



SEXUALITY

POLICY

WATCH

Global Implications of U.S. Domestic
and International Policies on Sexuality

by Françoise Girard

SPW Working Papers, No. 1, June 2004

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The Sexuality Policy Watch was constituted in 2002 as the *International Working Group on Sexuality and Social Policy* (IWGSSP). In the last four years SPW has been engaged in research and political activism and has been able to produce a series of policy analyses as well as other materials. In August 2006 we met in Toronto to assess and share the outcomes of our main policy research activities. We decided to change the name of the initiative as to more precisely project the image of who we are and what we do.

**GLOBAL IMPLICATIONS OF U.S.
DOMESTIC AND INTERNATIONAL POLICIES ON SEXUALITY**

by Françoise Girard

Table of Contents

Introduction.....	04
Definitions and distinctions.....	04
Some characteristics of Bush policies on Sexuality.....	06
The policies.....	07
A. Sexuality education.....	07
B. HIV Prevention, treatment and care.....	14
C. Marriage and family.....	17
D. LGBT and other diverse sexualities.....	20
E. Abortion and other reproductive health services.....	22
F. UNFPA.....	26
G. Research on sexual behavior, especially on LGBT individuals and sex workers.....	27
H. Trafficking and sex work.....	29
Conclusion	32

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Introduction*

The Bush Administration came into office in January 2001 determined to implement its far-right moral agenda on sexuality and sexuality-related matters. In fact, the first measure adopted by President Bush on taking office was to reinstate a "global gag rule" that requires foreign nongovernmental organizations to withhold information from pregnant women about legal abortion services, and to sacrifice their right to engage in public debate on abortion, on pain of losing U.S. funds for family planning.

Over previous decades, conservatives in government had already put in place some pieces of this agenda, often with the support of self-styled moderates (such as President Clinton). The focus, then and now, was to *regulate and control non-orthodox expressions of sexuality* - that is, anything except the conjugal and heterosexual kind - in the context of traditional gender roles. The poor, the marginalized, and persons of color were, and remain, particular targets.

Policies to assert sexual control, particularly over the poor, have long historical precedents. One of many examples is the Hyde Amendment, which cut federal funding for most abortions three years after the U.S. Supreme Court's 1973 recognition of women's right to abortion in *Roe v. Wade*.¹ When both Houses of Congress came under Republican control in 1994, additional elements of the right-wing agenda were adopted through Congressional action, with the acquiescence of the Democrats. Welfare reform proved to be the privileged point of entry, targeting poor, unmarried, women and girls - described as most at risk of having children out of wedlock - for various marriage promotion measures, and paving the way for abstinence-only-until-marriage education.

Since President Bush came into power, the White House has adopted a host of policies and rules and reinforced existing measures that have systematically attacked human rights in matters of sexuality, at home and abroad. It has taken some time for the true negative

effects of some of these policies to manifest themselves; the breadth of these policies is still not widely understood, even by informed observers. Yet, in recent months, aspects of the Bush "sex policing" drive have come into clearer focus as a renewed push is being made by the Republican leadership to mobilize its religious right-wing base for the 2004 elections.

This paper identifies and analyzes Bush Administration policies and actions regarding sexuality, both at home and abroad. While many of these measures have been put forward directly by the Administration, some have been promoted by allies (certain Republican Representatives in Congress play that role consistently) with White House support. It also seeks to highlight how some of the Administration's broader, cross-cutting policies, such as its faith-based initiative, are magnifying the impact of Bush Administration policies on sexuality. Throughout, this paper will seek to tease out the international implications of these policies for actors in other countries, whether at the national and local level or within the UN system.

Definitions and distinctions

This analysis is based on the working definitions of sexuality, sexual health and sexual rights used by the World Health Organization,² which draw on existing international law,³ international consensus agreements on sexual and reproductive health and women's rights,⁴ and the work of a number of experts and organizations in the field of sexuality. These definitions take a broad approach to sexuality and include topics such as sexual orientation,

² World Health Organization, Technical Consultation on Sexual Health, *Working Definitions*, Geneva, 2002. Available from: www.who.int/reproductive-health/gender/sexual_health.html#2, accessed 4 September 2003.

³ In particular, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1979 Convention on the Elimination of Discrimination Against Women, and General Comment no. 14 on the right to the highest attainable standard of health, issued by the UN Committee on Economic, Social and Cultural Rights in 2000.

⁴ Most notably, the Program of Action of the 1994 International Conference on Population and Development and the Platform for Action of the 1995 Fourth World Conference on Women.

* Note: Work on this text was completed on March 4, 2004.

¹ For in-depth analysis of these trends, see Rosalind Petchesky, *Abortion and Woman's Choice*, 1990; Linda Gordon, *Woman's Body and Woman's Choice*, 1990.

sexuality education, reproduction, and marriage. This paper, therefore, covers a range of these topics.

WHO's Working Definitions (2002)

Sexuality

Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy, and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, and religious and spiritual factors.

Sexual Health

Sexual health is a state of physical, emotional, mental and social well-being related to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected, and fulfilled.

Sexual Rights

Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus documents.

These include the right of all persons, free of coercion, discrimination and violence, to:

- the highest attainable standard of health in relation to sexuality, including access to sexual health including reproductive health care services;
- seek, receive and impart information in relation to sexuality;
- sexuality education;
- respect for bodily integrity;
- choice of partner;
- decide to be sexually active or not;
- consensual sexual relations;
- consensual marriage;
- decide whether or not, and when to have children; and
- pursue a satisfying, safe and pleasurable sexual life.

The responsible exercise of human rights requires that all persons respect the rights of others.

Bodily integrity, which is listed in the definition of sexual rights, is central to sexual and reproductive freedom. It can be defined as "the right to security in and control over one's body," including "an affirmative right to enjoy the full potential of one's

body, whether for health, procreation or sexuality."⁵

Sexuality should be distinguished from gender, and gender from women. What constitutes "gender" is itself a matter of debate. One influential approach defines gender as the social and cultural construction of sex: i.e., what it means, in a given time and place, to be a man or a woman, and what attributes, roles and behaviors are assigned to and expected of each sex in that particular context.⁶ Sexuality and gender interact and may overlap, but they should nevertheless be analyzed separately so as, for example, to tease out the ways in which sexual norms bear on the experience of being a man or woman, and conversely, to understand how gender roles affect sexuality.⁷ This distinction is all the more necessary given the tendency of many commentators and researchers to use "gender" as a stand-in for "women," thereby obscuring men's experiences.⁸

Thus, while policies that are designed to promote heteronormative sex within marriage are often related to policies aimed at reinforcing or reviving traditional gender roles, their scope is not identical. Policies that seek to reinforce traditional notions of masculinity and femininity would not consider married men who have other female sexual partners to be an issue; by contrast, conservative sex policies actively promote mutually monogamous relationships within marriage. Bush Administration policies combine both aspects.

⁵ Sonia Correa and Rosalind Petchesky, "Reproductive and Sexual Rights: A Feminist Perspective", in Gita Sen, Adrienne Germain, Lincoln C. Chen (eds), *Population Policies Reconsidered*, 1994, p. 113.

⁶ This "two-gender" formulation has been critiqued as simplistic. It certainly seems inadequate to deal with the reality of transgender persons. Gender analysis can also mask the differences between women themselves unless it is accompanied by analyses of other factors such as socio-economic status, race, sexual orientation, age or nationality.

⁷ See, e.g., Carole S. Vance, ed. *Pleasure and Danger; Exploring Female Sexuality*, Routledge and Kegan Paul, 1984, p. 9.

⁸ See Gary W. Dowsett, "Some Consideration on Sexuality and Gender in the Context of AIDS," *Reproductive Health Matters* 203; 11 (22): 21-29, on the predominance of the heteronormative "two-gender" analysis in the current understanding of HIV, and its attendant emphasis on heterosexual transmission and women's vulnerability to infection, to the detriment of an analysis of sexual interests, sexual cultures and sexual economies as driving forces of the pandemic.

Some characteristics of Bush policies on sexuality

While reproductive rights advocates in the United States and abroad have successfully drawn attention to a few specifics (right-wing attacks on abortion, de-funding of UNFPA), much of the right-wing assault on sexuality-related rights has so far evaded public scrutiny. The most surprising dimension of this assault, even to an otherwise well-informed observer, is how broad and pervasive it is, and how it builds on previous policy. The Bush White House is *extremely active* on a myriad of issues directly and indirectly related to sexuality, from sexuality education and HIV prevention, to marriage and sex trafficking. New developments take place almost every week. On sex trafficking alone, dozens of initiatives and measures are being pursued by the Bush White House and its proxies. Almost no subject is left untouched.

The key authors of these measures are the same figures over and over. Among them:

- the White House itself, with Karl Rove as a leading protagonist;
- important members of the Administration such as Secretary of Health and Human Services Tommy Thompson and, in particular, his advisers: Bill Steiger (Special Adviser), Claude Allen (Deputy Secretary of Health and Human Services), and Wade Horn (Assistant Secretary of Health and Human Services for Welfare Policy, often described as the Bush Administration's "marriage guru");
- Representatives Christopher Smith (Republican-New Jersey), Joseph R. Pitts (Republican-Pennsylvania), Marilyn Musgrave (Republican-Colorado), Patrick Toomey (Republican-Pennsylvania), Melissa Hart (Republican-Pennsylvania) and Mark Souder (Republican-Indiana); and
- Senator Rick Santorum (Republican-Pennsylvania, a vocal opponent of abortion and equal rights for lesbians and gays).

Recurring contributions are also made by a number of key conservative organizations and individuals, including:

- the Family Research Council, Focus on the Family, the Traditional Values Coalition, Concerned

Women of America and the Wilberforce Forum/Prison Fellowship Ministries, which are active on gay marriage and abortion;

- the hierarchy of the American Catholic Church, and the Holy See;
- John Klink, the Holy See's main strategist at the 1994 International Conference on Population and Development (ICPD), the 1995 Beijing Fourth World Conference on Women, and the 1999 ICPD Plus Five negotiations, who is a high-level member of the Republican National Committee and is now a regular member of U.S. delegations to UN meetings;
- Population Research International, the small anti-family planning group behind the false claims that UNFPA supports forced abortions in China;
- Human Life International (an aggressive anti-abortion and anti-Semitic group) and its UN arm, the Catholic Institute for the Family and Human Rights (also known as C-Fam).

As indicated by the strong connections between the Bush Administration and far-right, religious conservative groups, the agenda being pursued is a sweeping, comprehensive attack on sexual rights and gender equality, and not merely a concern about discreet issues such as abortion or gay marriage. At the national level in the United States, this drive has brought together interests ranging from American Catholic bishops to "pro-family" groups. At the international level, sexuality and women's rights have also become a rallying theme for otherwise disparate elements, from the Pope to the UN representatives of Egypt and Iran.

While the Administration's actions have been uniformly aggressive and increasingly so at home and abroad, the rhetoric and media messages have remained soft on the domestic front. This rhetoric is characterized by highly misleading language and an appeal to values that many Americans would like to support. For example, when President Bush proposed changing the Constitution to permanently bar gays from marrying, he invoked the dignity of every individual and expressed regret at being forced to act by "activist judges." Similarly, the Republican press campaign behind the PARTIAL BIRTH ABORTION LAW spoke of "children inches from birth" when referring to pre-viability fetuses.

This misleading rhetoric, coupled with war-time politics and a Democratic Congressional delegation that has all but abandoned progressive positions, has made it hard for domestic activists to

raise attention to Bush policies on sexuality until recently. It is even more difficult for activists abroad to discern the implications of U.S. policy on sexuality for their own work, funding sources and political situation.

The Bush agenda on sexuality interacts very closely with other aspects of ultra-conservative philosophy. These include the notion that the poor are responsible for their situation, and that state assistance should therefore be curtailed. It is remarkable how, time and again, ultra-conservatives use vehicles like welfare and health programs for low-income individuals to implement their sex policing agenda. Thus, the promotion of heterosexual marriage is not only meant to revive the moral way of having sex, but also seeks to take unwed mothers and their children off the welfare rolls. The Bush agenda also relies on highly traditional ideas about the roles of men and women in families and society. In this view, women and children should depend on men for economic support, and women's main aspiration should be to be wives and mothers; hence the support for heterosexual marriage but the ban on gay marriage, the opposition to abortion and contraception, which allow women and men to control their sexual lives, and the crack-down on sex work.

The Bush agenda on sexuality also interacts with other elements of conservative thinking that are not solely (or even principally) the province of hard-line religious groups – notably the centrality of corporations' financial interests. In the context of the President's global HIV/AIDS initiative, this has led to a new focus on treatment, which skirts the question of sexual practices and rewards pharmaceutical companies by ensuring the purchase of brand-name drugs.

Finally, the Administration has repeatedly put aside scientific evidence that contradicts this agenda, and put pressure on scientists and researchers whose work is at odds with Bush policy, demonstrating the profoundly ideological nature of this drive to police sexuality.

The result is a focused campaign that reaches far and wide across American policy on health, education, welfare, trade, and foreign assistance. The consequences will affect Americans and non-Americans alike for years to come, and will take time and effort to reverse.

The policies

A. Sexuality Education

On the domestic front, the Bush Administration has taken up with vigor abstinence-only education policies.⁹ To quote Claude Allen, the Deputy Secretary of Health and Human Services:

*We believe young people across the board should abstain until marriage. If that fails, fidelity is the next-safest protection against contraction of disease, followed by condom use.*¹⁰

Abstinence-only policies were first put in place under the Reagan Administration with the adoption of the Adolescent Family Life Act (AFLA) in 1981, and greatly expanded by Congressional Republicans under the 1996 welfare reform bill signed into law by President Clinton.¹¹ The welfare-reform federal entitlement program for abstinence-only-until-marriage, inserted under section 510(b) of the Social Security Act, requires states that accept federal money to adhere to a strict eight-point definition of abstinence education. Among other things, it requires them to teach that sexual activity outside marriage is likely to have harmful effects, and leaves out any discussion about the health benefits of contraception, including condoms, in preventing unintended pregnancy, sexually transmitted infections (STIs), and HIV/AIDS (see box).

