Testimony of Richard M. Doerflinger
on behalf of the
United States Conference of Catholic Bishops
before the
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Hearing on H.R. 7, No Taxpayer Funding for Abortion Act

I am Richard M. Doerflinger, Associate Director of the Secretariat of Pro-Life Activities at the United States Conference of Catholic Bishops (USCCB). I want to thank this Subcommittee for allowing us to present our views in support of H.R. 7, the No Taxpayer Funding for Abortion Act.

A Permanent Ban on Abortion Funding: Long Overdue

H.R. 7 will write into permanent law a policy on which there has been strong popular and congressional agreement for over 35 years: The federal government should not use tax dollars to support or promote elective abortion.[1]

Since 1976 this principle has been embodied in the Hyde amendment to annual appropriations bills funding the Department of Health and Human Services (HHS), and in numerous similar provisions governing a wide range of domestic and foreign programs. It has consistently had the support of the American people. For example, reflecting a long history of public support for the Hyde amendment, an April 2011 CNN survey found that Americans oppose "using public funds for abortions when the woman cannot afford it" by a margin of 61% to 35%.[2] In December 2009 a Quinnipiac University poll found 72% opposition to "allowing abortions to be paid for by public funds under a health care reform bill." In a survey conducted

[1] In this testimony the phrase "elective abortion" refers to abortions that have long been ineligible for federal funding; in recent years this has included abortions except for cases of rape, incest, or danger to the life of the mother. The term is used here as shorthand for a longstanding federal policy, not as expressing a medical or moral judgment.

[2] CNN/Opinion Research Corporation Poll of April 9-10, 2011, cited at www.pollingreport.com/abortion.htm. The same question in 2009 elicited an almost identical response, with public funding of abortion opposed by a margin of 61% to 37%. The 2009 poll even found a majority against companies including abortion in private insurance plans involving no government money, 51% to 45%. See CNN/Opinion Research Corporation Poll of November 13-15, 2009, at http://i2.cdn.turner.com/cnn/2010/images/03/09/top17.pdf.

for my organization by International Communications Research at about the same time, 67% (including 60% of those supporting health care reform legislation) opposed "measures that would require people to pay for abortion coverage with their federal taxes." That survey also asked: "If the choice were up to you, would you want your own insurance policy to include abortion?" Only 24% said yes; 68% of U.S. adults, and *69% of women*, said *no*. Also saying *no* were 82% of those who were uninsured, presumably the primary target audience for health care reform.[3] Finally, in a March 2013 poll by The Polling Company, Inc., respondents opposed using tax dollars to pay for abortion by a margin of 58% to 35%.[4]

Even public officials who take a "pro-choice" stand on abortion have supported bans on public funding as a "middle ground" on this contentious issue – in recognition of the fact that it is not "pro-choice" to force others to fund a procedure to which they have fundamental objections. And even courts insisting on a constitutional "right" to abortion have said that this alleged right "implies *no limitation* on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds."[5] As the U.S. Supreme Court said in 1980:

> By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened), Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid. These incentives bear a direct relationship to *the legitimate congressional interest in protecting potential life*. Nor is it irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions. *Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.*[6]

The Court's only error here was its use of the vague and incoherent term "potential life." The unborn child is actually (not just potentially) alive, unless he or she is made actually (not just potentially) dead by abortion. Later Supreme Court decisions have recognized this, saying more

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[3] These and other recent polls are summarized in National Right to Life Committee, "Public opinion on 'health care reform' and abortion," January 6, 2010, at http://www.nrlc.org/uploads/ahc/AHCPollsSummary.pdf . For more on the ICR survey see USCCB News Release, "New Survey: Most Americans Want Health Care Reform, Oppose Abortion Coverage, Support Conscience Protection Laws," September 22, 2009, at www.usccb.org/comm/archives/2009/09-186.shtml.

[4] See National Right to Life Committee News Release, "New Polling Shows Strong Support for Prohibiting Abortion on Pain-Capable Unborn Children," April 22, 2013, at https://www.nrlc.org/communications/releases/2013/release042213/.

[5] *Maher v. Roe*, 432 U.S. 464, 474 (1977) (emphasis added).

