

ISSUE BRIEF

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Defending Life: Opportunities for the 115th Congress

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A pro-life majority maintains control of the U.S. Senate and House of Representatives and the President has committed to defend innocent human life from conception to natural death and nominate Supreme Court justices who will respect the Constitution and the fundamental right to life. In previous years, a veto threat has loomed over life-affirming legislation. Policymakers now have the opportunity to pass laws that protect human life.

Congress should pursue a pro-life agenda that codifies important policy riders, stops the flow of taxpayer dollars to organizations that perform or promote abortion, and ends the inhuman practice of late-term abortions.

Federal Funds and Abortion

Congress should disqualify Planned Parenthood affiliates and other abortion providers from receiving taxpayer funds.¹ Because money is fungible, any taxpayer funds given to abortion providers will free up other money to fund abortion. The need to end such funding has become even more acute in light of disturbing press coverage of Planned Parenthood representatives discussing the sale of body parts of aborted babies.

Disqualifying Planned Parenthood affiliates and other abortion providers from receiving Title X family planning grants, Medicaid reimbursements, and other grants and contracts does not reduce the overall funding for women's health care. The funds currently flowing to abortion providers can instead be distributed to health centers that offer comprehensive health care without entanglement with abortion on demand.

Instead of relying on a patchwork of policy riders like the Hyde Amendment, which are attached to appropriation bills each year, Congress should permanently end taxpayer funding for abortion once and for all by passing the No Taxpayer Funding for Abortion Act which passed in the House of Representatives in January 2017.²

Congress should eliminate all federal funding to the United Nations Population Fund (UNFPA). From 1985 to 2008, the U.S. mostly withheld funding to the UNFPA due to its involvement with China's coercive family planning program. In 2009, however, President Obama restored U.S. funding to the UNFPA, sending hundreds of millions of taxpayer dollars over eight years despite continued assertions that the UNFPA has been involved in China's two-child policy.³

On January 23, 2017, President Trump reinstated the life-affirming "Mexico City Policy," which ensures that American taxpayers do not fund international organizations that perform and promote abortion overseas, and expanded the policy to apply to "global health assistance furnished by all departments or agencies" and likely disqualified the UNFPA by prohibiting funding to "organizations or programs that support...coercive abortion or involuntary sterilization."⁴

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4656>

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Congress should eliminate all federal funding to the UNFPA and permanently codify the recent iteration of the Mexico City Policy to disentangle U.S. funding from abortion activity abroad.

Congress should, under the Congressional Review Act,⁵ reverse President Obama's parting gift to Planned Parenthood by disapproving of the final rule submitted by the Secretary of Health and Human Services (HHS) in the waning weeks of his Administration.⁶ The rule prohibits states from disqualifying Planned Parenthood and other abortion providers from family planning programs under Title X of the Public Health Service Act. Title X is a federal program that focuses on providing family planning and related preventative services to low-income individuals at a reduced cost or no cost.

The rule was proposed in response to attempts at the state level to redirect funding—including Title X funding, in some cases⁷—from Planned Parenthood, particularly after the nation's largest abortion provider was featured in a series of undercover videos released by the Center for Medical Progress in 2015. As several pro-life groups stated in formal com-

ments back when the rule was proposed, the rule “runs contrary to the right of States in our federal system to optimize health care for women by prioritizing public funding to providers who offer primary and preventive care as well as contraception.”⁸

The House voted to undo the rule on February 16, 2017.⁹ The Senate should follow suit in using the Congressional Review Act disapproval process to send the resolution to the President's desk for signature.

Late-Term Abortion

Congress should pass the Pain-Capable Unborn Child Protection Act to protect women and unborn children from gruesome late-term abortions performed after 20 weeks.¹⁰ The U.S. is one of only seven countries in the world that allows elective abortion past 20 weeks (5 months),¹¹ at which point scientific evidence suggests that the baby is capable of feeling excruciating pain during an abortion procedure.¹² A poll released in January 2017 found that 74 percent of Americans want abortion restricted to, at most, the first trimester.¹³ At the state level, over a dozen states across the country have enacted

