



**STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL**

STEVE MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVE
MONTGOMERY, AL

June 21, 2021

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader Schumer, and Minority Leader McConnell:

We were disappointed to find the conspicuous omission of the Hyde Amendment in the budget proposal that President Biden delivered to Congress earlier this month.¹ The Hyde Amendment was first enacted in 1976 following the United States Supreme Court's decision in *Roe v. Wade*, and has been reenacted every year since with broad bipartisan support.² The key to the Hyde Amendment's four-and-a-half-decades longevity is that its purpose is clear and commonsensical: it prohibits the use of federal funds for abortions (with exceptions), on the basis that a great many taxpayers object to abortion on moral or religious grounds and, therefore, it is unconscionable to force them to pay for abortions by using their tax dollars for that purpose. Congress should resist following President Biden down this path and should instead maintain the Hyde Amendment language in the budget it ultimately passes.

Fighting for the freedom of conscience has been a hallmark of state attorneys general. We have a unique interest in the Hyde Amendment as an important protection for the consciences of the millions of Americans who oppose public funding of abortion. As we wrote to Health and Human Services Secretary Alex Azar in 2018, "Protecting religious liberty and freedom of conscience is at the root of the Constitution's commitment to individual liberty and limited government."³ Congress and the courts have historically recognized this founding principle, particularly in the context of abortion, as evidenced by the array of federal

¹ OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2022 (2021).

² See Julie Rovner, *Abortion Funding Ban Has Evolved over the Years*, NPR (Dec. 14, 2009), <http://www.npr.org/templates/story/story.php?storyId=121402281> [<http://perma.cc/NYH7-T4YJ>].

³ Letter from Ken Paxton, Att'y Gen. of Texas et al. to Alex Azar, Sec'y, U.S. Dep't of Health & Hum. Servs. (Mar. 27, 2021), http://www2.texasattorneygeneral.gov/files/epress/files/2018/TX_and_AZ_comment_letter_on_conscience_protection.pdf [<http://perma.cc/DA5E-5FYE>].

laws that provide conscience protections for individuals and entities,⁴ such as the prohibition on discriminating against medical providers who refuse to perform abortions and the prohibition on requiring health insurers to provide coverage for abortion-related services.⁵

President Biden explained his abrupt reversal on the Hyde Amendment by stating that he could not “justify leaving millions of women without access to the care they need and the ability to exercise their constitutionally protected right.”⁶ But even if one accepts the notion that a woman has a constitutional right to an abortion, the Supreme Court has made clear that the “right” is not a taxpayer-backed guarantee. In *Harris v. McRae*, the Court explained, “It simply does not follow that a woman’s freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. . . . Although government may not place obstacles in the path of a woman’s exercise of her freedom of choice, it need not remove those not of its own creation.”⁷ Thus, requiring taxpayers to fund abortions under the premise that the federal government is responsible for subsidizing an individual’s “rights” represents a dramatic departure, not just from Supreme Court precedent, but from a basic understanding of the role of the federal government.

Furthermore, the decision by President Biden to reject the Hyde Amendment and attempt to force states to fund activity that is violative of their own laws and policies is an affront to state sovereignty. The Supreme Court, in *National Federation of Independent Business v. Sebelius*, examined Congress’s threat to cut off all Medicaid funding to states that refused to expand Medicaid under the Affordable Care Act. The Court held that the provision was not just impermissibly coercive, it was “a gun to the head.”⁸ Here, we have a proposal that is equally as coercive, but objectively more offensive—if the Hyde language is omitted, then,

⁴ See, e.g., *Conscience Protections*, U.S. DEP’T OF HEALTH & HUM. SERVS., <http://www.hhs.gov/conscience/conscience-protections/index.html> [<http://perma.cc/A2WP-D6AS>] (last visited June 14, 2021).

⁵ See 42 U.S.C. § 300a-7(b)(2)(A); *id.* §§ 1395w-22(j)(3)(B)(i), 1396u-2(b)(3)(B)(i).

⁶ Mike Memoli, *Biden Drops Support for Hyde Amendment Restricting Abortion Funding after Criticism*, NBC NEWS (June 6, 2019), <http://www.nbcnews.com/politics/2020-election/biden-drops-support-hyde-amendment-restricting-abortion-funding-after-criticism-n1014871> [<http://perma.cc/74R8-SDHP>].

⁷ *Harris v. McRae*, 448 U.S. 297, 316 (1980).

⁸ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581 (2012).

as Congress itself has recognized, “every State will be required to provide matching funds for abortion on demand.”⁹ As you know, most states have a law analogous to the Hyde Amendment, as does the District of Columbia.¹⁰

If state taxpayers disagree with the services that their tax dollars pay for, they can “vote with their feet” and move to a state with lower taxes or one that prioritizes spending differently. But because one cannot move to avoid federal taxes, there would be nowhere for a pro-life, or even a moderately pro-choice, American to go to avoid violating the moral or religious conviction that their hard-earned dollars not be used to fund abortions. The administration’s decision here is merely the most recent illustration of its having lost all sense of accountability to the taxpayer. In addition to the sheer extravagance of a \$6 trillion budget, the administration is insisting that taxpayers fund the far-left agenda that now defines the Democratic Party, such as the indoctrination of school children with “critical race theory” curricula,¹¹ free “gender reassignment” surgeries for members of the military,¹² and sending stimulus checks to prisoners.¹³

