

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution
Hearing on H.R. 3, the “No Taxpayer Funding for Abortion Act”

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Introduction

Thank you for inviting me to provide testimony regarding H.R. 3, the “No Taxpayer Funding for Abortion Act,” introduced by Representative Chris Smith (R-NJ) and Representative Dan Lipinski (D-IL).

Thirty-five years ago a consensus was reached between those who support legal abortion and those who oppose it. A majority of “Pro-life” and “Pro-choice” Americans came together in agreement that, whatever their differences on the underlying question of legality, the government should not subsidize abortions. This agreement was the Hyde Amendment of 1976, in which Congress amended the Labor, Health and Human Services (LHHS) appropriations act to limit the funding of abortion to cases where an abortion is necessary to save the life of the mother and later to abortions involving pregnancies from rape or incest.¹

When a challenge to the constitutionality of the Hyde amendment reached the Supreme Court in 1980 in the case of *Harris v. McCrae*, 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.² Three years earlier the Supreme Court had ruled that government refusal to fund abortion placed no restriction on the right to choose abortion.³

The “No Taxpayer Funding for Abortion Act” (H.R. 3.) implements this legal and political consensus on a government-wide basis, through the means of statutory law.

H.R. 3 does not impact in any way the legality of any abortion, nor does it strengthen or diminish the arguments on either side of the abortion divide. Rather, it simply codifies the long-standing principle that federal dollars should not be used to finance abortions or abortion coverage, a principle supported by an overwhelming majority of Americans: 67%, according to a recent

¹ The provision is named after U.S. Representative Henry Hyde (R-IL) who, as a freshman member of the House, first proposed the amendment. Rep. Hyde (1924-2007) served in the House from 1975-2007. The Hyde Amendment is sometimes misunderstood to mean only the prohibition of direct funding for abortions. In truth, the Hyde Amendment not only prevents federal funding to pay directly for abortions but also prevents federal funds from paying for health care plans that include abortion coverage. See Sections 507 and 508(a)-(c) of Division D of the Consolidated Appropriations Act, 2010 (P.L. 111-117).

² *Harris v. McCrae*, 448 U.S. 297, 325 (1980).

³ *Maher v. Roe*, 432 U.S. 464, 475 (1977).

Quinnipiac University poll.⁴ It also codifies the Hyde-Weldon conscience protection amendment renewed as part of the LHHS appropriations bill since 2004 to prevent government discrimination against healthcare providers, including doctors, nurses, and hospitals, because the providers do not provide, cover, or refer for abortions.⁵

Congress has the authority to pass the H.R. 3 under the Spending clause in Article 1, Section 8, Clause 1 of the U.S. Constitution.⁶

Over the years the Hyde Amendment has been included in amendments to various appropriations bills annually renewed by Congress, in each instance prohibiting the funding of abortions through a particular federally-funded program.⁷ What has been lacking is a single, simple, law prohibiting government funding of abortion across the board, wherever federally-funded programs arise.

Moreover, two laws passed in the last Congress reversed course on the Hyde Amendment principle: the Patient Protection and Affordable Care Act (known popularly as “ObamaCare” and sometimes referenced herein as PPACA),⁸ which allows federal funds directly to pay for abortions and to pay for health care plans which cover abortion, and the Financial Services Appropriations Act for 2010, which allows funding for all abortions in the District of Columbia with funds appropriated from Congress.⁹

Why Does Abortion Warrant a Funding Prohibition?

An induced abortion is the purposeful termination of the life of a human child before birth. As the Supreme Court stated in *Harris v. McCrae*, “no other procedure involves the purposeful termination of a potential life.”¹⁰

The overwhelming majority of abortions in America are done on healthy women with healthy babies, according to research conducted by the Guttmacher Institute.¹¹ The Guttmacher research

⁴ Quinnipiac University Poll, page 7, January 14, 2010.

⁵ Hyde-Weldon is currently contained in Section 508(d) of Division D of The Consolidated Appropriations Act, 2010 (P.L. 111-117).

⁶ Where Congress has the authority to tax and spend money for the general welfare, as a general matter it also has the authority to carve out exceptions to that spending.

⁷ Examples include the Smith Amendment on Financial Services prevents federal funding for abortions under the Federal Health Employee Benefits Program, the Helms Amendment prevents funding abortions as a method of family planning in international aid, and restrictions on the funding for abortions through Medicaid and other government health programs such as the State Children’s Health Insurance Plan.

