

A Pro-Life Progress Report for the 118th Congress

Melanie Israel

KEY TAKEAWAYS

President Biden and congressional allies continued promoting a pro-abortion agenda.

Pro-life policymakers had opportunities to defend life through the appropriations process.

The current pro-life Administration should reverse President Biden's pro-abortion policies.

In the monumental *Dobbs* decision overturning *Roe v. Wade*, the Supreme Court returned abortion policy to the American people and their elected representatives at the state and federal levels. Roughly half the states now have robust pro-life protections for women, girls, and unborn children. But other pro-abortion states have doubled down on their extreme policies. Activists are working overtime to try to enshrine an unlimited “right” to abortion in state constitutions. Abortion pills continue flowing into pro-life states, undermining their strong pro-life laws.

A divided Congress makes it hard for either side to advance new policies through legislation. That is why the Biden Administration largely relied on administrative policy, the regulatory process, and the Department of Justice to resist the *Dobbs* decision and advance its pro-abortion agenda.

This paper, in its entirety, can be found at <https://report.heritage.org/bg3898>

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For the first session of each new Congress, The Heritage Foundation provides pro-life policy recommendations. The following year, a progress report takes stock of where things stand in the second session. Last year, at the start of the 118th Congress, Heritage provided a pro-life policy road map for the new post-*Roe* landscape.¹ Now, this *Backgrounder* provides an analysis of the legislative and administrative maneuverings during the second session of the 118th Congress.

In Congress

As expected, a divided Congress means that opportunities to advance pro-life legislation were few and far between. On the flipside, Congress had chances to reject pro-abortion legislation.

Pro-Life, Pro-Family Legislation. In January 2023 the House passed the Born-Alive Abortion Survivors Protection Act.² The bill would have required that babies who survive abortions be provided the same medical care as any other infant born alive.

In January 2023 the House passed a resolution condemning attacks against churches, pregnancy centers, and pro-life organizations by abortion extremists following the *Dobbs* decision overturning *Roe v. Wade*.³

In April 2023 the Senate fell short of the votes required to block the Biden Administration's interim final rule to require abortions at Veterans Administration (VA) facilities in violation of federal law.⁴

In January 2024 the House passed the Pregnant Students' Rights Act.⁵ The bill would have required universities to provide pregnant women and girls with information about their rights, resources, and available accommodations.

In January 2024 the House passed the Supporting Pregnant and Parenting Women and Families Act.⁶ The bill would have blocked the Administration for Children and Families from finalizing a rule for the Temporary Assistance for Needy Families (TANF) program. The proposed rule targets pro-life pregnancy resource centers that support women, families, and unborn children. The rule was ultimately withdrawn by the Biden Administration in January 2025.

Rejecting Pro-Abortion Legislation. Pro-abortion Members repeatedly attempted to pass anti-life legislation. Pro-life Members stopped these attempts to enact radical policies.

Equal Rights Amendment. In April 2023, the Senate failed to advance a resolution to eliminate the ratification deadline for the Equal Rights Amendment.⁷ The Senate has no authority to reset a deadline that has long expired.⁸

If the amendment were ever ratified, it could be used to establish unrestricted abortion and mandatory taxpayer funding for elective abortions.⁹

*Right to Contraception Act.*¹⁰ This bill, which failed by a vote of 51–39 in June 2024, is unnecessary, because women are already free to use contraception. Furthermore, the bill would define *contraceptives* so broadly that it would include abortion-inducing drugs, imperiling state and federal policies regulating abortion pills. The bill would also gut state and federal conscience laws and exempts itself from the protections of the Religious Freedom Restoration Act.¹¹

*Reproductive Freedom for Women Act.*¹² This bill failed by a vote of 49–44 in July 2024. The legislation expressed support for abortion and a “sense of Congress” that the abortion-on-demand regime of *Roe v. Wade* should be “restored and built upon.”

*Right to IVF Act.*¹³ This bill failed by a vote of 48–47 in June 2024 and again by 51–44 in September 2024. The sweeping legislation would have made in vitro fertilization (IVF), surrogacy, and other assisted reproductive technologies a statutory right, overriding existing safeguards states have enacted for the fertility industry in the process.

