I’m proud to have strong support from both sides of the aisle. I never want protecting life to be a partisan issue.¹

-Rep. Joe Pitts (R-PA), in a statement introducing the Protect Life Act, which amends the abortion-funding language of the healthcare law enacted in 2010.

The 2010 election secured a strong pro-life majority in the United States House of Representatives, and pro-life gains also were made in the United States Senate. With perhaps the most pro-life Congress since Roe v. Wade, efforts to pass pro-life legislation have witnessed a new vitality and momentum at the federal level. As examined below, particularly noteworthy was the various legislation introduced to prohibit taxpayer funding of abortion, de-fund the abortion industry, address anti-life threats of the healthcare reform law, protect conscience rights, promote ethical stem cell research, and protect minors by requiring compliance with parental notification laws. Legislative efforts in 2011 left the abortion industry reeling and on the defense.

LEGISLATION INTRODUCED IN THE 112TH CONGRESS

Prohibiting Taxpayer Funding of Abortion

Polls reveal that an overwhelming majority of Americans—whether pro-life or pro-abortion—oppose the use of their tax dollars to support abortion.² A strong consensus also exists among researchers that abortion rates are reduced when public funding is restricted.³ In fact, the pro-abortion Alan Guttmacher Institute (AGI) reported in its 2009 Literature Review that the “best studies… found that 18–37% of pregnancies that would have ended in Medicaid-funded abortions were instead carried to term when funding was no longer available.”⁴ Thus, prohibiting public funding of abortion coincides with the position of the majority of Americans who do not want their tax dollars paying for abortions, and furthers the legislative goal of reducing the incidence of abortion.

Since 1976, the Hyde Amendment, a rider to the Labor Health and Human Services (LHHS) Appropriations bill,⁵ has enacted a broad prohibition on the use of federal funds appropriated through the LHHS Appropriations. It prohibits the use of LHHS funds “for any abortion,”⁶ and for “health benefits coverage that includes coverage of abortion.”⁷ Thus, the Hyde amendment prohibits “direct” and “indirect” funding for elective abortions.

Although broad in its effect, the Hyde amendment has a limited application. If a program’s
funding does not pass through the LHHS appropriations process, or if the Hyde amendment fails to be explicitly applied by reference in another statute, the Hyde amendment does not apply. For example, the “Patient Protection and Affordable Care Act” (PPACA)—the healthcare reform law of 2010—bypassed the Hyde Amendment’s restrictions by “self-appropriating” its funding.

In addition, while Congress has approved the Hyde amendment as a “rider” to restrict abortion funding in Medicaid since 1976, it is susceptible to change and even complete eradication on a yearly basis. The abortion lobby has made it clear that its agenda includes targeting such vulnerable annual riders and regulations that currently prohibit federal funding of abortion.

Legislation introduced in the 112th Congress, the “No Taxpayer Funding of Abortion Act” (H.R. 3 and S. 906), would establish—consistent with the principles of longstanding federal law and policy—a permanent, government-wide prohibition on the use of federal taxpayer funding for elective abortions and the subsidization of insurance coverage for elective abortions. Because abortion is not healthcare—and should never be construed as such—the bill guarantees consistency throughout federal law that no tax credits or benefits provide a financial incentive for abortion.

Many Members spoke in favor of the “No Taxpayer Funding for Abortion Act.” For example, Representative Vicky Hartzler (R-MO) described the measure as a “common sense bill,” stating that “[w]e should not be spending our hard-earned tax dollars on abortion. It’s time to make this permanent.” Representative Renee Ellmers (R-NC), a freshman Member and former nurse noted, “No longer would Americans have to foot the bill for a practice that aims at destroying life while so many are struggling to find the means to preserve and maintain it.”

On May 4, 2011, the House passed the “No Taxpayer Funding for Abortion Act” with a strong bipartisan vote of 251 to 175. Expressing his approval, Representative Phil Gingrey, M.D. (R-GA) (and former OB-GYN) noted, “The American people have... demanded we use federal money more wisely. Taking innocent life is the last thing we should be putting scarce federal funds towards and the reason that I am pleased to see this bill pass today.”

**Abortion Funding Restrictions in the Budget Battles**

Because the 111th Congress failed to pass a budget before the close of 2010, in January 2011, the 112th Congress was forced—with a tight deadline—to immediately begin budget discussions for the current fiscal year.

Prohibiting taxpayer funding for Planned Parenthood (which the Senate ultimately voted against) is likely to be remembered as a key battle in the budget negotiations. However, several other pro-life provisions—many of which have been included in the federal budget for years—were also implicated and have remained a topic of debate as the 112th Congress determines policy and funding for the fiscal year 2012.
The Dornan Amendment: The “D.C. Hyde Amendment”

Congress successfully reinstated the Dornan Amendment (also known as the “D.C. Hyde Amendment”) in the final 2011 appropriations bill. The Dornan Amendment ensures that no congressionally appropriated funds—both funds generated through federal taxes and those generated through local taxes—may be used for abortions in the District of Columbia.

