

Defending Life: Recommendations for the 117th Congress

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KEY TAKEAWAYS

Policymakers should not shy away from advancing pro-life legislation that protects unborn children who survive abortions or are old enough to feel pain, and more.

The vast majority of Americans oppose allowing taxpayer funding for abortions, and Congress should not change pro-life protections to allow this.

Lawmakers should also reject government-run health care proposals, such as the public option, which make abortions a taxpayer-funded entitlement.

A House and Senate subject to a narrow pro-abortion majority for, at a minimum, the next two years means that the pro-life cause will be under near-constant attack. The abortion lobby is well organized and well funded, and policymakers in Congress must be prepared for an onslaught of radical proposals.

Legislation

Congress should reject bills such as the Equality Act, which redefines discrimination on the basis of sex in federal civil rights law to include discrimination on the basis of “sexual orientation” and “gender identity.” The Equality Act is bad policy for a number of reasons, which are discussed at length in other Heritage Foundation publications.¹ On the issue

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of life and conscience rights specifically, the Equality Act would have a devastating impact on a host of current pro-life policies and protections. The Equality Act would lay the groundwork to eliminate prohibitions on taxpayer-funded abortions at the state and federal level, purge existing statutory conscience protection provisions for pro-life individuals and entities in the context of health care, and nullify hard-fought court battles that upheld religious freedom protections for people like the Little Sisters of the Poor.²

Congress should also reject single-payer health care proposals such as “Medicare for All”³ and the so-called public option.⁴ Such policies would likely make elective abortions a taxpayer-funded entitlement. Furthermore, nondiscrimination language such as that found in Senator Bernie Sanders’ (I-VT) Medicare for All proposal and other public option proposals would obliterate current conscience protections for health care practitioners, forcing them to provide or participate in procedures such as abortion despite moral or religious objections.

Congress should reject attempts, such as the so-called Women’s Health Protection Act, to entrench unfettered access to abortion in federal law. This radical, far-reaching proposal would endanger essentially all state-level abortion restrictions, existing state and federal conscience protection laws, and various provisions limiting taxpayer funding for abortions.⁵ Similarly, the Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act would mandate elective abortion coverage in government health plans and managed insurance programs, and would prevent state governments from restricting abortion in private health insurance plans.⁶

Congress should reject attempts to resurrect the Equal Rights Amendment (ERA). Proposed by Congress in 1972 but not ratified by the deadline, the ERA can no longer be ratified.⁷ When the ratification deadline for the resolution passed, the proposed resolution ceased to be viable. Congress cannot remove a ratification deadline that has passed since the resolution no longer exists. An ERA—if it ever were to be ratified—could provide a separate basis for a right to unrestricted abortion and mandatory taxpayer funding of elective abortion. In fact, state-level ERAs and similar equal rights measures in state laws have been interpreted to require taxpayer-funded abortions in states including New Mexico and Connecticut.⁸

Congress must ensure that *all* current pro-life and conscience rights riders are maintained in all appropriations bills, budget reconciliation measures, and other legislation. Pro-abortion congressional leaders, including Speaker Nancy Pelosi (D-CA) and House Appropriations Committee Chair

Rosa DeLauro (D-CT), as well as President Joe Biden himself, have advocated that Congress stop including the Hyde Amendment in appropriations legislation.⁹ The Hyde Amendment generally prohibits federal funds from being expended on abortions. But Hyde is not the only rider under threat. Others include:

- The Weldon Amendment, which protects health care providers from discrimination on the basis of their refusal to provide, pay for, or refer women for abortion;
- The Dickey-Wicker Amendment, which prohibits Department of Health and Human Services (HHS) funds from being expended on embryo-destructive research;
- The Aderholt Amendment, which prohibits three-parent embryo research;
- The Helms Amendment, which prohibits foreign aid funds from being expended on abortions;
- The Livingston Amendment, which prohibits the federal government from discriminating against foreign aid organizations that do not offer all methods of contraception, for moral or religious reasons, during the grantmaking process;
- The Siljander Amendment, which prohibits foreign aid funds from being expended to lobby for abortion in other countries; and
- The Kemp-Kasten Amendment, which authorizes the President to withhold federal funding from any organization that “supports or participates in the management of a program of coercive abortion or involuntary sterilization.”

This list is not exhaustive, and policymakers must be prepared to carefully examine every legislative proposal for attempts—both overt and covert—to undermine existing pro-life and conscience-protection laws, or to establish new funding streams that do not encapsulate pro-life and conscience protections. Policies like the Hyde Amendment, which is broadly supported across the ideological spectrum, must be non-negotiables during the 117th Congress.

