

Congress of the United States
Washington, DC 20515

July 1, 2019

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar,

We encourage swift finalization of the proposed rule, titled “Patient Protection and Affordable Care Act; Exchange Program Integrity,” as it relates to compliance with the separate payment requirement in Section 1303 of the Patient Protection and Affordable Care Act (ACA). We support the rule and sincerely thank the Department of Health and Human Services (HHS) for proposing it. Finalization of this rule is critical and very time sensitive, as Open Enrollment for 2020 begins November 1, 2019.

Section 1303 of the ACA required qualified health plans (QHPs) that covered elective abortions to collect a separate payment—sometimes referred to as an abortion surcharge—of at least \$1 per enrollee per month and deposit it into an abortion account. By no means is this measure consistent with the principle of the long-standing Hyde Amendment; however, it is important that the administration comply with these minimal requirements with transparency. Section 1303 specifically requires:

- QHPs must “collect from each plan” a “separate payment” of not less than \$1 per month for any elective abortions covered.
- QHPs must deposit these separate elective abortion payments into “a separate account that consists solely of such payments and that is used exclusively to pay” for elective abortions.

Unfortunately, in an exercise of executive overreach, the Obama Administration undermined Section 1303 by interpreting “separate” to mean “together” in subsequent regulatory guidance. Blatantly disregarding congressional authority, the guidance stated that simply sending a single notice about the surcharge or itemizing the abortion surcharge on monthly bills would satisfy the requirement under Section 1303. This meant QHPs could collect the “separate” abortion surcharge payment “together” with the remaining premium in one check. This misinterpretation of the law created a hidden abortion surcharge in many health care plans on exchanges throughout the nation, requiring enrollees to—in some cases unknowingly—subsidize elective abortion.

The proposed rule is consistent with the clear meaning and congressional intent of Section 1303 and eliminates the hidden abortion surcharge in many ACA plans. While this requirement does

not change the fact that the ACA violates the precedent of the long-standing Hyde Amendment through its involvement of tax dollars in subsidies to abortion-covering plans, it is an important step in providing transparency and awareness for enrollees.

As stated in a letter sent to HHS in January, we are concerned that the proposed rule neglected to directly address the Obama Administration's deliberate misinterpretation of the law. We hope the final rule will clearly acknowledge the illegality and extent of this executive overreach in the prior regulation.

We were grateful to see an indication from the Office of Management and Budget that the rule may be finalized in August. We continue to urge swift action to finalize the rule in time for 2020 Open Enrollment. Failing to do so will result in another year of noncompliance with the requirements of Section 1303. It is time for the Obama-era regulation to be replaced.

Sincerely,



Cindy Hyde-Smith
United States Senator



Michael Cloud
Member of Congress



Deb Fischer
United States Senator



Steve Scalise
Member of Congress



Joni K. Ernst
United States Senator



Vicky Hartzler
Member of Congress



Marsha Blackburn
United States Senator



Christopher H. Smith
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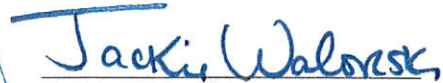
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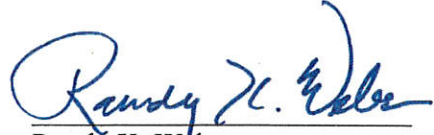
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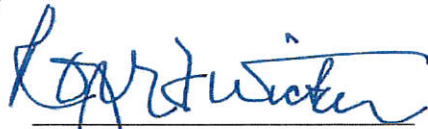
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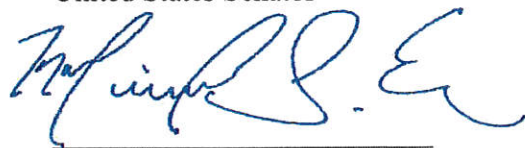
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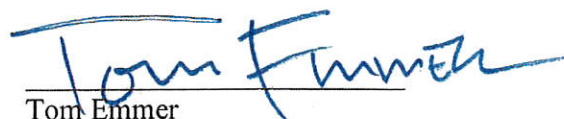

