



Regulatory Actions by Trump Administration

In the closing days of the Trump administration, the US Department of Health and Human Service (HHS) announced several actions to ensure compliance with existing laws related to respect for human life in research, disability-based discrimination, and the right of conscience.

On December 16, 2020, the HHS Office for Civil Rights announced that it is taking corrective action against the University of Vermont Medical Center and the State of California for violating federal conscience laws on abortion. UVMCMC violated the Church Amendments by forcing a nurse to participate in an elective abortion against her religious beliefs and moral convictions.¹ The State of California’s insurance and health care laws are violating the Weldon Amendment by requiring health plans to cover elective abortions. Most employers, including some churches, are unable to obtain self-funded health plans that exclude this objectionable coverage.²

On January 13, HHS issued a proposed rule to “strengthen informed consent requirements ... and ensure compliance with the statutory ban on the provision

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1. US Department of Justice, “Justice Department Defends Health Care Workers from Being Forced to Perform Abortions with Vermont Lawsuit,” news release, December 16, 2020, <https://www.justice.gov/opa/pr/justice-department-defends-health-care-workers-being-forced-perform-abortion-vermont-lawsuit>.
 2. US Department of Health and Human Services (HHS), Office for Civil Rights, “HHS Issues Notice of Violation to California for Its Abortion Coverage Mandate,” news release, January 24, 2020, <https://www.hhs.gov/about/news/2020/01/24/hhs-issues-notice-of-violation-to-california-for-its-abortion-coverage-mandate.html>.

of valuable consideration for human fetal tissue” in research. Specifically, the rule would require that

- There are no benefits or financial incentives provided to the pregnant woman or attending physician to “incentivize abortion or the donation of human fetal tissue.”
- No person who receives “human fetal tissue for use in research shall provide valuable consideration for the cost associated with the acquisition of the fetal tissue or with any abortion that may be the source of the human fetal tissue used or to be used in the research.” (*Valuable consideration* is defined as “all payments other than reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.”)
- The human fetal tissue may be used only if an acceptable informed consent form has been obtained.
- Human fetal tissue for research can be acquired only “from Federal or State Governments, Federal or State Government–owned entities, universities, colleges, accredited degree-granting institutions of higher education, or university hospitals or other academic medical centers.” (Note that this list of sources for fetal tissue does not include abortion providers like Planned Parenthood.)
- Human fetal tissue that is no longer used in research “shall be treated respectfully and disposed of reasonably and in compliance with any additional laws or regulations imposed by applicable state law.”
- “HHS Recipients that engage in human fetal tissue research [shall] provide HHS, inspectors general, and the Comptroller General with a right to access to all informed consent forms obtained for human fetal tissue research, and documents, papers, or other records as are necessary to establish that the human fetal tissue was not obtained or transferred for valuable consideration and that federal funds were not used to acquire or otherwise obtain the human fetal tissue.”
- “Expenses associated with the acquisition of human fetal tissue from elective abortions for use in research are not allowable expenses under Federal awards from an HHS awarding agency.”³

This proposed rule comes after HHS announced on June 5, 2019, that it would no longer conduct intramural research (research done within HHS) that requires new fetal tissue from elective abortions, and that new applications for extramural

3. Establishment of Safeguards and Program Integrity Requirements for Health and Human Services–Funded Extramural Research Involving Human Fetal Tissue, 86 Fed. Reg 2615 (January 13, 2021).

research that used fetal tissue would be subject to congressionally authorized review by an ethics advisory board.⁴

On January 15, the Office for Civil Rights issued a proposed rule to update and clarify existing regulations to conform with federal laws intended to protect infants and adults with disabilities from discrimination.⁵ It builds on an executive order signed by President Donald Trump on September 25, 2020, to ensure that federally funded hospitals are aware of, and compliant with, current legal protections intended to ensure that babies born prematurely or with disabilities receive a medical assessment and appropriate care.⁶ That executive order also calls for more funding for research to improve outcomes for babies born prematurely or with disabilities.

