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

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Cosponsors in the 112th: 227 (including Smith and Lipinski). 216 Republicans and 11 Democrats

Senate Companion: To be introduced by Senator Roger Wicker

Referrals: Judiciary, Ways and Means, and Energy and Commerce

Q: What does H.R. 3 do?

A: H.R. 3 establishes a permanent, government-wide prohibition on taxpayer subsidies for abortion and abortion coverage, codifies existing conscience protections with an added enforcement mechanism, and closes certain loopholes that give tax-preferred status to abortion.

Q: Why shouldn't the government subsidize and encourage abortion?

A: Abortion is not health care. It is a brutal procedure that ends the lives of unborn children through suction, dismemberment or chemical poisoning. This human rights abuse should not be paid for or encouraged by the government. Furthermore, the women in the “Silent No More Awareness Campaign” and “Operation Outcry” point out that abortion not only takes the lives of the unborn child, but also wounds their mothers.

Q: Do abortion funding bans save lives?

A: Yes! Abortion funding restrictions **SAVE LIVES!** Research published by the pro-abortion Alan Guttmacher Institute demonstrates that policies that prevent tax-funded abortion actually prevent 25% or more of the abortions that would otherwise occur among the covered population.

Q: Does the American public oppose taxpayer funding for abortion?

A: Yes, polling routinely shows that over 60% of those polled oppose taxpayer funding for abortion.

- An April 2011 CNN poll showed that 61% of respondents opposed public funding for abortion.
- A January 2010 Quinnipiac University Poll showed 67% of respondents opposed federal funding of abortion.
- A November 2009 Washington Post poll showed 61% of respondents opposed government subsidies for health insurance that includes abortion
- A September 2009 International Communications Research poll showed that 67% of respondents opposed measure that would “require people to pay for abortion coverage with their federal taxes.”

Q: Why do we need H.R. 3? Isn't the Hyde amendment enough?

A: The Hyde amendment only covers funds appropriated through the annual Labor, Health and Human Services Appropriations bills. Taxpayer funds made available through other bills are not covered by Hyde. That's why it has been necessary to attach funding bans to other bills to cover the programs funded through other funding streams (e.g. international aid, the federal employee health benefits program, the District of Columbia, Federal prisons, Peace Corp, etc.). Together these various funding bans form a patchwork of policies that cover most federal programs and the District of Columbia, but many of these funding bans must be reapproved every year and could be eliminated at any time. Furthermore, in 2010, the Patient Protection and Affordable Care Act (PPACA) established the largest deviation from this policy by allowing premium assistance credits under PPACA to be directed to health insurance coverage that includes abortion. PPACA also directly appropriated funds for high-risk pools, community health centers and other programs. These direct appropriations are NOT covered by the Hyde amendment.

Q: Are abortion funding bans constitutional?

A: Yes, the Supreme Court has held that the alleged constitutional "right" to an abortion "implies no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds." When a challenge to the constitutionality of the Hyde Amendment reached the Supreme Court in 1980 in the case of *Harris v. McRae*, the Court ruled that the government may distinguish between abortion and other procedures in funding decisions -- noting that **"no other procedure involves the purposeful termination of a potential life"** -- and affirmed that *Roe v. Wade* had created a limitation on government, not a government entitlement.

Q: Why does H.R. 3 amend the tax code?

A: Under the PPACA, premium assistance subsidies to help individuals purchase health insurance are classified as *tax credits* even though the "credits" are paid in advance by the government to insurance companies on behalf of an individual even if the individual has no tax liability in the first place. Also under PPACA, tax credits are made available to certain small businesses to help defray the cost of providing health insurance to their employees. H.R. 3 would only allow this credit to be used for plans that do not include abortion coverage. Finally, H.R. 3 ends the current practice of allowing itemized deductions for abortion in certain cases and ending tax-preferred status for abortion through health savings accounts (HSAs), flexible spending accounts (FSAs) and Medical Savings Accounts (MSAs).

Q: Why do you call PPACA individual premium assistance a subsidy?

A: The Congressional Budget Office (CBO) counts the cost of "tax credits" under PPACA as either "direct spending" or as "revenue reductions." Direct spending involves funds taken from the treasury to subsidize health insurance coverage. Revenue reductions represent reductions in tax liability. According to the CBO by 2020, PPACA premium assistance credits will cost the federal government \$72.2 billion in direct spending for premium assistance and \$27.2 billion in revenue reductions. **This means that 73% of premium assistance dollars will be provided in the form of "direct spending" or subsidies.**

Q: Why doesn't H.R. 3 contain a health exception?

