

October 26, 2009

Representative
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of FRCAction, the legislative action arm of Family Research Council, and the families we represent, I want to urge you to support any amendment offered to the America's Affordable Health Choices Act of 2009 (H.R. 3200) that would, like the amendment offered in the Energy and Commerce Committee by Representatives Bart Stupak (D-Mich.) and Joe Pitts (R-Penn.), permanently exclude funding for abortion and funding for plans that cover abortion in health care reform legislation. A Stupak-Pitts type amendment is necessary, since a provision added to H.R. 3200 in the Energy and Commerce Committee (the "Capps Amendment") would provide direct government funding for elective abortion in the public option and would subsidize health care plans that cover elective abortion.

I am writing to inform you that FRCAction will oppose and score against the Rule on H.R. 3200, if it does not allow consideration of an amendment such as the Stupak-Pitts Amendment. Moreover, if H.R. 3200 is not amended to permanently exclude abortion funding or subsidies for plans covering abortion, FRCAction will oppose final passage of H.R. 3200 and score this vote in our scorecard for the First Session of the 111th Congress.

The Capps Amendment contained in H.R. 3200 undermines current laws which prevent government funding for abortion or funding for plans that cover abortion. H.R. 3200 as introduced contained several provisions that would have been interpreted to include abortion funding unless abortion were explicitly excluded. While some supporters of H.R. 3200 argued that the term "abortion" was not in the bill, amendments to make it clear that abortion was explicitly excluded from the bill failed in three House committees. Instead of excluding abortion funding, the Energy and Commerce Committee on July 30 adopted an amendment by Rep. Lois Capps (D-CA) which explicitly includes abortion funding in the health care bill.

The Capps Amendment under Section 122 would authorize the Secretary of HHS to include abortion coverage under the public option. If, as is likely, the Secretary chose to cover elective abortion in the public option, the government would thereby *directly fund elective abortions*.

Defenders of the Capps Amendment argue that the federal government would not fund abortion because of a provision (Section 241) that prevents "affordability credits" from paying for elective abortion. However, this provision does *not* prevent the public option from using *any* government funding to cover the cost of elective abortion. It only restricts

affordability credits paid to it by the government run Exchange “Trust Fund.” The public option “Account”—a new U.S. Treasury account--will also consist of premiums paid to it by individuals purchasing coverage under this government plan. Once those premium payments are sent to the public option “Account,” they become *government* funds. Under H.R. 3200, payments for services covered by the public option will be distributed from this government Account. Even if the Capps Amendment did create a new requirement in H.R. 3200 to ensure that affordability credits paid by the Exchange Trust Fund to the public option Account are somehow kept separate from premium dollars paid to the public option Account, it would not prevent those government dollars from paying directly for elective abortions. In other words, the Capps Amendment at best precludes one type of government funds, affordability credits, from paying for abortion while authorizing another type of government funding, premiums, to pay the cost of elective abortions. In summary, the Capps Amendment authorizes the government to directly pay for elective abortion covered in the public option.

The Capps Amendment also authorizes qualified benefits plans under Section 122 to cover elective abortion and would subsidize such plans with government funds--with affordability credits. This additional provision undermines the abortion funding restrictions of the Hyde Amendment, which prevents funding for abortion services as well as paying health plans that cover abortion services. In addition, the Capps Amendment in Section 203 mandates at least one, and possibly more, Exchange participating plan in each premium rating region to cover elective abortion. Mandating that private health plans cover elective abortion is unprecedented, and is not justified, as some have argued, by an additional provision that mandates pro-life plans in each region. Subsidizing abortion covering plans in the Exchange with an accounting gimmick to give the appearance that private premiums and affordability credits paying such plans are kept separate, is simply a way around the principle contained in the Hyde Amendment.

Some have argued that the Hyde Amendment would still prevent government funding of abortion in H.R. 3200. This amendment is an annual appropriations provision which prevents HHS funds from paying for abortion, or funding plans that cover abortion (except in the case where the life of the mother is at risk or in the case of rape or incest). First, the Hyde Amendment provision could be removed in the future. And second, the Hyde Amendment would not apply to many of the programs established under H.R. 3200, because there are several self-appropriating provisions in this bill. Funds under H.R. 3200, therefore, would bypass the Hyde Amendment.

In summary, the Capps Amendment authorizes coverage of, and payment for, elective abortion in the public option, and would subsidize Exchange participating plans that cover elective abortion. We, therefore, support passage of a Stupak/Pitts-type amendment to restore the status quo by essentially attaching the Hyde Amendment to H.R. 3200.

We also support the inclusion of the provision adopted by the Energy and Commerce Committee to protect the conscience rights of healthcare workers with regard to abortion. Rep. Stupak’s amendment would codify existing statute by preventing government discrimination against health entities that refuse to provide, cover or participate in abortion. Including this provision in the health care reform legislation is essential to

maintain three conscience laws (Church Amendments, Coats Amendment, and the Hyde/Weldon Amendment) that have been enacted over the past 35 years to protect conscience rights for healthcare workers, especially with regard to abortion. We support the Energy and Commerce's efforts to include the Stupak conscience provision and ask that you oppose any effort during the floor debate to remove or undermine this provision.

We urge you to support a Stupak/Pitts-type amendment to ensure that the government does not fund elective abortion or subsidize plans that cover abortion in H.R. 3200. Again, FRCAction will score against the Rule if it does not make such an amendment in order. If H.R. 3200 does not address these concerns, FRCAction will also score against final passage in our scorecard for the First Session of the 111th Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom McClusky", written in a cursive style.

Thomas McClusky
Senior Vice President