



# NOW Foundation

## Annual Report 2005

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## THE NOW FOUNDATION MISSION

The National Organization for Women Foundation was established in 1986 as a 501 ( c ) (3) education and litigation organization allied with the National Organization for Women, the largest feminist activist organization in the United States, with its national offices in Washington D.C. and over five hundred affiliates across the country. The two groups share some staff and office space and have overlapping boards of directors.

The Foundation works to enhance the status of women in the United States and around the world through many strategies, including advocacy, litigation and education. The litigation efforts of the Foundation seek to protect reproductive health options, as well as focusing on other areas of concern to women, such as pregnancy discrimination, employment issues, discrimination against women in the military, sexual harassment and exploitation, lesbian and gay rights, civil rights, sex discrimination in insurance and ending violence against women.

In our education and advocacy efforts, the Foundation works to inform the general public, as well as policy-makers, about the need for equal treatment of women and for a constitutional guarantee of equal rights under the law. We do this in many ways, including public speaking, conferences and seminars, training programs and educational materials. NOW Foundation also engages in voter empowerment programs designed to encourage women to register, vote and stay politically active in their communities.

## The Women's Health Project

### Love Your Body Campaign

During 2005 the National Organization for Women Foundation celebrated our eighth annual Love Your Body Day. NOW Foundation's Love Your Body project is now a year long campaign, with a special day of observance on October 19, 2005.

Since its inception in 1998, the Love Your Body campaign has served to raise awareness about women's health issues, protest harmful and offensive advertisements, and promote the importance of positive body images for women and girls. As part of the campaign, Oct. 19 is designated as this year's day of action for students, teachers and women and girls of all ages.

"More and more women and girls across the country are embracing the Love Your Body campaign every year," said NOW Foundation President Kim Gandy. "They are speaking out about the dangers of plastic surgery and silicone implants; telling the fashion, cosmetics, and diet industries that they reject the myth that women's bodies need constant renovation and enhancement. Women and girls are saying 'No' to impossible beauty standards."

Each year, the NOW Foundation holds a contest for artists of all ages (and skill levels) to design the official Love Your Body Day poster. The 2005 poster was designed by Diana Fabre and inspired by an Henri Matisse collage. The poster contest for next year is already underway, with a March 1, 2006, deadline for entries. The category winners were selected and awarded cash prizes: Category I – Craig Hall, Alhambra, CA - \$400.00; II – Sophia Smith, Sammamish, WA - \$400.00; III - Whitney Calvert, Linesville, PA - \$200.00; and, IV – Leslie Rodriguez, Lynbrook, NY - \$200.00.

Scores of LYB events are held around the country, including many held on college campuses.

The Love Your Body campaign has a website linked from the NOW Foundation home page where visitors can send e-cards with winning poster designs, view a gallery of bad and good ads, and take the body image survey. Informational LYB materials were updated on the Foundation website, which is [www.nowfoundation.org](http://www.nowfoundation.org)

The Love Your Body campaign's spokespeople include the NOW Foundation's national officers as well as Jessica Weiner, performer and author of "A Very Hungry Girl;" Wendy Shanker, comedian and author of "The Fat Girl's Guide to Life;" and Wendy Hilsen-Bernard, author of "A Woman's Place," psychotherapist and mind-body wellness expert.

### **Breast Implant Safety**

Efforts to promote a more thorough examination of the alleged safety of silicone gel breast implants began at NOW Foundation in 1996 when a resolution was drafted by women who became ill after getting implants. At that time, women's health advocates feared that silicone breast implant manufacturers would attempt to bring their risky implants back onto the general market. Silicone implants had been withdrawn in 1992 following hundreds of cases reported of autoimmune illnesses, infections and other complications related to silicone breast implants. Only saline-filled breast implants were allowed to continue to be sold, though there were many reports from women who had become ill or experienced such complications as infections, capsular contracture (hardening around the shell), migration and rupture of the implants.

NOW Foundation developed a public education campaign to warn women of about reported problems and to demand that manufacturers demonstrate long-term safety of implants – i.e. no rupture or leakage. In May, 2003, NOW Foundation convened a day-long scientific symposium to present and review data from researchers and clinicians that raised numerous serious questions about silicone gel-filled implants.

A short-lived success was realized in January, 2004 when the Food and Drug Administration refused to approve an application to market silicone gel breast implants promoted by manufacturer Inamed Corporation – despite the advisory committee's recommendation (9-6) to approve. The non-voting chair later wrote a letter to the FDA commissioner criticizing the panel's vote and calling attention to the manufacturer's scant data. But in late 2004, a second manufacturer, Mentor Corporation, filed a Pre-marketing Application (PMA) with the FDA to sell several models of its silicone breast implant device, and Inamed renewed their own application.

NOW Foundation submitted extensive comments to the Food and Drug Administration in April, 2004, for the FDA's use in revising their guidance for manufacturers of implants. Our recommendations included suggestions that more research be done on those women with implants who breastfeed and on their children who have rare immune disorders that may be related to silicone that might have migrated to the developing fetus or transmitted through breast milk. The FDA did not release a revised guidance document that would have better informed companies on how to collect clinical data and what data would be important for the agency's review.

FDA hearings were held April 11-12, 2005, on the two pre-marketing applications for silicone breast implants. NOW Foundation worked in coalition to recruit women to testify, prepared testimony, co-sponsored a press conference, met with various members of Congress and used our website to post numerous articles and alerts about breast implant safety issues.

We called for a probe of the FDA advisory panel in late April when it became apparent that several members had serious conflict of interest issues, having been paid consultants to companies whose applications were under consideration. Additionally, a letter was sent to select members of Congress urging Congressional oversight of the decision-making process at the agency, after information was leaked that FDA officials may have prejudiced the review process by maintaining an overly friendly relationship with industry groups.

All along, NOW Foundation has stressed that longer-term clinical data must be submitted by the companies to the FDA (not just a few years of data) because implants are known begin to have problems after about five years, with serious degradation and rupture occurring in 7-12 years. Studies show that most implants degrade and rupture within 17 to 18 years – even though plastic surgeons tell women that their implants will last a "lifetime."

Despite the fact that scientific staff at the FDA stated that the companies had not provided sufficient long term safety data, the FDA's advisory panel split its decision, approving Mentor's application, but not Inamed's. Their recommendation was ostensibly based on Mentor's studies demonstrating better safety records. However, two Mentor high-level employees have given sworn statements that Mentor falsified their data on silicone implants.