[6] *Harris v. McRae*, 448 U.S. 297, 325 (1980) (footnotes omitted, emphasis added). Note that this court decision upheld the original Hyde amendment of Fiscal Year 1977, which allowed federal abortion funding only in cases of danger to the life of the mother; that policy was also in effect from 1981 to 1993.

directly that by regulating abortion "the State . . . may express profound respect for the *life* of the unborn."[7] Most recently, in their decision upholding the federal ban on partial-birth abortion, the justices reaffirmed government's "legitimate interests in regulating the medical profession in order to promote *respect for life, including life of the unborn*."[8]

So secure is this legal and political consensus against public funding of abortion, in fact, that some have *assumed* it is already fully implemented at all levels of our federal government. For example, some wrongly argued during the recent debate on health care reform that there was no need for restrictions on abortion funding in the legislation, because this matter had already been settled by the Hyde amendment. However, the Hyde amendment itself is only a rider to the annual Labor/HHS appropriations bill, and thus governs only funds appropriated under that particular Act.

The fact is that Congress's *policy* has been remarkably consistent for decades, but the implementation of that policy in *practice* has been piecemeal, confusing and sometimes sadly inadequate. Federal funds are prevented now from funding abortion by riders to a number of annual appropriations bills, as well as by provisions of specific authorizing legislation for programs such as the Department of Defense, Children's Health Insurance Program, Title X family planning, and foreign assistance.

Past Federal Action to Ensure a Consistent Abortion Funding Policy

On occasion a gap or loophole has been discovered that does not seem to be addressed by this patchwork of provisions, highlighting the need for a permanent and consistent policy to be applied across the federal government:

- In 1979, Congressman Hyde learned that elective abortions were being funded for American Indians and Alaska Natives through the Indian Health Service (IHS). In response to his inquiries, IHS Director Emery Johnson, M.D., replied that while funding abortions was not specifically authorized by any law, the authorizing legislation for the IHS did permit expenditure of appropriated funds for the "relief of distress and conservation of health" of Indians. "All current requirements having been met, and procedures followed," he wrote, "we would have no basis for refusing to pay for abortions" (Letter to Rep. Henry Hyde, July 30, 1979). He added that IHS services were funded through a separate Department of the Interior appropriations bill, which had no provision like the Hyde amendment. The Reagan Administration later attempted to place an administrative restraint on this practice in 1982; Congress finally enacted legislative language as part of the IHS reauthorization bill in 1988, but even this language only references whatever policy the Hyde amendment places on HHS funds in a given year.

[7] *Planned Parenthood* v. *Casey*, 505 U.S. 833, 877 (1992) (emphasis added).

[8] *Gonzales* v. *Carhart*, 550 U.S. 124, 158 (2007) (emphasis added).

- In 1997, it was discovered that some states were using federal Medicaid funds not to reimburse directly for particular services, but to help pay premiums for overall benefits packages or capitation fees for health maintenance organizations (HMOs). Since the Hyde amendment only prohibited expending federal funds for abortion itself, some thought states might be free to subsidize elective abortions by using federal funds to help purchase overall health plans that cover abortion. A second sentence had to be added to the Hyde amendment, to forbid using federal funds for "health benefits coverage that includes coverage of abortion." This same policy, denying federal funds to any health plan that covers elective abortion, was also incorporated into the State Children's Health Insurance Program (SCHIP) and the Federal Employees Health Benefits Program (FEHBP), creating a consistent federal policy: Wherever federal and nonfederal funds are combined to purchase a health benefits package, no part of that package may cover elective abortions. That policy was consistently applied until 2010, when it was contradicted by the final version of what is now known as the Affordable Care Act (ACA).

- In 1998, Congress became aware that Medicare was subsidizing abortions for non-elderly enrollees who were eligible for Medicare due to disability. Because federal funds appropriated through the Labor/HHS appropriations bill are combined with other funds such as premium payments and co-pays in the Medicare trust fund, which then reimburses for medical services, some federal officials thought they could fund these abortions while claiming this was not a use of federally appropriated funds. After congressional inquiries, HHS Secretary Donna Shalala reversed this interpretation and said that Medicare would follow the Hyde criteria (Letter to Senate Assistant Majority Leader Don Nickles, June 22, 1998). This policy, that a trust fund receiving federal funds may not be used to help fund abortions (or to help fund a health plan that covers abortions), was incorporated into the Hyde amendment for Fiscal Year 1999 and has remained in effect ever since.

