

# Abortion Funding: Save the Hyde Amendment

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## KEY TAKEAWAYS

Since 1976, the Hyde Amendment has saved millions of lives and protected taxpayer dollars from being weaponized to fund most abortions in the United States.

Despite widespread support for the amendment, a small minority of abortion advocates want to eliminate safeguards that prevent taxpayers from funding abortions.

Congress should reject the left's efforts to repeal the Hyde Amendment and other pro-life protections that ensure federal funds do not pay for abortions.

Our worth in life is not determined by the economic circumstances at the time of our birth. Despite being born into poverty to a teenaged mother, and despite spending the first five years of my life in the Louisiana foster care system, my life story is still one of hope. My siblings and I were all adopted, and three of us were placed with the same amazing family. I grew up knowing without a doubt that I was loved, and that I could achieve whatever goal I put my mind to.

—Deanna Wallace, pro-life attorney<sup>1</sup>

My mother faced intense pressure to abort.... The kind words of a Black elderly janitor encouraged her to walk out of her abortion appointment. “Do you want to have this baby?” she asked. My mother said yes. That question should have been asked by the

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This paper, in its entirety, can be found at <http://report.heritage.org/ib5206>

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counselor she met moments before. Sadly the counselor only assured her she was making the right decision by choosing abortion. Before she left the doctor's office, he tried to coax her to stay, reminding her she'd already paid for her abortion. My mother saw right through his insincere plea, recognizing his concern was about payment, not her welfare. He yelled, "Don't leave this room!" but she left regardless of his forceful plea.

—Christina Bennet, pro-life advocate<sup>2</sup>

Both of these women credit the Hyde Amendment—a legislative “rider” to annual appropriations bills that restricts taxpayer funds from paying for elective abortions in most circumstances—with saving their lives; for their vulnerable mothers, the possibility of a government-subsidized abortion may have led them to a different decision. For nearly half a century, this important guardrail has ensured that women such as Deanna and Christina are given a chance at life. But in recent years, the Hyde Amendment and similar provisions have come under attack.

## Context and Legislative History

The U.S. Supreme Court in 1973 legalized abortion on demand across the country in *Roe v. Wade* and *Doe v. Bolton*, yet in later years it upheld laws in Pennsylvania and Connecticut that excluded certain abortion coverage in their Medicaid programs.<sup>3</sup> The Court also upheld a policy in the city of St. Louis, Missouri, that prohibited elective abortions in two taxpayer-funded hospitals.<sup>4</sup> Together, these decisions made clear that states are under no constitutional obligation to fund elective abortions or facilitate abortions at publicly run hospitals.

On September 30, 1976, Representative Henry Hyde (R-IL) successfully proposed an amendment to the Departments of Labor and Health, Education, and Welfare Appropriations Act of 1977 that prohibited funds appropriated through the bill from being “used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.”<sup>5</sup>

During a speech on the House floor about his amendment, Representative Hyde spoke forcefully in defense of innocent unborn human life—“not a potential human being, but a human being with potential”:

The unborn child facing an abortion can best be classified as a member of the innocently inconvenient and since the pernicious doctrine that some lives are

more important than others seems to be persuasive with the pro-abortion forces, we who seek to protect that most defenseless and innocent of human lives, the unborn—seek to inhibit the use of Federal funds to pay for and thus encourage abortion as an answer to the human and compelling problem of an unwanted child.... We are told that bringing an unwanted child into the world is an obscene act. Unwanted by whom? Is it too subtle a notion to understand it is more important to be a loving person than to be one who is loved. We need more people who are capable of projecting love.... An innocent, defenseless human life, in a caring and humane society deserves better than to be flushed down a toilet or burned in an incinerator. The promise of America is that life is not just for the privileged, the planned, or the perfect.<sup>6</sup>

The Hyde Amendment has, in some form, been incorporated in every annual appropriations bill in subsequent years.

## Language and Scope

While the original Hyde Amendment included only a life-of-the-mother exception, the language has varied over the years and expanded to include other exceptions for circumstances such as rape and incest.

The initial application of the Hyde Amendment affected the Medicaid program. Over the years, Hyde-like language—that incorporates the spirit and goals of the Hyde Amendment—has been incorporated in other contexts.

Currently, the Hyde Amendment applies to the Medicaid program as well as the Indian Health Service, the Children’s Health Insurance Program (CHIP), and Medicare through annual Labor, Health and Human Services, Education, and Related Agencies (LHHS) funding.

The Dornan Amendment and the Smith Amendment apply Hyde-like restrictions in the Financial Services and General Government (FSGG) appropriations bill to District of Columbia spending and the Federal Employee Health Benefits (FEHB) program, respectively.

The Helms Amendment applies Hyde-like protections (though without rape or incest exceptions) within the State, Foreign Operations, and Related Funding (SFOPS) appropriations bill. Also incorporated in the SFOPS bill is a Hyde-like restriction that applies to the Peace Corps.

Commerce, Justice, Science, and Related Agencies appropriations contains a Hyde-like provision for the Department of Justice with respect to the Bureau of Prisons appropriations bills.