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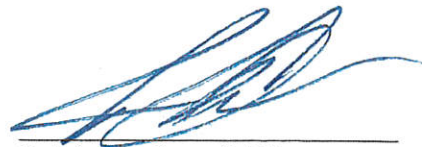

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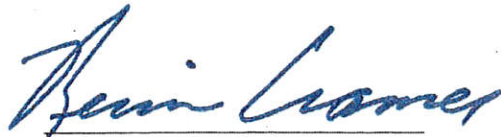

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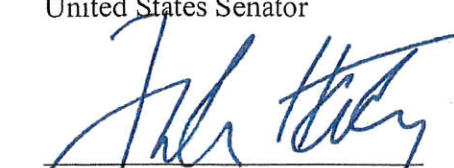

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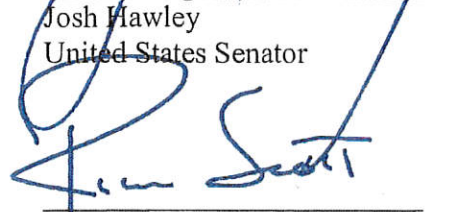

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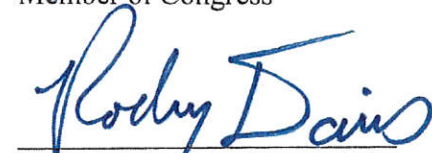

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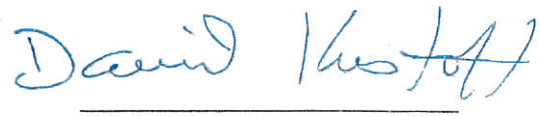

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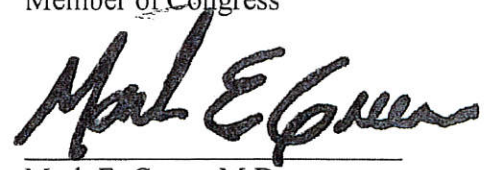

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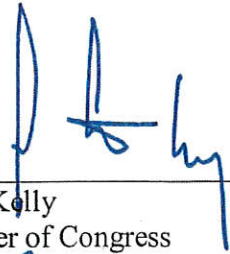

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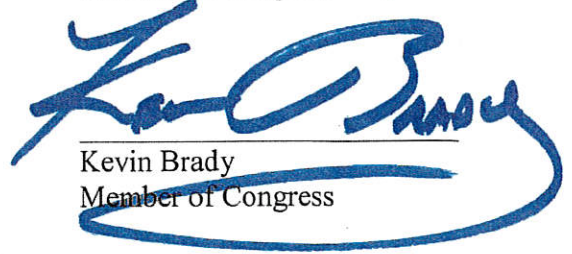
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Ben Cline
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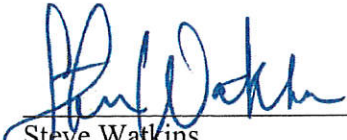
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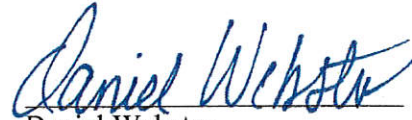
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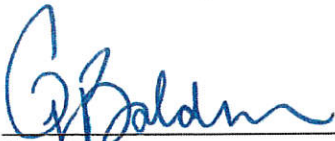
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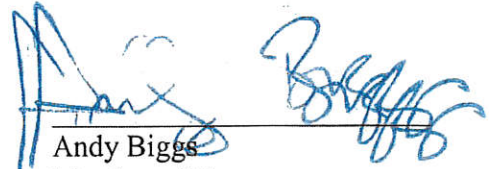
Troy Balderson
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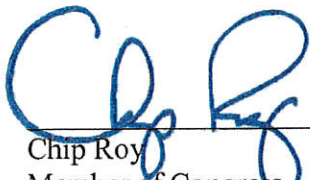
Greg Gianforte
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John Rose
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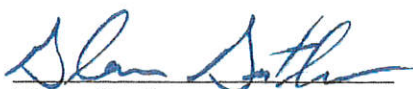
Andy Biggs
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Chip Roy
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Dan Newhouse
Member of Congress



