NARAL
Pro-Choice America Foundation

April 9, 2004

Ms. Mai T. Dinh, Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA E-MAIL <politicalcommitteestatus@fec.gov>
AND HAND-DELIVERY

Re: Notice of Proposed Rulemaking 2004-6: Political Committee Status

Dear Ms. Dinh:

The NARAL Pro-Choice America Foundation submits these comments in response to Notice of Proposed Rulemaking 2004-6[1] ("NPRM"), proposing amendments to the Commission's definitions of "political committee" and "expenditure."

We strongly oppose the NPRM, and urge the Commission not to adopt any part of it as drafted. The new standards set forth in the proposed rules would chill public debate of important policy issues. Furthermore, we believe the FEC lacks the statutory authority to promulgate these rules as they have been proposed.

The Rules Proposed in the NPRM Would Impede Issue Advocacy, Stifle Dissent, and Adversely Affect Public Debate of Critical Issues

The NARAL Pro-Choice America Foundation – Identity and Mission

For over a quarter century, since its founding in 1977, the NARAL Pro-Choice America Foundation has performed in-depth research and legal work, published substantive policy reports, mounted public education campaigns, and provided leadership training for grassroots activists across the nation in furtherance of its mission to protect and preserve the right to choose while promoting policies and programs that improve women's health and make abortion less necessary. The Foundation is exempt from taxation under section

[1] Political Committee Status; Proposed Rule, 69 Fed. Reg. 11,735 (proposed March 11, 2004).

501(c)(3) of the Internal Revenue Code and is the sister organization of NARAL Pro-Choice America, a section 501(c)(4) tax-exempt organization.

Women's access to reproductive health care services including abortion is affected by numerous public policies of the U.S. government. As part of its work to further that access for all women, the NARAL Pro-Choice America Foundation works to educate the public on laws, policy proposals and developments and their implications for reproductive freedom. Within the limits imposed by its 501(c)(3) tax status, the Foundation works to influence legislation as well as administrative agency and court actions.

The NPRM's Definition of Expenditure Would Destroy Our Ability to Speak Out About Reproductive Rights

The NPRM jeopardizes NARAL Pro-Choice America Foundation's ability to carry out this program, most critically by proposing to define as an "expenditure" any public communication that "promotes or supports, attacks or opposes" a candidate for Federal office.[2] As an incorporated organization that accepts funding from other incorporated entities, the Foundation is prohibited from making expenditures.[3] In addition, although the IRS applies a different standard from that used by the FEC, we are concerned that engaging in activities that have been characterized as expenditures in connection with a federal election could also jeopardize our 501(c)(3) tax-exempt status, even though those activities are currently clearly permitted by applicable IRS precedent.

As a 501(c)(3) organization, we do not promote or attack any candidate *as a candidate.* However, this same "promote or support, attack or oppose" standard was employed in the recently-issued Advisory Opinion 2003-37, in which context it became clear that the concept includes criticism or praise of a policy position or action taken by a Federal official who also *happens to be a candidate*, not merely support of or opposition to a candidate *qua* candidate. It may theoretically be possible to talk about important questions of public policy without naming specific office holders, or critiquing their actions or the position they have taken on those issues, but such a restriction would hamstring effective advocacy. Were the Commission to adopt this rule, it would suddenly become illegal for us to engage in public discussions of the repercussions of specific actions proposed or taken by the Bush Administration. Lobbying efforts that encourage our supporters to contact specific members of Congress in order to change their votes on pending legislation would be effectively banned. Such a rule would

[2] Id. at 11,757 (to be codified at 11 C.F.R. § 100.116(a)).

[3] Under current rules, "expenditures" are defined as payments for communications that expressly advocate the election or defeat of a clearly identified candidate for Federal office. Because this standard captures far less speech than does the IRS's facts and circumstances analysis, 501(c)(3) organizations as a rule do not need to worry about violations of the campaign finance laws if their public communications are in compliance with the IRS standard.

represent an unprecedented intrusion on the ability of nonprofit issue groups to speak out on critical issues of public concern. Our advocacy communications would be subject to a content-based set of rules for governmental approval.

