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1 {York Stenographic Services, Inc.}
2 HIF040.140
3 HEARING ON H.R. ____, A BILL TO AMEND THE PATIENT PROTECTION
4 AND AFFORDABLE CARE ACT TO MODIFY SPECIAL RULES RELATING TO
5 COVERAGE OF ABORTION SERVICES UNDER SUCH ACT
6 WEDNESDAY, FEBRUARY 9, 2011
7 House of Representatives,
8 Subcommittee on Health
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 1:06 p.m., in
12 Room 2322 of the Rayburn House Office Building, Hon. Joe
13 Pitts [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Pitts, Burgess,
15 Shimkus, Myrick, Murphy, Blackburn, Gingrey, Latta, McMorris
16 Rodgers, Lance, Cassidy, Guthrie, Upton, Pallone, Dingell,
17 Towns, Engel, Capps, Schakowsky, Gonzalez, Baldwin, Weiner,
18 and Waxman (ex officio).

19 Also present: Representative DeGette.

20 Staff present: Gary Andres, Staff Director; Jim

21 Barnette, General Counsel; Michael Beckerman, Deputy Staff

22 Director; Alison Busbee, Legislative Clerk; Howard Cohen,

23 Chief Health Counsel; Marty Dannenfelser, Senior Advisor,

24 Health Policy & Coalitions; Julie Goon, Health Policy

25 Advisor; Peter Kielty, Senior Legislative Analyst; Ryan Long,

26 Chief Counsel, Health; Jeff Mortier, Professional Staff

27 Member; Katie Novaria, Legislative Clerk; Heidi Stirrup; Lyn

28 Walker, Coordinator, Admin/Human Resources; Karen Nelson,

29 Deputy Democratic Staff Director for Health; Ruth Katz, Chief

30 Public Health Counsel; Steve Cha, MD, Professional Staff;

31 Phil Barnette, Democratic Staff Director; Karen Lightfoot,

32 Communications Director; Alli Corr, Special Assistant for

33 Health; and Mitch Smiley, Associate Clerk.

|

34 Mr. {Pitts.} The Subcommittee will come to order. The
35 Chair will recognize himself for an opening statement.
36 First, I would like to thank my colleagues on both sides of
37 the aisle for being here today for what promises to be a very
38 interesting hearing. The new Republican Majority has stated
39 its commitment to an open and fair legislative process, and
40 that will be reflected in this subcommittee. I ask all of my
41 colleagues and our audience to treat each other and our
42 witnesses with civility and respect. This hearing is an
43 important part of the legislative process and we will conduct
44 it accordingly. I would also like to acknowledge my friend,
45 the Ranking Member, Mr. Pallone of New Jersey. Pennsylvania
46 and New Jersey are as close together as the Phillies and the
47 Yankees are far apart. This Phillies fan intends to work as
48 closely as possible with Mr. Pallone, the Yankees
49 notwithstanding.

50 I believe there are a great many things we can work on
51 together for the good of this country, and I look forward to
52 cooperating with you this year. When we disagree I hope we
53 will always do so with dignity and respect, treating those
54 who may disagree with dignity and respect. And I promise to
55 do that on my part.

56 Pursuant to committee rules, I intend to make an opening

57 statement of not more than 5 minutes and will then recognize
58 the Ranking Member, Mr. Pallone, for an opening statement.
59 The Chairman of the Committee, Mr. Upton, will then have a
60 chance to give an opening statement followed finally by the
61 Ranking Member of the Committee, Mr. Waxman.

62 Today we will hear testimony from one panel of three
63 witnesses, two invited by the majority, and one invited by
64 the minority. All sides of the debate will be heard today
65 and every member will have a chance to question each of the
66 witnesses.

67 The testimony we will hear today regards the prohibition
68 of taxpayer funding of abortion and abortion coverage. For
69 decades there has been a clear prohibition against the use of
70 federal dollars to pay for abortion. The Patient Protection
71 and Affordable Care Act opened the door, for the first time
72 in decades, to government financing of abortion. My
73 colleagues will recall that the House acted affirmatively to
74 fix this in a strongly bipartisan vote of 240 to 194 to 1.
75 We are all aware that abortion itself can be a controversial
76 subject. What is far less controversial is the question of
77 whether the taxpayers should be financing it. The so-called
78 Stupak-Pitts amendment last session affirmed the view of 60
79 to 70 percent of Americans that government taxpayer money
80 should not be involved in abortion. Unfortunately, the

81 Senate did not see fit to include the House prohibition in
82 its version of the bill and it was the Senate Bill that
83 became law.

84 We need to be clear about some things as we start. The
85 government does not finance abortions and has not done so for
86 decades thanks to the Hyde amendment. Moreover, the
87 government has never told any medical professional or medical
88 institution that it must perform abortions. This bill seeks
89 to clarify these policies and give them permanence.

90 The President has on at least two occasions affirmed
91 what we are doing here today. In his 2009 speech to a joint
92 session of Congress, the President said, and I quote:
93 ``Under our plan no federal dollars will be used to fund
94 abortions and federal conscience laws will remain in place.''
95 A year later in his Executive Order, the President clearly
96 endorsed the principle of no government funds going to
97 abortion and again, clearly endorsed the principle of not
98 forcing health care professions to act against the dictates
99 of conscience. But an Executive Order is not law. It can be
100 rescinded at any time by this or any future president. It
101 can be overturned by a judge or simply ignored.

102 If we wish to respect the views of those who do not want
103 their money used to finance abortion, if we wish to follow
104 the wishes of 60 to 70 percent of Americans who believe the

105 government should not pay for the procedure, then Congress
106 should send this bill to President in short order. The
107 President is clearly on record supporting the principles in
108 the bill and when it gets to his desk, I hope he will sign
109 it.

110 I think I have how much time--40 seconds. I will yield
111 the remainder of my time to gentleman from Ohio, Mr. Latta.

112 [The prepared statement of Mr. Pitts follows:]

113 ***** INSERT 4 *****

|
114 Mr. {Latta.} I thank you, Chairman, for yielding and
115 for holding this very important hearing on the Protect Life
116 Act. And as the Chairman designated in his opening remark
117 stating that you know, the majority of Americans are opposed
118 to the Federal government funding abortion. And the
119 question, of course, came up during the bill, the Obama Care
120 legislation as to the use of federal taxpayer dollars to
121 allow that coverage and also for the Stupak-Pitts amendment
122 that was first supported, and then unfortunately we did not
123 have, and then, of course, the Executive Order.

124 So I would just like to say, Mr. Chairman, that we have
125 to be vigilant in our defense of human life and work past the
126 Protect Life Act so that the government funding is not used
127 to pay for abortions through the Federal government. The
128 Anti-life policies cannot be tolerated and it is because it
129 is absolutely morally wrong and opposed by again as I said
130 the majority of tax payers. The passage of the Protect Life
131 is the first step towards putting an end once and for all for
132 all taxpayer funding of abortion as well as fixing a deeply
133 flawed health care bill. And I look forward to the hearing
134 and when the bill becomes law. I yield back.

135 [The prepared statement Mr. Latta follows:]

136 ***** COMMITTEE INSERT *****

|
137 Mr. {Pitts.} The gentleman's time has expired. The
138 gentleman from New Jersey, the Ranking Member Mr. Pallone is
139 now recognized for 5 minutes for an opening statement.

140 Mr. {Pallone.} Thank you, Chairman Pitts. I look
141 forward to working alongside you as well and the subcommittee
142 and it is my hope that we can meet some common ground during
143 this Congress. And I appreciate the comments you made in
144 that regard. I just wanted to say briefly I remember the
145 time when you--I told you I was going to the University of
146 Pennsylvania farm in your district and I had a grand old time
147 there with the pigs and the cows and all the other farm
148 animals. And you still represent a good part of Lancaster
149 County--

150 Mr. {Pitts.} All of Lancaster.

151 Mr. {Pallone.} --which is a wonderful, peaceful, quiet
152 place--the Amish, and it is just a nice place, so let us work
153 together. I definitely think we can.

154 Regardless of any one person's views though on the topic
155 today, I want to stress the current law is clear. No
156 government funding can be used for abortion under the
157 Affordable Care Act except in cases of rape, incest, and to
158 save the life of the woman. And today is not about public
159 funding in my opinion. Today is an attempt by my colleagues

160 on the other side of the aisle to reopen the contentious
161 issue of abortion and dismantle the landmark healthcare law.
162 The bill before us in my opinion is too extreme. It is a
163 massive overreach from what was delicately negotiated during
164 health reform and it extensively restricts women's access to
165 reproductive health services and life saving care. Its
166 language does more than prevent federal funds from going to
167 abortions. It is a step towards eliminating a choice that
168 our Supreme Court has deemed legal and remains legal to this
169 day. Religious and personal views should not put women's
170 lives at risk.

171 Under current law, health care providers are obligated
172 to provide emergency services, otherwise stabilize a patient,
173 and make available the transfer to another facility should
174 they take issue with performing abortion procedures. This
175 bill eliminates these minimum moral obligations even to save
176 a woman's life. The bill in my opinion is not pro life. It
177 is anti-woman. The same members of this committee who voted
178 to repeal the Affordable Care Act last month charged that it
179 will interfere with the doctor/patient relationship. And I
180 can't think of a policy that is more intrusive of a
181 doctor/patient relationship than the one before us today.

182 I strongly believe women need and are entitled to safe,
183 affordable health care options and this bill only serves to

184 create health and financial challenges that may be impossible
185 to overcome. Now I--whatever time I have left, Mr. Chairman,
186 I would like to yield a minute each to Ms. Capps, Ms.
187 Baldwin, and Ms. Schakowsky in that order. We will see if we
188 can accommodate all three in my time and so start with Ms.
189 Capps.

190 [The prepared statement of Mr. Pallone follows:]

191 ***** COMMITTEE INSERT *****

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192 Mrs. {Capps.} Thank you, Mr. Pallone. As you just
193 stated, the notion that the Affordable Care Act allows for
194 funding of elective abortion is false. So I must ask with
195 national unemployment at 9 percent and the potential that we
196 have right here in this subcommittee to create and strengthen
197 a critical work--health care work force of the jobs there,
198 why are we here debating this extreme legislation that would
199 instead take reproductive rights away from women. Mr.
200 Chairman, the debate today isn't about tax dollars or
201 provider conscience. Instead it is about chipping away at
202 the legal rights of women including the right to receive life
203 saving treatment or referrals from a hospital emergency room.
204 Not even the Stupak Amendment we fought over last year tried
205 to change this.

206 It is disappointing that this committee, one that is so
207 important to job creation and the economy is wasting our time
208 on this extreme legislation. And it is downright appalling
209 that we are spending our first hours as a subcommittee in
210 this Congress trying to restrict a woman's right. Now,
211 instead--rights--instead of rehashing the culture wars we
212 should be using our time in this subcommittee doing what the
213 American people really want us to do, strengthen the economy
214 and create jobs. And I yield to my colleague, Ms. Baldwin.

215 [The prepared statement of Mrs. Capps follows:]

216 ***** COMMITTEE INSERT *****

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217 Ms. {Baldwin.} Thank you. I share your concern that
218 the very first hearing that we are having in this Congress
219 isn't about creating jobs or bolstering our economy or
220 helping families get health care coverage. Instead the
221 majority has demonstrated that its top priority is attacking
222 women's rights. This legislation takes away a woman's
223 ability to make their own important life decisions about
224 their reproductive health. And for--and this bill gives the
225 government and insurance companies new power to make these
226 decisions for them. And for that reason I think this
227 legislation is extreme. This legislation is an unprecedented
228 display of lack of respect for American women and for our
229 safety. The bill would cut off millions of women from the
230 private care that they have today. It would deny individual
231 decision making by giving insurance companies more power and
232 it would allow public hospitals to deny life saving care and
233 dictate what women can do with their own health care dollars.
234 With that I yield time to Jan Schakowsky.

235 [The prepared statement of Ms. Baldwin follows:]

236 ***** COMMITTEE INSERT *****

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237 Ms. {Schakowsky.} I would like to use that time to ask
238 the Chairman if I could offer for the record from the
239 Catholic Health Association a letter which takes exception
240 with some of the provisions--one of the provisions of the
241 bill and also from the National Partnership for Women and
242 Families, and the National Health Law Program.

243 Mr. {Pitts.} Without objection it will be added to the
244 record.

245 [The information follows:]

246 ***** COMMITTEE INSERT *****

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247 Mr. {Pitts.} All right, the gentleman's time is
248 expired. Thanks. Thank you to those who made statements and
249 now the Chair would recognize the Chairman of the Full
250 Committee, Mr. Upton for 5 minutes or such a time as he may
251 consume.

252 The {Chairman.} Thank you, Mr. Chairman. I intend to
253 use 1 minute and then yield 2 minutes to Dr. Burgess, a
254 minute to the Vice Chair Sue Myrick, and a minute to Cathy
255 McMorris Rodgers. So in my minute I want to again thank you,
256 Mr. Chairman. The discussion draft before us closely tracks
257 the Stupak-Pitts amendment that the house adopted by a strong
258 bipartisan majority in the last Congress. This includes the
259 Hyde amendment language that has continuously been adopted by
260 Congress since 1993. Unfortunately the massive health care
261 plan that was ultimately enacted by Congress contains
262 numerous loop holes that allow federal subsidies to be used
263 for to purchase plans that pay for abortions.

264 This bipartisan legislation today proposed by Chairman
265 Pitts amends the health bill to clearly and statutorily
266 prevent federal funding for abortion or abortion coverage
267 through government exchanges, community health centers or any
268 other program funded or created by the new law. Additionally
269 the bill protects the right of the conscience for health care

270 professionals and assures that private insurance companies
271 are not forced to cover abortion. I ask unanimous consent
272 that may full soon be part of the record. I now yield to Dr.
273 Burgess.

274 [The prepared statement of Mr. Upton follows:]

275 ***** INSERT 5 *****

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276 Mr. {Pitts.} Without objection so ordered.

277 Dr. {Burgess.} I thank the gentleman for yielding and
278 just a couple of observations as we take up this legislation
279 today. The Protect Life Act is not applying anything new.
280 It is not applying restrictions. It merely stems the status
281 quo, the taxpayer dollars will not be used to subsidize
282 elective abortions, and that is it. Similar language has
283 been--is found in the Hyde amendment, was passed in 1976, and
284 has been reauthorized in each Congress throughout the
285 appropriations process. H.R. 358 is only preserving language
286 that Congress and doctors and patients have relied upon for
287 decades. It does not change or alter the practice of
288 medicine or the responsibility of physicians in any way.
289 Past and present the Congress has said we will not pay for
290 elective abortions. That does not change in this
291 legislation.

292 Now in my prior life I was a doctor. I am a doctor. I
293 am an OB/GYN and I do value the sanctity of human life. I do
294 believe that it is a miracle that it can even occur and for
295 us to interfere in a harmful way is something that as an
296 OB/GYN I think it wrong. But I understand that people do
297 feel differently. I think it is important to codify with
298 this language that we are responsible for the judicious use

299 of taxpayer dollars. Now as a doctor, I am sworn to aid
300 those in need and I reject where people say where this
301 legislation would prevent doctors from providing care in
302 times of need. Integrity and the relationship with patients
303 upholding the oath that we all take as physicians are
304 fundamentals. Arguments that people will be harmed, let
305 alone left to die at the door, are just simply not true.
306 There is a suspension of belief required to think that
307 elective abortions versus medically necessary procedures are--
308 -can be in fact co-mingled. I see my time is at an end. I
309 will yield to the--

310 The {Chairman.} Vice Chairman.

311 Dr. {Burgess.} --Vice Chairman.

312 The {Chairman.} Sue Myrick.

313 [The prepared statement of Dr. Burgess follows:]

314 ***** COMMITTEE INSERT *****

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315 Mrs. {Myrick.} Thank you, Mr. Chairman. I am pleased
316 to speak on behalf of this bill and I believe it represents a
317 necessary improvement to the Patient Protection and
318 Affordable Care Act that was signed into law last year.
319 Americans broadly agree that taxpayer money should not
320 subsidize elective abortions. This bill doesn't affect the
321 legality of abortion services for American women. It is not
322 a seed change from current policy. In fact, it merely
323 carries forth what is already true for federal health
324 programs such as the Federal Employee Health Benefit Program,
325 Medicaid, SCHIP, and the Indian Health Service. To my
326 knowledge there is no evidence that prohibition of coverage
327 for elective abortions in these programs has negatively
328 impacted women's health. I look forward to the testimony for
329 our--from our witnesses and I yield back.

330 [The prepared statement of Mrs. Myrick follows:]

331 ***** COMMITTEE INSERT *****

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332 The {Chairman.} And the chair recognizes Cathy McMorris
333 Rodgers.

334 Ms. {McMorris Rodgers.} Thank you, Mr. Chairman. I,
335 too, want to speak in support of the legislation. If we are
336 committed to health care reform for everyone including women
337 and children then health care protections for children should
338 start at the moment their lives begin. We agree to allow
339 children to stay on health care plans until age 26. We agree
340 to provide our children's coverage for pre-existing
341 conditions, and eliminate annual and lifetime caps, but what
342 does it all mean if we are not going to protect them at the
343 moment their lives begin? Two thirds of women polled during
344 the health care debate representing all parties, races,
345 marital statuses objected to the Federal government paying
346 for abortions. I would urge all of my colleagues to join in
347 supporting the Protect Life Act and I yield back the balance
348 of my time.