⁹ The Bush Administration's Healthy People 2010 policy, coordinated by the Department of Health and Human Services, has adopted several national objectives on abstinence. For example, it seeks to increase the percentage of adolescents aged 15 to 17 who are abstinent; the target is 75 percent for both males and females, against a 1995 baseline of 57 and 62 percent, respectively. See www.healthypeople.gov and for targets, www.wonder.cdc.gov/data2010/focus.htm under objective 09, Family Planning, for Adolescents and Young Adults.

¹⁰ *Washington Post*, "Bush Policies Hurt AIDS Prevention, Groups Say Administration Accused of Disinformation on Condom Use, Harassment Audits of Education Programs, Tuesday," October 1, 2002, page A06.

¹¹ In 1995, Republican representatives in the House introduced their own welfare reform bill (H.R. 4) to counter the original Clinton bill, and their version became the blueprint for the final legislation (THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996, H.R. 3739, Public Law 104-193, "WELFARE REFORM ACT OF 1996").

**Section 520 (b) of Title V of the Social Security Act,
P.L. 104-193**

For the purposes of this section, the term "abstinence education" means an educational or motivational program which:

- A) has as its exclusive purpose to teach the social, psychological, and health gains to be realized by abstaining from sexual activity;
- B) teaches abstinence from sexual activity outside marriage as the expected standard for all school-age children;
- C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
- D) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of sexual activity;
- E) teaches that sexual activity outside the context of marriage is likely to have harmful psychological and physical effects;
- F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;
- G) teaches young people how to reject sexual advances and how alcohol and drug use increase vulnerability to sexual advances, and
- H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

That this provision of welfare reform legislation represents a direct attack on educators' ability to provide young people with comprehensive sexuality education is no surprise; it is exactly what its authors, led by Florida Representative E. Clay Shaw, intended:

Regardless of how one feels about the standard of no sex outside marriage, we believe that the statutory language and ... intent of Congress [is] clear. This standard was intended to put Congress on the side of social tradition – never mind that some observers now think the tradition outdated – that sex should be confined to married couples. That both the practices and the standards in many communities across the country clash with the standard required by the law is precisely the point.¹²

¹² R. Haskins, C.S. Bevan, *Implementing the Abstinence Education Provision of the Welfare Reform Legislation*. Written by Congressional staff for the authors of the legislation. Washington, DC: Capitol Hill, 1996; quoted in Marcela Howell, "The Future of Sexuality Education: Science or Politics?" *Transitions*, Volume 12, No. 3, March 2001, available at www.advocatesforyouth.org/publications/transitions/transitions1203_1.htm, accessed 13 October 2003.

Given that, in the U.S., 52 percent of unmarried adolescents aged 15-19 have had sex,¹³ and that the median age at first marriage is 28.6 for men and 26.6 for women,¹⁴ Representative Shaw's comments illustrate something of the fundamentally religious and anti-democratic dimensions of these policies. The architects of welfare reform expressly disregarded current sexual practices and standards in their drive to impose their own religious and moral points of view.

In 2000, Congress added an additional \$50 million over two years to abstinence-only-until-marriage programs under the Special Projects of Regional and National Significance Community-Based Abstinence Education (SPRANS) program of the Maternal and Child Health Bureau of the U.S. Department of Health and Human Services. SPRANS also includes the eight-point restrictive definition of abstinence education, but mandates stricter adherence to teaching all eight points. It specifically targets adolescents ages 12-18. Moreover, it bypasses states altogether and makes grants directly to community-based groups, including faith-based ones. Not surprisingly, SPRANS has become the favored vehicle of conservatives for abstinence education.

Among other grave pitfalls, abstinence-only education denies young people their freedom of information and expression, and impairs their access to health services. It discourages young people from using contraception by discussing modern methods of contraception only in terms of (often exaggerated) failure rates, and censoring information about their correct use and effectiveness.

A favorite tactic of proponents of abstinence-only education is to link condom failure with the relatively high prevalence of human papillomavirus (HPV) in sexually active individuals.¹⁵ Using HPV to attack condom

¹³ J.C. Abma, F.L. Sonenstein, *Sexual Activity and Contraceptive Practices Among Teenagers in the United States, 1988 and 1995*, National Center for Health Statistics, Vital Health Statistics 23 (21), 2001.

¹⁴ R. Schoen, N. Standish, "The retrenchment of marriage: results from marital status life tables for the United States, 1995," *Population Development Review* 2001; 27: 553-63.

¹⁵ Global prevalence of HPV is estimated at between 9 and 13 percent, or 630 million cases, making it the most common sexually

effectiveness is highly misleading, however, since genital HPV can be transmitted by exposure to areas, such as infected skin or mucosal surfaces, that are not covered or protected by the condom. Abstinence advocates have focused on this supposed inability of condoms to protect against HPV to argue against relying on condoms to prevent HIV infection.¹⁶ This kind of argumentation is especially shocking given the demonstrated effectiveness of condoms in preventing HIV infection.¹⁷ HPV, which has been a hobby horse of religious right-wing groups in the United States for years, has since January 2001 become more prominent as a health topic on the Centers for Disease Control and Prevention (CDC) Website.¹⁸

Abstinence-only education's unfounded claims that sex outside of marriage has harmful effects clearly stigmatizes lesbian, gay, bisexual and transgender (LGBT) youth (who cannot – so far – marry the person of their choice), the children of single parents, and adolescents who are already sexually active and have thus "failed" to remain chaste. Moreover, as a norm, it obviously does not correspond to the observable behavior of many adults – including members of Congress, Presidents, and Cabinet members and their families.

transmitted infection. However, the vast majority of HPV infections regress spontaneously. Five of the more than 30 variants of genital HPV have been shown to cause pre-cancerous cervical lesions, which may progress to cervical cancer without detection by Pap smears and preventive treatment. Cervical cancer has an annual incidence of 470,000 cases worldwide, 80 percent of which occur in developing countries, where Pap smears and treatment are often not available. World Health Organization, *Vaccines Against Human Papillomavirus*, available at <http://www.who.int/vaccines/en/hpvrd.shtml>, accessed 14 February 2004.

¹⁶ C. Wetzstein, "Unfamiliar sexual disease has no cure, spreads easily," *Washington Times*, Nov. 7, 2000 (making the case against condoms); L. Marr, *Sexually Transmitted Diseases: A Physician Tells You What You Need to Know*, Baltimore, MD: Johns Hopkins University Press, 1998 (making the case for condoms).

¹⁷ World Health Organization, *Effectiveness of male latex condoms in protecting against pregnancy and sexually transmitted infections*, Fact sheet N°243, June 2000, available at <http://www.who.int/mediacentre/factsheets/fs243/en/print.htm>, accessed 10 February 2004.

¹⁸ For example, the Fact Sheet "Genital HPV Infection," posted in May 2001. www.cdc.gov/nchstp/dstd/Fact_Sheets/FactsHPV.htm, and various News Updates that emphasize abstinence as the only sure way to avoid HPV such as <
www.thebody.com/cdc/news_updates_archive/oct8_02/arizona_hpv.html> posted October 2002.

At the present time, all states except California have requested and received funds for abstinence-only education under welfare law. President Bush's FY 2003 budget called for a \$33 million increase in funding (the increase to be directed to SPRANS) and maintained that level in the FY2004 budget request, bringing total federal funding to \$135 million for abstinence-until-marriage sex education programs in FY 2004.¹⁹ In 1999, 23 percent of secondary school sexuality education teachers in the United States were teaching abstinence as the only way to prevent pregnancy and STIs, compared to two percent in 1988.²⁰

Meanwhile, groups critical of abstinence-only and advocating for comprehensive sexuality education at home and abroad have been the subjects of repeated audits under the Bush White House. Advocates for Youth was reviewed three times in 2003, twice by the Centers for Disease Control and Prevention (CDC) and once by the General Accounting Office. The CDC was apparently looking into charges of "possible misuse of grant funds for lobbying efforts," in response to complaints from Representative Joseph R. Pitts (Republican-Pennsylvania), an advocate for abstinence-only programs, about a Website that argues against increased funds for abstinence-only programs. Advocates for Youth notes that, until this year, it had received grants from the CDC for 15 years without any requests for reviews or audits. The Sexuality Information and Education Council of the United States (SIECUS) was also audited in 2003 for the first time.²¹

But the CDC itself has been under scrutiny by right-wingers. In 2002, it altered information on its Website to suit the Bush White House's preferences for abstinence education. First to go was a page on "Programs that Work," a resource for educators that described various sexuality education curricula for adolescents. The second was "Facts about Condoms and their Use in

¹⁹ <http://www.nfprha.org/pac/factsheets/absunlesmarried.asp> and <http://www.whitehouse.gov/omb/budget/fy2004/pdf/budget/hs.pdf>.

²⁰ J.E. Darroch, et al. "Changing Emphases on Sexuality Education in U.S. Public Secondary Schools, 1988-1999," *Family Planning Perspectives*, vol. 32, no. 5, pp. 204-211, 265.

²¹ <http://www.washingtonpost.com/wp-dyn/articles/A551-2003Aug15.html> and http://story.news.yahoo.com/news?tmpl=story&u=/ap/20030816/ap_on_he_me/aids_condoms_1.

Preventing HIV Infection,” which was removed from the Website for several weeks and then re-posted with substantial changes. While the original fact sheet described how to use condoms properly and discussed the efficacy of different kinds of condoms, the revised version begins with a prominent statement about abstinence and omits instruction on condom use. It does state, however, that condoms are highly effective against HIV infection.²²

While it had until then been confined to domestic policy, abstinence-only education as U.S. foreign policy made its debut at the international level at the United Nations' Special Session on HIV/AIDS in July 2001, and at the Special Session on Children in May 2002. During both negotiations, the U.S. delegation – working closely with the Holy See – made repeated attempts to insert language that would promote abstinence to the exclusion of other education modalities. The U.S. also joined forces with the likes of Sudan, Libya, Egypt, Syria and Iran in this effort. While the U.S. succeeded in inserting abstinence into one paragraph of the Declaration of Commitment on HIV/AIDS, it had to accept a companion reference to male and female condoms.²³ The Plan of Action for children, for its part, makes no mention of abstinence, but the *quid pro quo* was only a few very general provisions on the sexual and reproductive health of adolescents.

The Bush Administration has continued to push for prominent mention of abstinence at the United Nations, but its lack of success so far has forced it to issue lengthy statements of position at the conclusion of each negotiation. Hence this, from the U.S.'s "general reservation," at the Fifth Asia-Pacific Population Conference in Bangkok in December 2002, where the U.S. stood alone:

The United States further understands that any promotion of the use of condoms or other methods of family planning for adolescents in this or other UN or UN Conference documents should be interpreted in the context of its continued

²² http://www.house.gov/reform/min/inves_admin/admin_hhs_info.htm and <http://www.cdc.gov/hiv/pubs/facts/condoms.htm>, accessed 15 October 2003.

²³ United Nations, *Declaration of Commitment on HIV/AIDS: Global Crisis - Global Action*, 2001, Doc. A/RES/S-26/2, para. 52.

support for, and promotion of, abstinence as the preferred, most responsible, and healthiest choice for unmarried adolescents.

Abstinence as U.S. international policy stands to gain much more prominence since the signature into law in May 2003 of the ACT TO PROVIDE ASSISTANCE TO FOREIGN COUNTRIES TO COMBAT HIV/AIDS, TUBERCULOSIS, AND MALARIA, AND FOR OTHER PURPOSES.²⁴ The HIV/AIDS legislation seeks to allocate \$15 billion for HIV/AIDS prevention and treatment in Africa and the Caribbean, in fulfillment of President Bush's 2003 State of the Union promises. The legislation sets the stage for the "President's Emergency Plan for AIDS Relief" or PEPFAR, which was issued on February 23, 2004.

Using the example of Uganda, which the Bush White House has consistently trumpeted as proof that abstinence is the key to HIV prevention, the HIV/AIDS Act includes the following findings about Uganda's situation and HIV policy:

Sec. 2 Findings

(20)(A) Uganda has experienced the most significant decline in HIV rates of any country in Africa, including a decrease among pregnant women from 20.6 percent in 1991 to 7.9 percent in 2000.

(B) Uganda made this remarkable turnaround because President Yoweri Museveni spoke out early, breaking longstanding cultural taboos, and changed widespread perceptions about the disease. His leadership stands as a model for ways political leaders in Africa and other developing countries can mobilize their nations, including civic organizations, professional associations, religious institutions, business and labor to combat HIV/AIDS.

(C) Uganda's successful AIDS treatment and prevention program is referred to as the ABC model: "Abstain, Be faithful, use Condoms," in order of priority. Jamaica,

²⁴ ACT TO PROVIDE ASSISTANCE TO FOREIGN COUNTRIES TO COMBAT HIV/AIDS, TUBERCULOSIS, AND MALARIA, AND FOR OTHER PURPOSES, Public Law 108-25, ("HIV/AIDS ACT of 2003").

Zambia, Ethiopia and Senegal have also successfully used the ABC model. Beginning in 1986, Uganda brought about a fundamental change in sexual behavior by developing a low-cost program with the message: "Stop having multiple partners. Be faithful. Teenagers, wait until you are married before you begin sex."

(D) By 1995, 95 percent of Ugandans were reporting either one or zero sexual partners in the past year, and the proportion of sexually active youth declined significantly from the late 1980s to the mid-1990s. The greatest percentage decline in HIV infections and the greatest degree of behavioral change occurred in those 15 to 19 years old. Uganda's success shows that behavior change, through the use of the ABC model, is a very successful way to prevent the spread of HIV.

