The Pro-Life Agenda: A Progress Report for the 115th Congress and the Trump Administration

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Abstract
In January 2017, a pro-life majority in the U.S. Senate and the House of Representatives and a President committed to defend innocent human life began pursuing an agenda to protect life from conception to natural death. In the past year, policymakers achieved a number of significant pro-life victories. But there is still much to be done in 2018 and beyond. Congress should pursue a pro-life agenda that codifies important policies into law, stops the flow of taxpayer dollars to organizations that perform and promote abortion, ends the inhumane practice of late-term abortion, and respects the fundamental right to life of every American. The Trump Administration should pursue administrative actions that ensure federal policy protects all Americans, from conception to natural death.

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Key Points
- Congress and the Trump Administration have accomplished a number of significant pro-life victories, but there is still much to be done to ensure that public policy respects the rights of the most vulnerable and innocent among us.
- Today there is a pro-life majority in the House of Representatives and Senate, and a veto threat no longer looms over life-affirming legislation. Rather, the President has committed to defend life from conception to natural death.
- In 2017, Congress and the Trump Administration made significant pro-life strides, including rescinding a late Obama-era gift to Planned Parenthood, reinstatement of the Mexico City Policy, and a renewed commitment to defending rights of conscience.
- More remains to be done. Policymakers should seize pro-life opportunities to vigorously pursue a pro-life agenda in 2018 and beyond.
Here are some collected examples of significant pro-life victories achieved by Congress and the Trump Administration since the January 2017 inauguration.

**Pro-Life Victories: Congress**

**Took Back President Obama’s Parting Gift to Planned Parenthood.** In early 2016 the House and Senate used the Congressional Review Act, which allows Congress to invalidate an agency rule via a joint resolution of disapproval signed by the President, to reverse President Obama’s parting gift to Planned Parenthood by disapproving of a final rule submitted by the Secretary of Health and Human Services (HHS) in the waning weeks of the Obama Administration. The rule prohibited 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 at no cost.

The rule was proposed in response to attempts at the state level to redirect funding—including Title X funding, in some cases—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 comments 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.” Congress rightly agreed with this sentiment and used its Congressional Review Act authority to ensure that states remain free to prioritize the providers they deem best.

**Pro-Life Victories: Trump Administration**

**Reinstated and Expanded the Mexico City Policy.** On January 23, 2017, President Trump reinstated via executive order the life-affirming “Mexico City Policy,” which ensures that American taxpayers do not fund international organizations that perform and promote abortion overseas. The Mexico City Policy was first announced by President Ronald Reagan in 1984. Since then, the policy has been enforced by every Republican President and suspended by every Democratic President shortly after being inaugurated.

Just a few months after his inauguration, the Trump Administration announced the expansion and implementation of the Mexico City Policy—now known as the “Protecting Life in Global Health Assistance” policy. The Mexico City Policy required foreign nongovernmental organizations that receive United States Agency for International Development (USAID) and State Department family planning assistance funds to certify that they will not perform or actively promote abortion as a method of family planning. The expanded policy will apply to almost $9 billion in Department of State, USAID, and Department of Defense funds. Importantly, the policy does not reduce funding for global health assistance. Rather, it ensures that U.S. dollars are not entangled with the abortion industry and that American taxpayers do not subsidize nongovernmental organizations that do not respect innocent human life.

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Defunded the United Nations Population Fund. On March 30, 2017, the Trump Administration used its authority under the Kemp–Kasten Amendment to withhold funding for the United Nations Population Fund (UNFPA) due to the organization’s complicity in violating the rights of Chinese women and men by aiding the Chinese government’s draconian coercive population-control policies. First enacted in 1985 and included in every foreign appropriations bill since, the Kemp–Kasten Amendment 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.”