⁸ Patient Protection and Affordable Health Care Act, H.R. 3590, became law P.L. 111-148 on March 23, 2010.

⁹ Passed as Division C of the Consolidated Appropriations Act, 2010 (P.L. 111-117).

¹⁰ *Harris* at 325.

¹¹ L. B. Finer, L. F. Frohwirth, L. A. Dauphinee, S. Singh and A. M. Moore, “Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives,” *Perspectives on Sexual and Reproductive Health* 37 (2005): 113, 114. (Sarah Rosenbaum, a fellow witness at today’s hearing who opposes H.R. 3, is a member of this Institute’s governing board).

This survey shows women have abortions for the following reasons:

25 % “not ready for a(nother) child/timing is wrong”

23 % “can’t afford a baby now”

19 % “have completed my childbearing/have other people depending on me/children are grown”

8 % “don’t want to be a single mother/am having relationship problems”

reveals that 92% of all abortions today are done for reasons unrelated to the health of the mother, the health of the baby, or cases involving rape or incest.

In 2008 there were 1,212,350 abortions in the United States.¹² If the Guttmacher Institute is correct, 1,115,362 abortions in 2008 were done on healthy women to end the lives of healthy babies.

In fact, the United States has the highest abortion rate in the Western World.¹³

Every abortion is an act of violence. One abortion method on the rise is Mifepristone, or RU-486, a drug regimen ingested orally which starves a developing fetus of the hormone necessary for its survival. RU-486 can cause an abortion up to ten weeks of fetal development – well past the point when the baby’s beating heart can be observed through ultrasound imagery.¹⁴ Often a second drug is taken to expel the baby.¹⁵ An RU-486 abortion is completed at home. Since it was approved by the Food and Drug Administration (FDA) a decade ago (under expedited review), 8 women have died in the United States due to infection and severe bleeding after taking RU-486, and over 1,300 women have suffered adverse events reported to the FDA.¹⁶ Those who do not suffer serious medical complications still face the prospect of delivering a dead baby at home.

There are different methods of surgical abortion depending on the age of the developing child. The most common method used during the first twelve weeks of pregnancy uses suction aspiration, where a woman’s cervix is dilated and a suction device is inserted to remove the child. A similar method called Dilation and Curettage (D&C) involves using a sharp instrument to scrape a living fetus from the mother’s uterus. Later in gestation, the mother’s cervix is dilated and forceps are inserted to dismember the child’s body and remove it piece by piece; the child’s skull may be crushed and the spine snapped.¹⁷ Each of these abortion methods is extremely invasive.

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- 7 % “don’t feel mature enough to raise a(nother) child/feel too young”
 - 6% “other” (this category had no further explanation)
 - 4% “would interfere with education or career plans”
 - 4 % “physical problem with my health”
 - 3 % “possible problems affecting the health of the fetus”
 - >0.5% “husband or partner wants me to have an abortion”
 - >0.5 % “was a victim of rape”
 - >0.5 % “became pregnant as a result of incest”

¹² See The Guttmacher Institute: http://www.guttmacher.org/pubs/fb_induced_abortion.html.

¹³ *Sharing Responsibility: Women, Society and Abortion Worldwide* (New York: The Guttmacher Institute, 1999), p. 28, <http://www.guttmacher.org/pubs/sharing.pdf>.

¹⁴ Moore, Keith L. and Persaud, T.V.N. *The Developing Human: Clinically Oriented Embryology*, 6th edition (Philadelphia: W.B. Saunders Co. 1998): 77, 350.

¹⁵ There is no doubt that every RU-486 pregnancy termination is an abortion. RU-486 ends the life of an implanted embryo or fetus. According to all four major American medical dictionaries that is an abortion. C.M. Gacek, “Conceiving Pregnancy: U.S. Medical Dictionaries and Their Definitions of Conception and Pregnancy,” 9 *National Catholic Bioethics Quarterly* (Autumn 2009): 542-57.

¹⁶ Coralee G. Lemley, “Mifepristone U.S. Postmarketing Adverse Events Summary Through 1/31/2008” (Rockville, Md: U.S. Food and Drug Administration, Jan. 31, 2008).

