



## Poison Pills in FY2021 Appropriations

The U.S. House of Representatives has passed ten of the twelve appropriations bills for fiscal year 2021. These appropriations bills were packaged together and passed using H.R. 7608 includes Agriculture, Interior and Environment, Military Construction, VA, and State-Foreign Operations. H.R. 7617 includes Commerce, Justice, Science, Department of Defense, Energy and Water, Financial Services, LaborHHS, and Transportation, Housing and Urban Development. The legislative branch appropriations bill has yet to be considered. The Senate has not considered FY2021 appropriations.

The White House issued a Statement of Administration Policy, laying out the four corners agreement not to include poison pills or new riders in appropriations bills.

“Throughout the summer of last year, the Administration worked diligently with Congress to finalize a two-year budget agreement that set bipartisan spending limits for defense and non-defense expenditures, work that culminated in the Bipartisan Budget Act of 2019 (Public Law 116-37). This agreement included a provision prohibiting poison pills – new riders, changes in mandatory programs, other changes in policy or conventions that allow for higher spending levels, or non-appropriations measures – unless agreed to on a bipartisan basis by the four leaders with the approval of the President. The agreement also included a provision maintaining “[c]urrent transfer funding levels and authorities” unless the four leaders and the President agreed on changes. This compact was absolutely essential to the completion of all 12 appropriations bills in December 2019.”

In 2019, President Trump sent Speaker Pelosi a letter delineating his pro-life position, and actions his administration has taken to support the life of the unborn. He stated that he would “veto any legislation that weakens current pro-life Federal policies and laws, or that encourages the destruction of innocent human life at any stage.”

**Southern Baptists affirm the full dignity of every human being and that every life is worthy of protection, beginning with the unborn.** We believe life begins at conception, and that abortion denies precious human lives both personhood and protection. Scripture is clear that every person is made in the image of God and his knowledge of each of us even

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precedes the creative act of conception (Jeremiah 1:5; Psalm 139:13). At the 2018 Annual Meeting of the Southern Baptist Convention, the Messengers passed a resolution to “reaffirm the sacredness and full dignity and worthiness of respect and Christian love for every single human being, without any reservation.”

**The ERLC is committed to conscience protection policies because they uphold two of our most closely held convictions.** First, we work to protect the consciences of our neighbors because we believe religious freedom is an inalienable human right, thankfully secured as the first freedom in the Bill of Rights. Second, protecting health-care workers from the coercive power of the profit-seeking, on-demand abortion industry is a pro-life responsibility.

**The ERLC opposes appropriations riders that deny religious freedom and conscience protections to millions of Americans.** Efforts to codify sexual orientation and gender identity as protected classes under federal law have explicitly included attempts to roll back religious freedom and conscience protections. Many of the riders discussed below do the same. As Russell Moore, president of the ERLC, often notes, “A government that can pave over the consciences of some can steamroll over dissent everywhere.”

# **ERLC Concerns in FY2021 Appropriations**

## **Agriculture**

No concerns

## **Commerce, Justice, Science (CJS)**

### **Section 531**

Section 531 prohibits the Department of Justice from preventing certain States and territories from implementing State or territory laws regarding the use of medical marijuana.

SEC. 531. None of the funds made available under this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

## **Department of Defense**

No concerns

## **Energy & Water**

No concerns

## **Financial Services and General Government**

### **Title IV, District of Columbia, Federal Funds**

The Federal Payment for School Improvement section modifies the Scholarships for Opportunity and Results Act (SOAR), which enables low-income DC students to attend

private schools. The modified language places cumbersome federal requirements on private schools, thus eliminating them from the program.

For a Federal payment for a school improvement program in the District of Columbia, \$52,500,000, to remain available until expended, for payments authorized under Scholarships for Opportunity and Results Act (division C of Public Law 112-10): Provided, That, to the extent that funds are available for opportunity scholarships and following the priorities included in section 3006 of such Act, the Secretary of Education shall make scholarships available to students eligible under section 3013(3) of such Act (Public Law 112-10; 125 Stat. 211) including students who were not offered a scholarship during any previous school year: Provided further, That within funds provided for opportunity scholarships up to \$1,200,000 shall be for the activities specified in sections 3007(b) through 3007(d) of the Act and up to \$500,000 shall be for the activities specified in section 3009 of the Act: Provided further, That none of the funds made available under this heading may be used for an opportunity scholarship for a student to attend a school which does not certify to the Secretary of Education that the student will be provided with the same protections under the Federal laws which are enforced by the Office for Civil Rights of the Department of Education which are provided to a student of a public elementary or secondary school in the District of Columbia and which does not certify to the Secretary of Education that the student and the student's parents will be provided with the same services, rights, and protections under the Individuals With Disabilities Education Act (20 U.S.C. 1400 et seq.) which are provided to a student and a student's parents of a public elementary or secondary school in the District of Columbia, as enumerated in Table 2 of Government Accountability Office Report 18-94 (entitled "Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities"), issued November 2017.

