

# BACKGROUND

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## 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.*

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.

### 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.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3280>

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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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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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1. 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).
  2. H.J. Res. 43, 115th Congress, Public Law 115-23, <https://www.congress.gov/115/plaws/publ23/PLAW-115publ23.pdf> (accessed January 19, 2018).
  3. *Federal Register*, Vol. 81, No. 243 (December 19, 2016), pp. 91852-91860.
  4. News release, “ADF, Pro-life Groups to HHS: New Rule Is Administration’s Parting Gift to Big Abortion,” Alliance Defending Freedom, October 7, 2016, <http://adfllegal.org/detailspages/press-release-details/adf-pro-life-groups-to-hhs-new-rule-is-administration-s-parting-gift-to-big-abortion> (accessed January 19, 2018).
  5. White House, “The Mexico City Policy,” Memorandum for the Secretary of State, Secretary of Health and Human Services, Administrator of the Agency for International Development, January 23, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-mexico-city-policy/> (accessed January 19, 2018).
  6. Fact sheet, “Protecting Life in Global Health Assistance,” Office of the Spokesperson, Department of State, May 15, 2017, <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm> (accessed January 19, 2018).
  7. Kaiser Family Foundation, “The Mexico City Policy: An Explainer,” June 1, 2017, <https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/> (accessed January 19, 2018).
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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.”<sup>8</sup> Like the Mexico City Policy, withholding UNFPA funding falls along presidential party lines (with Republicans withholding funding and Democrats permitting funding). Funds that were previously appropriated to the UNFPA (\$32.5 million in fiscal year 2017) were instead redirected to other maternal health programs.<sup>9</sup>

**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 exemp-

tion 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 than 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).<sup>10</sup> 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.<sup>11</sup> The insurer must ensure this payment goes into a separate account that pays for the abortion procedures for enrollees in the plan.<sup>12</sup> 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).<sup>13</sup>

However, a 2014 Government Accountability Office (GAO) study found that this “separate funding” accounting gimmick and notice provision were being ignored.<sup>14</sup> None of the QHP insurance issuers inter-

8. Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016, Public Law 114-113, as carried forward by the Continuing Appropriations Act, 2017, Public Law 114-223.

9. Consolidated Appropriations Act, 2017, Public Law 115-31.

10. 42 U.S. Code § 18023.

11. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, “CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act,” October 6, 2017, <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf> (accessed January 19, 2018).

12. 42 Code of Federal Regulations § 156.280 (2015).

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.”

14. Government Accountability Office, “Health Insurance Exchanges: Coverage of Non-Excepted Abortion Services by Qualified Health Plans,” September 15, 2016, <https://www.gao.gov/products/GAO-14-742R> (accessed January 19, 2018).

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<sup>15</sup> 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.<sup>16</sup> The “free choice of provider” provision, found in Section 1902(a)(23) of the Social Security Act,<sup>17</sup> 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.”<sup>18</sup>

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.<sup>19</sup> 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,<sup>20</sup> and the Governor of South Carolina has opted to deny funding to abortion providers via executive order.<sup>21</sup>

With accusations of fraud and abuse of Medicaid programs by numerous abortion providers,<sup>22</sup> 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.”<sup>23</sup> 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.

15. Centers for Medicare and Medicaid Services (CMS), letter to State Medicaid Directors, January 19, 2018, <https://www.medicare.gov/federal-policy-guidance/downloads/smd18003.pdf> (accessed January 19, 2018).

16. Centers for Medicare and Medicaid Services (CMS), letter to State Medicaid Directors, April 19, 2016, <https://www.medicare.gov/federal-policy-guidance/downloads/smd16005.pdf> (accessed January 19, 2018).

17. 42 U.S.C. 1396a.

18. 42 C.F.R. § 431.51(c)(2).

19. William Peacock, “Another AZ Abortion Law Falls; Would’ve Defunded Planned Parenthood,” Findlaw.com, August 23, 2013, [http://blogs.findlaw.com/ninth\\_circuit/2013/08/another-az-abortion-law-falls-wouldve-defunded-planned-parenthood.html](http://blogs.findlaw.com/ninth_circuit/2013/08/another-az-abortion-law-falls-wouldve-defunded-planned-parenthood.html) (accessed January 22, 2018), and Jonathan H. Adler, “Seventh Circuit Blocks Indiana Law Defunding Planned Parenthood,” The Volokh Conspiracy, October 23, 2012, <http://volokh.com/2012/10/23/seventh-circuit-blocks-indiana-law-defunding-planned-parenthood/> (links accessed January 19, 2018).