Glenn Grothman
Member of Congress



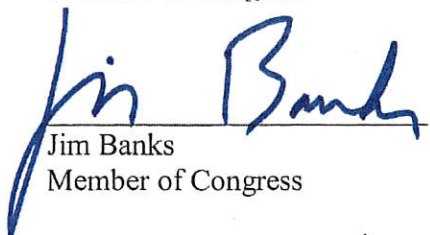
Dusty Johnson
Member of Congress



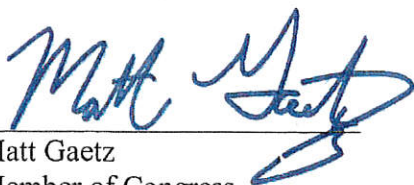
Ron Estes
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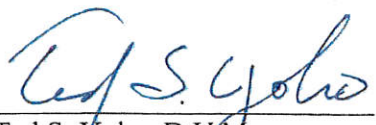
Mike Kelly
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Jim Banks
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Matt Gaetz
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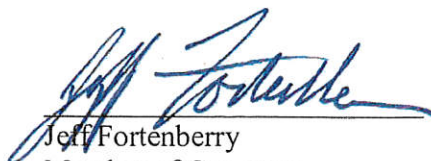
Ted S. Yoho, D.V.M.
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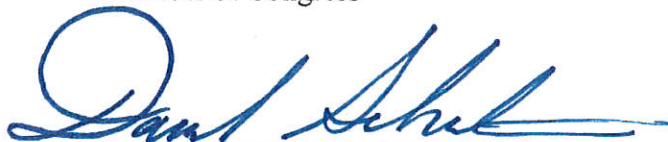
Paul Gosar, D.D.S.
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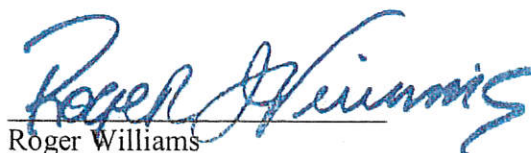
Joe Wilson
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Jeff Fortenberry
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David Schweikert
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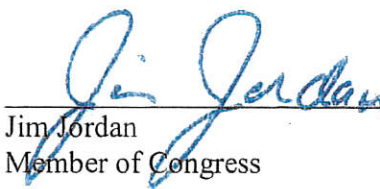
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Sean Duffy
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Mark Walker
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Jim Jordan
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Tom Graves
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Pete Olson
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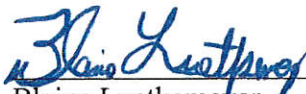
Mark Meadows
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Steve King
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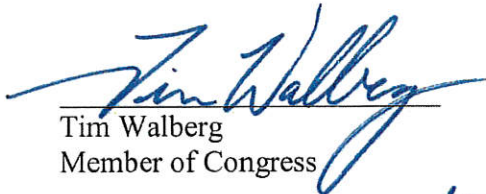
Bill Flores
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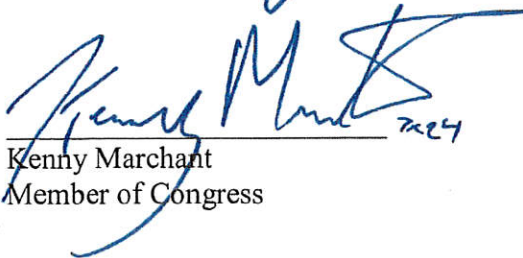
Blaine Luetkemeyer
Member of Congress



