national RIGHT TO LIFE committee, inc.

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March 25, 2009

Re: Opposing ratification of CEDAW

Dear Senator:

The National Right to Life Committee (NRLC), on behalf of our 50 state affiliates and the international pro-life community, urges you to oppose ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

There are excellent reasons why the CEDAW has never been ratified even though it was submitted to the Senate 29 years ago (by President Carter), and why it should not be ratified.

While the word "abortion" does not appear in the text of the CEDAW itself, this has proved to be of little significance. Article 12 asserts, "State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." Since about 1995, Article 12 and other provisions have been creatively interpreted by official bodies, ranging from the European Parliament to the U.N. CEDAW Committee, to condemn limitations on abortion, on grounds that any restrictions on abortion are per se discrimination against women.

The official U.N. CEDAW compliance committee has consistently exceeded its mandate. The committee has used CEDAW as the basis for criticizing at least 67 different U.N. member nations and pressuring them to weaken or repeal laws protecting unborn children. Among the targets of such criticisms by the CEDAW Committee have been Ireland ("The Committee is concerned that, with very limited exceptions, abortion remains illegal in Ireland"); Poland (in January 2007); Mexico ("The Committee recommends that all states of Mexico should review their legislation so that, where necessary, women are granted access to rapid and easy abortion"); and Portugal ("The Committee is concerned about the restrictive abortion laws in place in Portugal").

A listing of the nations affected and the dates they were cited by the CEDAW Committee, along with a selection of quotations from the CEDAW Committee's abortion-related documents, are posted here: http://www.nrlc.org/federal/foreignaid/index.html

The CEDAW Committee also has explicitly held that nations should provide public funding of abortion, and even has criticized nations that have laws in place to allow medical professionals to opt out of providing abortions. In 2007 the CEDAW Committee urged Poland "to ensure that women seeking legal abortion have access to it, and that their access is not limited by the use of the conscientious objection clause." In 2008, the Committee called on Slovakia to "regulate the invocation of conscientious objection by health professionals so as to ensure that women's access to health and reproductive health is not limited."

Here is how the Center for Reproductive Rights (previously known as the Center for Reproductive Law and Policy) distilled it in its 2002 report "Bringing Rights to Bear" (pages 146-147): "The CEDAW Committee has consistently criticized restrictive abortion laws, often framing such laws as a violation of the rights to life and health. It has asked states parties to review legislation making abortion illegal and has praised states parties for amending their restrictive legislation. . . . The CEDAW Committee has expressed concern over the lack of availability to abortion services due to laws allowing for conscientious objection on the part of hospital personnel. The committee has made it clear that it considers it an infringement of women's reproductive rights when a government fails to ensure access to another provider willing to perform the procedure."

Moreover, the CEDAW is now regularly cited as requiring abortion on demand by groups in pro-abortion lobbying efforts in various nations, and in legal arguments advanced by organizations such as the Center for Reproductive Rights. As the Center summarized the matter in its 2004 monograph, "Safe and Legal Abortion Is a Woman's Human Right": "[A]ccording to the Convention on the Elimination of All Forms of Discrimination Against Women, 'discrimination against women' includes laws that have either the 'effect' or the 'purpose' of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men. Laws that ban abortion have just that effect and that purpose."

In 2006, the Center for Reproductive Rights and others wrote the CEDAW Committee alleging that the Philippines is not in compliance with the provisions of the CEDAW: "Having ratified CEDAW, the Philippines is obligated to make abortion safe and legal."

In 2002, the European Parliament voted to adopt a sweeping report calling for removal of all limitations to abortion by European Union members such as Ireland, Spain and Portugal, and by nations then seeking membership. The report cited CEDAW as grounds for its assertion that there is an "international legal framework" under which all European Union nations should recognize abortion as a "fundamental right."

In 2002, when the Senate Foreign Relations Committee last debated the CEDAW, then-Chairman Biden attempted to paper over the problem by inserting into the ratification resolution certain language purporting to declare that CEDAW should not be used to create a right to abortion. This is mere eyewash. Such an "understanding" would have no legal force and no effect on any international legal obligations actually imposed on the United States if CEDAW is ratified, nor would it diminish the force with which the CEDAW is being employed as a pro-abortion weapon in and against other nations.

Unlike a "reservation," an "understanding" does not purport to alter the actual legal obligations imposed by a treaty. An "understanding" by one party to a multiparty convention may be of limited use in a case in which a future dispute arises over some obscure new question of interpretation. However, an "understanding" will have no effect where it directly contradicts a line of contemporaneous contrary interpretations on exactly the same point, by the committee established by the convention itself, as is the case with CEDAW and abortion. In contrast, a "reservation" announces to the other parties, in effect, that to the extent a convention is construed to impose a certain obligation, the reserving party is not to be regarded as a party to the convention

for the purpose of that particular obligation. Thus, even if the construction to which the party objects is regarded as authoritative, the reservation will generally exempt the party from the resulting obligation – but with a mere "understanding" the party will be bound by the obligation it had intended to avoid.

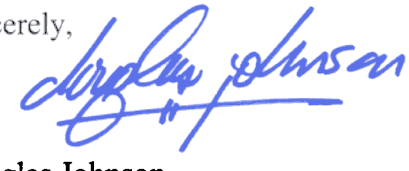
The drafters of the 2002 ratification resolution recognized very well the great distinction between an "understanding" and a "reservation." The resolution included four reservations, dealing with private conduct, women in combat, "comparable worth," and maternity leave. That the drafters of the resolution found it appropriate to use reservations rather than understandings to guard against this fairly broad array of possible CEDAW consequences, but conspicuously failed to do so in the case of abortion, demonstrates that they have deliberately avoided using the only method that might provide some measure of protection from the imposition of abortion-related obligations on the United States.

The 2002 resolution also contained an "understanding" that the UN compliance committee "has no authority to compel actions" by nations that ratify the treaty. This was just another dodge. Even without the power to directly compel action by state parties, the numerous pro-abortion decrees of the CEDAW Committee will be regarded as far more authoritative constructions of the legal obligations imposed by the treaty than any contrary "understanding" by a single party.

Already, two justices of the U.S. Supreme Court (Justice Ginsberg, joined by Justice Breyer) have cited CEDAW to buttress a legal point, even though the Senate has never ratified CEDAW. [Grutter v. Bollinger, 539 U.S. 344-346 (2003)] If the Senate ratifies CEDAW, litigants will employ CEDAW in future legal challenges to federal and state enactments that touch on abortion, and they are likely to find a greater number of jurists who will give legal weight to such arguments. It is noteworthy that in 2006 Colombia's Constitutional Court relied in part on CEDAW to liberalize Colombia's abortion law.

In summary: the CEDAW, if ratified, would be used to assert an international obligation on the federal and state governments to provide public funding for abortion, to refrain from adopting or enforcing restrictions on partial-birth abortions, to refrain from adopting or enforcing laws to protect the rights of parents with respect to their minor daughters, to eliminate conscience-protection laws, and otherwise to condemn any limitations on abortion. No mere "understanding to the contrary will preclude these legal claims. **For these reasons, a vote in favor of a ratification resolution is a vote in favor of all of these sweeping pro-abortion policies, and will be accurately so characterized in our scorecard of key roll call votes for the 111th Congress. We urge you to oppose any ratification resolution.**

Sincerely,



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