

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3) TO PROHIBIT TAX-
PAYER FUNDED ABORTIONS AND TO PROVIDE FOR CONSCIENCE PRO-
TECTIONS, AND FOR OTHER PURPOSES

MAY 2, 2011.—Referred to the House Calendar and ordered to be printed

Mr. NUGENT, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 237]

The Committee on Rules, having had under consideration House Resolution 237, by a record vote of 9 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3, the No Taxpayer Funding for Abortion Act, under a closed rule. The resolution provides one hour of debate with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary, 10 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means, and 10 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill. The resolution provides that in lieu of the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, the amendment in the nature of a substitute printed in this report shall be considered as adopted. The bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order against its consideration. The waiver is prophylactic.

The resolution waives all points of order against provisions in the bill, as amended. The waiver of all points of order includes a waiver of clause 5(a) of rule XXI, which prohibits a bill carrying a tax

provision from being reported by a committee that does not have jurisdiction to report tax measures. On April 6, 2011, the Committee on Ways and Means reported H.R. 1232, to amend the Internal Revenue Code of 1986 to eliminate certain tax benefits relating to abortion. The amendment printed in this report contains the provisions of H.R. 1232 as reported by the Committee on Ways and Means. The waiver of clause 5(a) of rule XXI is necessary because H.R. 3, as modified by the amendment in the nature of a substitute printed in this report, was not reported by the Committee on Ways and Means.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 83

Motion by Mr. McGovern to report an open rule. Defeated: 3–9

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Nay	Mr. McGovern	Yea
Ms. Foxx	Nay	Mr. Hastings of Florida	Yea
Mr. Bishop of Utah	Nay	Mr. Polis	Yea
Mr. Woodall	Nay		
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 84

Motion by Mr. McGovern to amend the rule to H.R. 3 to make in order separately and provide the appropriate waivers for each of the following amendments: Del. Norton (DC), #2, would permit the District of Columbia government to spend its local taxpayer-raised funds on abortions for low-income women; Rep. Biggert (IL), #3, would strike sections 303 through 307, 309, 310, and Title II, and the word “authorized” in sections 301 and 302; Rep. Chu (CA), #4, would make clear that provisions under current law that require that the federal government help protect access to appropriate medical care, do nothing to restrict doctors’ ability to fully disclose treatment options and other health information to patients, and do nothing to violate ethical standards of health care professionals or informed consent between doctor and patient are still in force under this bill; Rep. Engel (NY), #6, would reinstate conscience protections for health providers who provide abortion services as well as those who do not; Rep. Baldwin (WI), #7, would prohibit the bill from taking effect should it cause taxes for small businesses or individuals to increase; Rep. Chu (CA), #8, would exclude cases of a woman with cancer who needs life saving treatment incompatible with continuing the pregnancy from the requirements of the legislation relating to federal funding, health benefit plans and the limitations on federal facilities and employees; Rep. Maloney (NY), #9, would require the Federal Trade Commission to promulgate rules under the Federal Trade Commission Act declaring it an unfair or deceptive act for an entity, such as a crisis pregnancy center, to ad-

vertise as a provider of abortion services if the entity does not provide abortion services. Similarly, if an entity that does provide abortions it is prohibited from advertising that it does not provide abortions. Agencies that are not deceptive in their advertising or marketing will not be affected by this bill; Rep. Crowley (NY), #10, would provide that the provisions of H.R. 3 shall not take effect if the tax liability of any taxpayer (including individuals and small businesses) would be increased; Rep. Nadler (NY), #11, would strike Title II of the bill; Rep. Quigley (IL), #12, would provide that the provisions of the bill shall not take effect until the President, or his designee, certifies that this bill will not affect the availability of insurance that includes abortion coverage in the private insurance market; Rep. Moore (WI), #13, would delay the effective date for this Act (H.R. 3) until the Secretary of Health and Human Services determines that it would not result in a reduction in access to comprehensive health care coverage for low-income women; Rep. Jackson Lee (TX), #15, would delay the effective date of the act until the AG certifies to Congress that this act will not violate any Constitutionally guaranteed right; Rep. Jackson Lee (TX), #16, would carve out an exception to the act for instances where continuing a pregnancy could result in severe long-lasting damage to a women's health; Rep. Grijalva (AZ), #17, would require that a review be conducted by the Secretary of the Treasury to ensure that the tax penalties created by this act will not have a disparate impact on individuals based on race, gender, national origin, ability or age. It would also direct the Secretary to examine the impact of these tax penalties on small businesses owned and operated by minorities. Defeated: 3–9

