

# A Pro-Life Agenda for the 118th Congress

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## KEY TAKEAWAYS

Congress should protect unborn children, stop the interstate flow of abortion drugs, protect conscience rights, and stop taxpayer funding for abortions.

Congress should keep existing pro-life safeguards in spending bills and use the power of the purse to stop the Biden Administration's radical pro-abortion policies.

Using its oversight authority, Congress should hold the Biden Administration accountable for its campaign of resistance to the *Dobbs* decision.

At the start of each new Congress, The Heritage Foundation recommends pro-life policies for Members. The following year, a progress report takes stock of policy wins, ongoing challenges, and new prospects.

This is the first such report in a post-*Roe* America. Free from the dark shadow of *Roe v. Wade*, Congress cannot shrink from its role in crafting policy that carries out the government's duty to protect the first freedom: the right to life.

The pro-life movement's goal is to protect in law and welcome in life—every person—from the moment of conception. This requires a generational effort.

Despite the Left's best efforts, in 2023 there is a pro-life majority in the House of Representatives. But it must still contend with a pro-abortion majority in the Senate and a virulently pro-abortion President.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3750>

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This report provides a road map for Congress to advance pro-life policies in this challenging political setting. Congress should make the case for life to the American people, hold the Biden Administration accountable, and build on the pro-life movement’s momentum, moving America closer to the day when abortion is unthinkable.

## Legislation

**Gestational Protections.** Congress should protect unborn children with beating hearts through the Heartbeat Protection Act.<sup>1</sup> While several states have already done so with similar laws, many others have not. Some states have no gestational limits at all. This status quo—where Texas protects unborn children, but California treats them as medical waste—is unacceptable. Congress should use its constitutional authority<sup>2</sup> to protect the youngest and most vulnerable in every state.

**Abortion Survivors.** Congress should protect unborn children who survive abortion attempts. Federal law recognizes that infants born at any stage of development, regardless of the context of the birth, are “persons.”<sup>3</sup> But this law does not specify *duty of care* for these babies. The Born-Alive Abortion Survivors Protection Act<sup>4</sup> would require that an infant born alive following an abortion attempt receive proper medical care. It would punish health care providers who do not provide such care and also criminalize infanticide.

It is known from government sources in the United States and across the world that babies can and do survive abortion attempts.<sup>5</sup> Allowing these babies to suffer death by neglect is inhumane. Fixing this problem should not be controversial.

The House passed the Born-Alive Abortion Survivors Protection Act on January 11, 2023.<sup>6</sup> The Senate should put aside partisanship and follow suit.

**Lethal Discrimination.** Congress should also protect babies from lethal discrimination in the womb. One way is through the Protecting Individuals with Down Syndrome Act,<sup>7</sup> which would protect a child from abortion because a test result or diagnosis indicates the child has Down syndrome. The bill also prohibits forcing or coercing a woman to abort a child who has or may have Down syndrome.

A 2022 Joint Economic Committee report finds that between 60 percent and 90 percent of these precious boys and girls diagnosed with Down syndrome are aborted. It estimates that without these selective abortions, “the Down syndrome population would be 217,000 people

greater in 50 years, an increase which is greater than the current Down syndrome population.”<sup>8</sup>

A dozen states protect unborn children from such lethal discrimination in the womb.<sup>9</sup> The federal government should follow their lead.

**Chemical Abortion Drugs.** Congress should limit the interstate flow of dangerous chemical abortion drugs. Congress should also stop the Food and Drug Administration (FDA) from prioritizing the abortion industry over Americans’ health and safety.

The abortion pill regimen typically involves a two-part process. Mifepristone cuts off supply of a critical hormone called progesterone, which kills a developing unborn child. Then another drug, misoprostol, causes contractions akin to labor to expel the baby from the uterus. Mifepristone is subject to a safety protocol called a Risk Evaluation and Mitigation Strategy (REMS). This protocol, which applies to 60 drugs<sup>10</sup> now on the market, ensures that the “benefits of the medication outweigh its risks” and are administered safely.<sup>11</sup>

In the spring of 2021, under the cover of containing COVID-19, the FDA stopped requiring that chemical abortion drugs be dispensed in person in limited health care settings, contrary to its REMS safety protocol.<sup>12</sup> Then in December 2021, the FDA announced it would make that policy permanent and create a process for retail pharmacies to dispense these pills without a doctor’s visit.<sup>13</sup> In January 2023 the FDA officially formalized the process and updated the REMS.<sup>14</sup>

The FDA has put a stamp of approval on women and girls having risky do-it-yourself chemical abortions<sup>15</sup> in bathrooms, hotels, or college dorm rooms without doctors or nurses present.