The FDA conducted a criminal investigation of Mentor, but has sealed the records and would not provide them to the advisory committee. NOW Foundation filed a Freedom of Information Act (FOIA) claim, demanding the release of the criminal investigation findings and requesting that the FDA overrule the approval recommendation from the advisory panel because the recommendation was based on incomplete information. After 1992, when silicone breast implants were banned from general sale, many plastic surgeons signed up to be part of the required clinical trials, but apparently many did not bother to report on patients complications and the manufacturers failed to press doctors to make these reports.

One particularly egregious problem with inadequate data related to the paucity cases of women who had received implants following breast cancer surgery. It is in this group of women that the highest rates of complications and repeated surgeries have occurred.

Yet, in July 2005, the Food and Drug Administration inexplicably issued a preliminary "approvable" letter to Mentor Corporation, followed by a similar notice to Inamed Corporation in September.

In December 2005, Olga Vives, NOW Foundation Vice President Executive and Jan Erickson, Foundation Director of Programs, traveled to New York City to make a presentation to Lifetime Television about the need to update an 1997 television movie, *Two Voices*, about one woman's experience with breast cancer, mastectomy and numerous additional surgeries resulting from complications caused by breast implants. In addition, we suggested that Lifetime produce a movie about the experience of a young woman who became very ill after getting breast implants and now tours the country speaking at high schools and on college campuses.

### **Emergency Contraception**

Throughout the year, NOW Foundation continued its campaign to inform the public on the progress – or lack of it – at the Food and Drug Administration, which has taken an interminably long period to review an application for over-the-counter (OTC) sales of emergency contraception (Plan B).

By way of review, then interim FDA commissioner Lester Crawford promised in his confirmation hearing that the agency would issue a final decision by Sept. 1, 2005. What happened instead was a call for public comments on whether the agency could approve a drug that was both prescription and non-prescription, among other technical questions. The move was simply dilatory and seen as a tactic to provide further -- but unwarranted -- justification for denying EC to women 16 years of age and under.

NOW Foundation staff prepared a set of model comments that were posted on our website and distributed widely, and thousands messages went to the FDA by the Nov. 1 deadline. Essentially, the comments called for an immediate approval of over-the-counter availability of emergency contraception (EC) and no age limitation. Further, the comments objected to the invasive nature of the suggested monitoring of pharmacies and checking identification for proof of age that would be required for implementation of an age limitation.

More delay was anticipated as the agency reviewed these comments; some observers believe that little will happen until after the 2006 elections. But a number of members of Congress pushed for a legislative action that would override the FDA. A report by the Government Accountability Office, issued on Nov. 14, 2005 identified a number of extraordinary actions by the agency in reviewing the EC OTC application, including the refusal of a number of agency officials to sign the letter of non-approval. Evidence came to light that there was a decision made by top FDA officials to reject the application long before the medical and scientific review was completed.

A web page article about the easy access to EC that women in 39 nations and a half dozen or so states was prepared by NOW Foundation intern, Jesse Mesich, with a sidebar providing information on how women can obtain EC in their local areas through 800 number assistance.

### **Sexual Health and Responsible Sexual Behavior**

NOW Foundation Vice President Executive Karen Johnson served for three years on a consensus committee for sexual health and responsible sexual behavior, having been invited to serve by former U.S. Surgeon General David Satcher. Johnson was named as one of the pro-choice, pro-gay-rights advocates in the group, which also includes representatives from conservative groups who believe in "abstinence-only" sex education. This group

meets every few months and plans to reach a preliminary consensus statement on sexual health in 2006, despite the different viewpoints represented.

### **HPV Vaccine Approval**

An additional Women's Health Project effort involved public education activities concerning FDA review of a new vaccine that protects women against cancer-causing strains of the human papilloma virus (HPV). Although it is generally accepted that the vaccine is effective against the most dangerous strains of HPV, which are responsible for about 70 percent of all cases of cervical cancer, vaccine opponents claim that making it a regular part of children's vaccine protocol would encourage young women to be more sexually active. It was expected that the FDA would meet in early 2006 to make a final determination on the vaccine's availability.

# Public Policy Education and Advocacy

## Social Security and Domestic Priorities

NOW Foundation President Kim Gandy co-chairs the Women and Social Security (WSS) Task Force with Heidi Hartmann, President of the Institute for Women's Policy Research (IWPR). The Task Force is part of the activities of the National Council of Women's Organizations, a coalition of more than 200 organizations with more than 11 million members.

During 2005, concerns remained at a relatively high level that administration and Congressional efforts would continue to press for conversion of this successful social insurance program to what we believe is a risky private investment system.

Organizational members of the WSS Task Force jointly responded to a statement from House Ways and Means Chair Bill Thomas (R-Calif.) suggesting that Social Security would be revamped to address gender and race differences. The Task Force's public statement criticized the implied discriminatory nature of the Chair's suggestion and said that any such plan would be unacceptable to women. Though few substantive developments took place during 2005 regarding changes to the Social Security system, NOW Foundation remained observant in warning women's rights advocates about the potential for adverse legislative action. Numerous public events were held and up-to-date information to activists continued at a steady pace.

On February 8, a press conference to respond to the President's proposal on Social Security and the budget was held, with NOW Foundation staffers were active in organizing the event. Speakers included Heidi Hartmann, President of the Institute for Women's Policy Research and co-chair of the WSS Task Force, Kim Gandy, NOW Foundation's President and also co-chair of the WSS Task Force; Connie Cordovilla, Associate Director of the Human Rights and Community Relations Department of the American Federation of Teachers (AFT), Alma Morales Riojas, President of MANA: A National Latina Organization, Maya Rockey Moore, Vice President for Research and Programs of the Congressional Black Caucus Foundation and Diana Zuckerman, President of the National Research Center for Women & Families. An audio recording of the press conference was later made available to computer users via Real Player through [www.techpolitics.org/](http://www.techpolitics.org/)

On April 26, the Senate Finance Committee held a hearing on Social Security, taking testimony from a panel of witnesses who presented misleading information about the merits of private investment retirement accounts. Simultaneously, NOW Foundation President Kim Gandy with several thousand representatives from unions, seniors' groups, persons with disabilities organizations and women's organizations rallied outside the Capitol to protest the hearing and to present the other side of the story in support of protecting the current structure with guaranteed benefits and not risky investments in the stock market.