20. Wade Goodwyn, “Texas Wants to Set Its Own Rules for Federal Family Planning Funds,” NPR, May 16, 2017, <https://www.npr.org/sections/health-shots/2017/05/16/528657247/texas-wants-medicare-funds-and-the-right-to-set-its-own-rules> (accessed January 19, 2018).

21. Office of the Governor, State of South Carolina, Executive Order No. 2017-15, August 24, 2017, <http://governor.sc.gov/ExecutiveBranch/Documents/2017-15%20Abortion%20Clinics.pdf> (accessed January 19, 2018).

22. Catherine Glenn Foster, “Profit. No Matter What: 2017 Report on Publicly Available Audits of Planned Parenthood Affiliates and State Family Planning Programs,” Charlotte Lozier Institute, January 2017, <https://lozierinstitute.org/wp-content/uploads/2017/01/plannedparenthood-profit-no-matter-what.pdf> (accessed January 19, 2018).

23. Letter to State Medicaid Directors, January 19, 2018.

**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)<sup>24</sup> 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.”<sup>25</sup> The proposed rule revises and expands on a similar regulation<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> The U.S. is one of only seven countries in the world that allows elective abortion past 20 weeks (five months),<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> The Senate should follow suit.

**Pass the Born-Alive Abortion Survivors Protection Act.** Congress should pass the Born-Alive

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24. News release, Health and Human Services Office for Civil Rights, “HHS Announces New Conscience and Religious Freedom Division,” January 18, 2018, <https://www.hhs.gov/about/news/2018/01/18/hhs-ocr-announces-new-conscience-and-religious-freedom-division.html> (accessed January 19, 2018).

25. 45 C.F.R. Part 88, proposed rule to be published in *Federal Register* on January 26, 2018, “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” <https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-01226.pdf> (accessed January 19, 2018).

26. *Federal Register*, Vol. 73, No. 245 (December 19, 2008), pp. 78072–78101.

27. 45 C.F.R. Part 88, proposed rule.

28. Pain-Capable Unborn Child Protection Act, H.R. 36, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/house-bill/36> (accessed January 19, 2018).

29. 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 January 19, 2018).

30. Knights of Columbus, Marist Poll, “New Marist Polls Find That Americans of All Political Persuasions Favor Substantial Abortion Limits,” January 17, 2018, <http://www.kofc.org/en/news/polls.html#/> (accessed January 19, 2018).

31. Final vote results for roll call 549, on passage of H.R. 36, October 3, 2017, <http://clerk.house.gov/evs/2017/roll549.xml> (accessed January 19, 2018).

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.<sup>32</sup> 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.<sup>33</sup> On January 19, 2018, the House of Representatives passed the Born-Alive Abortion Survivors Protection Act in a bipartisan vote of 241–183.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

**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 coun-

try.<sup>37</sup> 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.”<sup>38</sup> 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.

The Conscience Protection Act strengthens the current system by providing a private right of action if a party, such as a health care professional, facility, insurer, or social service provider claims to have been adversely affected by discrimination. A private right of action allows a party to have its day in court but does not guarantee a certain outcome. Rather, it ensures that a person or entity alleging discrimination can, in addition to filing a complaint with the OCR, seek a legal remedy for violations of rights under federal conscience protection laws.

**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

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

33. Born-Alive Abortion Survivors Protection Act, H.R. 4712, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/house-bill/4712/related-bills> (accessed January 19, 2018).

34. Final vote results for roll call 36, on passage of H.R. 4712, January 19, 2018, <http://clerk.house.gov/evs/2018/roll036.xml> (accessed January 19, 2018).

35. National Right to Life Committee, “Dismemberment Abortion Bans,” January 27, 2017, <http://www.nrlc.org/uploads/stateleg/StateLawsDismembermentAbortionBans.pdf> (accessed January 5, 2018).

36. Dismemberment Abortion Ban Act, H.R. 3515, 114th Cong., 1st Session, <https://www.congress.gov/bill/114th-congress/house-bill/3515/text> (accessed January 5, 2018).