¹⁷ Warren M. Hern, M.D., *Abortion Practice* (Philadelphia: J.B. Lipincott Company, 1984), pp. 153-154. The conduct outlined in the recent grand jury report against abortion practitioner Kermit Gosnell of Philadelphia –

That abortion is scandalous to many is understandable; that it is exceptionally controversial in the United States is beyond dispute. For these reasons, it is entirely appropriate that abortions not be financed by the federal government.

The History of Funding Elective Abortion

In 1973 the federal government began funding abortion under the Social Security Act as part of its Medicaid program to provide health benefits to the poor. Congress passed the Hyde Amendment in 1977, and when it was upheld by the Supreme Court in 1980 in *Harris v. McCrae*, the LHHs Department stopped paying for abortions except those allowed by the Hyde Amendment. By that point, 300,000 abortions per year were being financed with federal dollars under Medicaid.¹⁸

In 1993 the Congressional Budget Office estimated that the federal government would pay for as many as 675,000 abortions each year without the Hyde Amendment and other measures in place at the time to prevent federal funding of abortion in federal programs.¹⁹

By contrast, in 2008 there were 425 abortions funded by the federal government and in 2009 there were 220 government-financed abortions.²⁰

It's axiomatic that when government subsidizes conduct, it encourages it. Our tax code is replete with pertinent examples. The Supreme Court in *Maher v. Roe* acknowledged the truth of this proposition in the context of abortion when it equated government funding of an activity with government encouragement of that activity.²¹

When one considers that the overwhelming majority of U.S. abortions are purely elective – 92% of abortions are done on healthy women to terminate the lives of healthy babies, according to the Alan Guttmacher Institute – the abortion-funding question becomes, quite literally, a matter of life-and-death for many thousands of American children.

The Passage of “ObamaCare” and the Executive Order on Abortion Funding

Abortion rights proponents have never concealed their goal of government-financed abortion without restriction. In a “wish list” for government healthcare sent to the White House Transition Team, a number of organizations, including Planned Parenthood, stated:

induction delivery of living babies and the cutting of their spinal cords with scissors -- is not dissimilar to some abortion methods; the main distinction being the location of the baby. “DA: Pa. abortion doc killed 7 babies with scissors”, Associated Press, by Maryclaire Dale And Patrick Walters, Jan 19, 2010.

http://news.yahoo.com/s/ap/20110119/ap_on_re_us/us_abortion_clinic_investigation.

¹⁸ 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.

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

²⁰ 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.

²¹ *Maher*, 432 U.S. at 475.

“Comprehensive benefits must include access to the full range of reproductive health services, including contraception, maternity care, and abortion care.”²² Indeed, President Obama himself, on the campaign trail in 2007, promised Planned Parenthood that the provision of “reproductive services” would be “at the heart” of his planned health care legislation.²³ The passage of “ObamaCare” substantially achieves this goal.

Prior to its passage by the full Congress, the House of Representatives voted in favor of legislation which included an amendment by former Rep. Bart Stupak (D-MI) to prohibit funding of abortion. The Senate bill, however, contained a variety of provisions that could fund and subsidize abortion. Ultimately former Rep. Stupak and others agreed to vote in favor of legislation including the text of the Senate bill in exchange for a promise that President Obama would sign an executive order purporting to nullify the Senate bill’s abortion funding language.

White House Executive Order 13535 was signed on March 24, 2010, but by its own terms it fails to reach some of the abortion-funding provisions in “ObamaCare,” such as the provision regarding pre-existing conditions. Nothing in the Executive Order limits funds under this section.

Moreover, an executive order is inherently limited: it binds only the executive branch, it can be rescinded at any time, and it does not and cannot change the authority of statutory law as applied to private individuals. “Executive orders cannot override statutory provisions,” according to the Congressional Research Service. When executive orders conflict with duly-enacted statutes, a court-challenge can result in the nullification of the executive order.

Former White House Chief of Staff, Rahm Emanuel, admitted as much during an editorial board meeting with the Chicago Tribune. He told the Tribune editors, “I came up with an idea for an executive order to allow the Stupak Amendment *not to exist by law* but by executive order” (emphasis added).²⁴ The President’s own Chief of Staff admits that abortion funding restrictions do not exist by law in ObamaCare.