In view of the evidence available, all commentators agree that Uganda has achieved remarkable declines in HIV prevalence and incidence over the 1980s and 1990s. But the HIV legislation presents a distorted picture of the Ugandan situation to further the political aims of proponents of abstinence-only-until-marriage and monogamy within marriage. Misleading statistical data is mustered to simultaneously bolster and disguise this agenda.

For example, the finding in paragraph A about HIV rates in pregnant women, which does not specify whether it is speaking of prevalence or incidence rates,²⁵ implies that figures for pregnant women are representative of the overall population. A number of respected researchers and health organizations have cautioned against using data from Ugandan antenatal clinics as illustrative of the magnitude of the Ugandan success:

The level and size of the declines in prevalence and incidence have been difficult to pinpoint for Uganda as a whole, because measurement in the early period of the epidemic was based on a few urban surveillance sites that provided data for

pregnant women tested in antenatal clinics... However, these levels should not be generalized to all of Uganda, because women who attend prenatal clinics are not representative of the general population, and because urban-based measures are not representative of the country, which is 85% rural. HIV prevalence measures that have become available in the mid to late 1990s from rural surveillance sites are much lower, suggesting that national HIV prevalence was much lower in the early 1990s.²⁶

Paragraph C overstates the importance of one intervention, "a low-cost program" with one single message of abstinence and monogamy. Attributing declines in prevalence to one or a few government interventions is a common misinterpretation of the Ugandan experience, which involved "hundreds of non-governmental organizations, religious groups, and community activists..." clear political leadership and a range of measures beyond "ABC."²⁷

Parkhurst notes that:

The [Ugandan] government has, for example, not only provided services such as education and blood screening across the country, but has also, more interestingly, implemented a uniquely creative and strategic policy approach to enable non-state actors in their individually targeted messages of prevention.²⁸

This is partly acknowledged in paragraph B, where the importance of working with a variety of actors is underlined, but not their diverse approaches.

The statement in Paragraph D that, in 1995, 95 percent of Ugandans reported one or no sexual partner in the previous year, is a particularly strange use of statistics. Existing national data on number of sexual partners for 1995 do not support this conclusion. The more nationally representative source, the Demographic and Health Survey (DHS), only contains information of the number of

²⁵ Prevalence is the proportion of subjects who are infected at any given point in time, while incidence is the number of new cases per year, usually expressed as the number of new cases diagnosed per 1,000 people in the overall group.

²⁶ Susheela Singh, Jacqueline E. Darroch and Akinrinola Bankole, *A, B and C in Uganda: The Roles of Abstinence, Monogamy and Condom Use in HIV Decline*, Alan Guttmacher Institute, Occasional Report No. 9, December 2003, p.10; see also Justin O. Parkhurst, "The Ugandan success story? Evidence and claims of HIV-1 prevention," *Lancet* 2002; 360: 78.

²⁷ Parkhurst, *op.cit.* note 26, p. 79.

²⁸ *Ibid.*

sexual partners in the previous six months in its 1995 survey, but DHS figures for 2000 collected this information for the previous twelve months. In 2000, three percent of women aged 15-49, married and unmarried, reported two or more sexual partners; the figure is 16 percent for men.²⁹

For its part, the WHO Global Program on AIDS (GPA) Survey for 1995 collected information for the previous year, but this survey is known to over-sample the urban population. GPA data show that the proportion of sexually active women (married and unmarried, aged 15-49) who had more than one partner in the past year fell from 12 percent in 1989 to three percent in 1995; for men, the numbers fell from 35 percent to 11 percent.³⁰ To arrive at a figure of 95 percent who have had less than two partners, one can only assume that the drafters of the HIV legislation took it upon themselves to include children aged 0-14 and adults aged over 49 in the population reporting their number of sexual partners as one or zero.

Paragraphs C and D attribute Uganda's success in reducing HIV prevalence and incidence to greater abstinence in the general population (including youth), and to monogamy, but are completely silent on condom use. This conflicts with DHS and GPA evidence on the respective roles of A, B and C, which show at least *three trends at work in Uganda between 1988 and 2000*: higher age at initiation of sexual intercourse for young men and women (but no general pattern of increased abstinence among sexually experienced youth and adults of either sex); a substantial decline in the numbers of women and men who have multiple partners; and steep increases in condom use among unmarried sexually active men and women.³¹ Moreover, the evidence does not allow the ranking of one trend as more significant than the others.³²

The key to Uganda's success, according to the Director of Uganda's Institute of Public Health, David Serwadda, is a multiple approach prevention campaign in which condoms played a substantial role. "We must not forget that abstinence is not always possible for people at risk, especially

(African) women," Serwadda said in recent interviews. "Many women simply do not have the option to delay initiation of sex or limit their number of sexual partners,"³³ added Serwadda, pointing out "socio-economic factors" (such as poverty) and the tradition of marrying young girls to older men. "50 percent of new infections per year occur in a situation where one partner is positive and another one is negative. .. In actual practice, on the ground, women cannot abstain from sex when they're in a marriage situation."³⁴

Serwadda's remarks highlight the degree to which the simplification of HIV prevention messages to A, B and C ignores the situation of these women. The same is true for other segments of the African population who are sexually active but do not wish to be, or cannot be, celibate, monogamous or married.

Despite the evidence, the HIV/AIDS Act forges ahead on the path of abstinence, and calls for HIV prevention programs to include, in order, the following messages, with condoms a subsidiary measure:

... delaying sexual debut, abstinence, fidelity and monogamy, reduction of casual sexual partnering, reducing sexual violence and coercion, including child marriage, widow inheritance, and polygamy, and where appropriate, use of condoms.

Consequently, the law mandates that, "for fiscal years 2006 through 2008, not less than 33 percent of the amounts appropriated pursuant to the authorization of appropriations [for HIV/AIDS prevention programs] for each such fiscal year shall be expended for abstinence-until-marriage programs."³⁵ Since the law includes no comparable minimum for condom distribution or other approaches to prevention, all prevention funds could presumably be allocated for abstinence programs.

In addition to this, groups that do not wish to speak about sexuality or teach the use of condoms, are explicitly protected by the legislation: "An

²⁹ Singh, Darroch and Bankole, *op.cit.* note 26, p. 37.

³⁰ Singh, Darroch and Bankole, *op. cit.* note 26, p. 38.

³¹ Singh, Darroch and Bankole, *op.cit.* note 26, pp. 20-21. On the importance of condom use in the Ugandan efforts, see also WHO, *Uganda reverses the tide of HIV/AIDS*, available at <http://www.who.int/inf-new/aids.htm>, accessed 4 February 2004.

³² Singh, Darroch and Bankole, *op.cit.* note 26, p. 5.

³³ Uganda's Health Chief Warns Against Abstinence-Only Approach, *UN Wire*, 21 July 2003.

³⁴ National Public Radio, "The ABCs of AIDS in Africa," Transcript of To The Point, aired July 8, 2003.

³⁵ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title IV, Section 403(a), Allocation of Funds.

organization that is otherwise eligible to receive assistance ... to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection."³⁶

A somewhat positive development came in January 2004, when the appropriations bill for FY2004 required that any information provided about condoms in these programs has to be complete and medically accurate – without requiring, however, that any information be provided, or identifying a standard for medical accuracy.³⁷ Some conservatives will no doubt respond by brandishing more pseudo-scientific data to support their views. Recent pronouncements by Cardinal Trujillo, the chief of the Vatican's office on the family, regarding the permeability of latex condoms to the HIV virus,³⁸ give an indication of the disinformation that certain religious groups are prepared to spread under the guise of science.

Programs that promote abstinence-only-until-marriage have not, in any event, been shown to be effective at doing that in the United States, much less in other parts of the world. Moreover, abstinence-only messages have been shown to

reduce contraceptive (including condom) use among sexually active adolescents, putting them at risk of pregnancy and STIs, including HIV. In contrast, there is evidence that young people who receive comprehensive sexuality education become sexually active later, and are more likely to use contraceptives when they do.³⁹

The downgrading of condoms is also inexplicable on the basis of science, given the proven record of the male latex condom in preventing HIV infection. For example, the Centers for Disease Control, in their fact sheet on condoms, state unequivocally (after the now requisite promotion of abstinence) that:

Male latex condoms, when used consistently and correctly, are highly effective in preventing the sexual transmission of HIV, the virus that causes AIDS. *AIDS is, by far, the most deadly sexually transmitted disease, and considerably more scientific evidence exists regarding condom effectiveness for prevention of HIV infection than for other STDs. The body of research on the effectiveness of latex condoms in preventing sexual transmission of HIV is both comprehensive and conclusive. In fact, the ability of latex condoms to prevent transmission of HIV has been scientifically established in "real-life" studies of sexually active couples as well as in laboratory studies. **Laboratory studies** have demonstrated that latex condoms provide an essentially impermeable barrier to particles the size of STD pathogens.*⁴⁰

Incidentally, the HIV/AIDS Act also requires the Administration to submit reports to Congress on,

³⁶ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title III, section. 104A. Assistance to combat HIV/AIDS, (d) Eligibility for Assistance.

³⁷ CONSOLIDATED APPROPRIATIONS BILL, H.R.2673, Division D, Foreign Operations, Export Financing and Related Programs Appropriations, 2004, Title II, Bilateral Economic Assistance - Child Survival and Health Program Fund: "...information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use."

³⁸ Joseph Horowitz, "Italy: Cardinal Warns on Condoms," *New York Times*, 14 October 2003, p. A6; Catholic Family and Human Rights Institute, *Friday Fax*, "BBC Accuses Church of Worldwide Condom Misinformation Campaign," October 17, 2003, Volume 6, Number 43, quotes Cardinal Trujillo as saying:

"I simply wished to remind the public, seconding the opinion of a good number of experts, that when the condom is employed as a contraceptive, it is not totally dependable, and that the cases of pregnancy is not rare. In the case of the AIDS virus, which is around 450 times smaller than the sperm cell, the condom's latex material obviously gives much less security. Some studies reveal permeability of condoms in 15% or even up to 20% of cases. Thus, to talk of condoms as 'safe sex' is a form of Russian Roulette."

³⁹ National Family Planning and Reproductive Health Association, *Oppose Dangerous, Unproven Abstinence-Unless-Married Education Programs*, available at <http://www.nfprha.org/pac/factsheets/absunlessmarried.asp>, accessed 4 February 2004; Douglas Kirby, *Emerging Answers: Research Findings on Programs to Reduce Teen Pregnancy*, The National Campaign to Prevent Teen Pregnancy, 2001, available at http://www.teenpregnancy.org/resources/data/report_summaries/emerging_answers/default.asp, accessed 4 February 2004.

⁴⁰ Centers for Disease Control, *Fact Sheet for Public Health Personnel: Male Latex Condoms and Sexually Transmitted Diseases*, updated January 23, 2003, available at <http://www.cdc.gov/hiv/pubs/facts/condoms.htm>, accessed 10 February 2004. Regarding effectiveness of condoms against HIV infection, see also World Health Organization, *Effectiveness of male latex condoms in protecting against pregnancy and sexually transmitted infections*, Fact sheet N°243, June 2000, available at <http://www.who.int/mediacentre/factsheets/fs243/en/print.html>, accessed 10 February 2004; UNAIDS, "The Male Condom," Technical Update, Geneva: August 2000, pages 2-3, available at <http://www.unaids.org/publications/documents/care/mcondom/s/JC302-TU18-MaleCondom-E.pdf>, accessed 10 February 2004.

among a variety of topics, "an analysis of the prevalence of Human Papilloma Virus (HPV) in sub-Saharan Africa and the impact that condom usage has upon the spread of HPV in sub-Saharan Africa."⁴¹

The HIV/AIDS legislation's intent is clear: the right-wing's moral and religious agenda on sex outside marriage is more important to the Bush Administration and Republican Congress than epidemiology, science, or the rights and realities of young people. This is an ominous sign of what we can continue to expect from U.S. foreign policy on sexuality education under the Bush Administration.

B. HIV prevention, treatment and care

The Bush White House has made a lot of the new HIV/AIDS legislation and the \$15 billion it allocates for HIV prevention and treatment in Africa and the Caribbean. The White House's use of "compassionate conservative" rhetoric has been effective in softening the image of callous disregard for poor nations that President Bush had acquired. Yet it seems the Administration's commitment to combating HIV under PEPFAR is not what it claims it to be.

The Administration's focus on abstinence education and its attacks on condoms, discussed above, are consonant with the Administration's avowed goals. After all, the Presidential Advisory Council on HIV/AIDS includes Tom Coburn, a former Republican member of the House of Representatives, who is a vocal opponent of family planning and other reproductive health services and has said he would "challenge the national focus on condom use for preventing the spread of HIV," and Joe McIlhaney, the head of the Medical Institute for Sexual Health, which conducts studies that purport to provide scientific evidence of condom ineffectiveness in HIV prevention.⁴²

But, contrary to the promises to act quickly and decisively that the President made during his July 2003 trip to Africa, the White House has been

dragging its feet when it comes to obtaining funding to back its rhetoric. Although the HIV/AIDS legislation authorized \$3 billion in spending for global HIV/AIDS programs in FY 2004, President Bush only asked for \$2 billion in his FY 2004 budget request, a \$1 billion shortfall, and only \$500 million more in total than actual FY 2003 HIV spending. The White House reportedly had been "twisting arms to get Congress to cut its own [HIV] program."⁴³ In the end, Congress, under pressure from AIDS activists and health groups, approved \$2.4 billion for global HIV/AIDS and other infectious diseases (of which an estimated \$2.1 billion is destined for HIV/AIDS), including \$546 million for the Global Fund to Fight HIV/AIDS, Malaria and Tuberculosis.⁴⁴

Other choices made by the Administration indicate something less than a sense of urgency. The HIV legislation created an entirely new bureaucracy within the State Department, the Office of the Global AIDS Coordinator, which is only now ready to begin work and make PEPFAR grants. In the interim, some have argued that more funding for the international Global Fund to Fight HIV/AIDS, Malaria and Tuberculosis could have been requested by the White House to save lives immediately. This was not done.⁴⁵

The Bush Administration's choice of Randall Tobias as the Global AIDS Coordinator also raises fundamental questions about its true intentions regarding HIV treatment. Mr. Tobias was, until a few years ago, the head of Eli Lilly and Company, a large pharmaceutical company. At his confirmation hearings in the Senate on September 30, 2003, Tobias said that he would resign from his position on Eli Lilly's board and sell his stock in all other drug companies except Eli Lilly, since the drug company does not make any HIV/AIDS drugs (it does produce two drugs that treat some forms of tuberculosis, which the global AIDS initiative is also targeting). Eli Lilly, however,

⁴¹ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title 1, Section 101, Development of a Comprehensive, Five-Year, Global Strategy, (3) (W).