On January 15, HHS also issued a request for information (RFI) in hopes of revising existing regulations related to disability discrimination in health care, and it is soliciting information and feedback on issues that include the following health scenarios:

- **Organ Transplantation:** The RFI states that “mounting evidence suggests that individuals with disabilities are disproportionately denied access to life-saving organ transplants.”
- **Life-Saving or Life-Sustaining Care—Medical Futility and Quality of Life Judgments:** The RFI notes that a significant body of evidence indicates that “individuals with disabilities face discrimination of various kinds in the provision of life-saving or life-sustaining care.”
- **Assisted Suicide:** The RFI states, “[The National Council on Disability] has reported that a double standard exists in suicide prevention efforts where people with disabilities are not referred for mental health treatment when seeking assisted suicide, while people without disabilities do receive such referrals.”
- **Crisis Standards of Care:** During the COVID-19 pandemic, there have been reports “that state Crisis Standards of Care guidelines included discriminatory provisions.”⁷

The Biden administration issued a regulatory freeze upon taking office on January 20, which pauses all new or pending rules until they can be reviewed by the

4. HHS, “Statement from the Department of Health and Human Services,” news release, June 5, 2019, <https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2019/06/05/statement-from-the-department-of-health-and-human-services.html>.

5. HHS, “OCR Publishes Proposed Rule Protecting Infants Born Alive from Discrimination on the Basis of Disability,” news release, January 15, 2021, <https://www.hhs.gov/about/news/2021/01/15/ocr-publishes-proposed-rule-protecting-infants-born-alive-discrimination-basis-disability.html>.

6. Protecting Vulnerable Newborn and Infant Children, 85 Fed. Reg. 62187 (September 25, 2020).

7. HHS, Discrimination on the Basis of Disability in Critical Health and Human Service, docket no. HHS-OCR-2021-0004 (January 15, 2021), <https://www.hhs.gov/sites/default/files/504-rfi.pdf>.

new administration. This means it is possible that at least some of these proposed actions, regulations, or the RFI could be rescinded.

President Biden's Executive Actions against Human Life

Within the first nine days of his administration, President Joe Biden has already taken several grievous actions in support of abortion. Very sadly, it seems he is following the *Blueprint for Sexual and Reproductive Health, Rights, and Justice* put forward by more than ninety pro-abortion organizations (<https://reproblueprint.org>).

First, on January 22, the president and vice president commemorated the anniversary of *Roe v. Wade* “by calling the decision an advancement of women’s rights and health.” Archbishop Joseph Naumann, chairman of the United States Conference of Catholic Bishops (USCCB), Committee on Pro-Life Activities, responded with the following statement:

It is deeply disturbing and tragic that any President would praise and commit to codifying a Supreme Court ruling that denies unborn children their most basic human and civil right, the right to life under the euphemistic disguise of a health service. I take this opportunity to remind all Catholics that the Catechism states, “Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable.” Public officials are responsible for not only their personal beliefs, but also the effects of their public actions. *Roe*’s elevation of abortion to the status of a protected right and its elimination of state restrictions paved the way for the violent deaths of more than 62 million innocent unborn children and for countless women who experience the heartache of loss, abandonment, and violence.

We strongly urge the President to reject abortion and promote life-affirming aid to women and communities in need.⁸

Second, on January 28, Biden signed an executive order allowing US taxpayer funds to be sent to organizations that both promote and provide abortions in developing countries.⁹ The policy which he overturned, known as Promoting Life in Global Health (formerly the Mexico City Policy), had separated abortion from family planning activities and ensured that US taxpayer dollars went only to organizations that agreed to provide health services in a way that respected the dignity of all human beings. The pro-life policy was first announced in Mexico City by President Ronald Reagan in 1984. The policy was then rescinded by President Bill Clinton in 1993, reinstated by President George W. Bush in 2001, and rescinded again by President Barack Obama in 2009. Lastly, it was reinstated by Trump on January 23, 2017, and updated so that it applied to all global health programs.

8. US Conference of Catholic Bishops, “U.S. Bishops’ Pro-Life Chairman Responds to President and Vice President’s Statement on Anniversary of *Roe v. Wade*,” news release, January 22, 2021, <https://www.usccb.org/news/2021/us-bishops-pro-life-chairman-responds-president-and-vice-presidents-statement-anniversary>.

9. Joseph R. Biden Jr., Memorandum on Protecting Women’s Health at Home and Abroad (January 28, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/>.

