

H.R. 3: “No Taxpayer Funding for Abortion Act”

- **The long-term decline in U.S. abortion rate has stalled.**
 - According to the most recent data, in 2008 1,212,350 abortions were performed in the United States (U.S.).¹
 - The total number of abortions in the U.S., since the Supreme Court decision in *Roe v. Wade* in 1973 is now well over 52 million.²
 - The Guttmacher Institute reports that the rate of women having abortions in the U.S. increased by 1% between the years 2005 and 2008, after 24 years of decline.³ The Centers for Disease Control and Prevention (CDC) also report a small increase in the abortion rate between 2005-2006⁴ but then a decrease from 2006-2007.⁵ 2007 is the latest year for which we have C.D.C. abortion data.
 - In New York City (NYC), in 2009, the abortion rate was a shocking 41.5%. For African-Americans, the abortion rate in NYC was 60%.⁶

- **Funding abortion will increase abortion; it will not make abortion “rare”.**
 - History has shown that direct federal funding for abortion increases the number of abortions performed. Likewise, federal funding of abortion providers increases the number of abortions performed.
 - Between 1973 and 1977 (the years between the *Roe v. Wade* decision and the Hyde Amendment becoming law), the Federal Government funded 300,000 abortions per year under Medicaid.⁷
 - In 1993, the Congressional Budget Office (CBO) estimated that the Federal Government would pay for as many as 675,000 abortions annually were the Hyde Amendment and other measures not in place to prevent taxpayer funding of abortion in government supported programs.⁸

1 Guttmacher Institute, In Brief: Fact Sheet, “Facts on Induced Abortion in the United States,” January 2011, p. 1.

http://www.guttmacher.org/pubs/fb_induced_abortion.html

2 National Right to Life Committee, Fact Sheet, “Abortion and Statistics: United States Data and Trends.”

http://www.nrlc.org/Factsheets/FS03_AbortionInTheUS.pdf

3 Rachel K. Jones and Kathryn Kooistra, “Abortion Incidence and Access to Services in the United States, 2008,” *Guttmacher*, Vol. 43, No. 1, March 11, 2011. <http://www.guttmacher.org/pubs/journals/4304111.pdf>

4 “Abortion Surveillance --- United States, 2006,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control, November 27, 2009 / 58(SS08);1-35. <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5808a1.htm>

5 “Abortion Surveillance – United States, 2007,” *Morbidity and Mortality Weekly Report*, Center for Disease Control, February 25, 2011 / 60(ss01);1-39. http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6001a1.htm?s_cid=ss6001a1_w

6 “Summary of Vital Statistics 2009,” The City of New York, New York City Department of Health and Mental Hygiene, December 2009. <http://www.nyc.gov/html/doh/downloads/pdf/vs/2009sum.pdf>

7 See Statement of the Department of Health, Education and Welfare, “Effects of Sec. 209, Labor-HEW Appropriations Bill, H.R. 14232,” June 25, 1976; John Thomas Noonan, *A Private Choice: Abortion in America in the Seventies* (Toronto: Life Cycle Books, 1979): ch. 12, fn. 6.

8 Robert D. Reischauer, Director, Congressional Budget Office, Letter to the Congressman Vic Fazio (D-Ca) (July 19, 1993).

- By contrast, in 2008 there were 425 abortions in the U.S. funded by the Federal Government and in 2009 there were 220 government-financed abortions in the U.S.⁹
- According to a 2007 Guttmacher report, the Hyde Amendment ban on federal funding for abortion has prevented between “18-35%” of women from having an abortion.¹⁰ In other words, unrestricted federal funding for abortion will increase the number of women obtaining an abortion by an average of 25%.
- In its 2008-2009 annual report, Planned Parenthood Federation of America (PPFA) reported receiving \$363.2 million in Federal and State Government grants and contracts -- a \$13.6 million increase from the prior year.
- PPFA performed an unprecedented 324,008 abortions in 2008¹¹ and 332,278 abortions in 2009.¹² The overall abortion rate in the U.S. had been on a long-term decline until recently when the rate appears to have stalled or slightly increased. Yet during these years the number of abortions performed by PPFA increased every year alongside an increase of Federal Government funding.
- H.R. 3 does not affect funding for Planned Parenthood, or funding for family planning services.
- H.R. 3 only prevents funding and subsidies for abortion and abortion coverage.

➤ **The majority of Americans object to federal funding of abortion.**

- A Quinnipiac University poll from January 2010 found that 67% of Americans opposed funding abortion.¹³
- A CNN poll from April 11, 2011 found that 61% of Americans oppose using public funds for abortion.¹⁴
- A large number of additional polls have found that Americans do not want taxpayer dollars paying for abortion.¹⁵

9 FY 2011 Moyer Report, submitted by the Office of the Assistant Secretary for Financial Resources, U.S. Department of Health and Human Services, February 2010, page 106.

