

Pro-Life Progress Report for the 117th Congress and Administration

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KEY TAKEAWAYS

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

Congress must conduct robust oversight activity to ensure transparency and hold the Biden Administration accountable.

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

At the start of each new Congress, Heritage Foundation analysts recommend pro-life policies to Congress and the Administration.¹ The following year, a progress report analyzes whether and how those policies have been enacted.² During the Trump Administration, policymakers followed many of these suggestions and achieved significant pro-life policy victories.

In 2021, the tide turned against life. The Biden Administration enjoys a narrow pro-abortion majority in the House with a divided Senate (in which Vice President Kamala Harris can break a tie). This has allowed policymakers to roll back key pro-life victories and advance policies that violate the right to life of every human being. The pro-life policy landscape will be more dynamic than ever for the remainder of the 117th Congress. By this summer, the Supreme Court

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will issue a highly anticipated decision in *Dobbs v. Jackson Women's Health Organization*³ and may finally overturn *Roe v. Wade*.

This *Backgrounder* provides an important snapshot on the status of pro-life policy and legislative and administrative dynamics under the current legal regime. By taking stock of where we are and where we have come from with respect to pro-life policy, this *Backgrounder* sets the stage for The Heritage Foundation's forthcoming road map for legislating in a post-*Roe* world.

In Congress

As expected, in 2021 the pro-life cause came under siege. An energized and well-funded abortion lobby and its allies in Congress sought to reverse long-standing consensus pro-life policies and promote radical alternatives.

The Equality Act. The Equality Act redefines sex discrimination in federal civil rights law to include discrimination based on "sexual orientation" and "gender identity." Such a policy would gut a host of vital pro-life policies and protections.⁴ It would open the door to taxpayer-funded abortions at the state and federal level, purge statutory pro-life conscience protections in health care, and nullify hard-fought court battles that protected religious freedom for people like the Little Sisters of the Poor.⁵ The Equality Act's harms also go far beyond the issue of life, and are discussed in other Heritage Foundation publications.⁶

The Equality Act passed in the House on February 25, 2021.⁷ The next month, the Senate Judiciary Committee held a hearing on the bill, but it has not yet been brought to the Senate floor for a vote. Proponents acknowledge that the bill does not have the 60 votes it needs to advance in the upper chamber.⁸ Policymakers should continue to reject this harmful policy.

The Women's Health Protection Act (WHPA). The so-called Women's Health Protection Act is the most pro-abortion bill ever considered in Congress. It passed in the House of Representatives on September 24, 2021, but on February 28, 2022, it fell short of the 60 votes required to advance in the Senate.⁹

The WHPA's defenders claim that the bill simply codifies *Roe v. Wade*, the 1973 Supreme Court decision that legalized abortion-on-demand across the country. While this would be bad policy on its own, this act goes far beyond *Roe*. It would mandate an abortion regime far more radical than that put in place by *Roe* and *Planned Parenthood v. Casey*.¹⁰ The act endangers both current and future state and federal laws that protect unborn children's lives, women's health and safety, medical providers' consciences and religious liberty, laws that separate tax dollars from the abortion industry, and more.¹¹

Americans across the country believe that women and children deserve better than abortion and broadly support policies that the WHPA would prohibit. Americans want to help women who face a difficult or unplanned pregnancy. Rather than take away Americans' role in pro-life policymaking, Congress should seek to protect unborn human children and their mothers.

The Equal Rights Amendment (ERA). The ERA was proposed by Congress in 1972 but not ratified before the legal deadline, therefore it is no longer viable. But that has not stopped Congress from trying to resurrect it in some form. In recent years, this has included treating the 1972 amendment as still pending before the states, reintroducing the original ERA, and proposing a new ERA. As a Heritage Foundation *Legal Memorandum* explains, each of these strategies will fail.¹²

Policymakers should understand that an ERA—if ever ratified—could provide a separate basis for a right to unrestricted abortion and mandatory taxpayer funding of abortion. In fact, courts have interpreted state-level ERAs and similar state equal rights measures to require taxpayer-funded abortions in states including New Mexico and Connecticut.¹³ The original objectives of the ERA—that is, equality under the law between men and women—have been effectively furthered through legislatures and courts. Policymakers should abandon attempts to bring back the 1972 ERA from the historical graveyard or to promote a reincarnated version.

