Life | Taxpayer Funding of Abortion

Overview

The issue of taxpayer funding of abortion has been debated since the U.S. Supreme Court’s decision in Roe v. Wade legalizing abortion on-demand throughout the country. The passage of the Patient Protection and Affordable Care Act (PPACA) in 2010 has only complicated and further raised the stakes in this continuing debate. But at the root of this issue is the question of whether taxpayers should be forced to subsidize an activity that they find to be morally repugnant.

Poll after poll reveals that Americans do not want their tax dollars paying for abortions, and one poll showed that 61 percent of the public opposes taxpayer funding of abortion.¹ The issue of taxpayer subsidization of abortion can be broken down into two categories: direct subsidization and indirect subsidization. In Arizona, other states, and at the federal level, laws have been enacted and upheld by the courts which prohibit taxpayer money from directly paying for elective abortions and which respect the rights of taxpayers to not directly subsidize the abortion industry.

However, millions of taxpayer dollars continue to go to abortion providers annually through Medicaid and other programs. These public funds indirectly subsidize the abortion business by freeing up additional money to be spent on abortion services. Despite numerous state efforts to cut off this indirect subsidization, few have been successful.

Issue Analysis

Combatting Direct Subsidization of Abortion

Almost as long as abortion on-demand has been legal, federal and state laws have been in place to prohibit taxpayer funds from directly paying for elective abortions. In 1976, Congress enacted the Hyde Amendment, which prohibited Medicaid coverage of most abortions.² Although the law was immediately challenged in court, the U.S. Supreme Court upheld the authority of Congress to pass the Hyde Amendment.³ In its decision, the Court stated that “abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life,” and “it simply does not follow that a woman’s freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices.”⁴
Since then, Congress has continued to pass the Hyde Amendment as a “rider” to budget and appropriation bills.5

Coinciding with the passage of the Hyde Amendment at the federal level, states began enacting laws prohibiting direct taxpayer funding of abortion, and Connecticut was one of the first states to pass such a law.6 That law was also challenged, and just as it did with the Hyde Amendment, the U.S. Supreme Court upheld the Connecticut law. The Court ruled that states have the authority “to make a value judgment favoring childbirth over abortion and to implement that judgment by the allocation of public funds.”7

Arizona Law

Arizona has a longstanding public policy against providing taxpayer money or benefits for abortion. Current Arizona law protects taxpayers from being forced to directly pay for the performance of abortions, and Arizona’s Medicaid program, the Arizona Health Care Cost Containment System (AHCCCS), must only pay for abortions to save the life of the mother and “medically necessary” abortions for indigent women.8

Combatting Indirect Subsidization of Abortion

As briefly mentioned above, despite the clear prohibition and obvious public policy against taxpayer dollars funding abortions, abortion providers continue to receive tax dollars through grants and programs like Medicaid. These taxpayer dollars subsidize the abortion business by freeing up additional money to be spent on abortion services. Additionally, a Medicaid patient who receives services such as Medicaid-covered family planning services from an abortion provider might not otherwise have had a relationship with an abortion provider. Once that relationship is established, the patient will be more likely to return to that abortion provider if that patient has an unexpected pregnancy. Thus, abortion providers’ participation in Medicaid necessarily benefits them both financially and through creating a stream of patients for the abortion side of the business.

Attempts by states to cut off abortion providers from public funding and this “patient stream” have achieved mixed results, and most have ended up in court. Part of the reason for these mixed results is that each state’s Medicaid program is different. For example in Texas, lawmakers have successfully disqualified abortion providers and their affiliates from the state-run Women’s Health Program.9 The key factor in that case is that Texas’ program is state-run.

In contrast to Texas, efforts to cut off abortion providers from public funding in states like Indiana and Arizona, which operate within the joint federal/state Medicaid program, have been largely unsuccessful. Indiana’s law was immediately challenged in court and ultimately struck down by the Seventh Circuit Court of Appeals in 2012 for violating the federal Medicaid law.10 Similarly, the Ninth Circuit Court of Appeals recently invalidated the CAP-supported HB 2800, which sought to cut off taxpayer funding to abortion providers, which means abortion providers continue to receive taxpayer funds in Arizona as well.11
Impact of the PPACA

Although there are many pieces of the PPACA that can be hotly debated, the law primarily impacts the issue of taxpayer funding of abortion in a few key ways. First, the law calls on each state to expand its Medicaid population to 133% of the Federal Poverty Level (FPL). This is problematic. Because few attempts have been successful in cutting off abortion providers from taxpayer Medicaid funding, expanding the Medicaid population greatly increases the indirect subsidization of the abortion industry. Moreover, this also increases the patient stream for abortion providers as discussed above. In 2013, Arizona expanded its Medicaid population to 133% of the FPL pursuant to the PPACA.

Second, the PPACA requires that health care exchanges be set up in each state so that some citizens may purchase partially subsidized private health care plans. Facing the potential that plans available on the exchanges may include coverage of elective abortions, many states have passed laws to prohibit any plans offered through the exchanges from providing coverage for abortions unless it is offered as a separate optional rider for which an additional insurance premium is charged. Arizona was the first state to pass such a law when it passed CAP-supported SB 1305 in 2010. To date, approximately 22 states have passed opt-out laws prohibiting abortion coverage on their state health care exchanges.

Finally, in late 2013 the Obama administration announced that health insurance coverage for Congress and Congressional staff would include coverage for elective abortion and would be paid for via the PPACA. This unilateral move by the executive branch goes against the majority of Americans on this issue and unequivocally places taxpayers on the hook to pay for elective abortions with their tax dollars.

Talking Points

- Americans agree that the abortion industry should not be subsidized with taxpayer dollars. Polls consistently show strong majorities of Americans oppose taxpayer funding of abortion.

- A woman’s legal right to choose an abortion does not demand that taxpayers subsidize or pay for an abortion. Courts have repeatedly held that states are not required to provide public funding for elective abortions.

- Any taxpayer dollar that flows to abortion providers for non-abortion services frees up another dollar for abortion.
In spite of the majority of Americans believing that public funds should not subsidize the abortion industry, abortion providers continue to receive taxpayer dollars across the country and in Arizona. The passage and implementation of the PPACA has only complicated this issue, which is likely to continue being debated in the coming years as lawmakers seek to close the loopholes that allow for the direct and indirect subsidization of the abortion industry.