



Defunding Planned Parenthood: Claim and Response

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Abortion giant Planned Parenthood has been a recipient of federal dollars under Title X of the Public Health Service Act and via Medicaid reimbursements, among other sources. Last reporting year, Planned Parenthood received \$528 million in taxpayer dollars – 41% of its total revenue – a significant portion of which comes from these federal government programs.

In July 2015, the Center for Medical Progress began releasing a series of undercover videos documenting leading Planned Parenthood executives haggling over the price of fetal body parts, as well as describing the use of the illegal partial-birth abortion procedure to secure intact organs. These videos have galvanized the conservative movement to demand that Congress finally defund Planned Parenthood.

But on September 30th, 2015, the House voted 277-151 to pass a so-called “clean” two-month continuing resolution (CR) that preserved federal funding for Planned Parenthood. This CR sets a new deadline for December 11, providing another opportunity to defund Planned Parenthood through the appropriations process.

Devaluing Life: Last year, Planned Parenthood was responsible for performing over 327,000 abortions – 1 in 3 abortions performed in the United States. While arguing that preventive care constitutes the bulk of their operations, the number of cancer screenings provided by Planned Parenthood has decreased by 50% since 2004, while the number of abortions performed annually has increased over the same time. In fact, abortion constitutes 94 percent of Planned Parenthood’s pregnancy-related services (abortion, prenatal care, and adoption referrals). Planned Parenthood has even opposed legislation that would protect infants born alive after a failed abortion.

This all occurred while federal law prevented the use of federal dollars in performing abortions – a provision circumvented by Planned Parenthood’s creative accounting and the fungibility of federal dollars.

Power of the Purse: Defunding Planned Parenthood involves attaching a legislative rider to an annual spending bill that withholds all federal dollars from Planned Parenthood. This would include tax dollars received from both Title X family planning funds and Medicaid.

As James Madison noted in *Federalist 58*,

The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of the government. . . . This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

In today’s Congress, this power is partly employed through the use of legislative riders onto spending legislation, which enables Congress to stipulate the conditions under which the people’s money is spent. Members of Congress should clearly communicate that they will oppose any appropriations legislation that continues funding for Planned Parenthood.

Claim: Planned Parenthood cannot be defunded via the appropriations process, as its money comes from a mandatory funding stream.

Response: Annual appropriations bills routinely carry funding limitations to block all sorts of activities, as well as make changes to mandatory spending. One particular rider, the Hyde Amendment (which bars the use of federal funds to pay for elective abortion), has been attached as a rider to a number of appropriations bills since 1976.

Additionally, Medicaid's budget is appropriated annually. According to the Congressional Research Service:

While most mandatory spending programs bypass the annual appropriations process and automatically receive funding each year according to either permanent or multi-year appropriations in the substantive law, Medicaid is funded in the annual appropriations acts. For this reason, Medicaid is referred to as an 'appropriated entitlement.' ... While most changes to the Medicaid program are made through statute, the fact that Medicaid is subject to annual appropriations process provides an opportunity for Congress to place funding limitations on specified activities in Medicaid, including the circumstances under which federal funds can be used to pay for abortions.

Claim: Medicaid is a state-run program and the federal government doesn't have the jurisdiction to stop funding to Planned Parenthood.

Response: Medicaid is a federal program. Though much of it is administered by states, it is funded by federal dollars and subjected to restrictions in federal law. As such, it is under the jurisdiction of the federal government. In fact, when certain states have attempted to remove Medicaid funding for Planned Parenthood in the past, their attempts have been struck down by federal courts precisely because such a measure is under the jurisdiction of the federal government.

Claim: States have already tried to defund Planned Parenthood, and federal courts have struck down the attempts.

Response: It is true that some state attempts to defund Planned Parenthood, such as Indiana's, have been struck down by federal courts. Part of Planned Parenthood's funding comes through Medicaid, a program that, though administered by the states, is still subject to a number of federal regulations. States which sought to restrict Medicaid funding to Planned Parenthood ran afoul of a provision in federal law that allows recipients of Medicaid to choose their own provider.

In short, states and localities face obstacles because of federal law. This isn't an obstacle for Congress, since Congress is the body that creates and amends that law.

Claim: No federal dollars that Planned Parenthood receives are allocated to abortions.

Response: It is true that federal dollars cannot be used to directly fund elective abortions. However, the government funding that American taxpayers have provided to Planned Parenthood for other services has freed up other resources that allowed the organization to become the nation's largest abortion provider. During its last reporting year, Planned Parenthood received over \$528 million in government funding, which made up 41% of the organization's total revenue. Because of the fungible nature of money, government funding for one program frees up resources to be allocated elsewhere. Federal dollars ultimately do end up funding abortions, even if they are listed elsewhere on a ledger sheet.

