORTION IN AN ECONOMY LIKE THIS?

This is a favorite line of those who oppose the Catholic Church's moral teachings. Some people may find it difficult to do two things at once, but the Church can and does simultaneously carry on pastoral care services, relief services, health care for one-sixth of the patients treated in hospitals each year, secondary and higher education for millions of children, evangelization, teaching, preaching, dispensing sacraments, and so much more. We can even manage to fit in an occasional postcard campaign.

A nation that elevates the destruction of innocent human life to the status of a "fundamental right" and government-funded priority risks losing its basic commitment to the intrinsic rights and dignity of people in general. Our fundamental obligation to help those who are poor, marginalized, and stigmatized by society can only erode if we convince ourselves that it's okay for the government to help kill our young.

— *Susan E. Wills is assistant director for education and outreach of the USCCB Secretariat of Pro-Life Activities.*

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