A Pro-Life Agenda for the 118th Congress

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At the start of each new Congress, The Heritage Foundation recommends pro-life policies for Members. The following year, a progress report takes stock of policy wins, ongoing challenges, and new prospects.

This is the first such report in a post-Roe America. Free from the dark shadow of Roe v. Wade, Congress cannot shrink from its role in crafting policy that carries out the government’s duty to protect the first freedom: the right to life.

The pro-life movement’s goal is to protect in law and welcome in life—every person—from the moment of conception. This requires a generational effort.

Despite the Left’s best efforts, in 2023 there is a pro-life majority in the House of Representatives. But it must still contend with a pro-abortion majority in the Senate and a virulently pro-abortion President.
This report provides a road map for Congress to advance pro-life policies in this challenging political setting. Congress should make the case for life to the American people, hold the Biden Administration accountable, and build on the pro-life movement’s momentum, moving America closer to the day when abortion is unthinkable.

**Legislation**

**Gestational Protections.** Congress should protect unborn children with beating hearts through the Heartbeat Protection Act. While several states have already done so with similar laws, many others have not. Some states have no gestational limits at all. This status quo—where Texas protects unborn children, but California treats them as medical waste—is unacceptable. Congress should use its constitutional authority to protect the youngest and most vulnerable in every state.

**Abortion Survivors.** Congress should protect unborn children who survive abortion attempts. Federal law recognizes that infants born at any stage of development, regardless of the context of the birth, are “persons.” But this law does not specify duty of care for these babies. The Born-Alive Abortion Survivors Protection Act would require that an infant born alive following an abortion attempt receive proper medical care. It would punish health care providers who do not provide such care and also criminalize infanticide.

It is known from government sources in the United States and across the world that babies can and do survive abortion attempts. Allowing these babies to suffer death by neglect is inhumane. Fixing this problem should not be controversial.

The House passed the Born-Alive Abortion Survivors Protection Act on January 11, 2023. The Senate should put aside partisanship and follow suit.

**Lethal Discrimination.** Congress should also protect babies from lethal discrimination in the womb. One way is through the Protecting Individuals with Down Syndrome Act, which would protect a child from abortion because a test result or diagnosis indicates the child has Down syndrome. The bill also prohibits forcing or coercing a woman to abort a child who has or may have Down syndrome.

A 2022 Joint Economic Committee report finds that between 60 percent and 90 percent of these precious boys and girls diagnosed with Down syndrome are aborted. It estimates that without these selective abortions, “the Down syndrome population would be 217,000 people
greater in 50 years, an increase which is greater than the current Down syndrome population.”

A dozen states protect unborn children from such lethal discrimination in the womb. The federal government should follow their lead.

**Chemical Abortion Drugs.** Congress should limit the interstate flow of dangerous chemical abortion drugs. Congress should also stop the Food and Drug Administration (FDA) from prioritizing the abortion industry over Americans’ health and safety.

The abortion pill regimen typically involves a two-part process. Mifepristone cuts off supply of a critical hormone called progesterone, which kills a developing unborn child. Then another drug, misoprostol, causes contractions akin to labor to expel the baby from the uterus. Mifepristone is subject to a safety protocol called a Risk Evaluation and Mitigation Strategy (REMS). This protocol, which applies to 60 drugs now on the market, ensures that the “benefits of the medication outweigh its risks” and are administered safely.

In the spring of 2021, under the cover of containing COVID-19, the FDA stopped requiring that chemical abortion drugs be dispensed in person in limited health care settings, contrary to its REMS safety protocol. Then in December 2021, the FDA announced it would make that policy permanent and create a process for retail pharmacies to dispense these pills without a doctor’s visit. In January 2023 the FDA officially formalized the process and updated the REMS.

The FDA has put a stamp of approval on women and girls having risky do-it-yourself chemical abortions in bathrooms, hotels, or college dorm rooms without doctors or nurses present.

In the post-*Dobbs* landscape, many states have passed new pro-life laws. But abortion pill-pushers, especially in pro-abortion states, undermine these efforts by promoting and trafficking chemical abortion drugs across state lines to pro-life states. As a result, abortion pills are the next pro-life battlefield.

Congress should step in. The SAVE Moms and Babies Act is a start. The bill bars the FDA from approving any new abortion drugs. For abortion drugs currently approved, the bill reinstates the in-person dispensing requirement, once again disallowing mail-order and tele-abortions. The bill also improves post-marketing safety surveillance to better track health complications and adverse events. In practice, the bill would put a stop to the Biden Administration’s reckless disregard for women’s health and safety.
Again, this is just a start. Congress should use every tool at its disposal to limit the damage these dangerous pills pose to women, girls, and unborn children.

**Taxpayer Funding.** Congress should once and for all stop tax dollars from paying for elective abortions and supporting the abortion industry. The Hyde Amendment and similar “Hyde family” amendments keep tax dollars from paying for elective abortions across various funding streams. These policies have saved millions of lives over the past four decades.

Regrettably, they largely take the form of annual riders that must be renewed every year. The No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act would permanently end federal funding for elective abortion or health insurance coverage of abortions.

Congress should also end federal funding for the abortion industry and direct funding to centers that provide real health care for women. Most federal funding for abortion providers such as Planned Parenthood comes from Medicaid reimbursements and grants through programs such as the Title X Family Planning Program. Under Hyde family protections, these funds cannot directly pay for elective abortions, but they can pay for shared overhead. However, money is fungible. Every federal dollar that goes to abortion providers frees up other money and resources for abortions.