Additionally, NOW Foundation organized a community dialogue event in July in Nashville, TN, to discuss why maintaining Social Security in its current form is important for women and how the system could be strengthened. Speakers included: Former U.S. Rep. Barbara Kennelly who also served as an official with Social Security Administration official in the Clinton administration, NOW Foundation Executive Vice President Olga Vives, AARP Tennessee Director of Communications Mary Liz Knish and Nashville Community Activist and Organizer, Megan Macaraeg.

Another important event for the Women and Social Security Task Force was participation in a debate with speakers from conservative women's organizations held on July 14 in the Capitol and was featured on C-SPAN. Dr. Hartmann from IWPR and NOW Foundation President Kim Gandy, with U.S. Representative Hilda Solis (D-Calif.), reviewed the merits of the guaranteed social insurance program with Rep. Melissa Hart (R-Penn.), Leanne Abdnor, Executive Director, Women for Social Security Choice and former member of the President's Social Security Commission as well as Alison Acosta Fraser, Director, Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation. The latter three speakers touted the supposed advantages of private investment accounts that they asserted would acquire sufficient earnings to provide retirement income for women.

More information materials, including talking points, were prepared and posted on our website.

In 2005, NOW Foundation also co-chaired the Domestic Priorities Task Force in NCWO and reviewed our priority agenda for this Congress plus assisted the NCWO Hill Briefing group (IWPR and Legal Momentum are co-chairs) in preparing for a series of Congressional briefings on the budget, Social Security, and Violence Against Women.

In July, NOW Foundation organized a Capitol Hill briefing that updated Congressional staffers and NGO colleagues on the state of women in the welfare-to-work process.

## **Education Equality**

The year began with feminist response to Harvard president Larry Summers' remarks about women having some sort of innate inability that prevents them from excelling at math and science subjects. Our sister organization, NOW, suggested that Mr. Summers ought to consider resigning from his post and staff participated in a coalition effort to counter through press coverage his thoughtless statement as well as co-signed a thoughtful letter to the Harvard president. During the controversy, Summers proposed that a long-desired women's center be established at Harvard, but later resigned from his post – though he had also been at odds with faculty members over other matters.

The experience helped to put the issue of girls and women facing sexist barriers in the fields of math, science, engineering and information technology on the front page. Since 2003, NOW Foundation has worked to promote better public awareness and more effective public policy to help bring down those barriers.

NOW Foundation conducted various public education and advocacy activities around proposed segregated-sex public education regulations that were reported to be issued at some point by the U.S. Department of Education (DoE). The Foundation has a long-standing position against sex-segregated public education, contending that separate is never equal and asserting that such programs at public institutions would be in violation of the Equal Protection Clause of the Constitution. In mid-summer, the DoE released a literature survey of segregated sex schools which did not provide evidence that single sex classes and schools improve outcomes for either boys or girls.

A further undermining of equal education opportunities was threatened by DoE Guidance for schools. Which are now permitted to conduct email "interest surveys" to determine female student interest in various athletic programs. Male students' sports are not limited by whether or not incoming male students respond to an email survey.

These email surveys will serve to diminish girls athletics program offerings and discourage girls and young women from trying various sports if the programs that might interest them are not even available. We signed onto joint letters to the department and to key members of Congress objecting to the interest surveys. The interest survey idea was originally proposed by the 2002 Secretary's "Commission on Opportunity in Athletics" which attempted to find ways to undermine the equal education mandates of Title IX. Nearly all of the Commission's truly bad ideas were beaten back by a massive organizing campaign by NOW Foundation, along with NOW and our many allies in the equal education advocacy community. Thousands of emails were sent to the administration by concerned parents of girls and young women who have derived many benefits from opportunities that have greatly expanded since the adoption of Title IX in 1972.

## **Media Reform Project**

### **Victory on Media Ownership Concentration**

One small victory: the Federal Communications Commission (FCC) dropped their effort to allow more concentration of media ownership by abandoning a plan to take the matter to the Supreme Court. We undertook efforts to communicate with the public and members of Congress how further concentration of ownership would diminish the voices of women and people of color in the media. Both the Senate and House adopted measures reversing that FCC decision.

## **Education and Advocacy on NOW's Core Issues**

### **Wide Array of Concerns Addressed**

NOW Foundation Public Policy Analyst Pat Reuss summarizes our work during 2005, as follows:

Bankruptcy:

\* Provided important analysis to members of Congress and the public about a harmful bankruptcy 'reform' bill that would reduce protections for women owed past due child support and seriously limit the ability of persons in financial difficulty to re-organize their debts. The bill would disadvantage a significant proportion of women who face bankruptcy following divorce as well as large number of persons forced into bankruptcy by a catastrophic and costly illnesses. We also conveyed information about the need to close a loophole that allowed perpetrators of violence against abortion clinics to declare bankruptcy and avoid paying court fees and judgments.

#### Violence:

\* We alerted the public, administration officials and select members of Congress to the glaring omission of any mention of emergency contraception (EC) in the Department of Justice's "medical guidelines" for treating rape survivors -- despite the fact that EC is a standard precaution against pregnancy after rape. The protocol for how the medical community must treat sexual assault patients was mandated by the 2000 Violence Against Women Act and was developed over a three-year period by the Justice Department's Office on Violence Against Women.

\* The Foundation worked with the producers of the movie "North Country" in a unique collaboration to provide moviegoers with opportunities to take action to stop sexual harassment and domestic violence.

\* We publicized and disseminated a report from California that found welfare counselors failed to advise poor women who may be victims of violence about services under the Family Violence Option (FVO) in the 1996 welfare bill. Once screened, battered women can receive counseling and protective services. An important message we conveyed: "By not telling these women about the Family Violence Option, they're robbing poor women of a chance to escape the violence in their lives."

#### Emergency contraception and family planning:

\* In formal comments to the Food and Drug Administration we opposed a "modified approval" that would prohibit teen-agers from buying emergency contraception without a prescription. The agency had called for more public input on how to provide emergency contraception on both a prescription and non-prescription basis. NOW Foundation identified the move as just one more dilatory action, while the serious need for better access to EC for tens of thousands of women continued.