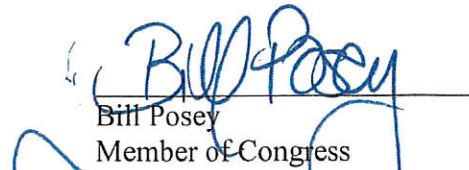
Brian Babin
Member of Congress



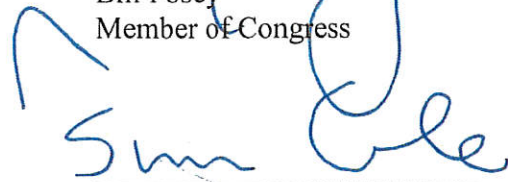
Tim Walberg
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Kenny Marchant
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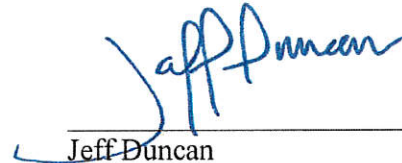
Bill Posey
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Tom Cole
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Gus M. Bilirakis
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Jeff Duncan
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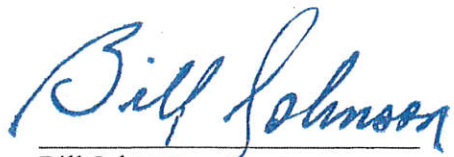
Chris Stewart
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Louie Gohmert
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Andy Harris, M.D.
Member of Congress



Bill Johnson
Member of Congress



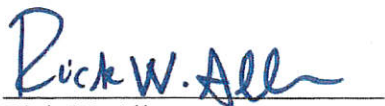
Steven M. Palazzo
Member of Congress



Doug Lamborn
Member of Congress



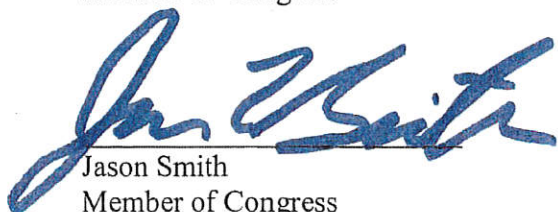
Debbie Lesko
Member of Congress



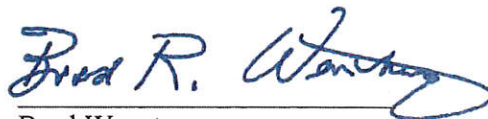
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Steve Chabot
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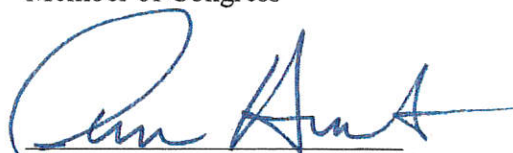
Jason Smith
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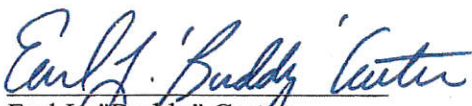
Brad Wenstrup
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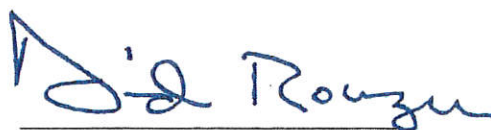
Rick Crawford
Member of Congress



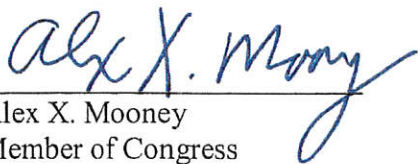
Duncan Hunter
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Earl L. "Buddy" Carter
Member of Congress



David Rouzer
Member of Congress



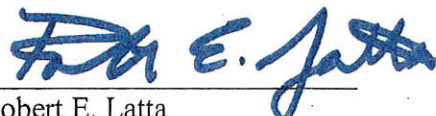
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Member of Congress



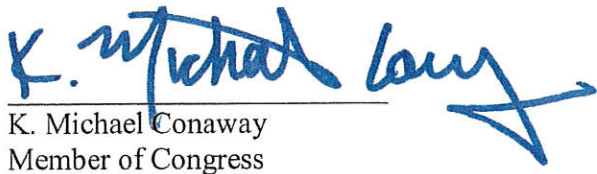
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Clay Higgins
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Anthony Gonzalez
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Carol D. Miller
Member of Congress


Rob Wittman
Member of Congress

October 21, 2019

Administrator Seema Verma
Centers for Medicare & Medicaid Services
Department of Health & Human Services
200 Independence Ave. SW
Washington, D.C. 20201

Dear Administrator Verma,

We are grateful for the ongoing efforts within the Trump administration and the Department of Health and Human Services to align health-related policies with pro-life principles, to protect women and their unborn babies, and to protect taxpayers from being unwilling participants in abortion funding. To continue this goal, we write to urge the finalization of the abortion separate payments rule.