Opponents of reproductive choice have launched an incremental attack on our legal rights. Our political adversaries have framed their actions carefully to avoid an obvious all-out assault on the protections of *Roe v. Wade*, yet to fully appreciate the consequences of their specific proposals it is necessary to understand their motivation and ultimate goal. Our research indicates that many Americans who consider themselves strongly pro-choice do not fully appreciate the threats to choice that exist. In order to protect the right to privacy and women's reproductive rights, we must educate the public about developments occurring around the country that jeopardize these fundamental rights.

We cannot effectively debate the issues without discussing the political actors who are promoting them. For example, last year Congress passed and President Bush signed the first federal abortion ban, criminalizing most abortions after 12-15 weeks.[4] The promoters of this federal abortion ban, including the President, characterized the law as a "late-term" abortion ban. It is not, and it is vital for the women and men of our country to know this fact. Yet under the NPRM, our public communications would not be permitted to mention the President's position on this ban and his role in this law. We would not be permitted to express our opposition to the anti-choice agenda promoted by this President. We would be prohibited from correcting his false characterization of the law's effect, thus undermining our ability to educate the public about how perilously close they are to losing fundamental rights. In short, we cannot realize our goal of building a fully educated pro-choice citizenry if we are legally banned from criticizing or praising any elected official who happens also to be a candidate. In the current political climate, to oppose the anti-choice policy proposals of the Bush administration without naming President Bush or indicating our opposition to his policy agenda is not possible.

The effects of a ban on public communications that "promote or support, attack or oppose" the policy positions of any elected official who is a candidate for re-election would be far-reaching indeed. Further specific examples of the ways in which the approach of the NPRM would constrain our advocacy and impede our ability to speak out on issues are too numerous to count. A few representative illustrations will suffice to demonstrate the scope of our concerns.

In an effort to stem the anti-choice tide that threatens to overwhelm our hard-won legal rights, several nonprofit groups have banded together to stage a march on the national mall. The march will be a historic occasion, with thousands of citizens coming together to speak out in support of the rights of women worldwide. It is an issue-focused event designed to energize our supporters to recognize and stand up to the systematic assault on reproductive freedom and justice for all women taking place at all levels of government

[4] Partial Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, 117 Stat. 1201 (2003) (codified at 18 U.S.C. § 1531).

within this country. The NARAL Pro-Choice America Foundation is proud to support the organizing efforts for this march. To publicize it and encourage attendance, we have purchased radio air time in markets where a weekend trip to the District of Columbia is feasible. A sample script is attached to these comments as the file attachment1.doc. In order to bring home to the listener the peril facing legal rights, which many assume to be unassailable, it quotes several anti-choice public figures, including President Bush. This radio spot is a recruitment tool for a march designed to encourage citizens to speak out on important issues and become involved in public policy debate. This is not by any stretch of the imagination an electoral message, yet because it expresses opposition to the President's declared agenda with regard to the right to choose, the NPRM would treat it as an illegal corporate expenditure. This amounts to an astonishing assertion of governmental power to stifle dissent.

As another example, we create and distribute a wide array of publications on a panoply of public policy issues. Many of these materials, in order to provide the reader with complete information on the current status of the issue, critique the positions taken by elected officials who either promote or oppose related policy proposals. A single example of such a paper is attached to these comments as the file attachment2.pdf. In a three-page, footnoted discussion of anti-choice attacks on policy positions that promote important health research, a single three-sentence paragraph summarizes the position of the Bush administration severely restricting access to stem cell lines for research. Because our position is clearly opposed to that of the administration, the proposed regulations would apparently treat the costs of preparing and distributing this document as an illegal corporate expenditure if it were mailed to 500 of our supporters. It is impossible to have a meaningful discussion of the role that anti-choice politics plays in creating obstacles to scientific research without discussing the role of anti-choice politicians. Hence, the rules proposed in the NPRM would effectively gag us and similarly situated organizations from speaking out on this as well as myriad other public policy issues.