Issued Regulations Providing Relief from Obamacare’s Contraception Mandate. On October 6, 2017, HHS issued interim final rules (IFRs) to provide much-needed relief to those with moral or religious objections to one of Obamacare’s most egregious assaults on rights of conscience and religious liberty: the HHS mandate that requires nearly all insurance plans to cover abortion-inducing drugs and contraception. The mandate is a burden on those who, because of their beliefs concerning the protection of unborn human life, are forced to choose between violating their sincere moral or religious beliefs, pay steep fines, or forgo offering or obtaining health insurance. The IFRs issued by the Trump Administration calculate that the expanded exemption will affect the roughly 200 employers that previously filed lawsuits over objections to the mandate on religious or moral grounds, and that the number of women whose contraceptive costs would be affected is less that 0.1 percent of the roughly 55.6 million women who receive preventive services coverage in private plans. On December 15, 2017, and December 21, 2017, respectively, federal judges in Pennsylvania and California issued injunctions blocking the Trump Administration from enforcing the rules. Those cases are currently pending appeal.

Issued Guidance Regarding Enforcement and Increased Transparency to Obamacare Abortion Requirements. On October 6, 2017, the Trump Administration issued guidance regarding enforcement of Section 1303 of the Affordable Care Act. Section 1303 prohibits insurers from using premium tax credits or cost-sharing reduction subsidies to pay for abortions unless they meet the exemption laid out under the Hyde Amendment (rape, incest, or the life of the mother is in danger). Furthermore, insurers must notify consumers if a qualified health plan (QHP) covers abortion outside the Hyde Amendment exemption and separate additional premiums collected for such coverage. The insurer must ensure this payment goes into a separate account that pays for the abortion procedures for enrollees in the plan. 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).

However, a 2014 Government Accountability Office (GAO) study found that this “separate funding” accounting gimmick and notice provision were being ignored. None of the QHP insurance issuers inter-

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10. 42 U.S. Code § 18023.
13. 42 U.S. Code § 18023(b)(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.”
viewed by the GAO billed enrollees separately for the abortion premium for which they were charged, and only one provided customers with an itemized amount on their bills. The GAO found that as many as 11 issuers indicated that consumers shopping for a plan on the exchange do not have access to information to ascertain which plans do not include abortion. The Trump Administration guidance makes clear that insurance issuers must abide by the letter and spirit of the law that requires them to offer at least some semblance of transparency regarding abortion in QHPs.

**Rescinded Obama-Era Agency Guidance Regarding Medicaid’s “Free Choice of Provider” Provision.** On January 19, 2018, the Centers for Medicare and Medicaid Services (CMS) rescinded an Obama-era 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. The “free choice of provider” provision, found in Section 1902(a)(23) of the Social Security Act, stipulates that Medicaid beneficiaries may obtain services “from any institution, agency, community pharmacy, or person, qualified to perform the service or services required...who undertakes to provide...such services.” Via regulation, states are allowed to set “reasonable standards relating to the qualifications of providers.” States have set provider standards that have the effect of excluding abortion providers from their Medicaid programs but have been blocked from doing so by courts based on a similarly flawed interpretation of the “free choice of provider” provision. More recently, Arkansas successfully defended its decision to not allow abortion providers to participate in its Medicaid program in the 8th Circuit Court of Appeals, but pro-abortion activists are vigorously pursuing additional challenges. Meanwhile, Texas has appealed to the CMS directly seeking flexibility in its program to prioritize organizations not engaged in abortion, and the Governor of South Carolina has opted to deny funding to abortion providers via executive order.

With accusations of fraud and abuse of Medicaid programs by numerous abortion providers, states should be allowed to maintain the integrity of their programs and tailor them to best reflect state priorities. In rescinding the 2016 guidance, the Trump Administration expressed concern that “the 2016 Letter raises legal issues under the Administrative Procedures Act and limited states’ flexibility with regard to establishing reasonable Medicaid provider qualification standards.” Rescinding the letter does not mean that states can disallow abortion providers from participating in their Medicaid programs for any reason; states must still comply with statutory and regulatory requirements regarding qualification standards. Rather, rescinding the 2016 guidance demonstrates the Trump Administration’s commitment to roll back Obama-era administrative policies that potentially overstep agency authority and put a thumb on the scale in favor of the abortion industry.

