No. 13-193

IN THE
Supreme Court of the United States

SUSAN B. ANTHONY LIST, AND COALITION OPPOSED TO ADDITIONAL SPENDING AND TAXES,

Petitioners,

v.

STEVEN DRIEHAUS, KIMBERLY ALLISON, DEGEE WILHELM, HELEN BALCOLM, TERRANCE CONROY, LYNN GRIMSHAW, JAYME SMOOT, WILLIAM VASIL, PHILIP RICHTER, OHIO ELECTIONS COMMISSION, AND JON HUSTED,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF *AMICUS CURIAE* OF BIOETHICS DEFENSE FUND IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

This brief will answer the following question:

Whether the Affordable Care Act ("ACA") authorizes taxpayer funding of abortion, such that assertions equating a political candidate's vote for the ACA with a vote for taxpayer-funded abortion are truthful.

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STATEMENT OF INTEREST[1]

Amicus curiae, Bioethics Defense Fund (BDF), is a non-profit legal and educational organization whose mission is to advocate for law in the service of life by applying the relevant legal, scientific and medical arguments that uphold the intrinsic dignity of the human person.

BDF's interest in the matter before this Court arises from its public education efforts about the workings of the Patient Protection and Affordable Care Act ("ACA") in relation to pro-life issues. From the introduction of the first bill in mid-2009 to the final passage of the ACA in March of 2010, BDF attorneys carefully read and analyzed each of the various bills for the purpose of educating citizens about the abortion permissive provisions hidden behind changing and often cryptic legislative jargon. With an express policy to neither support nor oppose any particular legislation, BDF limited its activities to public education efforts.

Following passage of the ACA, BDF served as lead counsel on an amicus brief to this Court in *NFIB v. Sebelius*, No. 11-398/11-398/11-400. Representing seven medical organizations, and co-counseled with four other national pro-life organizations, the brief set forth the scheme of the abortion premium mandate in Section 1303 of the ACA in relation to the individual mandate, 26 U.S.C.A. § 5000A.

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[1] The parties have submitted to the Clerk blanket consents to the filing of all amicus briefs. No counsel or party has authored any part of this brief, nor contributed monetarily the brief's preparation or submission. No person or entity, other than the amicus curiae or its counsel has made any monetary contribution to the preparation or submission of the brief.

This case is of central concern to *Amicus* Bioethics Defense Fund because it relates to truthfulness of public education assertions about how and whether particular legislation allows for taxpayer funding of abortion.

SUMMARY OF ARGUMENT

This brief addresses the underlying question of whether the Patient Protection and Affordable Care Act ("ACA") authorizes taxpayer funding of abortion. As set forth below, the answer is "yes." Therefore, assertions equating a political candidate's vote for the ACA with a vote for taxpayer-funded abortion are truthful.

Speculation is no longer required. The various phases of implementation of the ACA have provided concrete instances where taxpayer dollars have been authorized to directly fund abortion or subsidize health plans that cover elective abortion. Yet, confusion persists not only because the complexity of the statutory framework, but also because the relevant case law and the bill's drafting history–both essential to understanding the ACA's authorization of abortion funding–are obviously not set forth in the text of the Act.

The jurisprudential context in which the ACA was passed, discussed in Section A(1) of this brief, shows that beginning with Medicaid, federal statutes authorizing funding of general health services and health coverage have been consistently construed by courts to compel coverage of abortions essentially without restriction, except when Congress explicitly prohibits such subsidies.

The well-publicized drafting history of the ACA, summarized in Section A(2), shows that a Hyde-like

amendment adopted by the House of Representatives was repeatedly stripped and thwarted.

Section A(3) of the brief explains that abortion funding is not precluded by the Hyde Amendment, by Executive Order 13535, or by any provision of the ACA. Section A concludes that neither the ACA nor the related Executive Order contain language that would prohibit the bill's multiple self-appropriated funding streams from being used for abortion funding or for subsidies of health plans that included elective abortion.

This brief then outlines four non-exhaustive examples. The first two involve authorization for the use of taxpayer funding of abortion in federal programs, namely, in the Pre-existing Condition Insurance Plan program (discussed in Section B(1)) and in Community Health Centers (discussed in Section B(2)).

The remaining two examples involve provisions that authorize federal subsidies for private health plans that cover elective abortion purchased in the state and federal Exchanges. Section C(1) explains the abortion surcharge imposed without exception in subsidized plans that include abortion, even on objecting enrollees who later discover that they cannot decline abortion coverage in their plan even though it was hidden by the ACA's secrecy clause. Section C(2) briefly addresses federal subsidies of health plans that are required by the HHS Mandate to include abortifacient drugs and devices.

Taken alone, any of the four examples would provide ample basis to validate the truthfulness of an assertion that a vote for the ACA was a vote for federal funding of abortion. But these examples do not

represent an exhaustive list. The deliberate absence of any bill-wide Hyde-type restriction, combined with the vast discretionary power that the ACA granted to the Secretary of Health and Human Services explains why concrete examples of ACA enabled taxpayer-funded abortion continue to surface. *See*, *e.g.*, Cong. Chris Smith, *Of 112 Obamacare Plans for Congress and Staff, 103 are Pro-Abortion* (Dec. 3, 2013) (contrary to long-established Hyde Amendment prohibitions, federal employee insurance plans now cover elective abortion).

Petitioner Susan B. Anthony List seeks to challenge Ohio Revised Code Section 3517.21(B) as unconstitutional because it chills even truthful speakers from engaging in core political speech. Yet, the decision below concluded that Susan B. Anthony List's challenge is not ripe, even though the Ohio elections commission concretely constrained core political speech after erroneously labeling their assertions as false. The decision below should be reversed.

ARGUMENT

I. THE AFFORDABLE CARE ACT AUTHORIZES BOTH FEDERAL FUNDING OF ABORTION AND SUBSIDIES OF PRIVATE HEALTH PLANS THAT COVER ABORTIONS

This Court has repeatedly recognized that speech on the great political issues of the day lies at the core of the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 44-45 (1976). Speech on the practice and public funding of abortion is, therefore, so quintessentially political that it must necessarily elicit the greatest protection offered by the First Amendment.

