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Re: Pro-life Efforts in the 115<sup>th</sup> Congress: victories and remaining hurdles

There are no words to adequately express the revulsion we all feel over the fact that Planned Parenthood, the nation's largest abortion chain, annually receives well over \$500 million dollars through federal, state, and local government grants and contracts – nearly 40% of the Planned Parenthood Federation of America (PPFA) network's annual income.

The urgency to defund this abortion giant intensified after the release of hidden-camera videos by the Center for Medical Progress, starting in July 2015. These videos show senior Planned Parenthood officials engaged in conversations about harvesting and trafficking body parts of unborn children killed by abortion.

In March 2018, enactment of an omnibus federal funding bill (H.R. 1625) to cover the rest of the current fiscal year (through September 30, 2018) provoked a renewed public debate about the continued receipt of federal funds by Planned Parenthood. Some of the material published about this subject incorporates misunderstandings both about the nature of the problem, and about how it can be corrected.

### **Background on Federal Funding**

Congress is "supposed to" pass up to 12 different appropriations bills each year, each containing funding for specific federal agencies and programs, before a federal fiscal year begins on October 1. The House of Representatives accomplished this in September 2017, passing the substance of all 12 appropriations bills under the title *Make America Secure and Prosperous Act*. However, due to obstruction mainly by Democrat senators (Republicans currently control the Senate by only a one-seat margin), the Senate did not pass this legislation.

Because of the refusal of Senate Democrats to allow "regular" appropriations bills to be enacted, congressional Republican leaders kept the federal government running temporarily by enactment of a succession of "continuing resolutions," or "CRs." A CR essentially puts government programs on "auto-pilot" until fully developed appropriations legislation is passed.

The last of this year's CRs had an expiration date of March 23, 2018. This means that if Congress had not passed an appropriations bill by March 23, the federal government would have gone into "shutdown." During such a "shutdown," government functions deemed "essential" continue, but operation of many federal programs and services is suspended or frozen. Payments

to many federal contractors stop. Many federal employees are put on furlough and their pay is suspended. Federal government shutdowns have occurred several times over the past couple of decades, and they have proven to be tremendously unpopular with most of the electorate. Regardless of who is actually responsible, overwhelmingly, congressional Republicans are blamed when they occur.

Passage of any appropriations bill – whether a “regular” bill covering only certain agencies, or an omnibus bill, or even a stop-gap CR – requires 60 votes in the Senate, which at the moment means that at least 9 Democrats must vote in the affirmative. However, not a single Democrat senator currently supports language to de-fund Planned Parenthood. This problem is discussed further below.

**Why can't Republican leaders simply strike the portion of the budget that contains the money that goes to Planned Parenthood, after which Congress would pass a funding bill with no such offensive language in it?**

*This point is key: Neither the recent FY18 Omnibus (H.R. 1625) nor any other federal spending bills includes any “line item” designating money for Planned Parenthood. There is no earmark, “set aside,” or explicit authorization for Planned Parenthood in any federal funding bill.*

What occurs, however, is that Planned Parenthood affiliates are able to tap into funds from various longstanding health programs – programs that also fund many other entities. The greatest amount of federal money to Planned Parenthood flows through so-called “mandatory spending” programs, mostly Medicaid, which is a huge program created by federal law, in which states collaborate. At least 70%, and by some estimates 90%, of PPFA’s aggregate federal funding comes from those sources, with something on the order of \$350 million/year coming through Medicaid.

It works like this: If you have insurance and seek medical help, the medical provider sends a bill to your insurance company for payment or reimbursement for the services you received. In the case of someone who is eligible for Medicaid, the government acts as the insurance company, either directly or through private managed care plans that contract to provide Medicaid services. The Medicaid patient goes to a doctor or medical facility; the provider sends a bill to the government or the government-proxy managed care plan, and in due course receives payment for the services provided. Planned Parenthood affiliates will continue to provide Medicaid-eligible services and receive federal reimbursements for such services, *unless a new federal law can be enacted to explicitly prohibit it.*

So again: there was no Planned Parenthood “line item” to strike in the FY18 omnibus funding bill, no place where insertion of a zero would have done the trick. Rather, in order to deny federal funds to PPFA, a **NEW LAW** must be enacted to specifically block funding, either for PPFA by name, or for abortion providers however described. To pass such a law as part of a funding bill will require 60 votes in the U.S. Senate, but at the moment there are short of 50 votes for such a new law.

National Right to Life and other pro-life groups have also attempted to enact a block on most federal funding of Planned Parenthood through a shortcut process known as “reconciliation,” but those efforts also have failed so far, because Senate Republicans have only bare majority in the Senate, and two Republican senators oppose such a new law (and no Democrat senators supported the “reconciliation” legislation).

**Why can't the President simply refuse to sign a government funding bill that does not also contain the language of a new law that would prohibit funding of Planned Parenthood?**

He could refuse to sign it, but that would not block funding for Planned Parenthood. The federal government would go into “shutdown,” which places no pressure on Democrats to turn against Planned Parenthood – indeed, the contrary is true, since a “shutdown” always damages the political standing of congressional Republicans. Such a stand-off will do little if anything to disrupt funding of Planned Parenthood, which, as already explained, flows mainly through permanent programs such as Medicaid.