349 [The prepared statement of Ms. McMorris Rodgers
350 follows:]

351 ***** COMMITTEE INSERT *****

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352 Mr. {Pitts.} Chair thanks the members for their
353 statements. The Ranking Member of the Full Committee, Mr.
354 Waxman is now recognized for 5 minutes for an opening
355 statement.

356 Mr. {Waxman.} Thank you very much, Mr. Chairman. I
357 think we have to put this legislation in the context of this
358 bill and other bills that are also moving in other committees
359 on this very subject of abortion. Let there be no doubt
360 about it. The objective is not to say the taxpayer's funds
361 can be used--cannot be used for paying for a termination of a
362 pregnancy. The objective is to say, the objective of all
363 this legislation is to say no woman will be able to buy
364 insurance in this country that will cover a necessary medical
365 procedure involving the termination of a pregnancy. Even
366 though it is legal and it is a medical decision now will be
367 taken over by the Congress to be made for the women involved.

368 The Affordable Care Act had a very sensitive, delicate
369 balance and it was drafted in the Senate by Senator Nelson
370 whose pro-life record speaks for itself. That law prohibits
371 the use of federal funds for abortion, keeps state and
372 federal abortion related laws in place, it would not allow
373 government tax credits to be used to pay for abortion
374 services, but this bill goes beyond that. It would provide

375 that there would in a reality be no insurance policy for
376 anybody buying in an exchange for health insurance to get a
377 policy that would cover the termination of a pregnancy even
378 when it is medically necessary. This is an assault on
379 women's reproductive health and their constitutional rights
380 to choose when to bear children. Mr. Chairman, I would like
381 to ask unanimous consent that I be able to yield 2 minutes of
382 my time to Ms. DeGette, who is not a member of this
383 Subcommittee, but a member of the Full Committee.

384 [The prepared statement of Mr. Waxman follows:]

385 ***** COMMITTEE INSERT *****

|
386 Mr. {Pitts.} Without objection.

387 Ms. {DeGette.} Thank you very much, Mr. Chairman.

388 There are some days in Congress I feel like I am in Alice in
389 Wonderland where everything is upside down and today is
390 certainly one of those days. The extreme legislation that we
391 are considering today is not just simply saying that there
392 shall be no public funds for abortion. That is already the
393 law. That is the Hyde amendment. I disagree with the Hyde
394 amendment, but in the annual HHS Appropriations Bill every
395 year it says no federal funds shall be used for abortion.
396 This was also protected in the health care legislation last
397 year.

398 Let us be clear about what this extreme bill does. What
399 this bill says is first of all it does codify Hyde which is
400 far beyond current law. But secondly, it says that anybody
401 who purchases an insurance policy: an employer, or any
402 American, male or female who purchases an insurance policy
403 that covers all reproductive services--legal reproductive
404 service now cannot have any kind of tax relief. So it is not
405 about direct federal funding of abortion. We don't have
406 that. We don't have that. What it is about is saying these
407 indirect tax credits now will be interpreted as federal
408 funding. That is the most vast restriction of a woman's

409 right to choose that any of us will ever see in our lifetimes
410 and what it would lead to if it became law is that no
411 individual in this country or business in this country could
412 purchase an insurance policy that covered the full range of
413 legal reproductive services unless they suffered essentially
414 a tax increase.

415 Mr. {Waxman.} Thank you, Ms. DeGette.

416 Ms. {DeGette.} It is wrong. It is intrusive. And we
417 just need to call it what it is. Thank you, Mr. Chairman.

418 [The prepared statement of Ms. DeGette follows:]

419 ***** COMMITTEE INSERT *****

|
420 Mr. {Waxman.} I yield the rest of my time to Ms.
421 Schakowsky.

422 Ms. {Schakowsky.} Thank you, Mr. Waxman. You know,
423 Republicans ran on the promise of smaller government, but in
424 fact it looks as if they want to reduce the size of
425 government to make it just small enough so that it can fit in
426 our bedrooms. This extreme legislation is an unconscionable
427 intrusion into the important, and often wrenching, and often
428 devastating life decisions of American women and their
429 families. Not a single American woman's rights are safe
430 under this extreme bill. Already the Hyde amendment
431 unfortunately makes sure that poor women and federal
432 employees and military women can't get the full benefits
433 under the federal plans. But what this says is that women
434 with their own money will be restricted from purchasing full
435 reproductive services including the right to terminate a
436 pregnancy. It does raise taxes on businesses and
437 individuals. One hundred sixty-three Republicans wanted to
438 change the definition of rape. I think that is out of that
439 bill now saying it can only be forcible. You have to prove
440 that you were beat up I guess. And this will--can deny
441 emergency care to save a woman's life. Let us do what the
442 American people want. Let us create jobs. Let us get to the

443 business of the economy and start limiting the rights of
444 women in America.

445 [The prepared statement of Ms. Schakowsky follows:]

446 ***** COMMITTEE INSERT *****

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447 Mr. {Pitts.} The Chair thanks the members for their
448 statements and we will now turn to our witnesses. Each of
449 you has prepared statements that will be a part of the
450 record, but I ask that you summarize your prepared statements
451 in 5 minutes.

452 Our first witness is an Associate Professor of Law at
453 George Mason University School of Law, Helen Alvaré.
454 Professor Alvaré received her law degree at Cornell
455 University in 1984 and a Master's Degree in Systematic
456 Theology from the Catholic University of America in 1989.
457 She has practiced law with the Philadelphia firm of Stradley
458 Ronan Stevens & Young specializing in commercial litigation
459 and free exercise of religion matters. She also worked for
460 the National Conference of Catholic Bishops drafting amicus
461 Briefs on abortion and a variety of U.S. Supreme Court cases.

462 Next, we will hear from Professor Sara Rosenbaum, a
463 Department of Health Policy Chair from George Washington
464 University. Professor Rosenbaum received her Jurist
465 Doctorate from Boston University Law School and has focused
466 her career on health care access for low income, minority,
467 and medically underserved populations. She also worked for
468 the White House Domestic Policy Council during the Clinton
469 Administration where she directed the drafting of the Health

470 Security Act. While serving on numerous national
471 organizational boards, she has also co-authored a help law
472 textbook ``Law and the American Health Care System''.

473 Finally, we will hear from Douglas Johnson, Federal
474 Legislative Director from the National Right to Life
475 Committee who will offer his testimony. Mr. Johnson has
476 served as the Legislative Director of the NRLC since 1981.
477 Over the past several years, Mr. Johnson has written
478 extensively on the abortion related issues raised by various
479 bills to restructure the health care system including the
480 Patient Protect and Affordable Care Act. He has also
481 published extensively on other right to life issues including
482 partial birth abortion, fetal homicide, and human cloning, as
483 well as on issues relating to restrictions on political free
484 speech and critiques of how the news media covers some of
485 these issues. So at this point I will recognize Ms. Alvaré.

|
486 ^STATEMENTS OF HELEN M. ALVARÉ, ASSOCIATE PROFESSOR OF LAW,
487 GEORGE MAS UNIVERSITY SCHOOL OF LAW; SARA ROSENBAUM, J.D.,
488 HIRSH PROFESSOR AND CHAIR, DEPARTMENT OF HEALTH POLICY,
489 SCHOOL OF PUBLIC HEALTH AND HEALTH SERVICES, THE GEORGE
490 WASHINGTON UNIVERSITY; AND DOUGLAS JOHNSON, LEGISLATIVE
491 DIRECTOR, NATIONAL RIGHT TO LIFE COMMITTEE

|
492 ^STATEMENT OF HELEN M. ALVARÉ

493 } Ms. {Alvaré.} Thank you, Mr. Chairman. Good afternoon
494 and thank you for this opportunity. My testimony today will
495 address conscience protection in health care under the
496 Protect Life Act. Initially I want to say that there is no
497 need for us to view the matter of conscience protection as a
498 zero-sum game between conscience-driven health care providers
499 and the patients they serve particularly the most vulnerable.
500 Opponents of conscience protection are portraying the
501 situation this way but the opposite is true. It is by
502 protecting conscience and elevating respect for life in
503 health care that we are likely as a Nation to serve and
504 reflect the values of most Americans particularly the
505 vulnerable.

506 This can be understood from several angles. First, less

507 privileged women are less likely to support abortion or
508 abortion funding than their more privileged sisters or than
509 men. They are also less likely to abort their nonmarital
510 pregnancies than more privileged women. Second, abortion has
511 not mainstreamed into American health care even 38 years
512 after Roe. It remains in the words of the New York Times
513 ``at the margins of medical practice''. This, I believe, is
514 why opponents of conscience want to force the government and
515 conscience-driven providers to give them what the market has
516 steadfastly refused--dispersed sources for abortions in
517 hygienic medical settings.

518 Instead, today we have this: 87 percent of counties
519 with no abortion provider, a small percentage of doctors
520 willing to perform it according to the Guttmacher Institute
521 because of stigma issues. Ninety-five percent of abortions
522 delivered in clinics and not hospitals or doctor's offices.
523 Just recently even an affiliate of Planned Parenthood, our
524 largest abortion provider quit the national organization over
525 its insistence they provide abortions. Finally, there are
526 the regular reports of unhygienic or even horrific conditions
527 at abortion clinics.

528 In recent weeks we can't have missed the reports about
529 Planned Parenthood employees offering to cooperate with
530 someone posing as a sex trafficking ring director of minor

531 girls as young as 13. Planned Parenthood has acknowledged it
532 needs nationwide retraining. Third, there's an emerging
533 scientific and cultural willingness to conclude that abortion
534 is killing and not health care for women. Not only is this
535 the word used by a majority of our Supreme Court, but
536 abortion providers and supporters of abortion rights are
537 using it regularly. More broadly, and I think this is new
538 with respect to women's flourishing, there is emerging a
539 critical mass of evidence from respected scholars and peer
540 review journals that more easily available abortion is
541 associated with women's what they are calling
542 ``immiseration'', that is, making them miserable not their
543 flourishing. Associate, that is, with creating a market for
544 sex and mating that demands more uncommitted sexual
545 encounters contrary to women's empirically demonstrated
546 preferences thereby producing more sexually transmitted
547 diseases, more nonmarital pregnancies, more single parenting,
548 more abortions, more poverty.

549 Women of color, immigrants, and poor women are suffering
550 the most from this. If opponents of conscience protection
551 want to encourage high quality health care for women, they
552 couldn't do better than ally themselves with supporters of
553 conscience. These are the kinds of providers and
554 institutions with a thick sense of vocation and a record

555 particularly of assisting vulnerable women. These are not
556 the providers we want to drive out of health care.

557 The Protect Life Act will assure that conscience-driven
558 providers remain in this marketplace. It adds protections
559 for them which reinstate the status quo but were not present
560 in the Affordable Health Care Act. It adds protections
561 regarding training for abortion and protects health care
562 entities and providers against discrimination by governments
563 and federally funded institutions--an important oversight.
564 It explicitly protects existing state conscience protections
565 from federal preemption. The Affordable Care Act also lacks
566 sufficient enforcement mechanisms in connection with the
567 limited conscience protections it did offer.

568 In conclusion, the freedom of religion and moral
569 conscience is enshrined in the universal declaration of human
570 rights. Our own President Obama has urged ``Secularists are
571 wrong when they ask believers to leave religion at the door
572 before entering the public square.'' Our founders understood
573 that human beings require respect for conscience as a
574 condition for living in freedom and integrity. Our founders
575 knew and we know and we can ever measure it today, the
576 relationship between the flourishing of religion and moral
577 conscience and a good society. When it comes to abortion
578 conscience protection in some form has been the common ground

579 between all sides of the debate even before Roe. Even when
580 abortion was legal before Roe, conscience protections were
581 attached to it. Our Supreme Court called them in Doe v.
582 Bolton ``appropriate''. So it is contrary today to common
583 sense those insisting that health care providers check their
584 consciences at the door. This should be recognized for the
585 marginal and dangerous opinion that it is. Thank you.

586 [The prepared statement of Ms. Alvaré follows:]

587 ***** INSERT 1 *****

|
588 Mr. {Pitts.} Thank you.

589 Please pardon the interruption to the witnesses, but a
590 vote has been called on the floor. There are two votes, so
591 the committee will stand in recess for votes and reconvene 15
592 minutes after the last vote to resume the hearing. Thank
593 you. Committee's in recess.

594 [Recess.]

595 Mr. {Pitts.} The meeting will come to order. Thank you
596 for your patience to the witnesses as the members were called
597 to the floor for a vote. We have heard from Professor
598 Alvaré. Next we will hear from Professor Sarah Rosenbaum.
599 Welcome.

|
600 ^STATEMENT OF SARA ROSENBAUM

601 } Ms. {Rosenbaum.} Thank you very much Mr. Chairman and
602 Members of the Committee for providing me with the
603 opportunity to speak before you today. The Hyde amendment
604 and existing conscience protections both were expressly
605 incorporated into the Affordable Care Act through section
606 1303 in order to ensure the preservation of conscience and to
607 protect against public funding for abortions. The Protect
608 Life Act would dramatically expand the reach of abortion
609 prohibitions beyond the furthest limits of the Hyde amendment
610 by incorporating its prohibitions direction into the Internal
611 Revenue Code. The bill would achieve this result by amending
612 the ACA to bar the use of premium tax credits, even though
613 these credits must in many cases be repaid from personal
614 income, if earnings increase for privately purchased health
615 insurance products, if those products cover medically
616 indicated abortions for which federal funding is barred, and
617 even if the abortion coverage is paid for out of private
618 income. This would be an enormous break from the existing
619 provisions of law which allow tax credits to be used for
620 products even if those products cover medically indicated
621 abortions so long as that component of the product is

622 purchased with private funding.

623 This change would produce three results. For the first
624 time, the IRS would be required to assume major policy making
625 and enforcement responsibility where federal abortion policy
626 is concerned. Among its responsibilities the agency would be
627 obligated to develop implementing policies that define
628 critical terms. The IRS would have to define abortion in
629 order to separate allowable claims such as claims related to
630 spontaneous abortions and miscarriages from prohibited claims
631 for induced abortions that fall outside allowable federal
632 legal parameters. The IRS would have to define rape. It
633 would have to define incest. It would have to define what is
634 ``a physical disorder, physical injury, or physical illness''
635 that would as certified by a physician place the female in
636 danger of death. The IRS would also need to establish a plan
637 certification system to assure front end compliance as well
638 as medical audit procedures for measuring corporate
639 compliance.

640 Second, health plans could be expected to exit this
641 optional coverage market entirely rather than expose
642 themselves to IRS standards, audits, disallowances, and
643 exposure for potential legal violation. The law would
644 continue to permit but of course not require a plan to cover
645 certain distinct types of abortions, but the consequences of

646 crossing the line for a plan would be potentially so severe,
647 i.e. loss of the right to sell qualified products in
648 exchange, that there is really not business reason to risk
649 this kind of corporate exposure. This is particularly true
650 given the weak market for this kind of a product that is a
651 supplemental product in view of the modest income of so many
652 people who will be buying their coverage through exchanges.

653 Women also conceivably could risk loss of coverage of
654 abortion of important health care if they abortion
655 supplements ironically. A health plan could deny claims that
656 in the plan's view fall within what the plan would consider
657 an abortion related exclusion as defined by the plan.
658 Clearly such an exclusion would apply to treatment of the
659 after affects of a medically indicated abortion whose aim is
660 to restore a woman's health in childbearing. So, for
661 example, if an abortion undertaken for physical health
662 reasons resulted in sepsis, the plan would potentially
663 exclude treatment of sepsis and aftercare for sepsis because
664 it is related to the abortion.

665 Another example would be following on treatment for
666 stroke level blood pressure triggered by a pregnancy that is
667 terminated for health endangerment reasons. The plan
668 conceivably could deny ongoing treatment because the blood
669 pressure was a condition brought on by a pregnancy that ended

670 in an excluded abortion. While such a decision may be
671 reversed on appeal, critical care could be lost.

672 Finally, the conscience clause provisions bear focus.
673 They accomplish three goals. First, they explicitly strip
674 legal protections from entities that are the subject of
675 discrimination because of their willingness to provide lawful
676 abortions. Second, the provisions create an expressed
677 private right of action for both money damages and injunctive
678 relief against State and Federal governments for ``actual''
679 or ``threatened'' violations of the law without definition.
680 Third, the nondiscrimination provision raises great
681 uncertainty around EMTALA. While uniform enforcement of
682 EMTALA screening, stabilization, and medical transfer
683 requirements against federally obligated hospitals
684 constitutes anything but discrimination, in my view if you
685 are enforcing the law uniformly you are not discriminating.
686 The fact is that the newly recodified provisions without
687 clarifying language raise troubling questions for
688 administrative and judicial enforcement. I have the utmost
689 respect for religious healthcare institutions, but the
690 literature including articles published in the peer review
691 literature demonstrate instances in which crucial treatment
692 involving pregnant women was withheld or delayed over what is
693 termed conscience. EMTALA is a paramount protection unique

694 in all of health law and in my view Congress should take no
695 action that begins for any reason the long unraveling of its
696 absolute safeguards.

697 [The prepared statement of Ms. Rosenbaum follows:]

698 ***** INSERT 2 *****

|
699 Mr. {Pitts.} Chair thanks the gentlelady and now for
700 the final witness, Mr. Douglas Johnson.

|
701 ^STATEMENT OF DOUGLAS JOHNSON

702 } Mr. {Johnson.} Mr. Chairman, before I begin I would
703 just like to note that we are not getting any time
704 information. This device is not working, so if you could
705 give me some sort of 90 second warning.

