

The Pro-Life Agenda: A Progress Report for the 116th Congress and the Trump Administration

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KEY TAKEAWAYS

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

Congress should stop the flow of tax dollars to the abortion industry and put an end to inhumane late-term abortion practices.

The Trump Administration should ensure that federal policy across all agencies respects every American's fundamental right to life from conception to natural death.

Shortly after President Trump's inauguration, The Heritage Foundation issued a number of pro-life policy recommendations for both Congress and the Administration,¹ and, the following year, a progress report discussing where and how a number of those policies were realized.² Following the 2018 election, control of the House of Representatives flipped from a pro-life majority to a pro-life minority, and Heritage once again published recommendations for the new Congress.³ Despite the reality of a divided Congress, life remains at the forefront of many policy debates. While the political reality of a divided Congress poses challenges, President Trump's Administration continues to make great strides in ensuring that federal policy respects the fundamental right to life of every human being.

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Pro-Life Victories: Congress

Despite the challenge of a divided Congress, policymakers have enthusiastically endeavored to protect vulnerable, innocent life—including infants who survive an abortion attempt.

Initiated the Process to Force a Vote on the Born-Alive Abortion Survivors Protection Act in the House of Representatives. Current federal law does not require health care practitioners to treat an infant who survives an abortion with the same degree of care afforded to any other newborn. The Born-Alive Abortion Survivors Protection Act would remedy this problem by requiring that proper medical care be given to infants who survive an abortion and establishing criminal consequences for practitioners who fail to do so.⁴ This problem is not hypothetical: It is a matter of public record, both in the United States and abroad, that babies are born alive following attempted abortions.⁵

On April 2, 2019, House Minority Whip Steve Scalise (R-LA) filed a discharge petition to override House Democratic Leadership and force a vote on the bill.⁶ In order for a discharge petition to be successful, it must be signed by a majority of members—218. As of January 7, 2020, a total of 204 members have signed the discharge petition, meaning just 14 signatures are still needed.⁷

In addition to the discharge petition efforts, pro-life House members have been relentless in their attempts to bring the Born-Alive bill to the floor for a vote. According to the House Pro-Life Caucus, Members have gone to the floor of the House to formally request a vote on the bill, despite House Leadership's objections—80 times.⁸

More recently, the Senate Judiciary Committee held a hearing entitled "The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive."⁹

Pro-Life Victories: The Administration

The Trump Administration has continued to promote policies that respect human life through agency action and the regulatory process.

Finalized a Regulation Ensuring Transparency of Abortion Coverage in Health Insurance Plans. The rule will enforce the plain text of the Affordable Care Act (ACA, or Obamacare), requiring that insurers collect a separate payment for elective abortion coverage in qualified health plans (QHPs) approved to be sold on the Obamacare exchanges.¹⁰

The Obama Administration unfortunately undermined this attempt at transparency regarding elective abortion coverage in QHPs by allowing what should have been separate payments to be collected together with the rest of the premium in a single payment. This accounting gimmick meant that many Americans were paying a hidden surcharge for elective abortions—often unaware that their plan included such coverage in the first place.

In contrast, the Trump Administration rule will ensure that insurance issuers abide by both the letter and spirit of the law and follow Congress's intent of offering some semblance of transparency regarding abortion coverage in qualified health plans.

Finalized a Regulation to Strengthen Enforcement of Conscience-Rights Statutes. The rule would protect individuals and health care providers from discrimination or coercion in programs funded by the Department of Health and Human Services (HHS).¹¹ This is a much-needed action to protect individual liberties and robustly enforce federal conscience statutes.

For more than 40 years, federal law has protected conscience rights of Americans in the context of health care. While the Obama Administration provided inadequate enforcement and oversight of federal conscience statutes, this final rule ensures that HHS will safeguard the rights of individuals and entities that dissent on morally sensitive or controversial procedures.¹²

The freedom to act, work, and live in accordance with one's conscience is a fundamental American principle. No person or entity should face discrimination or coercion for declining to participate in procedures, such as abortion or physician-assisted suicide, which violate sincere moral, ethical, or religious beliefs. As of January 2020, the rule has been blocked by multiple federal appeals courts and further litigation is pending.

Reinstated and Strengthened Pro-Life Title X Regulation. Federal law prohibits the Title X family planning program from funding programs in which abortion is a method of family planning.¹³

Title X is a federal program that focuses on providing family planning and related preventive services to low-income individuals at a reduced cost or at no cost. The Trump Administration rightly recognized the urgent need to ensure programmatic integrity and finalized a rule that will ensure ethical stewardship of taxpayer dollars that complies with both the letter and spirit of current law.¹⁴

Importantly, the rule does not take away funding for federal family planning programs. Instead, it ensures that activities supported by taxpayer

funding are not entangled with the abortion industry. A similar rule finalized during the Reagan Administration was upheld by the Supreme Court.¹⁵

The Trump Administration's rule ensures that Title X activities are physically and financially separate from abortion activity. It also prohibits grantees from performing, promoting, referring for, or supporting abortion as a method of family planning. It additionally requires compliance with laws to protect women and children related to notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human trafficking.