\* We provided information on our website about how to locate a facility that dispenses emergency contraception and noted the dozen or so states that had adopted expedited processes for filling emergency contraception prescriptions.

\* We worked with coalition partners in disseminating information about the "Prevention First" bill, a collection of proposals that would ensure improved access to contraception and improve reproductive health care services. The package includes the Equity in Prescription Contraception Coverage Act, Emergency Contraception Education Act and the Compassionate Rape Assistance Act that would require that emergency contraception be given to victims of sexual assault.

\* We provided testimony for a House of Representatives hearing on pharmacists' "conscience" refusals, where panel membership was heavily weighted against improved access to contraception.

\* Health and Human Services Department (HHS) website – We expressed serious concerns about incomplete information on contraception techniques, deception information that linked it to infertility and breast cancer, biased information about LGBT sexuality issues, inadequate information about sexual abuse of youth and a variety of other non-factual items on the website. We co-signed a letter to HHS secretary Mike Leavitt objecting to the presentation of such misleading information and urged that only factual, scientifically accurate information be presented on the HHS website.

#### Equal Rights Amendment:

\* For many years, NOW Foundation has supported the passage and ratification of a constitutional equality amendment and for each successive Congress has publicized the introduction of legislation that would re-start the Equal Rights Amendment consideration process. In Spring 2005, NOW Foundation President Kim Gandy spoke at a press conference with the bill's prime sponsor, Rep. Carolyn Maloney (D – New York), Reps. Barbara Lee (D - Calif.), Sheila Jackson-Lee (D -Texas)

and Hilda Solis (D – Calif.). Gandy noted that women do not have equal protection under the Constitution's Fourteenth Amendment and urged that progressive leaders stimulate a debate among our elected representatives, women's rights advocates and the public-at-large on the need for equal protection under the law."

#### Family Leave:

\* We continued our educational campaign to promote and expand family and medical leave and alerted our readers and supporters of efforts to dismantle this life-saving workplace benefit. Since 1993, more than 50 million people have taken job-protected leave, and, as a result, fewer people have had to choose between job and family. An important initiative would be passage of The Healthy Families Act that would establish paid sick leave under Family and Medical Leave Act (FMLA). However, with a Congress led by politicians unsympathetic to the needs of working families and an administration attempting to undermine regulations for FMLA, the future for supportive family friendly policies did not look promising.

#### Voting Rights Act reauthorization:

\* Renewal of the Voting Rights Act of 1965 was to be considered in 2005 by Congress and NOW Foundation was concerned that insufficient attention would be paid to assuring that low income voters, persons with disabilities and people of color would still face barriers to casting their votes. NOW Foundation Executive Vice President Olga Vives spoke at a coalition rally on March 21 in support of reauthorization of the law and stressing the importance of the women's vote and women's involvement in the political process.

#### Pay Equity:

\* We participated in a coalition press conference on Capitol Hill on Pay Equity Day in April 19, 2005 – that day symbolizing how many more weeks into the next year women must work to be paid the wages that a man makes in one year. Sens. Tom Harkin (D-Iowa) and Hillary Clinton (D-New York) along with Rep. Rose DeLauro (D-Conn.) and Del. Eleanor Holmes Norton (D-D.C.) spoke about bills that each would be introducing to remedy the wage gap. The bills, which have been re-introduced into Congress for many successive years without any serious committee consideration or votes – are the Paycheck Fairness Act and the Fair Pay Act. The latter bill, the stronger of the two, would require employers to provide equal pay for jobs that are comparable in skill, effort, responsibility and working conditions. In our public statement, NOW Foundation President Kim Gandy noted that, "Disparity in pay limits women's buying power, affects their ability to pay for quality childcare, prevents them from saving for retirement, and hinders them from receiving livable Social Security benefits based on their wages." She added, "Pay discrimination not only affects women, but it also puts their families at a disadvantage."

#### Health Care:

\* NOW Foundation contacted members of Congress about the impact on women of H.R. 525, which would have exempted association health plans from state regulation and oversight, bypassing state laws and regulations mandating coverage of vital health care services that women's rights activists were successful in seeing adopted over the years. Additionally, some analysts predict that this bill, if passed, would be devastating to small businesses (20 million employees and their dependents) and health care consumers by making health insurance less affordable, less accessible, while offering no help for the 45 million uninsured persons.

#### Lesbian rights/marriage equality:

\* With the threat of a bill proposing a Constitutional amendment to define marriage as existing only between a man and a woman, we delivered in mid-February informational packets about Equal Marriage to House and Senate members. Our statements questioned and challenged the constitutionality of such an amendment and detailed the many instances of discrimination experienced by lesbians and gay men because of existing restrictions against their marrying.

## **Insurance Equality Project**

### **Myths, Errors in Auto Insurance Revealed**

As continuing widespread and authoritative false validation of the necessity for sex discrimination in commerce, state legislators and regulators routinely approve the selective use of a customer's sex to set prices and specify benefits in five types of insurance: automobile, disability income, medical expense, life, and retirement income insurance. Men are erroneously represented as disadvantaged relative to women in two of these: automobile and life insurance. The higher premiums charged or lower benefits paid to women for the other three types of insurance are supposed to be balanced by these "disadvantages" for men.

NOW Foundation's Insurance Project, managed by Patrick Butler, currently focuses on automobile insurance as a major validation of legalized sex discrimination and its demonstrably incorrect statistical basis in invidious stereotypes of women. To put an end to this harm it is necessary to confront myths, errors, and inconsistencies given support by some members of two scholarly communities: Risk and Insurance, and Law and Economics. Consequently, using NOW Foundation research on driver sex and accidents, Project Director Patrick Butler presented research papers on automobile insurance at two academic conferences in 2005: Western Risk and Insurance Association, ("Proof That Auto Insurance Rating by Accident Record Predicts Miles not Negligence: Fault Is Predictively Irrelevant"), and Southern Risk & Insurance Association ("Rival Theories to Explain 12 Claim Rate Predictors Used by Auto Insurers" (driver sex is a key predictor and is used selectively)).