Pro-Life and Conscience Rights Policy Riders. Congressional leadership and President Biden have called for Congress to strip policy riders like the Hyde Amendment from appropriations legislation. The Hyde Amendment has, since its inception in 1976, prohibited federal funds from being spent on abortions. It has saved 2.4 million lives and counting.¹⁴ The current Hyde Amendment applies to programs funded through the annual Labor, Health and Human Services, Education, and Related Agencies funding bill, such as Medicaid and Medicare.¹⁵

Over the years, the spirit and goals of the Hyde Amendment have been incorporated in other contexts as well, such as

- The Dornan Amendment, which addresses abortion funding in the District of Columbia via the Financial Services and General Government appropriations bill;
- The Smith Amendment, which addresses abortion funding in the Federal Employee Health Benefits Program;

- Hyde-like language in the Commerce, Justice, Science and Related Agencies appropriations, which applies to the Department of Justice regarding the Bureau of Prisons; and
- The Weldon Amendment, which protects health care providers from discrimination if they decline to provide, pay for, or refer women for abortion.

But the Hyde Amendment and these other pro-life policy protections have been under constant threat during appropriations debates. Proposals in both the House and Senate have lacked these key protections. Other at-risk protections include policies such as

- The Dickey–Wicker Amendment, which prohibits the U.S. Department of Health and Human Services (HHS) from funding embryo-destructive research;
- The Aderholt Amendment, which prohibits the Food and Drug Administration from approving three-parent embryo research;
- The Helms Amendment, which prohibits foreign aid funding for abortions;
- The Livingston Amendment, which prohibits the federal government from discriminating against foreign aid organizations that decline some methods of contraception for moral or religious reasons during the grantmaking process;
- The Siljander Amendment, which prohibits foreign aid funding for abortion lobbying 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.”

Notably, Congress has recently passed short-term continuing resolutions rather than new fiscal year (FY) appropriations bills. Under these continuing resolutions, pro-life riders still applied. At the beginning of the 117th Congress, 200 Representatives¹⁶ and 48 Senators¹⁷ opposed a funding bill

that weakens pro-life measures such as the Hyde Amendment. Members reaffirmed that commitment for 2022.¹⁸ In March, Congress advanced a \$1.5 trillion omnibus spending bill¹⁹ for FY 2022 that retained existing pro-life riders. Congress must resist all attempts to weaken pro-life and conscience riders in future appropriations bills.

New Funding Streams Without Pro-Life Protections. Several times Congress has failed to incorporate policy riders like the Hyde Amendment to prevent new funding streams outside the traditional appropriations process from funding abortions. For example, the \$1.9 trillion American Rescue Plan lacked Hyde language. This means billions in new spending were allocated without Hyde protections to ensure these dollars cannot be spent to fund or promote abortion.²⁰

The behemoth \$3.5 trillion Build Back Better proposal raises similar concerns.²¹ When Congress first began the budget reconciliation process, the Senate voted on a bipartisan basis for an amendment calling for the budget to comply with pro-life policies like the Hyde Amendment. Though nonbinding, the amendment showed that policymakers would continue the long-standing consensus that tax dollars should not fund elective abortions. However, the House passed a version of the bill which lacked Hyde protections. The Build Back Better proposal has now stalled in the Senate.

In the Biden Administration

President Biden, at the behest of the abortion industry, has pursued a pro-abortion agenda both at home and abroad. His Administration:

- Rescinded²² the Protecting Life in Global Health Assistance Policy (an expanded version of the Mexico City Policy), which required foreign nongovernmental organizations to certify that they would not perform or promote abortion abroad as a condition for receiving U.S. funding.²³
- Restored²⁴ funding for the United Nations Population Fund despite its complicity in China's coercive population-control policies, which include forced abortion and sterilization.²⁵
- Withdrew²⁶ the U.S. from the Geneva Consensus Declaration, which was signed by a coalition of more than 30 countries and sought to preserve human life (including those not yet born), among other goals.²⁷