**Statement of Administration Policy (SAP):** School Improvement. The Administration is disappointed that the bill provides \$37 million less than the level in FY 2021 Budget Request for School Improvement. The requested funding is needed to meet family demand for the D.C. Opportunity Scholarship Program (OSP) and provide additional support for D.C. public schools and public charter schools. Instead, the bill would continue to provide funding for the poorly-targeted Tuition Assistance Grants program. In addition, the Administration is concerned that the bill requires private schools participating in the OSP to certify with the

Department of Education that they comply with Federal requirements for which they do not receive funds to implement.

### **Section 631**

Section 631 removes penalties for banks that provide financial services to the marijuana industry. This provision would allow for a massive increase in funding and access to capital for the marijuana industry.

SEC. 631. None of the funds made available in this Act may be used to penalize a financial institution solely because the institution provides financial services to an entity that is a manufacturer, a producer, or a person that participates in any business or organized activity that involves handling hemp, hemp-derived cannabidiol products, other hemp-derived cannabinoid products, marijuana, marijuana products, or marijuana proceeds, and engages in such activity pursuant to a law established by a State, political subdivision of a State, or Indian Tribe. In this section, the term “State” means each of the several States, the District of Columbia, and any territory or possession of the United States.

### **Section 802**

Section 802 undermines the DC Hyde (Dornan) Amendment, limiting the abortion funding prohibition to “federal” funds, allowing DC to use local funds to pay for abortion on demand.

SEC. 802. None of the Federal funds available for obligation or expenditure by the District of Columbia government under any authority shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

## **Homeland Security**

No concerns

## **Interior and Environment**

No concerns

## **Labor, HHS, Education**

### **Section 245**

Section 245 repeals the Department of Health and Human Services' finalized rule (85 Fed. Reg. 37160 et seq.) concerning "Nondiscrimination in Health and Health Education Programs." These final rules align HHS regulations with federal civil rights statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, age, and disability.

SEC. 245. None of the funds made available by this Act may be used to implement, enforce, or otherwise give effect to the rule entitled "Nondiscrimination in Health and Health Education Programs or Activities" published in the Federal Register on June 19, 2020 (85 Fed. Reg. 37160 et seq.).

**Statement of Administration Policy (SAP):** Section 1557 of the Affordable Care Act (ACA) Rule Implementation Prohibition. The Administration strongly objects to the inclusion of section 245 of the bill, which prohibits the HHS Office for Civil Rights from using appropriated funds to implement, enforce, or otherwise give effect to the final rule entitled "Nondiscrimination in Health and Health Education Programs or Activities." This rule clarifies the scope of section 1557 of the ACA in keeping with pre-existing civil rights statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, age, and disability.

### **Section 114**

Section 114 impedes the implementation of the proposed rule on "Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption." These rules would make clear that the Equal Employment Opportunity Executive Order religious exemption covers not just churches but employers that are organized for a religious purpose, hold themselves out to the public as carrying out a religious purpose, and engage in exercise of religion consistent with, and in furtherance of, a religious purpose.

SEC. 114. None of the funds made available by this Act may be used to develop, promulgate, issue, or implement a final rule, or take any actions in furtherance of the proposed rule, on "Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious

Exemption” published by Department of Labor in the Federal Register on August 15, 2019 (84 Fed. Reg. 41677 et seq.).

### **Section 244**

Section 244 would repeal the administration’s final Conscience Protection Rule. The rule enforces existing statutory protections for Americans with respect to health care, including protections against discrimination for health care providers and practitioners on the basis that they object to participating in abortion, sterilization, or assisted suicide. This rule went into effect on November 22, 2019.

SEC. 244. None of the funds made available by this Act may be used to implement, enforce, or otherwise give effect to the final rule entitled “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” (84 Fed. Reg. 23170-23272, May 21, 2019).

**Statement of Administration Policy (SAP):** Conscience Rule Implementation Prohibition. The Administration strongly objects to the inclusion of section 244 of the bill, which prohibits the HHS Office for Civil Rights from using appropriated funds to implement, enforce, or otherwise give effect to the final rule entitled “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.” This rule protects vital conscience rights for healthcare entities and professionals.