Even the president of the Planned Parenthood Federation of America stated in a March 21, 2010 press release stated that the President’s Executive Order on abortion funding was “a symbolic gesture.”²⁵

²² See Planned Parenthood Federation of America “Advancing Reproductive Rights and Health Care in a New Administration.” Pg 17. <http://www.nrlc.org/obamaabortionagenda/ObamaTransitionDoc.pdf> November 2008.

²³ Remarks of Barack Obama before the Planned Parenthood Action Fund (July 17, 2007), available at <http://www.politifact.com/truth-o-meter/promises/obameter/promise/519/reproductive-health-care-will-be-heart-health-care/>. Video of Barack Obama making this promise is available here: <http://www.youtube.com/watch?v=Cqww8jmizug>.

²⁴ Rahm Emanuel, speaking to the Chicago Tribune Editorial Board, “Tribune Editorial Board meeting pt. 10- Women’s issues, healthcare, candidates pasts, closing arguments.” January 14, 2011. <http://www.wgntv.com/news/elections/mayor/editorial/>.

²⁵ “Statement of Cecile Richards, President of PPF, on House Passing Historic Health Care Reform Bill”, March 21, 2010. <http://www.plannedparenthood.org/about-us/newsroom/press-releases/statement-cecile-richards-president-ppfa-house-passing-historic-health-care-reform-bill-32230.htm>

Federal Funding of Abortion in “ObamaCare”

“ObamaCare” subsidizes abortion in private health plans and can pay directly for abortion in new health programs.²⁶ The funds under “ObamaCare” are directly appropriated, not subject to further appropriation through the LHHS appropriations bill, and are therefore not subject to the Hyde Amendment abortion funding restriction.

Here are some examples:

“ObamaCare” appropriates \$5 billion for high risk pool programs without a restriction on funding abortion.²⁷ The Pennsylvania, Maryland, and New Mexico’s high risk pool plans approved by the federal government did, in fact, contain coverage of elective abortion. Only after the news of government-financed abortions was reported in the press did the White House tell these states to remove abortion from the list of covered services.²⁸

“ObamaCare” also authorized funding for community health centers,²⁹ and the enactment of the Health Care and Education Reconciliation Act³⁰ a week later increased the amount of funding for these community health centers to \$12.5 billion. The money appropriated for community health centers can be used to pay for elective abortions directly, as these funds are not appropriated under LHHS and therefore not subject to the Hyde Amendment.³¹

“ObamaCare” appropriates \$6 billion for loans and grants for the creation of non-profit health co-ops.³² Because the funds would not be appropriated by the LHHS bill, they are not covered by the Hyde Amendment and can be used to pay for elective abortions.

“ObamaCare” provides tax credits for qualified health plans in each of the state exchanges.³³ Section 1303, as amended, permits qualified health plans to include coverage for elective abortions even if they receive tax credits or cost-sharing credits.³⁴ This directly conflicts with the principle of the Hyde Amendment and the restriction on subsidizing abortion through the Federal Employee Health Benefit Program (FEHBP).³⁵

What’s more, Section 1303, as amended, permits private insurance plans who receive federal subsidies to cover elective abortions. If they chose to cover elective abortions and receive

²⁶ For a chart of details of the various abortion funding provisions in PPACA, see <http://downloads.frcaction.org/EF/EF10C08.pdf>.

²⁷ PPACA, Section 1101.

²⁸ On July 14, 2010, HHS Spokesperson Jenny Backus issued a statement saying that abortion would not be covered in the high risk pool program in Pennsylvania. Then after other states approved abortion funding, Nancy-Ann DeParle on July 29, 2010 blogged that abortion would not be covered by the high risk pool program <http://www.whitehouse.gov/blog/2010/07/29/insurance-americans-with-pre-existing-conditions>

²⁹ PPACA Section 10503.

³⁰ The Health Care and Education Reconciliation Act, 2010, H.R. 4872, became P.L. 111-152 on March 30, 2010 (“Reconciliation Act”).

³¹ Reconciliation Act, Section 2303.

³² PPACA, Section 1322.

³³ PPACA, Section 1401 provides refundable tax credits and Section 1402 provides cost-sharing credits to purchase health plans.

³⁴ PPACA, Section 1303 as amended by Section 10104(c).