⁴² International Women's Health Coalition, "Bush's Other War: The Assault on Women's Sexual and Reproductive Health and Rights," available at www.iwhc.org.

⁴³ *New York Times*, "Betraying the Sick in Africa," 4 October 2003, p. A18.

⁴⁴ CONSOLIDATED APPROPRIATIONS BILL, H.R.2673, Division D, Foreign Operations, Export Financing and Related Programs Appropriations, 2004, Title II, Bilateral Economic Assistance - Child Survival and Health Program Fund; see also Congressional Research Service, "HIV/AIDS International Programs: Appropriations, FY2002 - FY2004," 28 January 2004, available at <http://fpc.state.gov/documents/organization/28757.pdf>, accessed 16 February 2004.

⁴⁵ *New York Times*, "Bush's AIDS Initiative," 16 February 2004, p. A18.

contributes to PHARMA, the pharmaceutical trade group that has sought to block access to life-saving, generically manufactured antiretroviral drugs. At the hearing, Tobias also said that the "main obstacle" to implementing an antiretroviral program in sub-Saharan Africa is a lack of infrastructure "on the ground," not the lack of available drugs⁴⁶ – a favorite assertion of pharmaceutical companies that has been largely discredited by examples of successful treatment programs in countries such as Brazil.

Mr. Tobias has recently become more enthusiastic about antiretroviral treatment in developing countries.⁴⁷ This new found support for AIDS treatment in developing countries might be related to the provision of the HIV/AIDS legislation, which directs that for FY 2006-2008 not less than 55 percent of the amounts appropriated each year be spent for treatment of individuals infected with HIV, and that at least 75 percent of those sums be spent for the purchase and distribution of antiretroviral drugs⁴⁸ – substantial sums by any account. As anticipated, Mr. Tobias' office has recently indicated that it will not be buying generic antiretrovirals.⁴⁹

In addition, the law makes sure to protect pharmaceutical companies' interest in brand name drugs by requiring the Administration to report to Congress on "specific strategies to ensure that the extraordinary benefit of HIV/AIDS pharmaceuticals (especially antiretrovirals) are not diminished through the illegal counterfeiting of pharmaceuticals and black market sales of such pharmaceuticals."⁵⁰ At the same time, the law seems to subtly undermine the call for treatment by asking the President to report to Congress on "specific strategies developed to promote sustainability of HIV/AIDS pharmaceuticals

(including antiretrovirals) and on the effects of drug resistance on HIV/AIDS patients," two arguments used to argue against treatment in developing countries.⁵¹

These provisions are consonant with the fact that until September 2003, the U.S. (Clinton and Bush Administrations) had consistently obstructed a World Trade Organization (WTO) pact on the export of inexpensive generic drugs, citing pharmaceutical industry concerns. The deal finally reached, in September 2003, allows developing countries that manufacture generic drugs to export them to other developing countries without the patent holder's permission. However, the United States required, as a condition of its agreement, that the requests for importation be made "in good faith" and "for no commercial gain" and that the generic drugs so exported be packaged and labeled differently to prevent re-exportation. These conditions have been criticized as creating bureaucratic obstacles to drug importation.⁵²

Meanwhile, the recently negotiated U.S.-Central American Free Trade Agreement (CAFTA) has created new restrictions on generic drugs.⁵³ Among other things, CAFTA will require Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to extend pharmaceutical patents beyond the 20 years required in WTO rules, force (often small) generic drug companies to re-do costly tests to obtain marketing approval, and prevent them from using the results of tests already completed by brand-name companies for a period of five years. Similar provisions, all of which exceed WTO standards, are in the draft Free Trade of the Americas (FTAA) agreement currently under negotiation.⁵⁴

The White House's continued animosity towards the Global Fund to Fight HIV/AIDS, Malaria and

⁴⁶ *Kaisernetwork.org Daily HIV Reports*, "Global AIDS Coordinator Nominee Randall Tobias Says Drug Industry Ties Could Help 'Get a Better Deal' on Antiretrovirals" Oct 01, 2003 available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=20119.

⁴⁷ Remarks at the American Enterprise Institute by Randall L. Tobias, 5 February 2004, available at <http://www.state.gov/s/gac/rl/rm/2004/29181.htm>, accessed 15 February 2004.

⁴⁸ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title IV Authorization of Appropriations, Section 403 Allocation of Funds

⁴⁹ "Bush's AIDS Initiative," *op.cit.* note 45.

⁵⁰ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title I, Policy Planning and Coordination, sec. 101 (b) (3)

⁵¹ *Ibid.*

⁵² *New York Times*, "Mixed View of a Pact for Generic Drugs," 29 August 2003, p. C3.

⁵³ CAFTA has not yet been presented to the U.S. Congress for approval, and there are signs that approval would be difficult to obtain in an election year.

⁵⁴ Médecins sans Frontières, *Provisions in CAFTA Restrict Access to Medicines, Latin American and Caribbean Countries Urged Not to Include Such Provisions in FTAA*, 3 February, 2004, available at <http://www.accessmed-msf.org/prod/publications.asp?scntid=42200410494&contenttype=PARA&>; for the full text of the CAFTA agreement, see <http://www.ustr.gov/new/fta/cafta/text/>

Tuberculosis also brings into question its commitment to HIV projects that countries themselves have prioritized, as opposed to those the Administration favors. Not surprisingly, Mr. Tobias supports the Bush plan to direct most of the funding for AIDS projects through bilateral U.S. programs, instead of the multilateral Global Fund. In a recent speech to the American Enterprise Institute, Mr. Tobias explained that he had asked the American ambassador in each "focus country" to develop a plan to implement PEPFAR in that country, and to "provide leadership to all elements of the U.S. Government on the ground to make it happen;"⁵⁵ priorities set in this manner could easily conflict with what the countries themselves want to do.

Bush's \$2 billion request for FY 2004 included only \$100 million for the Fund, and his FY 2005 budget requests only \$200 million. The Administration (and Mr. Tobias) have claimed that the Fund has more money on hand than it has been able to spend. This is contradicted by recent reports that the Fund is considering delaying grant applications because of an impending funding shortage. In fact, the Global Fund announced in June 2003 that it would need at least another \$700 million to fund projects that were up for approval in 2003.⁵⁶ In all these respects, President Bush's global AIDS initiative re-asserts bilateralism and subverts multilateralism, at a moment when the Global Fund had just begun to gain traction.

Bilateral aid can be a more effective tool in the Administration's push to shape the terms of sexual policy for the world. For example, a US-Brazil joint venture on HIV/AIDS treatment, care, and prevention, in Lusophone Africa was announced in June 2003 by the White House. The announcement for the bilateral agreement studiously avoids mention of sexuality education or condoms in connection with HIV prevention.⁵⁷ Sources connected to the Ministry of Health in Brazil report that the U.S. insisted on abstinence-only as the

standard for the program, and that Brazil chose to leave sexuality education out of it in order to access the funds.

Finally, the extensive references to "faith-based" groups in the HIV legislation – 16 mentions in the law – indicate that much of the funds appropriated under the Act could go to ultra-conservative groups that approach HIV prevention and treatment solely from the point of view of religion.⁵⁸ These groups, as we saw, are not required by the law to use comprehensive approaches to prevention and treatment. They can also invoke their beliefs to refuse to discuss any subject (such as condoms), or perform any act. Money that goes to these groups will displace funds for organizations that provide comprehensive information, education and services on health and sexuality.⁵⁹

In this respect, the HIV legislation reflects a broader policy by the White House to direct federal funds to religious groups that deliver social services. In December 2002, President Bush issued an Executive Order that purports to guarantee "Equal Protection of the Laws for Faith-based and Community Organizations" in obtaining federal funds. The Bush White House makes no bones about its determination to ensure that religious groups be allowed to adhere to and manifest their specific beliefs as they deliver social programs.⁶⁰ This openness to religious organizations is described by the President as part of a broader cultural change in government:

...offices in each Cabinet set up to make sure that the faith-based programs have a friendly ear when they come to apply; that they're not facing the same old bureaucratic morass, that they get a welcoming ear. ...Not only are people allowed to come and make their

⁵⁵ Remarks by Randall L. Tobias, *op.cit.* note 47.

⁵⁶ *Kaisernet.org Daily HIV Reports*, "Global Fund To Consider Delaying Grant Applications in Light of Funding Shortage," October 14, 2003, available at www.kaisernet.org/daily_reports/rep_hiv.cfm#20315.

⁵⁷ "U.S.-Brazil Joint Venture on HIV/AIDS in Lusophone Africa," 20 June 2003, at <http://www.whitehouse.gov/news/releases/2003/06/20030620-14.html>.

⁵⁸ A November 2003 workshop in Washington D.C. organized by USAID and entitled "Working with USAID: An Introductory Workshop for Community- and Faith-Based Organizations," brought together over 150 such groups, many of whom had little experience working abroad or with HIV/AIDS. The report of the workshop can be found at http://www.usaid.gov/our_work/global_health/aids/TechAreas/community/fbo_wrkshp.html.

⁵⁹ The New York Times reports in an editorial that earlier in 2003, USAID "denied funds to a highly regarded AIDS prevention program in Africa to give the money to a consortium of evangelical groups whose proposal was considered deficient on the merits, but whose leader has links to an influential conservative in Congress." *New York Times*, "Misguided Faith on AIDS," 15 October 2003, p. A18.

⁶⁰ *Executive Order on the Equal Protection of the Laws for Faith-based and Community Organizations*, 12 December 2002, section 2 (f).

case and to get help on grant-making, but we also assure them that, in reverse, the government is not going to force them to change their habits and change their ways and change their basic reason for existing.

And we're beginning to make some progress. Slowly but surely, we're changing the culture. We'll finalize new regulations later this month that will open up a lot of money available to faith-based programs...⁶¹

By contrast, Congress and the Bush White House have been harassing domestic HIV/AIDS groups that do not abide by the Administration's moralistic message on sex. The Health and Human Services Inspector General has been investigating a number of domestic AIDS programs to see "if their content is too sexually explicit or promotes sexual activity."⁶² AIDS groups are reporting that the Administration's actions are having a chilling effect on AIDS programming, and that they fear losing federal funding.⁶³ The HHS Inspector General had already issued one report in 2001 that criticized Stop AIDS in San Francisco, saying their programs aimed at gay men were promoting sex and were possibly obscene. The report singled out the program called "Great Sex Workshop," which examines ways of reducing the spread of HIV while also exploring sex that was "safe, erotic, fun and satisfying."⁶⁴ When asked to comment in February 2003, CDC Director Dr. Julie Gerberding contradicted the Inspector General's report, saying that "the design and delivery of Stop AIDS prevention activities was based on current accepted behavioral science theories in the area of health

promotion."⁶⁵ But four months later, Gerberding sent a letter to Stop AIDS indicating that some of the group's HIV prevention workshops violated a Public Health Service Act ban on encouraging sexual activity, and asked the group to discontinue the workshops or lose \$500,000 in federal grants.⁶⁶

The Administration has been hiding behind the fig leaf of complaints from its allies in Congress to justify these audits. In addition to raising issues about AIDS groups (and sexuality education groups, as we saw above), Republican Members of Congress have also complained to HHS that the 2002 Barcelona International AIDS conference did not focus sufficiently on the role of religious groups in HIV prevention, apparently prompting HHS staff to share these concerns with the Conference organizers.

C. *Marriage, family*

One could be forgiven for thinking that the 1996 Welfare Reform Act was mostly about replacing welfare with work programs. But, as we saw, the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 was the vehicle used by conservatives to inject millions of dollars into abstinence-only education.

But the law has another, related and more grandiose ambition: the promotion of (heterosexual) marriage, especially for the poor and working class. The current national debate over gay marriage and civil unions shows that right-wing conservatives have focused on the defense of heterosexual marriage as the most effective strategy to beat back LGBT rights.

The Welfare Reform Act begins with the following findings:

- (1) Marriage is the foundation of a successful society.

⁶¹ Remarks by President Bush at the Power Center 10th Anniversary Celebration, Houston, Texas, September 12, 2003, available at www.whitehouse.gov/news/releases/2003/09/20030912-14.html, accessed 16 September 2003.

⁶² *Kaisernetwork.org, Daily Reports*, "All CDC-Funded HIV/AIDS Programs Currently Under Bush Administration Review," *Fox News Reports*, July 31, 2002, available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=1&DR_ID=12614.

⁶³ *Washington Post*, "Bush Policies Hurt AIDS Prevention, Groups Say Administration Accused of Disinformation on Condom Use, Harassment Audits of Education Programs Tuesday," October 1, 2002; Page A06.

⁶⁴ *Kaisernetwork.org, Daily Reports*, "San Francisco AIDS Group Using CDC Prevention Funds for 'Sexually Explicit' Programs, HHS Inspector General Report Says," November 16, 2001, available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=1&DR_ID=8058.

⁶⁵ *Kaisernetwork.org, Daily Reports*, "CDC Deems Appropriate 'Controversial' Content of Federally Funded Stop AIDS Project Programs," February 14, 2003, available at www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=1&DR_ID=16063, accessed 4 February 2004.

⁶⁶ *Kaisernetwork.org, Daily Reports*, "CDC Asks Stop AIDS Project To Discontinue 'Controversial' HIV Prevention Programs," June 16, 2003, available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=1&DR_ID=18279, accessed 4 February 2004.