Yet another example: In the near future, we anticipate working in support of our sister organization's initiative to promote the "Freedom of Choice Act," introduced in both houses of Congress by Rep. Jerrold Nadler and Senator Hillary Rodham Clinton.[5] It would be an absurd result were the permissibility of this activity to turn on whether these legislative sponsors happen to be up for re-election this year. Yet that is the logical conclusion under the rules being considered. So long as a legislator is not a candidate, advocacy organizations may support or oppose their legislative efforts, yet when they formally announce an intention to seek another term (something that for many members of Congress happens almost immediately after the last election), most public communications promoting or criticizing their legislative proposals would be banned.

[5] H.R. 3719, 108th Cong. (2004) and S. 2020, 108th Cong. (2004).

Not Only Our Advocacy But All Public Political Discourse Would Suffer

As illustrated by the discussion above, we as an organization have particular cause to feel that our mission would be endangered were the new proposed definition of "expenditure" to be adopted. However, the approach of the NPRM would more broadly deprive the public of full and robust discussion of critical issues. The NPRM contains no ideological screen, so our political opponents would be equally limited in their ability to speak out effectively on issues of public concern.

Indeed, not only reproductive freedom, but same-sex marriage, environmental protections, the war in Iraq, the future of social security and medicare, tax cuts, economic recovery, investigations into pre-September 11 intelligence failures – all are current issues of great importance to the American public that deserve to be discussed thoroughly and thoughtfully. All are also likely to play a role in the debate around this year's Presidential campaign. To adopt rules that would restrict the ability of citizens' groups to speak out on these issues would deprive the public debate of some of its most important voices. In fact, it would likely deny the public the chance to hear from those most knowledgeable about the issues. Even if it were constitutionally permissible and within the Commission's authority to do so, the result would be catastrophic for the ability of a free society to grapple with its most difficult issues.

If nonprofit organizations are prohibited from speaking out on policy positions promoted by candidates, or risk being treated as a "political committee"[6] should they do so, our public discourse will suffer. By characterizing genuine issue debate as an electoral expenditure, the NPRM would allow only candidates, parties, and groups organized as federal political committees to engage freely in the debate over some of the most significant issues of our time.[7] With public discussion of these complex issues permitted only to the most political speakers, reasoned discourse and engagement on policy issues will become even rarer than they already have become. Public debate over the country's most contentious issues will be limited to 30-second ads and glib sound bites.

Equally alarmingly, the NPRM would insulate office holders from public discussion of the actions they have taken or propose to take. Efforts to lobby on pending policy decisions could be funded only with "hard" FEC-regulated dollars. Issue organizations would be unable to discuss the records of an elected official who happens to be running

[6] Status as a political committee subjects an organization to severe restrictions on the sources of its funding, as well as annual contribution limits even from permissible sources. These funding restrictions alone would cripple many nonprofits' ability to carry out their advocacy missions. For organizations involved in the debate over reproductive freedom, the donor disclosure requirements would have at least as much of a chilling effect.

[7] Those few nonprofits organized as unincorporated associations would perhaps be able to engage in a very limited amount of this advocacy, but the vast majority of independent advocacy groups are incorporated and hence subject to the prohibition on making "expenditures" under FECA.

for office, undercutting office holders' public accountability for their actions. Only political opponents would be truly free to criticize an office holder's actions. Because complete understanding of the ramifications of specific policy choices requires a subtlety of analysis and comprehension of details far beyond the level of discourse of most political campaigns, the public would lose access to a full range of information about their elected leaders' performance.

Legal Considerations

The NPRM Is Particularly Problematic As Applied To 501(c)(3) Organizations

Because of 501(c)(3) organizations' privileged tax status, they are already prohibited from electioneering or intervening in political campaigns.[8] This prohibition is broad and absolute, and it is applied using a "facts and circumstances" approach that not only captures explicitly electoral activities, but also examines all public statements made by a charity that praise or criticize public officials who are simultaneously candidates for re-election or for a different office. All of our policy advocacy is carefully designed to comply with the broad restrictions imposed by our organization's tax status.