The case at issue did not originate from a disagreement on the morality or legality of abortion, but rather from the seemingly elusive question of whether taxpayer funding of abortion is authorized by the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) ("ACA," "PPACA," or "the Act").

In the context of this case, questions about the truthfulness of Petitioner's assertions—that candidates who voted for the ACA voted for taxpayer funded abortion—began when the Ohio elections commission stated in a one-page letter, without supporting reasoning, that the panel found "probable cause" to believe that such speech violated Ohio's false-statement law.[2]

A District Court judge subsequently agreed, stating, "The express language of the PPACA does not provide for tax-payer funded abortion. That is a fact and it is clear on its face." *Susan B. Anthony List v. Driehaus*, 805 F. Supp. 2d 423, 435-36 (S.D. Ohio 2011).

But these conclusions are superficial, and therefore, erroneous; they ignore both the jurisprudential context in which the ACA was enacted, and the Act's drafting history showing that the ACA was passed without abortion limiting language.[3]

Therefore, the final Act did not—and still does not—contain a Hyde-like amendment that limits abortion

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[2] *Letter of Ohio Elections Commission to Susan B. Anthony List* (October 18, 2010).

[3] *See, e.g., Affidavit of Douglas D. Johnson,* at ¶¶ 7-11, 21, 26, at JA 81-82, 87-88 ("the Johnson Affidavit").

funding across the entire Act. This has resulted in continued attempts in the House of Representatives to add Hyde-like language, especially in light of "recent developments" that "underscore a need to correct the abortion funding problems" in the ACA.[4]

As explained below, the ACA consequently allows for the direct and indirect funding of abortion, and this reality is not remedied by the Hyde Amendment, any language in the ACA, or by the hollow Exec. Order No. 13535, § 3, 75 Fed. Reg. 15599 (Mar. 24, 2010).

A. The ACA is contrary to the two principles of the Hyde Amendment, and the President's Executive Order Does Not Provide a Fix for the Act's Lack of a Hyde-Like Amendment

Amicus' on-going careful review of the ACA in light of its drafting history and jurisprudential context leads us to agree with and adopt the legal analysis of the Office of General Counsel of the U.S. Conference of Catholic Bishops (USCCB) issued in a memorandum dated March 25, 2010, the day after the passage of the

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[4] As recently as January 28, 2014, the House passed H.R. 7, the "No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act," with a bi-partisan vote of 227-188 (House Roll Call No. 30). In congressional testimony in support of H.R. 7, Richard M. Doerflinger, a representative of the U.S. Conference of Catholic Bishops, said that recent developments "underscore a need to correct the abortion funding problems" in the ACA. USCCB, *Bishops Official Voices Support for 'No Taxpayer Funding for Abortion Act* (Jan. 10, 2014), http://www.usccb.org/news/2014/14-005.cfm. It is also telling that more than a year after the passage of the ACA, the President threatened a veto of the "No Taxpayer Funding for Abortion Act," H.R. 3, passed on May 4, 2011, discussed *infra* in Section A(2).

ACA and the signing of the corresponding Executive Order.[5]

That memorandum clarifies that there are two parts to the Hyde Amendment. *See* Omnibus Appropriations Act, 2009, Div. D, tit. V, § 507 (in effect at the time of the ACA's passage). The first provides that no appropriated federal funds can be used for *elective abortion services*.[6] *Id*. § 507(a). The second provides that no such funds can be used to pay for *health insurance coverage* that includes such abortions. *Id*. § 507(b). The ACA is contrary to both parts of this policy, and the Executive Order does not provide a remedy.

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[5] Anthony Picarello and Michael Moses, *Legal Analysis of the Provisions of The Patient Protection and Affordable Care Act and Corresponding Executive Order Regarding Abortion Funding and Conscience Protection* (March 25, 2010), http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/health-care-memo-re-executive-order-final-2010-03-25-pdf-09-03-48.pdf ("USCCB Memo of March 25, 2010"). With the permission of counsel, *Amicus* has utilized significant portions of this memo verbatim.

[6] Throughout this memo, the phrase "elective abortion" will be used to refer to abortions that have long been ineligible for federal funding in major health programs—that is, all abortions except for cases of rape, incest, or danger to the life of the mother. The term is used here as shorthand for a longstanding federal policy, not as an expression of a medical or moral judgment.

1. Courts Have Consistently Interpreted Congressional Statutes Authorizing the Provision of Broad Health Services to Compel Abortion Funding, Unless Congress Expressly Excludes It

Courts have held that when Congress authorizes the provision of comprehensive health services, it *must* pay for "medically necessary abortions,"[7] except insofar as Congress *expressly* excludes abortion funding. *Planned Parenthood Affiliates of Michigan v. Engler*, 73 F.3d 634, 637-38 (6th Cir. 1996) (holding that a state's refusal to pay for "medically necessary" abortions for which federal funding is not expressly barred by Congress violates Medicaid's general requirement that the state provide medically necessary services).

This issue originally arose in the context of Medicaid in the 1970s. In the years before the Hyde Amendment was first enacted by Congress in 1976, Medicaid was required to pay for about 300,000

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[7] In the abortion context, "health" has been construed broadly to include any abortion undertaken for physical, emotional, psychological, familial, or age-related reasons relevant to the well being of the patient. *Doe v. Bolton*, 410 U.S. 179, 192 (1973). Under this broad definition, it has long been interpreted that virtually any abortion a physician is willing to perform can be deemed "medically necessary." *See* John T. Noonan, Jr., A PRIVATE CHOICE: ABORTION IN AMERICA IN THE SEVENTIES 12 (1979); *see also* Douglas Johnson, Statement to the House, Subcommittee on Health, Committee on Energy and Commerce, *Testimony on the Protect Life Act of 2011*, Hearing, at 4 and n.6 (February 9, 2011), http://www.nrlc.org/uploads/ahc/ProtectLife ActDouglasJohnsonTestimony.pdf. Citation to Mr. Johnson's statements throughout this brief are for purposes of legal analysis, and not to indicate Amicus' endorsement of any past or pending legislation.

abortions a year.[8] "Because abortion fits within many of the mandatory care categories, including 'family planning,' 'outpatient services,' 'inpatient services,' and 'physicians' services,' Medicaid covered medically necessary abortions between 1973 and 1976," even though the Medicaid statute itself never used the word "abortion." *Engler*, 73 F.3d at 636. If broad language of this type were not read as mandating payment for abortion, there would have been no need for Congress to include the Hyde Amendment as a rider to the annual the Department of Health and Human Services (HHS) appropriations bill each year for the last 38 years.