- The absence of a government-wide law against federal funding of abortion led most recently to the passage of major health care reform legislation that contains at least *four* different policies on this issue. Section 1303 of the ACA, on health plans in state exchanges, complies with the first sentence of Hyde (against direct and traceable funding of abortion procedures themselves) but violates Hyde's second sentence (against funding health plans that cover abortions). Section 1101, on state high-risk insurance pools, appropriates its own new funds outside the bounds of the Hyde amendment, and allows those funds to be used for abortions or not, depending on a changeable decision by the Secretary of Health and Human Services. Section 10503, on community health centers, omits any reference to Hyde, and allows its new funding to be governed by underlying mandates in the authorizing legislation for these centers – mandates that in other health programs have been interpreted by federal courts to *require* federal funding of abortion, whenever that presumption is not corrected by explicit Hyde language. Finally, Section 4101, on school-based clinics, explicitly excludes abortion funding. All except

the last of these disparate policies are incompatible with the Hyde amendment and similar longstanding federal policies; each of them is incompatible with all the others.[9]

Three Recent Developments Highlighting Problems in the Affordable Care Act

Three specific developments since the enactment of the ACA highlight some ways in which it allows expanded federal support for abortion, if not corrected by later legislation.

First, in July 2010, a few months after enactment of the ACA, it was discovered that HHS had approved federally funded coverage for elective abortions in several states, under Section 1101's provision for state "high risk pools." This is a temporary program, providing coverage to those who have been unable to purchase it because they have preexisting conditions; it was intended to lapse once the state insurance exchanges become active. Each state was to develop its list of benefits and other details; the federal government would approve these plans and provide all public subsidies for the coverage. Pro-life groups found that HHS had already approved plans in some states that covered elective abortions; at least one state was already enrolling people in the plan.[10] In response to public criticism, HHS belatedly issued new guidance stating that these plans would not cover abortion except under the rare circumstances allowed by the Hyde amendment. But an Administration spokesperson announced that this decision 'is not a precedent for other programs or policies given the unique, temporary nature of the program…"[11] The Congressional Research Service later concluded that this program was not covered by the Hyde amendment, and that nothing in the Act itself, or in President Obama's contemporaneous executive order on abortion funding, authorized HHS to exclude elective abortions even from this program.[12] The Secretary of HHS could arguably exclude them in this specific case, only because this particular section of the Act explicitly required the high-risk pools to comply with

[9] For more about this and other problems in the final version of theACA see www.usccb.org/healthcare. The United States Conference of Catholic Bishops has declined advocating for or against repeal of the ACA since its enactment, focusing instead on advocating changes to address the bishops' key priorities of universal access to affordable care, respect for life and conscience, and fairness to immigrants. See USCCB News Release, "Bishops Note Way Forward With Health Care, Clarify Misconceptions," May 21, 2010, at http://old.usccb.org/comm/archives/2010/10-104.shtml.

[10] Pennsylvania's plan stated that it would not cover "elective abortions" -- but would cover any abortion that was not illegal under state law, which amounted to the same thing. See Brooks Jackson, "Taxpayer-funded Abortions in High Risk Pools," *Fact Check*, at http://www.factcheck.org/2010/07/taxpayer-funded-abortions-in-high-risk-pools/.

[11] See National Right to Life Committee News Release, "NRLC: This shows the law allows abortion funding," July 29, 2010, at https://www.nrlc.org/communications/releases/2010/release072910/.

[12] For a more complete analysis of the executive order's failure to address abortion problems in the ACA, see USCCB Office of the General Counsel, "Legal Analysis of the Provisions of the Patient Protection and Affordable Care Act and Corresponding Executive Order Regarding Abortion Funding and Conscience Protection," March 25, 2010, at http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/health-care-memo-re-executive-order-final-2010-03-25-pdf-09-03-48.pdf.

