

Defending Life: Recommendations for the 116th Congress

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KEY TAKEAWAYS

Congress must protect women and unborn children from late-term abortions, protect infants who survive abortion attempts, and all Americans' right of conscience.

Congress should pursue an agenda that stops any taxpayer dollars from going to organizations that perform or promote abortions.

Congress should reject radical pro-abortion policies and any attempts to weaken pro-life protections in current law.

Policymakers have accomplished significant pro-life victories at the state and federal level over the past four decades, but sanctioned abortion on demand due to *Roe v. Wade* and subsequent Supreme Court decisions continues to pose challenges to life and conscience. A pro-life majority in the Senate and an energized pro-life minority in the House must continue to strive to codify important policy riders, stop the flow of taxpayer dollars to organizations that perform or promote abortion, end the inhumane practice of late-term abortion, and reject attempts to advance pro-abortion policies and weaken existing pro-life protections.

Federal Funds and Abortion

Congress should disqualify abortion providers from receiving taxpayer funds.¹ Because money is fungible, any taxpayer funds given to organizations that

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provide both abortions and other services will free up monetary resources 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 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 half-billion taxpayer dollars² annually 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 end taxpayer funding for abortion once and for all by passing the No Taxpayer Funding for Abortion Act.³

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 the organization's complicity in violating the rights of Chinese women and men by aiding the Chinese government's draconian coercive population-control policies. In 2009, however, President Barack Obama restored U.S. funding to the UNFPA, sending hundreds of millions of taxpayer dollars over eight years despite continued evidence of the UNFPA's involvement with China's two-child policy.⁴

On March 30, 2017, the Trump Administration used its authority under the Kemp–Kasten Amendment⁵ to withhold funding for the UNFPA. Funds that were previously appropriated to the UNFPA (\$32.5 million in fiscal year 2019) were instead redirected to other global health programs.⁶ Congress should affirmatively eliminate appropriations for the UNFPA and reject attempts to restore or increase its funding.

Late-Term Abortion

Congress should pass the Pain-Capable Unborn Child Protection Act to protect women and unborn children from inhumane late-term abortions performed after 20 weeks.⁷ The U.S. is one of only seven countries in the world that allows elective abortion past 20 weeks (five months),⁸ at which point scientific evidence suggests that the baby is capable of feeling excruciating pain during an abortion procedure.⁹ A poll released in January 2019 found that 75 percent of Americans want abortion restricted to, at most, the first trimester.¹⁰ More than a dozen states across the country have enacted 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. It is a matter of public record, both in the United States and abroad, that some babies are born alive following attempted abortions, and because current law is insufficient to protect them, these infants are left vulnerable to neglect that can cause their deaths—deaths that would have been preventable with adequate emergency care.¹¹ 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.¹² However, the 2002 law did not contain enforcement provisions. The Born-Alive Abortion Survivors Protection Act augments current law by including criminal consequences for health care providers who violate the law, and it requires that proper medical care be given by the health care practitioner present if an infant is born alive.¹³ Treating a baby born after an attempted abortion with the same care as any other newborn should not be controversial in a civilized society.

Congress should also pass the Dismemberment Abortion Ban Act, which has been enacted in a dozen states in recent years.¹⁴ 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. 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 minor on whom the procedure has been performed could seek civil action.¹⁵

Conscience Rights

Congress should pass the Conscience Protection Act. Language protecting rights of conscience appear throughout federal law in order to ensure that Americans are not forced to violate their sincere moral or religious convictions. Among these is the Weldon Amendment, which is a rider included or referenced in annual appropriations bills that forbids states that receive federal funding from discriminating against health care entities “on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”¹⁶ Enforcement of this and other conscience protection policies is left to the discretion of officials in the Office for Civil Rights (OCR) within the Department of Health and Human Services (HHS), and individuals or entities making claim to a conscience violation do not have a private right of action to seek a remedy in court.¹⁷

Under the Obama Administration, the HHS had a poor track record of moving quickly—if at all—on complaints of conscience rights violations.¹⁸ The Trump Administration, in contrast, has committed to robustly enforcing more than two dozen provisions in federal law to protect conscience rights and established a Conscience and Religious Freedom Division within the OCR.¹⁹

While the Trump Administration has committed to vigorously protecting the freedom to act in accordance with one's conscience, there is no guarantee that future Administrations will share that commitment to protecting this fundamental civil right.