Yet despite the broad and absolute ban on direct or indirect electioneering by 501(c)(3)s, the IRS has recognized that organizations retain the right to engage in advocacy, and that the pendancy of an election should not eliminate a group's right to speak out on issues. In an internal training manual, the IRS acknowledged the difficulty of articulating a test that would permit genuine issue advocacy yet prohibit surreptitious intervention in a political campaign:

> Basically, a finding of campaign intervention in an issue advertisement requires more than just a positive or negative correspondence between an organization's position and a candidate's position. What is required is that there must be some reasonably overt indication in the communication to the reader, viewer, or listener that the organization supports or opposes a particular candidate (or slate of candidates) in an election; rather than being a message restricted to an issue. . .

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[8] We note that the constitutional analysis applicable to the IRS's vague definition of "campaign intervention" is different from that triggered by regulation under FECA. Because the tax code definitions arise in the context of a grant of exemption, which is viewed as a form of subsidy to the organization, a lower level of scrutiny is applied than when the government regulates or prohibits outright certain types of speech. *Regan. v. Taxation with Representation*, 461 U.S. 540, 549-550 (1983) (upholding limitation on lobbying by 501(c)(3) organizations); *Christian Echoes National Ministry v. U.S.*, 470 F.2d 849, 857 (10th Cir. 1972) (upholding 501(c)(3) ban on campaign intervention). Even if the "facts and circumstances" test used by the IRS passes constitutional scrutiny when applied to tax-exempt 501(c)(3) organizations, applying it outside the context of a governmental subsidy would be unlikely to survive challenge.

> [T]he appropriate focus is on whether the organization, in fact, is commenting on a candidate rather than speaking about an issue. [9]

Recently the IRS again reflected its recognition that regulation in this area must be careful not to chill policy advocacy with the issuance of Revenue Ruling 2004-6, noted in the NPRM.[10] This approach is in stark contrast to the blanket approach of the NPRM, which apparently would treat as an "expenditure" the costs of many communications that the IRS would recognize as being clearly not political campaign intervention.

Put plainly, there is no legitimate public interest served by subjecting organizations already governed by this "facts and circumstances" inquiry to further restrictions on their ability to advocate public policy positions and to criticize or praise the positions put forth by our elected leaders on those issues. Unfortunately, the NPRM would do just that. It would effectively impose a broad gag rule on incorporated nonprofit organizations that seek to speak out effectively on legislative, administrative, and other policy matters.

Neither the NARAL Pro-Choice America Foundation nor our sister organization, NARAL Pro-Choice America, took a position in support of or in opposition to the Bipartisan Campaign Reform Act ("BCRA") when it was being debated.[11] We recognize that there are valid concerns about campaign spending and the role money plays in the political system. It has always been our position that we will comply with the laws enacted to govern electoral activity, [12] and we have not advocated for or against any specific approach. We feel compelled to speak out now because the NPRM sets out a regulatory regime that reaches far beyond speech that is even arguably campaign-related, threatening to still our voice and tie our hands at a critical juncture for the future of reproductive rights.

The FEC Lacks The Legal Authority To Enact These Rules

The full legal arguments pertaining to all the different elements of the NPRM will no doubt be made ably by others. Yet it is important for us to emphasize here that adoption

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[9] Judith E. Kindell and John Francis Reilly, Election Year Issues, Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002 335, 433.

[10] Rev. Rul. 2004-6, Internal Revenue Bulletin 2004-4, Jan. 26, 2004. Although this ruling directly addresses only the application of tax under section 527(f) to organizations exempt under sections 501(c)(4), 501(c)(5), and 501(c)(6), the IRS has repeatedly stated that (at least with respect to campaigns for elected office) activity that triggers the imposition of the 527(f) tax is the same activity that would be illegal campaign intervention for a 501(c)(3) organization. Hence, 501(c)(3)s will justifiably look to the ruling as guidance on the application of the "facts and circumstances" to their own activities.

[11] Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002).