A: The Hyde Amendment and other similar funding restrictions do not contain a health exception. A general "health" exception would gut the provisions because courts have interpreted the word "health" to include virtually any reason for an abortion. In *Doe v. Bolton*, the Supreme Court interpreted "health" to mean "all factors -- physical, emotional, psychological, familial and the woman's age -- relevant to the well-being of the patient."

Q: Does H.R. 3 raise taxes?

A: No, under H.R. 3, individuals CAN STILL RECIEVE A TAX CREDIT for health insurance coverage that DOES NOT INCLUDE ABORTION. If they also want abortion coverage they can use their own money to buy a separate abortion rider. The only scenario in which an individual or business would experience a tax increase under H.R. 3 is if the individual or business is so committed to abortion that they would rather pay more in taxes than choose a plan that does not cover abortion.

H.R. 3 has been scored as having a negligible tax impact by the Joint Committee on Taxation, which means H.R. 3 is considered tax neutral. In addition, American's for Tax Reform (ATR) has written a letter stating that "ATR has no problems or issues with H.R. 3. The bill has no net tax change whatsoever, and is therefore not legislation at all relating to the Taxpayer Protection Pledge. Attempts to claim otherwise are not based on reality, but on mere political gamesmanship of the lowest order."

Q: Does H.R. 3 use the term "forcible rape"?

A: The term "forcible rape" no longer appears in H.R. 3. The rape/incest exception in H.R. 3 is the same as the rape/incest exception in the Hyde amendment. The term "forcible rape" was not intended to change the meaning of the time-tested protections or exceptions currently contained in the Hyde amendment. To avoid confusion and distraction the bill text was changed to drop the word forcible.

Q: Will women who have been raped be targeted for audits under H.R. 3?

A: No, individual tax returns reflect total dollar amounts for medical care. They DO NOT list each and every expense. Since abortions aren't listed on the return anywhere, the IRS would have no information to prompt an "abortion audit."

Q: Is a rape victim who is audited by the IRS (for other reasons) subject to different audit standards if they take a tax deduction for abortion or use their HSA for an abortion?

A: No. The scenario of a rape victim being audited would be very rare since it would only apply if the rape victim was subject to an audit triggered for *other reasons*. As is the case in any audit, the individual taxpayer might be required to provide some documentation for all expenses billed to an HSA (or similar arrangement like an MSA or FSA) and itemized deductions might have to be documented. Under current rules, the IRS requires documentation for a number of sensitive issues. In fact, the IRS already only allows deductions for "legal abortions" under current law. As such, the IRS can now ask for evidence that the procedure was actually an abortion, and ask whether the illegal partial-birth procedure was used in order to ensure that the abortion was legal. H.R. 3 creates no new audit authority.

If H.R. 3 is enacted, the IRS, under President Obama's authority, will decide what documentation is necessary for the exceptions allowed under H.R. 3. Other federal agencies like Medicaid and the Federal Employee Health Benefits Program (FEHBP) have had no difficulty distinguishing between rape abortions and elective abortions and have done so without a reporting requirement. Barring a very unusual pattern of claims, these programs generally accept a physician's statement that the abortion was for one of these rare cases; there is no reason to expect different behavior from the IRS.

Q: Why is there a conscience clause in H.R. 3?

A: Since 2004, the Hyde amendment has included the Hyde-Weldon conscience clause which protects health care entities (including doctors, nurses, hospitals, health insurance providers, etc) from discrimination by any state, local or federal agency receiving funds under the Labor, Health and Human Services Appropriations Act. H.R. 3 makes that policy permanent and governs recipients of all sources of federal funds. H.R. 3 also adds a remedies section that gives entities legal recourse against actual or threatened discrimination.

Q: What about EMTALA? Should there be an “emergency” exception for the conscience clause?

A: Various conscience clauses have been in place for several decades and they have coexisted in harmony with the Emergency Medical Treatment and Active Labor Act (EMTALA). In fact, EMTALA itself even refers to stabilizing a pregnant woman and her “unborn child” before transport to another facility. Advocates for an “EMTALA” exception actually want an “emergency” exception loophole that would allow states to force pro-life physicians to do abortions in a broad range of circumstances even if another life-affirming treatment. Forcing pro-life doctors to do abortions under any circumstances is a violation of their moral conscience.