In the post-*Dobbs* landscape, many states have passed new pro-life laws. But abortion pill-pushers, especially in pro-abortion states, undermine these efforts by promoting and trafficking chemical abortion drugs across state lines to pro-life states. As a result, abortion pills are the next pro-life battlefield.

Congress should step in. The SAVE Moms and Babies Act is a start.<sup>16</sup> The bill bars the FDA from approving any new abortion drugs. For abortion drugs currently approved, the bill reinstates the in-person dispensing requirement, once again disallowing mail-order and tele-abortions. The bill also improves post-marketing safety surveillance to better track health complications and adverse events. In practice, the bill would put a stop to the Biden Administration’s reckless disregard for women’s health and safety.

Again, this is just a start. Congress should use every tool at its disposal to limit the damage these dangerous pills pose to women, girls, and unborn children.

**Taxpayer Funding.** Congress should once and for all stop tax dollars from paying for elective abortions and supporting the abortion industry. The Hyde Amendment and similar “Hyde family” amendments keep tax dollars from paying for elective abortions across various funding streams. These policies have saved millions of lives over the past four decades.<sup>17</sup>

Regrettably, they largely take the form of annual riders that must be renewed every year. The No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act<sup>18</sup> would permanently end federal funding for elective abortion or health insurance coverage of abortions.

Congress should also end federal funding for the abortion industry and direct funding to centers that provide real health care for women. Most federal funding for abortion providers such as Planned Parenthood comes from Medicaid reimbursements and grants through programs such as the Title X Family Planning Program.<sup>19</sup> Under Hyde family protections, these funds cannot *directly* pay for elective abortions, but they can pay for shared overhead. However, money is fungible. Every federal dollar that goes to abortion providers frees up other money and resources for abortions.

The Protecting Life and Taxpayers Act would require that groups seeking federal funding certify that they will not perform abortions or fund other entities that do.<sup>20</sup> This would in effect defund abortion providers such as Planned Parenthood, the International Planned Parenthood Foundation, and Marie Stopes International. In the past these groups have refused to comply with similar terms in the Title X Family Planning Program<sup>21</sup> and foreign aid funding,<sup>22</sup> respectively. Federal resources can instead go to pregnancy resource centers and entities that provide high-quality, comprehensive care that is not entangled with the abortion industry.

**Conscience Rights.** Many Americans cannot in good conscience provide, pay for, or refer for abortions. Congress protects American citizens and entities from being forced to do so through policies such as the Church Amendments,<sup>23</sup> the Coats–Snowe Amendment,<sup>24</sup> and the Weldon Amendment. (The latter is an annual rider in appropriations bills, not a permanent statute.<sup>25</sup>) If someone believes his rights have been violated, he can file a complaint with the Office for Civil Rights at the Department of Health and Human Services (HHS).<sup>26</sup> But the current Administration has failed to adequately enforce conscience laws—if at all.<sup>27</sup>

The Conscience Protection Act<sup>28</sup> would codify the Weldon Amendment and provide victims with a private right of action for conscience violations.

Such a right does not guarantee a certain outcome, but it would allow Americans to have their day in court rather than rely on potentially hostile government bureaucrats for relief.

## Power of the Purse

**Existing Protections.** The pro-abortion left routinely calls on Congress to strike the Hyde Amendment and similar pro-life protections from appropriations bills. Congress must rebuff their efforts.

The Hyde Amendment prohibits federal funds from being spent on elective abortions. But Hyde is not the only rider under threat. Some other “Hyde family” amendments include:

- The Weldon Amendment, which protects health care providers from discrimination if they will not provide, pay for, or refer for abortion;
- The Smith Amendment, which prohibits funding elective abortions in the Federal Employee Health Benefits program;
- The Dornan Amendment, which prohibits funding elective abortions within Washington, D.C.;
- The Helms Amendment, which prohibits foreign aid funds from being spent on abortions;
- The Siljander Amendment, which prohibits foreign aid funds from being spent to lobby for abortion in other countries; and
- The Kemp–Kasten Amendment, which allows the President to withhold federal funding from any organization that “supports or participates in the management of a program of coercive abortion or involuntary sterilization.”