706 Mr. {Pitts.} So sorry--correct that.

707 Mr. {Johnson.} I would appreciate it. Chairman Pitts,
708 Distinguished Members of the Subcommittee, I am Douglas
709 Johnson, Federal Legislative Director for the National Right
710 to Life Committee or NRLC. NRLC is the Federation of State
711 Right to Life organizations nationwide. NRLC supports the
712 Protect Life Act as well as the more comprehensive government
713 wide approach incorporated in the No Taxpayer Funding for
714 Abortion Act, H.R. 3.

715 The Protect Life Act could correct the new abortion
716 expanding provisions that became law as part of the so called
717 Patient Protection and Affordable Care Act or PPACA. That
718 law contains multiple--excuse me--multiple provisions that
719 authorized subsidies for abortion as well as provisions that
720 could be employed for abortion expanding administrative
721 mandates. Some of these objectionable provisions are
722 entirely untouched by any limitation on abortion. While

723 others are subject only to limitations that are temporary,
724 contingent, and/or riddled with loopholes. Federal funding
725 of abortion became an issue soon after the U.S. Supreme Court
726 decision Roe v. Wade and by 1976 the federal Medicaid program
727 was paying for 300,000 elective abortions annually. If a
728 woman or girl was Medicaid eligible and wanted an abortion
729 then abortion was deemed to be ``medically necessary'' and
730 was federally reimbursable. Unfortunately that pattern was
731 generally replicated in other federal health programs.
732 And so beginning in the late 1970's Congress applied
733 restrictions to nearly all of them but this was done in a
734 piecemeal, patchwork fashion. And many of these protections
735 were achieved through limitations amendments to annual
736 appropriation bills. This is a disfavored form of
737 legislation. For one thing, the limitation amendments expire
738 with the term of each appropriation bill which is never more
739 than one year. Some of the pro life policies have in fact
740 been lost for varying periods of time because of their
741 transient nature. For example, because of the actions of the
742 111th Congress and the Obama White House, today
743 congressionally appropriated funds may be used for abortion
744 for any reason at any point in pregnancy right here in the
745 Nation's capitol. And that is being done as reported in
746 today's Washington's Post.

747 We believe that when Congress creates or reauthorizes or
748 expends a health insurance program it should write the
749 appropriate abortion policy into the law as was done with the
750 SCHIP program when it was created in 1997. During the 111th
751 Congress we strongly advocated that all programs created or
752 modified by the health care bill should be governed by
753 explicit permanent language to apply the principles of the
754 Hyde amendment to the new programs.

755 I wish to underscore here what many have tried to
756 obscure. The language of the Hyde amendment prohibits not
757 only direct federal funding of abortion, but also funding of
758 plans that include abortion. I would refer to my written
759 testimony in footnote 10 for the full text of the Hyde
760 amendment and you will see that it refers to funds that go to
761 any trust fund from which--which includes coverage of
762 abortion. And this is explicitly defined to include the
763 ``package of services covered by a managed care provider or
764 organization pursuant to a contract or other arrangement.''
765 Very similar language is found in the abortion related
766 provisions that govern other federal health programs, for
767 example, SCHIP and the Federal Employee's Health Benefits
768 Program. This exact language is in footnote 12 of my written
769 testimony.

770 I have also submitted to the committee a 24 page

771 affidavit that I executed that explains four of the major
772 components of the PPACA that authorized subsidies for
773 elective abortion. Its focus is primarily on 1) the pre-
774 existing condition insurance program; 2, the federal tax
775 credit subsidies for private health plans that cover elective
776 abortion; 3) authorization for funding of abortion through
777 community health centers; and 4) authorization for inclusion
778 of abortion in health plans administered by the federal
779 office of personnel management. And Mr. Chairman, it is not
780 an exhaustive list.

781 To summarize, in the PPACA there is nothing on the way
782 that remotely resembles the Stupak-Pitts amendment. Instead
783 of bill wide language to permanently apply the Hyde amendment
784 principles we find a hodgepodge of artful exercises and
785 misdirection, bookkeeping gimmicks, loopholes, ultra-narrow
786 provisions that were designed to be ineffective, and
787 provisions that are rigged to expire. We find abortion
788 authorizations that are permanent and limitations that
789 expire.

790 As to President Obama's Executive Order it is a hollow
791 political construct. As discussed further in my written
792 testimony and in the affidavit, it consists mostly of
793 rhetorical red herrings, exercises in misdirection, and was
794 characterized by the president of Planned Parenthood as a

795 symbolic gesture.

796 [The prepared statement of Mr. Johnson follows:]

797 ***** INSERTS 3, 3A *****

|
798 Mr. {Pitts.} Thank you. Chair thanks the witnesses for
799 their statements. Your entire written testimony will be made
800 a part of the record and at this time we will go to
801 questioning for the members of the committee. Chair
802 recognizes himself for 5 minutes for questions. First for
803 Professor Alvaré. If Catholic hospitals were to lose their
804 tax exemptions and have to close their doors because they
805 refuse to perform abortions what would be the impact on the
806 playing--

807 Ms. {Alvaré.} --can't claim to representative of
808 Catholic hospitals. I do know that there is information that
809 you can easily access regarding their services in poor areas.
810 Just as one example that I brought with me today. One, the
811 third largest Catholic hospital system in the United States,
812 its statistics alone 19 States, 73 hospitals, 900--excuse me,
813 \$590 million in charity care and a great deal of loss as a
814 result of that. Because of the charity care it is nonprofit
815 and they regard themselves as having a particular commitment
816 to the poor, to free clinics, to education, and research.
817 These hospitals have empirically demonstrated that the
818 provide the kinds of services to women and the poor in
819 particular that are exemplary and are thought to be superior
820 in many ways to other kinds of hospital systems.

821 Mr. {Pitts.} Thank you. Mr. Johnson, in your testimony
822 you estimated that more than one million Americans are alive
823 today because of the Hyde amendment limitations on government
824 funding of abortions. What would be the effect of
825 authorizing government funding of abortion nationwide as a
826 routine method of healthcare?

827 Mr. {Johnson.} Mr. Chairman, this estimate is based on
828 studies done by the Guttmacher Institute and other critics of
829 the Hyde amendment and they have given figures. The lowest
830 figure being the reduction of abortions among Medicaid
831 eligible population has been on the order of one in four.
832 There has been some estimates as high as one in two, that if
833 one takes even the lowest estimate, the 25 percent figure and
834 extrapolates that over the life of the Hyde amendment there
835 are indeed more than one million Americans alive today
836 because of that policy. So we have heard President Obama
837 speak about his desire for abortion reduction. We believe
838 the Hyde amendment has proven itself to be the greatest
839 domestic abortion reduction policy ever enacted by Congress
840 and yet it has been characterized by in a 19--rather a 2007
841 Guttmacher Institute monograph as a ``tragic result of the
842 Hyde amendment'' these one million births. Mr. Chairman, we
843 think it stands to reason that if the Hyde amendment is
844 overturned or effectively circumvented by these mechanisms in

845 the PPACA, the effect is going to be more abortions, not
846 abortion reduction. We think that anyone who thinks that the
847 million plus Americans who walk among us today because of the
848 Hyde amendment constitute a tragic result should vote against
849 your bill. But those who believe otherwise we respectfully
850 submit should vote for it.

851 Mr. {Pitts.} To follow on, Mr. Johnson, given that
852 President Obama and the 111th Congress greatly expanded the
853 role of government in the private insurance market does it
854 seem reasonable that Congress would correspondingly try to
855 extend the Hyde amendment and similar measures to prevent
856 taxpayer subsidies for elective abortions?

857 Mr. {Johnson.} These principles have been in place with
858 respect not only to the Health and Human Services
859 Appropriation Bill and Medicaid, but in a great many other
860 programs as well including as I mentioned the Federal
861 Employees Health Benefits Program which of course covers most
862 members of Congress and their staffs, and about eight million
863 others. For most with one brief interruption for the last 24
864 years, the 200 plus private plans that participate in that
865 program have been required as a condition of participation
866 not to cover any abortions except life of the mother, rape,
867 and incest. It is not a bookkeeping scheme like you find in
868 PPACA. It doesn't say they can--no, it says they can't

869 participate in the program if they cover any abortions. And
870 you know, the scenarios that we have heard spun out about how
871 it is impossible for insurers to handle this, the IRS will
872 never because able to administer it--the experience of the
873 Federal Employees Health Benefits Program itself I think
874 disproves these sorts of fanciful scenarios.

875 Mr. {Pitts.} In other words under the Federal Employee
876 Health Benefits Plan--Program now, you can purchase abortion
877 coverage with your own money. Is that correct?

878 Mr. {Johnson.} Within the program itself there is no
879 abortion coverage. It is prohibited by the limitation on the
880 Annual Appropriation Bill. Insurers are not required to
881 cover any abortions to participate in the programs, but they
882 are forbidden to cover any other than life of the mother,
883 rape, and incest and that has been the case for almost a
884 quarter of a century. Now, there is nothing of course to
885 stop any private individual from going out and purchasing
886 abortion coverage with their own resources on the private
887 market if they choose to do so. I suspect from the data we
888 have seen that very few people do that.

889 Mr. {Pitts.} Thank you. Chair thanks gentleman, and
890 now recognizes the Ranking Member Mr. Pallone for 5 minutes
891 for questioning.

892 Mr. {Pallone.} Thank you. I want to ask each of the

893 panelists just a yes or no answer. There is a lot of
894 frustration by myself and on the democratic side of the aisle
895 that you know we are in the midst of a recession, maybe we
896 are getting out of it hopefully, but it is still out there
897 and you know, that we should be spending our time focused on
898 the economy and on jobs. And in all honesty just like the
899 Health Care Repeal, I don't see that even if this bill passes
900 the House it has any chance of garnering 60 votes in the
901 Senate or being approved by the President. So I just wanted
902 to ask you, is there anything in this legislation that
903 creates jobs? Just a yes or no and then I will move on.
904 Start with Mr. Johnson. Yes, or no, does this legislation in
905 any way created jobs?

906 Mr. {Johnson.} Mr. Pallone, I have no competence to
907 answer that question.

908 Mr. {Pallone.} All right, Ms.--

909 Mr. {Johnson.} I would be--

910 Mr. {Pallone.} Alvaré? I will just move on.

911 Ms. {Alvaré.} Nor do I. I am here to testify on
912 conscience.

913 Mr. {Pallone.} Okay. And Ms. Rosenbaum?

914 Ms. {Rosenbaum.} It doesn't appear to me that it does.

915 Mr. {Pallone.} All right, thank you. Now let me ask--
916 is it Alvaré? Is that how you pronounce it? Now, I am

917 sorry, this is for Dr. Rosenbaum and I am going to come to
918 you if I have time. The EMTALA statute prohibits hospitals
919 from dumping a patient who is medically unstable. If a
920 patient arrives in a life threatening situation the hospital
921 must treat them until her life is no longer in danger. The
922 Health Reform Law made clear that the conscience protections
923 that were written into law did not repeal or amend the basic
924 EMTALA provisions requiring hospitals to treat a patient
925 until she is stable. Now the Pitts legislation changes that.
926 It says that EMTALA is subject to the abortion provisions.
927 So Dr. Rosenbaum, what does that do? Does that mean if a
928 pregnant woman's life is in danger and the medically
929 indicated response is to terminate the pregnancy to save her
930 life that the hospital can refuse her emergency care or
931 refuse to transfer her to another facility that would perform
932 such a life saving procedure?

933 Ms. {Rosenbaum.} As long as the later amendment, this
934 amendment is unclear, the impact of EMTALA, the impact of the
935 amendment on EMTALA is similarly immeasurable at this point.
936 To the extent that the statute raises questions about whether
937 or not EMTALA applies, and also creates a federal right of
938 action to seek an injunction against the actual or threatened
939 enforcement of a federal law that discriminates against a
940 hospital, an administrative agency and a court would face a

941 very difficult situation in which they would have to
942 reconcile the language of EMTALA which seems to be an
943 obligation on the part of hospitals against an express
944 authority now in the statute to be able to essentially to be
945 able to essentially evade what is an EMTALA obligation which
946 is of course stabilization or medically appropriate--

947 Mr. {Pallone.} But my fear is that if this bill were to
948 pass, and again, I don't see how that happens, but if it were
949 to become law that you could have a situation where the
950 hospital can refuse the woman emergency care--

951 Ms. {Rosenbaum.} But what--

952 Mr. {Pallone.} --or refuse to transfer her to another
953 facility that would perform the--you know save her life.

954 Ms. {Rosenbaum.} It would appear that way. I mean,
955 this is the problem. It is a later amendment that does not
956 clarify how it is to be applied in an EMTALA situation. And
957 so a court or an administrative agency would be faced with a
958 very difficult question and it would seem to imply that the
959 later legislation actually alters the EMTALA provision.

960 Mr. {Pallone.} And so that that could happen?

961 Ms. {Rosenbaum.} Yes.

962 Mr. {Pallone.} Okay. Now let me ask Ms. Alvaré. You
963 say that the bill before us today would protect individuals
964 and entities who are not willing to provide all medical

965 choices to women and their families even in life saving
966 situations. Now, you know, this is the conscience aspect.
967 Why shouldn't these protections apply equally to all beliefs?
968 In other words why shouldn't we protect those who believe
969 that they have a moral obligation to provide all medical
970 service choices in this case, one that is legal in the
971 country to a woman and families. I mean, I will give you an
972 example. My concern is you know, Catholic hospital, I guess,
973 religious hospital that doesn't believe in abortion. You
974 know, administrator or doctor, or somebody makes a decision
975 that because of the mother's life that they are going to
976 perform the abortion and it is contrary to the beliefs of
977 that particular religious hospital, and then they fire them
978 or they don't hire them because they say that they would
979 perform an abortion in that circumstance. So why aren't we
980 protecting that person so they can't be fired or they can't
981 be discriminated against? Or would you protect them as well?

982 Ms. {Alvaré.} One thing is that our law, the Supreme
983 Court has said it--whether in the Harris v. McRae or the
984 Webster decision, our Supreme Court has said that government
985 can favor life over abortion. It can favor bringing children
986 into this world versus taking their life.

987 Mr. {Pallone.} But the bottom line is then you wouldn't
988 protect that person against that type of discrimination.

989 Ms. {Alvaré.} In 38 years of legal abortion there has
990 never been a situation, not one, where a woman lost her life
991 because she needed an abortion and didn't get one. So the
992 idea that it is a medical choice is even contradicted by the
993 evidence let alone by statements by people like Dr.
994 Guttmacher of Guttmacher Institute who said he really
995 couldn't imagine a situation in which you couldn't deliver
996 the child and protect the mother's life without that.

997 Mr. {Pallone.} But it sounds like you wouldn't be in
998 favor of passing a law that would do that, that would protect
999 the person.

1000 Ms. {Alvaré.} In 38 years since Roe v. Wade, there has
1001 never been a conflict. The Catholic Health Association
1002 letter that was referred to as coming in here today indicated
1003 that they had never had a conflict in 38 years.

1004 Mr. {Pallone.} No, but I am just asking you if you
1005 would be in favor of that kind of a law.

1006 Ms. {Alvaré.} You would have to overturn EMTALA then
1007 because EMTALA itself and I have the provision with me--
1008 Section 1395DD(e) says when faced with pregnant woman and
1009 child you most ``stabilize the woman and her unborn child''.
1010 So I think you would have to first of all change what EMTALA
1011 says is emergency care in order to say we would have to kill
1012 to provide care. EMTALA says stabilize to provide care.

1013 Mr. {Pallone.} I don't think I am going to get an
1014 answer so we will move on.

1015 Mr. {Pitts.} Okay. Chair thanks the gentleman and
1016 recognizes the Vice Chairman of the Subcommittee, Dr.
1017 Burgess, for 5 minutes.

1018 Dr. {Burgess.} Thank you, Mr. Chairman. Well, in fact,
1019 Mr. Pallone, I think you got your answer. EMTALA, if I
1020 understood the comments correctly actually specifies
1021 protection of the unborn. Does it not?

1022 Ms. {Alvaré.} Yes, sir, it does. It is 42 U.S.C.
1023 1395DD subsection E, it talks about if you are faced with a
1024 pregnant woman ``the health of the woman or her unborn child
1025 is in serious jeopardy you must stabilize them both.''

1026 Dr. {Burgess.} Well, it is interesting that you said in
1027 38 years of law since the Supreme Court ruling in the early
1028 1970's--I mean I was thinking back and trying to remember the
1029 specific clinical situation that would have occurred that is
1030 being referred to here over and over again and in 25 or 28
1031 years of medical practice, four of which at Parkland
1032 Hospital, a major downtown public health facility, it never
1033 happened. So I--you know I guess sometimes we do try to
1034 legislate to the most extreme case, but we are trying to
1035 legislate to a case that no one can identify. Ms. Rosenbaum,
1036 Dr. Rosenbaum, do have--you have referenced in your opening

1037 statement that you have cases from--I think you said from
1038 Catholic hospitals where care was compromised. Do you have
1039 such a body of case reports that you could supply to the
1040 committee? I don't necessarily need to hear about them
1041 today, but I would be very grateful if you would supply those
1042 clinical situations to the committee so that we might
1043 evaluate where those situations have occurred. Because
1044 apparently in the legal literature in 38 years there is not
1045 any. My own personal experience for almost 30 years there is
1046 not any. I just fail to see what--where are we trying to
1047 government with this. And it is, you know it is well
1048 established again in EMTALA and in federal statute that the
1049 life of the mother of course can be protected. So there are
1050 extreme problems that do occur, big pregnancy, cancer of the
1051 cervix, required radial therapy, well recognized that is
1052 going to be deleterious to the pregnancy but you do protect
1053 the life of the mother. Okay. That--a rare occurrence, but
1054 it does happen and it is taken care of under current law,
1055 under PPACA, under the Executive Order, under all existing
1056 conditions today. So again, if you have those circumstances
1057 I pray that you would share them with the committee.