37. Melanie Israel, “What Congress and the Administration Can Do to Protect Conscience Rights,” Heritage Foundation *Issue Brief* No. 4795, December 7, 2017, <http://www.heritage.org/civil-society/report/what-congress-and-the-administration-can-do-protect-conscience-rights>.

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.<sup>39</sup>

**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,<sup>40</sup> Washington, DC,<sup>41</sup> and Illinois,<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

39. No Taxpayer Funding for Abortion Act, H.R. 7, 115th Cong., 1st Sess., <https://www.congress.gov/bill/115th-congress/house-bill/7> (accessed January 19, 2018).

40. Maggie Gallagher, “Banned in Boston,” *The Weekly Standard*, May 15, 2006, <http://www.weeklystandard.com/banned-in-boston/article/13329> (accessed January 19, 2018).

41. Chuck Donovan, “The D.C. Government's Strike Against Foster Kids—and Religious Liberty,” Heritage Foundation, *The Foundry*, February 19, 2010, <http://dailysignal.com/2010/02/19/the-d-c-government%E2%80%99s-strike-against-foster-kids-%E2%80%93-and-religious-liberty/>.

42. Manya A. Brachear, “Last Faith Agency Opposed to Civil Union Adoptions Out of Foster Care,” *Chicago Tribune*, November 16, 2011, [http://articles.chicagotribune.com/2011-11-16/news/ct-met-evangelical-foster-care-gone-20111116\\_1\\_ken-withrow-faith-agency-catholic-charities-agencies](http://articles.chicagotribune.com/2011-11-16/news/ct-met-evangelical-foster-care-gone-20111116_1_ken-withrow-faith-agency-catholic-charities-agencies) (accessed January 19, 2018).

43. Ryan Anderson and Sarah Torre, “Adoption, Foster Care, and Conscience Protection,” Heritage Foundation *Backgrounder* No. 2869, January 15, 2014, [http://www.heritage.org/marriage-and-family/report/adoption-foster-care-and-conscience-protection?\\_ga=2.165744446.1803874523.1514994777-844872844.1509137151](http://www.heritage.org/marriage-and-family/report/adoption-foster-care-and-conscience-protection?_ga=2.165744446.1803874523.1514994777-844872844.1509137151).

44. The original grant document is no longer available on the HHS website, but the terms of the grant were widely reported at the time. See Sarah Torre, “Obama Administration Puts Politics Before Trafficking Victims?” *The Daily Signal*, December 1, 2011, <http://dailysignal.com/2011/12/01/obama-administration-puts-politics-before-trafficking-victims/> (accessed January 19, 2018); Jerry Markon, “Health, Abortion Issues Split Obama Administration and Catholic Groups,” *The Washington Post*, October 31, 2011, [https://www.washingtonpost.com/politics/health-abortion-issues-split-obama-administration-catholic-groups/2011/10/27/gIQA5xZM\\_story.html?utm\\_term=.4793456cd278](https://www.washingtonpost.com/politics/health-abortion-issues-split-obama-administration-catholic-groups/2011/10/27/gIQA5xZM_story.html?utm_term=.4793456cd278) (accessed January 19, 2018); Mary Ann Walsh, “The ABC Factor at HHS—Anybody But Catholics,” USCCBlog, October 13, 2011, <http://usccbmedia.blogspot.com/2011/10/abc-factor-at-hhs-anybody-but-catholics.html> (accessed January 19, 2018); and Florrie Burke and Andrea Powell, “HHS and the Catholic Church: Examining the Politicization of Grants (Minority Day of Hearing),” testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives, December 14, 2011, <https://oversight.house.gov/hearing/hhs-and-the-catholic-church-examining-the-politicization-of-grants-minority-day-of-hearing/> (accessed January 19, 2018).

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.”<sup>45</sup> 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<sup>46</sup> and upheld by the Supreme Court in *Rust v. Sullivan*.<sup>47</sup>

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.<sup>48</sup>

### **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. Policy-makers 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.

46. 53 Fed. Reg. 2922-2946 (1988).

47. *Rust v. Sullivan*, 500 U.S. 173 (1991).

48. 42 C.F.R. 59 (Subpart A, Section 59.5 (i))