Americans across the ideological spectrum support these long-standing policies. All existing policies that separate tax dollars from abortion and protect Americans’ conscience rights are non-negotiables in the 118th Congress.

**Going on Offense.** Congress must protect unborn life and conscience in new funding streams wherever such language is needed. It must stop attempts to undermine existing pro-life and conscience-protection laws

or create backdoor funding for the abortion industry. And Congress must stop the Biden Administration's aggressive post-*Dobbs* agenda.

After *Dobbs*, the Biden Administration has—in some cases lawlessly—undermined state and federal pro-life laws. From HHS<sup>29</sup> to the Department of Defense<sup>30</sup> to the Veterans Administration,<sup>31</sup> this Administration has used executive orders, agency guidance, and the regulatory process to promote abortion and abortion travel using taxpayer dollars.<sup>32</sup>

The Free Access to Clinic Entrances (FACE) Act<sup>33</sup> forbids physically obstructing, injuring, intimidating, or interfering with anyone “obtaining or providing reproductive health services.” However, the Department of Justice (DOJ) has weaponized this law against peaceful pro-life Americans.<sup>34</sup> Meanwhile, the DOJ has been impotent in enforcing the FACE Act protection for “exercising...the First Amendment right of religious freedom at a place of religious worship” by failing to respond to attacks against churches and pro-life pregnancy clinics, to which FACE Act provisions also apply.<sup>35</sup>

Congress should stop funding or funding increases for departments and offices charged with carrying out the Biden Administration's actions.

## Oversight

Congress should conduct oversight to hold the Biden Administration accountable for its actions resisting the *Dobbs* decision. The FDA, HHS, Department of Defense, Department of Veterans Affairs, and DOJ have much to answer for.

This means shining a light on the Administration's action in hearings, congressional testimony, written questions for the record, congressional letters, and more. Congress can also leverage its demands by holding nominees and refusing to confirm presidential appointments until the Administration complies with oversight.

Congress should trace every taxpayer dollar that has unlawfully supported Biden's pro-abortion agenda. And it should ultimately uncover the full extent that the Biden Administration has promoted abortion and colluded with the abortion industry.<sup>36</sup>

## Conclusion

In the *Dobbs* decision, the Supreme Court made clear that the people can protect unborn life at any stage through “their elected representatives...in the States or Congress.”<sup>37</sup>

Many states have passed laws to protect women and unborn children in the past six months. Meanwhile, pro-abortion states are doing the opposite. Some have even enshrined abortion on demand in state constitutions.<sup>38</sup> At the federal level, the Biden Administration will continue using the administrative state to achieve what it cannot accomplish through the democratic process.

From gestational limits on abortion to protecting life and conscience in funding measures to government oversight and accountability, federal policymakers have an opportunity—and a constitutional duty—to advance robust pro-life policies in the 118th Congress.