Since *Engler*, courts have repeatedly and consistently interpreted statutory language that describes relatively broad categories of medical services to compel—not just *allow*, but *compel*—abortion funding. *See*, *e.g.*, *Hope Medical Group for Women v. Edwards*, 63 F.3d 418, 427 (5th Cir. 1995), *cert. denied*, 517 U.S. 1104 (1996); *Little Rock Family Planning Services v. Dalton*, 60 F.3d 497, 502-03 (8th Cir. 1995), *rev'd in part on other grounds*, 516 U.S. 474 (1996); *Hern v. Beye*, 57 F.3d 906, 910-13 (10th Cir.), *cert. denied*, 516 U.S. 1011 (1995). *See also Roe v. Casey*, 623 F.2d 829, 836-37 (3d Cir. 1980) (holding

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[8] *Id.*, Johnson Testimony at 4, n.4; The Hyde Amendment is the most successful domestic "abortion reduction" policy ever enacted by Congress. *Id.* at 18 ("There is abundant empirical evidence that where government funding for abortion is not available under Medicaid or the state equivalent program, at least one-fourth of the Medicaid-eligible women carry their babies to term, who would otherwise procure federally funded abortions."); *see also* National Committee for Human Life Amendment, *The Hyde Amendment 3* (April 2008), http://www.nchla.org/datasource/ifactsheets/4FSHydeAm22a.08.pdf.

that the Hyde Amendment substantively modified the Medicaid Act so that a state's refusal to pay for Hyde-eligible abortions violated the Act); *Hodgson v. Bd. of County Com'rs*, 614 F.2d 601, 608 (8th Cir. 1980) (holding that a state's refusal to pay for Hyde-eligible abortions was not based on a uniform standard of medical need as required by the Medicaid statute); *Zbaraz v. Quern*, 596 F.2d 196, 199 (7th Cir. 1979) (holding that a state's refusal to pay for Hyde-eligible abortions was "unreasonable" and "inconsistent with the objectives of the [Medicaid] Act" in violation of the Act), *cert. denied*, 448 U.S. 907 (1980); *Preterm, Inc. v. Dukakis*, 591 F.2d 121, 126, 134 (1st Cir.) (same), *cert. denied*, 441 U.S. 952 (1979).

In this jurisprudential context, the ACA expressly enacted only one narrow statutory ban on the direct funding of abortion with federal taxpayer dollars appropriated under the Act. Namely, the ACA provides for grants to school-based health centers, and at the same time defines those centers so that they "do[] not perform abortion services." ACA, § 4101. But this leaves all remaining federal funds appropriated under the Act without Hyde-like restrictions—which means that under the cases noted above those funds *must* be used to pay for abortions where the statutory language describing the services is broad enough to encompass abortion.

2. Hyde-like abortion restrictions do not apply to the ACA because of the rejection of the Stupak Amendment and the Nelson-Hatch Amendment, and the adoption of the Manager's Amendment.

Along with the ACA's statutory structure and jurisprudential context, the Act's drafting history

confirms that the ACA dramatically changed decades of federal law by authorizing taxpayer funded elective abortion. *See Burgess v. United States*, 553 U.S. 124, 133 (2008) ("The drafting history of the CSA reinforces our reading of [that statute]"); *see also Russello v. United States*, 464 U.S. 16, 23-24 (1983) (citing the "evolution of [RICO's] statutory provisions" as an aid to statutory construction, and adding, "[w]here Congress includes [certain] language in an earlier version of the bill but deletes it prior to enactment, it may be presumed that the [omitted text] was not intended.")

The Hyde Amendment is a rider that applies only to funds appropriated through the annual HHS appropriations bill because of the pertinence of abortion policy to the federal Medicaid program that is funded primarily through that bill.

By its very terms, the Hyde Amendment only applies to appropriations to which the Amendment is attached. Omnibus Appropriations Act, 2009, Div. D, tit. V, § 507 (a) & (b) (stating that "[n]one of the funds appropriated in *this* Act ... shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion") (emphasis added).

The ACA as enacted (Public Law 111-148) authorized multiple new streams of federal funding, and also contained multiple provisions that directly appropriated large sums for new or expanded health programs (such as the federal programs discussed below). These "direct appropriations" were outside the regular funding pipeline of future HHS appropriations bills and therefore are entirely untouched by the Hyde Amendment, even if one assumed that the

Hyde Amendment would be renewed for each successive fiscal year in perpetuity.[9]

Because of this legal landscape, the legislative action committees of several pro-life organizations "informed members of Congress that any health care restructuring bill that created new health programs and new funding streams must also include a permanent prohibition on the use of those programs and funds for elective abortion."[10]

However, as detailed in the Johnson Affidavit, *supra* n. 3, the final passage of the ACA did not include any language even remotely similar to the Hyde limitation, including the Stupak-Pitts Amendment which had been adopted onto a previous version of the bill by a bipartisan vote of 240-194. House Roll Call No. 884 (Nov. 7, 2009). The Stupak-Pitts Amendment was bill-wide and permanent because it was not contingent on any requirement for perpetual annual renewal. That amendment stated in part, "No funds authorized or appropriated by this Act (or an amendment made by this Act) may be used to pay for any abortion or to cover any part of the costs of any health plan that includes coverage of abortion, except in the case where a woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself, or unless the pregnancy is the result of an act of rape or incest." *Id*. at ¶ 12, JA 82-83.

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[9] *Affidavit of Douglas D. Johnson, National Right to Life Committee*, supra, n. 3, at ¶¶ 8, JA 81.

[10] *Id*. at ¶ 10, JA 82.