[12] Such activity conducted only by our sister 501(c)(4) organization or its SSF, of course.

of these proposed regulations would not only reflect unsound public policy but would also represent a tremendous over-stepping of the FEC's delegated authority.

The proposed definition of "expenditure" is not only bad policy, it is not consistent with FECA

There has been much speculation about the continued significance of express advocacy as a viable or even meaningful concept under the Federal Election Campaign Act. In 1976, the Supreme Court authoritatively construed the statutory term "expenditure" "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate."[13] The court added this definition as a saving construction because the terminology employed in the statute itself, "for the purpose of influencing any election for Federal office,"[14] raised concerns of both vagueness and overbreadth.

Over a quarter century later, the Court upheld against constitutional challenge a different category of regulated spending, the "electioneering communication" restrictions of BCRA. In doing so, it clarified that the express advocacy line drawn in *Buckley* was "not constitutionally compelled."[15] That is, the specific line chosen was not mandated by constitutional principles, but was an exercise in statutory interpretation intended to accommodate the constitutional concerns raised by the vague and broad statutory language under consideration. The Court concluded that Congress had successfully drawn a different line in defining this new category of regulated activity. BCRA uses a very bright line to define "electioneering communications," thus avoiding any vagueness concerns. And the Court agreed that on the substantial record in front of it Congress could reasonably conclude that these paid advertisements "are the functional equivalent of express advocacy,"[16] thus alleviating concerns of over-breadth.

The *McConnell* court notably did not indicate that the constitutional limits on regulation of speech based on the vagueness and overbreadth doctrines would no longer apply to campaign-related speech. Rather, it found that in this specific regulatory exercise Congress had met the burdens imposed on the government if it would regulate protected speech. It also plainly did not overrule *Buckley*'s construction of the statutory term "expenditure." This has been the law of the land for over a quarter century. *McConnell* did not open the door for the FEC to re-define "expenditure" under FECA to include speech other than express advocacy.

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[13] *Buckley v. Valeo*, 424 U.S. 1, 80 (1976).

[14] 2 U.S.C. § 431(9)(A)(i).

[15] *McConnell v. FEC*, 124 S.Ct. 618, 695 (2003).

[16] *Id.* at 696.

The proposed definitions of "major purpose" exceed the Commission's regulatory authority

In addition to the proposed re-definitions of "expenditure," under either alternative I-B (redefining "expenditure" for all actors for all purposes) and I-A (redefining "expenditure" only for purposes of determining political committee status), the NPRM's provisions regarding the "major purpose" test for determining political committee status go equally far beyond the Commission's authority. The concept of a "major purpose" test to limit the application of FECA is a judicial construction intended to limit the reach of the law's regulatory effects.[17] It is not an independent basis for regulation.

The "major purpose" standard has its roots in judicial opinions,[18] yet exploring its precise parameters was not essential to the holding of the cases, and it has not been fully developed. Any rulemaking establishing regulatory definitions must represent a reasonable attempt to divine the intent of the courts in articulating this test and to implement a definition that achieves those goals. In *Buckley,* the Court described as a political committee an organization, "the major purpose of which is the nomination or election of a candidate."[19] Similarly, in *MCFL*, the Court stated that should an organization's independent expenditures "become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee."[20] While this language did not clearly fix how one might measure an organization's major purpose, it does not leave it open to the Commission's discretion to arbitrarily select any spending threshold and decree it to be "major."

The infirmity of the NPRM's approach is most evident in the proposal that spending $50,000 on identified activities would be found *per se* to cause an organization's major purpose to be electoral.[21] Presumably the court used the word "major" in its commonly understood meaning: greater in size, extent or amount.[22] "Major" is a relative term, and must be understood in the context of a specific organization. While $50,000 might represent the majority of spending of a smaller organization, for an entity with a multi-million dollar annual budget it is a tiny fraction of all expenditures. Unless an organization can have many, indeed dozens of major purposes, any absolute dollar

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[17] *Buckley,* 424 U.S. at 79, *citing United States v. National Comm. for Impeachment*, 469 F.2d 1135, 1139-1142 (2nd Cir. 1972); *American Civil Liberties Union v. Jennings*, 1041, 1055-1057 (DC 1973) (three-judge court), vacated as moot sub nom. *Staats v. American Civil Liberties Union*, 422 U.S. 1030 (1975).