Administration

The Biden Administration will aggressively, and in some cases has already begun to, roll back many of the Trump Administration's pro-life policies, including executive orders and regulations. These Trump Administration accomplishments include:

- The Protecting Life in Global Health Assistance Policy (PLGHA, an expansion under the Trump Administration of the Mexico City Policy), which prohibits foreign nongovernment organizations (NGOs) from performing or promoting abortion abroad in order to be eligible to receive U.S. funding. President Biden rescinded the policy on January 28, 2021.¹⁰
- Moral and religious exemptions from the Affordable Care Act's onerous mandate that nearly all health insurance plans cover contraception and abortion-inducing drugs and devices.
- Programmatic integrity requirements to ensure that the federal Title X family planning program is not entangled with the abortion industry through grants and other activities.
- The Conscience and Religious Freedom Division within the office for Civil Rights at the Department of Health and Human Services (HHS), which is tasked with ensuring that existing federal civil rights laws are robustly enforced.
- A regulation to ensure that insurers abide by both the letter and spirit of the Affordable Care Act by fulfilling the law's requirement that insurers collect a separate payment for elective abortion coverage in qualified health plans (QHP) approved to be sold on the Obamacare exchanges.
- Ending contracts for fetal tissue research using tissue obtained from elective abortions, conducting a comprehensive review of fetal tissue research activity, committing to pursue ethical alternative methods, ceasing intramural fetal tissue research within the National Institutes of Health (NIH), and subjecting extramural research (conducted outside the NIH but with NIH funding) to review by an Ethics Advisory Board (EAB).

- Defunding the United Nations Population Fund (UNFPA) due to the organization's complicity in China's coercive population control policies, which include forced abortion and sterilization. Funding was instead redirected to other maternal health programs. In the January presidential memorandum that rescinded the PLGHA policy, President Biden instructed the Secretary of State to resume UNFPA funding.
- Rescinding a Centers for Medicare and Medicaid Services (CMS) guidance that interpreted Medicaid's "free choice of provider" provision to restrict states from excluding family planning providers who also provide abortion from state-run Medicaid programs.¹¹ Additionally, the Trump Administration CMS granted Texas a "Section 1115" Medicaid demonstration waiver that allowed the state to set provider standards that had the effect of excluding abortion providers like Planned Parenthood from their state-run Healthy Texas Women Program.¹²

In addition to rolling back these and other pro-life policies, the Biden Administration is expected to deliver on many of the abortion lobby's demands outlined in a coalition document called "Blueprint for Sexual and Reproductive Health, Rights, and Justice,"¹³ which includes demands on both the domestic and international fronts.

From reading a right to abortion into international human rights law at the United Nations and other international bodies to supporting multilateral organizations that advocate for abortion, the Biden Administration will use the United States' significant power and influence on the world stage to undermine the cause of life.

Domestically, the Biden Administration will have ample opportunities to roll back conscience and religious freedom protections for individuals, health care entities, and organizations that partner with the federal government through various grants and other funding opportunities. The Administration is expected to weaken the current Food and Drug Administration (FDA) guidelines for the chemical abortion pill regimen, which would undo decades-old health and safety restrictions and open the door to making abortion pills widely available through telemedicine and retail pharmacies.

How Policymakers Can Respond

Policymakers must be clear-eyed and prepared for the challenges that are to come.

The Senate should reject attempts to abolish the current legislative filibuster (requiring 60 votes to end debate on a piece of legislation) in favor of a simple majority vote. The legislative filibuster is an important tool, ensuring that Congress's upper chamber lives up to the moniker "The World's Greatest Deliberative Body." As a procedural tool, the filibuster distinguishes the Senate from the House of Representatives and preserves the legislative branch as a body in which compromise is sometimes necessary and seeking consensus is not an obsolete endeavor.¹⁴ The absence of the Senate filibuster would significantly increase the chances of radical pro-abortion bills being enacted.

Policymakers should embrace opportunities for oversight and accountability within the Biden Administration. Oversight hearings, including in-person questions and written questions for the record (QFR), provide welcome opportunities for Members of Congress to question high-level government officials across federal departments and agencies. In the weeks and months to come, the Senate will conduct many confirmation hearings, which will provide an opportunity to put nominees on the record for the benefit of both Congress as well as the American people. Members should take advantage of every opportunity to ask government officials about their positions and policies on abortion, conscience rights, and religious freedom.

Policymakers should not be deterred from attempting to enact policies that advance the cause of life; the posture in the coming years need not be entirely defensive. Congress should pursue policies such as:

- The **No Taxpayer Funding for Abortion Act**, which would eliminate the need for annual appropriations riders and end taxpayer funding for abortion once and for all;¹⁵
- The **Pain-Capable Unborn Child Protection Act**, which would protect women and their unborn children from inhumane late-term abortions performed after 20 weeks,¹⁶ at which point scientific evidence suggests that the baby is capable of feeling excruciating pain during an abortion procedure;¹⁷ and
- The **Born-Alive Abortion Survivors Protection Act**, which would augment current law by including criminal consequences for health care providers who violate the law and require that proper medical care be given by the health care practitioner present if an infant is born alive.¹⁸

House and Senate procedure provides various tools that protect minority rights, and other nontraditional processes—such as a discharge petition—can provide policymakers with creative ways to advance pro-life policies in a hostile environment.

Opportunities and Challenges in the Months to Come

Most Americans support significantly limiting abortion, do not believe that medical professionals should be forced to participate in abortions, and do not want their tax dollars to fund abortions at home or abroad.¹⁹

An Administration that is in lockstep with the abortion lobby coupled with a slim pro-abortion majority in both the House and Senate will undoubtedly pose many challenges in the 117th Congress. But policymakers are not completely powerless, and energized pro-life members should work to maintain existing pro-life language in current law—including appropriations bills—while rejecting attempts to advance radical pro-abortion legislation.

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Endnotes

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