### **Section 248**

Section 248 would withhold federal funding to private foster care providers who operate consistent with deeply held religious beliefs and would block HHS from pursuing further religious liberty waivers, like the Miracle Hill waiver to South Carolina. There are currently 437,283 children in the U.S. foster care system, a situation which demands a wide range of organizations serving children in need.

SEC. 248. (a) None of the funds made available by this Act may be awarded to any organization, including under the Federal Foster Care program under part E of title IV of the Social Security Act, that does not comply with paragraphs (c) and (d) of section 75.300 of title 45, Code of Federal Regulations (prohibiting discrimination on the basis of age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation), as in effect on October 1, 2019. (b) None of the funds made available by this Act may be used by the

Department of Health and Human Services to grant an exception from either such paragraph for any Federal grantee.

**Statement of Administration Policy (SAP):** Religious Freedom and Non-Discrimination in HHS Grants. The Administration strongly opposes section 248. This section would prohibit HHS from providing any funding in the Act to grantees, including foster care grantees under title IV-E of the Social Security Act, who do not abide by HHS's current nondiscrimination rules, which prohibit discrimination on the basis of gender identity and sexual orientation, or treat as valid marriages in accordance with the recent Supreme Court decisions in *United States v. Windsor* and *Obergefell v. Hodges*.

### **Family Planning**

The Family Planning section of Labor H increased from \$286 million to \$400 million and would repeal the Administration's final "Protect Life" (Title X) rule. In 2019, the Department of Health and Human Services (HHS) finalized a rule pertaining to Title X funding, that "prohibits the use of Title X funds to perform, promote, refer for, or support abortion as a method of family planning." The Title X rule will be expected to shift funding from abortion providers—such as Planned Parenthood—and steer some of it toward faith-based care providers. If the rule remains in effect, Planned Parenthood could lose as much as \$60 million in annual funding from the federal government, roughly 10% of the over half a billion in government grants and reimbursements the nation's largest abortion provider receives each year.

For carrying out the program under title X of the PHS Act to provide for voluntary family planning projects, \$286,479,000: Provided, That the Secretary shall carry out section 1001 of the PHS Act solely in accordance with any regulations or other conditions or instructions established by the Secretary pursuant to the authority under section 1006 of the PHS Act that applied as of January 18, 2017, to grants and contracts awarded under section 1001 of the PHS Act: Provided further, That amounts provided to said projects under such titles shall not be expended for abortions, that all pregnancy counseling shall be nondirective, and that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office: Provided further, That for each entity that, in fiscal year

2019, received an award under section 1001 of the PHS Act and whose award was terminated or relinquished before the planned end of the period of performance, the Secretary shall, not later than 60 days after the date of enactment of this Act, issue a new award to such entity using funds made available herein, equal to the amount of the award that was terminated or relinquished and consistent with any terms and conditions that applied at the time that the fiscal year 2019 award was made except as modified by this Act, but only if(1) the Secretary has not, prior to the enactment of this Act, awarded grants or contracts for the performance of substantially similar activities in the geographical areas that were served by the terminated or relinquished award, but if such grants or contracts awarded prior to the enactment of this Act would only partially replace the activities or areas covered by the terminated or relinquished award, the Secretary shall seek to restore the terminated award with respect to the remaining activities or areas;

**Statement of Administration Policy (SAP):** Title X Family Planning. The Administration opposes language under the Health Resources and Services Administration—Family Planning account heading that prevents the implementations and enforcement of new Title X Family Planning rule that took effect on May 3, 2019. This language would prevent the Administration from ensuring compliance with statutory Title X program integrity provisions, in particular the prohibition on the use of Title X funds in programs in which abortion is a method of family planning. The new regulations make notable improvements designed to increase the number of patients served to improve the quality of care they receive, and to help protect vulnerable women and children from abuse and coercion. In addition, the Administration opposes language in this account that requires HHS to earmark grants in certain circumstances to entities that terminated or relinquished grants due to the new rule. The Administration is also disappointed that the bill does not contain language proposed in the FY 2021 Budget request that would prohibit Federal funding from being provided to certain providers of abortion services.

## **Office of the Secretary, General Departmental Management**

### **Teen Pregnancy Prevention Program**

This section under “General Departmental Management” would effectively require funding for the Teen Pregnancy Prevention program to continue going to abortion-providing organizations and would eliminate funding for Sexual Risk Avoidance Educational programs.