[18] *Buckley,* 424 U.S. at 79; *FEC v. Massachusetts Citizens for Life,* 479 U.S. 238, 263 (1986) (hereinafter "MCFL").

[19] *Buckley*, 424 U.S. at 79.

[20] *MCFL*, 479 U.S. at 262.

[21] We put aside for the sake of the present discussion the extraordinary over-breadth of the covered activities, which is assuredly not tailored to include only electoral communications and leave unregulated "pure" issue discussion.

[22] Random House Webster's College Dictionary 793 (2nd ed. 1997).

threshold is not a reasonable attempt to capture the Court's intent in employing the term "major." Nor do any of the other proposals adequately undertake this task. By relying on broad definitions of triggering expenditures and importing concepts from the tax code, which in fact cover an array of activity outside the FEC's regulatory purview, the NPRM fails to state a viable interpretation of "major purpose" that accommodates the judicial concerns that led to the test's articulation.

The NPRM applies the concept of "federal election activity" to a purpose inconsistent with its intent

By importing into the definition of expenditure and/or of political committee the statutory term "federal election activity," the NPRM fails to recognize the limited circumstances for which Congress adopted that term and under which the Court found it to pass constitutional muster. BCRA created this category of activity and applied it to state and local political parties, which by their very nature exist for the purpose of getting candidates elected. Communications by parties that "promote or support, attack or oppose" a candidate can fairly be assumed to be an attempt to influence an election.[23] Yet the adoption of the standard in that context cannot be taken as evidence of a Congressional finding that all such speech should be regulated as an "expenditure." Indeed, the "promote or support, attack or oppose" standard was applied to non-party organizations in a very limited context. The FEC is empowered to adopt by regulation exceptions to the definition of "electioneering communication" so long as communications meeting the standard are not excepted.[24] Congress applied the standard to outside groups in this narrow way, strongly suggesting that it did not intend to limit such communications in other contexts. For the Commission to do so has no basis in the statute that it is charged with interpreting and enforcing.

To properly accommodate the concerns of nonprofit organizations, any regulatory proposal must be completely redrawn

Because the thrust of our comments is limited to the inappropriate effect that these proposed regulations would have on 501(c)(3) organizations, we recognize that one response would be to address these concerns by simply stating that 501(c)(3)s, or perhaps all 501(c) organizations, are excluded as a class from the regulations' reach.

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[23] A similar analysis would apply to get-out-the-vote and voter registration activities, which may have a presumed electoral intent and impact when carried out by parties, yet are conducted by numerous nonprofit organizations for wholly different purposes. Indeed, by allowing Federal candidates and office holders to raise funds specifically for organizations that primarily engage in such activities in amounts exceeding the Federal limits (2 U.S.C. § 441i(d)(4)(B)), BCRA creates a presumption that these voter involvement activities are not per se sufficient to trigger political committee status.

[24] 2 U.S.C. § 434(3)(B)(iv).

We do not believe this would be an adequate solution. The entire NPRM reflects a deep and pervasive lack of appreciation for the breadth of political discourse in this country and the role played by nonprofit organizations. In order to draw lines that carry out Congressional intent, adequately regulate campaign-related spending, and not chill robust debate of important public policy issues, the Commission must start anew.

I would be happy to provide additional information. You may contact me via our legal counsel, Elizabeth Kingsley, Harmon, Curran, Spielberg & Eisenberg LLP, at BKingsley@harmoncurran.com or 202-328-3500.

<signed>

Kate Michelman
President
NARAL Pro-choice America Foundation
1156 15th Street, NW
Washington, DC 20005

NARAL
March for Women's Lives
:60 Radio

ANNOUNCER: Lots of people are talking about a woman's right to choose.

Congressman Henry Hyde says -- and I quote—"The only thing worse than rape is abortion."