After the majority abandoned the House bill containing the Stupak Amendment, Senators Ben Nelson and Orrin Hatch failed in their effort to add a nearly identical amendment to the substitute Senate version of the bill that ultimately was enacted as the ACA. The Nelson-Hatch amendment was supported by NRLC and other pro-life organizations because it tracked the Stupak language, stating in part, "No funds authorized or appropriated by this Act (or an amendment made by this Act) may be used to pay for any abortion or to cover any part of the costs of any health plan that includes coverage of abortion, except in the case where a woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering condition caused by or arising from the pregnancy itself, or unless the pregnancy is the result of an act of rape or incest." The Nelson-Hatch Amendment was tabled on a vote of 54-45, and therefore did not become part of the ACA as enacted. Senate Roll Call No. 369 (Dec. 8, 2009)

Instead, so-called "compromise" language known as a "manager's amendment" was considered and adopted on December 21, 2009. Sometimes referred to as the "Nelson-Boxer language," the amendment created Section 1303 relative to a program to subsidize the purchase of health plans that contain coverage for elective abortion, as discussed *infra*, in Section C of this brief. NRLC characterized the new (and now final) "manager's amendment" as follows: "The new abortion language solves none of the fundamental abortion-related problems with the underlying Senate bill, and it actually creates some new abortion-related problems… The abortion-related language violates the principles of the Hyde Amendment by requiring the

federal government to pay premiums for private health plans that will cover any or all abortions." *Id*. at ¶ 20, JA 86-87.

As late as March 19, 2010, Congressman Stupak, joined by ten original cosponsors (including Respondent Driehaus), introduced a formal resolution, H. Con Res. 254, to prohibit the Senate-passed health bill from being enacted without abortion limiting language. That resolution, if enacted, would have removed objectionable language added by the manager's amendment (dealing with the premium subsidy program), and would have added bill-wide, permanent prohibitions on any provision of the bill from being used by administrative decree to authorize abortion funding or subsidies.

House Speaker Nancy Pelosi did not agree to allow a vote on the Stupak resolution/amendment. Mr. Stupak and some (but not all) of the other lawmakers in the "Stupak group" then abandoned their resistance and voted to send H.R. 3590 to President Obama for his signature. House Roll Call No. 165 (Mar. 21, 2010).

Congressman Stupak and some of the other Congress members in his group justified their votes by leaning heavily on the hollow claims regarding the content of Executive Order 13535, signed by President Obama on March 24, 2010, and more fully discussed below.

No subsequent enactment by Congress has modified any provisions of the ACA that authorize abortion funding policy. To the contrary, when the "No Taxpayer Funding for Abortion Act," H.R. 3, passed the House on May 4, 2011, with a bipartisan vote of 251-175, the President threatened a veto. *See* Executive Office of the President, *Statement of*

Administration Policy: H.R. 3, No Taxpayer Funding for Abortion Act (May 2, 2011) ("The Administration will strongly oppose legislation that unnecessarily restricts women's reproductive freedoms and consumers' private insurance options. If the President is presented with H.R. 3, his senior advisors would recommend that he veto the bill."), http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr3r_20110502.pdf.

The federal programs discussed in Section B of this brief therefore allow taxpayer funding of abortion, and, as discussed below, the Executive Order does not and cannot provide any enforceable fixes.

3. The President's Executive Order Contains No Operative Provisions to Prohibit Taxpayer Funding of Abortion in the ACA

The very need for an Executive Order to purportedly limit the funds appropriated in the ACA evidences that the Act itself does indeed allow for taxpayer-funding of elective abortion.[11] *See* JA 88. The problem is the Executive Order was a meaningless act; it has no operative provisions to prohibit taxpayer funded abortion.

It is telling that in the wake of the passage of the ACA, Cecile Richards, the president of Planned Parenthood Federation of America (PPFA), the nation's largest abortion provider, characterized the

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[11] Moreover, the Hyde Amendment itself, which the Order purports to apply, authorizes federal funds to pay for abortions at least in some cases (such as rape or to protect the life of the mother), making assertions about abortion funding factually true regardless.

Executive Order as "a symbolic gesture."[12] Harvard Law professor Lawrence Tribe called it "magic" that "amounts to a signing statement on steroids."[13]

These characterizations are consistent with the careful analysis of the USCCB Memo of March 25, 2010, *supra* n. 5, which concludes that "none of the provisions of the Order represent valid fixes to those shortcomings" concerning abortion funding and subsidies.

Exec. Order No. 13535, § 3, 75 Fed. Reg. 15599 (Mar. 24, 2010), in its operative sections, superficially references only two of the abortion-related components of the bill. Regarding the abortion premium-subsidy program, Section 2 of the Executive Order does little more than reiterate the statutory language, under which federal tax-based subsidies will help pay for health plans that cover elective abortions (addressed in Section C of this brief). In Section 3 of the Order, involving Community Health Centers, the Executive Order purports to prohibit the use of funds appropriated under one narrow section of the Act for abortions—but this component of the order is not enforceable, since it lacks a foundation in the language of the statute itself.

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[12] *Statement of Cecile Richards, President of PPFA, on House Passing Historic Health Care Reform Bill* (March 25, 2010), http://www.plannedparenthood.org/about-us/newsroom/press-releases/statement-cecile-richards-president-ppfa-house-passing-historic-health-care-reform-bill-32230.htm.

[13] Thomas Peters, *White House Knew Obamacare Abortion Funding "Ban" a Sham*, Lifenews.com (Nov. 15, 2011) (linking to Email of Larry Tribe (March 21, 2010), obtained by Judicial Watch, *available at* http://www.judicialwatch.org/files/documents/2011/doj-kagan-docs-11102011.pdf).

It is the constitutional duty of the President and the Executive Branch to "take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 3, cls. 4. The legislative authority, however, is reserved to Congress and the Legislative Branch. *See id*. art. I. Correspondingly, in his actions to enforce the law, such as issuing an Executive Order, the President may not amend or otherwise contradict the legislative mandates expressed by Congress in the form of statutory law. *See Minnesota v. Mille Lacs Band Chippewa Indians*, 526 U.S. 172, 188-89 (1999). *See also The Confiscation Cases*, 87 U.S. 92, 112-13 (1873) ("No power was ever vested in the President to repeal an act of Congress.").[14] Finally, of course, it is the Judicial Branch, not the Executive Branch, that has the final word on what the law means. *See* U.S. CONST. art. III; *Marbury v. Madison*, 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

In light of these principles, the USCCB Memo provides the following four-part analysis:

> "First, the Executive Order says that '[t]he Act maintains current Hyde Amendment restrictions.' Executive Order, § 1. If 'maintains' means simply that PPACA does not repeal the annual Hyde

[14] That the President has subsequently seen fit unilaterally to disregard portions of the ACA does not mean those actions are lawful or proper exercises of executive power. *See, e.g*., Ed. Board, *The Obama administration has a mandate on the health-care law, too*, The Washington Post (Feb. 11, 2014) ("But none of that excuses President Obama's increasingly cavalier approach to picking and choosing how to enforce this law."), http://www.washingtonpost.com/opinions/the-obama-administration-has-a-mandate-on-the-health-care-law-too/2014/02/11/f001df36-9361-11e3-84e1-27626c5ef5fb_story.html.