"any other requirements determined appropriate by the Secretary."[13] The chairman of the U.S. bishops' Committee on Pro-Life Activities welcomed HHS's final decision in this case, while expressing grave concern that federal funding for elective abortions had come so close to being implemented. "This situation illustrates once again the need for Congress to enact legislation clearly stating once and for all that funds appropriated by PPACA will not pay for abortions or for insurance coverage that includes abortion," he said. "In this program as in others, the issue of government involvement in the taking of innocent human life should not remain subject to the changeable discretion of executive officials or depend on the continued vigilance of pro-life advocates."[14]

Second, as the state exchanges for purchasing individual health plans have begun to be implemented, Americans have become more aware of the strange and unprecedented abortion policy that will govern these plans (wherever state law has not intervened to establish a different policy). Each insurance company will decide whether its plan will include elective abortions, for those who receive federal subsidies as well as those who do not; once that decision is made, federal law will demand that *every* enrollee must help pay for those abortions, notwithstanding any conscientious objection they may have; this mandatory surcharge for abortion will be kept in a separate account from the account used for federal premium subsidies, apparently so it can be said that no "federal tax dollars" are being used for elective abortions; and insurers are forbidden by federal law to make any special effort to inform people that their plan includes such abortions, or to tell them how much they will be paying for other enrollees' abortions.[15]

This "separation of funds" scheme is contrary to the policy of the Hyde amendment and parallel laws, which forbid federal subsidies to any part of a benefits package that includes elective abortions. It also violates the spirit of these laws in terms of subsidies for abortion itself. If I find myself explicitly forced by federal law to pay for other people's abortions, as a condition for receiving the health care my family and I need, is it really that important to me whether the law calls the forced payment a "premium" rather than a "tax"?

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[13] This requirement, not found in other parts of the ACA that raise the issue of abortion funding, is at Sec. 1101 (c)(2)(D) of the Act. See Congressional Research Service, "High Risk Pools Under PPACA and the Coverage of Elective Abortion Services," July 23, 2010, at www.nrlc.org/uploads/ahc/CRSReportAbortionandHighRiskPools.pdf.

[14] USCCB News Release, "Pro-Life Chair Welcomes HHS Exclusion of Abortion from Federal Insurance Program, Calls For Permanent Law," July 15, 2010, http://www.usccb.org/news/archived.cfm?releaseNumber=10-142.

[15] For a detailed analysis see USCCB Secretariat of Pro-Life Activities, "Backgrounder: The New Federal Regulation on Coerced Abortion Payments," November 6, 2013, at http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Backgrounder-The-New-Federal-Regulation-on-Coerced-Abortion-Payments.pdf. The secrecy provisions in this part of the ACA haves prompted the introduction of a separate federal bill which the U.S. bishops support, the "Abortion Insurance Full Disclosure Act" (H.R. 3279, S. 1848).

Some may answer that enrollees can choose a health plan whose provider has chosen to exclude elective abortions. However, the option to do so may be very limited or non-existent for some Americans. The ACA requires that at least one "multi-state plan" offered across state lines must exclude elective abortions; however, that plan need not be offered in all 50 states until 2017. In some states it seems *every* plan in their exchange will include elective abortions.[16] In these states, Americans who are conscientiously opposed to paying for the destruction of unborn human life through their individual health plans will be forced by the federal government to violate their conscience, or forgo health coverage altogether (and pay a federal penalty for remaining uninsured).

Third, the ACA has had the effect of expanding abortion coverage (and greatly narrowing freedom of conscience on abortion) by requiring members and key staff of Congress to transfer from the Federal Employees Health Benefits Program (FEHBP) to the state exchanges. All plans in the FEHBP, of course, are federally subsidized and made available by a federal agency, so all have long excluded elective abortions. By contrast, members and staff in Washington D.C. have been forced to seek coverage on the D.C. exchange, where only 9 out of 112 plans exclude such abortions.[17] By nonetheless issuing a rule to maintain the subsidies authorized by the FEHBP for these federal employees, the Administration has effectively nullified the longstanding appropriations rider that forbids use of federal funds for such abortions or "to pay for… the administrative expenses in connection with any health plan… which provides any benefits or coverage for abortions" beyond the exceptions allowed by the Hyde amendment.[18]

The Benefits of a Clear and Consistent Federal Abortion Funding Policy

Obviously the current patchwork of almost a dozen legislative provisions, most of which must be reapproved each fiscal year, has not always adequately served the will of Congress or the American people in preventing all forms of federal subsidy for abortion. However, at least until 2010, Congress has always acted to address the immediate problem once it has understood that problem and had an opportunity to address it. It should do no less today. In fact, it should finally put a stop to this ungainly mechanism and simply apply the principle of the Hyde

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[16] This seems to be true at least in Connecticut and Rhode Island. See C. Donovan and G. Plaster, "Abortion in the Obamacare Exchanges," *National Review Online*, December 4, 2013, at http://www.nationalreview.com/corner/365504/abortion-obamacare-exchanges-chuck-donovan-genevieve-c-plaster.