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18. 42 C.F.R. § 431.51(c)(2).
Proposed Regulation to Strengthen Enforcement of Conscience Rights Statutes. On January 19, 2018, HHS announced the newly created Conscience and Religious Freedom Division within the Office for Civil Rights (OCR) and issued a notice of proposed rulemaking to “revise regulations previously promulgated to ensure that persons or entities are not subjected to certain practices or policies that violate conscience, coerce, or discriminate, in violation of such Federal laws.” The proposed rule revises and expands on a similar regulation that was put in place during the George W. Bush Administration but was later rescinded in large part under President Obama.

The proposed rule seeks to ensure that the department is vigorously enforcing federal laws that protect rights of conscience by granting the OCR the authority to initiate compliance reviews, conduct investigations, supervise and coordinate compliance by the Department and its components, and use enforcement tools otherwise available in civil rights law to address violations and resolve complaints. In order to ensure that recipients of Federal financial assistance and other Department funds comply with their legal obligations, the Department will require certain recipients to maintain records; cooperate with OCR’s investigations, reviews, or other enforcement actions; submit written assurances and certifications of compliance to the Department; and provide notice to individuals and entities about their conscience and associated anti-discrimination rights, as applicable.

Federal conscience protections ensure that Americans can work and live according to their moral and religious beliefs, and when violations of these rights occur, it is critical that the government responds with robust enforcement of federal law. The proposed regulation would help ensure that health care professionals and entities do not face coercion or discriminatory action if they decline to participate in certain activities because of moral or religious objections.

In addition to the pro-life policy accomplishments previously discussed, there are a number of additional policies that Congress and the Administration should prioritize going forward.

Recommendations for Congress

Pass the Pain-Capable Unborn Child Protection Act. 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. The U.S. is one of only seven countries in the world that allows elective abortion past 20 weeks (five months), at which point scientific evidence suggests that the baby is capable of feeling excruciating pain during an abortion procedure. A poll released in January 2018 found that 76 percent of Americans want abortion restricted to—at most—the first trimester. At the state level, over a dozen states across the country have enacted 20-week bills. Congress is overdue to pass the bill at the federal level. The House of Representatives passed the Pain-Capable Unborn Child Protection Act on October 3, 2017, in a bipartisan vote of 237–189.

Abortion Survivors Protection Act. In 2002, President George W. Bush signed legislation that extended legal protection to infants born alive at any stage of development, including after an abortion. However, as the disturbing case of abortionist Kermit Gosnell has shown, babies continue to be born alive and then killed after attempted abortions—or are purposely 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 present health care practitioner if an infant is born alive. On January 19, 2018, the House of Representatives passed the Born-Alive Abortion Survivors Protection Act in a bipartisan vote of 241–183. The Senate should follow suit.

**Pass the Dismemberment Abortion Ban Act.** Congress should pass the Dismemberment Abortion Ban Act, which has already been enacted in several states. 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.

**Pass the Conscience Protection Act.** Congress should pass the Conscience Protection Act. Despite the fact that there are numerous federal laws that protect individuals and entities from participating in health care practices that violate their sincere moral, ethical, or religious convictions, conscience-based violations and discriminations occur across the country. Enforcement of these conscience protections is left to the discretion of officials in the HHS OCR, which can leave Americans at the mercy of unelected and often unaccountable bureaucrats who are frequently ideologically opposed to the very conscience protections they are charged with enforcing.

On January 18, 2018, the Trump Administration announced the creation of a new Conscience and Religious Freedom Division (discussed supra) within the OCR to “vigorously and effectively enforce existing laws protecting the rights of conscience and religious freedom.” This new division will help ensure that health care professionals enjoy the same rights they have had for decades—to avoid coercion or discriminatory actions if they decide not to participate in certain procedures because of moral or religious objections. But Congress can do more to protect rights of conscience in the current and subsequent administrations.