Additionally, in early May the essay, "Driving With The Brakes On: Guido Calabresi's Failed 1970 Auto Insurance Case Against Safety-Device Mandates," was posted by the American Law and Economics Association on its annual meeting website, from which 167 full-text downloads of the essay were delivered to requestors during the remainder of 2005. These and related papers are available at the NOW-affiliated website [www.centspermilnow.org](http://www.centspermilnow.org) as well as on websites such as the Casualty Actuarial Society and the U.S. Department of Transportation.

## Lesbian Rights Project

In 2005, NOW Foundation made more visible our commitment to a broad range of LGBT issues, from marriage equality and transgender inclusion to lesbian, bi and transgender women's health issues. We have done this by being a presence in a wide range of coalitions as well as through developing basic resources and informational materials.

Below you will find a sample of a much longer list of activities the Lesbian Rights Project conducted from August 2004-2005. These activities highlight how our work has evolved and strengthened:

- Attended the monthly National Freedom to Marriage Coalition meetings where we were able to contribute and gain a great deal of strategic information from both national and grassroots partners all over the country. Attending these meetings also helped us to forge some strong relationships with organizations such as Lambda Legal and the ACLU;
- Served as the staff liaison to Marriage Equality Ad Hoc Committee. We met via teleconference every two weeks for about 3-4 months prior to the conference to organize a marriage equality workshop for the conference and launched a marriage equality story bank. We also developed a strategic plan for launching a "personalizing the message campaign" for Fall 2005;
- Worked with a former NOW Legal Defense Fund Attorney, Julie Goldscheid, to put together an article and resources on the fall out from Issue 1 in Ohio. Ohio's constitutional amendment to ban equal marriage was being used to invalidate domestic violence laws;
- Organized a visit to Senator Kennedy's office on to discuss inclusion of language providing protection for transgender persons the hate crimes legislation for 15+ organizations. This was a historic visit because it was led by a broad coalition of lesbian, gay and bisexual allies arguing for transgender inclusion; and
- At the 2004 Creating Change Conference in November, NOW Foundation staff member Lisa Weiner-Mahfuz presented two all day pre- conference institutes, one on Marriage Equality and one on Sexual Rights and Sexual Freedom.

# Racial and Ethnic Diversity Project

Since its founding, NOW Foundation has made a priority of promoting and supporting inclusion of women of color in our public education and policy work. According to the 2000 Census, African American, Asian American Pacific Islanders, Latina and Native Americans are fastest-growing and the youngest among the female population.

Recognition of issues that disproportionately impact women of color in the NOW Foundation agenda is essential to the growth and productivity of the women's movement.

The project's activities resulted in closer ties to such women of color organizations as: National Latino Alliance for the Elimination of Domestic Violence (Alianza), Hermanas Mirabal Family Center, Environmental Diversity Group, Congreso, Diversity conference Latina Style, AFL-CIO CAFTA taskforce, INCITE, Women and Cuba Collaboration Project, National Dominican Women's Caucus, NYC-Bride March, DONAR, DC-Immigrant Coalition, and Sister Song Collective.

Other activities included representation at key events, a few of which are described as follows;

On September 16, NOW Foundation staff member, Zenaida Mendez, testified in before the Latino and Congressional Black Caucuses on behalf of NOW Foundation and the National Women of Color Coalition Against Domestic Violence and Sexual Assaults in regards to the reauthorization of the Violence Against Women Act (VAWA). She was asked by the coalition to testify about the effects of the omission of important provisions in VAWA dealing with immigrants and women of color issues. The session was well attended by members, representative staff and more than one hundred organizations that work on domestic violence and sexual assault.

The safety needs of immigrant women – many of whom are women of color -- were not addressed in the 2005 VAWA reauthorization package, as it passed on September 28, 2005 as part of the Department of Justice's yearly authorizing and funding bill, H.R. 3402. As a result, many immigrant women and their children who are in the process of obtaining legal status in the U.S. under battered women asylum protections were made more vulnerable to the possibility of being sent back to the home country to endure more attacks from abusers.

In early November, Mendez represented this organization in the delegation to Juarez and Chihuahua concerning the kidnappings, rapes and murders of hundreds of young women in Juarez and Chihuahua, Mexico. The victims of the Juarez murders have primarily been young women who were raped and strangled, their bodies left in the desert or on a secluded street. They worked at maquiladoras, assembly factories often equated to sweatshops, where they earned around \$55 a week from U.S. companies such as Alcoa, DuPont and General Electric. Waiting in the dark on empty streets for the buses that take them to and from the maquiladoras is a daily reality for the women of Juarez.

Mendez met with members of the Mexico Solidarity Network, the Amigos de Law Mujeres de Juarez and the Casa Amiga Rape and Abuse Crisis Center to discuss what could be done about the mass murders and getting effective action from government officials. She met with other organizations about the mass murders and learned of their work with the families of the disappeared and murdered women. They provide, legal, psychological /emotional support, and help to find affordable funeral services and social services and to create international visibility.

A special ceremony was held on November 1, the traditional Mexican Day of the Dead to honor the memory of the many murdered women. Mendez joined a caravan from Chiapas and Mexico City, with people from Juarez as well as the mothers of the women who were found dead at the site of the ceremony. The event was well covered by the media: TV, radio and print local and national.

Another objective of this visit was to plan for a joint action between U.S. and Mexican women sponsored by the National Organization for Women and NOW Foundation to hold a press conference and demonstrations at the border in El Paso, Texas following the organizations' board meetings, Dec. 2 – 4. The idea grew out of the Women of Color and Allies Summit, held in April, after attendees viewed Lourdes Portillo's award-winning documentary "Señorita Extraviada," which details the continuing violence women face in Juarez.

To date, no safety measures have been put in place by the factories or the Mexican government. In fact, victims' advocates face a culture where violence against women has traditionally been ignored by authorities. Advocates believe the culture actually works to foster violence, rather than prevent it; for example, men in Mexico cannot be charged with spousal rape.

The United Nations and human rights groups are pressuring the international community to help stop the killings. However, the U.S. government must take greater responsibility for the conditions in Juarez. The factories in Juarez, most of which are U.S. owned and operated, employ young women living in poverty to create goods for export to the U.S. NOW Foundation representatives communicated with the office of U.S. Representative Hilda Solis to review her legislation that would promote bilateral actions between U.S. and Mexico to address many problems connected with the kidnappings and murders.