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Nay	Mr. McGovern	Yea
Ms. Fox	Nay	Mr. Hastings of Florida	Yea
Mr. Bishop of Utah	Nay	Mr. Polis	Yea
Mr. Woodall	Nay		
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 85

Motion by Mr. Sessions to report the rule. Adopted: 9–3

Majority Members	Vote	Minority Members	Vote
Mr. Sessions	Yea	Mr. McGovern	Nay
Ms. Foxx	Yea	Mr. Hastings of Florida	Nay
Mr. Bishop of Utah	Yea	Mr. Polis	Nay
Mr. Woodall	Yea		
Mr. Nugent	Yea		
Mr. Scott of South Carolina	Yea		
Mr. Webster	Yea		
Mr. Reed	Yea		
Mr. Dreier, Chairman	Yea		

SUMMARY OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE
CONSIDERED AS ADOPTED

Smith (TX), Camp (MI) AMENDMENT IN THE NATURE OF A
SUBSTITUTE: Would combine the text of H.R. 3 as reported by the
Committee on the Judiciary and the text of H.R. 1232 as reported
by the Committee on Ways and Means.

TEXT OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE
CONSIDERED AS ADOPTED

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “No Taxpayer
Funding for Abortion Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as
follows:

Sec. 1. Short title; table of contents.

**TITLE I—PROHIBITING FEDERALLY-FUNDED ABORTIONS AND PROVIDING
FOR CONSCIENCE PROTECTIONS**

Sec. 101. Prohibiting taxpayer funded abortions and providing for conscience pro-
tections.

Sec. 102. Amendment to table of chapters.

**TITLE II—ELIMINATION OF CERTAIN TAX BENEFITS RELATING TO
ABORTION**

Sec. 201. Deduction for medical expenses not allowed for abortions.

Sec. 202. Disallowance of refundable credit for coverage under qualified health plan
which provides coverage for abortion.

Sec. 203. Disallowance of small employer health insurance expense credit for plan
which includes coverage for abortion.

Sec. 204. Distributions for abortion expenses from certain accounts and arrange-
ments included in gross income.

**TITLE I—PROHIBITING FEDERALLY-
FUNDED ABORTIONS AND PROVIDING
FOR CONSCIENCE PROTECTIONS**

**SEC. 101. PROHIBITING TAXPAYER FUNDED ABORTIONS AND PRO-
VIDING FOR CONSCIENCE PROTECTIONS.**

Title 1, United States Code is amended by adding at the end the
following new chapter:

**“CHAPTER 4—PROHIBITING TAXPAYER FUNDED ABOR-
TIONS AND PROVIDING FOR CONSCIENCE PROTEC-
TIONS**

“Sec.

“301. Prohibition on funding for abortions.

“302. Prohibition on funding for health benefits plans that cover abortion.

“303. Limitation on Federal facilities and employees.

“304. Construction relating to separate coverage.

“305. Construction relating to the use of non-Federal funds for health coverage.

“306. Non-preemption of other Federal laws.

“307. Construction relating to complications arising from abortion.

“308. Treatment of abortions related to rape, incest, or preserving the life of the
mother.

“309. Application to District of Columbia.

“310. No government discrimination against certain health care entities.

“§ 301. Prohibition on funding for abortions

“No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for any abortion.

“§ 302. Prohibition on funding for health benefits plans that cover abortion

“None of the funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for health benefits coverage that includes coverage of abortion.

“§ 303. Limitation on Federal facilities and employees

“No health care service furnished—

“(1) by or in a health care facility owned or operated by the Federal Government; or

“(2) by any physician or other individual employed by the Federal Government to provide health care services within the scope of the physician’s or individual’s employment,

may include abortion.