1. Sarah Torre, “Congress Should End Federal Funding to Planned Parenthood and Redirect It Toward Other Health Care Options,” Heritage Foundation *Issue Brief* No. 4462, September 22, 2015, <http://www.heritage.org/health-care-reform/report/congress-should-end-federal-funding-planned-parenthood-and-redirect-it>.
2. No Taxpayer Funding for Abortion Act, H.R. 7, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/house-bill/7> (accessed February 15, 2017).
3. Sarah Torre, William Wilson, and Olivia Enos, “An Economic and Humanitarian Case for Pressing China to Rescind the Two-Child Policy,” Heritage Foundation *Background* No. 3146, November 18, 2016, <http://www.heritage.org/asia/report/economic-and-humanitarian-case-pressing-china-rescind-the-two-child-policy>.
4. Press release, “Presidential Memorandum Regarding the Mexico City Policy,” the White House, Office of the Press Secretary, January 23, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy> (accessed February 15, 2017).
5. 5 U.S. Code §§ 801–08 (2012). The Congressional Review Act of 1996 was enacted as Title II, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 871 (1996).
6. *Federal Register*, Vol. 81, No. 243 (December 19, 2016), pp. 91852–91860.
7. *Ibid.*
8. News release, “ADF, Pro-life Groups to HHS: New Rule Is Administration's Parting Gift to Big Abortion,” Alliance Defending Freedom, October 7, 2016, <https://www.adflegal.org/detailspages/press-release-details/adf-pro-life-groups-to-hhs-new-rule-is-administration-s-parting-gift-to-big-abortion> (accessed February 15, 2017).
9. H. J. Res 43, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/house-joint-resolution/43/text> (accessed February 15, 2017).
10. Pain-Capable Unborn Child Protection Act, H.R. 36, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/house-bill/36?q=78%22search%22%3A%5B%22pain+capable+unborn+child%22%5D%7D&r=1> (accessed February 15, 2017).
11. Angelina Baglini, “Gestational Limits on Abortion in the United States Compared to International Norms,” Charlotte Lozier Institute, *American Reports Series*, Issue 6, February 1, 2014, <https://lozierinstitute.org/internationalabortionnorms/> (accessed February 15, 2017).
12. Charlotte Lozier Institute, “Fact Sheet: Science of Fetal Pain,” May 13, 2015, <https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/> (accessed February 15, 2017).
13. Knights of Columbus–Marist Poll, “Americans Support Supreme Court Ruling to Restrict Abortion, Oppose Taxpayer Funding,” January 27, 2017, <http://www.kofc.org/en/news/polls/opose-taxpayer-funding.html> (accessed February 15, 2017).

20-week bills. Congress is overdue to pass the bill at the federal level.

Abortion Procedures

Congress should pass the Born-Alive Abortion Survivors Protection Act. In 2002, President Bush signed legislation that extended legal protection to infants born alive at any stage of development, including after an abortion.¹⁴ However, as the disturbing case of Kermit Gosnell has shown, babies continue to be born alive and then killed after attempted abortions or are purposefully delivered alive and left to die. The Born-Alive Abortion Survivors Protection Act augments the 2002 law by providing for criminal consequences for health care providers who violate the law and requires that proper medical care be given by the health care practitioner present if an infant is born alive.¹⁵ In a civilized society, treating a baby born alive after an abortion with the same care that any other newborn baby would receive should not be controversial.

Congress should also pass the Dismemberment Abortion Ban Act, which has been enacted at the state level.¹⁶ The bill prohibits an abortionist from dismembering a living unborn child in utero and extracting the baby's body parts one piece at a time using instruments such as clamps, tongs, and grasping forceps during a late-term abortion procedure. A physician who ends the life of an unborn child using this cruel and risky procedure would be subject to fines and imprisonment, and a woman or the parents of a woman on whom the procedure has been performed could seek civil action.¹⁷

Conscience

Congress should pass the Conscience Protection Act. Current conscience protections exist in federal law, including the Weldon amendment, which forbids states that receive federal funding from discriminating against health care entities "on the basis that [the entity] does not provide, pay for, provide coverage of, or refer for abortions."¹⁸ Enforcement of the policy, however, is left to the discretion of officials in the Department of Health and Human Services (HHS), which has a poor track record of moving quickly—if at all—on such complaints.¹⁹

The need to codify this important conscience protection and provide victims a better path to relief is urgent. In August 2014, the Department of Managed Health Care in California mandated that almost every health plan in the state include coverage of elective abortions, including those plans purchased by religious organizations, religious schools, and churches. Complaints to the HHS about the state's mandate were dismissed by the Department's Office for Civil Rights after nearly two years of investigation.²⁰ Policymakers should not wait for more assaults on conscience before protecting the freedom of all Americans to provide, find, or offer health care and health insurance coverage that aligns with their values.

The Conscience Protection Act strengthens conscience protections by providing a private right of action if a party (such as a hospital or health care practitioner) claims to have been discriminated against for following their conscience with regard to abortion.²¹ Providing individuals with their day in court is a much better system than the current one,

14. Born-Alive Infants Protection Act of 2002, Public Law 107-207.

15. Born-Alive Abortion Survivors Protection Act, S. 220, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/senate-bill/220?q=%7B%22search%22%3A%5B%22Born-Alive+Abortion+Survivors+Protection+Act%22%5D%7D&r=1> (accessed February 15, 2017).