The Protecting Life and Taxpayers Act would require that groups seeking federal funding certify that they will not perform abortions or fund other entities that do. This would in effect defund abortion providers such as Planned Parenthood, the International Planned Parenthood Foundation, and Marie Stopes International. In the past these groups have refused to comply with similar terms in the Title X Family Planning Program and foreign aid funding, respectively. Federal resources can instead go to pregnancy resource centers and entities that provide high-quality, comprehensive care that is not entangled with the abortion industry.

**Conscience Rights.** Many Americans cannot in good conscience provide, pay for, or refer for abortions. Congress protects American citizens and entities from being forced to do so through policies such as the Church Amendments, the Coats–Snowe Amendment, and the Weldon Amendment. (The latter is an annual rider in appropriations bills, not a permanent statute.) If someone believes his rights have been violated, he can file a complaint with the Office for Civil Rights at the Department of Health and Human Services (HHS). But the current Administration has failed to adequately enforce conscience laws—if at all.

The Conscience Protection Act would codify the Weldon Amendment and provide victims with a private right of action for conscience violations.
Such a right does not guarantee a certain outcome, but it would allow Americans to have their day in court rather than rely on potentially hostile government bureaucrats for relief.

**Power of the Purse**

**Existing Protections.** The pro-abortion left routinely calls on Congress to strike the Hyde Amendment and similar pro-life protections from appropriations bills. Congress must rebuff their efforts.

The Hyde Amendment prohibits federal funds from being spent on elective abortions. But Hyde is not the only rider under threat. Some other “Hyde family” amendments include:

- The Weldon Amendment, which protects health care providers from discrimination if they will not provide, pay for, or refer for abortion;

- The Smith Amendment, which prohibits funding elective abortions in the Federal Employee Health Benefits program;

- The Dornan Amendment, which prohibits funding elective abortions within Washington, D.C.;

- The Helms Amendment, which prohibits foreign aid funds from being spent on abortions;

- The Siljander Amendment, which prohibits foreign aid funds from being spent to lobby for abortion in other countries; and

- The Kemp–Kasten Amendment, which allows 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.”

Americans across the ideological spectrum support these long-standing policies. All existing policies that separate tax dollars from abortion and protect Americans’ conscience rights are non-negotiables in the 118th Congress.

**Going on Offense.** Congress must protect unborn life and conscience in new funding streams wherever such language is needed. It must stop attempts to undermine existing pro-life and conscience-protection laws
or create backdoor funding for the abortion industry. And Congress must stop the Biden Administration’s aggressive post-Dobbs agenda.

After Dobbs, the Biden Administration has—in some cases lawlessly—undermined state and federal pro-life laws. From HHS to the Department of Defense to the Veterans Administration, this Administration has used executive orders, agency guidance, and the regulatory process to promote abortion and abortion travel using taxpayer dollars.

The Free Access to Clinic Entrances (FACE) Act forbids physically obstructing, injuring, intimidating, or interfering with anyone “obtaining or providing reproductive health services.” However, the Department of Justice (DOJ) has weaponized this law against peaceful pro-life Americans. Meanwhile, the DOJ has been impotent in enforcing the FACE Act protection for “exercising...the First Amendment right of religious freedom at a place of religious worship” by failing to respond to attacks against churches and pro-life pregnancy clinics, to which FACE Act provisions also apply.

Congress should stop funding or funding increases for departments and offices charged with carrying out the Biden Administration’s actions.

Oversight

Congress should conduct oversight to hold the Biden Administration accountable for its actions resisting the Dobbs decision. The FDA, HHS, Department of Defense, Department of Veterans Affairs, and DOJ have much to answer for.

This means shining a light on the Administration’s action in hearings, congressional testimony, written questions for the record, congressional letters, and more. Congress can also leverage its demands by holding nominees and refusing to confirm presidential appointments until the Administration complies with oversight.

Congress should trace every taxpayer dollar that has unlawfully supported Biden’s pro-abortion agenda. And it should ultimately uncover the full extent that the Biden Administration has promoted abortion and colluded with the abortion industry.

Conclusion

In the Dobbs decision, the Supreme Court made clear that the people can protect unborn life at any stage through “their elected representatives...in the States or Congress.”

Many states have passed laws to protect women and unborn children in the past six months. Meanwhile, pro-abortion states are doing the opposite. Some have even enshrined abortion on demand in state constitutions. At the federal level, the Biden Administration will continue using the administrative state to achieve what it cannot accomplish through the democratic process.

From gestational limits on abortion to protecting life and conscience in funding measures to government oversight and accountability, federal policymakers have an opportunity—and a constitutional duty—to advance robust pro-life policies in the 118th Congress.

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Endnotes


9. Arizona, Arkansas, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Ohio, South Dakota, Tennessee, and Utah have all enacted legislation protecting children from discrimination based on genetic abnormality or Down syndrome, specifically, though not all of these laws are currently in effect. See Guttmacher Institute, “Abortion Bans in Cases of Sex or Race Selection or Genetic Anomaly,” January 1, 2023, https://www.guttmacher.org/state-policy/explore/abortion-bans-cases-sex-or-race-selection-or-genetic-anomaly (accessed February 3, 2023).


23. 42 U.S.C. § 300a-7(b)–(e).