## Women of Color and Allies Summit

Hundreds of activists and leaders from across the country gathered in Arlington, Va., April 1-3, for the Women of Color and Allies (WOCA) Summit, organized by NOW Foundation and co-sponsored by dozens of organizations. The event was a major success, with participants leaving energized and inspired to keep in touch, work together back home, and take concrete action on issues of mutual concern.

After a festive reception on Friday night, where Hon. Eleanor Holmes Norton (D-D.C.) saluted the organizers and joined in the salsa dancing, the Summit opened on Saturday morning with a vibrant ceremony. Aileen Hernandez, the second president (and first African-American president) of NOW and current chair of the California Women's Agenda, fittingly started the first plenary session, exhorting us to greater accomplishments and getting the Summit off to a great start. Irene Natividad, executive director of the Philippine American Foundation and president of the Global Summit of Women, reminded us of the economic power of women, and the ways we can use that power to make change in our lives, our communities and our world.

Following the opening plenary session, participants were informed and enlightened by a dynamic panel on women's health and reproductive rights. The presenters gained a packed house as buses slowed by torrential rains continued to unload new attendees. Lorraine Cole, president and CEO of the National Black Women's Health Imperative, moderated the panel, which included: Courtney Chappell, a legislative attorney with the National Asian Pacific American Women's Forum; Silvia Henriquez, executive director of the National Latina Institute for Reproductive Health; Aliyah Morgan, M.D., a physician working for more than 30 years in the culturally diverse and most stressed communities of New York City; and Patricia Sosa, director of constituency relations for the National Center for Tobacco Free Kids and a regular commentator on PBS's *To The Contrary*.

Workshops covered a stimulating range of issues — from the struggle of immigrant women to the feminist agenda in hip-hop music; from violence against women and sex trafficking to religion, spirituality and values. Skill-building workshops provided hands-on guidance for organizing around issues in women of color communities. Each of these workshops had an interactive component, encouraging presenters and participants to develop action ideas addressing their issue.

The Sunday general session heard from the workshop presenters and reporters, who outlined more than 60 recommendations on a plan of action to further the cause of equality and justice for women of color. These recommendations were to be provided to all participants for their use in organizing locally. They included more than 60 action items, including taking on the HIV/AIDS pandemic among women of color; the unjust "war on drugs" in the U.S.; and the tragedy of the kidnapped, raped and murdered women of Juarez and Chihuahua, Mexico.

Just when people thought things would settle down, a troop of spoken word artists and an outrageous comic kept the energy popping until almost midnight on Saturday. Niche Ward, also known as The Original Woman, led the way for three other artists: Queen Sheba, Monica Daye and Melissa Best, aka the Princess of Controversy. Each, in their own vibe and verse, spoke about living as feminist women of color and the need for empowerment in the lives of all women. Best even rapped some lyrics for the audience, which moved many in the audience to get up and dance.

Saturday afternoon's featured speakers included Ritu Sharma, co-founder of the Women's Edge Coalition and a leading voice on international women's issues. Sharma outlined ten gaps that affect women around the world,

such as the education, health and safety gaps, and encouraged U.S. women to get involved in international issues.

Lateefah Simon, recipient of a 2004 NOW Foundation Intrepid Award, won over the audience as she told of when she became executive director of the Center for Young Women's Development at the age of 20. Simon's advocacy on behalf of young women who are or have been confined to juvenile detention centers, group homes, jails and prisons was truly revolutionary!

Mandy Carter was the perfect closer for the conference on Sunday. Carter is one of the nation's leading lesbian rights activists and a founder and executive director of SONG: Southerners on New Ground. Carter sent participants home with just the right attitude and a few thoughts to chew on.

## **Intrepid Awards**

### **Dr. Jane Goodall Honored**

NOW Foundation derives its income from gifts, bequests and special fund-raising events. Among our most illustrious event is the Intrepid Awards Gala, co-sponsored by an impressive list of members of Congress and hosted by our most enduring supporters. The gala's significance is that it presents an opportunity to enhance awareness among the general public of the outstanding accomplishments of a number of influential and accomplished women.

On September 15, NOW and the NOW Foundation held the third annual Intrepid Awards Gala at the beautiful National Museum of Women in the Arts in Washington, D.C.. Three outstanding women leaders were honored for their bold and fearless actions on behalf of women. Dr. Jane Goodall, world-renowned primatologist and U.N. Messenger of Peace, was honored with an Intrepid Award. Dr. Goodall began her landmark study of chimpanzees in Tanzania in 1960, under the mentorship of famed anthropology and paleontologist Dr. Louis Leakey. Her work at the Gombe Stream Chimpanzee Reserve would become the foundation of future primatological research and redefine the relationship between humans and primates. Dr. Goodall gave a moving and inspirational talk about the influence in her own life and career of her supportive mother.

Josie Ashton, a young Dominican woman who walked 1,600 miles from New Jersey to Florida in her wedding dress in 2001 to raise awareness of domestic violence in the Latina community, which led to the establishment of annual "bride's marches" against domestic violence in New York, Miami, Washington, D.C., and other cities, was also honored. Sen. Barbara Boxer (D – Calif.) was honored for her longtime dedication to advocating for women, children and families over a 22 year career in public service. Sen. Boxer has been especially forceful in defending women's reproductive rights and she has always been willing to speak out on controversial issues. NOW Foundation cites her singular courage and leadership in taking a principled stand for electoral justice and democracy by objecting to the certification of the State of Ohio's 2004 electoral votes.

# LITIGATION

## ***Scheidler et al. v. National Organization for Women et al. and Operation Rescue et al. v. National Organization for Women et al.***

On Wednesday, Nov. 30, at 10 a.m., *Scheidler et al. v. National Organization for Women et al. and Operation Rescue et al. v. National Organization for Women et al.* were argued before the Supreme Court. These cases, in which NOW Foundation has represented a group of plaintiffs that includes NOW, relate to stopping illegal violence directed against women's health clinics, abortion providers and their patients under the federal Racketeer Influenced and Corrupt Organizations Act (RICO). Unfortunately, the Bush administration's Department of Justice has chosen to oppose NOW Foundation and to support the positions of Joseph Scheidler and Operation Rescue.

This case was initiated nearly 20 years ago in an effort to stop anti-abortion extremists from continuing to plan and organize violence at women's health clinics, and was one of the defining events in the original formation of the NOW Foundation.

