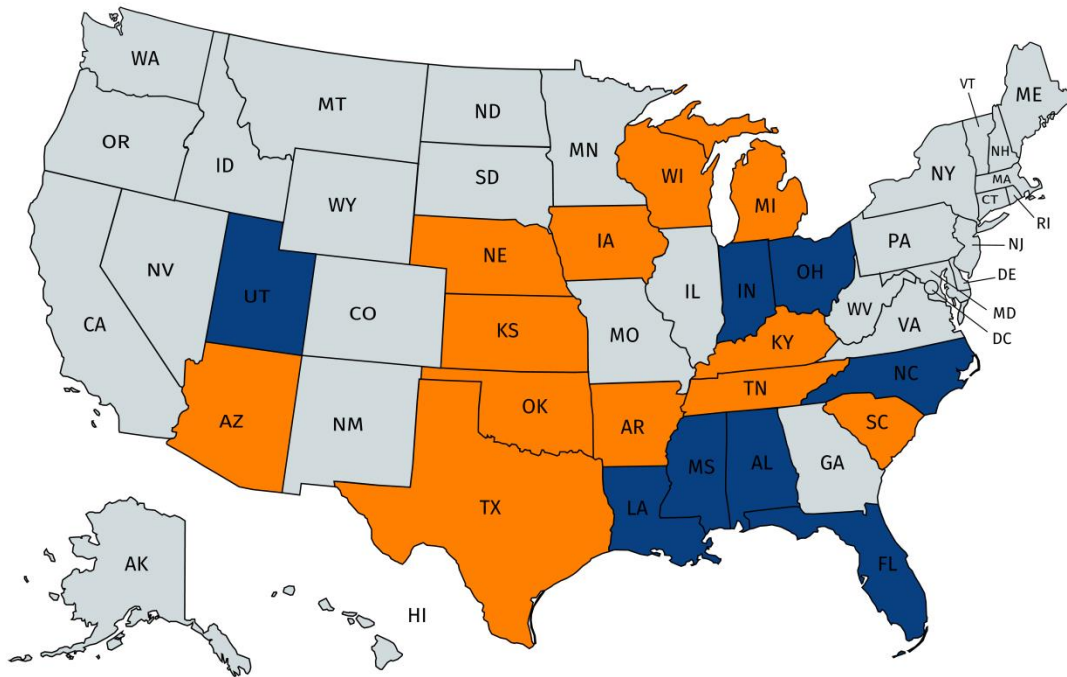


# HOW TO DEFUND ABORTION GIANTS

In recent years, several states have passed laws that attempt to defund abortion giants like Planned Parenthood and similar abortion facilities, both directly and indirectly. Title X allocates for Medicaid funds to be distributed to the states by the federal government for the purpose of supplementing family planning programs. The states contract with public and private entities to provide those family planning services. Legislators in some states have worked to restrict government funding to these facilities by refusing to contract with them, or any abortionist. Naturally, the minute a state passes legislation intent on defunding abortion facilities, the national abortion giants file suit against that state.



State Efforts to Defund Planned Parenthood through Title X Grants

- States where defunding is in effect
- States where defunding is not in effect

Two techniques have tried to revoke Title X funding from big abortion facilities. Only one of those two has been successful. This guide will clarify the differences in legislative language so states may pursue bills that have a successful strategy for limiting funding to abortion groups.

1. Fund Prioritization: Seven states (AZ, KS, KY, MI, OK, TN, and WI), have passed laws with some success in defunding the abortion industry by prioritizing the types of medical centers that receive Title X funding. Under this plan, states create a hierarchy of provider classifications, and distribute funds from the top category first, then to the second, third, etc. By the time the lowest classification, which includes abortion facilities like Planned Parenthood, is eligible for the awards, there is little to no funding available for abortion facilities to receive.
  - a. It is critical to note that the language of the bills in KS, OK, and WI, do not even mention the word abortion. This is the easiest way to prevent judicial scrutiny, since any effort to explicitly leave out abortion facilities will be struck down as unconstitutional. One subsection of Arizona's law does mention abortion, and that part of the law was struck down as unconstitutional, even though the rest of the law remained intact. Michigan prioritizes to entities that do not offer abortion, although it does not prohibit funds from being given to abortion facilities if they are the only groups remaining.
  - b. Another reason that this method has been successful is because it does not clearly target abortion giants, rather, it creates tiers placing them in a lower priority tier that is unlikely to be funded.
  