Since 1976, the Hyde Amendment has prohibited federal funding through Health and Human Services to cover elective abortions or insurance plans that include elective abortion coverage. Research shows that by the end of 2018, over 2.3 million babies have been saved as a result of this amendment. This policy applies to Medicaid and other federal health care programs.

The sole deviation from the Hyde principle is Obamacare. Contrary to the Hyde principle, Section 1303 of the Affordable Care Act expressly allows abortion coverage in taxpayer-funded health insurance plans as long as the insurer collects a separate abortion surcharge of at least \$1 per enrollee per month.

The Obama administration went on to implement their own law with a gross misinterpretation of it, requiring "separate" to mean "together." This gave insurance companies the ability not only to cover elective abortion, but to do so while creating hidden abortion surcharges, for enrollees who are unknowingly paying into plans that subsidize elective abortion.

We were very supportive of the November 2018 Department of Health and Human Services proposed rule, "Patient Protection and Affordable Care Act; Exchange Program Integrity," which would bring federal regulations into compliance with the clear meaning of Section 1303. While including abortion at all in government subsidized health insurance plans runs afoul of the long-standing principle of the Hyde Amendment, requiring separate payments is an important first step in correcting this wrong and providing transparency.

As we near the one year anniversary of the proposal of this rule, we strongly urge its finalization and swift implementation.

Sincerely,

Marjorie Dannenfelser
President
Susan B. Anthony List

Tom McClusky
President
March for Life Action

Catherine Glenn Foster
President & CEO
Americans United for Life

Carol Tobias
President
National Right to Life Committee

Donna J. Harrison, M.D.
Executive Director
American Association of Pro-Life Obstetricians
and Gynecologists

Lila Rose
Founder and President
Live Action

Travis Weber
Vice President for Policy and Government
Affairs
Family Research Council

Kristan Hawkins
President
Students for Life

Fr. Frank Pavone
National Director
Priests for Life

Austin Ruse
President
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Eunie Smith
President
Eagle Forum

Thomas A. Glessner, J.D.
President
National Institute of Family and Life Advocates

Alexandra Snyder, Esq.
Executive Director
Life Legal Defense Foundation

Janet Morana
Co-founder
Silent No More Awareness Campaign

Joe Langfeld
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Human Life Alliance

Eric J. Scheidler
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James Nolan
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Crossroads Pro-Life

Fr. Shenan J. Bouquet
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Human Life International

Brian Gibson
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CEO & President
Concerned Women for America LAC

Russell Moore
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Southern Baptist Ethics & Religious Liberty
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Jessica Anderson
Vice President
Heritage Action for America

Ryan Bomberger
Chief Creative Officer
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Allan E. Parker Jr
President
The Justice Foundation

Cynthia Collins
Global Advisor
Operation Outcry

Cheryl Sullenger
Senior Vice President
Operation Rescue

Jordan Sekulow
Executive Director
American Center for Law and Justice

Jo Ann Gerling
Director
Coalition on Abortion Breast Cancer

Rabbi Pesach Lerner
President
Coalition for Jewish Values

Steven Ertelt
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LifeNews.com

Terry Schilling
Executive Director
American Principles Project

Bev Cielnicky
President
Crusade for Life, Inc.

David Nammo
CEO & Executive Director
Christian Legal Society

Cathie Humbarger
Executive Director
Allen County Right to Life

John Helmberger
Chief Executive Officer
Minnesota Family Council

Elisa Martinez
Founder and Executive Director
New Mexico Alliance for Life

Lois Anderson
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Oregon Right to Life

Brad Mattes
President
Life Issues Institute

Larry Cirignano
DC Representative
Children First Foundation

Cathi Herrod
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Center for Arizona Policy

Melissa Clement
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Nevada Right to Life

Tami Fitzgerald
Executive Director
NC Values Coalition

Julaine K. Appling
President
Wisconsin Family Action