The self-described "pro-life Mafia" planned to end abortion by closing every clinic that provided abortion services. Over the past 19 years, the violence included invasions, violent blockades, arson, chemical attacks and bombings of women's health care clinics, assaults on patients, death threats and shootings of health care workers and administrators, including the murder of eight abortion providers.

This was the third time the Supreme Court considered this class action case filed by NOW on behalf of all women who could potentially be patients of the approximately 2,000 health care clinics and by two named clinics representing the class of clinics themselves.

In 1986, after years of increasing violence, a Florida clinic was invaded, equipment smashed, and staff seriously injured. It became clear that action had to be taken to stop the violence before it escalated to murder. Within months, NOW and two reproductive health clinics had sued Joseph Scheidler (author of *CLOSED: 99 Ways to Stop Abortion*), the Pro-Life Action Network (PLAN), and others in an effort to stop their reign of terror across the country. NOW later added Operation Rescue and Randall Terry as defendants, and sought a nationwide injunction under RICO (Racketeer Influenced and Corrupt Organizations Act) based on violations of the Hobbs Act, a federal criminal statute, to stop these organizations from planning, conspiring and urging others to engage in violent acts.

PLAN, Operation Rescue, Scheidler and others challenged NOW's right to bring the case, and argued that the racketeering law did not apply to them because their actions were not motivated by financial gain. NOW responded that racketeering laws designed to stop the Mafia were exactly what was needed to stop the "pro-life Mafia" — thugs who organized others to commit violence against clinics and to intimidate and terrorize patients and health care providers.

In 1994 the U.S. Supreme Court ruled unanimously that an economic motive was not required and that we had a right to pursue the racketeering case in federal court. The case was sent back to the lower court for trial.

In 1998, following a seven-week trial in federal court in Chicago, a jury unanimously found 121 violations of law by Scheidler, PLAN, Operation Rescue and others. According to the federal district court judge who presided over the trial, there was enough evidence of illegal acts "to fill up this courtroom." Based on the jury's findings, the judge issued a nationwide injunction to prohibit further violations. This injunction was still in effect across the United States throughout 2005.

The issuance of the injunction was appealed by Scheidler, PLAN and Operation Rescue, and was upheld by the Seventh Circuit Court of Appeals. The Supreme Court agreed to hear two technical issues, but rejected our opponents' contention that the First Amendment or free speech was ever at issue in these cases.

In the second round, the Supreme Court ruled in 2003 that while anti-abortion groups did commit crimes and interfere with clinic operations, the lower court's injunction could not be supported because no money or property had been obtained from the clinics as a result. The Court also found that 117 of the 121 violations, those related

to extortion, did not fall under the Hobbs Act (and therefore could not support a RICO claim) because the clinics' property was not physically taken. However, the Court did not rule on the remaining four counts found by the jury — the four acts or threats of violence.

The Supreme Court sent the case back to the Seventh Circuit Court of Appeals for further action, where our attorneys argued that even if our opponents' acts of extortion were not covered by the Hobbs Act, their acts and threats of physical violence were covered by the plain language of Hobbs, and thus were sufficient to support the RICO verdict. When the Seventh Circuit sent the case back to the lower court to determine these issues, PLAN and Operation Rescue appealed to the Supreme Court, demanding that the injunction be lifted without any further proceeding in any other court.

On that date in November, the Supreme Court was being asked to decide whether the Hobbs Act does what it says and prohibits violence and threats of violence designed to obstruct interstate commerce, or whether it only prohibits extortion and robbery. In addition, Scheidler, PLAN and Operation Rescue asked the Court to reopen the question of whether private parties (meaning NOW and the class of women it represents and the class of clinics) can obtain injunctions under the RICO Act.

Respondents' briefs and *amicus* briefs in this case, including an *amicus* brief signed by 47 members of Congress in support of the respondents, explain in detail the issues before the Supreme Court, a history of the illegal violence, bombings and murders and other background.

The nationwide injunction has not affected non-violent protest covered under the First Amendment. But it has been successful in decreasing the threats and acts of violence directed at clinics, patients and staff. From 1977 through 1999 (the year our nationwide injunction took effect), the National Abortion Federation (NAF) received reports that 161 women's health care facilities were damaged or destroyed by arson and 40 were bombed. In the six years that the injunction has been in effect, NAF reports 12 arsons and one bombing -- a dramatic decrease.

As noted previously, PLAN and Operation Rescue asked that the nationwide injunction be lifted. We believe that removing the injunction would embolden PLAN and its associates to again start to plan, conspire and organize illegal violence against clinics nationwide and would waste precious law enforcement and judicial resources by forcing clinics, local prosecutors and police to bring individual suits to protect individual facilities.

The final ruling by this Supreme Court under the leadership of Chief Justice John Roberts will give us an indication of the direction of the Court on future cases related to stopping violence at abortion clinics and upholding a woman's constitutional rights under the law. The ruling was expected to be announced sometime in early 2006.

The case was argued by Erwin Chemerinsky, a Professor of Law and Political Science at Duke University, a preeminent constitutional scholar, First Amendment expert and a former board member of the American Civil Liberties Union. Our legal team working on this case included: Fay Clayton of Robinson, Curley & Clayton in Chicago, IL, who has represented NOW in the case for over fifteen years, Lowell Sachnoff of Sachnoff & Weaver in Chicago, IL, who represented the clinics at trial, Adam Hirsch, also of Robinson, Curley & Clayton; Paul Hoffman of Schonbrun DeSimone Seplow Harris & Hoffman of Los Angeles, CA; Laurie Levenson of Loyola Law School in Los Angeles, CA; Catherine Fisk of Duke University School of Law in Durham, NC; Jack Block and Casey Westover, also of Sachnoff & Weaver in Chicago, IL; Frank Susman of St. Louis, MO; Steven Gey of Florida State University College of Law in Tallahassee, FL; Jon Eisenberg of Horvitz & Levy in Encino, CA; and NOW President and attorney Kim Gandy.

Many media outlets used an Associated Press story that misrepresented the case as a First Amendment attack; NOW Foundation President Gandy wrote a letter to the editor to all the papers that did not report the case correctly. Gandy said that our attorney, Duke law professor and well-known constitutional scholar Erwin Chemerinsky, presented an excellent argument before the Court; however, we know the judges are not friendly to our case since they voted 8-1 against us in 2003. If Sam Alito is confirmed to the Court, she said, the case may need to be re-argued. Briefs filed in support of our case can be found at: <http://www.nowfoundation.org/issues/reproductive/scheidler.html>.