Pat Robertson says the pro-choice agenda – quote – "is about a socialist, anti-family political movement that encourages women to leave their husbands, kill their children, practice witchcraft, destroy capitalism and become lesbians."

Pat Buchanan calls the right to choose—and I'm still quoting here—"The greatest evil on the American continent since slavery."

Then there's George Bush, who said he'd do everything in his power to limit the right to choose -- and is making good on that pledge.

They've all had their say. Isn't it time that the rest of us have ours?

Join the NARAL Pro-Choice America Foundation in Washington, D.C. on April 25th for the March for Women's Lives. April 25th—before it's too late.

Be counted at www.ProChoiceAmerica.org

ANTI-CHOICE ATTACKS ON HEALTH RESEARCH

Anti-choice politics are threatening important health research involving fetal tissue, human embryos, and stem cells derived from embryos. This research is critical to a wide range of diseases and disabilities, including Alzheimer's, diabetes, and stroke. Indeed, fetal tissue research in the 1950s was critical to creating two life-saving vaccines — for polio and rubella.[1] Anti-choice activists are trying to stop this vital health research using a strategy to give legal rights to embryos and fetuses.

NARAL'S POSITION

Research involving fetal tissue, human embryos, and stem cells derived from human embryos is critical to advancing medical science and human health. NARAL supports public funding of this research under appropriate ethical guidelines developed and enforced by the National Institutes of Health.

HIGHLIGHTS

- **Fetal tissue and human embryo research, including stem cell research, are critical to medical science.**
- **Federal funding for this research supports vital health enhancements.**
- **Ethicists support this research.**
- **Opposition to this research is grounded in anti-choice politics and is part of an overall strategy to grant legal rights to embryos and fetuses independent of the woman.**

SUPPORTING FACTS

Fetal tissue and human embryo research, including stem cell research, are critical to medical science.

- Fetal tissue, embryos, and stem cells each have unique characteristics that make them vital to research.
  - Fetal cells grow and divide rapidly and can adapt to new environments.[2]
  - Stem cells can develop into almost any type of tissue.[3]
  - Human embryos are needed to produce stem cells, and research with the embryo itself is critical for understanding growth and reproduction.[4]
- Fetal neural cell transplants have demonstrated promise in the treatment of Parkinson's disease, a neuro-degenerative disorder affecting approximately 1.5 million people in the United States.[5] The transplantation of fetal neural cells into the brains of Parkinson's patients has allowed some patients to regain gait, speed of movement, and the ability to control facial expressions.[6]
- Research with human embryos holds promise for treating some forms of infertility by improving the safety and success rates of assisted reproduction;[7] increasing contraceptive choices;[8] reducing the frequency of miscarriage;[9] and developing and improving cancer treatments by gaining a more complete understanding of cell division and growth.[10]
- Stem cells may lead to treatment for diseases and disabilities such as Parkinson's and Alzheimer's, spinal cord injury, stroke, burns, heart disease, diabetes, osteoarthritis, and rheumatoid arthritis.[11]

Federal funding for this research supports vital health enhancements.

- The United States is the worldwide leader in biomedical research, in large part due to the federal investment in this research. Federal funds are critical to advancing any type of medical research, and are essential to developing the promising treatments that fetal tissue, human embryos, and stem cells may yield.

Ethicists support this research.

- Scientists, medical ethicists and laypeople have thoroughly reviewed the ethical issues involving this type of research, and have consistently decided that this research is ethical.

- The National Institutes of Health,[12] the Ethics Advisory Board (1979),[13] the Human Embryo Research Panel (1994),[14] and the National Bioethics Advisory Commission (1999)[15] all have endorsed research involving human embryos within carefully constructed ethical guidelines.

Opposition to this research is grounded in anti-choice politics and is part of an overall strategy to grant legal rights to embryos and fetuses independent of the woman.

- Anti-choice activists and legislators are attempting in a number of contexts to grant legal recognition to embryos as part of a long-term strategy to erode the foundations of *Roe v. Wade*.[16]

- The George W. Bush Administration has come out against human embryo and stem cell research, other than research using a narrow category of existing cell lines. In all but those narrow cases, federal funding is banned. The premise of this Bush Administration policy is that an embryo, zygote, or blastocyst, from the moment of conception, is a person with its own legal rights, separate and equal to those of the woman.