Amendment that covers most HHS appropriations, then the statement is true but obvious and irrelevant under PPACA. But if 'maintains' means that PPACA includes the Hyde restrictions and applies them to its own appropriations for CHCs, then the statement is false, except in the two specified areas described above. Therefore, PPACA appropriations for CHCs are still not subject to a Hyde restriction and must be used to pay for abortions. This is no fix."

"Second, the Executive Order says that '[e]xisting law prohibits these [community health] centers from using Federal funds to provide abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), as a result of both the Hyde Amendment and longstanding regulations containing the Hyde language.' Executive Order, § 3. But once again, the *annual* Hyde Amendment does not cover PPACA appropriations for CHCs, and the HHS regulations are based exclusively on that inapplicable Amendment. So although annual appropriations for CHCs are restricted by Hyde in the way described in the order, PPACA appropriations for CHCs are not. Therefore, to the extent the Executive Order suggests that existing law would subject PPACA funds to annual Hyde restrictions, it is inaccurate. And any enforcement based on that inaccurate account of the law would be invalidated in court."

"Third, the Executive Order states that PPACA 'specifically prohibits the use of tax credits and cost-sharing reduction payments to pay for abortion services (except in cases of rape or incest, or when the life of the woman would be

> endangered) in the health insurance exchanges....' Executive Order, § 2. This is an accurate description of the Act as far as it goes, *see* PPACA, § 1303(b)(2), but adds nothing to the enforcement of this limitation. Moreover, PPACA does *not* prohibit the federal funding of abortion anywhere else among its own appropriations, with the exception of school-based health centers. PPACA § 4101. Nor does the Act prohibit—indeed, it explicitly permits—tax-credits and cost-sharing reduction payments to be made for *insurance policies* that include abortion, in violation of the second principle of the Hyde Amendment. PPACA, § 1303(a)(2). And the Executive Order does nothing to fix these shortcomings of the statute—nor could it, for if it did, it would involve an intrusion of the Executive Branch into the legislative power."
>
> "Fourth and finally, the Order states that PPACA 'imposes strict payment and accounting requirements to ensure that Federal funds are not used for abortion services....' Executive Order, § 2. Again, this does correspond with the language of the statute. PPACA, § 1303(b)(2). But those statutory requirements were added to the Act in lieu of a flat ban on the use of federal funds to pay for *insurance policies* that include abortion. Accordingly, this provision of the Executive Order is legally valid, but it reinforces a provision that falls short of the second Hyde principle."

USCCB Memo of March 25, 2010, supra n. 5, at 6.

B. The ACA Authorizes Taxpayer Funded Abortion in Federal Programs.

1. Taxpayer Funded Abortion in High Risk Pools

An early and graphic demonstration that the statutory language of the ACA does indeed authorize taxpayer funding of abortion is a pertinent component of the ACA that has already been implemented. Specifically, that provision is Section 1101 of the ACA, 42 U.S.C. § 18001, creating the Pre-Existing Condition Insurance Plan (PCIP), also known as the "high-risk pool" program.

As detailed in paragraphs 35-44 of the Johnson Affidavit, supra, n.3, this program is completely federally funded by the ACA. It directly authorizes $5 billion in federal taxpayer funds for this program alone, which (before the January 1, 2014 effective date of the ACA) provided coverage for high-risk uninsured people who were unable to secure coverage from private carriers. As explained above, the ACA contains no restriction on the use of these funds for abortion.

Since Section 1101 mandated launching the PCIP program within 90 days of enactment of the law, the federal Department of Health and Human Services invited states that wished to operate the program in their respective states to submit proposals by June 1, 2010. During July, 2010, National Right to Life Committee (NRLC) examined those state-submitted proposals and found that three states had submitted and apparently received HHS approval for plans that covered elective abortion (Pennsylvania, New Mexico, and Maryland). Johnson Affidavit at ¶ 25, JA 87-88.

In a report published on July 22, 2010 FactCheck.org, a nonpartisan entity operated by the Annenberg Public Policy Center, examined NRLC's July 13, 2010 press release regarding the HHS-approved PCIP proposal for Pennsylvania and concluded that it did indeed cover elective abortion. *Taxpayer Funded Abortions in High Risk Pools*, http://www.factcheck.org/2010/07/ taxpayer-funded-abortions-in-high-risk-pools/.

FactCheck.org also verified that the State of New Mexico explicitly listed "elective termination of pregnancy" as covered under the federal PCIP in that state, in a document provided on a state website to prospective enrollees. *Id*.

On July 23, 2010, the Congressional Research Service (CRS), a nonpartisan research support agency for Congress, issued a report confirming that neither the Hyde Amendment nor any provision of the ACA prevented the use of funds in the PCIP program from being used to cover all elective abortions. The CRS report also correctly noted that Executive Order 13535 was entirely silent on the PCIP component of the PPACA. Congressional Research Service, *High Risk Pools under PPACA and the Coverage of Elective Abortion Services* (July 23, 2010), http://www.help.senate.gov/imo/media/doc/CRS%20Report%20for%20HELP%2007232010.pdf

On July 29, 2010, under mounting public attention, the federal Department of Health and Human Services issued a regulation specifying that it will not allow coverage of abortions under the PCIP in any state, except to save the life of the mother, or in cases of rape or incest. 75 Fed. Reg. 45014 (2010). Notably, HHS did not assert that this decision was legally dictated by any provision of the ACA or by Executive

Order 13535, but implicitly recognized that this was not the case, by observing that similar restrictions were in force in "certain federal programs that are similar to the PCIP program."