It boils down to this: What is needed to “defund Planned Parenthood,” at the federal level, is at least a few additional pro-life senators. The recent election of a pro-abortion Democrat in Alabama, succeeding a pro-life Republican, has reduced the Senate Republican majority to one seat, making it impossible to enact ambitious new pro-life laws until reinforcements arrive.

While the FY18 omnibus did not include new pro-life measures, it did retain all previously enacted pro-life limitation riders, such as the Hyde amendment, the D.C. Hyde (Dornan) amendment, the Helms amendment and others. Various pro-abortion amendments, such as language that would have prevented the Trump administration from making changes to how the Title X family planned program is administered and language to repeal President Trump’s Protecting Life in Global Health Assistance Policy (Mexico City Policy), were blocked by Republicans and not included in the enacted FY18 omnibus appropriations bill.

**Congressional Activity**

Despite the obstacles discussed above, the Republican leadership of the current (115<sup>th</sup>) Congress has acted on a number of pro-life measures. Listed below, you can see a list of key scorecard votes that have occurred in the House and Senate during 2017 and 2018:

U.S. House of Representatives: 115th Congress

1. No Taxpayer Funding for Abortion Act (01/24/2017, Roll Call No. 65) (Pro-life win in the House)
2. Nullification of Obama pro-abortion Title X rule (02/16/2017, Roll Call No. 99) (Resolution to block Obama rule on family planning services and abortion providers passed both houses, and became law.)
3. American Health Care Act (Obamacare replacement / defund Planned Parenthood) (05/04/2017, Roll Call No. 256) (Pro-life win in the House.)

4. To block the D.C. "Reproductive Health Non-Discrimination Act" (RHNDA) (09/14/2017, Roll Call No. 518) (Pro-life win in the House.)
5. Congressional control over District of Columbia funds (abortion, etc.) (09/14/2017, Roll Call No. 520) (Pro-life win in the House.)
6. Pain-Capable Unborn Child Protection Act (20-week abortion ban) (10/03/2017, Roll Call No. 549) (Pro-life win in the House.)
7. Born-Alive Abortion Survivors Protection Act (vote to protect bill) (01/18/2018, Roll Call No. 30) (Pro-life win in the House.)
8. Born-Alive Abortion Survivors Protection Act (passage) (01/19/2018, Roll Call No. 36) (Pro-life win in the House.)

U.S. Senate: 115th Congress

1. Title X rule (03/30/2017, Roll Call No. 101. ) (Resolution to block Obama rule on birth-control program passed both houses, and became law.)
2. Whether to allow filibusters on Supreme Court nominations (04/06/2017, Roll Call No. 109) (Pro-life side prevailed.)
3. Confirmation of Neil Gorsuch as Associate Justice of the U.S. Supreme Court (04/07/2017, Roll Call No. 111) (Confirmed)
4. Obamacare replacement / defund Planned Parenthood (07/25/2017, Roll Call No. 167) (Pro-life side prevailed on this roll call, but the bill was later blocked.)
5. Pain-Capable Unborn Child Protection Act (20-week ban) (01/29/2018, Roll Call No. 25) (A majority of senators supported the bill, but on a nearly party-line vote, the bill failed to advance because of a Democrat filibuster.)

For more on these votes and to see how your member voted, visit our Legislative Action Center at: <http://www.capwiz.com/nrlc/home/>

### **Judicial Appointments**

Shortly after President Trump took office in January 2017, he nominated Neil Gorsuch, age 49, as associate justice of the U.S. Supreme Court, to succeed the late Justice Antonin Scalia. When Senate Democrats vowed to use the filibuster to prevent Gorsuch's confirmation, Senate Republicans all voted to abolish the right to filibuster Supreme Court nominees, a position that prevailed 52-48, after which Gorsuch was confirmed to the Supreme Court, 54-45.

In addition, since President Trump has taken office, the Senate has confirmed 14 nominees to lifetime appointments on the powerful federal circuit courts of appeals – which are only one level below the U.S. Supreme Court, and which are the “last word” on most cases. Calendar year 2017 saw the largest number of circuit court nominees confirmed during the first year of a president's term, in modern times.

The Senate has also confirmed 14 Trump nominees to lifetime appointments on federal district (trial) courts. An additional 52 Trump judicial nominees are awaiting confirmation by the Senate (most of whom have already received favorable votes in the Senate Judiciary Committee), while

139 judicial seats are awaiting nominations. The pace of confirmations has been slowed by Democrat senators' use of all available procedural delaying tactics against nearly all judicial nominees, even those who are finally confirmed by lopsided votes.

### **Pro-life Legislative Action**

As explained above, to achieve enactment of legislation to block federal funding of Planned Parenthood or achieve other major pro-life gains, we need to see the election of at least several additional reliably pro-life senators. In the meantime, and until the Supreme Court revises *Roe v Wade*, we can work to, among other things: 1) pass a ban on abortions on unborn babies who feel pain; 2) protect living unborn children from dismemberment abortions which would go far in putting a stop to Planned Parenthood's harvesting and trafficking of baby body parts; and 3) establish federal penalties for failing to care for a baby born alive during an abortion.

\* One key bipartisan prolife measure, permanent repeal of the Obamacare Independent Payment Advisory Board, was included in a Continuing Resolution enacted on February 9, 2018. You can read more here: <https://www.nrlc.org/site/communications/releases/2018/release020918/>