1058 Ms. {Rosenbaum.} Certainly. There are both actually
1059 peer reviewed literature references and the case that arose
1060 in Arizona last summer involved a near--a woman who was on

1061 the verge of death and who was in an early stage of
1062 pregnancy. I would also note that EMTALA actually specifies
1063 that the obligation to save a life runs independently to the
1064 woman and/or her unborn child. So it is not a matter of only
1065 being able to save them as a unit. It is a matter of having
1066 to save whatever life--

1067 Dr. {Burgess.} Yeah, let me stop you there because in
1068 present day practice of obstetrics in this country, having to
1069 choose between the life of one and the life of the other as a
1070 practical matter that just doesn't come up. It just doesn't.
1071 There are--yes, there are pregnancies that cannot be saved.
1072 We all recognize--heartbreaking when they happen. Yes, there
1073 are situations that the baby has to be delivered so early
1074 that it may have a tough go and may not survive. We all
1075 recognize when that happens, but it is just rare. I can't--
1076 and again, I am trying to think back in my own volume of
1077 clinical experience which was not insignificant. I cannot
1078 remember ever having to stand outside the patient's room with
1079 the family and say look, we got to make a decision here. It
1080 is one or the other. Which would you have me save? It just
1081 simply doesn't happen. And nothing that we are doing here
1082 today--I think, I mean we may add just intellectual
1083 discussion, but as a practical matter I don't think we are
1084 affecting anything at all one way or the other again, either

1085 in PPACA, Executive Order, EMTALA, or any existing statute.
1086 Let me just ask you, Ms. Alvaré one quick question. Some
1087 opponents of the legislation that is under consideration
1088 today seem to suggest that by denying taxpayer funding of
1089 termination of pregnancy that we are denying access to a
1090 basic form of health care. Is elective termination of
1091 pregnancy a basic form of health care?

1092 Ms. {Alvaré.} I think I wish I had an M.D. in addition
1093 to my J.D. In the legal literature it has been increasingly
1094 said and the Supreme Court's decision in the Gonzales v.
1095 Carhart said it most basically. They referred to abortion as
1096 killing. The improvements in embryological knowledge,
1097 genetic knowledge, et cetera that lawyers use in order to
1098 come to a hearing like this and make our case, in order to
1099 make State legislation refer more and more to characteristics
1100 of unborn life that place it firmly within the context of
1101 being a member of the human family.

1102 Dr. {Burgess.} And I would just say the 38 years since
1103 Roe v. Wade the game changer has been the refinement of
1104 ultrasonography as a clinical tool. What became just
1105 something in theory in 1971 is very much reality today with
1106 the ability to look inside and make determinations about the
1107 health and condition of a baby well before the time of birth.
1108 These technologies didn't exist at the time of Roe. You

1109 talked about this procedure has been pushed almost of the
1110 periphery of the practice of medicine. And I think that is a
1111 big reason why. Thank you.

1112 Ms. {Alvaré.} Thank you.

1113 Mr. {Pitts.} Chair thanks gentleman. Chair recognizes
1114 the Ranking Member Mr. Waxman for 5 minutes.

1115 Mr. {Waxman.} Thank you very much, Mr. Chairman. Ms.
1116 Alvaré just to follow up on that line of questioning,
1117 abortion is sometimes a medically necessary procedure,
1118 medical procedure. Do you agree with that statement?

1119 Ms. {Alvaré.} Again, I would like to quote Dr.
1120 Guttmacher, the founder of the Guttmacher Institute. In 1967
1121 when obstetric care was not even as good as it is now who
1122 said today it is possible for almost any patient to be
1123 brought through pregnancy alive unless she suffers--

1124 Mr. {Waxman.} No, I really--excuse me. I really asked
1125 you the question. Do you think that it could be a legitimate
1126 medical procedure?

1127 Ms. {Alvaré.} I have to rely on the doctors, sir, and
1128 looking at--

1129 Mr. {Waxman.} And what does--the doctor says yes or no?

1130 Ms. {Alvaré.} He says even if she suffers from a fatal
1131 illness such as cancer or leukemia, abortion would be
1132 unlikely to prolong much less save life. I can provide you

1133 with additional medical literature--

1134 Mr. {Waxman.} Well, we do allow abortion under the Hyde
1135 language to save the life of the mother. Do you acknowledge
1136 that there could be circumstances where the life of the
1137 mother would be lost if a termination of a pregnancy didn't
1138 take place?

1139 Ms. {Alavaré.} Not having been present when that was
1140 negotiated, I imagine that that is the kind of thing that in
1141 politics is said and is not necessarily have referenced to
1142 the medical literature. But in public debate and at public
1143 insistence they want the language of life of the mother
1144 whether it is--

1145 Mr. {Waxman.} You would be against abortion under any
1146 circumstance. Is that an accurate statement?

1147 Ms. {Alvaré.} I would not--yes, I would not say we
1148 could knowingly kill human life.

1149 Mr. {Waxman.} Okay. Well, I respect that point of
1150 view. I respect the idea of a conscience clause. I would
1151 not want you if you were a medical person to have to perform
1152 an abortion even though some people would say it would be
1153 appropriate under the circumstance. And that is why I
1154 support this conscience clause idea because a Catholic doctor
1155 shouldn't be required to perform abortions if that individual
1156 feels that way. A Catholic hospital shouldn't be required to

1157 do it either. The Affordable Care Act is very clear on this
1158 point and doesn't provide--and does provide these protections
1159 for people with a conscience. But let me ask you this. If a
1160 doctor in good conscience or a nurse felt that they were
1161 morally required to provide an abortion to a victim of a rape
1162 who requests it would you respect that as a conscience clause
1163 protection?

1164 Ms. {Alvaré.} Again, I prefer what the Supreme Court
1165 has said on this and I am glad they have which is that the
1166 State can prefer life over abortion. And if a doctor feels
1167 that he or she wants to do that then probably they should
1168 steer clear of conscience driven health care facilities as a
1169 place of employment.

1170 Mr. {Waxman.} Well, they have a different conscience
1171 than you.

1172 Ms. {Alvaré.} They are free to do it elsewhere.

1173 Mr. {Waxman.} They have come to a different conclusion
1174 than you do.

1175 Ms. {Alvaré.} Yes.

1176 Mr. {Waxman.} You want us to protect the conscience of
1177 someone out of adherence to the Catholic Church not to
1178 provide abortions. Would you respect the fact that someone
1179 with a different religious point of view or maybe even a
1180 Catholic as well who would say I think this would be morally

1181 reprehensible not to provide a victim of a rape, a rape a
1182 service to terminate the pregnancy. Now let me ask that to
1183 Ms. Rosenbaum because--

1184 Ms. {Alvaré.} Could I respond to one thing?

1185 Mr. {Waxman.} Sure.

1186 Ms. {Alvaré.} I would also--I don't think this is just
1187 about Catholics. Morally pro-life atheists--

1188 Mr. {Waxman.} Well it is not.

1189 Ms. {Alvaré.} --I hope would get just as much
1190 protection.

1191 Mr. {Waxman.} You are absolutely right, but people's
1192 conscience ought to be respected. It ought to be both ways.
1193 If we are going to say we want to respect the conscience of
1194 the person who doesn't want to do abortions, I think we have
1195 to respect the conscience of someone who feels it is morally
1196 required of them to perform that service. Let me ask you
1197 about the provision in this bill because it says State laws
1198 can allow insurance companies to refuse coverage of emergency
1199 contraception. Well now, let me go back. There is one
1200 provision in this bill that says State laws can do more than
1201 discriminate on abortion because they can look at the
1202 conscience on other issues as well. Originally it had
1203 conscience related to abortion but struck the abortion. It
1204 said whenever there is a conscience issue that conscience

1205 issue ought to be respected. I would like to know whether
1206 this can be read to say that State laws can allow insurance
1207 companies to refuse coverage of family planning and
1208 contraception because it offends the company's conscience.

1209 Ms. {Alvaré.} Excuse me, sir, could you tell me which
1210 provision that is because came with the Protect Life Act.

1211 Mr. {Waxman.} Section 1303 of the Affordable Care Act
1212 dealt exclusively with treatment of abortion. And then this
1213 bill strike regarding abortion out. Ms. Rosenbaum, do you
1214 know--are you familiar with the provision?

1215 Ms. {Alvaré.} I do know what you are talking about now.

1216 Mr. {Waxman.} Okay. Well I--

1217 Ms. {Alvaré.} I am sorry, would you like me to answer
1218 that?

1219 Mr. {Waxman.} I would like an answer, yes or no answer
1220 because it seems to me they would be allowed--an insurance
1221 company would be allowed to say that you can't have family
1222 planning or contraception.

1223 Ms. {Alvare.} That might--

1224 Mr. {Waxman.} It seems to me the State law can also
1225 allow insurance companies to refuse coverage of emergency
1226 contraception like a morning after pill. It seems to me this
1227 can be read to say that State laws could allow insurance
1228 companies or doctors who refuse treatment of people with aids

1229 because homosexuality or drug use offends their conscience.
1230 Or that we can allow insurance companies to refuse
1231 infertility services because it offends the company's
1232 conscience. Or not to pay for therapies that are derived
1233 from stem cell research because it offends their conscience.

1234 Ms. Rosenbaum, am I correct in reading that change as
1235 allowing those state laws?

1236 Ms. {Rosenbaum.} I agree the wording is altered to
1237 eliminate the reference to abortion.

1238 Mr. {Waxman.} Yeah. I find that troubling. Thank you,
1239 Mr. Chairman.

1240 Mr. {Pitts.} Thanks to gentleman. Chair recognizes the
1241 gentlelady from Tennessee, Ms. Blackburn for 5 minutes.

1242 Mrs. {Blackburn.} Thank you, Mr. Chairman. Ms.
1243 Rosenbaum, I wanted to--there you are. Now I can see you.
1244 Okay. Catholic hospitals since we were just talking--looking
1245 at that. Should they be required to perform all the
1246 abortions that you would deem as medically necessary?
1247 Because it seems like we are debating and discussing
1248 medically necessary and you all continue to go to that
1249 provision. So do you think Catholic hospitals should be
1250 required to perform abortions that you yourself would deem as
1251 medically necessary?

1252 Ms. {Rosenbaum.} I think obviously there is a wide

1253 range of opinion on how the term medically necessary is used.
1254 I don't think--I am actually strong--a very strong believer
1255 in a conscience clause and would just clarify that EMTALA
1256 itself certainly does not obligate a hospital to provide
1257 medically necessary abortions, however we define the term.

1258 Mrs. {Blackburn.} Okay. Let us talk then about medical
1259 students. Medical students that are opposed to abortion
1260 should they be required to receive training in how to perform
1261 abortions?

1262 Ms. {Rosenbaum.} Again, it is my understanding that the
1263 various provisions, the various aspects of conscience clauses
1264 as we have come to understand them today are something that
1265 everybody believes in that are actually reflected both in
1266 underlying law and in the Affordable Care Act. But I think
1267 that is a different question than the very specific EMTALA
1268 obligation.

1269 Mrs. {Blackburn.} Okay. Do you agree with President
1270 Obama? He made a statement that he thinks the use of
1271 abortion should be rare. Would you share that view?

1272 Ms. {Rosenbaum.} As a mother and hopefully a
1273 grandmother I agree emphatically.

1274 Mrs. {Blackburn.} Okay. Mr. Johnson, Good to see you.
1275 I want to ask you about a statement that I have read. It was
1276 made by Rham Emanuel who had been the Chief of Staff over at

1277 the White House as we had the Pitts-Stupak language last
1278 year. And he was giving an interview with the Chicago
1279 Tribune with their editorial board. Have you seen that
1280 statement, sir? Do you know what I am ready--

1281 Mr. {Johnson.} Yes, I have Congressman.

1282 Mrs. {Blackburn.} Okay. And I thought that it was just
1283 so telling when he said and I am quoting here ``I came up
1284 with an idea for how an Executive Order to allow the Stupak
1285 Amendment not to exist in law.'' So you know, this is of
1286 concern to me when you see that kind of language. And I just
1287 ask you, sir, when you look at that is that Executive Order
1288 addressing abortion funding insufficient to assure that
1289 taxpayers are not going to end up footing the bill for
1290 abortions?

1291 Mr. {Johnson.} The Executive Order is a hollow
1292 political construct. The president of the Planned Parenthood
1293 Federation of the American described as ``a symbolic
1294 gesture''. I think these are two ways of saying the same
1295 thing. We could go through it section by section if we had
1296 time and I do in my affidavit that I referred to earlier
1297 which is available here and on our website. But in substance
1298 there is a great deal of rhetorical misdirection in the first
1299 section. The actual operative language only speaks to two of
1300 the many abortion implicating components of the PPACA itself.

1301 In one case it merely reiterates the objectionable language
1302 that allows the tax credits to be used to purchase plans that
1303 cover elective abortion and in the other case it purports to
1304 put a restriction on abortion funding through community
1305 health centers but there is no statutory basis for it and so
1306 it is doubtful that they could make that stick if it ever
1307 became an issue. The other provisions in the bill, in the
1308 PPACA itself which implicate abortion policy are not even
1309 addressed in the Executive Order. And so we saw, for
1310 example, this summer the very first component of the packet
1311 to be implemented, the high-risk insurance pool program.
1312 Once we got a hold of some of the plans that had been
1313 approved by HHS we found three of those of the ones we were
1314 able to get explicitly covered elective abortion. And when
1315 we blew the whistle on this last July and a public
1316 controversy ensued, after about a week the administration
1317 said okay. They would employ their administrative discretion
1318 not to pay for abortion in that program. But they said and
1319 we said and the ACLU said and everybody agreed they were
1320 authorized to do so and they had already approved plans to do
1321 so. There is nothing in the bill to prevent it. It was
1322 authorized. There is nothing in the Executive Order that
1323 even mentioned it. All of these events are recited in detail
1324 in my written testimony and in the affidavit.

1325 Mrs. {Blackburn.} Thank you. Yield back.

1326 Mr. {Pitts.} Chair thanks gentlelady and recognizes the
1327 Ranking Member Emeritus Mr. Dingell for 5 minutes.

1328 Mr. {Dingell.} Thank you Mr. Chairman. Ladies and
1329 gentlemen, I heard someone at the committee table--I don't
1330 remember who it was, say that there are a number of subsidies
1331 for abortion in federal law. Could you tell me where they
1332 are, please, starting with Mr. Johnson?

1333 Mr. {Johnson.} There are subsidies--

1334 Mr. {Dingell.} For abortion.

1335 Mr. {Johnson.} Are we talking about the PPACA or other
1336 law?

1337 Mr. {Dingell.} Well all right, Let us take first of all
1338 the Health Care Reform Bill. Are there subsidies in there?

1339 Mr. {Johnson.} Yes, we described them.

1340 Mr. {Dingell.} Where are they and what are they?

1341 Mr. {Johnson.} In the written testimony I just gave one
1342 example the high-risk insurance plan. The Administration in
1343 July was already approving State plans that covered elective
1344 abortion explicitly. They then backed off but they asserted
1345 and they were correct that they were authorized to do so by
1346 the statute.

1347 Mr. {Dingell.} All right now--

1348 Mr. {Johnson.} They weren't mandated to do so, they

1349 were--

1350 Mr. {Dingell.} All right, Let us analyze that. When
1351 you subsidize something you pay more than the cost of it. Is
1352 that right? That would be a good definition isn't it?

1353 Mr. {Johnson.} The cost of what, sir?

1354 Mr. {Dingell.} Well, if I am subsidizing abortion I am
1355 going to pay more than the cost of the abortion to the person
1356 that I am giving the money to. Is that right or wrong?

1357 Mr. {Johnson.} I am not sure I follow you, sir.

1358 Mr. {Dingell.} Well--

1359 Mr. {Johnson.} If that is--

1360 Mr. {Dingell.} In the farm bill we give a subsidy and
1361 there we subsidize farmers for producing goods. We
1362 essentially pay them to do that. So where in this--where in
1363 the Health Reform Bill is there where we subsidize it, where
1364 we pay people to have it?

1365 Mr. {Johnson.} Well, that was--

1366 Mr. {Dingell.} Where we give them a financial
1367 inducement?

1368 Mr. {Johnson.} This first example which would be the
1369 first in a long list I could give you if I had time--

1370 Mr. {Dingell.} All right.

1371 Mr. {Johnson.} --is 100 percent federally funded
1372 program. It is 100 percent federally funded. That is where

1373 it goes.

1374 Mr. {Dingell.} But 100 percent federal funded--

1375 Mr. {Johnson.} To purchase the health coverage--

1376 Mr. {Dingell.} I am sorry?

1377 Mr. {Johnson.} --for the population that qualifies for

1378 this particular program, the pre-existing condition program

1379 created by the PPACA. Okay. Now, so we take it as a

1380 premise.

1381 Mr. {Dingell.} You are telling me it is a pre-existing

1382 condition prohibition pays a subsidy for people to get

1383 abortions?

1384 Mr. {Johnson.} They were paying 100 percent of the cost

1385 of State plans.

1386 Mr. {Dingell.} One hundred percent of what cost?

1387 Mr. {Johnson.} They were covering the cost of the

1388 health plan, sir. Entire cost--

1389 Mr. {Dingell.} One hundred percent--

1390 Mr. {Johnson.} --of the health plan is being paid by

1391 the Federal government.