On the same day the regulation was issued, the head of the White House Office of Health Reform issued a statement on the White House blog explaining that the discretionary decision to exclude abortion from the PCIP "is not a precedent for other programs or policies [under the ACA] given the unique, temporary nature of the program."[15] The director of the Washington legislative office of the American Civil Liberties Union urged protest of that decision before it was finalized, stating, "The White House has decided to *voluntarily* impose the ban for all women in the newly-created high risk insurance pools…. What is disappointing is that there is *nothing in the law* that requires the Obama Administration to impose this broad and highly restrictive abortion ban."[16]

The series of events surrounding the implementation of the PCIP provides a concrete demonstration that the statutory language of the ACA does authorize taxpayer funding of abortion; and that such funding is not precluded by the Hyde Amendment by any provision of the ACA or of Executive Order 13535. In response to public education, "DHHS ultimately drew

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[15] Nancy-Ann DeParle, *Insurance for Americans with Pre-Existing Conditions*, The White House Blog (July 29, 2010), http://www.whitehouse.gov/blog/2010/07/29/insurance-americans-with-pre-existing-conditions.

[16] Julian Pecquet, *ACLU steps into healthcare reform fray over abortion*, The Hill (July 17, 2010) (emphasis added), http://thehill.com/blogs/healthwatch/health-reform-implementation/109383-aclu-steps-into-healthcare-reform-fray-over-abortion.

on the discretionary administrative authority that the bill conferred specifically with respect to the PCIP program to shut off abortion funding in the PCIP—even as the senior White House health policy aide underscored that this would not be a precedent for implementation of other components of the PPACA." Johnson Affidavit, supra, n. 3, at ¶ 44, JA 94-95.

2. Taxpayer Funded Abortion Allowed in Community Health Center Fund

The ACA established the "Community Health Center Fund" and directly appropriated "$11 billion over a five year period for the operation, expansion and construction of health centers throughout the Nation."[17] Community Health Centers ("CHCs") provide primary health services, including "health services related to family medicine, internal medicine, … obstetrics, or gynecology that are furnished by physicians," and "family planning services." ACA § 10503, codified at 42 U.S.C. § 254b. Thus, the statutory terms that describe the services provided by the CHC program are as broad as the terms used in the Medicaid statute, and in the case of "family planning services," the terms are identical. Therefore, by virtue of the same reasoning applicable to the Medicaid statute, *supra* Section A(1), courts are highly likely to conclude that the CHC program *must* provide tax-funded abortions unless Congress attaches to the CHC funds a Hyde-type limitation. And because the ACA appropriates CHC funds without including a Hyde-type limitation in that appropriation, those

[17] U.S. Dept. of Health and Human Services, *The Affordable Care Act and Health Centers*, http://bphc.hrsa.gov/about/healthcenterfactsheet.pdf.

funds, under the court precedent referenced above, *must* be used for abortions.

CHCs have existed for more than 45 years, and so far they have not provided abortions except in the narrow range of cases where Hyde has authorized them (rape, incest, and threat to maternal life). But that is precisely because all of their federal funding, at least so far, appears to have been made through annual appropriations bills that included the Hyde Amendment. The problem with the ACA is that it makes a *separate* appropriation of billions of dollars for CHCs *without* including Hyde Amendment language to cover that appropriation.[18]

The Secretary of HHS wrote recently that HHS regulations exclude federal funding of abortions in CHCs, subject to life-of-the-mother, rape, and incest exceptions. We agree that the HHS regulations she cites are perfectly valid as to funds that Congress

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[18] The Hyde Amendment limits abortion using "funds appropriated in this Act," and also applies to "funds in any trust fund to which funds are appropriated in this Act." Consolidated Appropriations Act, 2010, Div. D, tit. V, § 507. Based on the latter, some may argue that the ACA appropriations may not be used for abortions in CHCs if they are commingled in a trust fund that is already Hyde-restricted. But the ACA does not place CHC funds into such an existing trust fund. Rather, the ACA creates a new fund into which its new appropriations shall be placed. ACA, § 10503 ("It is the purpose of this section to establish a Community Health Center Fund (referred to in this section as the 'CHC fund') ... There is authorized to be appropriated, and there is appropriated, out of any monies in the Treasury not otherwise appropriated, to the CHC Fund" specified amounts to be used for CHCs). *See also* Executive Order, § 3 (noting that the ACA creates new CHC fund within HHS). Thus, the ACA-appropriated funds are untouched by any existing Hyde limitation on the fund into which they are appropriated, and must under the cases described earlier still be spent on abortions.

appropriated specifically subject to the annual Hyde restriction. But those regulations rely for their statutory authority—and their validity—on the annual Hyde Amendment. Because that annual Hyde Amendment does not apply to ACA appropriations for CHCs, and because that section of ACA does not have Hyde language of its own, the regulations are highly likely to be found unenforceable as to these ACA-appropriated funds.

Indeed, the fact that the HHS regulations currently call for abortions to be provided in the CHC program in cases when the mother's life is endangered (42 C.F.R. § 50.304), and in cases of rape or incest (42 C.F.R. § 50.306), is an implicit acknowledgment that abortions are generally within the range of services that CHCs provide, subject only to such limitations as Congress has imposed through the Hyde Amendment. The problem is that the ACA makes an appropriation to the CHC program *without* an accompanying Hyde Amendment, thereby depriving the regulations of any statutory basis as applied to the funds that the ACA appropriates for CHCs.

In sum, the combination of (a) the statutory mandate that CHCs currently have to provide comprehensive health services, and (b) the absence of any Hyde limitation on the funds that the ACA appropriates for CHCs, means that (c) courts are highly likely to read the ACA to require the funding of abortions at CHCs in the absence of a statutory correction.

C. The ACA Authorizes Taxpayer Subsidies for Exchange Plans that Cover Elective Abortion

The following section addresses the impact of the "Nelson-Boxer Amendment," discussed above, which adopted Section 1303 of the ACA. In short, the accounting scheme embodied in the express language of Section 1303 of the ACA is contrary to the second part of the Hyde Amendment, which provides that no federal funds can be used to pay for health insurance coverage that includes elective abortions. This is because the statutory language in the ACA expressly states that federally subsidized plans in the Exchanges may include coverage for elective abortion. The statute further requires that all enrollees who find themselves in such plans (often unintentionally by virtue of the "secrecy language" discussed below) must, without exception, pay an abortion premium surcharge to be placed into a separate abortion allocation account.