- (2) Marriage is an essential institution of a successful society, which promotes the interests of children.⁶⁷

The law declares that there is "a crisis in our Nation," and proceeds to establish a connection between welfare and... various, somewhat related, phenomena, without making clear which is the fundamental issue: "nonmarital teen pregnancy," "births to unmarried women," "out-of-wedlock births," "single parent families," "[lack of] male responsibility," "predatory sexual practices by men who are significantly older," "female-headed households with children under 18 years," "mothers who never married," and "young women who have children before finishing high school."

This broad sweep justifies the allocation of block grants to states to achieve four objectives. While the poor are the excuse for this effort, and its main target, it is worth noting that the last two objectives apply to all women (and men), and not only to welfare recipients:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.⁶⁸

In total, the 1996 welfare reform law contains at least 15 provisions directly or indirectly aimed at "reducing illegitimacy." The most important of these are: an initial \$50 million a year for abstinence education; a cash bonus ("Illegitimacy Bonus") of up to \$25 million a year for states that reduce their illegitimacy and abortion rates; the Temporary Assistance to Needy Families (TANF) block grant, which allows states to deny benefits for additional children born while the parent(s) are

on welfare; and paternity establishment requirements in the child support enforcement part of the legislation, aimed at making fathers of children born outside marriage pay for their support.

In preparation for the 2002 reauthorization by Congress of the 1996 reforms, the Bush Administration issued a Policy Paper, "Working Toward Independence,"⁶⁹ which previewed the Administration's own bill. The paper specifies that "Cohabitation is not equivalent to marriage in promoting the well-being of children... By the time they reach age 16, three quarters of children born to cohabiting parents will see their parents separate, compared to only about one third of children born to married parents."

If the aim was indeed to ensure that parents and guardians stay together based on data regarding the well-being of children, then presumably the Administration should support gay marriages. But, having realized that the previous TANF goal of encouraging two-parent families did not encourage marriage *per se* and might encourage families headed by same-sex parents, the Administration reveals the true, homophobic nature of its proposal by suggesting this goal be "clarified" to read: "to encourage the formation and maintenance of *healthy, two parent married* families and responsible fatherhood."⁷⁰

The Bush Policy Paper goes on to bemoan the fact that states do not seem to have done much since 1996 to promote marriage: "...state efforts to promote healthy marriages represent just one percent of total TANF program expenditures. The limited attention paid to family formation by states is due in part to the lack of knowledge about how to implement successful marriage and family formation programs." The Administration proposes to offer the unenthusiastic states over \$200 million annually, *specifically earmarked*, to conduct research and demonstration projects, provide technical assistance, and "to develop innovative approaches to promoting healthy marriage and reducing out-of-wedlock births." It would require

⁶⁷ WELFARE REFORM ACT OF 1996, *op.cit.* note 11, section. 101. Findings.

⁶⁸ WELFARE REFORM ACT OF 1996, *op.cit.* note 11, Part A Block grants to States for Temporary Assistance for Needy Families, section 401, Purpose.

⁶⁹ www.whitehouse.gov/news/releases/2002/02/welfare-reform-announcement-book-all.html.

⁷⁰ www.whitehouse.gov/news/releases/2002/02/welfare-reform-announcement-book-all.html. The word "healthy" is apparently meant to counter the accusation that women are being encouraged to remain in abusive relationships.

states to provide explicit descriptions of their family formation and healthy marriage efforts; numerical performance goals; and annual reports of state achievement.⁷¹ It is expected that states will find specifically earmarked funds difficult to resist, as was the case with abstinence education funding.

The bill to reauthorize welfare reform that has languished in the Senate since 2002 (H.R. 4, THE PERSONAL RESPONSIBILITY, WORK, AND FAMILY PROMOTION ACT OF 2003 – note the greater clarity of the title!), takes up these Bush proposals – reportedly without much opposition from Democrats in the House. In addition, the new bill lists suggested activities for "healthy marriage promotion," such as: public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health; education in high schools on the value of marriage, relationship skills, and budgeting; marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers; divorce reduction programs that teach relationship skills; marriage mentoring programs which use married couples as role models and mentors in at-risk communities...⁷²

Hoping to jump-start the reauthorization bill, the Administration announced, in January 2004, a five-year, \$1.5 billion initiative to promote marriage. The Administration is reported to have timed the announcement of this initiative to satisfy right-wing groups, which were pressing for a constitutional amendment to ban gay marriage. Wade F. Horn, the assistant secretary of health and human services for children and families, has specified that federal money for marriage promotion would be available only to heterosexual couples.⁷³

In addition to evincing a tremendous fear of non-traditional forms of the family, including families

headed by gay or lesbian couples, the effort is emblematic of the religious right-wing's ideal for women: they should be mothers, as long as they are married to a man. And if they cannot be married, they should abstain from sex. The main targets for this social experiment are the poor, the young and racial minorities, especially African-American communities.

But the law also contains revealing contradictions: it is unclear whether the legislator prefers marriage to simply avoiding teenage pregnancy altogether (which would mean supporting more access to contraception and abortion services). And allowing states to deny benefits for additional children born while the mother is on welfare would seem to push these women to have abortions (but maybe abortions for African-American mothers on welfare are not entirely undesirable?).⁷⁴

The Bush obsession with the married, two-parent, heterosexual "family" has carried over to the UN, where the Holy See has been trying to enshrine it in international agreements for over a decade. Attempts to define the "family" as the nuclear family have so far failed at the international level, for obvious cultural reasons, and the statement that "in different cultural, political and social systems, various forms of the family exist," remains the agreed norm.

At recent UN negotiations, the Bush Administration has consequently been issuing reservations on "the family" that are very similar to those traditionally put out by the Vatican. These statements emphasize marriage between a man and a woman, the control of parents over children, and the "stability" of the family. The statement issued by the U.S. government delegation at the Asia-Pacific Population Conference in December 2002 is an excellent example:

3. The Family

The United States reaffirms that "The family is the natural and fundamental unit of society and is entitled to protection by society and the State" (Universal Declaration on Human Rights), that "The right of men and women of marriageable

⁷¹ www.whitehouse.gov/news/releases/2002/02/welfare-reform-announcement-book-all.html.

⁷² THE PERSONAL RESPONSIBILITY, WORK, AND FAMILY PROMOTION ACT OF 2003, H.R. 4, section 103 Promotion of Family Formation and Healthy Marriage, (b).

⁷³ *New York Times*, "Bush Plans \$1.5 billion Drive for Promotion of Marriage," 14 January 2004, p. A1.

⁷⁴ These contradictions go back a long way in U.S. social policy, see e.g. Linda Gordon, *Women's Body, Women's Choice*, 1990; Rosalind Petchesky, *Abortion and Woman's Choice*, rev. ed. 1990; Rickie Solinger, *Beggars and Choosers, How the Politics of Choice Shapes Adoption, Abortion, and Welfare in the United States*, 2001.

age to marry and found a family shall be recognized" (International Covenant on Civil and Political Rights, Art. 23, 1-2); and that "Motherhood and childhood are entitled to special care and assistance" (Universal Declaration on Human Rights, Art. 25, 2). The United States emphasizes that governments can help support families by promoting policies that strengthen the institution of marriage and help parents rear children in positive and healthy environments, stress the importance of family stability and the role of fathers as well as mothers, and encourage parents to communicate with their children concerning responsible sexual behavior and delaying sexual onset.

With regard to "reproductive rights" in the context of children and adolescents, the United States further understands any such rights to be linked to the rights, duties and responsibilities of parents, who have primary responsibility for their children's education and well-being. In this regard, the United States emphasizes the importance it attaches to the involvement of parents in decisions affecting children and adolescents in all aspects of sexual and reproductive health, and in all other aspects of children's [sic] lives and education for which parents have the primary responsibility.⁷⁵

At UN negotiations over health, the Bush Administration has also adopted a classic Vatican tactic: to have "family health" replace the health of individuals (particularly their reproductive health), by invoking apparently scientific health arguments. Thus, at the meeting of the Directing Council of the Pan American Health Organization (PAHO) in September 2003, the U.S. presented a resolution on "Family Health" to reorient the work of the organization.⁷⁶ The resolution stressed the "importance of the family as the setting in which healthy behavior is first established..." the fact that "science is now revealing how strong families improve the promotion and protection of their own health..." and how "unhealthy behaviors that occur within a family context – child abuse, neglect,

spousal and domestic violence, and neglect of older persons – are common occurrences of growing public health significance." The U.S. resolution, having postulated these "family health" dynamics and problems, sought to impose a "family health" approach that would have occulted the interests of individual family members. Objections from Canada prevented the U.S. from achieving its goals.

D. LGBT and other diverse sexualities

Lesbian and gay rights and diverse sexualities are an increasingly urgent source of concern for the religious right-wing. Ultra-conservatives were very agitated by a series of court decisions in favor of gay rights, beginning with the June 2003 decision by the Ontario Court of Appeals in Canada that gays and lesbians have the constitutional right to marry, followed a few days later by the U.S. Supreme Court judgment in *Lawrence and Garner v. Texas*, which overturned state sodomy laws and stated that private sexual acts between consenting adults are protected by the U.S. Constitution, and finally, by the decision in November 2003 of the Massachusetts Supreme Judicial Court that gay couples have the right to marry under that state's Constitution. Not coincidentally, the Vatican issued a virulent statement in July 2003 urging legislators worldwide to oppose same-sex marriage and adoption by gay couples.

These events have galvanized opponents and advocates of gay marriage. Conservative groups in particular report that they are revitalized by the debate over gay unions, and that this issue could eclipse abortion as a mobilization tool.⁷⁷ A visit to a few of the Websites of well-known U.S.-based right-wing groups bears this out.⁷⁸

Right-wing politicians and religious leaders have mounted a campaign to ban same-sex marriage by means of a federal constitutional amendment. In May 2003, Representative Marilyn Musgrave (Republican-Colorado) and 81 co-sponsors introduced a bill in the House that purported to do

⁷⁵ Economic and Social Commission for Asia and the Pacific, *Report of the Fifth Asian and Pacific Population Conference*, Doc.E/ESCAP/1271 (March 2003), Annex III (b), U.S. General Reservation, issued 17 December 2002, available at www.unescap.org.

⁷⁶ Pan American Health Organization, Proposed resolution of family health by the United States, CD44/PR.2, 23 September 2003.

⁷⁷ New York Times, *Conservatives Using Issue of Gay Unions As a Rallying Tool*, 8 February 2004, p. 1 and 16.

⁷⁸ See Focus on the Family at www.family.org; Family Research Council at www.frc.org; or Concerned Women for America, at www.cwfa.org.

that.⁷⁹ There is already a federal law on the subject, the 1996 DEFENSE OF MARRIAGE ACT (DOMA), which defines marriage as existing between a man and a woman, and negates any federal entitlements, such as veteran or pension benefits, to homosexual partners. Additionally, DOMA allows states to refuse to recognize same-sex marriages performed in other states.

Following the Supreme Court decision, President Bush announced his opposition to the ruling, and stated that White House lawyers were reviewing the proposed constitutional amendment. Under pressure by its right-wing base to announce its support for the amendment, the White House sought to position itself as acting in defense of institutional tradition, while trying not to appear too intolerant of gays. President Bush's comments on gay marriage in the 2004 State of the Union address are illustrative:

A strong America must also value the institution of marriage. I believe we should respect individuals as we take a principled stand for one of the most fundamental, enduring institutions of our civilization. Congress has already taken a stand on this issue by passing the Defense of Marriage Act, signed in 1996 by President Clinton. That statute protects marriage under federal law as a union of a man and a woman, and declares that one state may not redefine marriage for other states.

Activist judges, however, have begun redefining marriage by court order, without regard for the will of the people and their elected representatives. On an issue of such great consequence, the people's voice must be heard. If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional process. Our nation must defend the sanctity of marriage.

The outcome of this debate is important – and so is the way we conduct it. The same moral tradition that defines marriage also

teaches that each individual has dignity and value in God's sight.⁸⁰

In February 2004, the White House finally announced its support for the Musgrave constitutional amendment. The proposed text reads: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution or the constitution of any State, not state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups." As worded, this amendment would also do away with civil unions, domestic partnerships and other alternatives to marriage, whether for gay or straight couples. Banning gay marriage and promoting traditional marriage clearly go hand in hand.⁸¹

Conservative obsessions about the gay movement have even reached the National Park Service. Under pressure from right-wing groups, the Park Service has reportedly agreed to edit the video that has been shown at the Lincoln Memorial in Washington since 1995, to remove any image of gay or abortion rights demonstrations that took place at the memorial.⁸²

At the UN, meanwhile, the U.S. under Bush has been more aggressive on the subject of "men who have sex with men." At the UN's Special Session on HIV/AIDS in 2001, the U.S. supported the efforts by Egypt, Iran, Pakistan and others to remove from the text mention of certain stigmatized groups known to be particularly at risk for HIV infection, namely men who have sex with men, sex workers, and IV drug users. All references to the International Guidelines on HIV/AIDS and Human Rights were also expunged

⁸⁰ The 2004 State of the Union Address is available at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html>.

⁸¹ The Senate, which had introduced an amendment identical to the Musgrave amendment in November 2003, has revised its proposed version to remove the words "nor state or federal law," allegedly in an attempt to preserve civil unions. What it should have removed, however, is the entire second sentence of the amendment, or at the very least, the words "or the legal incidents thereof." PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO MARRIAGE, S.J. RES. 30, March 22, 2004.

⁸² Public Employees for Environmental Responsibility, "Religion on Display in National Parks, Christian Fundamentalist Influence on Park Service Decisions, 'Faith-Based Parks' Decried," 22 December 2003, available at <http://www.peeer.org/press/415.html>.

⁷⁹ PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO MARRIAGE, H.J. RES. 56.

from the final Declaration of Commitment, apparently because the Guidelines themselves explicitly name the same groups.