2. Explicit Defunding<sup>1</sup>: Eight states, including (AZ, AR, FL, IN, NE, LA, MS, OH), have passed laws that explicitly prohibit Title X funds from going to private or public entities that provide abortions, except in cases where the mother's life is at risk. Three states (NC, UT, and TX), prohibit the state from entering into a contract with an entity that performs abortions.
  - a. The courts have struck down any law that uses abortion as a litmus test for contracting. They argue that a state cannot discriminate against an entity for performing actions that it has a constitutional right to do. Whether the statutes name the abortion giant or not, they cannot prohibit contracts with companies that provide abortions.
  - b. Furthermore, entities cannot be excluded through efforts to prevent the use of public funds for abortions, either directly or indirectly. Under the Hyde amendment, federal funds cannot be used to provide abortions except in cases of rape, incest, or the life of the mother. Most states have similar laws as well. Since groups are already prohibited from mixing public and private funds, any argument for excluding abortion facilities like Planned Parenthood to prevent this would require evidence that funds are currently being commingled. Even though these funds are indirectly supporting abortion by aiding a company that provides them, they are not used to directly fund them and therefore cannot be restricted.

1. The undercover videos of Planned Parenthood have unfortunately been proven to be an unviable method to block funds. Multiple states have decided to terminate contracts arguing that Planned Parenthood has violated their agreement, or, is not providing quality care. Most courts have since stated that the videos are irrelevant to the quality of care provided to women, and cannot be used as a basis to defund Planned Parenthood.

## Specific Laws Directed at Defunding Planned Parenthood

June 25, 2018

State	Year Enacted	Description	Court Case	Status
Alabama  Governor's Order	2015	Terminated Medicaid contract with Planned Parenthood on the basis of undercover videos.	<i>PLANNED PARENTHOOD SOUTHEAST, INC.; and JANE DOE</i> , v. <i>ROBERT BENTLEY</i> , Governor of Alabama, in his official capacity; and <i>STEPHANIE McGEE AZAR</i> , Acting Commissioner, Alabama Medicaid Agency, in her official capacity, Defendants. (U.S. Dist. Oct. 28, 2015)	Permanent Injunction
Arkansas  A.C.A. § 20-16-1602	2015	Prohibits the state from entering into contract with or awarding grants to any entity that performs abortions, or has an affiliate that performs abortions.	<i>Planned Parenthood Ark. &amp; E. Okla. v. Selig</i> , 313 F.R.D. 81 (E.D. Ark. Jan. 25, 2016) Decision was upheld by 8 <sup>th</sup> Circuit Court of Appeals	In effect
Arizona  A.R.S. § 35-196.05	2012	Prioritization of Title X funds to state facilities, then to hospitals, then to rural clinics, then primary health providers. Prohibits the state from contracting with abortion facilities	<i>Planned Parenthood Ariz., Inc. v. Betlach</i> , 922 F. Supp. 2d 858 (D. Ariz. Feb. 8, 2013) While it maintained the prioritization structure, the court struck down the ban on contracting with abortion facilities.	Partially in effect
Florida  Fla. Stat. § 390.0111	2016	No government entity may expend funds or enter into contract with abortion facilities.	<i>Planned Parenthood of Southwest v. Philip</i> , 194 F. Supp. 3d 1213 (N.D. Fla. June 30, 2016)	Permanent Injunction

State	Year Enacted	Description	Court Case	Status
Iowa  Iowa Code § 217.41B (Section 90)	2017	Discontinues Medicaid family planning waiver and replaces it with state family planning services which will not provide funding for abortion organizations	None	In effect July 1, 2017
Indiana  <i>Burns Ind. Code Ann. § 5-22-17-5.5</i>	2011	An agency of the state may not enter into contract with or offer a grant to any entity that performs abortion or operates a facility where abortions are performed that involves the expenditure of state or federal funds at the site.	<i>Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. State Dep't of Health</i> , 699 F.3d 962 (7th Cir. Ind. Oct. 23, 2012)	Permanent Injunction
Kansas  K.S.A. § 65-103b	2016	Title X funds are prioritized to public entities, and then to nonpublic hospitals or federally qualified health centers.	None	In effect
Kentucky  KRS § 311.715	2017	Title X funds are prioritized to public entities, and then to nonpublic entities		In effect
Louisiana  Governor's Order	2015	Terminated Medicaid contract with Planned Parenthood on the basis of undercover videos.	<i>Planned Parenthood Gulf Coast, Inc. v. Kliebert</i> , 2015 U.S. Dist. LEXIS 141481 (M.D. La. Oct. 18, 2015)	Permanent Injunction