“§ 304. Construction relating to separate coverage

“Nothing in this chapter shall be construed as prohibiting any individual, entity, or State or locality from purchasing separate abortion coverage or health benefits coverage that includes abortion so long as such coverage is paid for entirely using only funds not authorized or appropriated by Federal law and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State’s or locality’s contribution of Medicaid matching funds.

“§ 305. Construction relating to the use of non-Federal funds for health coverage

“Nothing in this chapter shall be construed as restricting the ability of any non-Federal health benefits coverage provider from offering abortion coverage, or the ability of a State or locality to contract separately with such a provider for such coverage, so long as only funds not authorized or appropriated by Federal law are used and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State’s or locality’s contribution of Medicaid matching funds.

“§ 306. Non-preemption of other Federal laws

“Nothing in this chapter shall repeal, amend, or have any effect on any other Federal law to the extent such law imposes any limitation on the use of funds for abortion or for health benefits coverage that includes coverage of abortion, beyond the limitations set forth in this chapter.

“§ 307. Construction relating to complications arising from abortion

“Nothing in this chapter shall be construed to apply to the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of an abortion. This rule of construction shall be applicable without regard to whether

the abortion was performed in accord with Federal or State law, and without regard to whether funding for the abortion is permissible under section 308.

“§ 308. Treatment of abortions related to rape, incest, or preserving the life of the mother

“The limitations established in sections 301, 302, and 303 shall not apply to an abortion—

“(1) if the pregnancy is the result of an act of rape or incest;

or

“(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself.

“§ 309. Application to District of Columbia

“In this chapter:

“(1) Any reference to funds appropriated by Federal law shall be treated as including any amounts within the budget of the District of Columbia that have been approved by Act of Congress pursuant to section 446 of the District of Columbia Home Rule Act (or any applicable successor Federal law).

“(2) The term ‘Federal Government’ includes the government of the District of Columbia.

“§ 310. No government discrimination against certain health care entities

“(a) NONDISCRIMINATION.—A Federal agency or program, and any State or local government that receives Federal financial assistance (either directly or indirectly), may not subject any individual or institutional health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

“(b) HEALTH CARE ENTITY DEFINED.—For purposes of this section, the term ‘health care entity’ includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

“(c) REMEDIES.—

“(1) IN GENERAL.—The courts of the United States shall have jurisdiction to prevent and redress actual or threatened violations of this section by issuing any form of legal or equitable relief, including—

“(A) injunctions prohibiting conduct that violates this section; and

“(B) orders preventing the disbursement of all or a portion of Federal financial assistance to a State or local government, or to a specific offending agency or program of a State or local government, until such time as the conduct prohibited by this section has ceased.

“(2) COMMENCEMENT OF ACTION.—An action under this subsection may be instituted by—

“(A) any health care entity that has standing to complain of an actual or threatened violation of this section; or

“(B) the Attorney General of the United States.

“(d) ADMINISTRATION.—The Secretary of Health and Human Services shall designate the Director of the Office for Civil Rights of the Department of Health and Human Services—

“(1) to receive complaints alleging a violation of this section;

“(2) subject to paragraph (3), to pursue the investigation of such complaints in coordination with the Attorney General; and

“(3) in the case of a complaint related to a Federal agency (other than with respect to the Department of Health and Human Services) or program administered through such other agency or any State or local government receiving Federal financial assistance through such other agency, to refer the complaint to the appropriate office of such other agency.”.

SEC. 102. AMENDMENT TO TABLE OF CHAPTERS.

The table of chapters for title 1, United States Code, is amended by adding at the end the following new item:

“4. Prohibiting taxpayer funded abortions and providing for conscience protections 301”.

TITLE II—ELIMINATION OF CERTAIN TAX BENEFITS RELATING TO ABORTION

SEC. 201. DEDUCTION FOR MEDICAL EXPENSES NOT ALLOWED FOR ABORTIONS.

(a) IN GENERAL.—Section 213 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(g) AMOUNTS PAID FOR ABORTION NOT TAKEN INTO ACCOUNT.—

“(1) IN GENERAL.—An amount paid during the taxable year for an abortion shall not be taken into account under subsection (a).