***Ayotte v. Planned Parenthood of Northern New England*** - In the fall of 2005, NOW Foundation joined in an *amicus curiae* brief in support of an important reproductive rights case that was heard by the Supreme Court on Wednesday, Nov. 30. The case, *Ayotte v. Planned Parenthood of Northern New England*, concerns a New

Hampshire law, The Parental Notification Prior to Abortion Act, which requires written notice to parents or guardians at least 48 hours in advance of a minor's abortion, and does not provide an exception in the event the young woman's health is in jeopardy.

Planned Parenthood and other abortion providers challenged the act before it took effect, claiming that the lack of an exception for risks to health, combined with the inadequate exceptions for risk to her life, make the act unconstitutional. But even the right to a pre-effectiveness challenge was at issue, because abortion opponents argue that the law can't be challenged until it has actually caused harm, and then only by the individual (or group of individuals) who can prove harm. If the Supreme Court agrees with them, it would be far more difficult to bring constitutional challenges to obviously unconstitutional state laws.

"This case is important because it is a very clever and concise attack on the health exception that has been carved out under *Stenberg v. Carhart* and related cases," said NOW Foundation President Kim Gandy. She added, "If the new Supreme Court line-up under Chief Justice John Roberts finds that the New Hampshire law is constitutional, critical protections for women's health, bodily autonomy and reproductive decisions will soon disappear as other states follow suit."

The New Hampshire law provides for a judicial proceeding that would authorize a bypass of the notice requirement for a young woman who demonstrates to a judge that she is mature and capable of giving informed consent to the proposed abortion, or that having an abortion would be in her best interest. But it does not provide an exception to the notice requirements for situations where there is a threat to the young woman's health. The act contains only a narrow exception to the notice requirement when her life is in danger.

Violation of the notice requirement could expose physicians and other health care providers to criminal and civil penalties. So if a young woman appears at a clinic seeking an abortion but has not provided written consent, and yet manages to obtain an abortion, her doctor could be sent to prison.

Of the case, NOW Foundation Gandy noted, "The New Hampshire law is an assault on the medical profession and on its obligation to prevent harm. In many cases, doctors simply will not be able to adequately care for young women when serious medical complications exist."

The District Court ruled the act unconstitutional because of the lack of an adequate health exception, and then the United States Court of Appeals for the First Circuit upheld the ruling. Both courts ruled that a state may not endanger a woman's health when it regulates abortion. The Court of Appeals rejected the state's argument that parental involvement laws are exempt from the constitutional rule, and found that neither the judicial bypass procedure nor general New Hampshire law allowing emergency care without consent would provide a functional equivalent to the required health exception.

The amicus brief that NOW has signed with other reproductive rights and women's health organizations, which was written by Legal Momentum, argues that reproductive rights are essential to women's full and equal participation in society, and that this equality, like freedom of speech, is a public good, not just a personal constitutional right. It is crucial that the Supreme Court protect women's equality, and not allow this constitutional right and public good to be trampled on.

**Castle Rock v. Gonzales** - NOW Foundation joined in an amicus brief in *Town of Castle Rock, Colorado v. Gonzales* in support of the plaintiff, a Colorado woman who sued police over their failure to enforce a restraining order against her estranged husband; police ignored her repeated complaints, and the ex-husband murdered her three young children. The restraining order had stated that law enforcement agents must use all available means to enforce the order. A lower court ruled against her, but the Tenth Circuit ruled in favor of her right to sue. On June 27, in an opinion written by Justice Antonin Scalia, the Supreme Court ruled (7-2) that Jessica Gonzales did not have a constitutional right to police enforcement of the court order.

This unfortunate ruling gives abusers a green light to ignore restraining orders, and police departments could see domestic violence enforcement as an area to cut expenses. NOW Foundation leaders expressed serious concerns that the safety of battered women is now in serious jeopardy because of this ruling.

# **NOW FOUNDATION NATIONAL BOARD, 2005**

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**Karen Johnson**, Executive Vice President  
**Olga Vives**, Education Vice President  
**Terry O'Neill**, Secretary-Treasurer

## **NOW Foundation National Officers (July 2005 – July 2008)**

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**Ellen Willis**, Raleigh, NC 27608  
**Gilda M. Yazzie**, Durango, CO 81302

## July 2005 – July 2006

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**Kathy Austin**, Nashville, TN 37206  
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**Susan Bramlet-Lavin**, Springfield, IL 62704-1631  
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**Michelle Colon**, Jackson, MS 39207  
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**Karen Godshall**, Madison, WI 53711-3668  
**Genevieve James**, Marana, AZ 85653  
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**Austin S. Lin**, Cambridge, MA 02139  
**Michelle Coleman Mayes**, Chair, Legal Momentum, New York, NY 10014  
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**Kathy Miller**, Philadelphia, PA 19146-9998  
**Kathryn Mitchell**, Phoenix, AZ 85064  
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**Hannah Riddering**, Austin, TX 78757-3125  
**Janice Rocco**, Sacramento, CA 95825  
**Eleanor Smeal**, Co-Chair, Advisory Committee, Arlington, VA 22204  
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**Duchy Trachtenberg**, Rockville, MD 20852  
**Harriet Trudell**, Las Vegas, NV 89121-1645  
**Marian Watkins**, Pittsburgh, PA 15218  
**Ellen Willis**, Youngsville, NC 27596  
**Gilda M. Yazzie**, Durango, CO 81302

## Dates, Times and Places of NOW Foundation Board Meetings in 2005:

January 29-30, 2005, Washington, DC  
April 1 and April 3, 2005, Washington, DC  
June 30, 2005, Nashville, TN  
September 18, 2005, Washington, DC  
December 4, 2005, El Paso, TX

## Chief Administrative Personnel, 2005:

**Kim Gandy**, President  
**Karen Johnson**, Executive Vice President (term ending in August, 2005)  
**Olga Vives**, Executive Vice President (Beginning in August, 2005)  
**Liz Gilchrist**, Director of Major Gifts & Planned Giving  
**Jean Knaack**, Senior Financial Manager  
**Renee Moore**, Senior Financial Manager (replacing Jean Knaack later in 2005)