According to a Marist poll released in January, 77 percent of Americans oppose using taxpayer dollars to support abortion in other countries.¹⁰

Archbishop Naumann and Bishop David Malloy of Rockford, chairman of the USCCB Committee on International Justice and Peace, responded:

It is grievous that one of President Biden's first official acts actively promotes the destruction of human lives in developing nations. This Executive Order is antithetical to reason, violates human dignity, and is incompatible with Catholic teaching. We and our brother bishops strongly oppose this action. We urge the President to use his office for good, prioritizing the most vulnerable, including unborn children. As the largest non-government health care provider in the world, the Catholic Church stands ready to work with him and his administration to promote global women's health in a manner that furthers integral human development, safeguarding innate human rights and the dignity of every human life, beginning in the womb. To serve our brothers and sisters with respect, it is imperative that care begin with ensuring that the unborn are free from violence, recognizing every person as a child of God. We hope the new administration will work with us to meet these significant needs.¹¹

Third, in the same January 28 executive order, Biden announced his intention to rescind the Protect Life Rule governing the Title X family planning program. The rule prohibits Title X projects from referring for abortion, requires Title X entities to maintain physical and financial separation from abortion providers, and requires compliance with abuse reporting laws. Prior to the Protect Life Rule, Planned Parenthood received nearly \$60 million in Title X funds every year. Under the rule, abortion providers who do not comply with the new regulations are not eligible for Title X funds. The rule does not reduce Title X funds; it redirects them to providers that do not perform or promote abortions.

Fourth, Biden directed the Secretary of State to provide funding to the United Nations Population Fund. Trump directed funding away from UNFPA under the authority provided by the Kemp-Kasten Amendment. This amendment is a long-standing appropriations provision that allows the president to discontinue funding to organizations that support or participate in the management of a coercive abortion program. The Trump administration's determination explained that China's National Health and Family Planning Commission oversees the implementation of China's two-child birth limit law.¹² The determination stated that UNFPA supports China's family planning program, which includes coercive elements. Despite

10. Knights of Columbus and Marist Institute for Public Opinion, *Americans' Opinions on Abortion*, January 2021, <https://www.kofc.org/en/resources/news-room/polls/kofc-americans-opinions-on-abortion012021.pdf>.

11. US Conference of Catholic Bishops, "Bishops Decry Executive Order That Promotes Abortion Overseas," news release, January 28, 2021, <https://www.usccb.org/news/2021/bishops-decry-executive-order-promotes-abortion-overseas>.

12. Joseph E. Macmanus, Letter to Bob Corker, US Department of State, Committee on Foreign Relations, April 3, 2017, <https://assets.documentcloud.org/documents/3534944/State-Kemp-Kasten-Amendment-Determination.pdf>.

UNFPA's complicity in China's continued human rights abuse, Biden has chosen to resume funding.

Fifth, Biden announced that the United States shall withdraw from the Geneva Consensus Declaration. Signed by thirty-five countries in 2020, the declaration is a historical international agreement that proclaims many critical truths about the sanctity of human life and the family, including that every human being has the inherent right to life and that the family is foundational to a healthy society. Equally important, the declaration makes clear that every country has a sovereign right to determine its own laws with regard to abortion, free of coercion. Specifically, it asserts that "in no case should abortion be promoted as a method of family planning," and there is "no international right to abortion."¹³

Finally, the executive order directs the Secretary of State to "ensure that adequate funds are being directed to support women's health needs globally, including sexual and reproductive health and reproductive rights." These terms are often used euphemistically to refer to abortion.

Increasing Attacks on Laws Banning Taxpayer Funding of Abortion

Pro-abortion extremists not only are pushing for executive action by the Biden administration in their blueprint mentioned previously. They also have an aggressive legislative agenda as well, including seeking an end to the Hyde Amendment and similar longstanding, bipartisan policies prohibiting use of taxpayer funds to pay for abortions and health plans that cover abortions.¹⁴ In recent months, there has been a significant escalation in attacks on Hyde and its international counterpart, the Helms Amendment, by Biden and high-ranking Democrats in Congress, who have characterized the policies as racist and have publicly committed to eliminate them and others from funding bills this year. More specifically, House Speaker Nancy Pelosi and House Appropriations Chair Rosa DeLauro have announced that Hyde will *not* be included in this year's appropriations bill.¹⁵ During his campaign for president, Biden changed his position on the Hyde Amendment and now seems committed to its repeal.¹⁶ Add to this a Senate that is now controlled by the Democrats, most of whom also seek the repeal of Hyde, and it is not an exaggeration

13. US Mission to the United Nations et al., Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family (November 11, 2020), <https://geneva.usmission.gov/2020/11/11/joint-statement-promoting-womens-health-and-strengthening-the-family-wha-73/>.

14. The Hyde Amendment, contained in the federal government's annual appropriations legislation, prohibits federal taxpayer funding of domestic abortions and health plans that cover abortions, except in cases of rape or incest or to save the life of the mother.