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A) an abortion—

“(i) in the case of a pregnancy that is the result of an act of rape or incest, or

“(ii) in the case where a woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy, and

“(B) the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of an abortion.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 202. DISALLOWANCE OF REFUNDABLE CREDIT FOR COVERAGE UNDER QUALIFIED HEALTH PLAN WHICH PROVIDES COVERAGE FOR ABORTION.

(a) **IN GENERAL.**—Subparagraph (A) of section 36B(c)(3) of the Internal Revenue Code of 1986 is amended by inserting before the period at the end the following: “or any health plan that includes coverage for abortions (other than any abortion or treatment described in section 213(g)(2)).”

(b) **OPTION TO PURCHASE OR OFFER SEPARATE COVERAGE OR PLAN.**—Paragraph (3) of section 36B(c) of such Code is amended by adding at the end the following new subparagraph:

“(C) **SEPARATE ABORTION COVERAGE OR PLAN ALLOWED.**—

“(i) **OPTION TO PURCHASE SEPARATE COVERAGE OR PLAN.**—Nothing in subparagraph (A) shall be construed as prohibiting any individual from purchasing separate coverage for abortions described in such subparagraph, or a health plan that includes such abortions, so long as no credit is allowed under this section with respect to the premiums for such coverage or plan.

“(ii) **OPTION TO OFFER COVERAGE OR PLAN.**—Nothing in subparagraph (A) shall restrict any non-Federal health insurance issuer offering a health plan from offering separate coverage for abortions described in such subparagraph, or a plan that includes such abortions, so long as premiums for such separate coverage or plan are not paid for with any amount attributable to the credit allowed under this section (or the amount of any advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act).”

(c) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years ending after December 31, 2013.

SEC. 203. DISALLOWANCE OF SMALL EMPLOYER HEALTH INSURANCE EXPENSE CREDIT FOR PLAN WHICH INCLUDES COVERAGE FOR ABORTION.

(a) **IN GENERAL.**—Subsection (h) of section 45R of the Internal Revenue Code of 1986 is amended—

(1) by striking “Any term” and inserting the following:

“(1) **IN GENERAL.**—Any term”, and

(2) by adding at the end the following new paragraph:

“(2) **EXCLUSION OF HEALTH PLANS INCLUDING COVERAGE FOR ABORTION.**—The terms ‘qualified health plan’ and ‘health insurance coverage’ shall not include any health plan or benefit that includes coverage for abortions (other than any abortion or treatment described in section 213(g)(2)).”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 204. DISTRIBUTIONS FOR ABORTION EXPENSES FROM CERTAIN ACCOUNTS AND ARRANGEMENTS INCLUDED IN GROSS INCOME.

(a) **FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.**—Section 125 of the Internal Revenue Code of 1986 is amended by redesignating subsections (k) and (l) as subsections (l)

and (m), respectively, and by inserting after subsection (j) the following new subsection:

“(k) ABORTION REIMBURSEMENT FROM FLEXIBLE SPENDING ARRANGEMENT INCLUDED IN GROSS INCOME.—Notwithstanding section 105(b), gross income shall include any reimbursement for expenses incurred for an abortion (other than any abortion or treatment described in section 213(g)(2)) from a health flexible spending arrangement provided under a cafeteria plan. Such reimbursement shall not fail to be a qualified benefit for purposes of this section merely as a result of such inclusion in gross income.”

(b) ARCHER MSAS.—Paragraph (1) of section 220(f) of such Code is amended by inserting before the period at the end the following: “, except that any such amount used to pay for an abortion (other than any abortion or treatment described in section 213(g)(2)) shall be included in the gross income of such holder”.

(c) HSAS.—Paragraph (1) of section 223(f) of such Code is amended by inserting before the period at the end the following: “, except that any such amount used to pay for an abortion (other than any abortion or treatment described in section 213(g)(2)) shall be included in the gross income of such beneficiary”.

(d) EFFECTIVE DATES.—

(1) FSA REIMBURSEMENTS.—The amendment made by subsection (a) shall apply to expenses incurred with respect to taxable years beginning after the date of the enactment of this Act.

(2) DISTRIBUTIONS FROM SAVINGS ACCOUNTS.—The amendments made by subsection (b) and (c) shall apply to amounts paid with respect to taxable years beginning after the date of the enactment of this Act.