- State legislation banning this research often includes anti-choice rhetoric, such as "A human embryo is a human being at an early stage of development...."[17]

- Anti-choice advocates are intent on eroding *Roe v. Wade*, in which the Supreme Court refused to grant 14th Amendment rights to embryos and fetuses. Many anti-choice advocates believe that even an unimplanted egg, or one in a petri dish, should be accorded full personhood rights. This belief is not only in tension with *Roe*, but when translated into restrictions on scientific research, amounts to a stranglehold on research that could hold promise for the treatment of a range of conditions.

NOTES

[1] Don Colburn, *The Fetus: Medicine, Law, Morality*, WASHINGTON POST, Oct. 18, 1988, Z16; Rachel B. Gold and Dorothy Lehrman, *Fetal Research Under Fire: The Influence of Abortion Politics*, FAMILY PLANNING PERSPECTIVES, vol. 21, no. 1 (Jan./Feb. 1989), 6-7.

[2] Gold and Dorothy Lehrman, *Fetal Research Under Fire*, 7.

[3] Department of Health and Human Services, *Fact Sheet: Stem Cell Research* (Jan. 19, 1999).

[4] National Institutes of Health (NIH), *Backgrounder: Human Embryo Research Overview* (1994), 2-4.

[5] Gold and Lehrman, *Fetal Research Under Fire*, 7; The National Parkinson Foundation, Inc., "What the Patient Should Know," at http://www.parkinson.org/pdedu.htm (2/18/00); Carl T. Hall, *Solving the Parkinson's Puzzle: Scientists Report Promising Results in Research to Help Cure Disease*, SAN FRANCISCO CHRONICLE, Jan. 31, 2000, A6.

[6] Anne H. Chisholm, *Fetal Tissue Transplantation for the Treatment of Parkinson's Disease: A Review of the Literature*, JOURNAL OF NEUROSCIENCE NURSING, vol. 28, no. 5 (Oct. 1996), 329. In 1999, preliminary findings from the first federally funded trial studying fetal cell transplants and their effectiveness in treating Parkinson's disease indicate that, once implanted into the brains of Parkinson's patients, fetal cells "do grow and divide and provide some patients with relief," particularly patients under 60 years of age. *Fetal Cell Study Shows Promise for Parkinson's*, LOS ANGELES TIMES, Apr. 22, 1999, A29.

[7] National Institutes of Health (NIH), *Backgrounder: Human Embryo Research Overview* (1994), 2-3.

[8] R. Alta Charo, *Embryo Research: An Argument for Federal Funding*, JOURNAL OF WOMEN'S HEALTH, vol. 4, no. 6 (1995), 603-04.

[9] Charo, *Embryo Research*, 603.

[10] NIH, *Backgrounder*, 3; Charo, *Embryo Research*, 604.

[11] NIH, *Pluripotent Stem Cells: A Primer*, May 2000.

[12] Gold and Lehrman, *Fetal Research Under Fire*, 10-11; Bell, *Regulating Transfer and Use of Fetal Tissue in Transplantation Procedures*, 278-79.

[13] NIH, *Backgrounder*, 5.

[14] NIH, Report of the Human Embryo Research Panel, vol. I (1994), x.

[15] National Bioethics Advisory Commission, Ethical Issues in Human Stem Cell Research, Executive Summary, Sept. 1999, 5.

[16] *See* Fetal Rights section herein; NARAL Fact Sheet, *Bush Administration Proposal to Make "Unborn Children" Eligible for CHIP is Part of Stealth Campaign to Undermine Abortion Rights*, at http://www.naral.org/mediaresources/fact/chip_points.html; NARAL Fact Sheet, *The Unborn Victims of Violence Act Undermines Roe v. Wade*, at http://www.naral.org/mediaresources/fact/uvva.html.

[17] 2002 S.B. 404 (WISC.).