15. Jennifer Haberkorn, "House Democrats Will Try to Repeal Long-Standing Ban on Federal Money for Abortions," *Los Angeles Times*, August 28, 2020, <https://www.latimes.com/politics/story/2020-08-28/democrats-seek-to-restore-government-funding-of-abortion>.

16. BidenHarris, "The Biden Agenda for Women," accessed February 11, 2020, <https://joebiden.com/womens-agenda/>. "Vice President Biden supports repealing the Hyde Amendment because health care is a right that should not be dependent on one's zip

to say that Hyde and similar policies are facing the most serious threat of repeal since their enactment.

However, there are at least two Democratic senators, Joe Manchin (WV) and Bob Casey (PA), who have voiced support for Hyde and indicate they will oppose its repeal. Furthermore, for the time being, the Senate's legislative filibuster (which requires sixty votes to advance legislation) seems likely to remain in place.¹⁷ This suggests that for the immediate future in the 117th Congress, it may be improbable that appropriations bills without these longstanding pro-life provisions would advance to the president, since there would be no more than fifty votes for such an appropriations bill in the Senate. But this commitment is not a guarantee, and circumstances could change these two senators' minds to support elimination of the filibuster. Furthermore, it is possible that the Democrats could change another procedural rule (known as the Byrd Rule) that would allow them to attach non-budgetary legislation (like the EACH Woman Act [H.R. 1692, 116th Cong.] that would legislatively repeal Hyde) into a budget reconciliation bill with only fifty votes (with the fifty-first vote provided by Vice President Kamila Harris).

This is a very serious situation for several reasons. First, Hyde has been credited with saving nearly 2.5 million lives since its enactment in 1976, so its elimination will probably result in a significant increase in abortions.¹⁸ Second, the Hyde Amendment has represented a bipartisan compromise position on abortion. Regardless of one's view on the legality of abortion, there has been a consensus that taxpayers should not have to fund and encourage it. Furthermore, Hyde has been enacted and signed into law every year since its inception whether Congress and the White House were led by Republicans or Democrats. Third, Hyde has served as the model for dozens of other federal and state policies that prohibit the government from funding abortion in other areas (for example, in trafficking programs, community health programs, or health insurance). Rescinding Hyde would even impose a pro-abortion funding policy on states that have decided against it. With the Hyde Amendment in place, states choose whether to fund elective abortions with state taxes, and the people and elected representatives of thirty-three states have voluntarily chosen *not* to do so.¹⁹ Without the Hyde Amendment, abortion

code or income. And, the public option will cover contraception and a woman's constitutional right under *Roe v. Wade*."

17. Jordain Carney, "Senate Democrats Leery of Nixing Filibuster," *The Hill*, January 16, 2021, <https://thehill.com/homenews/senate/534527-senate-democrats-leery-of-nixing-filibuster>.
18. Michael J. New, "Addendum to Hyde @ 40: Analyzing the Impact of the Hyde Amendment," Charlotte Lozier Institute, July 21, 2020, <https://lozierinstitute.org/addendum-to-hyde-40-analyzing-the-impact-of-the-hyde-amendment/>. This site also links to New's more complete 2016 study, which cites over twenty peer-reviewed studies showing that such laws help prevent abortions. The estimate of lives saved takes into account the fact that some states use their state tax dollars to replace federal abortion funding.
19. Guttmacher Institute, "State Funding of Abortion under Medicaid," February 1, 2021, <https://www.guttmacher.org/print/state-policy/explore/state-funding-abortion-under-medicaid>.

would probably become just another basic service that *all* states must fund to be part of Medicaid.

Pro-Life Legislation in the 117th Congress

Despite the unlikely prospects of any pro-life legislation's moving forward in this Congress, many pro-life bills continue to be introduced. The Pro-Life Secretariat has so far expressed support for the following pro-life bills:

- The No Taxpayer Funding for Abortion Act would establish a permanent, government-wide prohibition on abortion funding (S. 92, 117th Cong.).
- The Pain-Capable Unborn Child Protection Act protects the right to life of unborn children beginning at twenty weeks after fertilization (H.R. 36, 115th Cong.).
- The Protecting Life and Integrity in Research Act enhances protection for taxpayer-funded research on fetal tissue while holding individuals or groups who seek to profit from the sale of fetal tissue accountable (H.R. 573, 116th Cong.).
- The Born Alive Abortion Survivors Protection Act requires any health care practitioner present when a child is born alive following an abortion to exercise the same degree of care to preserve the life and health of the child as would be given to any other child born alive at the same gestational age. And following exercise of such care, it requires the practitioner to ensure that the child is immediately transported and admitted to a hospital (H.R. 619, 117th Cong.).
- The SAVE Moms and Babies Act prevents labeling changes, such as removing the risk evaluation and mitigation strategies (REMS), for already approved abortion drugs; prevents providers from dispensing the drugs remotely, by mail, or via telemedicine; prevents the US Food and Drug Administration from approving new chemical abortion drugs (S. 78, 117th Cong.).
- The Dignity for Aborted Children Act attempts to instill some dignity in how these bodies are treated by insisting that fetal remains be buried or cremated, as we do in the normal course with other human bodies (S. 2590, 116th Cong.).
- The Ensuring Accurate and Complete Abortion Data Reporting Act intends to improve the reporting of abortion data to the US Centers for Disease Control and Prevention (H.R. 3580, 116th Cong.).