Provided further, That of the funds made available under this heading, \$101,000,000 shall be for making competitive grants to public and private entities to fund medically accurate and complete and age-appropriate (as those terms are defined in section 513(e) of the Social Security Act (42 U.S.C. 713(e))) programs that reduce teen pregnancy and that do not withhold information about the effectiveness and benefits of correct and consistent use of condoms and other contraceptives, and for the Federal costs associated with administering and evaluating such grants, of which not more than 10 percent of the available funds shall be for training and technical assistance, outreach, and additional program support activities, and of the remaining amount 75 percent shall be for replicating programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral risk factors underlying teenage pregnancy, or other associated risk factors, and 25 percent shall be available for research and demonstration grants to develop, replicate, refine, and rigorously test (defined as randomized control trial, quasi-experimental design, or regression discontinuity design) additional models and innovative strategies for preventing teenage pregnancy: Provided further, That amounts made available under this heading for programs to reduce teen pregnancy shall meet the requirements listed in clauses (ii) through (vi) of section 513(b)(2)(B) of the Social Security Act (42 U.S.C. 713(b)(2)(B)(ii)-(vi)) and shall not be made available by interagency agreement or otherwise to any agency within the Department of Health and Human Services other than the Office of the Secretary to carry out or support such programs: Provided further, That of the amounts provided under this heading from amounts available under section 241 of the PHS Act, \$6,800,000 shall be available to carry out evaluations (including longitudinal evaluations) of teenage pregnancy prevention approaches.

**Statement of Administration Policy (SAP):** Teen Pregnancy Prevention (TPP) Program. The Administration opposes the bill's inclusion of \$101 million in unrequested funds for the TPP program. The TPP program began in FY 2010 to provide competitive grants to replicate successful TPP approaches, test new TPP approaches, and identify the effectiveness of these interventions. The TPP program serves less than one percent of teenagers in the United States. Although the teenage pregnancy rate has declined significantly, the evidence suggests that TPP has not been a major driver in that reduction.

## Legislative Branch

No concerns

## Military Construction, VA

### Section 234

Sec. 234 would codify the annual appropriations rider permitting IVF and assisted reproductive technology (ART) coverage for veterans who are infertile due to service related injuries. IVF and ART can often result in the destruction of a large number of human embryos.

SEC. 234. (a) Chapter 17 of title 38, United States Code, is amended by inserting after section 1720I the following new section: “§ 1720J. Provision of assisted reproductive technology or adoption reimbursements for certain disabled veterans “(a) PROVISION OF SERVICES.—Subject to the availability of appropriations, the Secretary may provide—

“(1) fertility counseling and treatment using assisted reproductive technology to a covered veteran or the spouse of a covered veteran; or

“(2) adoption reimbursement to a covered veteran.

“(b) LIMITATIONS.—Amounts made available for the purposes specified in subsection (a) are subject to the requirements for funds contained in section 508 of division H of the Consolidated Appropriations Act, 2017 (Public Law 115-31).

“(c) DEFINITIONS.—In this section: “(1) The term ‘adoption reimbursement’ means reimbursement for the adoption-related expenses for an adoption that is finalized after the date of the enactment of this section under the same terms as apply under the adoption reimbursement program of the Department of Defense, as authorized in Department of Defense Instruction 1341.09, including the reimbursement limits and requirements set forth in such instruction, as in effect on the date of the enactment of this section.

“(2) The term ‘assisted reproductive technology’ means benefits relating to reproductive assistance provided to a member of the Armed Forces who incurs a serious injury or illness on active duty pursuant to section 1074(c)(4)(A) of title 10, as described in the memorandum on the subject of ‘Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Service Members’ issued by the Assistant Secretary of Defense for Health Affairs on April 3, 2012, and the guidance issued to implement such policy, as in effect on the date of the enactment of this section, including any limitations on the amount of such benefits available to such a member, except that—

“(A) the periods regarding embryo cryopreservation and storage set forth in part III(G) and in part IV(H) of the first part IV of such memorandum shall not apply; and  
“(B) such term includes embryo cryopreservation and storage without limitation on the duration of such cryopreservation and storage.”“(3) The term ‘covered veteran’ means a veteran who has a service-connected disability that results in the inability of the veteran to procreate without the use of fertility treatment.”.

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1720I the following new item:

“1720J. Provision of assisted reproductive technology or adoption reimbursements for certain disabled veterans.”.