Since 1996, the policy had been included in numerous appropriations bills supported by Members in both political parties and on both sides of the abortion debate. The policy was changed for the first time in the 2009 Appropriations bill when language was approved to prohibit only the use of “federal” funds for elective abortion. During the time prior to the Dornan Amendment’s reinstatement, at least 300 abortions were performed in D.C. with taxpayer dollars. According to the Alan Guttmacher Institute’s findings on public funding and abortion incidence, nearly a quarter of these abortions may not have occurred had the policy remained in place.

The Mexico City Policy: De-funding the Global Abortion-Agenda

The Mexico City Policy, instituted by President Ronald Reagan at the 1984 United Nations International Conference on Population in Mexico City, provides that for non-governmental organizations (NGOs) to be eligible to receive family planning funds from the U.S. Agency for International Development, they must agree to neither perform nor actively promote abortion—with federal or other funds—as a method of family planning in other nations. In effect, the abortion industry is prohibited from using taxpayer funds for its global agenda.

President Obama rescinded the Mexico City Policy—one of his first acts as President—which has allowed over $450 million of U.S. taxpayer dollars to go to organizations that perform abortions, or to promote abortion. Polling shows that although President Obama otherwise enjoyed public support at that time, a strong majority of Americans disapproved of his decision to reinstate taxpayer funding for an overseas abortion agenda.

Several appropriations measures introduced by the House of Representatives in the 112th Congress have contained the Mexico City Policy.

De-funding the coercive-abortion policy endorsing UNFPA

Through the Kemp-Kasten provision, which permits the President to withhold funds from any organization that “supports or participates in the management of a program of coercive abortion or involuntary sterilization,” Presidents Ronald Reagan, George H.W. Bush, and George W. Bush withheld funds from the United Nations Population Fund (UNFPA), an organization whose support of coercive popula-
tion control has been documented by the State Department.

In 2002, after returning from a fact-finding mission in China, then-Secretary of State Colin Powell stated, “The UNFPA’s support of, and involvement in, China’s population-planning activities allows the Chinese government to implement more effectively its program of coercive abortion. Therefore, it is not permissible to continue funding UNFPA at this time.”

On March 11, 2009, President Obama reinstated UNFPA funding, which has amounted to over $105 million in taxpayer funds being allocated to UNFPA despite its facilitation of China’s brutal policy.

Representative Chris Smith (R-NJ), co-chair of the Pro-Life Caucus who has chaired nearly 30 hearings on China’s human rights violations, profoundly stated the injustice of funding the UNFPA:

Since 1979, brothers and sisters have been illegal in China as part of the barbaric one child per couple policy. And for 30 years, the United Nations Population Fund (UNFPA) has vigorously supported, funded, defended, promoted, even celebrated these massive crimes against humanity…. [The UNFPA is] an organization that has unapologetically stood not with oppressed women but with the oppressors of women; an organization that has made the Chinese killing machine more efficacious and lethal; an organization that has systematically white washed and defended these crimes against humanity.

In addition to House efforts to de-fund the UNFPA in its proposed appropriations bills, Representative Ellmers has introduced H.R. 2059, “Prohibition on UNFPA.” The bill very simply states: “Notwithstanding any other provision of law, the Secretary of State may not make a contribution to the United Nations Population Fund (UNFPA).”

De-funding Planned Parenthood and Other Abortion Providers

Congress—particularly the House of Representatives—made historic strides this year toward ending federal funding of abortion providers.

In early 2011, Representative Mike Pence (R-IN) introduced an amendment to an appropriations bill, H.R. 1, to ensure that no funds made available through the measure would support America’s largest abortion provider—Planned Parenthood Federation of America (PPFA) and its affiliates.

PPFA and its affiliates receive millions of dollars annually from the federal government, and between 1998 and 2008, as government funding of Planned Parenthood doubled, Planned Parenthood simultaneously doubled its abor-
tion business. In addition to concerns over its increasingly abortion-centric business model, the heavily subsidized PPFA has been rocked by recent scandals, including overbilling government programs and failure to report instances of suspected sexual abuse of minors. In January 2011, the organization Live Action released video footage showing Planned Parenthood employees apparently willing to assist a man alleging to be sex-trafficking girls as young as 14 years old.

On February 18, 2011, the House passed the Pence amendment by a bipartisan vote of 240 to 185. This marked the first time in history that the House voted to prohibit all federal funding for PPFA and its affiliates. On April 14, 2011, the House again voted to prohibit federal funds from being allocated to PPFA and its affiliates by passing H.Con.Res. 36, the first bill freshmen Representatives Diane Black (R-TN) and Martha Roby (R-AL) introduced in Congress.

Although the Senate failed to pass either measure, a victory was gained in the budget agreement forged by Speaker John Boehner (R-OH) forcing the Senate to debate the issue and to have an up or down vote on H.Con.Res. 36.

In another effort to end federal funding of abortion providers, Representative Pence introduced H.R. 217, the “Title X Abortion Provider Prohibition Act,” which amends Title X—a domestic “family planning” program—to prohibit Title X family planning funds from being awarded to any entity that performs abortions or provides any funds to any other entity that performs abortions.

The “Title X Abortion Provider Prohibition Act” would ensure consistency with the purpose of Title X’s statutory restriction that its funds shall not “be used in programs where abortion is a method of family planning.” Federal regulations have construed the statutory requirement narrowly to permit abortion
providers to receive Title X funding. Doing so, the Title X program effectively subsidizes the abortion industry by covering overhead and operational costs. PPFA, the nation’s largest abortion provider, is also the largest recipient of Title X funding.

Senator David Vitter (R-LA) has introduced a sister bill in the Senate, S. 96, the “Title X Family Planning Act.”

Addressing the Anti-Life Threats in the PPACA

Contrary to longstanding federal law and policy, funds appropriated and authorized through the PPACA may subsidize abortion and insurance plans that cover abortion; mandate authorities within the PPACA may be invoked to require abortion coverage; and state and federal conscience protections for healthcare professionals, institutions, and payers are in jeopardy under the PPACA.

In January 2011, the House of Representatives voted to repeal the 10-month-old PPACA. The repeal effort—one of the first legislative actions of the 112th Congress—received bipartisan support and passed by a greater majority than that which originally enacted the law in the House. Although repeal efforts failed in the Senate, several additional bills to repeal and/or rectify the life-threatening provisions of the PPACA have been introduced.

The “Protect Life Act,” H.R. 358 and S. 877, modifies the PPACA to comprehensively prohibit both funding for abortion and insurance coverage for abortion. The “Protect Life Act” ensures that no funding streams created through the PPACA may be used to fund abortion or insurance plans that cover abortion. By writing the restriction into the law, the “Protect Life Act” safeguards against a court ruling ordering that abortion must be funded, and does not make a determination on abortion funding dependent on administrative rulings and agency interpretations which are subject to change.

The “Protect Life Act” also aligns the conscience protections contained in the PPACA with the protection of the Hyde-Weldon Amendment (current federal law), guarantees respect for state conscience protections, and ensures that healthcare professionals have an adequate means to enforce their basic civil right to provide care without being forced to participate in abortions.

Importantly, the “Protect Life Act” contains a private right-of-action which allows healthcare providers to pursue litigation and enforce their rights. The recent weakening of federal conscience regulations underscores the necessity for healthcare providers to have an effective means to enforce their legal rights.

The “Respect for Rights of Conscience Act,” H.R. 1179 and S. 1467, amends the PPACA to protect the right to provide, purchase, or enroll in healthcare coverage that is consistent with one’s religious beliefs and moral convictions. This would address the anti-life mandate from the Department of Health and Human Services (HHS), issued pursuant to the PPACA’s “preventive services for women” provision. The HHS mandate requires nearly all insurance plans to provide coverage (without co-pay) for drugs and devices with life-ending mechanisms of action, including the abortion-inducing drug ella, that have been labeled by the Food and Drug Administration (FDA) as “contracep-
tion.” The “Respect for Rights of Conscience Act” also ensures that no requirement in the PPACA creates new pressures to exclude those exercising such rights from health plans.

Another bill, H.R. 1216, passed by the House and waiting for Senate action, would apply the Hyde amendment to a funding stream created by the PPACA for certain teaching health centers. H.Res. 269, introduced by Representative Virginia Foxx (R-NC), was added as an amendment to the bill to ensure further that none of the funds can be used to pay for “abortion or training in the provision of abortions.” The amendment also prohibits funding for any teaching health center that discriminates against individual or institutional health-care entities on the basis that the entity does not “provide, pay for, provide coverage of, or refer for abortions.”

Other bills have been introduced to address the rationing concerns in the PPACA. For example, H.R. 452, the “Medicare Decisions Accountability Act of 2011,” repeals the provisions of the PPACA providing for the Independent Payment Advisory Board (IPAB). When the PPACA is fully implemented, the IPAB—an unelected entity—will have the power to effectively ration health care through price controls.