Advancing pro-life legislation and stopping pro-abortion legislation requires a lot of grassroots lobbying of our elected officials in Congress. The Secretariat of Pro-Life Activities provides an easy way to make your voice heard and to join with other Catholics in prayer and service through "Respect Life Prayer and Action." Those who sign up at www.respectlife.org will receive prayers, action alerts to

contact Congress and government leaders, service opportunities to aid at-risk women, and more.

Finishing Up with Inspiration

In an amicus brief filed before the US Supreme Court in *Loce v. New Jersey*, Mother Teresa offered characteristically powerful and challenging words about how *Roe* “deformed a great nation”:

In another sense, no one in the world who prizes liberty and human rights can feel anything but a strong kinship with America. Yours is the one great nation in all of history that was founded on the precept of equal rights and respect for all humankind, for the poorest and weakest of us as well as the richest and strongest. As your Declaration of Independence put it in words that have never lost their power to stir the heart:

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness . . .

A nation founded on these principles holds a sacred trust: to stand as an example to the rest of the world, to climb ever higher in its practical realization of the ideals of human dignity, brotherhood, and mutual respect. Your constant efforts in fulfillment of that mission, far more than your size or your wealth or your military might, have made America an inspiration to all mankind.

It must be recognized that your model was never one of realized perfection, but of ceaseless aspiration. From the outset, for example, America denied the African slave his freedom and human dignity. But in time you righted that wrong, albeit at an incalculable cost in human suffering and loss of life. Your impetus has almost always been toward a fuller, more all-embracing conception and assurance of the rights which your founding fathers recognized as inherent and God-given. Yours has ever been an inclusive, not an exclusive, society. And your steps, though they may have paused or faltered now and then, have been pointed in the right direction and have trod the right path. The task has not always been an easy one, and each new generation has faced its own challenges and temptations. But, in a uniquely courageous and inspiring way, America has kept faith.

Yet there has been one infinitely tragic and destructive departure from those American ideals in recent memory. It was this Court’s own decision in 1973 to exclude the unborn child from the human family. *Roe v. Wade*, 410 U.S. 113 (1973). You ruled that a mother, in consultation with her doctor, has broad discretion, guaranteed against infringement by the United States Constitution, to choose to destroy her unborn child. Your opinion stated that you did not need to “resolve the difficult question of when life begins.” 410 U.S. at 159. That question is inescapable. If the right to life is an inherent and inalienable right, it must surely obtain wherever life exists. No one can deny that the unborn child is a distinct being, that it is human, and that it is alive. It is unjust, therefore, to deprive the unborn child of its fundamental right to life on the basis of its age, size, or condition of dependency. It was a sad infidelity to America’s highest ideals when this Court said that it did not matter, or could not be determined, when the inalienable right to life began for a child in its mother’s womb.

America needs no words from me to see how your decision in *Roe v. Wade* has deformed a great nation. The so-called right to abortion has pitted mothers against their children and women against men. It has sown violence and discord at the heart of the most intimate human relationships. It has aggravated the derogation of the father's role in an increasingly fatherless society. It has portrayed the greatest of gifts—a child—as a competitor, an intrusion, and an inconvenience. It has nominally accorded mothers unfettered domination over the independent lives of their physically dependent sons and daughters. And, in granting this unconscionable power, it has exposed many women to unjust and selfish demands from their husbands or other sexual partners.

Human rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity. The right to life does not depend, and must not be declared to be contingent, on the pleasure of *anyone* else, not even a parent or a sovereign.²⁰

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20. Brief for Mother Teresa of Calcutta as Amicus Curiae, *Loce v. New Jersey*, 510 U.S. 1165 (1994), at 4–8, <http://haroldcassidy.com/pdf/Mother-Teresa.pdf>.