16. National Right to Life Committee, "Dismemberment Abortion Bans," January 27, 2017, <http://www.nrlc.org/uploads/stateleg/StateLawsDismembermentAbortionBans.pdf> (accessed February 15, 2017).

17. Dismemberment Abortion Ban Act, H.R. 3515, 114th Cong., 1st Session, <https://www.congress.gov/bill/114th-congress/house-bill/3515/text> (accessed February 15, 2017).

18. U.S. Department of Health and Human Services, Office for Civil Rights, "Overview of Federal Statutory Health Care Provider Conscience Protections," <https://www.hhs.gov/civil-rights/for-individuals/conscience-protections/factsheet/index.html> (accessed February 15, 2017).

19. U.S. Conference of Catholic Bishops, "The Need for the Conscience Protection Act of 2017: Questions and Answers," February 10, 2017, <http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/The-Need-for-The-Abortion-Non-Discrimination-Act.pdf> (accessed February 15, 2017).

20. *Ibid.*

21. Conscience Protection Act of 2017, S. 301, 115th Congress, 1st Sess., <https://www.congress.gov/bill/115th-congress/senate-bill/301/text/is?overview=closed&format=xml> (accessed February 15, 2017).

which leaves Americans at the mercy of bureaucrats who are often ideologically opposed to the very conscience protections they are charged with enforcing.

Obamacare

Congress, the Administration, and state officials must lead a smooth and methodical transition for the repeal of Obamacare²² and ensure that the process addresses the abortion funding loophole and onerous HHS Mandate.

Obamacare opens new avenues for federal funding of abortion coverage by allowing health insurers that sell plans on many state exchanges to cover abortion while remaining eligible for federal subsidies in the form of an “affordability tax credit” available to low-income and middle-income Americans.²³

Furthermore, some Americans could pay an abortion surcharge out of their own pockets—possibly without their knowledge. An individual enrolled in a plan that covers abortion must pay an additional abortion premium with private dollars. The insurer must ensure this payment goes in a separate account that pays for the abortion procedures for enrollees in the plan.²⁴ According to Obamacare regulations, insurers do not have to disclose the existence and amount of the abortion surcharge until the time of enrollment (which may constitute a single sentence on a massive plan document) and insurers may not itemize the abortion surcharge on premium bills.²⁵

Obamacare also requires preventive services to be covered with no enrollee cost sharing. HHS issued regulations and guidance specifying the types of preventive services health insurance plans must cover, which includes certain contraceptives and abortion-inducing drugs.²⁶ Only a very nar-

row religious exemption was allowed for employers, meaning most employers would be required to provide coverage for services despite sincere moral or religious objections. The Supreme Court has given relief to closely held businesses (in *Burwell v. Hobby Lobby*) and to religious institutions (in *Zubik v. Burwell*), but not to individuals who purchase insurance on exchanges or who are covered by their employer. Should Congress repeal Obamacare, employers would no longer be penalized for noncompliance with the HHS mandate and consumers will ultimately have more, not fewer, life-affirming options.

Promoting a Culture of Life

The success of pro-life candidates up and down the ballot is a victory for the most vulnerable and innocent in society. Since *Roe v. Wade* and *Doe v. Bolton* effectively legalized abortion on demand, more than 58 million children have been denied the right to life. For over forty years the pro-life community has worked to counter the devastating impact abortion has had on mothers, fathers, and their unborn babies, witnessing to the fundamental truth that from the moment of conception, a distinct human being with inherent worth and dignity has the right to life.

With pro-life majorities in the House and Senate, and a President who has committed to defend innocent life, Congress has the opportunity of a generation. Passing key pro-life legislation should be among the highest priorities in the 115th Congress.

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22. Edmund Haislmaier, Robert Moffit, and Alyne Senger, “A Plan to Repeal and Replace Obamacare,” Heritage Foundation *Backgrounder* No. 3193, February 9, 2017, <http://www.heritage.org/health-care-reform/report/plan-repeal-and-replace-obamacare>.
 23. Sarah Torre, “Obamacare’s Many Loopholes: Forcing Individuals and Taxpayers to Fund Elective Abortion Coverage,” Heritage Foundation *Backgrounder* No. 2872, January 13, 2014, http://www.heritage.org/health-care-reform/report/obamacares-many-loopholes-forcing-individuals-and-taxpayers-fund-elective#_ftn2.
 24. 42 Code of Federal Regulations § 156.280 (2015).
 25. 2 U.S. Code § 18023(E)(3)(A). According to the statute: “A qualified health plan that provides for coverage of the services described in paragraph (1)(B)(i) [elective abortions beyond those allowed for coverage under the Hyde amendment] shall provide a notice to enrollees, only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage.”
 26. U.S. Department of Health and Human Services, Health Resources and Services Administration, “Women’s Preventive Services Guidelines,” <https://www.hrsa.gov/womensguidelines/> (accessed February 15, 2017).
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