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## Endnotes

1. Heartbeat Protection Act of 2023, H.R. 175, 118th Cong., 1st Sess., <https://www.congress.gov/bill/118th-congress/house-bill/175> (accessed February 3, 2023).
2. Thomas Jipping, "Can the Fourteenth Amendment Be Used to Protect Human Life Before Birth?," Heritage Foundation *Legal Memorandum* No. 321, December 28, 2022, <https://www.heritage.org/life/report/can-the-fourteenth-amendment-be-used-protect-human-life-birth>.
3. Born-Alive Infants Protection Act, 1 U.S.C. § 8.
4. Born-Alive Abortion Survivors Protection Act of 2023, H.R. 26, 118th Cong., 1st Sess., <https://www.congress.gov/bill/118th-congress/house-bill/26/text> (accessed February 3, 2023).
5. Melanie Israel, "The Necessity of the Born-Alive Abortion Survivors Protection Act," Heritage Foundation *Issue Brief* No. 4939, February 21, 2019, <https://www.heritage.org/life/report/the-necessity-the-born-alive-abortion-survivors-protection-act>.
6. Mary Margaret Olohan, "House Passes Bill Protecting Babies Born Alive in Botched Abortions," *The Daily Signal*, January 11, 2023, <https://www.dailysignal.com/2023/01/11/democrats-block-bill-protecting-babies-born-alive-in-botched-abortions/>.
7. Protecting Individuals with Down Syndrome Act, S. 18, 118th Cong., 1st Sess., <https://www.congress.gov/bill/118th-congress/senate-bill/18/text?r=5&s=1> (accessed February 3, 2023).
8. Joint Economic Committee Republicans, "Down Syndrome and Social Capital: Assessing the Costs of Selective Abortion," March 2022, <https://www.jec.senate.gov/public/index.cfm/republicans/2022/3/down-syndrome-and-social-capital-assessing-the-costs-of-selective-abortion> (accessed February 3, 2023).
9. Arizona, Arkansas, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Ohio, South Dakota, Tennessee, and Utah have all enacted legislation protecting children from discrimination based on genetic abnormality or Down syndrome, specifically, though not all of these laws are currently in effect. See Guttmacher Institute, "Abortion Bans in Cases of Sex or Race Selection or Genetic Anomaly," January 1, 2023, <https://www.guttmacher.org/state-policy/explore/abortion-bans-cases-sex-or-race-selection-or-genetic-anomaly> (accessed February 3, 2023).
10. U.S. Food and Drug Administration, "Approved Risk Evaluation and Mitigation Strategies (REMS)," <https://www.accessdata.fda.gov/scripts/cder/remis/index.cfm?event=RemsData.page> (accessed February 3, 2023).
11. U.S. Food and Drug Administration, "Risk Evaluation and Mitigation Strategies," <https://www.fda.gov/drugs/drug-safety-and-availability/risk-evaluation-and-mitigation-strategies-rems> (accessed February 3, 2023).
12. Alice Miranda Ollstein and Darius Tahir, "FDA Lifts Curbs on Dispensing Abortion Pills During Pandemic," *Politico*, April 12, 2021, <https://www.politico.com/news/2021/04/12/abortion-pills-481092> (accessed February 3, 2023).
13. Melanie Israel, "Biden Administration Sanctions Mail-Order Abortion. Here's How the Move Endangers Women," *The Daily Signal*, December 19, 2021, <https://www.dailysignal.com/2021/12/19/biden-administration-sanctions-mail-order-abortion-heres-how-the-move-endangers-women/>.
14. U.S. Food and Drug Administration, "Risk Evaluation and Mitigation Strategy (REMS) Single Shared System for Mifepristone 200mg," January 2023, [https://www.accessdata.fda.gov/drugsatfda\\_docs/remis/Mifepristone\\_2023\\_01\\_03\\_REMS\\_Full.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/remis/Mifepristone_2023_01_03_REMS_Full.pdf) (accessed February 3, 2023).
15. Melanie Israel, "Chemical Abortion: A Review," Heritage Foundation *Backgrounders* No. 3603, March 26, 2021, <https://www.heritage.org/life/report/chemical-abortion-review>.
16. SAVE Moms and Babies Act of 2023, S. 95, 118th Cong., 1st Sess., <https://www.congress.gov/bill/118th-congress/senate-bill/95/text> (accessed February 3, 2023).
17. Melanie Israel, "Abortion Funding: Save the Hyde Amendment," Heritage Foundation *Issue Brief* No. 5206, July 30, 2021, <https://www.heritage.org/life/report/abortion-funding-save-the-hyde-amendment>.
18. No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act, H.R. 7, 118th Cong., 1st Sess., <https://www.congress.gov/bill/118th-congress/house-bill/7/text?r=9&s=1> (accessed February 3, 2023).
19. Planned Parenthood, *Here for a Reason: 2020–2021 Annual Report*, [https://www.plannedparenthood.org/uploads/filer\\_public/40/8f/408fc2ad-c8c2-48da-ad87-be5cc257d370/211214-ppfa-annualreport-20-21-c3-digital.pdf](https://www.plannedparenthood.org/uploads/filer_public/40/8f/408fc2ad-c8c2-48da-ad87-be5cc257d370/211214-ppfa-annualreport-20-21-c3-digital.pdf) (accessed February 3, 2023).
20. Protecting Life and Taxpayers Act, H.R. 372, 118th Cong., 1st Sess., <https://www.congress.gov/bill/118th-congress/house-bill/372/text?s=3&r=1> (accessed February 3, 2023).
21. Melanie Israel, "Planned Parenthood Sides with Abortion Over Title X Funds. Here's What It Means," *The Daily Signal*, August 19, 2019, <https://www.dailysignal.com/2019/08/19/planned-parenthood-sided-with-abortion-over-title-x-funds-heres-what-it-means>.
22. U.S. Government Accountability Office, *Global Health Assistance Awardees' Declinations of U.S. Planned Funding Due to Abortion-Related Restrictions*, GAO-20-347, March 2020, <https://www.gao.gov/assets/gao-20-347.pdf> (accessed February 3, 2023).
23. 42 U.S.C. § 300a-7(b)-(e).
24. 42 U.S.C. § 238n.

