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June 4, 2008

RE: Indian Health Care Improvement Act
Amendments of 2007 (H.R. 1328)

Dear Member of Congress:

A critical vote on federal policy on tax funding of abortion may occur as early as next week, if the House of Representatives considers the Indian Health Care Improvement Act Amendments of 2007 (H.R. 1328) on the Suspension Calendar, which various sources indicate is likely.

On February 26, 2008, the Senate adopted – by a bipartisan majority of 52-42 – a crucial pro-life amendment to the companion bill (S. 1200). The amendment, offered by Senator Vitter, would exclude abortion from federally funded Indian health programs, except to save the life of the mother or in cases of rape or incest. Nine Democrats (including Majority Leader Reid and President Pro Tempore Byrd) joined 43 Republicans in supporting this amendment. The Senate then passed the amended bill, 83-10.

At the time the Senate passed S. 1200, it was anticipated that the House Energy & Commerce Committee would quickly schedule a markup on H.R. 1328. Congressman Pitts made it known that he would offer an amendment incorporating the exact text of the Senate-passed Vitter Amendment. We believe that the amendment likely would have garnered a bipartisan majority in the committee. However, the markup has been repeatedly postponed, and American Indian groups recently have indicated that they have been informed that no markup will be held because a vote on the anti-abortion-funding amendment will not be tolerated by House leadership.

Moreover, various sources that we deem credible have indicated that preparations are being made to suddenly place H.R. 1328 on the Suspension Calendar, which could occur as early as next week (the week of June 9). As you know, the Suspension Calendar is generally reserved for noncontroversial measures; bills on the Suspension Calendar are not subject to amendment nor to any motion to recommit, debate is limited to 40 minutes, and a two-thirds vote is required for passage. H.R. 1328 runs about 387 pages, and it is not yet non-controversial – it involves at least one major controversial policy issue, abortion funding. (Once the pro-life amendment was added, the Senate bill was relatively noncontroversial, as it passed 83-10.)

Given these circumstances, if H.R. 1328 does appear on the Suspension Calendar, the National Right to Life Committee (NRLC) urges you to vote against it. NRLC expects to include this roll call in its scorecard of key pro-life votes of the 110th Congress. It should be noted that, given reports that individual appropriations bills will not be brought to the floor this year, it is quite possible that this will be the only roll call this year regarding federal abortion funding policy.

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For Medicaid, federal funding of abortion was restricted beginning in 1976 by the addition of the Hyde Amendment to the annual DHHS appropriations bill. **However, because the Indian Health Service (IHS) is funded through the separate Interior appropriations bill, which has never contained a “Hyde Amendment,” the IHS continued to pay for abortion on demand long after the Hyde Amendment was enacted.** The Reagan Administration curbed this practice administratively in 1982, but did so without benefit of a firm legislative mandate. Subsequently, in an IHS reauthorization bill in 1988, Congress enacted 25 U.S.C. § 1676, which said that any abortion funding limitations found in the governing DHHS appropriations law at any given time will also apply to the IHS. This tie-in would be extended under Section 805 of H.R. 1328.

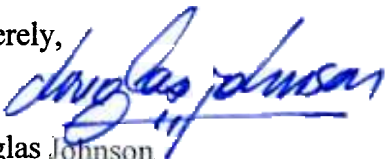
We wish to underscore that the Section 805 provision is absolutely neutral regarding federal funding of abortion; it does not itself restrict such funding, and it provides no real assurance that federal funds will not be used to pay for abortion on demand in the future. Limitation amendments on appropriations bills are a disfavored form of legislation, requiring annual renewal and dependent on a host of legislative contingencies. NRLC worked diligently over the years to codify vital pro-life policies whenever possible – that is, to move them out of the annual appropriations process and into appropriate “permanent” statutes. This has been accomplished, for example, with respect to the Department of Defense (in 1996) and the State Children’s Health Insurance Program (SCHIP)(in 1997).

Indian health programs have not been reauthorized since 1992. H.R. 1328/S. 1200, a comprehensive re-write of the statutes governing all federally administered health programs for American Indians, is clearly the appropriate vehicle for codification of the Hyde Amendment for these important programs.

We believe that a majority of members of the House oppose federal funding of abortion and would support the Pitts-Vitter Amendment. Placing H.R. 1328 on the Suspension Calendar would be an attempt to prevent the anti-abortion-funding majority from prevailing. If you are among that anti-abortion-funding majority, we urge you to insist on a fair procedure that will allow an up-or-down vote on the pro-life amendment, by voting “no” on H.R. 1328 on Suspension.

In summary, consideration of H.R. 1328 on Suspension is a procedural abuse that is being employed for the primary purpose of preventing adoption of a pro-life amendment. The substantive effect of passage, under this circumstance, would be to open the door to future funding of abortion on demand under the American Indian health programs that are funded and administered by the federal government, and the vote will be so described in the NRLC congressional scorecard. Thank you for your consideration of NRLC’s position on this important issue.

Sincerely,



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Susan T. Muskett, J.D.
Congressional Liaison

Vitter-Pitts Amendment to S. 1200/H.R. 1328

(appears as Section 805 in the Senate-passed S. 1200)

LIMITATION RELATING TO ABORTION.

(a) **DEFINITION OF HEALTH BENEFITS COVERAGE.**—In this section, the term ‘health benefits coverage’ means a health-related service or group of services provided pursuant to a contract, compact, grant, or other agreement.

(b) **LIMITATION.**

(1) **IN GENERAL.**—Except as provided in paragraph (2), no funds or facilities of the Service may be used --

(A) to provide any abortion; or

(B) to provide, or pay any administrative cost of, any health benefits coverage that includes coverage of an abortion.

(2) **EXCEPTIONS.**—The limitation described in paragraph (1) shall not apply in any case in which -- (A) a pregnancy is the result of an act of rape, or an act of incest against a minor; or (B) the woman suffers from a physical disorder, physical injury, or physical illness that, as certified by a physician, would place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself.