

Legislative De-funding of Abortion Providers: States Respond to Widespread Industry Abuses

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In 2011, at least 27 laws were enacted or administrative actions were taken to restrict abortion funding, insurance coverage for abortions, or the subsidization of abortion providers, in 18 states. This represented a nearly threefold increase from 2010. Why the widespread interest in restricting public funding for abortions? Events in the past three years have awakened Americans to the extent of government-subsidization of abortion in the United States, as well as the grisly nature of the abortion business.

BACKGROUND

Whether government has an obligation to pay for abortions, particularly for women receiving public assistance, became a major issue after the United States Supreme Court created a constitutional “right” to abortion in 1973. However, while determining whether many legislative restrictions on abortion will withstand the Court’s scrutiny continues to be an arduous task, the Court has firmly settled the *funding* issue.

United States Supreme Court Precedent

The Supreme Court has repeatedly affirmed the constitutionality of federal and state restrictions on public funding for abortions.¹ In *Harris v. McRae*, the Court upheld the Constitutionality of the Hyde Amendment, a federal appropriations rider that restricts the use of

federal and state matching Medicaid funds for most abortions. The Court held that a “[s]tate that participates in the Medicaid program is not obligated under Title XIX to continue to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment . . . [and] that the funding restrictions of the Hyde Amendment violate neither the Fifth Amendment nor the Establishment Clause of the First Amendment.”² In *Rust v. Sullivan*, the Court held that that federal regulations prohibiting recipients of Title X funds from engaging in abortion-related activities were a permissible construction of the underlying legislation and were Constitutional; further, the Court reaffirmed that it is permissible for a State to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed to be in the public interest.³

Unfortunately, 13 states are forced—pursuant to court interpretations of state constitutions—to pay for most abortions for women receiving public assistance, and four states do so voluntarily. With the exception of the legal battles in these states, however, abortion funding was not a major newsmaker for years.

National Healthcare Reform and Abortion Funding

The 2009-2010 healthcare reform debate brought abortion funding under the microscope



again, when efforts to secure more taxpayer-funding for abortions nearly brought down the bill. Early drafts of the legislation were riddled with loopholes that were certain to permit widespread taxpayer-funding for abortions and abortion coverage. Under intense pressure from pro-life Americans and members of Congress, the bill's sponsors closed *some* of the loopholes. Nonetheless, eleventh hour deal-making secured the enactment of the federal *Patient Protection and Affordable Care Act* (PPACA) without answering many pro-life concerns, leaving pro-life groups with the task of constantly monitoring the act's implementation to ensure that remaining loopholes are not exploited.

Critically, however, the pro-abortion lobby—which sought to have abortion treated as “health care” indistinguishable from a routine gynaecological exam—dramatically

overstepped. Their aggressive efforts ignited a firestorm across the country as Americans began asking how much federal and state funding is used for abortions and abortion coverage in the United States, and in their home states in particular. Polls overwhelmingly demonstrate that Americans, regardless of their opinion on whether abortion should be legal, oppose taxpayer-funding for abortion.

Coinciding with increased awareness among Americans about the nature and frequency of abortion subsidization in the United States was

an increased awareness about the true nature of the abortion industry. And as Americans learn more, their aversion toward paying directly for abortions is evolving into an aversion toward subsidizing abortion providers for *any* medical services.

Abortion Providers: The Ugly Truth

When news broke about Kermit B. Gosnell's abortion mill in Philadelphia, Pennsylvania, it was too ghastly for even the mainstream media to ignore. The detailed descriptions in the Grand Jury report of how he cavalierly butchered women and murdered infants born alive read like something out of a horror novel. It defies logic that something so extreme could

continue for years in a “medical” clinic operating in Pennsylvania, a state with some of the strictest abortion regulations in the country.

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While it would be easy to dismiss the Gosnell clinic as rare and view his motivation—to make a fortune without any regard for the lives he destroyed to do it—as antithetical to what most abortion providers intend to do, that would be a mistake. In undercover videos taken in Planned Parenthood clinics by Live Action in 2011, employees of the largest abortion provider in the United States were recorded counselling individuals posing as pimps and prostitutes on how to obtain abortions for minors who were potentially sex-trafficking victims.⁴ These actions by presumably “skilled” workers showed



no more concern for the safety of women than Gosnell's actions in his filthy clinic.