³⁵ Section 613, Division C of the Consolidated Appropriations Act, 2010 (P.L. 111-117).

federal subsidies, then every individual who is part of that plan is required to pay an abortion surcharge and the insurance company will take that surcharge payment and hold it in a special account. This accounting gimmick does nothing to cure the problem: it still allows federal dollars to be used to subsidize abortion coverage.

Secretary Kathleen Sebelius on December 22, 2009 said that “everyone in the exchange would pay” a “portion of their premium” for “abortion coverage.”³⁶ (This would not be the case for plans purchased without abortion coverage.) The abortion surcharge is, arguably, an even more egregious violation of the Hyde Amendment principle.

“ObamaCare” also created a new government-controlled, multi-state plan to be run by the Director of the Office of Personnel Management that can include insurance plans with abortion coverage.³⁷ This multi-state plan is similar to the FEHBP for federal employees and will be operated by the Federal government, but without the FEHBP restriction on coverage of elective abortion.

The Impact of the “No Taxpayer Funding for Abortion Act”

On “ObamaCare”

H.R. 3 does not strike down “ObamaCare” or specifically amend it. Instead, H.R. 3 amends Title 1 of the U.S. Code so that all existing law will be subject to an abortion-funding limitation.

Section 301 prevents funds appropriated by the federal government to be used for abortions. Section 302 prevents federal funds from being used to pay for health plans that include abortion. Taken together, along with Section 303, these provisions will stop government funding of abortions under “ObamaCare” and will prevent tax credits for premiums paid to health plans that cover abortions. Direct payments for abortions under the high risk pool program and in the community health centers will be prohibited, and tax credits will not be given to subsidize health plans with abortion coverage whether in private plans in the state exchanges, in plans created under the co-op program, or in the multi-state plan run by the government.

H.R. 3 does not ban abortion coverage in private insurance or prevent individuals from purchasing abortion coverage. Section 305 states explicitly that individuals, localities, or even states are not prevented from purchasing health care insurance packages with abortion coverage or separate abortion coverage so long as federal funding does not pay for such coverage. Section 306 states explicitly that insurance providers and others are not prevented from offering insurance packages with abortion coverage or separate abortion coverage so long as federal funding is not involved.

³⁶ See “Sebelius Praises Abortion Accounting Trick in Senate Bill,” Real Clear Politics Video (last modified December 22, 2009) in which Secretary Sebelius states: “That would be an accounting procedure, but everybody in the exchange would do the same thing, whether you’re male or female, whether you’re 75 or 25, you would all set aside a portion of your premium that would go into a fund, and it would not be earmarked for anything, it would be a separate account that everyone in the exchange would pay....[I]t’s really an accounting that would apply across the board and not just to women, and certainly not just to women who want to choose abortion coverage.”

http://www.realclearpolitics.com/video/2009/12/22/sebelius_praises_abortion_accounting_trick_in_senate_bill.html

³⁷ PPACA, Section 1334 as amended by Section 10104(q).

On the Tax Code

The reduction of taxation is a form of government subsidy. H.R. 3 Section 303 applies the principles of the Hyde Amendment to the tax code.

Section 303(1) prohibits individuals from receiving any tax credits, including under “ObamaCare,” for the payment of premiums on health insurance plans that cover abortion. It also prohibits small businesses owners from obtaining tax credits under “ObamaCare” for the cost of health care plans which cover abortion.³⁸ Individuals and small businesses will be able to obtain tax credits on the purchase health plans that do not include abortion coverage.

Section 303(2) applies to tax deductions for abortion or for health plans that include abortion coverage (for those who may deduct the cost of their medical expenses because that cost exceeds 10% of their income). The Internal Revenue Code does not specify which expenses are eligible for deduction, yet the IRS has, without congressional authorization, listed “abortion” as a deductible medical expense in its official publication on medical expenses.³⁹ Section 303(2) would correct this abortion subsidy.

Section 303(3) applies to tax-preferred trusts, such as medical savings accounts, health savings accounts, and other tax-favored health plans.⁴⁰ Because IRS Publication 969 which governs these types of health accounts allows reimbursement for “qualified medical expenses” based on Publication 502, abortions are currently tax-preferred medical expenses. Section 303(3) would exclude abortion as a qualified medical expense.