**Defund Abortion Providers Like Planned Parenthood.** Congress should disqualify Planned Parenthood affiliates and other abortion providers from receiving taxpayer funds. 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

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38. “HHS Announces New Conscience and Religious Freedom Division.”
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 2017.39

**Pass the Child Welfare Provider Inclusion Act.** Congress should pass the Child Welfare Provider Inclusion Act, which prohibits federal, state, and local governments from discriminating against a child welfare provider simply because the provider declines to provide a service that conflicts with the provider’s religious or moral beliefs, such as the belief that children deserve to be placed with a married mother and father. The bill withholds 15 percent of federal child welfare funds from states that religiously discriminate.

Faith-based child welfare providers play an integral role in giving women a loving alternative to abortion by offering personalized resources to women and adoptive parents—as well as providing more opportunities to place children in safe, permanent homes. However, in places like Boston,40 Washington, DC,41 and Illinois,42 faith-based agencies have been forced to close their doors when they were no longer allowed to operate according to their religious beliefs. Foster care and adoption policy should seek to increase the number of agencies and families willing to foster and potentially adopt children, not risk reducing the number of agencies or families working for children. Provided these agencies meet basic requirements, they should be free to serve birth moms, children, and adoptive families while operating according to their values, especially their reasonable and religiously informed beliefs about marriage and the importance of both mothers and fathers.43 Protecting the rights of child welfare providers ensures that women, children, and adoptive parents have a variety of resources.

**Recommendations for the Trump Administration**

**Issue Guidance Regarding Funding Discrimination.** Under the Obama Administration, HHS gave “strong preference” to applicants for a federal anti-trafficking grant that would be willing to provide referrals for abortion for trafficking victims.44

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The U.S. Conference of Catholic Bishops, which had been using that federal grant for five years to serve victims of sex slavery and human trafficking, has a long-standing policy of declining to refer victims for contraception or abortion. Yet despite higher scores for effectiveness than other organizations applying—and despite a federal prohibition on discrimination against grant applicants on the basis of participation in abortion—the Conference of Catholic Bishops lost the grant competition and was stripped of funding for its important work on behalf of vulnerable women, men, and children.

To ensure that faith-based groups can continue to partner with the federal government to serve vulnerable populations, the Secretary of HHS should direct all offices offering grants, contracts, and other funding to respect the religious and moral beliefs of those who apply for such funding and ensure that the grant-making process abides by the letter and spirit of federal laws protecting faith-based groups from discrimination.

Reinstate and Strengthen Pro-Life Title X Regulations. There is a statutory prohibition on Title X family planning funds being used directly for abortion services, and current federal regulations prohibit Title X recipient organizations from providing “abortion as a method of family planning.” 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 at no cost. HHS should promulgate regulations that further clarify that Title X recipients may not provide counseling concerning the use of abortion as a method of family planning or provide referrals for abortion as a method of family planning. Likewise, new regulations should require Title X recipients to maintain strict physical and accounting separation between family planning activities and abortion services. Similar regulations were promulgated under President Ronald Reagan and upheld by the Supreme Court in Rust v. Sullivan.

Title X regulations should also include a requirement that funding recipients must offer pregnant women the opportunity to receive information and counseling on adoption. Under current law, offering such information is merely optional. In addition, “pregnancy termination” should be eliminated from the list of information Title X recipients must offer to pregnant women.

Opportunities to Defend Life in 2018 and Beyond

Congress and the Trump Administration have accomplished a number of significant pro-life victories, but there is still much to be done to ensure that public policy respects the rights of the most vulnerable and innocent among us. Today there is a pro-life majority in the House of Representatives and Senate, and a veto threat no longer looms over life-affirming legislation. Rather, the President has committed to defend life from conception to natural death. Policymakers should seize this opportunity to vigorously pursue a pro-life agenda in 2018 and beyond.

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45. 42 U.S.C. §§ 300a–6; and 42 C.F.R. part 59, subpart C.
48. 42 C.F.R. 59 (Subpart A, Section 59.5 (i))