In August 2019, Planned Parenthood announced that the organization was not willing to comply with the new programmatic integrity measures governing Title X and would stop participating in the program altogether unless an appeals court stepped in.¹⁶ The court did no such thing. Facing judicial defeat, Planned Parenthood will forgo approximately \$60 million in annual Title X funds.¹⁷ Funds previously granted to Planned Parenthood affiliates may instead be directed to other eligible grantees.

Imposed New Restrictions on Research Using Fetal Tissue Obtained from Elective Abortions. In the fall of 2018, HHS terminated a contract between the Food and Drug Administration (FDA) and Advanced Bioscience Resources, Inc., a tissue procurement company, because HHS “was not sufficiently assured that the contract included the appropriate protections applicable to fetal tissue research or met all other procurement requirements.”¹⁸ HHS then announced plans to conduct an audit of all fetal tissue acquisitions, a comprehensive review of fetal tissue research (including the laws, regulations, and oversight procedures governing such research), and committed to pursue alternative methods of research.¹⁹

The following summer, HHS announced that it would not renew a contract with the University of California, San Francisco, for fetal tissue research; cease intramural research conducted within the National Institutes of Health (NIH) that used fetal tissue obtained from elective abortions; and subject extramural research (conducted outside the NIH, but with NIH grant money) to additional levels of review.²⁰ Additionally, the NIH announced a \$20 million funding opportunity for alternative methods to current fetal tissue research practices.²¹

These measures rightly further separate federal research funding from the abortion industry. Good science and life-affirming, ethical research are not mutually exclusive. Indeed, it is ethically derived sources—such as discarded surgical tissue and adult stem cells—that have contributed to successful treatments for a variety of ailments—not tissue obtained from elective abortions.²² The United States is a worldwide leader in scientific

discovery. Thanks to the Trump Administration, federally funded projects will continue conducting vitally important, life-saving research while also respecting innocent human life.

Recommendations for Congress

As the second session of the 116th Congress commences, policymakers should continue pursuing a pro-life agenda.

Reject “Medicare for All” Proposals. Various single-payer health care policies discussed during the 116th Congress all lead to the same thing: government control over health care and fewer choices for the American people.

Furthermore, such proposals pose a dire threat to the pro-life cause. As The Heritage Foundation’s Bob Moffitt explains, “Medicare for All” would require compulsory taxpayer funding of abortion, effectively nullifying the Hyde Amendment and similar legislative restrictions that guide the use of federal funding of abortion. Furthermore, the bill’s antidiscrimination language would override current federal conscience protection laws, including laws that protect medical professionals from being forced to participate in abortion despite sincere religious or moral objection.²³

Reject Attempts to Weaken or Strike Existing Pro-Life Protections in Current Law and Administration Policies. Policymakers must remain vigilant in considering all legislation before Congress and meticulously pore over bill text in search of attempts—conspicuous or covert—to weaken hard-fought policies (legislative and administrative) that protect innocent life.

Furthermore, policymakers should ensure that existing commonsense pro-life and conscience-rights riders are maintained in all appropriations bills, 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.”

Continue Pursuing Pro-Life Legislation. Many bills filed during the 116th Congress have not reached the President’s desk for signature. The political reality of a divided Congress lessens the likelihood of these bills becoming law, but that should not stop Congress from attempting a vote so that all members can go on the record and show the American people where they stand.

These bills include:

- 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;²⁴
- The **Pain-Capable Unborn Child Protection Act**, which would protect women and their unborn children from inhumane late-term abortions performed after 20 weeks,²⁵ at which point scientific evidence suggests that the baby is capable of feeling excruciating pain during an abortion procedure;²⁶ 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.²⁷

Recommendations for the Administration

In the fourth year of President Trump’s term, both the President and his Administration should continue to build on the victories of the past three years.

Protect Women’s Health and Safety by Strengthening Regulation of Chemical Abortion Drugs. In 2016, during President Obama’s final year in office, the Food and Drug Administration (FDA) changed the approved regimen for the chemical abortion drug mifepristone (also known under the brand Mifeprex). The drug originally came on the market in the United States after much controversy in 2000, and in 2016 the Obama Administration FDA loosened the standards for the use of the drug by changing its Risk Evaluation and Mitigation Strategy (REMS).²⁸ Recently, a generic version of the drug received approval.

Mifepristone’s health risks are well-documented; since 2000, 24 women have died and thousands more have suffered adverse consequences.²⁹ Meanwhile, pro-abortion advocates support removing the REMS entirely.³⁰

The Trump Administration should return to the 2000 REMS, which would:

- Decrease the gestational limit in which the drug would be taken to earlier in pregnancy;
- Mandate that the drug be taken under the supervision of a physician;
- Require a total of three office visits; and
- Mandate full, complete collection of all adverse health events related to the drug’s use (not just deaths).³¹

Reject Legislation that Undermines the President’s Commitment to Defend Innocent Life. 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.”³² President Trump should maintain that position in the second session of the 116th Congress.

2020 Presents Opportunities, Challenges

Congress and the Trump Administration have accomplished a number of significant pro-life victories in the first three years of President Trump’s term, but there is still much work to be done. An era of divided government poses a number of understandable challenges, but policymakers should continue to prioritize the cause of life.

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.³³ This consensus should encourage policymakers to uphold existing pro-life policies and, whenever possible, advance pro-life policies and reject pro-abortion legislation and amendments.

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