

April 18, 2023

(202) 626-8820

RE: Scorecard advisory on S.J.Res.10, using the Congressional Review Act to overturn the Biden Administration rule related to VA Interim Final Rule (IFR)

Dear Senator:

The Senate is expected to vote on the motion to proceed to S.J.Res. 10. This resolution employs the Congressional Review Act to nullify the September 9, 2022 Biden Administration Department of Veterans Affairs (VA) rule that provides abortion services through the taxpayer-funded VA health care system.

The National Right to Life Committee (NRLC) urges you to support S.J.Res. 10, NRLC intends to include the roll call on S.J.Res.10 in its scorecard of key pro-life votes of the 118th Congress.

Permanent VA Statute Prohibits the IFR

Since 1992, the VA has been statutorily prohibited from using taxpayer dollars for abortion. On September 9, 2022, the administration disregarded this longstanding statutory prohibition on taxpayer funding for abortion at the VA and issued a new rule, “Reproductive Health Services,” 87 FR 55287, including funding abortion for “**health reasons.**” The IFR authorizes the VA to provide taxpayer-funded abortions and abortion counseling to veterans, as well as eligible spouses and dependents, in direct conflict with both federal and state law.

Congress, for 30 years, has unequivocally prohibited taxpayer-funded abortion. Section 106(a) of the Veterans Health Care Act of 1992 restricts the VA from providing abortions, stating, “In furnishing hospital care and medical services under chapter 17 of title 38, United States Code, the Secretary of Veterans Affairs may provide to women . . . [g]eneral reproductive health care . . . but not including under this section . . . abortions.”

Undefined Definition of “Health” Will Turn Veterans Clinics into Abortion Clinics

The undefined reference to health will mean, as in *Doe v. Bolton* (the companion case to *Roe v. Wade*), that abortions can be done for virtually any reason. The Court held in *Doe* that, “medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the wellbeing of the patient. All these factors may relate to health.”

For the past 30 years, women have long been able to receive care in the rare cases where the mother faced an emergency situation or life-threatening complication. Because there is nothing in the IFR which defines health, the health exception is not limited in any way. This means the VA is now providing abortion on demand, with no limits.

The IFR is the latest in a long string of actions the Biden Administration has taken to promote abortion, regardless of how it violates state and federal laws regarding abortion. One of the goals of this policy is to end-run around state laws that protect unborn children. According to the Department of Veterans Affairs Women Veterans Health Care page, “VA is taking steps to guarantee Veterans and other VA beneficiaries have access to abortion-related care anywhere in the country. VA employees, when working within the scope of their federal employment, may provide authorized services regardless of state restrictions.”

However, federal law cannot immunize VA employees from state laws on abortions. Federal law expressly prohibits VA from providing abortions.

The IFR circumvents the rulemaking process

As a bi-cameral member comment on Interim Final Rule points out,

Moreover, the IFR fails to demonstrate a “good cause” to forgo notice and comment procedures for rulemaking required under the Administrative Procedure Act. The VA does not have the power to override an Act of Congress to impose its preferred policy of taxpayer-funded abortion on demand until birth.ⁱ

For the above reasons, the National Right to Life Committee urges you to support S.J. Res. 10. NRLC intends to include the roll call on S.J.Res.10 in its scorecard of key pro-life votes of the 118th Congress.

Should you have any questions, please contact us at (202) 378-8863, or via e-mail at jpopik@nrlc.org. Thank you for your consideration of NRLC’s position on this important legislation.

Sincerely,



Carol Tobias
President



Scott Fischbach
Executive Director



Jennifer Popik, J.D.
Legislative Director

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<https://www.lankford.senate.gov/imo/media/doc/Lankford%20Bicameral%20Comment%20on%20VA%20IFR%2010.11.22.pdf>