1392 Mr. {Dingell.} Well, maybe I am looking at a different

1393 session but I am curious. We don't--the government doesn't

1394 pay 100 percent of that. We simply say you got to pay--you

1395 say to the insurance company you have to give folks this--you

1396 have to give them coverage and may not deny it because they

1397 have a pre-existing condition. What--how?

1398 Mr. {Johnson.} No, that is--you are--that is a
1399 different part of the law.

1400 Mr. {Dingell.} All right. To what--

1401 Mr. {Johnson.} I am talking about--

1402 Mr. {Dingell.} To what do you refer? I am having a
1403 hard time following you.

1404 Mr. {Johnson.} I am talking about it is the high-risk
1405 pool program that pre-existing insurance--

1406 Mr. {Dingell.} All right, so the high--the pre-existing
1407 where does that subsidize?

1408 Mr. {Johnson.} Section 1101.

1409 Mr. {Dingell.} What--

1410 Mr. {Johnson.} This is for the qualified population the
1411 Federal government pays 100 percent of the cost of their
1412 health coverage.

1413 Mr. {Dingell.} Of the health coverage. Do we pay 100
1414 percent of the rest of the--wait, hold--do we pay--

1415 Mr. {Johnson.} And the State plans were explicitly
1416 covering--pay for--

1417 Mr. {Dingell.} Just yes or no? Do we pay or?

1418 Mr. {Johnson.} Yes. Of course.

1419 Mr. {Dingell.} We pay 100 percent of the cost of the
1420 abortion?

1421 Mr. {Johnson.} When the government pays for health
1422 insurance it pays for what the insurance pays for, Mr.
1423 Dingell. And if you adopt the view that it is a bottom line
1424 issue. Look at back when Medicaid was paying for 300,000
1425 abortions a year before there was a Hyde amendment. Now,
1426 every time they paid for one of those abortions they actually
1427 saved the cost of childbirth which is more expensive than the
1428 abortion. So you could say there was no bottom line impact
1429 and that the government wasn't actually subsidizing abortion
1430 when they were paying for 300,000 elective abortions a year.
1431 We think that--

1432 Mr. {Dingell.} Let us stay--

1433 Mr. {Johnson.} --would be tortured logic.

1434 Mr. {Dingell.} --with my question and not get off into
1435 rather odd dialectic here if you please. I am trying to
1436 understand if the Federal government pays the cost of the
1437 overage so that the State may offer this particular benefit
1438 to people how is it then that they are subsidizing abortion?
1439 I am trying to understand how--

1440 Mr. {Johnson.} I am not sure why you keep talking about
1441 the State. This is a 100 percent federally funded program.

1442 Mr. {Dingell.} Okay. Well, there is actually several
1443 programs here, but all right, Let us say it is 100 percent
1444 federal. Where--how is the Federal government if they pay

1445 100 percent of that cost subsidizing abortion?

1446 Mr. {Johnson.} If the Federal government is paying for
1447 somebody to enroll in this program in, say New Mexico which
1448 is one of the plans, and that plan covers elective abortion,
1449 then the Federal government is paying for every abortion that
1450 is paid for by that plan. How could it be otherwise?

1451 Mr. {Dingell.} All right, what are the other subsidies?

1452 Mr. {Johnson.} There are authorizations in the PPACA
1453 for a great deal--what seven billion in money to community
1454 health centers. These--

1455 Mr. {Dingell.} So do community health services--centers
1456 provide abortions?

1457 Mr. {Johnson.} Some do.

1458 Mr. {Dingell.} How many?

1459 Mr. {Johnson.} This was disputed. We don't know.

1460 Mr. {Dingell.} I have got seven of them in my District
1461 and I am not aware of one that does.

1462 Mr. {Johnson.} There is a national project called the
1463 Reproductive Health Equity Project I believe which is devoted
1464 to trying to get them to adopt abortion as part of their
1465 regular--

1466 Mr. {Dingell.} Is that covered by the Hyde amendment?

1467 Mr. {Johnson.} It is not, sir, because these funds are
1468 self appropriated in the packet itself. Now, the President

1469 in his Executive Order purports to say please don't use those
1470 monies for abortions but there is no statutory basis for it.
1471 The Hyde amendment only covers what flows through the HHS
1472 appropriations pipeline. The PPACA has a great many new
1473 pipelines self appropriate at this--

1474 Mr. {Pitts.} The gentleman's time has expired.

1475 Mr. {Dingell.} Thank you, Mr. Chairman.

1476 Mr. {Pitts.} Gentlemen, the Chair recognizes the
1477 gentleman from Pennsylvania, Dr. Murphy for five minutes.

1478 Mr. {Murphy.} Thank you, Mr. Chairman. I hope I can--
1479 you can see me back there. I just want to clarify the stream
1480 and what is the law and not the law. Can federal money such
1481 as Medicare, Medicaid be used to purchase medical supplies at
1482 health clinics? Can that be used? Yes or no, anybody from
1483 the panel.

1484 Ms. {Rosenbaum.} Certainly Medicare and Medicaid pay
1485 for the supplies.

1486 Mr. {Murphy.} Okay yes, okay. And so they can pay the
1487 rent and heating and utilities that clinics that perform a
1488 number of services including abortions?

1489 Ms. {Rosenbaum.} There would be no payment. I am--

1490 Mr. {Murphy.} But if it is the same building it would
1491 pay for the medical supplies and utilities and the rent et
1492 cetera where some types of medical procedures are covered,

1493 but also where abortions are also performed. Is that
1494 correct?

1495 Ms. {Rosenbaum.} You could not bill for a prohibited
1496 feature.

1497 Mr. {Murphy.} But if it pays the rent and utilities and
1498 the medical supplies you could use Medicare funds, Medicaid
1499 funds to pay for that where those abortions may also exist.
1500 Am I correct?

1501 Ms. {Rosenbaum.} No, you could not bill for a
1502 prohibited feature. And you could not pay for--

1503 Mr. {Murphy.} Can you--if an abortion takes place and
1504 there is medical equipment needed: sutures, scalpels,
1505 scissors, clamps, gauze, medicines, can some of those that
1506 are paid for in the clinic in one category filing or closet
1507 be also used for a woman who may be having an abortion?

1508 Ms. {Rosenbaum.} I still don't understand. You cannot
1509 bill for a prohibited feature.

1510 Mr. {Murphy.} When a clinic purchases supplies do they
1511 have two separate medical supply rooms? One that is paid
1512 for--the money could come from federal or say taxpayer
1513 dollars such as Medicaid and another entirely separate
1514 funding stream where supplies would come from? Are they kept
1515 entirely separate? Does anybody on the panel know? Okay. I
1516 hold in my hand a federal grand jury report about a clinic in

1517 Philadelphia, first judicial district of Pennsylvania. It is
1518 260 pages worth of shocking and horrifying descriptions of
1519 what took place at the Women's Medical Society. It is--and
1520 it has procedures and lists of things too gruesome to
1521 describe. Many babies who were born, who were viable and
1522 were left on a table until the doctor would come in and use
1523 scissors to sever their spine. The fellow Rhenus Clinic is
1524 up for many charges of murder although it is estimated this
1525 actually took place in the hundreds. Now, I want to show you
1526 a document here which is fairly important with regard to this
1527 that--with regard to how one billed for some of these
1528 services. And what it has on this document, it is very
1529 interesting the column of how things are paid for because it
1530 lists some of the prices. Let me see if I can find it here.
1531 It lists some of the prices for these services and in this
1532 column it says you know paid for by Medicaid and for--and
1533 then part was out of pocket expenses. Does anybody--here
1534 would help me find that paper. Anybody know how that could
1535 be?

1536 Ms. {Rosenbaum.} I presume you would have to ask the
1537 Pennsylvania Medicaid folks.

1538 Mr. {Murphy.} I mean the thing that is real difficult
1539 for me is we are told it is illegal and yet here is a clinic
1540 that has operated for quite a time billing Medicaid. I want

1541 to know how this is where it has on this price list and it is
1542 broken down by the age of the fetus from 6 to 12 weeks under
1543 discount price for Medicaid and cash it is \$330. Thirteen to
1544 14 weeks gestation is \$440. When it is 21 to 22 weeks it is
1545 1180 although the 23 to 24 weeks because it is a three day
1546 procedure of dilation for a partial birth abortion it is
1547 1525. The prices go up according to the age of the baby.
1548 But it says Medicaid and cash and I don't understand how if
1549 we are saying federal taxes don't go towards paying for
1550 abortions I just want to make sure we are not living in a
1551 delusional world. Is it used or not?

1552 Ms. {Rosenbaum.} A State Medicaid program, a State
1553 Medicaid agency can use nonfederal share funding to pay for a
1554 broader range of services.

1555 Mr. {Murphy.} How do they do that? Do they mark the
1556 bills that come from the Federal government and separate them
1557 into a pile?

1558 Ms. {Rosenbaum.} Yes. They literally segregate out
1559 claims that would be federally allowed.

1560 Mr. {Murphy.} So State taxpayer dollars--

1561 Ms. {Rosenbaum.} This is a--

1562 Mr. {Murphy.} --are going toward this? But State
1563 taxpayer dollars can go toward these abortions?

1564 Mr. {Johnson.} I have a different view on this point,

1565 Mr. Murphy.

1566 Mr. {Murphy.} Yes.

1567 Mr. {Johnson.} First of all, it is not true that the
1568 Hyde amendment allows States to use matching funds in
1569 Medicaid for abortions other than life of the mother, rape,
1570 and incest. This is explicitly prohibited by the text of the
1571 Hyde amendment which again the complete text is footnote 10
1572 in my written testimony. But a State may set up a parallel
1573 program with entirely State funds. Technically it is not
1574 Medicaid--

1575 Mr. {Murphy.} Taxpayer funds.

1576 Mr. {Johnson.} --as--former administrator has pointed
1577 out to cover whoever they want with entirely State funds.
1578 But Pennsylvania has not done so. Pennsylvania in fact has
1579 resisted even the expansion to the rape/incest back during
1580 the Clinton Administration. So I can't explain the document
1581 that you have in your hand. I think that does bear further
1582 investigation. And it really illustrates how particularly
1583 with respect to late abortions a lot of the things that were
1584 told, statistics and so forth are highly suspect. I mean,
1585 you are told that late abortions are quite rare. Well, even
1586 by the Guttmacher Institute figures there is at least 20,000
1587 a year after the first half of pregnancy in the fifth month
1588 or later--maybe a lot more.

1589 Mr. {Murphy.} Mr. Chairman, I would just ask as part of
1590 what the committee takes action in researching this issue in
1591 terms of how that funding stream was done and look at this is
1592 it an example or not of how taxpayers funds were used to pay
1593 for abortions. Thank you. I yield back.

1594 Mr. {Pitts.} Without objection. Thank you. The Chair
1595 recognizes the gentlelady from California, Ms. Capps for 5
1596 minutes.

1597 Mrs. {Capps.} Thank you, Mr. Chairman and before I ask-
1598 -get to my questions I want to ask unanimous consent to
1599 submit for the record statements from NARAL, an organization
1600 opposing this legislation.

1601 Mr. {Pitts.} Without objection, so ordered.

1602 [The information follows:]

1603 ***** COMMITTEE INSERT *****

|
1604 Mrs. {Capps.} Thank you. Previously my colleague Mr.
1605 Waxman was asking some questions and I want to follow up on
1606 one of his questions to you, Professor Alvaré. Should a
1607 health care provider whose conscience dictates that they
1608 should provide abortion services just like in Mr. Waxman's
1609 example of a woman who had been raped. If you from your
1610 lawyer's point of view from being an attorney and a professor
1611 of law should that individual provider's conscience receive
1612 the same protection under the law that you support for those
1613 opposed to abortion? We are talking about the conscience
1614 clause here.

1615 Ms. {Alvaré.} The first thing with respect to this
1616 particular legislation is that they are free to provide
1617 abortions in the United States. It remains legal. It
1618 remains legal throughout pregnancy and they are free to do
1619 it. I would not want legislation that particularly protects
1620 their conscience to do it within an institution that doesn't
1621 want to do it. They are free to do it anywhere they like
1622 except of course within an institution whether they are
1623 religious or just morally opposed to abortion. We prefer as
1624 a nation life over death. The Supreme Court has allowed
1625 States to do that and if they want to extent conscience
1626 protection particularly to people who do not want to provide

1627 abortions it is because those are the people being forced.
1628 People who want to provide abortions are not stopped from
1629 doing so.

1630 Mrs. {Capps.} So you are referring to an anti-
1631 discrimination law?

1632 Ms. {Alvaré.} People who want to provide abortions are
1633 not stopped from doing so. That is the state of our country
1634 right now.

1635 Mrs. {Capps.} Okay. Let me point out that you have
1636 asserted also that poor and vulnerable women are often
1637 treated by Catholic hospitals and that the protection of
1638 conscience and care for vulnerable women are not opposite
1639 values. But this is the situation that Professor Rosenbaum
1640 brought up. November of 2009, a 27-year-old pregnant woman
1641 brought to St. Joseph's Hospital, a medical center in
1642 Phoenix, Arizona suffering pulmonary hypertension. To quote
1643 the hospital in that case the treatment--her hypertension was
1644 exacerbated by the pregnancy and the treatment necessary to
1645 save her life required the termination of an 11 week
1646 pregnancy. This decision was made after consultation with
1647 the patient, her family, her physicians, and in consultation
1648 with the ethics committee of the hospital. Fortunately
1649 because of the doctor's actions in this case this woman
1650 lived. That is what you are referring to and then went home

1651 to care for her four children. Now in your testimony,
1652 Professor, you describe the need for institutions and medical
1653 providers to be able to choose against performing health care
1654 services that they find objectionable. Do you believe that
1655 if--that the hospital should have had the choice in a
1656 different situation or with a different set of committees and
1657 so forth to let this woman die without a treatment or
1658 referral?

1659 Ms. {Alvaré.} Congresswoman, I think the hospital would
1660 disagree with your characterization. The details of this
1661 particular situation have never been fully, publicly
1662 verified--

1663 Mrs. {Capps.} But you could answer my question as an
1664 attorney. Say the details were--

1665 Ms. {Alvaré.} Well, they said it wasn't an abortion,
1666 Representative.

1667 Mrs. {Capps.} Well, but it--the--then--

1668 Ms. {Alvaré.} At the hospital.

1669 Mrs. {Capps.} Then make this a hypothetical situation.

1670 Ms. {Alvaré.} Okay.

1671 Mrs. {Capps.} As a professor of law in this kind of
1672 situation do you believe that a hospital with a conscience
1673 clause who chooses not to perform these procedures should let
1674 this woman die? Or someone who is hemorrhaging which is

1675 sometimes the case in a pregnancy and only has a few minutes
1676 to live and in some parts of this country there is not
1677 another hospital within the time that would be allotted.

1678 Ms. {Alvaré.} Then if you believe that unlike what
1679 Guttmacher says--

1680 Mrs. {Capps.} I am asking you to answer for yourself.

1681 Ms. {Alvaré.} Yes, that--but it is premised on the
1682 question that you believe this situation could occur. Doctor
1683 and Representative Burgess has suggested it hasn't--38 years
1684 of legal abortion it hasn't.

1685 Mrs. {Capps.} But the conscience clause should apply--
1686 it needs to apply.

1687 Ms. {Alvaré.} Where we really need some conscience
1688 protection in a big way is at the health department officials
1689 that need investigating.

1690 Mrs. {Capps.} But you are not answering my question,
1691 Professor.

1692 Ms. {Alvaré.} No, I think I have with due respect that
1693 we don't have that situation. It is hypothetical. What is
1694 not hypothetical is the dozens of women dying at abortion
1695 clinics like Dr. Gosnell's. We need protection for those
1696 women and the situation in Phoenix as you said you--is not--

1697 Mrs. {Capps.} Let me put it in another way. I don't
1698 want to interrupt you, but I--there is such little time. In

1699 your testimony you seem to indicate that an individual with
1700 life threatening emergency has time to Google all the
1701 available medical services and she could get to some other
1702 place to find a treatment for her life threatening
1703 hemorrhage. For this woman to receive the care she might
1704 need she would have to self--do you not think this is an
1705 incredibly unreasonable action to expect from a woman in that
1706 sort of condition?

1707 Ms. {Alvaré.} I never referenced Googling hospital
1708 services in any of my testimony. There is nothing similar to
1709 that in my written testimony. What I am telling you is that
1710 when it comes to women dying in connection with abortion we
1711 have dozens and dozens and dozens of examples--

1712 Mrs. {Capps.} But doesn't--but you--

1713 Ms. {Alvaré.} --at abortion clinics but not in a
1714 hospital setting. None in 38 years.

1715 Mrs. {Capps.} I yield back.

1716 Mr. {Pitts.} Chair thanks the gentlelady and recognizes
1717 the gentleman from Georgia, Dr. Gingrey for 5 minutes.

1718 Dr. {Gingrey.} Mr. Chairman, thank you. I want to
1719 refer back to a line of questioning that the Ranking Member
1720 brought up earlier. I don't think he is still here, but this
1721 is in regard to the questions over conscience protections and
1722 I am going to address this to Ms. Alvaré. Does the Pitts

1723 legislation, the Protect Life Act, does it provide any
1724 additional conscience protections that are not included in
1725 the Patient Protection and Affordable Care Act, sometimes
1726 referred to as Obama Care. Or indeed President Obama's
1727 Executive Order. And if so, why do you think those
1728 protections should be adopted through enactment of the Pitts
1729 legislation before us here today?