[17] See Rep. Chris Smith, "Only 9 Plans Exclude Elective Abortion" (using information from DC Health Link), at http://chrissmith.house.gov/uploadedfiles/2013_12-02_floor_flyer_on_member_hc_plans.pdf.

[18] See: USCCB News Release, "USCCB Urges Office of Personnel Management to Comply With Federal Ban on Funding Health Plans That Cover Abortion," September 4, 2013, at http://www.usccb.org/news/2013/13-158.cfm; National Right to Life Committee News Release, "National Right to Life Blasts Obama Administration's Final Rule, Charging that the Government is 'Falsifying' what the Law Says," October 1, 2013, at http://www.nrlc.org/communications/releases/2013/release100113/.

amendment across the federal government once and for all.

If a bill like H.R. 7 had been enacted before the health care reform debate began, that debate would not have been about abortion funding. A major obstacle to support by Catholics and other pro-life Americans would have been removed, and the final legislation would not have been so badly compromised by provisions that place unborn human lives at grave risk.

The USCCB has also supported the Protect Life Act (H.R. 358 in the 112th Congress), to address these and other abortion-related problems in the ACA itself.[19] The benefit of H.R. 7, however, is that it would prevent problems and confusions on abortion funding in future legislation. Federal health bills could be debated in terms of their ability to promote the goal of universal health care, instead of being mired in debates about one lethal procedure that most Americans know is not truly "health care" at all. Annual funding bills could be discussed in terms of how their budget priorities best serve the common good, instead of being endangered because some want to use them to reverse or weaken longstanding federal policy on abortion funding. This is a result that everyone in Congress should welcome.

Answering Questions About H.R. 7

A number of questions have been raised about H.R. 7, sometimes in the form of charges by groups committed to government support for abortion. These groups have abandoned their earlier slogan of "choice" and instead are committed to "access" – which means maximizing abortions, and using the coercive power of government to enlist the unwilling aid of taxpayers and health care providers who disagree with them. Answers are offered here for some of these questions.

Does H.R. 7 eliminate private coverage for abortion, or forbid people to spend their own money on such coverage?

No. In fact, Sections 304 and 305 of Title I explicitly allow such coverage to be purchased and provided as long as it does not use federal subsidies. Those who want abortion coverage can use nonfederal money to purchase a plan that includes it; or they can receive a federal subsidy to purchase a plan that does not include it, and buy abortion coverage separately with nonfederal funds.

Critics claim that such separate abortion riders will not be offered or will be difficult to obtain. The experience in states that have generally prohibited abortion coverage except by optional rider rebuts this claim. Supplemental abortion coverage is available in these states – in some plans offered by large insurers, choosing this coverage requires a simple check-off. The

[19] H.R. 358 was approved by the full House 251-172 on October 13, 2011, but was not considered by the Senate.

problem is that almost no woman chooses abortion coverage, which is to be expected in light of the surveys showing that most women oppose it. Abortion coverage is included in so many plans now because it is imposed on women and men by employers and insurance companies without their consent and generally without their knowledge. (In the ICR poll cited earlier, 68% of those who had insurance simply *did not know* whether their plan covered abortion, though that same percentage would reject such coverage if the decision were up to them.)

What this legislation does is place abortion coverage more in the arena of *individual choice* for women – an outcome opposed by groups that once claimed to be "pro-choice" and "pro-woman." They prefer a status quo in which insurance companies or employers choose abortion coverage and impose it on others, chiefly because it is cheaper for them than reimbursing for live birth.[20]

A more limited and subtle argument has been advanced by Prof. Sara Rosenbaum and colleagues at George Washington University.[21] They point out that the policy outlined here – denial of federal subsidies for health plans that include elective abortions – already affects many millions of people under Medicaid, the Federal Employees' Health Benefits Program, SCHIP and so on. By extending this policy to millions more (*e.g.*, to middle-income people who purchase their coverage on state exchanges), the new legislation when combined with existing laws may produce a "tipping point" where coverage without abortion becomes the usual norm for health insurance; coverage that includes abortion will be permitted but rare.