At the same negotiation, Egypt opposed the participation of a representative of the International Gay and Lesbian Human Rights Commission (IGLHRC) at a Round Table dialogue between NGOs and governments. Canada forced a vote on the issue. While Egypt, Libya, Iran, Sudan, Syria, Pakistan and Malaysia voted against IGLHRC, a majority of states prevailed and IGLHRC was reinstated. While the U.S. also voted to reinstate IGLHRC, it had not spoken up to defend its presence, even though the organization is based in the U.S. In that context, the U.S. silence was very significant.

Conservative euphemisms for denouncing gay sex in international texts include phrases like "risk-taking sexual behavior" and "responsible sexual behavior." At the urging of the U.S. and its conservative Islamic allies, both phrases were inserted in the Declaration of Commitment issued by the UN's Special Session on HIV/AIDS in 2001.⁸³ The inclusion in the U.S. \$15 billion HIV legislation of a call for programs that "encourage[s] men to be responsible in their sexual behavior, child rearing, and to respect women,"⁸⁴ is thus of some concern in the current political climate, since the law does not specify what constitutes responsible behavior.

E. Abortion and other reproductive health services

A long-time wedge issue for the right-wing, abortion has been the alleged concern behind multiple measures adopted or considered under the Bush Administration. Closer examination, however, reveals that the fundamental aim of these

measures is not to prevent or reduce abortion, but to reduce women's autonomy in decisions about their sexual and reproductive lives.

At the Fifth Asia-Pacific Population Conference in Bangkok in December 2002, the Bush White House stated publicly for the first time that "the United States supports innocent life from conception to natural death" and therefore "does not support, promote, or endorse abortions, abortion-related services or the use of abortifacients."⁸⁵ This was a page from the Vatican's book - indeed, John Klink, the adviser to the Holy See at the 1994 International Conference on Population and Development (ICPD), the Beijing Conference on Women and ICPD Plus Five negotiations, was a prominent member of the U.S. delegation in Bangkok.

That life begins at conception had clearly been the belief underlying the actions of the Administration until that point, but it had never been stated openly. This statement is, of course, in direct contradiction with the U.S. Constitution, which, as interpreted by the Supreme Court, contains a constitutional right to privacy and thus abortion (within certain parameters). The Bush Administration evidently equates its views and those of its right-wing supporters with those of the "U.S."

A few consequences flow from a belief that life begins at conception. One is, of course, that abortion should be forbidden, or at least severely restricted. The other is that some forms of modern contraception that prevent (the IUD), or may prevent (hormonal pills, whether taken as emergency contraception, or as contraceptives), a fertilized ovum from implanting in the uterus, are therefore considered abortifacients. This interpretation reveals what is really at stake: the ability of women to control their fertility and, consequently, their sexual lives.

At the Conference in Bangkok, the U.S. thus sought to include statements in the Plan of Action about "adoption as an alternative to the reliance on abortion," "untimely" pregnancies (as opposed to unwanted, since in the right-wing canon, pregnancy should always be

⁸³ United Nations, *Declaration of Commitment on HIV/AIDS*, *op. cit.* note 75:

Para 52. By 2005, ensure: that a wide range of prevention programmes which take account of local circumstances, ethics and cultural values, is available in all countries, particularly the most affected countries, including information, education and communication, in languages most understood by communities and respectful of cultures, aimed at reducing risk-taking behavior and encouraging responsible sexual behavior, including abstinence and fidelity; (...).

⁸⁴ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title III Bilateral Efforts, Subtitle A—General Assistance and Programs, Section. 104A. Assistance to Combat HIV/AIDS. (1) Prevention (A) and (C).

⁸⁵ Economic and Social Commission for Asia and the Pacific, *op.cit.* note 75.

welcome), "minimizing the incidence of abortion" (without specifying by which means), and "abortion-related mortality and morbidity" (which would cover the fetus – as opposed to the usual phrase "mortality resulting from unsafe abortion," which deals with the woman). The U.S. delegation sought to remove altogether any mention of "reproductive rights" and "reproductive health services" (defined by the ICPD as inclusive of abortion in circumstances where it is not against the law) as well as of "sexual health" and "sexual health services." The U.S. also insisted on high priority being given to natural family planning methods, and rejected a call for programs that teach "consistent condom use."

Notably, the U.S.'s only success in the final Plan of Action adopted by the Bangkok Conference was natural family planning methods, although they are not to be given high priority. The U.S.'s extreme views, heavy-handed behavior and intransigence so alienated Asia-Pacific delegations that they united to reject the U.S. amendments and reiterate their support for reproductive rights and the Programme of Action of the ICPD. Interestingly, even the Bush Administration's allies in the so-called "war on terror" (Pakistan, the Philippines) deserted the U.S., leaving it completely isolated.

The use of abortion to undermine reproductive rights goes back to the second day of the President's term, January 22, 2001, when he re-imposed the "Global Gag Rule" (GGR) (also known as the "Mexico City Policy," where it was first announced by the Reagan Administration during the 1984 Population Conference). This policy restricts foreign NGOs that receive USAID family planning funds from using their own, non-U.S. funds to provide legal abortion services, lobby their own governments for abortion law reform, or even provide medical counseling or referrals regarding abortion. The USAID family planning program is currently funded at \$432 million.

The President recently expanded the GGR to all State Department programs for "voluntary population planning furnished to foreign nongovernmental organizations."⁸⁶ The State

Department funds programs for refugees, some of which have a reproductive health dimension. It is not clear how much money is in play there, but former State Department staff estimate that it would be much less than \$40 million, the only sum mentioned so far by right-wing groups.

It is important to note that direct funding with U.S. public funds of abortion services abroad was already prohibited by U.S. law since 1973.⁸⁷ As a result, U.S. money was already going *solely to other reproductive health services*, such as family planning, STI treatment, or pre-natal care. If the GGR is not targeting U.S. funding of abortion services, then what is it after? Clearly, it targets these other reproductive health services, as well as freedom of speech and the professional duty of doctors to counsel patients on legal medical procedures.

The GGR's effects are beginning to be documented. Groups that took the money are no longer able to participate in national debate about abortion law reform, or to refer patients for legal abortion; while groups that refused U.S. money have had to cut reproductive health services substantially – which is likely to lead to *more unwanted pregnancies and abortions*.⁸⁸ This shows that it is not only abortions that the right-wing is concerned about, but also shutting down reproductive and sexual health services and undermining groups that advocate for reproductive and sexual rights.

Advocates fear that a version of the GGR might next be applied to some or all of the \$15 billion for HIV/AIDS, thereby excluding a number of reproductive rights groups from applying for funding. President Bush has so far excluded that possibility.

Meanwhile, President Bush's proposed FY 2003 budget would have cut U.S. international family

⁸⁶ *Associated Press*, <http://www.seacoastonline.com/news/08302003/world/47580.htm>, *Agence France-Presse*, http://story.news.yahoo.com/news?tmpl=story&u=/afp/20030829/hl_afp/us_abortion_aid_bush_030829231126, and *Los Angeles*

Times (CA), <http://www.latimes.com/news/nationworld/world/la-fg-family30aug30,1,6418240.story>.

⁸⁷ The 1973 Helms amendment to the 1961 Foreign Assistance Act: "None of the funds made available to carry out this part [development and humanitarian aid programs] may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions."

⁸⁸ Planned Parenthood of America, *The Bush Administration, The Global Gag Rule, and HIV/AIDS Funding*, June 2003, available at www.ppfa.org.

planning and reproductive health assistance to \$425 million from \$446.5 million in FY 2002, a \$21.5 million cut – not a way to prevent pregnancy and reduce abortion. While family planning needs continue to increase worldwide, proposed funding remained at \$425 million in Bush's FY 2004 budget.⁸⁹ Congress approved \$432 million.⁹⁰

On the domestic front, the PARTIAL-BIRTH ABORTION BAN ACT OF 2003, S.3, sponsored by Senator Rick Santorum (Republican-Pennsylvania), was signed into law by President Bush in November 2003. Named for a medical procedure that it invented and then banned, the Act could outlaw a number of common techniques for performing safe abortions after the first trimester of pregnancy. Using strategies common to the anti-abortion movement, the law's supporters have sought to portray aborted fetuses as babies, with full personhood. In the words of President Bush, at the signature ceremony for the law:

For years, a terrible form of violence has been directed against children who are inches from birth, while the law looked the other way. Today, at last, the American people and our government have confronted the violence and come to the defense of the innocent child.⁹¹

The law is nearly identical to a Nebraska law that was overturned 5-4 by the U.S. Supreme Court in 2000 for vagueness and lack of an exemption to preserve the health of the woman. It is, therefore, likely to be declared unconstitutional by the U.S. Supreme Court – unless the make-up of the Court changes. For the time being, the law's effect has been suspended by court order while legal challenges proceed, but only with respect to the plaintiffs: Planned Parenthood clinics, members of the National Abortion Federation, and a few individual doctors in Nebraska. The U.S. Justice Department has taken unprecedented steps in its defense of the law; it recently subpoenaed hundreds of confidential medical records of women who underwent abortions from at least six hospitals, allegedly to demonstrate that this

abortion procedure is never necessary to preserve the health of women. Fortunately, courts have quashed these subpoenas. Among its many deleterious effects, the law is likely to complicate access of younger and poorer girls and women to abortion. Because fear, shame, and lack of money induce delay, adolescents have been shown to be more likely to seek an abortion after 15 weeks of pregnancy.⁹²

Other actions by opponents of abortion rights are making their way through Congress, with active White House support. Perhaps the most notorious is the UNBORN VICTIMS OF VIOLENCE ACT (H.R. 1997), which inaccurately purports to protect pregnant women from violence, while pronouncing that a fetus or embryo shall be considered "a member of the species *homo sapiens*, at any stage of development," i.e. a separate person. The bill was passed by the House on 26 February 2004, and is expected to pass in the Senate.

Other likely measures include an effort to use public funds to support clinics ("crisis pregnancy centers") that attempt to dissuade women from having an abortion,⁹³ a ban on the prescription of emergency contraception in school clinics, and a directive to the National Institutes of Health (NIH) to conduct research on the (fictional) "post-abortion syndrome."

The Administration has been pressuring the NIH on abortion in other ways. On November 25, 2002, the National Cancer Institute posted "Early Reproductive Events and Breast Cancer," a fact sheet intended to replace "Abortion and Breast Cancer," which had disappeared from the NCI's Website several weeks earlier. The original fact sheet debunked the right-wing myth that abortions increase women's risk of developing breast cancer. By contrast, the new fact sheet states that studies

⁸⁹ http://www.planetwire.org/wrap/files.fcgi/2282_FY2003.htm and <http://www.state.gov/documents/organization/17227.pdf>.

⁹⁰ CONSOLIDATED APPROPRIATIONS BILL, H.R.2673, Division D, Foreign Operations, Export Financing and Related Programs Appropriations, 2004, Title II, Bilateral Economic Assistance - Child Survival and Health Program Fund.

⁹¹ *New York Times*, "Bush Signs Ban on a Procedure For Abortions," 6 November 2003, p. A1.

⁹² Stanley K. Henshaw, "Unintended pregnancy in the United States," *Family Planning Perspectives*, 1998, 30(1): 24-29 & 46; Alan Guttmacher Institute, *Induced Abortion, Fact Sheet*, available at http://www.guttmacher.org/pubs/fb_induced_abortion.html

⁹³ See H.RES.233, EXPRESSING THE SENSE OF THE HOUSE OF REPRESENTATIVES WITH RESPECT TO PREGNANCY RESOURCE CENTERS, currently before the House of Representatives Subcommittee on Health. The Resolution is a first step to a law that would provide financial support to 2,500 Pregnancy Resource Centers, whose avowed mission is to counsel women on the "negative effects of abortion" and on "alternatives such as adoption and parenting."

are "inconsistent," and fails to mention that early studies suggesting a link between abortion and breast cancer were found to be scientifically unsound, and that larger, better designed studies found no link whatsoever.⁹⁴ The NCI's Board of Scientific Advisors and Board of Scientific Counselors concluded on March 3, 2003⁹⁵ that there is no evidence that having an abortion increases the risk of breast cancer. While their report has been posted on the web, the NCI's online fact sheet has not been updated.

In pursuit of its goal of denying reproductive health care to women under the guise of restricting abortion, the White House has found other creative ways to try to install the fetus as a full person under U.S. law and policy. For example, an October 2002 regulation issued by the Administration extends health coverage of low-income children under the State Child Health Insurance Plus (SCHIP) to "unborn children," from "conception up to age 19." Soon after this regulation was issued, the Bush administration withdrew its support for bipartisan legislation that added low-income pregnant women to SCHIP, arguing that it was no longer needed now that coverage was being provided directly to the fetus. Treatment for women who are hemorrhaging during birth, for example, is not covered by the new regulation.⁹⁶

Similarly, President Bush has shown little support for family planning services under Title X of the Public Health Services Act, a program which provides contraceptive services, gynecological exams and other preventive health care, such as screening for high blood pressure, anemia, and diabetes, to more than 4.8 million Americans, most of whom are low income and uninsured. President Bush's FY

2003, FY2004 and FY 2005 budget requests have not included any funding increase for the program, which currently only receives \$275 million. If funding for that program had kept up with inflation since 1980 (which does not take into account increases in the number of clients), it would now be at \$590 million.⁹⁷

Finally, the Bush White House has appointed a large number of anti-abortion activists to positions at all levels of the Administration, some of whom (Claude Allen, Bill Steiger) have already been mentioned. Among them, W. David Hager, M.D., was appointed in December 2002 to the Reproductive Health Drugs Advisory Committee of the Food and Drug Administration (FDA). Dr. Hager, who served on the Physicians Resource Council of Focus on the Family, recently assisted the Christian Medical Association in a "citizen's petition" calling on the FDA to reverse itself on mifepristone (RU-486). He prefers not to prescribe contraceptives to unmarried women, endorses the medically inaccurate assertion that emergency contraception is an abortifacient, and advises women who suffer from premenstrual syndrome to read the Bible and pray.