Objecting to UC Requests. Matters before the Senate, such as nominations and legislation, can be expedited through unanimous consent (UC) agreements. UC can save time on non-controversial matters such as military promotions or post office and courthouse renaming bills. But Senators sometimes seek to use UC as a workaround for controversial stand-alone legislation. In these cases, any Senator can stop a UC request by raising an objection, which is exactly what pro-life Senators have done:

- In June 2023, Senator Mike Braun (R-IN) objected to a UC request for the Right to Contraception Act.¹⁴ As mentioned above, the bill is unneeded, has an overly broad definition of contraceptives, and would violate conscience and religious freedom protections.
- In June 2023 Senator Mike Lee (R-UT) objected to a UC request—and Senator Cindy Hyde-Smith (R-MS) did the same in July 2024—for the Freedom to Travel for Health Care Act,¹⁵ which would have provided protections to travel across state lines for abortions. The bill is unnecessary because the Constitution already establishes a right to interstate travel. The bill would have given cover to traffickers and abusers of women and girls.
- In June 2023, Senator Hyde-Smith objected to a UC request for the Upholding Protections for Health and Online Location Data Privacy

Act,¹⁶ which would have stopped pro-life organizations and pregnancy resource centers from targeting advertisements offering help and resources to pregnant women and girls.

- In June 2023 and again in July 2024, Senator Ted Budd (R–NC) objected to a UC request for the Let Doctors Provide Reproductive Health Care Act,¹⁷ which would have allowed abortionists in pro-abortion states to ignore laws in pro-life states—for example, laws about mailing dangerous abortion pills. It would have also granted millions of dollars to pro-abortion organizations.
- In February 2024, Senator Hyde-Smith objected to a UC request for the Access to Family Building Act¹⁸ and highlighted the far-reaching consequences of creating a statutory right to various forms of assisted reproductive technology, including embryo-destructive IVF, surrogacy, and human cloning.¹⁹
- In March 2024, Senator James Lankford (R–OK) objected to a UC request for the Veterans Families Health Services Act of 2023²⁰ due to ethical concerns about “human cloning, gene editing, sex or disability-based discrimination against embryos, and expanding IVF access beyond biological women.”²¹
- In July 2024, Senator Roger Marshall (R–KS) objected to a UC request for the Reproductive Health Care Training Act of 2023,²² which would have created federal funding streams for abortion training for medical professionals.

Other Strategies to Protect Life. Voting yes or no on a standalone bill is not the only way Members were able to protect life during the 118th Congress. Members used additional strategies to conduct oversight and use the power of the purse to protect life.

Taxpayer-Funded Abortion Travel. Beginning in February 2023, Senator Tommy Tuberville (R–AL) exercised his prerogative as a Member of the Senate to place “holds” on certain Department of Defense (DOD) civilian, general officer, and flag officer promotions. High-ranking promotions require Senate confirmation. Confirming promotions one by one would be a time-consuming process. The Senate has rules in place to fast-track the process through UC agreements. Senators “hold” nominations by refusing to grant passage by UC.²³ Senator Tuberville’s holds were in

response to a memorandum (discussed below) that created a policy to pay for abortion travel benefits for servicemembers—a violation of federal law.²⁴ After months of pressure from Senate Democrats—and some Republicans—Senator Tuberville lifted the holds.²⁵ DOD has since revealed that 12 servicemembers used the taxpayer-funded abortion travel policy between June and December 2023.²⁶

Late-Term Abortions in Washington, DC. In 2022, pro-life activists obtained the bodies of more than 100 aborted babies from a Washington, DC, abortion clinic. Five of the babies were preemie-size. Publicly shared images indicate that some may have been aborted using the illegal partial-birth abortion procedure, and one baby still in the amniotic sac may have been born alive and left to die.²⁷ Authorities in Washington have been silent on any ongoing investigation about illegal abortion activity and have stonewalled questions from Congress and the press. In February 2024, the DC Office of the Chief Medical Examiner indicated that it intended to destroy the five bodies, despite the lack of autopsy. Following intervention from pro-life activists and Members of Congress, the office reversed course and said that the bodies would not be destroyed—for now.²⁸

Appropriations. For many years, Congress has included in annual funding bills riders such as the Hyde Amendment, which prohibits spending taxpayer dollars on most abortions.²⁹ These riders are not permanent law, so they must be included each year. The 118th Congress maintained the status quo by incorporating these long-standing pro-life riders in fiscal year 2024 appropriations. But many other pro-life policy riders, described in a separate Heritage Foundation *Background*,³⁰ were ultimately dropped from the final text.³¹ Additionally, two separate facilities that provide late-term abortion procedures received over \$2 million in funding via earmarks.³²

In the Biden Administration

In 2022, The Heritage Foundation published the *Pro-Life Progress Report for the 117th Congress and Administration*. The report highlights many of the administrative policies and executive actions the Biden Administration pursued to promote its abortion agenda as soon as Biden took office.³³ The past two years have produced more of the same.