H.R. 3 does not affect the employer tax deduction, which allows employers to deduct the cost of their contributions to an employee’s health insurance plan as a business expense. Nor does H.R. 3 affect the employee exclusion, which allows an employee to exclude the cost of his employer’s contribution to his health care insurance plan from his gross income.⁴¹

On the District of Columbia

Because H.R. 3 codifies the Hyde Amendment principle as a matter of federal law, it will affect federal funding in the District of Columbia. Article 1 of the Constitution grants Congress control over all District legislation, including funding. Last year the Omnibus Appropriations Act⁴² which allocates funds to the District removed the provision restricting the funding of elective

³⁸ PPACA, Section 1421, as amended by Section 10105(e), provides a small business tax credit for certain employers to cover up to 35% of the cost health care plans from 2010 through 2013, and up to 50% of the cost of health plans after 2014 for two consecutive years.

³⁹ Section 213(d) of the IRS code allows individuals who itemize to deduct medical expenses over 10% of their income, but does not specify what services can be deducted. IRS Publication 502 for 2010 “Medical and Dental Expenses” lists services which can be deducted. See page 5 (<http://www.irs.gov/pub/irs-pdf/p502.pdf>).

⁴⁰ See IRS Publication 969 for 2010 “Health Savings Accounts and Other Tax-Favored Health Plans,” page 8 (<http://www.irs.gov/pub/irs-pdf/p969.pdf>).

⁴¹ The “employer tax deduction” found in IRS Code 162(a) allows employers to write off the cost of their contribution to their employees’ health plans as well as other business expenses. The “employee tax exclusion” found in IRS Code 106(a) allows employees to exclude from taxable income the amount their employer contributes to their health care premiums.

⁴² Section 814 of Division C of The Consolidated Appropriations Act, 2010 (P.L. 111-117).

abortions, a provision which had been renewed each year since 1996. Section 814 of Division C changed this provision to prevent only “Federal” funds from being used for abortion, a fictitious distinction: all funds received and spent by the District are appropriated by the federal government. H.R. 3 would restore the prohibition on taxpayer funding for elective abortion in the nation’s Capitol.

On Conscience Protection

H.R. 3 makes permanent the conscience protection language found in the Hyde-Weldon Amendment renewed each year in the LHHS appropriations bill. The Hyde-Weldon Amendment prevents the federal government, and any state and local government receiving federal funds, from discriminating against a health care entity because they refuse to provide, pay for, provide coverage of, or refer for abortions. Since “ObamaCare” appropriates funds directly, bypassing the LHHS bill, these funds are not bound by the Hyde-Weldon conscience protections. Moreover, “ObamaCare” included a weaker nondiscrimination provision which only prevents health “plans” in the exchanges from discriminating against “providers” or “facilities” unwilling to participate in abortion. It does not prevent the Federal government, or state or local governments, from committing such discrimination. H.R. 3 would codify the Hyde-Weldon provision, restoring conscience protections for health care workers to the status quo.

H.R. 3 also adds remedies not contained in the Hyde-Weldon Amendment due to continued attempts to undermine it and other conscience laws. For example, while the Church Amendment prevents government-funded discrimination, a lawsuit filed by a nurse forced to participate against her will in a late-term abortion was summarily dismissed recently by a federal circuit court which ruled that § 300a-7(c) of the Church Amendment does not confer a private right of action to enforce it.⁴³ Further, the conscience protection regulations implemented by President George W. Bush to enforce conscience laws, and provide relief for those who have been discriminated against, were rescinded by the current Administration.⁴⁴ These cases coupled with passage of abortion funding provisions in “ObamaCare” raise serious concerns about the conscience rights of health care entities who do not want the government to discriminate against them due to their views on abortion.

H.R. 3 solves this problem by providing judicial relief against government discrimination. Those who believe their conscience rights regarding abortion have been violated will be able to file claims to the Office of Civil Rights at the Department of Human Services.

Conclusion

President Obama has urged Americans to find common ground on the controversial issue of abortion. For over three decades Americans have come together in what may be the only truly bi-partisan agreement possible: That whatever our differences on the underlying question of legality, we agree that the federal government should not subsidize abortions with taxpayer dollars. This is *the* common ground on abortion in America. H.R. 3 would make that common ground statutory law.

⁴³ *Cenzon Decarlo v. Mount Sinai Hospital*, Docket No. 10-0556-cv. (November 23, 2010).

⁴⁴ The Department of Health and Human Services issued a proposed rule to rescind the conscience regulations, on March 10, 2009. 45 CFR Part 88.