1730 Ms. {Alvaré.} Thank you. A good deal of that is to
1731 preserve what we always had in the Hyde-Weldon legislation.
1732 For instance specific examples, the Affordable Care Act
1733 extended nondiscrimination protection with regard to health
1734 plans but not as against actions of government. The Stupak-
1735 Pitts amendment which was adopted by voice vote, by the full
1736 Energy and Commerce Committee in 2009 included those
1737 protections just like Weldon did. It was considered so
1738 uncontroversial that it included those on a voice vote.
1739 Additionally and this is where I would appreciate the
1740 opportunity to clarify what I believe was Congressman
1741 Waxman's fundamental misunderstanding of that piece of the
1742 Protect Life Act that talks about regarding abortion. He
1743 thought that by striking that language out of the Affordable
1744 Care Act and putting other language in we were actually
1745 allowing for hospitals to refuse to provide or health care
1746 providers, et cetera--any entity to provide this wide array

1747 of health care services that he listed. In fact, that was
1748 just the striking of a heading because the heading did not
1749 appropriately characterize what went underneath it. And in
1750 addition, it was connected with amending the Affordable Care
1751 Act to make sure that not only did it not preempt State laws
1752 on abortion, but it also didn't preempt those 47 States and
1753 the District of Columbia that already have conscience
1754 protection on the books. So his reading of that particular
1755 piece of Protect Life Act I would say is not--would not be
1756 what the text is saying. And that what it was doing that the
1757 Affordable Care Act didn't do but now we would have under the
1758 Protect Life Act was to protect all those State's conscience
1759 protection clause.

1760 Dr. {Gingrey.} So Ms. Alvaré, in just in summary from
1761 what you say, clearly your opinion is that what is in Patient
1762 Protection Affordable Care Act and also in the Executive
1763 Order does not go far enough in regard to the conscience
1764 clause; therefore, the need of that provision, that section
1765 of the Protect Life Act in the Pitts bill

1766 Ms. {Alvaré.} On its face--

1767 Dr. {Gingrey.} Yeah.

1768 Ms. {Alvaré.} --textually speaking Protect Life Act
1769 does--

1770 Dr. {Gingrey.} And I think that is a yes and I am going

1771 to accept that--

1772 Ms. {Alvaré.} Yes.

1773 Mr. {Gingrey.} --because my time is getting limited. I
1774 did want to go to Mr. Johnson. And Mr. Johnson, some have
1775 suggested that the current existence of the Hyde amendment
1776 and the President's Executive Order mean there is no need for
1777 the Pitts legislation. Does President Obama's Executive
1778 Order support the Hyde amendment and does his Executive Order
1779 address all of the concerns regarding federal funding of
1780 abortion?

1781 Mr. {Johnson.} The reference in the Executive Order,
1782 the Hyde amendment is just discursive. It is a form of
1783 misdirection. Of course, the bill doesn't repeal--

1784 Dr. {Gingrey.} Let me interrupt you just for a second.
1785 I will let you answer. And I think that came up a little bit
1786 earlier. My colleague from Tennessee, Ms. Blackburn
1787 mentioned the interview that the former Chief of Staff to the
1788 President, Mr. Rahm Emanuel had in an interview with the
1789 Chicago Tribune, he essentially said that. Did he not? You
1790 go ahead.

1791 Mr. {Johnson.} Yes, and that is why president of
1792 Planned Parenthood said it was just a symbolic gesture. By
1793 the way, I am sorry Mr. Dingell is not here anymore because
1794 my associate handed me the memo from the Congressional

1795 Research Service about the high-risk pool program that we
1796 were discussing a few minutes ago and it says--this is a memo
1797 from the CRS July 23, 2010, and I quote ``Because the Hyde
1798 amendment restricts only the funds provided under the
1799 appropriations measure for the Departments of Labor, HHS, and
1800 Education, it would not seem to apply to the funds provided
1801 for the high-risk pools.'' And that is why the ACLU
1802 criticized the White House when they made the discretionary
1803 decision after the public controversy last July not to fund
1804 abortions in that particular program. They had the authority
1805 to do so under the PPACA. They decided not to because of the
1806 controversy.

1807 Dr. {Gingrey.} Mr. Johnson, let me interrupt you just
1808 quickly. In the last 5 seconds I have got do you think then
1809 that the Protect Life Act is an effort to codify, essentially
1810 to codify the language in the Stupak-Pitts amendment that was
1811 passed by this house in November of 2009?

1812 Mr. {Johnson.} Yes, the bill was patterned very closely
1813 on the amendment that passed the house by--

1814 Dr. {Gingrey.} With much Democratic support.

1815 Mr. {Johnson.} --240 votes which was one quarter of all
1816 the Democrats and no Republican voted against it.

1817 Dr. {Gingrey.} Thank you. Yield back.

1818 Mr. {Pitts.} Chair thanks the gentleman and recognizes

1819 the gentlelady from Illinois, Ms. Schakowsky for 5 minutes.

1820 Ms. {Schakowsky.} Thank you, Mr. Chairman. I wanted to
1821 ask you Mr. Johnson, do you want to stick with your statement
1822 that the Federal government pays 100 percent of the high-risk
1823 pools?

1824 Mr. {Johnson.} Yes, and in fact that statement is up on
1825 the Secretary Sebelius's Website.

1826 Ms. {Schakowsky.} I have in my hand the Illinois plan,
1827 the Illinois Pre-existing Condition Insurance Plan and it
1828 says how is IPXP being funded. In addition to the federal
1829 funds, the IPXP will be funded by premiums paid by enrollees
1830 and here is the whole list of the money that is being paid by
1831 the enrollees. This is not a question. I want to say for
1832 the record that this is not 100 percent paid for by the
1833 Federal government. And if I could just have a yes or no
1834 answer to this, did the National Right to Life Committee
1835 support the changes to the Hyde amendment that were
1836 originally included in this bill forcible rape and regarding
1837 incest if a minor?

1838 Mr. {Johnson.} I can address that question, but not
1839 with a yes or a no.

1840 Ms. {Schakowsky.} Well, it seems pretty simple. Did
1841 the organization support those?

1842 Mr. {Johnson.} We supported the bill as introduced. We

1843 also support the current policy which is incorporated in the
1844 Hyde amendment. I believe that these--well, Congresswoman if
1845 you want my position then you will have to allow me to answer
1846 in my own way. We support the policy that is in corporate in
1847 the Hyde amendment. It is not perfect, but we do support it.
1848 And we supported the bill as introduced. It is not perfect
1849 either. You know we could discuss the history of how the
1850 language was--

1851 Ms. {Schakowsky.} No, I--medical doctors on--however,
1852 my understanding of the National Right to Life constituent
1853 views of the term for--they said see it as what we are
1854 talking about as frivolous or--so let me ask you this. Is it
1855 elective when a woman has an abortion because she will go
1856 blind because of the use of all the--

1857 Mr. {Johnson.} The term elective as it has been used
1858 the last couple of years and in testimony today is a kind of
1859 shorthand for abortions outside the scope of the Hyde
1860 exceptions, life of the mother, rape, and incest. It is not
1861 a moral judgment or an ethical judgment on these other
1862 circumstances. It is just a shorthand way--

1863 Ms. {Schakowsky.} So in other words by that definition
1864 elective, if a woman would go blind as a result of pregnancy
1865 that would be outside of Hyde and that would be elective?

1866 Mr. {Johnson.} That would be elective as the term has

1867 been used in some of this discourse as a form of shorthand.
1868 It does not--the circumstance you have just described is not
1869 to prevent the death of the mother as you have just stated.
1870 It is not rape. It is not incest.

1871 Ms. {Schakowsky.} Right, okay. So is it elective then-
1872 -I want to just get this on the record if a woman with an
1873 ectopic--

1874 Mr. {Johnson.} I have answered your question.

1875 Ms. {Schakowsky.} No, I am asking another question.
1876 Excuse me. If the--is it elective if a woman with an ectopic
1877 pregnancy has the embryo surgically removed while leaving the
1878 fallopian tube intact?

1879 Mr. {Johnson.} What you have described many would
1880 dispute as any kind of an abortion, but if it is to be
1881 considered an abortion it would be considered an abortion to
1882 save the life of the mother and certainly allowed by Hyde.
1883 Indeed this was explicitly in the Hyde language back in the
1884 '70's I believe or at least in the conference report. But it
1885 has never been an issue.

1886 Ms. {Schakowsky.} If--is it elective if a woman
1887 miscarries one of the twins she is pregnant with and
1888 terminates the pregnancy of the second fetus after doctors
1889 conclude there is no hope for survival.

1890 Mr. {Johnson.} For whose survival, Congresswoman?

1891 Ms. {Schakowsky.} For the--no hope for survival of the
1892 fetus.

1893 Mr. {Johnson.} The Hyde amendment does not permit
1894 federal funding of abortion of a child because the child has
1895 a poor prognosis or a handicap. The criteria is if the life
1896 of the mother would be endangered if the pregnancy were be
1897 carried to term.

1898 Ms. {Schakowsky.} So, no hope for survival does not
1899 constitute--that would be elective? No hope for survival.

1900 Mr. {Johnson.} No hope for survival of the child for
1901 some time after birth? Is that what you are saying?

1902 Ms. {Schakowsky.} That the child cannot perhaps survive
1903 the full nine months or could not survive after birth.
1904 Right.

1905 Mr. {Johnson.} The Hyde amendment does not permit
1906 federal funding of abortion as a form of prenatal euthanasia.

1907 Mr. {Pitts.} The Chair thanks the gentlelady and
1908 recognizes the gentleman from Louisiana, Dr. Cassidy for 5
1909 minutes. You want to step back here? We will hold the five.

1910 Dr. {Cassidy.} Hi Ms. Rosenbaum. In full disclosure to
1911 everybody else, you and I have authored and coauthored a
1912 paper before.

1913 Ms. {Rosenbaum.} I have to put my mic down for that.
1914 We have indeed.

1915 Dr. {Cassidy.} Yes. Now, a couple things. I am
1916 approaching this as a physician because some of this
1917 discussion--a woman doesn't go blind from diabetes in
1918 pregnancy. The Renal-retinal syndrome is something that
1919 develops over years and so it is not something that would
1920 precipitously occur. And that is just one example how as a
1921 physician I have kind of approached this. When I read your
1922 testimony you quoted an article that you had written so I
1923 pulled it up. I have great respect for your writing. And
1924 one of the things you are talking about here is medically
1925 indicated and you say a woman has a car wreck, fractures her
1926 pelvis, loses the baby, would the hospital not be paid for
1927 fixing the pelvis because the baby was lost. Now frankly,
1928 that would most likely be to save the life of the mother, but
1929 I had never heard of a hospital having a problem in such a
1930 situation, major motor vehicle accident. Have you?

1931 Ms. {Rosenbaum.} Let me just be sure I am following
1932 your question.

1933 Dr. {Cassidy.} I am reading your paper here--I am sure
1934 you are familiar with it. It is regarding the Stupak-Pitts
1935 amendment. It is actually about current law and not about
1936 what is proposed. And you say how will plan administrators
1937 distinguish between the abortion procedure and the rest of
1938 the treatment? Will the entire cost of a course of

1939 treatment--example, surgery to repair a damaged pelvis
1940 following an automobile accident be denied of abortion is
1941 part of the procedure. I have never heard of that happening.
1942 Have you?

1943 Ms. {Rosenbaum.} Here is the problem. The analysis
1944 which I reference and also gave sort of shorthand to in my
1945 oral statement focuses on the administrative choices made by
1946 health plans. When a particular treatment is excluded often
1947 they will say that other treatments that are related to the
1948 treatment--

1949 Dr. {Cassidy.} But see, for example, I am sure we have
1950 experience with Medicaid managed care.

1951 Ms. {Rosenbaum.} Yeah, absolutely.

1952 Dr. {Cassidy.} If a woman comes in with sepsis
1953 following a whatever--an abortion that normally the Medicaid
1954 wouldn't pay for, she paid cash and had a complication and
1955 came to the hospital, I have never heard of a managed care
1956 plan not paying for the rescue, if you will, of the botched
1957 procedure. Have you?

1958 Ms. {Rosenbaum.} What I am writing about and testifying
1959 about is what is absolutely legally within the right of the--

1960 Dr. {Cassidy.} So it is not anything that is
1961 empirically happened with a long experience with Medicaid
1962 managed care. Rather it is a what if?

1963 Ms. {Rosenbaum.} It is the legal implication of having
1964 an exclusion. This is once you have a benefit exclusion then
1965 other--

1966 Dr. {Cassidy.} But we have benefit exclusions in
1967 Medicaid managed care which is why I come back to that.
1968 Medicaid managed care does not cover abortion.

1969 Ms. {Rosenbaum.} Correct.

1970 Dr. {Cassidy.} But as far as I know I have never heard
1971 of it not paying for the rescue of somebody who has had a
1972 complication following a cash paid abortion. Have you--
1973 again, I just ask because you--I don't think you are fear
1974 mongering on purpose, but frankly it has that effect because
1975 I have never heard of that and that is as a practicing
1976 physician.

1977 Ms. {Rosenbaum.} Well, I don't--I think the issue in
1978 analyzing a bill like this is to identify for Members of
1979 Congress what the potential implications are. Now you could
1980 address the issue--

1981 Dr. {Cassidy.} Now I accept that. Okay. So I think it
1982 is fair to say it hasn't happened and it is just a question
1983 of--

1984 Ms. {Rosenbaum.} No, we don't know at least. There has
1985 been no documentation.

1986 Dr. {Cassidy.} I can promise that would hit the

1987 newspaper. But that said and again I was struck because I
1988 have seen patients although I am a gastroenterologist. I
1989 know of such patients. Secondly, the ERISA market--there
1990 seems to be some concern you have that by doing this we are
1991 going to somehow destroy the insurance market for non-
1992 federally somehow connected plans. It is interesting that
1993 you suggest that a lot of people are going to drop their
1994 current coverage to go on a subsidized plan and I will note
1995 that we were assured that was not going to happen. But
1996 nonetheless, as you note in your paper we have a huge ERISA
1997 market. I mean, a huge--what--87 percent of the people are
1998 covered by ERISA and most of those folks have coverage.
1999 Maybe as a percent it will decline but really in absolute
2000 numbers it is huge. Are you saying that that will go away?

2001 Ms. {Rosenbaum.} No, no. The paper addresses what
2002 happens when the same health benefit companies that sell
2003 products in Let us say the exchange market are also selling
2004 small group products, employer products in the non- exchange
2005 market. A company can only make so many variations on the
2006 product itself.

2007 Dr. {Cassidy.} But we certainly know that they do make
2008 lots of product variations now. Now you mentioned for
2009 example that there is dental and vision. We all know that
2010 and you say that would be a smaller market. On the other

2011 hand I have no doubt there is an enterprising insurance
2012 company out there that will become the coverer for many other
2013 companies.

2014 Ms. {Rosenbaum.} The problem with this particular
2015 market is that if you follow both this bill and HR3--

2016 Dr. {Cassidy.} Now by the way, we are talking actually
2017 by--this is about Stupak-Pitts.

2018 Ms. {Rosenbaum.} Yes, yes, yes.

2019 Dr. {Cassidy.} So it is actually--you are describing
2020 now what would be the effect of this addendum, if you will,
2021 but rather what is the effect of the current Executive Order
2022 as regards PPACA now. Correct?

2023 Ms. {Rosenbaum.} No, no, no. In fact, I would say this
2024 bill would bring health reform into line with what originally
2025 was Stupak-Pitts.

2026 Dr. {Cassidy.} Okay. So the original kind of thing
2027 that passed by a huge bipartisan, this would bring it into
2028 align with where that was?

2029 Ms. {Rosenbaum.} This would substitute--

2030 Dr. {Cassidy.} Yeah.

2031 Ms. {Rosenbaum.} --at least in part Stupak-Pitts for
2032 what was--

2033 Dr. {Cassidy.} They are clicking behind me. We are
2034 through. Thank you very much.

2035 Mr. {Pitts.} Gentleman's time is expired. Chair
2036 recognizes the gentlelady from Wisconsin, Ms. Baldwin.

2037 Ms. {Baldwin.} Thank you, Mr. Chairman. Before I begin
2038 I would like to ask unanimous consent to submit for the
2039 record the testimony of Dr. Douglas Laube who is the Board
2040 Chair of Physicians for Reproductive Choice in Health.

2041 Dr. {Burgess.} Mr. Chairman, could I ask to see that
2042 before we have that unanimous--

2043 Mr. {Pitts.} Could we request a copy of that?

2044 Ms. {Baldwin.} Well certainly.

2045 Dr. {Burgess.} While we are on the subject, can I see
2046 the paper that the previous questioner was referring to? If
2047 I could get a copy of that as well that would be great.

2048 Mr. {Pitts.} No--

2049 Dr. {Burgess.} Thanks. No rush. I just--

2050 Mr. {Pitts.} All right, the gentlelady is recognized
2051 for 5 minutes.

2052 Ms. {Baldwin.} And the result of my unanimous consent
2053 request? Have I--

2054 Mr. {Burgess.} Take a minute to read it. I don't mean
2055 to be rude. I am going to read while you are talking but I
2056 can listen while I read.