- Reversed²⁸ the Trump Administration’s policies on unethical and obsolete research using fetal tissue from abortions,²⁹ including a ban on funding for National Institutes of Health intramural research and a requirement that extramural research be subject to an ethics advisory board.
- Proposed a FY 2022 budget that did not incorporate Hyde Amendment protections.³⁰
- Refused to hold the University of Vermont Medical Center accountable for forcing health care personnel to assist in abortion procedures in violation of federal law, which protects people who decline to participate in such procedures based on moral or religious conviction. The hospital was previously issued a notice of violation³¹ by the Trump Administration in 2019, which the Biden Administration reversed.³²
- Restored³³ \$200 million in Medicaid funds to California that were disallowed³⁴ under the Trump Administration after California violated federal law for requiring organizations and individuals to purchase abortion coverage insurance—including in plans used by an order of nuns.
- Reversed³⁵ a Trump Administration regulation that required insurers to collect a separate payment for elective abortion coverage in qualified health plans under the Obamacare health insurance exchanges.³⁶
- Reversed³⁷ a Trump Administration regulation that required grantees funded through Title X, the federal family planning program, to maintain strict physical and financial separation between Title X activities and abortion.³⁸
- Released a National Strategy on Gender Equity and Equality, which claims to provide a road map to “close pernicious gender gaps.”³⁹ The strategy wrongly frames abortion as a prerequisite for gender equality. It proposes codifying “rights recognized under *Roe v. Wade*” (that is, abortion on-demand through all nine months of pregnancy). It also proposes repealing the Hyde Amendment in order to force taxpayers to pay for abortions. Finally, it advances what many around the world see as ideological or cultural colonialism by pushing abortion abroad.⁴⁰

- Updated the HHS FY 2022–2026 Strategic Plan⁴¹ to remove pro-life language. The plan, updated every four years, referenced unborn children and human life “from conception to natural death” during the Trump Administration.⁴²
- Gutted⁴³ safety protocols on chemical abortion pills that have stood for more than 20 years, thereby opening the door to widespread and dangerous telemedicine abortion and mail-order abortion pill distribution.⁴⁴
- Proposed a FY 2023 budget that, for the second year in a row, did not incorporate Hyde Amendment protections.⁴⁵

The Biden Administration will continue its assault on life and conscience rights, particularly via HHS, which has repeatedly undermined—and been outright hostile toward—conscience rights.⁴⁶ HHS intends to rescind⁴⁷ a Trump Administration regulation that strengthened⁴⁸ enforcement of long-standing conscience rights statutes—including those that protect individuals and health care entities from discrimination based on their moral or religious convictions regarding abortion.

HHS has also indicated that it intends to propose rulemaking regarding Section 1557 of the Affordable Care Act,⁴⁹ modifying existing sex discrimination provisions to encompass sexual orientation and gender identity. Among the harms of such a change, which are extensive,⁵⁰ the proposal would extend the definition of sex discrimination to encompass “reproductive health decisions” and “termination of pregnancy.” People or entities with objections to dangerous and experimental interventions such as gender transition treatments or abortion procedures could find themselves nonetheless required to perform them, including on minors.⁵¹

Remainder of the 117th Congress

At the federal level, pro-life policymakers must remain vigilant. Even if the Supreme Court corrects a grave error and overturns *Roe*,⁵² President Biden and his allies in the House and Senate will push pro-abortion policies through legislation. Abortion advocates are also calling on the Administration to advance abortion through other means. For instance, they are urging the Food and Drug Administration to argue that its regulations permitting telemedicine abortion preempt state laws to the contrary and calling for

the federal government to lease land to abortion clinics. This could mean that an abortion clinic could operate on certain federal land even within a pro-life state.⁵³

Pro-life policymakers are not powerless. They should be laser-focused on defending current pro-life language that protects life, conscience rights, and religious freedom in federal spending bills. They should also resist every effort to advance radical pro-abortion laws and continue to hold the Biden Administration accountable by conducting robust oversight of federal agencies and administrative decision-making.

Dynamic Policy Landscape Presents Opportunities, Challenges

The Supreme Court has the chance to correct the grave error of *Roe v. Wade*, which has poisoned our laws, our courts, and our culture. If they do, policymakers will have more opportunities to protect the youngest and most vulnerable members of our human family. But with a pro-abortion President and narrow pro-abortion majorities in the 117th Congress, pro-life policymakers will still face challenges. Regardless of what happens at the Supreme Court, protecting existing pro-life policies and blocking new pro-abortion legislation must be key priorities as the policy landscape evolves in 2022.

Of course, federal policymakers should not just play defense. As will be discussed in the Heritage Foundation's forthcoming road map for a post-*Roe* America, Congress must be forward-looking and prepare for post-*Roe* policymaking by introducing legislation that would protect unborn children from abortionists who profit from their deaths.

This means using all available constitutional authority to protect the youngest among us in states that refuse to protect them from abortion after their heartbeats can be detected. This means continuing the work to protect babies who survive abortions, to stop the interstate flow of abortion drugs, and to stop taxpayer dollars from funding the abortion industry. This means ensuring that nobody is forced to violate his or her moral or religious convictions by participating in abortion. Finally, policymakers must commit to the central goal of the pro-life cause: to see the day when every person, from the moment of conception, is protected in law and welcomed in life.

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