10 Heather D. Boonstra, “The Heart of the Matter: Public Funding Of Abortion for Poor Women in the United States,” *Guttmacher Policy Review*, Winter 2007, Vol. 10, No. 1, pp. 12-16.

11 PPFA, “Planned Parenthood Services,” September 2010, p. 2 (http://www.plannedparenthood.org/files/PPFA/fact_ppservices_2010-09-03.pdf).

12 PPFA, “Planned Parenthood Services,” March 2011, p. 2 (http://www.plannedparenthood.org/files/PPFA/PP_Services.pdf).

13 *Quinnipiac University Poll*, January 14, 2010. Poll questions retrieved May 3, 2011 from <http://www.quinnipiac.edu/x1295.xml?ReleaseID=1413>.

14 *CNN Opinion Research Corporation Poll*, April 11, 2011. Poll questions retrieved May 3, 2011 from <http://i2.cdn.turner.com/cnn/2011/images/04/11/rel6a.pdf>.

15 *Quinnipiac University Poll*, December 22, 2009. Poll questions retrieved May 3, 2011 from <http://www.quinnipiac.edu/x1295.xml?ReleaseID=1408>.

Pew Forum Poll, November 19, 2009. Poll questions retrieved May 3, 2011 from <http://pewforum.org/uploadedfiles/Topics/Issues/Abortion/healthcarereform.pdf>.

CNN Opinion Research Corporation Poll, November 18, 2009. Poll question retrieved on May 3, 2011 at <http://i2.cdn.turner.com/cnn/2009/images/11/17/rel17f.pdf>.

- **Americans should NOT be forced to pay for abortion in the following laws.**
 - The Patient Protection and Affordable Care Act (PPACA) will subsidize abortion and fund abortion in private health plans through tax credits.
 - The PPACA directly appropriates funds for medical services without abortion restrictions, and subsidizes health plans that include abortion. The funding is not appropriated through the Labor, Health and Human Services (LHHS) bill which contains the Hyde Amendment that since 1976 prevented funding for abortion except in cases of rape, incest and life of the mother.
 - The PPACA “premium assistance” tax credits that are advanceable and refundable will pay people to purchase health plans that include abortion coverage. PPACA also created small business tax credits for the purchase of health plans that include abortion coverage.
 - The PPACA does not adequately protect the conscience rights of health care workers who object to participating in abortion. (See comparison of Stupak Amendment and final PPACA law: <http://downloads.frcaction.org/EF/EF10C08.pdf>.)
 - The FY2010 Omnibus Appropriations Act (H.R. 3288) gutted the Dornan Amendment which prohibited government funding for abortion in the District of Columbia (DC) by allowing congressionally appropriated funding for abortion. On April 14th, 2011, the ban on abortion funding in DC was restored as part of the FY2011 Continuing Resolution (H.R. 1473). This ban is annually renewed as part of the appropriations bills, and H.R. 3 would codify the restriction on government funding for abortion in the District.
 - The *Internal Revenue Service (IRS)* also allows abortion to be deducted as a medical expense under cafeteria plans such as flexible savings accounts (FSAs), Archer medical savings accounts (MSAs) and health savings accounts (HSAs).

- **Smith-Lipinski applies the principles of the Hyde Amendment Across the Government.**
 - The Hyde amendment has 2 prongs. First, it prevents funding on the LHHS bills from paying directly for abortion except in case of life, rape and incest. Second, it prevents funding for health plans that include abortion coverage, including the federal or state portion of Medicaid. However, it does not prevent states from using non-Medicaid funds for abortion.
 - The Hyde amendment, currently in law, only covers LHHS appropriated funds. It does not therefore cover direct appropriations in PPACA, or other forms of government subsidies.
 - The Hyde amendment is annually renewed.
 - Other federal laws are annually renewed to prevent federal funds from subsidizing health plans that include abortion coverage, such as the Smith Amendment governing the Federal Employees Health Benefits Program

(FEHB), or, as enacted recently, the Dornan Amendment restricting appropriations for abortion in DC, or the Helms Amendment restricting funding for abortion in overseas programs.

- H.R. 3 would make permanent these annual bans on government funding for abortion or funding for health plans that include abortion.

➤ **Smith-Lipinski applies the principles of the Hyde Amendment to the U.S. Tax Code to prevent tax incentives for abortion.**

- Tax credits created by PPACA can pay for health care plans that include abortion.
 - Premium-Credits that are advance payments would be prevented from paying for insurance plans with abortion (Section 1401 and 1402).
 - CBO estimates that by 2020, premium credit payments will reach \$72 billion.
 - Premium credits are actual subsidies paid by the government because they are advanceable and refundable.
 - Small Business Tax-credits would be prohibited for health plans that include abortion (Section 1421).
- Itemized deductions by individuals whose health care costs exceed 7.5% of their adjusted gross income can deduct abortion as a medical benefit (PPACA raised the threshold from to 10% in 2013). IRS Publication 502 explicitly allows “abortion” to be deducted as a medical expense despite the fact that Section 213(d) of the IRS Code does not list abortion as a deductible medical expense.
- Tax preferred accounts can also be used to pay for abortion. IRS Publication 969 allows medical expenses to be deducted based on the definition of medical expense contained in Publication 502. Therefore, the abortion is considered a deductible medical expense in tax-preferred accounts, such as HSAs, MSAs, and in cafeteria plans such as FSAs.
 - 2010 estimates of the tax break for cafeteria plans amount to \$26.4 billion.
 - HSAs are held by an estimated 10 million people, with tax breaks for 2010 estimated at about \$900 million.