State	Year Enacted	Description	Court Case	Status
Louisiana La. R.S. § 40:1061.6	2016	Prohibits the government from making any contracts, or awarding any grants to abortion facilities.	<i>Planned Parenthood of Gulf Coast, Inc. v. Gee</i> , 837 F.3d 477 (5th Cir. La. Sept. 14, 2016)	Permanent Injunction
Louisiana House Bill 891	2018	Prohibition of public funding for entities that perform abortions. The state department of health may not enter into contracts with organizations that perform abortions.		In Effect
Michigan <i>MCLS § 333.1091</i>	2003	Title X funds are prioritized to entities that do not practice or refer abortions, and only after that to ones that do.	None	In effect
Mississippi Miss. Code Ann. § 43-13-117.4	2016	Prohibits Medicaid from making payments to entities that perform nontherapeutic abortion or that is affiliated with an entity that performs them.	<i>Planned Parenthood Southeast, Inc. v. Dzielak</i> , 2016 U.S. Dist. LEXIS 148015 (S.D. Miss. Oct. 20, 2016)	Permanent Injunction

State	Year Enacted	Description	Court Case	Status
Nebraska  Legislative Bill 944	2018	Entities that want to receive Title X funding must conform to a legal, physical and financial separation from any entity that performs or counsels for abortion.	None	In effect
North Carolina  <i>2011 N.C. ALS 145 (Section 29.23)</i>	2011	The government not enter contracts for family planning services with any abortion providers.	<i>Planned Parenthood of Cent. N.C. v. Cansler</i> , 877 F. Supp. 2d 310 (M.D.N.C. June 28, 2012)	Permanent Injunction
North Carolina  <i>N.C. Gen. Stat. § 130A-131.15A</i>	2015	Prohibits NC Department of Health and Human Services' Teen Pregnancy Prevention program from using state funds to renew or create contracts with organizations that provide abortion	None	In effect
Ohio  <i>ORC Ann. 3701.034</i>	2016	Prohibits any state funds from being distributed to groups that provide abortions.	<i>Planned Parenthood of Greater Ohio v. Hodges</i> , 188 F. Supp. 3d 684 (S.D. Ohio May 23, 2016); appeal filed. Decision upheld in <i>Planned Parenthood of Greater Ohio v. Lance Himes</i> (April 18, 2018)	Permanent Injunction

State	Year Enacted	Description	Court Case	Status
Oklahoma  <i>63 Okl. St. § 1-747.1</i>	2013	Title X funds are prioritized to public entities, then to nonpublic hospitals, federally qualified health centers, and rural clinics, and finally to nonpublic primary health providers.	None	In effect
South Carolina  Governor's Order	2017	State and local funds must cease to be provided to abortion clinics through any form including grants and contracts		In effect
Tennessee  T.C.A. Title 71, Chapter 5	2018	Direct or indirect use of state funds can not promote or support health clinics providing elective abortions.	None (HB2251)	In effect
Texas  Governor's Order	2016	Terminated Medicaid contract with Planned Parenthood on the basis of undercover videos.	<i>Planned Parenthood of Greater Tex. Family Planning &amp; Preventative Health Servs. v. Smith</i> , 2017 U.S. Dist. LEXIS 24061 (W.D. Tex. Feb. 21, 2017)	Permanent Injunction

State	Year Enacted	Description	Court Case	Status
Texas  SB 1 Budget Bill Rider <b>Must be voted on every year</b>	2017	To the extent allowed by state and federal law, funds appropriated under the 2017 budget act cannot be used by any entities or individuals that provide abortions which aren't reimbursable by Medicaid.	None	In effect
Utah Governor's Order	2015	Ended all funds given to Planned Parenthood on the basis of undercover videos.	<i>Planned Parenthood Ass'n of Utah v. Herbert</i> , 839 F.3d 1301 (10th Cir. Utah Oct. 28, 2016)	Permanent Injunction
Wisconsin  <i>Wis. Stat. § 253.075</i>	2015	Title X funds are prioritized to public entities, then to nonpublic entities. Those nonpublic entities may distribute funds as appropriate, but not to abortion facilities	None	In effect