Claim: Planned Parenthood provides essential women's health care, with abortions comprising only 3% of their services.

Response: Planned Parenthood claims that abortion is only 3% of its services, but it arrived at this number through creative accounting practices. The calculation counts each "discrete clinical interaction" as a separate medical service, meaning that simple tests or routine provisions of birth control are given the same weight as an abortion – despite the time-intensiveness and profitability of abortion (at approximately \$1500 per procedure). The extent to which these services provide a cover for the organization's core operations is demonstrated by the

lack of the devices necessary to conduct basic women's health services – not a single Planned Parenthood clinic has the ability to conduct a mammogram.

There are more than 9,000 federally qualified health centers throughout the country that are capable of providing comprehensive primary health care for women, without the need to become entangled with abortion. According to [a report from The American Perceptions Initiative](#), 78% of Americans believed that the government should not fund an organization that harvests and sells baby parts from aborted children, and 72% believe that taxpayer dollars would be directed towards health centers and hospitals that provide comprehensive women's health care.

Claim: Defunding Planned Parenthood is an unconstitutional bill of attainder.

Response: Article I, Section 9 of the U.S. Constitution states that “No Bill of Attainder or ex post facto law shall be passed.” In *Selective Service v. Minnesota Public Interest Research Group*, the Supreme Court defined a bill of attainder as a “law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.” In order to be ruled a bill of attainder, a legislative act must 1) specify the affected persons, 2) include punishment, and 3) lack a judicial trial.

In *ACORN v. United States*, the Second Circuit Court of Appeals ruled that a 2009 law defunding ACORN by name did not constitute a bill of attainder because it did not meet the historical, functional, or motivational tests for punishment. Historically, the statute did not involve traditional forms of punishment, such as imprisonment, banishment, death, or other similarly severe consequences. Functionally, the statute furthered non-punitive purposes. Motivationally, there was no legislative record overwhelmingly reflecting a clear intent to punish, as opposed to merely ensuring that tax dollars no longer flowed to the organization.

Similarly, a statute defunding Planned Parenthood would not fulfill the historical, functional, and motivational criteria. Defunding Planned Parenthood would not involve consequences historically recognized as punishment, it would further the non-punitive legislative purpose of protecting human life, and it would not overwhelmingly reflect a clear legislative intent to punish.

Claim: Defunding Planned Parenthood would result in a government shutdown, causing conservatives to lose face.

Response: This effort will set up a major political confrontation with President Obama, but it is the sort of conflict that will allow conservatives in the House of Representatives to remind the American people that it is taxpayer dollars that enable the horrors we've witnessed from Planned Parenthood, and that a defunding rider could pull out the supports propping up the abortion industry.

If House conservatives insist on defunding Planned Parenthood, it is possible that the Obama Administration will shut the government down. This would not be the end of the world, and it needs to be an option. President Clinton shut the government down in 1995 by refusing to sign legislation funding the government. While most pundits in Washington, DC believe this was a catastrophic political failure for Republicans, it is a fact that the House Republicans maintained their majority in 1996, even with a popular president of another party on the ticket. Their willingness to not accept all of Clinton's demands was crucial towards eventually balancing the budget and reforming welfare.

Similarly, in 2013, House Republicans fought to defund Obamacare, and President Obama with Senate Democrats ultimately shut the government down. Again, pundits have heralded this as a political failure for the Republican Party, but the fact remains that Republicans grew their majority to their largest since 1929-30, and took control of the Senate. Meanwhile, Obamacare continues to be destabilized.

Claim: Planned Parenthood can dissolve and reform under a different name. ACORN did this in response to a bill from Congress cutting off their funding.

Response: ACORN did dissolve in 2010, after a bill passed Congress specifically defunding the organization. But they did not reform as a national organization. Instead, various state organizations splintered off and formed

their own groups. While remnants of the organization were able to survive defunding by Congress, the blow to the organization was decisive.

Each organization has different structures and streams of revenue. Though Planned Parenthood's path to becoming the nation's abortion giant was made possible by federal funds (which provided 41% of the organization's revenue in 2014), they still receive considerable funding from private donors. Dissolving and reforming would be a significant blow to Planned Parenthood's branding, as well as their corporate sponsorships. Transferring ownership of facilities and resources is also a long and arduous process. If Planned Parenthood decides to dissolve and reform, it will still be a significant blow to their ability to perform 327,000 abortions a year, and a significant blow to the abortion-on-demand movement as a whole.

Claim: Congress should ban funding flowing to any abortion provider.

Response: Congress could attach a broader rider aimed at all taxpayer funding of abortions, and we would support such a policy. But given the blatant disregard for human life showed by this particular organization – which happens to perform 1 out of every 3 abortions in the country – Planned Parenthood is a good place to start.

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