The Conscience Protection Act would provide additional protections regardless of the philosophical views of an Administration by codifying the Weldon Amendment, requiring via statute that the OCR investigate complaints of conscience rights violations, and 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 based on objections to abortion or abortion coverage.

A private right of action does not guarantee a certain outcome one way or another, but it would ensure that a person or entity alleging discrimination can, in addition to filing a complaint with the OCR, seek a legal remedy for violations of their conscience rights.

Congress should also pass the Child Welfare Provider Inclusion Act (CWPIA),²⁰ which would protect faith-based foster and adoption agencies from being discriminated against for their desire to place children with a married mother and father. With more than 400,000 children in the United States foster care system and 100,000 eligible for adoption, the federal government needs all qualified child welfare providers on hand to recruit and equip families to welcome these children into their homes.²¹

The pro-life movement in particular strives to support pregnant women in difficult circumstances, including those who have chosen to place their child with an adoptive family. For many mothers, having a provider that shares her faith and will help her find an adoptive family of the same faith can be an important factor.²² Restricting the choices of adoption providers for a mother seeking adoption fails that mother and her child. The CWPIA ensures that women have the best options for finding a home for their child consistent with their beliefs and values.

Protecting a diversity of private providers and their ability to operate according to their values—and with families who share those values—makes it more likely that the greatest possible number of children will be connected with permanent, loving families. The CWPIA would ensure that

a variety of qualified providers remain available to serve children, birth mothers, and adoptive families.

Health Care

During the 115th Congress, policymakers failed to repeal Obamacare. Accordingly, the law's numerous assaults on the right to life and religious liberty remain, including avenues for federal funding of abortion coverage. While it is ultimately Congress's responsibility to address Obamacare's many problems, the Trump Administration has taken a number of steps to mitigate some of these assaults:

- **HHS-issued final rules provide exemptions for those with religious²³ or other moral²⁴ objections to Obamacare's mandate that nearly all health insurance plans cover abortion-inducing drugs and contraception.** But the rules have not gone into effect due to nationwide injunctions stemming from legal challenges from the Left.²⁵
- **HHS-issued guidance²⁶ regarding enforcement and increased transparency of Obamacare abortion requirements.** Obamacare prohibits insurers from using premium tax credits or cost-sharing-reduction subsidies for most abortions. It also requires that insurers notify consumers if a qualified health plan covers abortion outside the Hyde Amendment exemption and separate additional premiums collected for such coverage. However, the Government Accountability Office has found that this "separate funding" accounting gimmick has been ignored. The Trump Administration guidance addresses this lack of enforcement. Insurance issuers must abide by the letter and spirit of the law and provide some semblance of transparency regarding abortion in qualified health plans.²⁷

With a pro-abortion majority in the House of Representatives, the conversation has shifted from Obamacare repeal to radical single-payer proposals, such as "Medicare for All." In addition to raising health care costs and decreasing access,²⁸ this type of government-run program proposed by Senator Bernie Sanders (I-VT) would make elective abortions, underwritten by U.S. taxpayers, an entitlement. The proposal also contains a nondiscrimination provision that, troublingly, could be interpreted to mean that health care practitioners could be forced to provide or participate in a procedure such as an abortion, despite personal moral or religious objections.

Policymakers must reject the push to expand government-run health care and instead pursue patient-centered reforms that allow Americans to obtain care that meets their needs and reflects their values.

Appropriations

Policymakers must ensure that existing commonsense pro-life and conscience rights riders are maintained in all appropriations bills during the 116th Congress, including:

- The Hyde Amendment and similar language, which generally prohibits federal funds from being expended on abortions;
- 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 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 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.”

At the onset of the 116th Congress, President Trump expressed, in writing, his commitment to “veto any legislation that weakens current pro-life Federal policies and laws, or that encourages the destruction of innocent human life at any stage.”²⁹

With this presidential commitment in mind, and a pro-abortion majority in the House, it is essential that the pro-life majority in the Senate hold the

line and reject House proposals that undermine existing pro-life policies that enjoy long-standing public support.

Divided Control in the House and Senate Offers Challenges and Opportunities

The vast majority of Americans support limiting abortion to, at most, the first trimester. They also do not want their tax dollars to fund abortions, and believe that medical providers should not be forced to participate in abortions.³⁰

Congress and the Trump Administration have accomplished a number of significant pro-life victories. Now, in an era of divided control between a pro-abortion majority in the House and a pro-life majority in the Senate, policymakers must endeavor to uphold existing pro-life policies and advance pro-life policies wherever possible, and reject pro-abortion legislation and amendments.

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