➤ **Specifically, Smith-Lipinski applies the Hyde principles across the government by amending Title I of the U.S. Code.**

- **Section 101: Amends Title 1 of the U.S. Code with Chapter 4 to ban federal funding for abortion and to provide conscience protections.**
 - **Sec. 301** Prevents federal funding for abortion.
 - **Sec. 302** Prevents federal funding for health plans that include abortion coverage.
 - **Sec. 303** Prevents abortion from being performed at federal facilities and prevents abortion from being provided by federal employees.
 - **Sec. 304** Clarifies that H.R. 3 does not prevent individuals, states or localities from purchasing abortion coverage or health coverage that includes abortion with non-federal funds.

- **Sec. 305** Clarifies that H.R. 3 does not prevent non-federal insurance providers from offering abortion coverage or health coverage that includes abortion with non-federal funds.
 - **Sec. 306** Clarifies that H.R. 3 does not pre-empt other federal laws that restrict the use of federal funds for abortion.
 - **Sec. 307** Clarifies that H.R. 3 does not prevent federal funding for services necessary to treat a woman for any injury or disease caused by an abortion.
 - **Sec. 308** Makes an exception for abortions in the case of life, rape and incest abortions applied to Sections 301, 302, and 303.
 - **Sec. 309** Codifies the ban on government funding for abortion in DC.
 - **Sec. 310** Codifies the Hyde-Weldon ban on government discrimination against health care workers who refuse to participate in abortion and provides legal remedies.
- **Section 102: Replaces Section 303 of H.R. 3 with H.R. 1232 offered by Rep. Dave Camp (R-MI) to prevent certain tax incentives for abortion or abortion coverage.**
- **Sec. 201** Amends Sec. 213 of the IRS Code to ensure that abortion is not deducted as a medical expense by individuals who deduct the cost of health care over 7.5% of their gross income (PPACA raised the threshold from to 10% in 2013). It makes exceptions in the case of life, rape and incest abortions, and it clarifies that the cost of treatments for injury or disease resulting from abortion are not precluded.
 - **Sec. 202** Amends Sec. 36B(c)(3) of IRS Code to ensure that the refundable advanceable tax credits created under PPACA (Sec. 1401) do not subsidize health care plans that include abortions, except in the case of life, rape and incest abortions.
 - Subsection (b) further clarifies that this restriction does *not* prevent individuals from *purchasing* separate abortion coverage or health plans with abortion coverage provided that premium credits are not used. (Similar to Sec. 304.)
 - Subsection (b) further clarifies that this restriction does *not* prevent non-federal health insurers from *offering* separate health plans with abortion or separate coverage for abortion provided that premium credits are not used. (Similar to H.R. 3 Sec. 305.)
 - **Sec. 203** Amends 45R Subsection (h) of the IRS Code to prevent the small business health tax credits created under PPACA (Sec. 1421) from being used to purchase health insurance with abortion, except in the case of life, rape and incest. It accomplishes this goal by amending the definition of “qualified health plan” and “health insurance coverage” in subsection (h) to exclude any health plan or benefit that includes coverage for abortions for the purpose of receiving the small business tax credit.

- **Sec. 204** Amends Sec. 125 of the IRS Code to prevent abortion from being included as a tax exempt medical expense for disbursements from *cafeteria plans* such as FSAs. Amends Sec. 220 to prevent abortion from being deducted from MSAs. Amends Sec. 223 to prevent abortion from being deducted as a medical expense in HSAs.
 - **Note: Section 201 does NOT effect the “employer deduction”** which allows businesses to deduct from their taxes the cost of their contributions to employees’ health care plans. 2008 estimates of this tax break amount to \$226.2 billion in foregone taxes per year. **Section 201 also does NOT impact the “employee exclusion”** which allows employees to exclude their employer’s contributions to their health care from their gross income.
- **Solution: Pass the Smith-Lipinski “No Taxpayer Funding for Abortion Act”.**
 - We need to pass the Smith-Lipinski “No Taxpayer Funding for Abortion Act” to provide a government-wide Hyde amendment to stop abortion funding.
 - The Smith-Lipinski bill will prevent federal funding for abortion and federal funding for health plans that include abortion—returning us to the status quo.
 - The Smith-Lipinski bill will stop funding for abortion in DC.
 - The Smith-Lipinski bill will restore and protect the conscience rights of healthcare workers from government discrimination because they object to abortion.