25. See, for example, Consolidated Appropriations Act of 2005, Public Law 108-447.
26. Melanie Israel, "What Congress and the Administration Can Do to Protect Conscience Rights," Heritage Foundation *Issue Brief* No. 4795, December 7, 2017, <https://www.heritage.org/civil-society/report/what-congress-and-the-administration-can-do-protect-conscience-rights>.
27. Melanie Israel, "Pro-Life Progress Report for the 117th Congress and Administration," Heritage Foundation *Backgrounder* No. 3700, May 3, 2022, <https://www.heritage.org/life/report/pro-life-progress-report-the-117th-congress-and-administration>.
28. Conscience Protection Act, H.R. 6060, 117th Cong., 1st Sess., <https://www.congress.gov/bill/117th-congress/house-bill/6060> (accessed February 3, 2023).
29. News release, "HHS Issues Guidance to the Nation's Retail Pharmacies Clarifying Their Obligations to Ensure Access to Comprehensive Reproductive Health Care Services," U.S. Department of Health and Human Services, <https://www.hhs.gov/about/news/2022/07/13/hhs-issues-guidance-nations-retail-pharmacies-clarifying-their-obligations-ensure-access-comprehensive-reproductive-health-care-services.html> (accessed February 3, 2023).
30. Secretary of Defense, Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency, and U.S. Department of Defense Field Activity Directors, "Ensuring Access to Reproductive Health Care," October 20, 2022, <https://media.defense.gov/2022/Oct/20/2003099747/-1/-1/1/MEMORANDUM-ENSURING-ACCESS-TO-REPRODUCTIVE-HEALTH-CARE.PDF> (accessed February 3, 2023).
31. U.S. Department of Veterans Affairs, "Reproductive Health Services," interim final rule, *Federal Register*, Vol. 87, No. 174 (September 9, 2022), pp. 55287-55296, <https://www.federalregister.gov/documents/2022/09/09/2022-19239/reproductive-health-services> (accessed February 3, 2023).
32. The White House, "Fact Sheet: President Biden Issues Executive Order at the First Meeting of the Task force on Reproductive Healthcare Access," August 3, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/03/fact-sheet-president-biden-issues-executive-order-at-the-first-meeting-of-the-task-force-on-reproductive-healthcare-access-2/> (accessed February 3, 2023).
33. 18 U.S.C. § 248.
34. Hans A. von Spakovsky and Cully Stimson, "FBI, Justice Department Twist Federal Law to Arrest, Charge Pro-Life Activist," *The Daily Signal*, September 28, 2022, <https://www.dailysignal.com/2022/09/26/fbi-justice-department-twist-federal-law-to-arrest-charge-pro-life-activist/>.
35. Mary Margaret Olohan, "DOJ: Attacks on Pro-Life Pregnancy Centers 'Can Be Prosecuted,'" *The Daily Signal*, November 2, 2022, <https://www.dailysignal.com/2022/11/02/doj-attacks-on-pro-life-pregnancy-centers-can-be-prosecuted/>.
36. News release, "Justice Department Announces Reproductive Rights Task Force," U.S. Department of Justice, July 12, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force> (accessed February 3, 2023).
37. Justice Kavanaugh, concurring, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. \_\_\_\_ (2022), [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf) (accessed February 3, 2023).
38. The Heritage Foundation, "State Protections for Unborn Children," Data Visualization, <https://datavisualizations.heritage.org/life/state-protections-for-unborn-children/>.