My response to this prediction is that I hope it is correct. As the Supreme Court noted approvingly three decades ago, the purpose of a federal funding ban is precisely to use the government's funding power to encourage childbirth over abortion. Abortion coverage, and therefore abortion, may become more rare, a result favored by all but the most committed advocates for abortion.

It is well established that providing federal funds for abortions substantially increases abortion rates. In one study by the Guttmacher Institute, for example, Medicaid-eligible women whose states provide Medicaid funding for abortion have more than *twice* the abortion rate of eligible women whose states do not provide such funding.[22] At the same time, with or without

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[20] John Nugent, CEO of Planned Parenthood of Maryland, says of abortion coverage that "the insurance companies think they should be offering it" because it's "cheaper to terminate an unwanted pregnancy rather than taking it to term." David Whelan, "Obamacare: Why Private Insurers Like Paying for Abortion," *Forbes* Blog, January 7, 2010, at http://blogs.forbes.com/sciencebiz/2010/01/07/obamacare-why-private-insurers-like-paying-for-abortion/.

[21] Sara Rosenbaum *et al.*, "An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions," The George Washington University Medical Center, November 16, 2009, at http://sphhs.gwu.edu/departments/healthpolicy/DHP_Publications/pub_uploads/dhpPublication_FED314C4-5056-9D20-3DBE77EF6ABF0FED.pdf.

[22] "In states that provide Medicaid funding for medically necessary abortions, women with Medicaid coverage had

federal subsidies, some private insurance companies will most likely continue to cover elective abortions because they see it as cheaper to dispose of a child than to help provide health care for him or her. It is difficult to rebut that claim in its own crass terms. In the short run, at least, live people do cost more to take care of than dead ones. Therefore, as long as abortion is legal, insurers and others ruled by a profit motive will have an economic incentive to promote abortion over childbirth. At the very least, a federal policy against subsidizing elective abortions is needed to counter that bias.

Does Title II of H.R. 7 create an unprecedented policy of denying "tax benefits" to abortion?

No, that issue was settled by the ACA. Members of Congress discussed whether the premium tax credits that help make health coverage affordable on state exchanges constitute federal funding, and decided in the affirmative. The provision forbidding direct use of these credits for abortion is even titled "Prohibition on the Use of Federal Funds" (Sec. 1303 (b)(2)).[23]

The ACA debate drew attention to the issue of how our tax system treats abortion, and uncovered some remarkable facts. For example, the individual tax deduction for medical expenses can be directly used to help reduce the cost of an abortion performed for *any* reason (not just abortion coverage but payments for abortions themselves).[24] This seems a very explicit and direct statement that the government wants to help pay for your elective abortions. Now that this loophole allowing tax support for abortion has been discovered, H.R. 7 is addressing it.

Conclusion

H.R. 7 is a well-crafted and reasonable measure to maintain longstanding and widely supported policies against active government promotion of abortion. It consistently applies to all branches of the federal government the principle that government can encourage childbirth over abortion through its funding power. It merits prompt and overwhelming support by this Congress.

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an abortion rate more than four times as high as women without such coverage (89 vs. 21 per 1,000). In contrast, in states that do not cover abortion services for women on Medicaid, the abortion rate among Medicaid recipients was twice that of women without Medicaid coverage (35 vs. 16 per 1,000)." Rachel Jones et al., "Patterns in the Socioeconomic Characteristics of Women Obtaining Abortions in 2000-2001," *Perspectives on Sexual and Reproductive Health*, vol. 34 (2002), 226-235 at 231. See www.guttmacher.org/pubs/journals/3422602.pdf.

[23] This provision still violates the policy of the Hyde amendment by allowing use of these credits to purchase overall health plans that cover abortion. But it did establish the idea that abortions not eligible for federal funding under Hyde should be ineligible for these advanceable, refundable tax credits.

[24] "You can include in medical expenses the amount you pay for a legal abortion." Internal Revenue Service, Publication 502, *Medical and Dental Expenses (Including the Health Coverage Tax Credit)*, Dec. 9, 2008, page 5.