Regulations. The Biden Administration harnessed the power of the administrative state to resist the *Dobbs* decision and promote abortion in the following ways:

- Issued an interim final rule (IFR)³⁴ providing for abortion procedures and abortion referrals and counseling to veterans at VA medical facilities. Because the regulation was an IFR, it went into effect immediately and did not go through the notice and comment process. The VA has no authority³⁵ to provide taxpayer-funded abortions for its beneficiaries. Legal challenges are ongoing.
- Proposed a rule revoking an existing accommodation for moral objections to the Affordable Care Act’s contraception mandate.³⁶ Under the first Trump Administration, accommodations were available for both religious *and* moral objections. The proposed rule would have also created a new “individual contraceptive arrangement” for paying a third-party provider if a woman’s religious employer had an exemption. In December 2024, the Biden Administration withdrew the proposed rule.³⁷
- Proposed a rule that, among other things, unfairly targeted pro-life pregnancy resource centers that serve women, children, and unborn children.³⁸ As written, the rule unfairly held pregnancy resource centers to a different standard required of other organizations to be eligible for TANF grants. In January 2025 the Biden Administration withdrew the proposed rule.³⁹
- Formally rescinded⁴⁰ a 2019 rule⁴¹ about enforcement of more than a dozen federal laws that protect conscience rights for individuals or entities that do not want to participate in or facilitate morally fraught procedures such as abortion. The 2024 rule guts the ability of Health and Human Services (HHS) Office for Civil Rights (OCR) to adequately enforce conscience laws that protect Americans’ civil rights.
- Issued a final rule implementing the Pregnant Workers Fairness Act (PWFA) that, among other things, defines a medical condition related to pregnancy to include abortion and thus requires employers to provide accommodation.⁴² For employers who care deeply about the well-being of employees and their children, accommodating abortion is a gross violation of their constitutional rights.⁴³ The legislative record of the PWFA is clear: Pro-life members of Congress would not have supported the bipartisan bill if they believed it empowered the federal bureaucracy to invent a requirement for abortion accommodations.⁴⁴

- Issued a final rule that purports to strengthen protections for sensitive private health information.⁴⁵ In reality, the rule would turn medical professionals in pro-life states into criminals if they cooperate with law enforcement investigations related to abortion—even cases involving rape, trafficking, and abuse.
- Issued a final rule that, among other things, requires the Office for Refugee Resettlement to facilitate abortions for unaccompanied children in its custody.⁴⁶ This includes transferring minors from pro-life states to pro-abortion states.
- Issued a final rule regarding the Affordable Care Act’s nondiscrimination provision. The rule elevates “termination of pregnancy” into a federal civil right.⁴⁷
- Issued a final rule regarding Title IX, a landmark law from 1972 that prohibits discrimination against women and girls in school programs and sports.⁴⁸ The rule redefines *biological sex* to include sexual orientation and gender identity and redefines *pregnancy* to include abortion. This means that, in addition to undermining women’s athletics and due process,⁴⁹ the rule allows schools to use Title IX as a vehicle for abortion education, referrals, or access.⁵⁰
- Issued a final rule that weakens the prohibition on abortion funding within the Indian Health Service (IHS).⁵¹ Under the Hyde Amendment, federal funds cannot pay for abortion except in very limited circumstances. Under the new rule, if Congress ever fails to include the Hyde Amendment in its annual spending bill, IHS would be able to fund abortions well beyond the scope of what is allowed under Hyde.

Administrative Policy. Beyond the rulemaking process, the Biden Administration used other administrative policy strategies to promote abortion.

Executive Orders. Shortly after the *Dobbs* decision, President Biden issued two executive orders promoting abortion,⁵² which laid the groundwork for regulations and guidance listed earlier in this *Backgrounder*.