Nearly sixty percent of Americans oppose taxpayer funding of abortion, including “a majority of independents” and even “a notable proportion of Democrats.”¹⁴ President Biden previously professed to share this conviction, assuring the public that he was guided by the “principle” that “those of us who are opposed to abortion should not be compelled to pay for them” and touting that he “ha[d] consistently—on no fewer than 50 occasions—voted against federal funding of

⁹ 139 CONG. REC. 22,632 (1993) (statement of Sen. Hatch); *see id.* at 22,640 (statement of Sen. Nickles) (“Removal of the Hyde language would result in mandating that the States pay for these abortions with State dollars.”); *id.* at 14,889 (statement of Rep. Dornan) (“While the [Clinton] administration has claimed that repeal of the Hyde amendment will allow States flexibility to fund or not to fund abortions, this is untrue. . . . States would be required to participate in providing abortions on demand . . .”).

¹⁰ *State Funding of Abortion under Medicaid*, GUTTMACHER INST. (June 1, 2021), <http://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid> [<http://perma.cc/9NYZ-DJTR>].

¹¹ Proposed Priorities—American History and Civics Education, 86 Fed. Reg. 20,348 (Apr. 19, 2021). *See generally* Inez Feltscher Stepman & Lindsey Burke, *Joe Biden Wants to Take Critical Race Theory to the Next Level*, NAT’L INT. (May 11, 2021), <http://nationalinterest.org/blog/politics/joe-biden-wants-take-critical-race-theory-next-level-184930> [<http://perma.cc/HNG7-33E8>].

¹² Exec. Order No. 14,004, 86 Fed. Reg. 7471 (Jan. 28, 2021). *See generally* Thomas Spoehr, *Biden’s New Policy on Transgender Troops Will Weaken Our Military*, HERITAGE FOUND. (Apr. 14, 2021), <http://www.heritage.org/defense/commentary/bidens-new-policy-transgender-troops-will-weaken-our-military> [<http://perma.cc/XFW3-5QVY>].

¹³ American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021). *See generally* Morgan Phillips, *COVID Relief Bill Offers Convicted Murderers Stimulus Checks*, FOX NEWS (Mar. 6, 2021), <http://www.foxnews.com/politics/cotton-covid-relief-bill-convicted-murderers-stimulus-checks> [<http://perma.cc/V5TX-KPXN>].

¹⁴ MARIST POLL, AMERICANS’ OPINIONS ON ABORTION 5 (2021), <http://www.kofc.org/en/resources/news-room/polls/kofc-americans-opinions-on-abortion012021.pdf> [<http://perma.cc/H9A2-TT7J>].

abortions.”¹⁵ Seeking the Democratic nomination for president, candidate Biden again affirmed his support for the Hyde Amendment. But then—forty-eight hours later—he reversed himself and denounced the Hyde Amendment after facing criticism from a small but extreme minority of the American populace: pro-abortion activists.¹⁶

Unborn life might be nothing more than a matter of politics for the administration, but it is something quite different for us: the policy in question is one of life or death. Studies of the Hyde Amendment have found that it has saved the lives of millions of unborn children—saving 2.13 million lives in its first forty years alone, and saving over 60,000 lives per year today.¹⁷

Whatever the explanation for President Biden’s reversal, Congress—as the representative body of our republic—should not indulge it. Our country’s debt, at the time of this writing, is over \$28 trillion, or \$226,113 per taxpayer.¹⁸ If anything, President Biden should be working with Congress to eliminate wasteful spending on government programs that do not promote the general welfare. Taxpayer funding of abortion defies common sense, both fiscally and ethically, and is no way to “unify America.” We call on you to reject the President’s invitation to join in this perilous pursuit.

¹⁵ Letter from Sen. Joseph R. Biden, Jr., to Michael Gregg (Apr. 7, 1994), <http://assets.documentcloud.org/documents/6127592/biden94letter.pdf> [<http://perma.cc/T36H-T7SD>].

¹⁶ Compare Katie Glueck, *Biden Still Backs Hyde Amendment, Which Bans Federal Funds for Abortions*, N.Y. TIMES (June 5, 2019), <http://www.nytimes.com/2019/06/05/us/politics/biden-hyde-amendment.html> [<http://perma.cc/L4U8-WB97>], with Katie Glueck, *Joe Biden Denounces Hyde Amendment, Reversing His Position*, N.Y. TIMES (June 6, 2019), <http://www.nytimes.com/2019/06/06/us/politics/joe-biden-hyde-amendment.html> [<http://perma.cc/4VS3-95R5>].

¹⁷ MICHAEL J. NEW, HYDE @ 40: ANALYZING THE IMPACT OF THE HYDE AMENDMENT 12 (2016), http://s27589.pcdn.co/wp-content/uploads/2016/09/OP_hyde_9.28.3.pdf [<http://perma.cc/3KVH-3XCS>].

¹⁸ U.S. DEBT CLOCK, <http://usdebtclock.org> [<http://perma.cc/2FKK-KB3J>] (last visited June 14, 2021).

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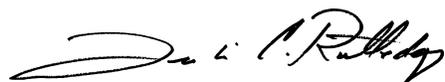
Sincerely,



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Treg Taylor
Alaska Attorney General



Leslie Rutledge
Arkansas Attorney General



Chris Carr
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Kansas Attorney General



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