2057 Ms. {Baldwin.} All right. Earlier I expressed my
2058 dismay that our very first hearing of this subcommittee in

2059 this brand new session of Congress wasn't focused on the
2060 issues that are most important to my constituents. I would
2061 suggest all of our constituents--that being jobs. Many
2062 facets of which would be directly relevant to our
2063 subcommittee's jurisdiction. But instead on a bill that
2064 rolls back the right of women to make important life
2065 decisions. And I think that speaks volumes and I wonder what
2066 else we will see on this issue in the weeks and months to
2067 come. Will we see defunding of family planning and access to
2068 contraception? Will we see revisiting of the rape and incest
2069 exemptions? And on that topic, I am familiar with the
2070 Chairman's bill as introduced. I believe it is H.R. 358 and
2071 another bill H.R. 3. That one which is cosponsored by over
2072 half of the Republican conference. In both of those bills
2073 there is a redefinition of the rape exemption that would give
2074 insurance companies and health care providers new
2075 authorities. Perhaps you could even argue new
2076 responsibilities to decide if a woman has been forcibly raped
2077 and the authority to deny care to victims of incest. You
2078 know, it used to be that we told our young daughters and sons
2079 no means no. But now apparently no isn't sufficient. What
2080 happens if a rape victim is unconscious? What about somebody
2081 who has been given the date rape drug as it is known. Are
2082 these people no longer considered rape victims? Now, thanks

2083 to Americans and particularly American women who spoke out
2084 against these provisions, we are now considering a discussion
2085 draft of the Chairman's bill without these provisions.
2086 Although I don't have the discussion draft at my desk. I
2087 don't know if I am alone, but am I--

2088 Mr. {Pitts.} Where is it?

2089 Ms. {Baldwin.} Were people provided with the discussion
2090 draft because I would like to certainly confirm that that
2091 language has indeed been removed. But it doesn't appear to
2092 be at our desks with our materials. In any event, let me
2093 move on. We know that this language in this proposal is not
2094 new. During the debate last year on the health care reform
2095 bill, this language was proposed and ultimately again
2096 withdrawn. So I guess Professor Rosenbaum, I would like to
2097 explore the impact of this proposed redefinition of rape and
2098 incest that was included in the legislation H.R. 358, a
2099 variation of what we are looking at today. Who would make
2100 these treatment and coverage decisions for victims of rape
2101 and if this redefinition were to occur how might it be
2102 applied in practice? It is deeply troubling to me.

2103 Ms. {Rosenbaum.} There would be--really two levels of
2104 decision making. First of course there would have to be a
2105 structure by which the sellers of the products themselves
2106 could certify that they were in compliance with the

2107 definitions. And so in this case because we are talking
2108 about a tax advantage plan definition the IRS would have to
2109 define these issues. But then when it comes to individual
2110 claims, it would go through a claims appeals process. So if
2111 you were a woman who claimed to have had an abortion for a
2112 covered purpose, the plan might review the claim and decide
2113 that the medical justification, the supporting evidence was
2114 not strong enough and would have legal authority of course to
2115 deny the claim for that purpose. So it would be an
2116 evidentiary determination just like any evidentiary
2117 determination. Then you would go through the appeals
2118 process.

2119 Ms. {Baldwin.} What about at the treatment stage. Is
2120 there any--what would come into play there in terms of what a
2121 young victim of rape would have to share in terms of
2122 demonstrating that she was forcibly raped?

2123 Ms. {Rosenbaum.} If it is a--if the standard is a
2124 forcible rape standard then one could imagine everything from
2125 police reports which sometimes don't exist in these cases
2126 because of fears about coming forward. Other evidence,
2127 evidence of particularly brutal attack, physical tearing, all
2128 of the medical, clinical, law enforcement evidence that would
2129 surround presumably a forcible rape would come into play.
2130 And the insurer would be, you know, labeled as the bad guy

2131 but the insurer would be doing what it legally needed to do
2132 in order to adhere to the federal exclusion.

2133 Ms. {Baldwin.} Thank you and I would renew my unanimous
2134 consent request.

2135 Mr. {Pitts.} Chair thanks the lady. There is no
2136 objection so with unanimous consent so ordered.

2137 Ms. {Baldwin.} Thank you.

2138 [The information follows:]

2139 ***** COMMITTEE INSERT *****

|
2140 Mr. {Pitts.} Chair thanks the lady and recognizes the
2141 gentleman from Kentucky, Mr. Guthrie for 5 minutes.

2142 Mr. {Guthrie.} Thank you, Mr. Chairman. My friend Dr.
2143 Cassidy was talking about this--the paper, Ms. Rosenbaum that
2144 you had and I guess what you were saying how is the physician
2145 going to--if there is an abortion procedure, there is
2146 complication of that and they are treated beyond that, how
2147 are they going to disentangle what was abortion related and
2148 what wasn't. That was the same question we had with
2149 insurance. I mean, if somebody goes into the exchange and
2150 they receive a subsidy to go into the exchange, whether they
2151 pay 80 percent, 50 percent, and some of the argument that was
2152 made on the floor, I guess in the Senate although we did pass
2153 Stupak-Pitts in the house was how do you know what portion of
2154 that premium is going to be for abortion? How--what portion
2155 is going to be from the federal taxpayer? And without being
2156 able to disentangle that we said well, you can't disentangle
2157 it because it is all tied together. And therefore, the
2158 intent is to ban this to keep with our idea that the federal
2159 taxpayer shouldn't pay for people's abortion. And on that
2160 with Mr. Johnson--and I am going to try to get this quickly
2161 because I want to yield some time. With Chairman Dingell, or
2162 Mr. Dingell you were talking about the coverage. So even if

2163 you don't get 100 percent coverage in the high-risk pool, if
2164 you get some percentage of coverage in the high-risk pool or
2165 any exchange, if the exchange offers abortion coverage and
2166 then there is no way to disentangle just what I was saying
2167 what is a federal dollar and what is a private dollar?

2168 Mr. {Johnson.} Well, these are two different issues. I
2169 think Congresswoman Schakowsky and I were talking past each
2170 other a little bit. The high-risk pool program, yes, the
2171 client has to pay a certain amount in. Those become federal
2172 funds. Those become federal funds. That is why secretary of
2173 HHS on their Website says it is 100 percent federally funded.
2174 The State contributes nothing. The clients pay a certain fee
2175 just like in Medicare, but those then become federal funds.
2176 The notion that a federal agency can pay out of the treasury
2177 for medical services, abortions or any other and that that is
2178 the use of private funds is really a hoax. And we saw an
2179 attempt with the Capps amendment on a bill last year to make
2180 that claim where the--under the public plan, the secretary of
2181 HHS would have been paying for elective abortions out of the
2182 federal treasury and they said but that was private funding
2183 of abortion. That is a hoax and nobody would entertain it
2184 for a moment if you were talking about some context other
2185 than abortion.

2186 Mr. {Guthrie.} I am going to yield the remainder of my

2187 time to Mr. Burgess.

2188 Dr. {Burgess.} I thank the gentleman for yielding.
2189 And in fact, Mr. Johnson when we had that discussion on the
2190 Caps amendment in the mark up of the Patient Protection and
2191 Affordable Care Act in July of 2009 the Democrats own counsel
2192 characterized that as--he said it would be a sham if I recall
2193 correctly. It was late at night and after a lot of
2194 discussion, but I think many of us were startled when Mr.
2195 Barton asked the question and again the Democratic Counsel
2196 said no, that would be a sham.

2197 Mr. {Johnson.} We cite in our testimony a host of
2198 authorities on this that these are public funds, federal
2199 funds once they are collected. The government collects money
2200 through diverse means: taxes, user fees, these premiums and
2201 so forth. They are all federal funds once the government has
2202 them.

2203 Dr. {Burgess.} On just a couple of things that have
2204 come up. The issue of a pregnancy located in the fallopian
2205 tube--I just--there would not be a situation arise where that
2206 would not be the health of the mother invoked in treating
2207 that condition.

2208 Mr. {Johnson.} Life of the mother.

2209 Dr. {Burgess.} Life or health of the mother with--life
2210 of the mother. Whether you use Methotrexate as a medical

2211 procedure or a surgical procedure but that has to be treated
2212 and everyone recognizes that. The paper that I asked
2213 permission to look at before we accepted it in the record
2214 does go through a litany of very hard rendering difficult
2215 situations. There is only one that is referenced in here
2216 that really would fall outside the emergency classification
2217 where it needed to be ten to two whether it is a hospital
2218 that provides this service or not. The doctor is obligated
2219 under EMTALA to provide that care, stabilize, transfer to
2220 another facility if the condition is--permits it, but only
2221 one of the six or seven cited here would actually fall into
2222 the category of elective. And the one that is elective,
2223 again, it is a tough story of someone with another child who
2224 is ill and decides not to carry their pregnancy. But that is
2225 hardly an emergency situation and one that can easily be
2226 stabilized and a proper care giver found. Now, the other
2227 issue that is brought up in this paper is the issue about
2228 that a rider--the requirement of a rider would be unworkable,
2229 but in fact that is what insurance is. It is planning for
2230 the unplanned. And it does not seem to me to be unreasonable
2231 to ask for that to be a--one of the conditions. And again,
2232 the President is pretty clear in his Executive Order I think.
2233 So we are just--Mr. Pitts, I congratulate you. You are
2234 trying to help the President and there is a lot of people who

2235 would say that that is an evidence of bipartisanship. So I
2236 welcome.

2237 Mr. {Pitts.} The Chair thanks the gentleman. And
2238 recognizes the gentleman from New York, Mr. Engel for 5
2239 minutes.

2240 Mr. {Engel.} Thank you, thank you Mr. Chairman. Look,
2241 we are all really beating around the bush here and when we
2242 are talking about a right of a woman to choose or the right
2243 of abolishing abortion in any circumstances. These are very
2244 heartfelt and personal views and I don't denigrate anybody's
2245 view on this issue. But I really am very much chagrined that
2246 first thing out of the box in this Congress the majority is
2247 pushing forward on wedge issues such as abortion when we
2248 should be doing things like helping our economy, and getting
2249 people back to work, and getting unemployment down. That is
2250 as far as I can see what the election was about in November
2251 and it is very disconcerting to see these wedge issues of
2252 being pushed to the fore. Let me get back to basics. Let me
2253 first ask Professor Rosenbaum because we have been back and
2254 forth on this, aside from the narrow exceptions of life,
2255 rape, and incest, does the Affordable Care Act allow federal
2256 funding for abortion services?

2257 Ms. {Rosenbaum.} It does not.

2258 Mr. {Engel.} Okay. So it is--your reading of it is a

2259 lot different from some of the testimony we have been
2260 hearing?

2261 Ms. {Rosenbaum.} I think--and every effort has been
2262 made to clarify any circumstance in which there was any
2263 question. I can find no evidence that anybody has not
2264 clarified that the same standards that we know in Hyde apply
2265 under the Affordable Care Act.

2266 Mr. {Engel.} In your testimony you state that the
2267 Protect Life Act will affect women's ability to find a health
2268 plan that includes abortion and purchase it with her own
2269 funds. Can you explain what that implication would mean for
2270 a woman's access to health services?

2271 Ms. {Rosenbaum.} The effect of the Protect Life Act
2272 would be in my view given my familiarity with the way
2273 insurers behave in a marketplace is that the market for the
2274 kind of coverage that one would need to buy essentially
2275 totally outside of the tax advantaged coverage just would
2276 never materialize because the people who are going to get the
2277 benefit of the Affordable Care Acts tax advantage system are
2278 individuals who don't have disposable income. They are by
2279 definition without the means to buy coverage. That is
2280 problem number one. Problem number two is the problem that I
2281 alluded to in both the written testimony and the oral
2282 statement namely it is very difficult to buy supplemental

2283 coverage and have that supplement totally, separately
2284 administered. Because the whole nature of a supplement is
2285 that it works in tandem with the basic coverage. Under the
2286 Protect Life Act the only way a supplement can be offered is
2287 if it is offered entirely separately, administered separately
2288 from the underlying coverage and is the example actually that
2289 Mr. Cassidy provided before where you have a terrible car
2290 accident and you have several things going on at the same
2291 time: an injury and potentially an abortion. You could
2292 easily end up in a situation where both--with the full
2293 coverage has to work in tandem in order to work otherwise the
2294 supplement and the primary just both deny it.

2295 Mr. {Engel.} Well, I think that this is another attempt
2296 to try to kill the Affordable Care Act and I am sorry that it
2297 uses--this legislation uses low income and middle income
2298 women as a political football. I just don't think it is
2299 right. Professor Alvaré, I want to ask you a question. You
2300 talked a lot about the conscience clause and conscience
2301 protections for hospitals and doctors. I actually do agree
2302 with you on a number of things. I don't think that anybody
2303 who is opposed to abortion should be forced to perform one.
2304 And I don't think that hospitals that for moral or religious
2305 reasons don't believe in it should be forced to perform it.
2306 That is their conscience. You talked about the conscience of

2307 doctors or hospitals. But what about the conscience of the
2308 woman who is being affected? If in her conscience, if what
2309 she decides and she has to make a gut-wrenching decisions, or
2310 if the family has to make a decision because of the woman's
2311 health why are we not respecting her conscience? Why only
2312 the conscience of the hospital or the doctor?

2313 Ms. {Alvaré.} Thank you, sir. Under your definition of
2314 that being her conscience we do have over 1.2 million
2315 abortions a year with a hugely disproportionate number among
2316 the women you would consider to be vulnerable that we
2317 especially want to take care of. And if you are saying that--
2318 -which I would not agree with that abortion is part of that
2319 care, then I think you can rest assured in a rather sad way
2320 that the most vulnerable women are getting access to the most
2321 abortions. And the conscience protection for them is Roe,
2322 Casey, Stenberg, Gonzales which allows abortion on demand in
2323 the United States.

2324 Mr. {Engel.} But you would eliminate that so where is--

2325 Ms. {Alvaré.} Absolutely.

2326 Mr. {Engel.} Where is respect for her conscience?

2327 Ms. {Alvaré.} This bill does not eliminate that
2328 whatsoever and I would also bring up which I should have
2329 before and I am sorry the Church amendment which since 1973
2330 has not only said that employers can't discriminate against

2331 doctors who don't want to do abortions, but also can't
2332 discriminate against doctors who do. Now, they can't do them
2333 at a religious or morally opposed hospital, but they are
2334 protected by federal law from--for doing them.

2335 Mr. {Engel.} But you would eliminate it given your
2336 druthers, would you not?

2337 Ms. {Alvaré.} Would eliminate?

2338 Mr. {Engel.} Abortion under any circumstances. You
2339 said--

2340 Ms. {Alvaré.} That is absolutely true, but this Act
2341 doesn't agree with what I say.

2342 Mr. {Engel.} Even with rape and incest you would say a
2343 woman should be forced to go through a pregnancy if she was
2344 raped or if there was incest.

2345 Ms. {Alvaré.} I would never punish the child for what
2346 other people did. But this bill doesn't come close to
2347 reducing abortion in the United States sadly enough unless it
2348 changes the federal bully pulpit to say abortion is not a
2349 preferred service in a way that I hope it will.

2350 Mr. {Engel.} Mr. Chairman, before I relinquish, Mr.
2351 Towns before he left asked me if I would submit for him for
2352 the record--unanimous consent to submit testimony from the
2353 National Asian Pacific Women's Forum and the Center for
2354 Reproductive Rights. I have it here. I am doing it on

2355 behalf of Mr. Towns.

2356 Mr. {Pitts.} Good enough. Could--we haven't seen that.

2357 Take a look at that.

2358 Mr. {Engel.} Yeah. Thank you.

2359 Mr. {Pitts.} Chair thanks the gentleman and recognizes
2360 the gentleman from New York, Mr. Weiner for 5 minutes.

2361 Mr. {Weiner.} Thank you, Mr. Chairman. You know let us
2362 face it. There is broad--a broad gulf. Mr. Engel is right
2363 on people's views of abortion and the Hyde amendment is one
2364 way to come to a conclusion on it. I don't believe that
2365 someone should be denied a medical procedure because of their
2366 income. I don't believe that someone who is more well-to-do
2367 who gets enormous tax breaks from the country that we don't
2368 attach to that tax break an agreement that they won't get a
2369 certain medical procedure. I don't believe we should
2370 distribute health care that way. I think it is inhumane and
2371 immoral. We have this Hyde amendment that is supposed to try
2372 to strike some kind of a middle ground that I am not
2373 completely happy with and members of the panel are not
2374 completely happy with. But Let us agree on what we are
2375 saying here. We are not codifying the Hyde amendment. The
2376 Hyde amendment says that there is an exemption from the
2377 restriction of an abortion if a pregnancy is the result of a
2378 rape or an act of rape or incest. The bill that the sponsor

2379 would have liked to have us pass and probably will still
2380 succeed, a pregnancy occurred because a pregnant female is
2381 the result of a forcible rape changing the definition of rape
2382 because apparently some rape is more desirable in the eyes of
2383 the maker of the bill than others. And that includes a minor
2384 in active incest. So it can't be someone 19 is that age. So
2385 it is not at any effort here to codify the Hyde amendment.
2386 This is in an effort to expand the Hyde amendment. And well,
2387 frankly, someone caught him this time but they will work it
2388 in. They are the majority party. They can work this in at
2389 rules committee. We can count on seeing this language again
2390 expanding the Hyde amendment. Don't let anyone who supports
2391 this bill ever say to you I am for less government
2392 regulation. There is too much government regulation. You
2393 have got to be kidding. You can't vote for this thing and
2394 then say you are for less government regulations the mother
2395 of all government regulations. This is the regulation of an
2396 individual woman in a room with her doctor and Congressman
2397 Pitts apparently. I mean, I can't think of a bigger
2398 government regulation. So Let us agree that in one hearing
2399 last week where we are against government regulation and
2400 another one this week we are for all kinds of government
2401 regulation. If you don't think it is a government regulation
2402 ask a doctor who has got to try to navigate this hearing.