Task Forces. The Administration created the White House Inter-agency Task Force on Reproductive Healthcare Access, which “coordinates and drives efforts across the Federal government” to promote abortion.⁵³ HHS also has its own Task Force on Reproductive Healthcare Access, which works to “bolster access” to abortion.⁵⁴ And

the Department of Justice has a Reproductive Rights Task Force discussed later in this section.

Food and Drug Administration. Perhaps most famously, the Food and Drug Administration (FDA) weakened⁵⁵ long-standing safety protocols for dangerous chemical abortion pills.⁵⁶ The FDA stopped requiring that these risky drugs be dispensed after a doctor has screened a woman for complications in person. Now, the FDA has effectively approved mail-order abortion pills and online pill ordering yet does not track injuries short of death. This leaves women and girls to have dangerous do-it-yourself abortions without any professional medical support.

Department of Justice (DOJ). In July 2022, the DOJ established a Reproductive Rights Task Force, which monitors and evaluates “all state and local legislation, regulations, and enforcement actions” that restrict abortion.⁵⁷ The task force mostly focused on the Free Access to Clinic Entrances (FACE) Act⁵⁸ which prohibits physically obstructing, injuring, intimidating, or interfering with anyone “obtaining or providing reproductive health services.” The DOJ has weaponized⁵⁹ the FACE Act against peaceful pro-life Americans. Meanwhile, the DOJ has failed to vigorously enforce the FACE Act’s protections that apply to churches and pro-life pregnancy clinics. As of June 2024, there have been “25 cases involving...57 defendants accused of criminal FACE Act-related violations.”⁶⁰ Moreover, since May 2022 when the *Dobbs* decision draft leaked, there have been at least 96 attacks against pro-life pregnancy resource clinics and pro-life groups⁶¹ and 316 attacks against Catholic churches—nearly 500 attacks since May 2020.⁶² But the DOJ lists only four people charged with FACE offenses for attacking pregnancy centers.⁶³

Days into the new Administration, President Trump issued pardons for 23 pro-life activists convicted under the FACE Act.⁶⁴ The DOJ also issued a memo stating that FACE Act prosecutions will be allowed only in “extraordinary circumstances” or for cases with “significant aggravating factors” only after receiving authorization within the DOJ. Outside of extraordinary circumstances or aggravating factors, cases “can adequately be addressed under state or local law.”⁶⁵

The DOJ Office of Legal Counsel (OLC) also issued a memo about its interpretation of the Comstock Act.⁶⁶ This law prohibits mailing “any article or thing designed, adapted, or intended for producing abortion.”⁶⁷ The FDA’s weakening of safety requirements for abortion pills, which included allowing mail-order pills, clearly contradicted Comstock. But that is not how the Biden OLC saw it. As explained in a Heritage Foundation *Legal Memorandum*, the OLC’s interpretation of Comstock is so narrow “that

it would be virtually unenforceable.... The plain and ordinary meaning of [Comstock] unambiguously prohibits mailing abortion drugs.”⁶⁸

The DOJ sued the state of Idaho over its interpretation of the federal Emergency Medical Treatment and Labor Act (EMTALA). Under EMTALA, a hospital emergency room must “stabilize” a patient or transfer her to another facility. The DOJ argued that under EMTALA, a doctor can perform an abortion if a woman’s health is at risk. Under Idaho law, abortion is permitted to prevent a pregnant woman’s death. The Biden DOJ argued that its interpretation of EMTALA supersedes Idaho’s law. Idaho argued that there is no conflict between federal and state law, “because EMTALA doesn’t mandate a particular treatment for particular medical conditions.”⁶⁹ The case ultimately reached the Supreme Court, which remanded the case back to lower courts.⁷⁰

In July 2021, without explanation the Biden HHS dropped⁷¹ an earlier Trump Administration complaint⁷² against the University of Vermont Medical Center for breaking federal law by forcing a nurse to assist in an elective abortion. The DOJ simultaneously dropped its litigation against the hospital, refusing to hold it accountable for violating federal conscience law.⁷³

Declaring a Constitutional Amendment into Existence. Days before leaving office, President Biden’s official X account posted that he “affirmed” that the “28th Amendment is the law of the land.”⁷⁴ His personal beliefs aside, the Constitution does not have a 28th Amendment. The deadline for ratifying the Equal Rights Amendment passed decades ago.⁷⁵