Notably, while Section 1303 was written to implement a "two check" scheme to avoid the appearance of federal subsidies covering abortion, new research indicates that the "separate payments" requirement expressly required by Section 1303 is not being enforced by the Obama Administration.[19]

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[19] Susan T. Muskett, *Bait-and-Switch: The Obama Administration's Flouting a Key Part of Nelson 'Deal' on Obamacare*, National Right to Life News (Dec. 9, 2013) (quoting bulletins and guidance from state insurance commissioners in Maryland, New York and Washington State advising insurance companies that the state will not require them to collect the separate payments from enrollees, nor to even issue an itemized bill setting forth the separate abortion surcharge.)

1. The Abortion Premium Surcharge and its Secrecy Clause Force Taxpayers to Personally Fund the Abortions of Other Enrollees in Subsidized Plans

This section attempts to clear the fog surrounding the inner workings and unconstitutional impact of the Abortion Premium Mandate that originated in Section 1303 of the Affordable Care Act, as codified at 42 U.S.C. § 18023. Section 1303 of the ACA was subsequently implemented in regulations governing Exchanges that were finalized on March 27, 2012, entitled "Segregation of funds for abortion services." Section 1303 and its implementing regulations are collectively referred to as "Section 1303" or the "Abortion Premium Mandate".

The accounting scheme laid out in the provisions of Section 1303 was devised as an attempt to overcome the political hurdle of "taxpayer subsidized abortion."[20] This became necessary because the ACA expressly allowed health plans to provide elective abortion coverage within the government subsidized Exchanges, contrary to the Hyde Amendment and former federal policy.[21]

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[20] Of course, if individuals are forced to pay for other people's elective abortions, this too is a form of "taxpayer funded abortion."

[21] The ACA breaks with the consistent federal policy since 1996 of prohibiting coverage for elective abortion in subsidized plans offered through the Federal Employees Health Benefits Plan, military insurance through TRICARE, or Indian Health Services. Ernest Istook, *The Real Status Quo on Abortion and Federal Insurance*, The Heritage Foundation (November 11, 2009), http://blog.heritage.org/2009/11/11/the-real-status-quo-on-abortion-and-federal-insurance/.

a. How the Abortion Premium Mandate Operates.

On Christmas eve of 2009, following a week of tense negotiations with Senator Majority Leader Harry Reid, Senator Ben Nelson took to the floor of the U.S. Senate to explain the "manager's amendment" that he had negotiated. What would become Section 1303 of the Act was described by Senator Nelson as follows:

> [I]n the Senate bill [which later became the ACA], if you are receiving Federal assistance to buy insurance, and if that plan has any abortion coverage, the insurance company must bill you separately, and you must pay separately from your own personal funds—perhaps a credit card transaction, your separate personal check, or automatic withdrawal from your bank account—for that abortion coverage. Now, let me say that again. You have to write two checks: one for the basic policy and one for the additional coverage for abortion. The latter has to be entirely from personal funds.

In subsequent litigation brought by Liberty University based in part on the religious liberty implications of Section 1303, a federal district court explained:

Section 1303 became known as the "Nelson Compromise" because it arose out of an attempt by Senator Ben Nelson, a pro-life Democrat, to find language that would "make it clear that [the healthcare bill] does not fund abortion with government money." *Abortion Haggling Looms Over Health Care Debate in Senate* (Nov. 10, 2009), available at http://www.foxnews.com/politics/2009/11/10/abortion-haggling-looms-health-care-debate-senate/ (last visited March 5, 2013).

> In plans that do provide non-excepted [elective] abortion[22] coverage, a separate payment for non-excepted [elective] abortion services must be made by the policyholder to the insurer, and the insurer must deposit those payments in a separate allocation account that consists solely of those payments; the insurer must use only the amounts in that account to pay for non-excepted [elective] abortion services. ACA, § 1303(b)(2)(B),(C). Insurers are prohibited from using funds attributable to premium tax credits or [federal] cost-sharing reductions … to pay for non-excepted [elective] abortion services. ACA § 1303(b)(2)(A).

Liberty University v. Geithner, 753 F. Supp. 2d 611, 643 (W.D. Va. 2010).

With the finalization of the implementing regulations that mirror Section 1303, each enrollee in Exchange plans that happen to include abortion coverage is mandated to make "a separate payment" from their own personal funds or payroll deduction directly into an allocation account to be "used exclusively to pay for" other people's elective surgical abortions. 45 CFR § 156.280(e) (implementing ACA, Section 1303(b)(2)(B), as codified at 42 U.S.C. § 18023). This abortion premium mandate applies "without regard to the enrollee's age, sex, or family status," 45 CFR § 156.280(e)(2)(i), and with no exemption for enrollees who consider the practice and

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[22] The court used the ACA phrase "non-excepted" to describe elective abortions (all abortions other than those in cases of rape, incest or life of the mother). ACA, §1303(b)(1)(B).

direct funding of surgical abortion to be a grave moral evil.

Futhermore, despite the clear language of the ACA, it appears that the "separate payments" requirement is not going to be enforced by the Obama Administration. Gretchen Borchelt, director of state reproductive health policy at the National Women's Law Center, told the Huffington Post that "we used to talk about it as being two checks that the consumer would have to write because of the segregation requirements, but that's not the way it's being implemented."[23] Likewise, a spokeswoman for Rhode Island's Exchange told PolitiFact Rhode Island that "the customer is not billed a separate fee." As PolitiFact notes, "it turns out to be a hidden fee."[24]

b. How the "Secrecy Clause" Creates Abortion Landmines for Taxpayers

Since the ACA's effective date of January 1, 2014, pro-life Americans shopping in the Exchanges have been unable to get a straight answer on which plans include elective abortion.[25] As time goes on, taxpayers

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[23] Jeffrey Young, *Obamacare Provokes 21 States Into Banning Abortion Coverage by Private Health Insurers*, Huffington Post (Sept. 3, 2013), http://www.huffingtonpost.com/2013/09/03/obamacare-abortion-coverage_n_3839720.html.

