

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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February 11, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

We are writing to urge you to refrain from bringing H.R. 358 before the full Committee. This bill, which is an attack on a woman's right to choose, was introduced without a valid statement of constitutional authority as required under the new House rules adopted in January. We respectfully urge that the bill not be considered in Committee unless it is re-introduced with a proper citation of constitutional authority.

At today's markup in the Health Subcommittee, Rep. Anthony Weiner raised a point of order against consideration of H.R. 358. Mr. Weiner quoted from House Rule XII, clause 7(c)(1), which provides: "A bill or joint resolution may not be introduced unless the sponsor submits for printing in the Congressional Record a statement citing as specifically as practicable the power or powers granted to Congress in the Constitution to enact the bill or joint resolution." Mr. Weiner then read from the statement submitted by Subcommittee Chairman Joe Pitts, the sponsor of the legislation, which stated in full: "Congress has the power to enact this legislation pursuant to the following: The Protect Life Act would overturn an unconstitutional mandate regarding abortion in the Patient Protection and Affordable Care Act."

As Mr. Weiner argued in support of his point of order, the statement submitted by Mr. Pitts does not identify any specific provision in the Constitution that authorizes Congress to enact his legislation. Indeed, it is impossible to divine any constitutional basis for Mr. Pitts's bill from his statement.

Mr. Pitts ruled that Mr. Weiner had not stated a valid point of order, in part based on advice you provided. You advised Mr. Pitts and the subcommittee that the only point at which an objection can be raised to validity of the constitutional statement is when the bill is introduced, not during a markup of the legislation.

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We do not dispute Chairman Pitts's ruling or the parliamentary advice you gave him. But we believe that if the Committee adheres to this policy, it will make a mockery of the rule requiring submission of a statement of constitutional authority. According to the Parliamentarians, the chair judges only whether a constitutional statement has been submitted at the time of introduction, not whether the statement is valid. If members cannot raise a point of order to enforce the constitutional statement rule during committee consideration of the rule, there is no point at which the rule can be enforced.

Chairman Pitts's bill is an assault on a woman's access to abortion services. Its apparent objective is to make it impossible for women to choose an abortion by effectively eliminating coverage for the necessary medical services. It also calls into question the obligation of health care providers to provide the emergency services needed to save the life of a pregnant woman. Because the bill represents a federal intrusion into the most intimate personal decisions of women and families, it is exactly the type of legislation that most needs a clear statement of Congress's constitutional authority.

While we do not dispute that you have the right to bring H.R. 358 before the full Committee, we respectfully suggest that you use your discretion not to do so. You should ask Mr. Pitts to introduce a new bill with a valid statement of constitutional authority and use the new bill, not H.R. 358, as the vehicle for any further consideration of this matter in the Committee. That would send a strong signal that the Committee is serious about the requirement that the constitutional basis of legislation be clearly stated before legislation can be considered in Committee.

The new Republican majority adopted the constitutional statement requirement with great fanfare in January. As the provision is now part of our rules, we believe it should be appropriately enforced – not rendered meaningless – as we approach our first full Committee markup.

Sincerely,



Henry A. Waxman
Ranking Member



Frank Pallone, Jr.
Ranking Member
Subcommittee on Health

cc: The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health