In spite of this appointment, the FDA's Reproductive Health Drugs Advisory Committee has surprised observers by its independent stance. In December 2003, for example, it recommended that Plan B, the emergency contraceptive pills,⁹⁸ be made available without a prescription. However, in an unusual move that some attributed to conservative political pressure, the FDA itself suddenly announced in February 2004 that it

⁹⁴ World Health Organization, *Abortion Does Not Increase The Risk of Breast Cancer*, Fact Sheet no. 240, June 2000.

⁹⁵ See International Women's Health Coalition, "Bush's Other War: The Assault on Women's Sexual and Reproductive Health and Rights," available at www.iwhc.org; and http://www.house.gov/reform/min/inves_admin/admin_hhs_info.htm, http://www.cancer.gov/cancer_information/doc.aspx?viewid=8cf78b34-fc6a-4fc7-9a63-6b16590af277, and <http://www.cancer.gov/cancerinfo/ere-workshop-report>.

⁹⁶ See <http://cms.hhs.gov/providerupdate/regs/cms2127f.pdf> and http://bingaman.senate.gov/Issues/Health_Care/uninsured_pregnant/test_bingaman/test_bingaman.html.

⁹⁷ National Family Planning and Reproductive Health Association, "President Bush sends FY05 Budget to Congress: Flat Funding Proposed for Title X as Abstinence Funding Soars," available at <http://www.nfprha.org/uploads/FY2005PresidentRequest.pdf>, accessed 10 February 2004.

⁹⁸ Emergency contraceptive pills are a dose of contraceptive pills which, when taken within 72 hours of unprotected sexual intercourse, prevent pregnancy by suppressing ovulation, impeding fertilization or preventing implantation of a fertilized ovum. Emergency contraception is not RU-486, and cannot interrupt an established pregnancy. See World Health Organization, *Emergency Contraception: A Guide for Service Delivery*, 1998. Anti-abortion activists claim that life begins at conception, and that preventing implantation of a fertilized ovum is thus equivalent to abortion.

would need an additional 90 days to complete its review of Plan B's application.⁹⁹

The Bush concern for ideological purity reaches far and wide. Newsweek reported recently that the first team of State Department experts sent to Iraq with Lt. General James Garner had to be screened by the right-wing ideologues in the White House: "The vetting process 'got so bad that even doctors sent to restore medical services had to be anti-abortion,' recalled one of Garner's team."¹⁰⁰

Many staunch opponents of abortion and reproductive health services have also been nominated by President Bush to the judiciary. So far, the Senate has refused to confirm most of them.¹⁰¹

F. UNFPA

The United Nations Population Fund (UNFPA), the world's largest provider of family planning and reproductive health services, has been a constant target of religious right-wing groups in the United States.¹⁰² They have consistently sought to weaken it; the Bush White House has obliged them.

In 2001, after reaching an agreement with the Bush Administration, Congress approved \$34 million for UNFPA. A few months later, President Bush personally blocked release of these funds, on the basis of convoluted claims made by the Population Research Institute, a small ultra-conservative group, that UNFPA supported coerced abortion and sterilization in China. The State Department dispatched a hand-picked team to China to investigate the charges. It found no evidence that the UNFPA was involved in forced abortion, and recommended that funding be released. The

Administration cast aside this report and invoked a piece of U.S. law (known as the 1985 Kemp-Kasten amendment) that prohibits funding programs of coercive abortion and sterilization,¹⁰³ to refuse to release the funds. The Administration argued that the mere fact of working in collaboration with the Chinese family planning authorities (even if it was to persuade them to abandon coercion) was tantamount to participation in a program of coercive abortion.

Using Kemp-Kasten to block UNFPA funding is particularly cynical, because UNFPA has worked actively to persuade the Chinese government to relax what is commonly known as the "one-child policy," and the resulting coercive practices. In the 32 counties where UNFPA is active in China, family-planning quotas and targets have been abandoned. UNFPA is also working to convince the Chinese government to abandon the often steep "social compensation fees" imposed on parents for each child beyond the officially prescribed number.¹⁰⁴ The State Department's background note on China *currently posted on its Website* even states that "Recent international efforts, including those funded by the UN Population Fund (UNFPA), are demonstrating to government officials that a voluntary, non-coercive approach to family planning can be effective in promoting sustainable population growth."¹⁰⁵

Clearly, if the Administration cared about ending forced abortions in China, it would *fund* UNFPA, not de-fund it. The cut in the U.S. contribution amounted to 12 percent of UNFPA's budget, and the shortfall has since been only partly made up by increased European and private contributions. This points to the Bush White House's broader agenda of weakening reproductive health and family planning agencies and undermining women's sexual and reproductive autonomy, whether in the U.S. or in the developing world.

⁹⁹ *Washington Post*, "FDA Delays Decision on 'Morning After' Pill," February 14, 2004; Page A15.

¹⁰⁰ John Barry and Evan Thomas, "The Unbuilding of Iraq," *Newsweek*, October 6, 2003, page 35.

¹⁰¹ For a complete list, see International Women's Health Coalition, "Bush's Other War: The Assault on Women's Sexual and Reproductive Health and Rights," available at www.iwhc.org.

¹⁰² See for example, the Websites of the Catholic Family and Human Rights Institute at www.c-fam.org; Population Research International at www.pop.org; Focus on the Family at www.family.org; Family Research Council at www.frc.org; or Concerned Women for America, at www.cwfa.org.

¹⁰³ The 1985 Kemp-Kasten Amendment prohibits foreign aid funding for any organization that, as determined by the President, "supports or participates in the management of a program of coercive abortion or involuntary sterilization."

¹⁰⁴ Catholics for A Free Choice, *Report of an Interfaith Delegation to China, The United Nations Population Fund in China: A Catalyst for Change*, 2003.

¹⁰⁵ U.S. Department of State, "China: Background Note," dated March 2003, available at <http://www.state.gov/r/pa/ci/bgn/18902.htm>, accessed 18 February 2004.

As further proof, the Administration promised that the \$34 million would be redirected to family planning programs in 19 countries, including 13 in Africa, through the United States Agency for International Development (USAID). Yet in January 2003 the State Department announced its intention to use these funds for non-family planning programs and only in Afghanistan and Pakistan. President Bush did not request funding for UNFPA in FY 2003, FY 2004 or FY2005. Congress appropriated \$34 million for UNFPA in each of FY 2003 and FY2004, but release of these funds to UNFPA was also blocked by the Administration.¹⁰⁶

The "Alice in Wonderland" application of Kemp-Kasten is now affecting other groups and other programs. On August 27, 2003, the State Department cut off funding for an AIDS program for African and Asian refugees, run by the Reproductive Health for Refugees Consortium, a group of seven organizations. One of the groups, Marie Stopes International (MSI), has been working with UNFPA in China for years. Solely on that basis and without an investigation, the State Department suddenly concluded that MSI was supporting forced abortions and sterilization.¹⁰⁷ The six other groups in the Consortium, the International Rescue Committee, CARE, the American Refugee Committee, the Women's Commission for Refugee Women and Children, John Snow International and Columbia University's Department of Population and Family Health, were offered the money if they repudiated MSI. They declined the government's offer, saying they would not divide the Consortium because of "baseless allegations."¹⁰⁸

"We were disappointed that for reasons of solidarity with Marie Stopes that they should refuse our money," a State Department official was quoted as saying in an August 27 story by The

New York Times. "We had hoped they would show more humanitarian statesmanship than that."¹⁰⁹

More is, no doubt, yet to come: the 2003 HIV legislation, in its section on bilateral assistance, makes a point of naming a list of UN agencies with which the President will collaborate – without naming UNFPA,¹¹⁰ and includes a *verbatim* repetition of Kemp-Kasten...¹¹¹

G. Research on sexual behavior, especially on LGBT individuals and sex workers

The Bush Administration – notably HHS – and House Republicans are aggressively questioning research on "sensitive" topics. Research on sexual behavior in general, but especially on the sexual practices of LGBT individuals, seems to be a prime target; research on sex workers is also at issue. Staff at NIH and researchers at various universities have borne the brunt of this pressure.

During the course of 2003, Roland Foster, a staffer for a House Committee headed by Representative Mark Souder (Republican-Indiana), repeatedly sent inquiries to NIH expressing concern about specific grants on sexual behavior and sexuality-related matters.¹¹²

A favorite target was Tooru Nemoto of the University of California, San Francisco (UCSF), who conducts research on subjects such as HIV prevention in Asian sex workers and transgender men who are planning or have had a sex change operation. In January 2003, HHS officials contacted Nemoto to ask for information about his work and the administration of his NIH grants. A few weeks after the call from HHS, NIH told the University that several agencies planned a site visit to discuss Nemoto's grants – a "very unusual" step, according to UCSF grants and contracts manager

¹⁰⁶ <http://www.planetwire.org/details/2937>,
<http://www.state.gov/r/pa/prs/dpb/2002/12036.htm>,
http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=15660, and
<http://www.state.gov/documents/organization/17238.pdf>.

¹⁰⁷ *The Guardian*, "US ends funds for African Aids Programme," August 28, 2003, available at
<http://www.guardian.co.uk/aids/story/0,7369,1030583,00.html>,
accessed 27 January 2004.

¹⁰⁸ *New York Times*, "US ends funds for AIDS Program, Provoking Furor," August 27, 2003, available at
<http://www.nytimes.com/2003/08/27/international/asia/27AIDS.html> accessed 27 January 2004.

¹⁰⁹ *ibid*.

¹¹⁰ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title III—Bilateral efforts, Subtitle A—General Assistance and Programs, Section. 104A. Assistance to Combat HIV/AIDS.(3) Coordination of Assistance Efforts.

¹¹¹ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title III—Bilateral efforts, Subtitle A—General Assistance and Programs, Section. 104A. Assistance to Combat HIV/AIDS (c) Conforming Amendment.

¹¹² Jocelyn Kaiser, "Studies of gay men, prostitutes come under scrutiny," *Science*, Friday, April 18, 2003, available at www.csis.org.

Joan Kaiser, who says such questions are normally addressed by phone or in correspondence. In late March 2003, four officials from NIH spent two days at UCSF asking about procedures and going "all over San Francisco" to hear scientific talks by Nemoto's team, Kaiser says. UCSF officials "haven't heard back" but assume the grants were in compliance.¹¹³

Then, on 11 April 2003, Foster sent a letter to NIH raising questions about another UCSF grant on HIV prevention in gay men. Foster's memo asked for detailed information about the grant, including the names of study section members who approved it and the scores they gave. He also demanded a list of all NIH HIV-prevention studies and all NIH studies of prostitutes over the past decade.¹¹⁴ NIH did not furnish this list.

In July 2003, the House of Representatives narrowly defeated an amendment, presented by Patrick Toomey (Republican - Pennsylvania) to deny funding to four NIH and National Institute of Child Health and Human Development sexuality research projects. Targeted grants included research on "Sexual Risk-Taking," "Longitudinal Trends in The Sexual Behavior of Older Men," "HIV Risk Reduction Among Asian Female Commercial Sex Workers at Massage Parlors in San Francisco Who Are Drug Users" (a Nemoto grant), and a "Health Survey of Native American Gay, Lesbian, Bisexual, and Transgender Individuals."¹¹⁵

Finally, in September 2003, the Traditional Values Coalition circulated in Congress a list of about 250 NIH sexuality research grants. These included grants to educate college students about sexually transmitted infections, to study female condoms, understand the history of cancer in men living with HIV, help prevent suicide in gays and lesbians, identify risk factors for sexually transmitted infections, decrease HIV-related stigma, and fight HIV transmission among rural drug users. Institutions sponsoring the grants included the likes of Baylor, Emory, Harvard and Johns Hopkins University. Citing requests by Republican lawmakers, NIH reportedly called 157 researchers to ask them to describe the usefulness of their work and "to inform them that their names were on a list

being circulated in Washington."¹¹⁶ It appears likely that the list was compiled for the Traditional Values Coalition by HHS staff using HHS data banks.¹¹⁷

Off the record, program staff at the NIH have warned grant applicants to remove certain terms from their applications, such as "condom effectiveness," "transgender," "men who have sex with men," "commercial sex workers," "needle exchange," and "abortion." The reason, according to an NIH staffer, is to reduce the projects' visibility to scrutiny.¹¹⁸

Bernadine Healey, a former NIH director, analyzes these pressures in a recent op-ed:

*The flap is not about the medical research, NIH's scientific review process, or even the money involved. Rather it's about a social agenda that has made the sex grants a lusty foil—a veritable fire-and-brimstone opportunity to sledgehammer their views that sex is out of control in America, undermining traditional values, corrupting kids, fostering homosexuality, and ruining marriage.*¹¹⁹

The intimidation by the Administration and its proxies clearly intends to deter scientific research into sexuality and diverse sexual practices. It also threatens the integrity of the peer review process in government funding of research, which could have far-reaching consequences. Judy Auerbach, who worked eight and half years at NIH and was, until August 2003, the Director of the Behavioral and Social Science Program in the Office of AIDS Research at NIH, says that the Reagan and first Bush Administrations had engaged in episodic scrutiny of sex-related research. But she says that the NIH had, in 30 years, never experienced

¹¹⁶ CBS News, "Sex, AIDS Research Under Scrutiny," 28 October 2003, available at http://www.cbsnews.com/htdocs/send_article/framesource.html?story_headline=Sex,+AIDS+Research+Under+Scrutiny&story_url=http://www.cbsnews.com/stories/2003/10/28/health/main580425.shtml, accessed 14 February 2004.

¹¹⁷ Letter from Representative Henry Waxman to Secretary Tommy Thompson, 27 October 2003, available at <http://www.cossa.org/CPR/thompson.10.27.03.PDF>

¹¹⁸ Kaiser, *op. cit.* note 111.

¹¹⁹ Bernadine Healey, "Smarm and the country," *US News and World Report*, Science & Society, 2 February 2004, available at <http://www.usnews.com/usnews/issue/archive/040202/20040202043094.php>.