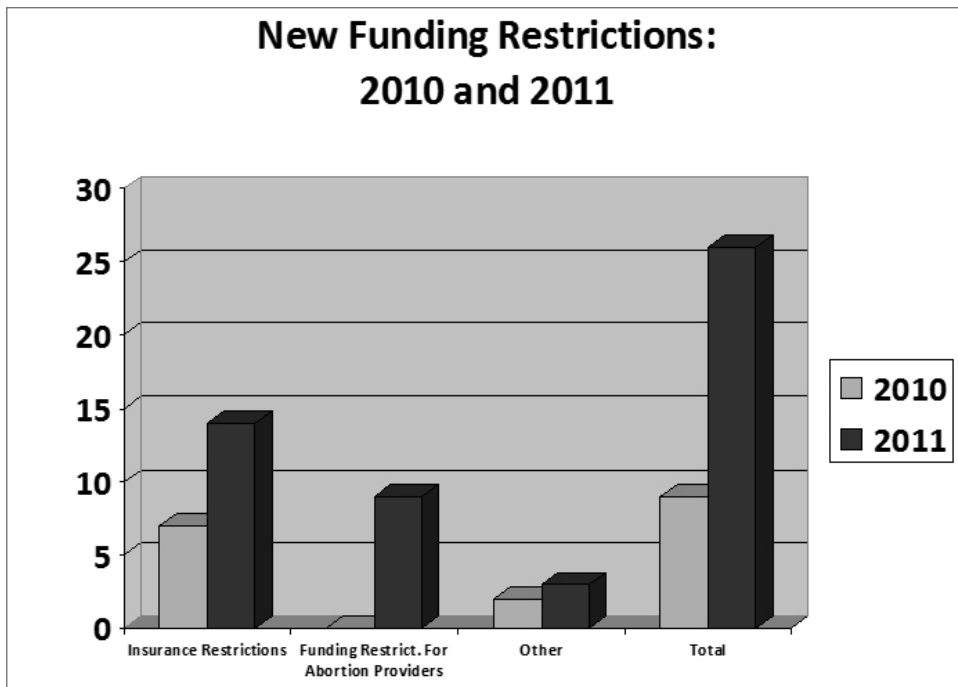
In 2011, AUL attorneys released a special report detailing how Planned Parenthood disregards legal and ethical boundaries when caring for women and their unborn children.⁵ The highly-profitable abortion giant evades abuse reporting requirements and parental involvement laws, while enjoying ample government support—over \$363 million a year—which it has been known to misuse.⁶

These factors—an increased awareness about the breadth of government subsidization of abortion and an increased suspicion about and disdain for the abortion industry—have led many Americans to say “enough.”

2011: THE STATES RESPOND

Insurance Coverage of Abortions

In 2010, the same year that the PPACA was enacted, five states enacted laws prohibiting insurance coverage of most abortions within their state insurance Exchanges which must be established by 2014. In 2011, this number more than doubled: nine states passed similar laws prohibiting insurance coverage of most abortions within their state insurance Exchanges; four states passed laws prohibiting private insurance plans offered within their states from covering most abortions; and two states prohibited such coverage in state-subsidized plans for public employees. At least 14 other states considered legislation restricting insurance coverage of abortions.



Cutting off Planned Parenthood and other Abortion Providers

Nine states—Indiana, Kansas, Montana, New Hampshire, New Jersey, North Carolina, Tennessee, Texas, and Wisconsin—took new action in 2011 to withhold family planning funding for Planned Parenthood and other abortion providers. While some of these efforts were accomplished legislatively, others were handled administratively. For example, Governor Chris Christie in New Jersey vetoed funding for Planned Parenthood. While a few of these states are now in litigation over the restrictions, it is crystal-clear that Americans do not want tax dollars subsidizing the abortion industry, regardless of whether the tax dollars directly pay for abortions.

Other Restrictions

Other restrictions enacted in 2011 included a restriction on state funding for abortions for women receiving public assistance in Alaska, a broad prohibition on the use of state funds for abortions in Arizona, and a prohibition on abortion referrals in public schools or the use of public funds for abortion services in schools in Arkansas.

CONCLUSION

The striking number of laws enacted in 2011 restricting abortion funding clearly demonstrates that the issue—one that was supposedly “settled” by the Supreme Court in 1973—is far from settled. As Americans become more aware of how their tax dollars or insurance premiums are being used to subsidize abortion, and how that affects the safety and well-being of women, we can expect to see the repugnant

practice, and its perpetrators, financially marginalized in our society.

Endnotes

¹ See *Rust v. Sullivan*, 500 U.S. 173 (1991) (holding that federal regulations prohibiting recipients of Title X funds from engaging in abortion-related activities were a permissible construction of the underlying legislation and were Constitutional); *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989) (upholding the state’s restrictions on the use of public employees and facilities for the performance or assistance of “nontherapeutic abortions”); *Harris v. McRae*, 448 U.S. 297 (1980) (holding that a State that participates in Medicaid is not obligated to continue to fund “medically necessary abortions” for which federal reimbursement is unavailable under the Hyde Amendment, and also holding that the funding restrictions of the Hyde Amendment are constitutional); *Poelker v. Doe*, 432 U.S. 519 (1977) (holding that the Constitution did not forbid a state or city from expressing a preference for childbirth over nontherapeutic abortions by providing services for childbirth and not abortions); *Maher v. Roe*, 432 U.S. 464 (1977) (upholding the constitutionality of a state welfare regulation under which Medicaid recipients received payment for services related to childbirth, but not for “nontherapeutic abortions”); *Beal v. Doe*, 432 U.S. 438 (1977) (holding that Pennsylvania’s refusal to extend Medicaid coverage to “nontherapeutic abortions” was not inconsistent with the Social Security Act).

² *Harris*, 448 U.S. at 326.

³ *Rust*, 500 U.S. at 201-03.

⁴ See Americans United for Life, *THE CASE FOR INVESTIGATING PLANNED PARENTHOOD: AUL LOOKS BEHIND THE CLOSED DOORS OF THE NATION’S LARGEST ABORTION PROVIDER* Appendix IX (July 2011), available at <http://www.aul.org/aul-special-report-the-case-for-investigating-planned-parenthood/> (last visited Aug. 24, 2011).

⁵ See generally, *id.*

⁶ *Id.* at 1.

