

March 20, 2010

Member of Congress
U.S. House of Representatives
Washington, DC 20510

Dear Representative:

On behalf of FRCAction, the legislative arm of Family Research Council, and the families we represent, we want to take this opportunity to warn you off any rumored last minute promises to issue an Executive Order (EO) that would magically fix the fact that the Senate bill (H.R. 3590) and the Reconciliation bill (H.R. 4872) would spend government funds to pay for elective abortions, regardless of any EO.

President Obama and the Democratic leadership know that such a plan, due to legal precedent, would be worth little in the long run. Some examples of courts overruling Executive Orders include:

- The District of Columbia Court of Appeals struck down Executive Order 12954, "Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts," issued by President Clinton, March 8, 1995, which authorized sanctions on federal contractors that exercise their legal right to permanently replace economic strikers. In *Commerce of U.S. v. Reich*, 74 F.3d 1322. The court ruled that the executive order is regulatory in nature and is preempted by the NLRB, which guarantees employers the right to hire permanent replacements. *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322.
- The Hamdan decision struck down President Bush's executive order because Congress, in enacting a statutory military commissions system, had impliedly prohibited the President's invocation of military commission jurisdiction over Hamdan. *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006).
- In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court struck down President Truman's executive order during the Korean War that purported to authorize assuming federal control of certain domestic steel mills due to labor unrest.

We would like to take this opportunity to thank the President for finally admitting that H.R. 3590 would lead to taxpayer funding of abortions (as we detailed in our score letter sent previously that can be found here <http://downloads.frcaction.org/EF/EF10C07.pdf> as well as a chart comparing the Stupak-Pitts amendment language in the original House passed bill vs. abortion language in H.R. 3590. This chart can be found here <http://downloads.frcaction.org/EF/EF10C08.pdf>). If the Obama Administration continued to falsely believe the Senate bill had no problem on the issue of funding abortion and funding health plans that include abortion, he certainly would not put forth the idea of an EO.

Because of an EO would give no protections to the unborn when it comes to funding for abortion in the Senate and Reconciliation bills, FRCAction will still score votes on both in our scorecard for the Second Session of the 111th Congress.

Sincerely,



Thomas McClusky
Senior Vice President