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ <http://www.cossa.org/sexual%20research%20grants.htm>

pressure as extreme as that applied under this Administration:

*NIH program staff now is reluctant to issue RFAs or hold research meetings on what are perceived to be highly sensitive topics, such as rectal microbicides or HIV prevention among commercial sex workers. NIH staff feels censored and beat upon, and researchers are nervous. It is having a chilling effect on everyone.*¹²⁰

Scientists have organized to protest the Administration's efforts to intimidate researchers, and have published reports and op-eds in defense of sexuality research.¹²¹ In January 2004, Elias A. Zerhouni, the current director of NIH, issued a strongly worded letter of support for this line of research, in which he expressed his complete confidence in the NIH's review process.¹²²

H. Trafficking and sex work

The right-wing investigation of research on sex workers is rooted in the conservative view that all prostitution should be eradicated because it offends the dignity of women. Sex workers are portrayed as victims who must be rescued from this form of sexual violence. Women's agency and autonomy are presumed absent. For example, a March 2003 memo to NIH by House staffer Foster (see above) argues that by studying ways to protect the health of sex workers, NIH-funded studies "seek to legitimize the commercial sexual exploitation of women." "This runs counter to a February directive from President George W. Bush to reduce international sex trafficking," claims Foster.¹²³

¹²⁰ Personal conversation of author with Judy Auerbach, 28 January 2004.

¹²¹ See e.g. *United Press International*, "Medical journal editor defends sex studies," December 03, 2003, available at <http://www.aegis.com/news/upi/2003/UP031201.html>, accessed 14 January 2004; Healey, *op. cit.* note 118; *New York Times*, "Scientists Say Administration Distorts Facts: Accusations Include Suppressing Reports and Stacking Committees," February 19, 2004, p. A18; and Union of Concerned Scientists, *Scientific Integrity in Policymaking: An Investigation into the Bush Administration's Misuse of Science*, February 2004, available at www.ucsusa.org/documents/RSI_final_fullreport.pdf.

¹²² Letter by Elias A. Zerhouni to Senator Judd Gregg, Chairman, Committee on Health, Education, Labor and Pensions, 26 January 2004, available at <http://www.cossa.org/CPR/NIHgrantsreviewlettertoCongress.pdf>.

¹²³ Kaiser, *op. cit.* note 111.

The right-wing view of sex work is, paradoxically, shared by a number of feminists¹²⁴ and progressive men.¹²⁵ The debate in the international women's movement about whether or not prostitution and pornography are inherently exploitative, and can ever be voluntary, has been very divisive. These divisions have been skillfully exploited by right-wingers. One of their tactics is to equate trafficking with sex work and sexual violence, and to occult the question of whether women (and men) who move across borders for sex work do so willingly, in whole or in part.

For this reason, sex trafficking has become a favorite subject of ultra-conservatives in the Administration and in Congress, and has been the source of dozens of actions. Representative Christopher Smith (Republican - New Jersey), an extremely conservative anti-abortion activist with close ties to the Catholic Church hierarchy, has been particularly active on the issue of trafficking. While prostitution of minors and genuine sex trafficking are undoubtedly issues that merit serious action, the underlying agenda of the right-wing makes this particularly fraught terrain.

In February 2003, President Bush signed a National Security Directive against Trafficking in Persons and established a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons. In the press release announcing the Directive, the White House states that:

*Prostitution and related activities, which are inherently harmful and dehumanizing, contribute to the phenomenon of trafficking in persons, as does sex tourism, which is an estimated \$1 billion per year business worldwide.*¹²⁶

¹²⁴ For example, Equality Now and the Coalition Against Trafficking in Women.

¹²⁵ See the series of columns on sex trafficking and sex work in Cambodia by Nicholas Kristof in the *New York Times*, January 2004.

¹²⁶ *Trafficking in Persons National Security Presidential Directive*, 25 February 2003, available at <http://www.whitehouse.gov/news/releases/2003/02/20030225.html>

The equation of trafficking and sex work is a position shared by Congress, which inserted the following statement about sex work in the 2003 HIV legislation:

Prostitution and other sexual victimization are degrading to women and children and it should be the policy of the United States to eradicate such practices. The sex industry, the trafficking of individuals into such industry, and sexual violence are additional causes of and factors in the spread of the HIV/AIDS epidemic. One in nine South Africans is living with AIDS, and sexual assault is rampant, at a victimization rate of one in three women. Meanwhile in Cambodia, as many as 40 percent of prostitutes are infected with HIV and the country has the highest rate of increase of HIV infection in all of Southeast Asia. Victims of coercive sexual encounters do not get to make choices about their sexual activities.¹²⁷

The HIV legislation requires, as part of strategies to prevent HIV, that efforts be made to "eradicate prostitution, the sex trade, and rape, sexual assault and sexual exploitation of women and children."¹²⁸ It goes even further by prohibiting funds from being used "to promote or advocate the legalization or practice of prostitution or sex trafficking" and specifically prohibits any funding "to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking."¹²⁹ Since many of the groups best suited to reach sex workers and women who have been trafficked are groups run by sex workers themselves (who are not likely to have a policy opposing prostitution!), this provision seems expressly designed to exclude them from receiving funding. Guidelines for implementing this provision are still being formulated by the U.S. State Department.

The central piece of legislation on which the Administration's efforts hangs is the 2000 ACT TO COMBAT TRAFFICKING IN PERSONS, ESPECIALLY INTO THE SEX TRADE, SLAVERY, AND INVOLUNTARY SERVITUDE, TO REAUTHORIZE

CERTAIN FEDERAL PROGRAMS TO PREVENT VIOLENCE AGAINST WOMEN, AND FOR OTHER PURPOSES (H. 3244), which was sponsored by Representative Christopher Smith (Republican - New Jersey).

Tellingly, the Victims of Trafficking Act of 2000 contains a definition of *sex trafficking* that does not involve coercion: "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."¹³⁰

It reserves, however, its protective measures for victims of *severe forms of trafficking*, namely "(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."¹³¹

Critics of the Victims of Trafficking Act of 2000 point out that, while it claims to protect victims of trafficking, the Act adopts a punitive, criminal law enforcement model that is largely unhelpful to individuals who have been trafficked. Most of the support measures offered to victims in the United States (work visas, health services, resettlement, permanent residence) require them to "assist in every reasonable way in the investigation and prosecution of severe forms of trafficking..."¹³² – something which many trafficked persons are unlikely to agree to, for fear of reprisals.

Because the Victims of Trafficking Act of 2000 denies any distinction between sex work and trafficking, it also ignores a fundamental fact of commercial sex workers' lives, namely, that much abuse, violence and repression comes at the hands of law enforcement officials. Those engaged in the

¹²⁷ HIV/AIDS ACT of 2003, *op.cit.* note 24, section 2 Findings, (23).

¹²⁸ HIV/AIDS ACT of 2003, *op.cit.* note 24, section 101, Development of a Comprehensive, Five-Year, Global Strategy (4).

¹²⁹ HIV/AIDS ACT of 2003, *op.cit.* note 24, Title III Bilateral Programs Sec. 104A Limitation (e) and (f).

¹³⁰ 2000 ACT TO COMBAT TRAFFICKING IN PERSONS, ESPECIALLY INTO THE SEX TRADE, SLAVERY, AND INVOLUNTARY SERVITUDE, TO REAUTHORIZE CERTAIN FEDERAL PROGRAMS TO PREVENT VIOLENCE AGAINST WOMEN, AND FOR OTHER PURPOSES, H. 3244, ("VICTIMS OF TRAFFICKING ACT OF 2000"), section 103 (9).

¹³¹ VICTIMS OF TRAFFICKING ACT OF 2000, *op. cit.* note 129, section 103 (8).

¹³² VICTIMS OF TRAFFICKING ACT OF 2000, *op. cit.* note 129, section 107 (b) (1) (E).

sex trade are not likely to perceive law enforcement as trustworthy and helpful. As an example, an anti-trafficking sweep conducted in Romania in October 2003 (with U.S. assistance under the Act) identified 696 apparent victims of trafficking and 831 suspected traffickers. But, of the victims, only 67 were reported to have accepted offers of assistance from law enforcement officials.¹³³

The Act authorizes sizeable sums of money for foreign assistance to help countries address severe forms of trafficking, and denies nonhumanitarian and nontrade assistance to countries deemed not to act sufficiently vigorously against such trafficking.¹³⁴

Among the many measures taken by the Administration in the wake of the Victims of Trafficking Act of 2000:¹³⁵

- The Department of State's Office to Monitor and Combat Trafficking in Persons now issues an annual Trafficking in Persons Report, which assesses the progress of 165 governments in addressing trafficking. After much agitation by right-wingers who felt the State Department was too soft on prostitution, former Representative John Miller (Democrat - Washington) was appointed to head the office. Miller is known for his "abolitionist" views on the subject of sex work.
- In FY 2002 the Department of State funded over 110 anti-trafficking programs in some 50 countries.
- In 2001-2003, the Department of Justice reports that it charged 79 sex traffickers, and has obtained convictions for 59 defendants. The Department reports 142 open trafficking investigations.
- The Department of Justice conducted its largest anti-trafficking training for federal prosecutors and agents in January 2003. In December 2002, the Justice Department held a first Department summit on protecting children from prostitution.
- The Immigration and Naturalization Service has issued a little over 450 "T visas," to enable certain

trafficking victims to live and work legally in the United States for three years while their cases are investigated and prosecuted. The Department of Justice and HHS jointly certify these persons to receive federal and state benefits and services including housing, and medical care. The T-visa process and the certification for benefits both require cooperation with the prosecution.

- Since 2001, HHS reports it has provided over \$4 million in grant funding to domestic NGOs to provide community education, outreach, and direct assistance to victims of trafficking. HHS says that these grantees have already reached over 3,000 individuals.
- Since January 2001, USAID says it has significantly increased its funding of anti-trafficking activities in developing and post-socialist transition countries. In FY 2002 USAID spent more than \$10 million in over 30 countries.
- The Department of State Trafficking in Persons Office and the United Nations Office of Drugs and Crime are launching public service announcements "to encourage victims and the general public to take action against human trafficking." The Administration has set up a toll-free hot line, the "Trafficking in Persons and Worker Exploitation Task Force Complaint Line."

In June 2003, in a bill on appropriations for FY 2004 and 2005 for the Victims of Trafficking Act of 2000,¹³⁶ Representative Chris Smith proposed to prohibit the use of authorized funds to "promote, support, or advocate the legalization or practice of prostitution," and to prevent any funds from going to "any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution." This would shut out many organizations working with or composed of sex workers, which are likely to be effective at reaching trafficked persons. Once again, moralistic views of sex work prevail, to the detriment of the true victims of trafficking.

¹³³ *New York Times*, "12 Nations in Southeast Europe Pursue Traffickers in Sex Trade," 19 October 2003, p. 8.

¹³⁴ VICTIMS OF TRAFFICKING ACT OF 2000, *op. cit.* note 129, section 113.

¹³⁵ For more details on measures taken, see Trafficking in Persons National Security Presidential Directive, 25 February 2003, available at <http://www.whitehouse.gov/news/releases/2003/02/20030225.html>; and letter by John D. Ashcroft to the editor, *New York Times Magazine*, 15 February 2004, p. 6.

¹³⁶ AN ACT TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEARS 2004 AND 2005 FOR THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000, AND FOR OTHER PURPOSES, H.R. 2620, section 7.

Conclusion

These are only some of the sexuality-related policies of the Bush Administration. They nevertheless give an idea of the breadth and ambition of the right-wing thinkers in the Administration and their allies in Congress in their drive to remake America and the world in line with their moral and religious values. Sexuality is not an afterthought, but a centerpiece of their thinking. Large sums of money are being spent to make this vision of a mythical, heterosexual, conjugal sexual past, a reality.

The extent and interconnection of the Bush agenda demonstrates that progressive forces cannot stop the right-wing by giving in on one issue – say, abortion – and still keep the rest from tumbling down. The religious right-wing has an integrated vision where everything is tied to everything else: abortion is thus, in their canon, equally relevant to cloning and to modern contraception. The dignity of women dictates against sex work, and against pre-marital sex. The family needs to be protected from adolescent health services, and from gay marriage.

The idea that rational and scientific arguments (health, effectiveness, even cost!) can prevail in discussions with the religious ideologues in power is also clearly put to rest when one examines the content of the measures: better to condemn sex work and condoms than to prevent HIV infection, better to promote doomed-to-failure policies on abstinence than to prevent teenage pregnancies, better to waste money on promoting marriage than to fix the education system or set up effective vocational training.

Given the far-reaching nature of the Bush agenda on sexuality, non-U.S. NGOs and other governments have to pay particular attention to the terms under which they accept U.S. foreign aid. Are they being asked to condemn sex workers in order to obtain HIV funds? Will they be asked to betray colleague organizations to secure their grant? Are they forgoing their right to speak out? Who are the American "faith-based" groups working in their country?

A Romanian human rights activist recently told me that an influential Romanian women's group had accepted

USAID family planning funds in spite of the GGR, because they absolutely did not anticipate conservative action on abortion in Romania (where liberalization of the abortion law was the very first legislative measure taken in 1989, after the fall of pro-natalist dictator Ceaucescu). Yet, last year, a sudden drive by Romanian nationalists threatened to impose "waiting periods" and mandatory counseling before abortion – and the women's group found itself gagged.

The linkage between domestic measures and foreign policy when it comes to policing sexuality is noteworthy. It would be difficult to fully understand, for example, what "abstinence" truly means in the HIV legislation, without an examination of what the term entails in the United States' own domestic context.

More sustained cooperation and exchanges between groups in the U.S. and groups abroad would help ensure that these linkages are better understood. Conversely, NGOs in other countries, who are battling their own right-wing forces, can inform American understanding of where the Bush Administration and its allies might be going next with their sex control drive.