Hyde-like restrictions have also been enacted into permanent law in various statutes that apply to TRICARE (the military health care program),

Veterans Affairs, CHIP, Medicare, and more.<sup>7</sup> With respect to foreign assistance, the Helms Amendment was codified into permanent law in 1973 when Congress amended the Foreign Assistance Act of 1961.<sup>8</sup>

## Constitutionality

In the 1980 *Harris v. McRae* decision,<sup>9</sup> the Supreme Court upheld the Hyde Amendment, finding that it does not violate the Establishment Clause of the First Amendment, nor does it violate the Due Process Clause of the Fifth Amendment. While a woman can choose to have an abortion, that choice does not include “a constitutional entitlement to the financial resources to avail herself of the full range of protected choices.” The Court further held that states are not required “to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment.” The Court also rejected the allegation that the Hyde Amendment violated the Establishment Clause, a claim based on the fact that its provisions happen to coincide with tenets of the Catholic Church. “That the Judeo-Christian religions oppose stealing,” the Court noted, “does not mean that a State or the Federal Government may not, consistent with the Establishment Clause, enact laws prohibiting larceny.”

## Impact

Restrictions on public funding for abortions, including the Hyde Amendment, lead to a decrease in the abortion rate. A Charlotte Lozier Institute study notes that of nearly two dozen studies that have reviewed the impact of funding restrictions on abortion incidence, most find “statistically significant evidence that abortion rates fell after Medicaid funding was reduced.”<sup>10</sup> While other factors are certainly at play—including states passing other pro-life laws and more unintended pregnancies being carried to term for other reasons—the Hyde Amendment and similar funding restrictions play an important role in the encouraging long-term trend of declining abortion rates across America.<sup>11</sup>

This decline translates to more than 2.4 million lives since 1973, roughly 60,000 per year.<sup>12</sup> These millions of people are not abstractions—they are real people with families, children of their own, responsibilities, and hopes and dreams. These 2.4 million people are roughly equal to the population of the city of Houston, Texas,<sup>13</sup> or the combined populations of Wyoming and Idaho.<sup>14</sup> They could fill AT&T Stadium, with a seating capacity of 80,000,<sup>15</sup> 30 times. Beyond the data, their lives are more than a statistic. Every single one of these millions of people has immeasurable worth and dignity.

## Under Threat

Congress has passed various bills and appropriations measures that incorporate the Hyde Amendment and Hyde-like protections for over four decades, but that bipartisan cooperation appears to be coming to an end.

President Biden released a budget proposal in spring 2021 that eliminates the Hyde Amendment and other long-standing pro-life riders. Biden—who as a Senator wrote to a concerned constituent that “the government should not tell those with strong convictions against abortion, such as you and I, that we must pay for them”<sup>16</sup>—reversed his decades-old stance in support of the Hyde Amendment during the 2020 presidential campaign.

While it is the President’s job to propose a budget outlining spending priorities, it is ultimately the role of Congress to appropriate government funding. The House of Representatives’ version of the fiscal year 2022 Labor, Health and Human Services, Education, and Related Agencies funding bill—as well as other funding bills—for the first time in decades fails to incorporate the Hyde Amendment and other pro-life riders.

Failure to incorporate the Hyde Amendment and similar policies is deeply divisive. There is a well-established, long-standing consensus across the political spectrum: 58 percent of Americans do not support taxpayer funding for abortions domestically, including 31 percent of Democrats and 65 percent of independents. An even stronger majority of 77 percent of Americans oppose taxpayer funding for abortions abroad.<sup>17</sup>

## Recommendations

Policymakers should stand firm during the 117th Congress and reject attempts to force American taxpayers to pay for elective abortions. Already, 200 Representatives<sup>18</sup> and 48 Senators<sup>19</sup> have publicly declared that they will not support a government funding bill that weakens pro-life measures such as the Hyde Amendment.

Rather than repeal the Hyde Amendment, Congress should make this life-saving policy permanent law through legislation such as the No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act.<sup>20</sup> The bill would codify a prohibition on federal funding for abortion or health insurance coverage of abortions, and contains rape, incest, and life-of-the-mother exceptions.

The Senate should reject proposals to abolish the legislative filibuster, in which 60 votes are required to end debate on a bill. The filibuster has long been an important tool to ensure that the Senate lives up to the moniker,

“The World’s Most Deliberative Body,” in which compromise and consensus can be achieved. The absence of the Senate’s heightened vote requirement would significantly increase the chances of radical and pro-abortion policies—including permanently repealing the Hyde Amendment—being enacted.<sup>21</sup> Retaining the filibuster, in contrast, ensures that policymakers must strive to craft legislation that appeals to a broad spectrum of constituents, not cater to the impassioned impulses of the whoever happens to enjoy control for a time.

## Conclusion

For nearly half a century, the Hyde Amendment and similar policies have provided an important guardrail to ensure that taxpayer dollars do not pay for most abortions. It is good policy as a matter of principle and enjoys widespread support from Americans across the political spectrum. Congress should reject attempts to change course, and the pro-life movement should continue its work providing women, children, and families with the tools and resources they need to flourish and thrive.

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## Endnotes

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