

# EXECUTIVE ORDER CAN'T OVERRIDE ABORTION PROBLEMS IN SENATE HEALTH CARE BILL

Recent reports have floated the idea of an executive order issued on the abortion issue, following House passage of the Senate health care bill. Pro-life groups and precedent both tell us this won't work.

## Pro-Life Groups on Executive Order:

*US Conference of Catholic Bishops*: “**No** regulation, policy letter from HRSA, or other **executive action can withstand a statutory mandate**, construed by federal courts applying a constitutional decision on abortion.”

*National Right to Life Committee*: “If the [Senate] bill is signed into law, **these statutory requirements and defects are not subject to correction or nullification by the chief executive or his appointees, whether by Executive Order, regulation, or otherwise.**”

*Americans United for Life*: “The proposal to address the problem of abortion funding in the health care bill through use of an Executive Order is a tacit acknowledgement that the bill as it stands is pro-abortion legislation ... [I]t also **does not succeed in application**. An Executive Order cannot prevent insurance companies that pay for abortions from participating in the exchanges. Further, Executive Orders can be undone or modified as quickly as they are created. This is a blatant attempt to subvert democracy and should be quickly quashed.”

*Family Research Council* warns against the promise of: “an Executive Order (EO) that would magically fix the fact that the Senate bill (H.R. 3590) would spend government funds to pay for elective abortions. Further, the Reconciliation bill will make matters worse by increasing funding for community health centers, which will bypass any abortion funding restrictions in appropriations bills because it is directly appropriated. Both taken together will fund abortion, regardless of any EO.”

## Precedent on Executive Order:

Court rulings in prior cases demonstrate that statutory laws cannot be overridden by regulations or executive orders. The Constitution strictly reserves the role of lawmaking to the Congress, not the President.

- The Supreme Court struck down an executive order issued by President G.W. Bush because Congress, in enacting a statutory military commissions system, had impliedly prohibited the President's invocation of military commission jurisdiction over Hamdan. *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006).
- The District of Columbia Court of Appeals struck down an executive order issued by President Clinton which authorized sanctions on federal contractors that exercise their legal right to permanently replace economic strikers. The court ruled that the executive order was regulatory in nature and was preempted by the NLRB, which guarantees employers the right to hire permanent replacements. *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322 (1996).
- The Supreme Court struck down President Truman's executive order during the Korean War that purported to authorize assuming federal control of certain domestic steel mills due to labor unrest. The Court here ruled that this was an unconstitutional exercise of the lawmaking authority reserved to Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).