## **State-Foreign Operations (SFOPS)**

### **United Nations Population Fund (UNFPA)**

According to the Congressional Pro-Life Caucus, “The Kemp-Kasten amendment was adopted in 1985. The Kemp-Kasten Amendment restricts funds from organizations that the President determines support or participates in a coercive abortion program. Presidents Ronald Reagan, George H.W. Bush, George W. Bush, and Donald Trump all interpreted this provision to require the elimination of funds for UNFPA. In addition, Congress has the opportunity to directly prohibit funding to the UNFPA based on its complicity in China’s birth-limitation policy.”

SEC. 7067. (a) CONTRIBUTION.—Of the funds made available under the heading “International Organizations and Programs” in this Act for fiscal year 2021, \$55,500,000 shall be made available for the United Nations Population Fund (UNFPA). (b) AVAILABILITY OF FUNDS.—Funds appropriated by this Act for UNFPA, that are not made available for UNFPA because of the operation of any provision of law, shall be transferred to the “Global Health Programs” account and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committees on Appropriations.

AVAILABILITY OF FUNDS.—Funds appropriated by this Act for UNFPA, that are not made available for UNFPA because of the operation of any provision of law, shall be transferred to the “Global Health Programs” account and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committees on Appropriations.

### **Global Health Activities**

Section 7068 prevents implementation of the Protecting Life in Global Health Assistance policy (formerly known as the Mexico City Policy). The policy protects life by prohibiting international assistance for foreign non-governmental organizations that promote or perform abortions. This section would also increase funding levels to \$750 million for family planning and reproductive health programs. Foreign organizations like International Planned Parenthood would utilize these funds to promote and perform abortions overseas.

SEC. 7068. (a)(1) IN GENERAL.—Funds appropriated under the heading “Global Health Programs” in this Act that are made available for bilateral assistance for global health programs including activities relating to research on, and the prevention, treatment and control of, HIV/AIDS may be made available notwithstanding any other provision of law except for provisions under this section and the United States Leadership Against HIV/ AIDS, Tuberculosis, and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 7601 et seq.), as amended: Provided, That of the funds appropriated under title III of this Act, not less than \$750,000,000 shall be made available for family planning/reproductive health, including in areas where population growth threatens biodiversity or endangered species: Provided further, **That none of the funds made available by this Act or prior Acts making appropriations for the Department of State, foreign operations, and related programs shall be made available to implement the Presidential Memorandum on Mexico City Policy dated January 23, 2017:** Provided further, That none of the funds made available by this Act may be used in contravention of the conditions of section 7066 of this Act.

## **Transportation, Housing and Urban Development (THUD)**

### **Section 235**

Section 235 would impede HUD’s proposed rule that would “provide that grant recipients, subrecipients, owners, operators, managers, and providers under HUD programs that permit single-sex or sex-specific facilities may establish a policy, consistent with federal, state, and local law, to accommodate persons based on sex.”

The proposed rule would maintain requirements from HUD's 2012 final rule entitled “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity” and would require shelters to uniformly and consistently apply any such policy the shelter develops.

SEC. 235. None of the funds made available to the Department of Housing and Urban Development by this or any other Act may be used to implement, administer, enforce, or in any way make effective the proposed rule entitled “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs”, transmitted to Congress for review by the

Department of Housing and Urban Development on June 12, 2020 (Docket No. FR10 6152-P-01), or any final rule based substantially on such proposed rule.

### **Section 236**

This rider would prevent faith-based emergency shelters from operating in a manner consistent with their religious beliefs, potentially creating difficult situations for women in crisis situations. This raises significant privacy and safety concerns for people who use single-sex shelters and facilities.

SEC. 236. Notwithstanding any other provision of law, the notice issued by the Department of Housing and Urban Development on February 20, 2015, and entitled “Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities” (Notice CPD-15-02) shall have the force and effect of law.

**Statement of Administration Policy (SAP):** HUD Rulemaking Prohibitions. The Administration strongly objects to section 237 of the bill, which would prevent HUD from proceeding with the proposed rule that prohibits persons other than United States citizens and other eligible noncitizens benefiting from HUD rental assistance. Section 235 of the bill would also prevent HUD from proceeding with the proposed rule to allow grantees participating in programs that permit single-sex facilities to have greater flexibility in establishing their own policies, consistent with State and local laws. In addition, section 236 of the bill would codify an outdated guidance notice on this subject in statute. The Administration opposes such provisions because they would impede the Administration’s rulemaking process and authority as well as damage efforts to protect vulnerable women and girls.