2403 God bless the three of you, but it is complicated stuff
2404 because you are trying to shoehorn government into what is
2405 essentially a basic relationship that revolves around health
2406 care. It doesn't revolve around which funding stream is
2407 coming--of course this is complicated. Of course you guys
2408 have different view of this. And if you are a physician and
2409 I, you know, if I--you can't swing a dead cat around here
2410 without signing someone--well, I am speaking from a level of
2411 experience. I am a doctor, therefore I can tell you. I
2412 mean, stop that already. The bottom line about this is you
2413 are not any particular doctor for a particular client. I
2414 don't want anyone who is a doctor here in my operating room.
2415 You can just keep with your Congressman stick. It is more--
2416 that is better. I mean, what this is about is a fundamental
2417 philosophical agreement. And that is that if you are
2418 conservative and you believe in smaller, less intrusive
2419 government you have got to take a wild, wild, philosophical
2420 bank shot to get back into supporting this bill. I don't
2421 know how you do it. I really don't know how you can ever say
2422 you are conservative believing you should have this much of
2423 government involvement in a medical decision in a
2424 conversation. And I do have to say this. I know we read the
2425 Constitution that first day we were here and I am glad we
2426 did. You have to also basically say if you support this you

2427 don't believe in a right to privacy for at least one half of
2428 the country. And that is the bottom line. Now some people
2429 don't. Some people believe to this day and you know the
2430 right to privacy as my lawyer friends or people who were
2431 lawyers and portraying lawyers the fact is that there is--
2432 does and there is not explicit right to privacy. But I think
2433 most Americans of all political stripes believe there is a
2434 basic right to privacy. Is there anything more basic, more
2435 basic than your body? Is there anything more basic privacy
2436 there? Well, not according to--not according to many people.
2437 And that is the conversation here. And if you are on the
2438 side of the--saying you know what? I think government should
2439 have a limit on where they go. I think there should be a
2440 limit beyond which they should not pass, this means you do
2441 not support this bill bottom line. If you believe there is
2442 no limit you can go anywhere, you can get into any personal
2443 relationship the government wants to get involved in they can
2444 we have got a bill for you and we are going to have others.
2445 But I have to tell you something. I would say to my
2446 colleagues and friends that if you are going to ring your
2447 hands and gaze at your naval about how we reduce regulation
2448 in this country and how we get government out of business,
2449 try being in the business of health care watching this
2450 debate. Try dealing with an emergency room situation where a

2451 woman is coming in there and the doctor is saying you know
2452 what? I believe this is a medically necessary procedure. I
2453 want to do it. But wait a minute. I got to go through this
2454 first. I got to go--and let me--and someone get CSPAN 9
2455 tapes back for me so I can see if I am allowed to do it.
2456 There is too much government regulation in this. And I think
2457 the best thing to do is we should say let doctors and their
2458 patients make these decisions. And as far as I remember
2459 listening to health care debate, so did my Republican friends
2460 way back when last week.

2461 Mr. {Pitts.} Chair thanks gentleman. On the issue of
2462 the unanimous consent request, without objection.

2463 [The information follows:]

2464 ***** COMMITTEE INSERT *****

|
2465 Dr. {Burgess.} Mr. Chairman, was there a question in
2466 that soliloquy? Should we let our panel respond?

2467 Mr. {Pitts.} We--would one of the panelists like to
2468 respond any of them? Mr. Johnson?

2469 Mr. {Johnson.} I think you are forgetting someone Mr.
2470 Weiner? What about this little girl here? This is from the
2471 Grand Jury Report. You talk about the privacy of the body?
2472 What about her body? You are forgetting someone. There is
2473 another human individual, a member of the human family who is
2474 involved here. That is why it is different than--

2475 Mr. {Weiner.} When you say another, Mr. Johnson, are
2476 you stipulating that the woman has rights here?

2477 Mr. {Johnson.} Of course the woman has rights including
2478 the right to life. But he unborn child is also a member of
2479 the human family.

2480 Mr. {Weiner.} And Mr. Johnson, do you think that a
2481 bunch of members of Congress should make that determination
2482 where that line is?

2483 Mr. {Johnson.} We think that the Congress makes laws
2484 for all members of the human family.

2485 Mr. {Weiner.} Well that is a yes. You think 435 fairly
2486 well-to-do mostly white men should make that decision?

2487 Mr. {Johnson.} I think the elected representative of

2488 the American people should establish--

2489 Mr. {Weiner.} Should make decisions for that woman and
2490 child?

2491 Mr. {Johnson.} Can I finish my answers may I not?

2492 Mr. {Weiner.} Well, it doesn't sound terribly enticing,
2493 no.

2494 Mr. {Pitts.} Chair thanks gentleman. Chair recognizes
2495 the gentlelady from Colorado, Ms. DeGette for 5 minutes.

2496 Ms. {DeGette.} Thank you so much, Mr. Chairman. I have
2497 a--quite a number of questions for all the witnesses so if
2498 you can try to keep your answers short I would appreciate it.
2499 Professor Rosenbaum, you have written extensively on issues
2500 around insurance law as part of your academic career.

2501 Correct?

2502 Ms. {Rosenbaum.} I have.

2503 Ms. {DeGette.} Now, right now under current law--is
2504 your microphone on? We are having--

2505 Ms. {Rosenbaum.} It is.

2506 Ms. {DeGette.} Under current law right now employers
2507 can--many employers can take tax credits for offering their
2508 employees insurance plans. Correct?

2509 Ms. {Rosenbaum.} It is deductible.

2510 Ms. {DeGette.} And so they are getting a federal
2511 benefit for offering their employees insurance. Correct?

2512 Ms. {Rosenbaum.} Indeed.

2513 Ms. {DeGette.} Right now?

2514 Ms. {Rosenbaum.} Yes.

2515 Ms. {DeGette.} And the insurance plans that many
2516 employers offer to their employees include a full range of
2517 reproductive services including abortion coverage. Correct?

2518 Ms. {Rosenbaum.} That is correct.

2519 Ms. {DeGette.} And the Hyde amendment as it is
2520 currently written even in the Affordable Care Act and the
2521 other bills does not preclude people from getting tax credits
2522 for offering insurance plans that offer a full range of
2523 reproductive services?

2524 Ms. {Rosenbaum.} Tax Advantage Plans are outside the
2525 Hyde amendment.

2526 Ms. {DeGette.} Now, in addition, most insurance
2527 policies don't break out abortion services. They just say
2528 any medically necessary services. So if it is legal and it
2529 is necessary then the insurance will cover it. Correct?

2530 Ms. {Rosenbaum.} Correct.

2531 Ms. {DeGette.} Now, Professor, the Hyde amendment says
2532 that no federal funds shall be used to pay for abortions with
2533 the exception of rape, incest, and the life of the mother.
2534 Correct?

2535 Ms. {DeGette.} And that does not include indirect

2536 expenditures like tax credits or tax deductions. Is that
2537 right?

2538 Ms. {Rosenbaum.} It does not.

2539 Ms. {DeGette.} So under this legislation, this Pitts
2540 bill, for the exchanges and then under the Smith bill which
2541 is also being examined what it would do, it would go far
2542 beyond the established law of current law which says no
2543 direct federal funds shall be used for abortion. And it
2544 would then define a whole different set of benefits that
2545 people get in the way of tax relief as somehow being federal
2546 funding. Is that correct?

2547 Ms. {Rosenbaum.} Correct.

2548 Ms. {DeGette.} And so is it your opinion, Professor,
2549 that what that would do in essence would be to either if
2550 employers wanted to offer people plans in the exchange that
2551 offered abortion coverage they couldn't get the tax credits.
2552 Right?

2553 Ms. {Rosenbaum.} Correct.

2554 Ms. {DeGette.} So then those employers would be paying
2555 higher taxes. Wouldn't they? Because they wouldn't get the-
2556 -

2557 Ms. {Rosenbaum.} They offered a product that was not
2558 tax advantaged anymore.

2559 Ms. {DeGette.} Right. So basically employers would be

2560 forced to not--to purchase plans that didn't offer a legal
2561 medical service that they are offering now in order to get
2562 federal tax relief. Right?

2563 Ms. {Rosenbaum.} The other way of saying it is that
2564 plans--that companies would stop selling products that
2565 offered--

2566 Ms. {DeGette.} Right. And so that is far beyond what
2567 the Hyde amendment says.

2568 Ms. {Rosenbaum.} Yes.

2569 Ms. {DeGette.} Okay. Than you very much. Now,
2570 Professor Alvaré, I wanted to ask you a question following up
2571 on what Mr. Dingell and several other people were asking you.
2572 Section 1303 of the Affordable Care Act talks about the
2573 treatment of abortion under the Act. But under the Pitts
2574 bill, this bill that we are talking about today, the words
2575 regarding abortion in Section 1303 are struck and instead the
2576 language that says protecting conscience rights is inserted.
2577 Correct?

2578 Ms. {Alvaré.} That is correct and--

2579 Ms. {DeGette.} So--let--now when that--is it your
2580 understanding as sort of an ethicist that conscience rights
2581 about--that conscience rights could be talking about more
2582 issues other than abortion? For example, Catholic providers
2583 conscience rights around birth control and family planning

2584 and contraception--it could be interpreted that way couldn't
2585 it?

2586 Ms. {Alvaré.} I don't think so, Congresswoman.

2587 Ms. {DeGette.} Why not?

2588 Ms. {Alvaré.} Because the purpose of that was to strike
2589 a heading that was not properly characterizing what went
2590 before it. And at the same time, to extend non-preemption to
2591 State laws not only regarding abortion and abortion coverage
2592 but conscience.

2593 Ms. {DeGette.} So okay. So I am sorry, you can
2594 supplement your answer. I apologize. So you don't think so?

2595 Ms. {Alavaré.} That is all of it.

2596 Ms. {DeGette.} Okay. Mr. Johnson, I just have a couple
2597 question for you. Now, you have been the head of the
2598 National Right to Life Committee since 1981. Correct?

2599 Mr. {Johnson.} No, I am not the head of the National
2600 Right to Life Committee. I am the legislator.

2601 Ms. {DeGette.} Okay. I am sorry. You are the
2602 legislative director. Thank you for clarifying that. Do you
2603 support a constitutional amendment to overturn Roe v. Wade?
2604 Yes or no?

2605 Mr. {Johnson.} Our organization has supported
2606 constitutional amendment--

2607 Ms. {DeGette.} Do you support a constitutional

2608 amendment to overturn Roe v. Wade?

2609 Mr. {Johnson.} Properly drafted, yes.

2610 Ms. {DeGette.} Yes or no?

2611 Mr. {Johnson.} I said if properly drafted.

2612 Ms. {DeGette.} Yes or no?

2613 Mr. {Johnson.} There have been many amendments and some
2614 we support. Some we don't.

2615 Ms. {DeGette.} Do you support--okay. But you would
2616 overturn Roe v. Wade, right?

2617 Mr. {Johnson.} We would overturn Roe v. Wade.

2618 Ms. {DeGette.} Now, do you agree with Professor Alvaré
2619 that abortion should be outlawed. Correct?

2620 Mr. {Johnson.} The position of the National Right to
2621 Life Committee--

2622 Ms. {DeGette.} No, what is your position, sir?

2623 Mr. {Johnson.} No, I represent the National Right to
2624 Life Committee.

2625 Ms. {DeGette.} So you are not going to answer that
2626 question? Would that be correct?

2627 Mr. {Johnson.} I am going to answer it. I am just
2628 testifying on the behalf of the National Right to Life
2629 Committee.

2630 Ms. {DeGette.} Okay. So what is their position? Do
2631 they support banning abortion?

2632 Mr. {Johnson.} That they--the exception that should be
2633 allowed is to save the life of the mother if there is indeed
2634 such a case. Which you have heard disputed.

2635 Ms. {DeGette.} Okay. So you would not support an
2636 exemption for rape. Correct?

2637 Mr. {Johnson.} That is correct. Our policy practice
2638 would not be--

2639 Ms. {DeGette.} And you would not support--you as an
2640 organization would not support an exemption for incest. Is
2641 that correct?

2642 Mr. {Johnson.} That is correct.

2643 Ms. {DeGette.} Thank you very much, Mr. Chairman. I
2644 appreciate your comity in letting me participate.

2645 Mr. {Pitts.} Chair thanks the lady and recognize the
2646 gentleman from Ohio, Mr. Latta for 4 minutes.

2647 Mr. {Latta.} Thank you very much, Mr. Chairman. At
2648 this time I would like to yield 5 minutes to Dr. Burgess.

2649 Dr. {Burgess.} I thank the gentleman for yielding. Let
2650 us just come back to the issue we are here discussing today
2651 and it is not overturning Roe v. Wade. It is dealing with
2652 the aftermath that we were dealt in a very poorly drafted
2653 piece of legislation that was signed into law on March 23 of
2654 last year. And because of some of the unfinished business,
2655 the way that was pushed through so late in the night we are

2656 here today to make certain that we all understand what the
2657 parameters are, what is required of each of us, and what the
2658 Federal government is going to be required to cover and
2659 reimburse for. So I do think that while I might agree with
2660 Mr. Weiner and it hurts me to say this, but I might agree
2661 with Mr. Weiner on some points. And in fact with no thought
2662 to my personal safety I would go into an operating room if it
2663 were required to save his life even though I am licensed and
2664 uninsured. But at the same time what we are talking about
2665 here today is the use of federal funds, taxpayer dollars to
2666 fund this procedure. And there have been correctly some
2667 parameters and boundaries set around this since 1976. And we
2668 are here to help the President see the execution of his
2669 Executive Order and make certain that the spirit of it is
2670 upheld not just this year, but next year and the year after.
2671 And even if there is a different president in the White House
2672 and a different set of Executive Orders that the spirit of
2673 this Executive Order will continue to be carried out. Now,
2674 let me just ask a general question, but probably it goes to
2675 Mr. Johnson. Does anyone really want to force someone to
2676 perform a procedure of termination of pregnancy if it is
2677 against their will to do so?

2678 Mr. {Johnson.} Dr. Burgess, I have heard remarks from
2679 both sides here today about no one would want to do that.

2680 And I can only implore the Members of the Committee who
2681 really want to explore that issue to read this document:
2682 Health Care Refusals. It is put out by the National Health
2683 Law Program, 2010. Professor Rosenbaum was on the advisory
2684 committee which according to the acknowledgments played a
2685 very active role. It is an amazing document. I just read it
2686 myself the other day for the first time. It is about 100
2687 pages. And it is relentless in attacking all forms of
2688 conscience laws. They absolutely argue that it is an
2689 obligation that should be enforced both on institutions and
2690 individuals to perform abortions to provide abortions. This
2691 should be enforced through law, through malpractice law,
2692 through licensure requirements, and through diverse other
2693 means. There are even attacks on physicians who simply share
2694 their personal views about the sanctity of human life with
2695 their patients. That is deemed to be a breach of the ethics
2696 as defined by these people. The ACLU has a very active
2697 project as Mr. Dorflinger from the Catholic Bishops
2698 Conference testified before the other committee yesterday to
2699 try to compel Catholic hospitals to either get with the
2700 program on abortion or get out of town. I mean, they do want
2701 to basically drive people out of health care if you will not
2702 get with their program and ideology of collaborating and
2703 actively participating in killing unborn members of the

2704 species Homo sapien. And if you think I am engaged in
2705 hyperbole, I implore you to read this report.

2706 Dr. {Burgess.} I thank you for bringing it to our
2707 attention. Certainly, Mr. Chairman, if the committee could
2708 be made a copy of that I for one would be happy to look at
2709 it. Now, if--Mr. Johnson, if this bill does not pass--well,
2710 let me just ask you a question. Do you really think that
2711 hospitals are going to not allow emergency treatment for
2712 women who show up in the emergency room who are suffering a
2713 complication? I mean, is it--that is--is that--and we have
2714 heard that professed by the other side but is that the intent
2715 of this legislation?

2716 Mr. {Johnson.} I believe they are going to continue to
2717 comply with EMTALA and just with good medical practice which
2718 is to recognize that they have two patients and the law could
2719 not be more explicit. Professor Alvaré read it earlier. It
2720 says you seek to help to save both the mother and her unborn
2721 child. It uses that term unborn child. And I don't see how
2722 any fair reading of that law could mean that that is a
2723 mandate to take the unborn child out in pieces. Okay?

2724 Dr. {Burgess.} And I appreciate your answer. Just
2725 because I am about to run out of time, again, I want to
2726 stress that this law is to put the boundaries in place that
2727 the President asked for in the Executive Order. This

2728 hearing, this legislation is not about overturning Roe v.
2729 Wade. It is not about doing anything other than helping the
2730 President accomplish his goal that taxpayer funding will not
2731 be used for the performance of elective termination of
2732 pregnancy. Thank you, Mr. Chairman. I will yield back my--I
2733 will yield back to the gentleman from Ohio.

2734 Mr. {Pitts.} Chair thanks the gentleman. Every member
2735 was emailed with the hearing notice a copy of the discussion
2736 draft. If any of you did not have a copy we will be happy to
2737 provide it for you. That in conclusion I would like to thank
2738 all of the witnesses and all of the Members that participated
2739 in today's hearing. I remind the members that they have 10
2740 business days to submit questions for the record, and I ask
2741 the witnesses all agree to respond promptly to those
2742 questions. Again, I would like to thank Mr. Pallone, all the
2743 members for the civil tone of the hearing on such a
2744 controversial issue. The Subcommittee hearing is adjourned.

2745 [Whereupon, at 4:20 p.m., the Subcommittee was
2746 adjourned.]