Other Administrative Actions. The Biden Administration also:

- Maintained ReproductiveRights.gov.⁷⁶ This federally funded resource directed users to a third-party website that instructs women and girls on how to locate abortion services (even if they live in states where elective abortion is prohibited) and bypass state parental notification and consent laws. The website is no longer active as of January 2025.
- Restored \$200 million in Medicaid funds to California⁷⁷ that were disallowed under the first Trump Administration after California violated federal conscience protection law⁷⁸ by requiring organizations and individuals to purchase abortion coverage insurance—including plans used by nuns and other pro-life organizations.
- Issued guidance⁷⁹ wrongly claiming that EMTALA requires that doctors perform elective abortion when doing so would violate their consciences. The State of Texas and pro-life medical organizations

successfully sued. As a result, HHS may not enforce its guidance within Texas or against members of pro-life medical organizations.⁸⁰

- Issued guidance⁸¹ ordering pharmacies to stock and dispense dangerous abortion pills, even though pharmacies and pharmacists have a right to not violate their conscience by participating in abortion. HHS walked back part of this guidance after losing a court case to pharmacies challenging the guidance.⁸² The revisions make it clear that pharmacies are not required to fill prescriptions for abortion drugs.⁸³
- Invited states to seek Medicaid Section 1115 demonstrations to use taxpayer dollars to help women from pro-life states travel to pro-abortion states to obtain abortions.⁸⁴ This may violate the Hyde Amendment, which prohibits taxpayer funding for most abortions.
- Issued a DOD memorandum⁸⁵ that, among other things, instructs employees to establish “travel and transportation allowances for Service members and their dependents” for abortion if such services are not available locally. In January 2025, the second Trump Administration rescinded the policy.⁸⁶
- Disbanded the Conscience and Religious Freedom Division within the HHS OCR and reassigned staff to different divisions.⁸⁷ The division had been established under President Trump in 2018 to ensure that Americans don’t face coercion or discrimination if they decline to participate in certain procedures such as abortion, sterilization, or assisted suicide because of moral or religious objections.⁸⁸
- Announced \$1.5 million to establish an abortion hotline using grant money through the Title X Family Planning Program.⁸⁹ The hotline is meant to provide abortion referrals. This may violate the spirit of Title X’s prohibition on supporting programs in which abortion is advocated as a method of family planning.
- Issued a DOD memorandum expanding access to assisted reproductive technology services for certain service members injured during active duty. Under the old policy the qualifying person had to be married, and third-party gametes could not be used. Now, unmarried

individuals are eligible and donor gametes are permitted.⁹⁰ The VA made a similar policy change.⁹¹

Reproductive Technology

- Post-*Dobbs*, reproductive technology has taken center stage. Many people are thinking about moral concerns surrounding these technologies and the related industry for the first time. Pro-life Americans are rightly concerned with technologies and treatments that can lead to the wanton destruction of human embryos or commodify human life.⁹²
- As mentioned above, there have been several proposals to codify a right to embryo-destructive IVF and require taxpayer funding for IVF. Members of Congress have offered a pro-life alternative. The Reproductive Empowerment and Support through Optimal Restoration (RESTORE) Act⁹³ addresses underlying causes of infertility and other reproductive health problems. By emphasizing proactive treatments for conditions that make it difficult to conceive naturally, restorative reproductive medicine empowers women and men with more choices beyond IVF (which is costly, has a low success rate, and doesn't treat the root of the problems preventing natural conception).⁹⁴

A Strong Start

Congress and the Trump Administration should undo the damage that President Biden and his pro-abortion allies have inflicted for the past four years. President Trump is already off to a strong start. The Heritage Foundation's forthcoming "Pro-Life Agenda" *Background*, regularly published at the start of a new Congress and Administration, will lay out where policymakers can go from here.

Policymakers at every level of government should remain committed to welcoming and protecting every innocent human life regardless of its circumstances or level of dependence. This is not an easy fight, but it is one worth engaging in nonetheless.

Melanie Israel is a Visiting Fellow in the Richard and Helen DeVos Center for Life, Religion, and Family at The Heritage Foundation.

Endnotes

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