Protecting Conscience Rights

Increasingly, the conscience rights of health-care professionals who wish to provide care for their patients without participating in abortion have been under attack. To strengthen federal conscience protection laws, the “Abortion Non-Discrimination Act” (ANDA), H.R. 361 and S. 165, has been introduced in both the House and the Senate. ANDA clarifies existing language to make clear that the policy of non-discrimination applies to all government departments and agencies. Importantly, ANDA also provides a private right-of-action for victims of discrimination, ensuring that private litigation can be pursued, rather than being reliant on the discretion of the Department of HHS.

Promoting Effective and Ethical Stem Cell Research

Since 1996, the Dickey-Wicker Amendment has prohibited the Department of Health and Human Services (HHS) from using federal funds for the creation of human embryos for research or for research in which human embryos are destroyed. The rider—which is added to the Labor, HHS, and Education appropriation act each year—expressly bans the National Institutes of Health (NIH) from funding research where human embryos “are destroyed, discarded, or knowingly subjected to risk of injury or death.”

In August 2001, President George W. Bush permitted taxpayer funding for research on then-existing embryonic stem cell lines where, he argued, “the decision of life and death has already been made.” However, under the Bush policy, federal funding was not permitted for research on stem cell lines that were created involving embryo destruction after that date.
In March 2009, President Obama issued an executive order lifting President Bush’s date restriction, thus extending federal funding to research on new stem cell lines created by destroying human embryos. The Obama Administration’s policy is being challenged as violating the Dickey-Wicker Amendment in an ongoing lawsuit, *Sherley v. Sebelius*, filed by adult stem cell researchers.

Introduced in response by Representatives Randy Forbes (R-VA) and Dan Lipinski (D-IL), the “Patients First Act” is consistent with the Dickey-Wicker Amendment and the majority of Americans who oppose taxpayer funding for controversial stem cell research that requires destruction of human embryos. The “Patients First Act” promotes effective and ethical stem cell research by supporting all stem cell research that has demonstrated strong potential for curing and treating patients and does not risk injuring, discarding, or destroying human embryos.

*Protecting Minors by Requiring Compliance with State Laws*

Consistent with the majority of Americans who support parental involvement laws—as well as the proven effectiveness of these laws to reduce the incidence of abortion—the 112th Congress considered the “Child Interstate Abortion Notification Act” (CIANA) (H.R. 2299 and S. 1241). CIANA prohibits knowingly taking a minor across states lines for an abortion in order to evade a parental involvement law in the minor’s home state, as well as requires abortion providers to notify parents at least 24 hours before performing an abortion on an out-of-state minor.

“This bill will help states enforce what they have implemented on their own,” stated Representative Ros-Lehtinen (R-FL), who introduced the bill in the U.S. House in the 112th Congress, and also authored this bill in the 109th Congress when it passed the House twice by a wide margin with bipartisan support.

The Act also permits parents of a minor to bring a civil action against any adult who violates this Act, and creates criminal and civil penalties for any physician who knowingly performs an abortion on a minor in violation of this Act. Importantly, CIANA includes carefully constructed safeguards to protect minors in case of incest or abuse. CIANA also would ensure child predators are not able to circumvent parental involvement laws to cover up their crimes by transporting their victims across state lines for secret abortions.

**BUILDING ON THE PRO-LIFE MOMENTUM IN 2012**

In 2011, Congress introduced important legislation and held historic votes to protect life. Concrete pro-life gains were made, such as the reinstatement of the “D.C. Hyde Amendment,” and an important groundwork for future victories was laid. The 2012 election presents an opportunity for further legislative victories, with the possibility of electing an executive who values the sanctity of every human life and a majority in the Senate who will prioritize passing legislation to protect human life at all stages.

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Endnotes

Abortions: A Literature Review


Id. at §507(b).

Id. at §507(c).

See, e.g., 25 U.S.C. § 1676, which applies any abortion funding limitation found in Department of Health and Human Services (HHS) appropriations (the Hyde Amendment) to the Indian Health Service (even though it is funded through the Interior Appropriations Bill).

See, e.g., National Organization for Women (NOW), 2010 NOW Conference Resolutions, Hyde and Seek-Repeal of the Hyde Amendment (2010), available at http://www.now.org/organization/conference/resolutions/2010.html#Hyde (last visited Aug. 31, 2011). For example, NOW has vowed, “[T]he Board of NOW is hereby instructed to develop a long-term strategy with other allied organizations for the defeat of the Hyde Amendment and that the grassroots level of NOW be urged to take action in an aggressive campaign to repeal the Hyde Amendment....”


The Dorn amendment has also been included in House-produced appropriations bills for the 2012 fiscal year.


42 U.S.C. 300a 6, § 1008 (“None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.”).


H.R. 358 §2(a)(4) (“No funds authorized or appropriated by this Act (or an amendment made to this Act)... may be used to pay for any abortion... .”)

PPACA §§ 3403, 10320.