[24] PolitiFact Rhode Island (Oct. 2, 2013), http://www.politifact.com/rhode-island/statements/2013/oct/23/barth-bracy/anti-abortion-activist-barth-bracy-says-people-who/. For other examples of State insurance commissions who are not being required by the Obama administration to abide by the "separate payments" requirement of Section 1303, *see* Susan T. Muskett, *Bait-and-Switch: The Obama Administration's Flouting a Key Part of Nelson 'Deal' on Obamacare*, *supra* n. 20.

[25] Julie Rovner, *Which Plans Cover Abortion? No Answers on HealthCare.gov*, NPR (Nov. 1, 2013), http://www.npr.org/

will increasingly find themselves subject to the Abortion Premium Mandate because either (1) the abortion inclusive plan was the choice of their small employer who purchased a subsidized group plan in the Exchange,[26] or (2) they become entrapped via the "secrecy clause" that effectively instructs insurers to conceal abortion coverage and abortion premiums when advertising in the Exchanges (and even to conceal the breakout of the separate abortion premium in the summary of benefits provided at enrollment). 45 CFR § 156.280(f).[27]

Given the profound religious freedom issues that arise from the ACA's inclusion of plans that cover elective surgical abortion, as well as its clear violation of the second part of the Hyde Amendment by subsidizing abortion plans, the burden should be on the government to clearly warn consumers who respect the sanctity of human life to avoid abortion-covering Exchange plans. But, quite to the contrary, the ACA and its implementing regulations effectively

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blogs/health/2013/11/01/242174176/which-plans-cover-abortion-no-answers-on-healthcare-gov. *See also* Genevieve Plaster and Charles A. Donavan, *Elective Abortion Coverage Information Still Elusive*, Charlotte Lozier Institute (Dec. 13, 2013) (reporting on a survey sample of online websites via the federal exchange examined by the authors, and detailing the difficulty if not impossibility of identifying which plans cover elective abortion).

[26] Small Business Health Care Tax Credit for Small Employers, Internal Revenue Service, http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers.

[27] For a two-page review of the regulations' abortion mandate and secrecy clause, *see* USCCB, *Backgrounder: The New Federal Regulation on Coerced Abortion Payments*, http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Backgrounder-The-New-Federal-Regulation-on-Coerced-Abortion-Payments.pdf .

instruct the issuers to conceal elective abortion coverage and the separate abortion premium from taxpayers in the federally subsidized Exchanges.

Section (f)(1) of 45 CFR § 156.280 provides that notice about a plan's inclusion of elective abortion coverage is to be disclosed *not* in Exchange advertising, but rather "*only*… at the time of enrollment." Further, section (f)(2) prohibits issuers from disclosing the separate elective abortion premium in Exchange advertisements, and even in the summary of benefits provided at enrollment. Rather, it requires that the issuer must provide notice "only with respect to *the total amount of the combined payments*" of regular premiums and the abortion premium.

The "secrecy clause" reads as follows:

> (f) *Rules relating to notice*.
>
> (1) *Notice*. A QHP [qualified health plan] that provides for coverage of services in paragraph (d)(1) of this section [elective abortion], must provide a notice to enrollees, *only* as part of the summary of benefits and coverage explanation, *at the time of enrollment*, of such coverage.
>
> (2) *Rules relating to payments*. The notice described in subparagraph (f)(1) of this section, any advertising used by the QHP issuer with respect to the QHP, any information provided by the Exchange, and any other information specified by HHS must provide information *only with respect to the total amount of the combined payments* for services described in paragraph (d)(1) of this

> section [elective abortion] and other services covered by the QHP.

45 C.F.R. § 156.280(f), 77 Fed. Reg 18472-73 (emphasis added).

From a pro-life perspective, even if the Section 1303 requirement of two payments were being effectuated, it would not mitigate the fact that massive federal premium subsidies are now flowing to Exchange plans that cover elective abortion (a sharp departure from the longstanding policy of the Hyde Amendment), and that every taxpayer enrolled in the plan will have a portion of their premium placed into a separate account solely to pay for other people's elective abortions. But it is telling that part of the very "deal" that secured passage of the ACA—that separate payments be collected from enrollees in abortion-covering Exchange plans—is now being flagrantly flouted. *See* Susan T. Muskett, *Bait-and-Switch: The Obama Administration's Flouting a Key Part of Nelson 'Deal' on Obamacare*, *supra* n. 20.

2. The ACA Subsidizes Plans Required by the HHS Mandate to Cover Abortion-Inducing Drugs and Devices

Enrollees who somehow navigate the murky waters of the taxpayer subsidized Exchanges to find a plan that does not include surgical abortion coverage will nonetheless be subjected to the HHS "Women's Preventive Services" Mandate covering abortifacient drugs and devices, without the ability to decline coverage.

To be sure, ACA § 1334(a)(6) requires at least one qualified health plan in each Exchange that does not cover surgical elective abortion. But this option does

not provide relief from the HHS Mandate that requires certain abortion-inducing drugs and devices to be included in every single qualified health plan, even those that are subsidized by taxpayer dollars.

While most of the public attention on the HHS Mandate has focused on employer group plans and plans by non-exempt religious organizations, the HHS Mandate is also applicable to every single *individual* health insurance plan, including those subsidized by taxpayer dollars in the Exchanges:

> [N]on-grandfathered group health plans and *health insurance issuers offering* group *or individual health insurance coverage* [shall] provide benefits for certain preventive health services without imposition of cost sharing… that include… '[a]ll FDA approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity….

77 Fed. Reg. 8725 (emphasis added) (implementing 42 U.S.C. § 300gg-13(a)).

As discussed in briefing before this Court in the Hobby Lobby/ Conestoga Woods cases, Nos. 13-354, 13-356, FDA-approved "contraceptives" include drugs and devices that are capable of terminating the life of a human being at the embryonic stage of development. The mandatory inclusion of these life-ending drugs and devices as an "essential benefit" is one more example of an administrative decree under the ACA that allows and even requires abortion funding.

For the above reasons, the ACA authorizes taxpayer-funded abortion.

CONCLUSION

Amicus respectfully urges this Court to reverse the decision below.

Respectfully submitted,

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