



Written by [Raven Clabough](#) on September 5, 2012

Former Dem. Rep. Stupak Says HHS Mandate is Illegal

The Patient Protection and Affordable Care Act, known as ObamaCare, may not have passed in March of 2010 had it not been for several swing voters, such as former Michigan Democratic Rep. Bart Stupak, who led the pro-life Democrats in efforts against the healthcare law virtually up until the time of the vote. Stupak's vote was swayed by a last-minute deal with President Obama that put Stupak's fears of federally-funded abortions at ease. In order for the president to secure the much-needed pro-life Democrats' votes, he agreed to sign an Executive Order stating that abortions would not be financed through ObamaCare. 

The [Executive Order](#) is 876 words long, totaling two pages. Its stated purpose was to assure that the new healthcare law would not violate existing law and use federal funds to pay for abortion services:

Following the recent enactment of the Patient Protection and Affordable Care Act (the "Act"), it is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment.

The purpose of this order is to establish a comprehensive, Government-wide set of policies and procedures to achieve this goal and to make certain that all relevant actors — Federal officials, State officials (including insurance regulators) and health care providers — are aware of their responsibilities, new and old.

But in January of this year, the Department of Health and Human Services issued a mandate under the Affordable Care Act that requires employer health plans to fund free contraceptives, sterilizations, and abortion-inducing drugs, regardless of the moral or religious objections from the employers. The mandate directly violates the Executive Order the president signed in March 2010.

At the time, critics argued that the president was merely attempting to appease pro-life Democrats, and that the order was futile and would not actually prevent abortions from being covered.

Conservative blogger Breeanne Howe observed, "Following an Executive Order signed by President Obama that supposedly ensured that abortion would not be covered, Stupak declared victory for the pro-life movement. This in spite of the fact that many had said the Executive Order was toothless and would not prevent anything."

Stupak has finally come to the same realization, and is now claiming that the HHS mandate violates the president's Executive Order and "statutory law."

This week, Stupak [appeared](#) on a Democrats for Life panel during the Democratic National Convention in Charlotte, North Carolina. An attendee questioned him and the panel on whether they felt that the



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HHS mandate has put them in a difficult position.

Stupak replied,

Well, I'll let individuals, pro-life Democrats, answer that. I myself do not appreciate the HHS mandate, when you demand that an employer must provide contraceptives despite their moral, legal objections to it. I think that's wrong. I think it violates freedom of religion. I think it violates the Hyde law [amendment] that's been statutory for 40-some years. So, I think there's real problems with it. I think the president is wrong on this one.

He argued that because the mandate covers "contraceptive services" and drugs that induce abortion, the entire thing is "illegal." He continued,

To tell you the truth, I am perplexed and disappointed having negotiated the executive order with the president. Not only does that HHS mandate violate the executive order, it also violates statutory law.

If you go back to the Omnibus Budget Act of 2009, passed by Democratic House, Democratic Senate and signed by President Obama, that is probably the most specific particular language that no funds can be used to promote abortion.

Stupak, did add, however,

At the same time, we have a year to get it implemented — started August 1st — there's a year that the religious organizations must comply. And within that year and from what we've seen, there's a constant discussion, back and forth, between the administration and those of us who are not comfortable with that HHS mandate, and hopefully there will be some changes to that before it becomes effective a year from now.

CNSNews.com probed Stupak on whether he'd had any second thoughts changing his vote:

Do you have any regrets about how, first you were holding strong and then you made the compromise in the end with the [president's] [executive order](#)? A lot of people feel like the executive order doesn't do much and can be overturned in the future by a future president.

Stupak said, "Well, any executive order and any law can be overturned."

CNSNews.com continued, "But the executive order is much easier [to be overturned] by a future president as opposed to a law, which takes an act of [Congress]."

Stupak replied,

Sure, sure, and a future president can overturn it or President Obama can wake up tomorrow and overturn it. But there's no way we could get our language — the Stupak amendment — in the Senate. That's the hard, cold reality. So, we tried other legislative maneuvers. That was the only avenue left to us. And for those of us who felt strongly, that after 100 years it's about time this country has health care for all Americans, I have no regrets.

President Obama has honored the executive order, until we get to this HHS mandate and that's not a closed chapter yet. We're still working on that one with him. So I haven't thrown the baby out with the bath water yet.

There is a possibility that the HHS mandate could be overturned, as members of Congress are taking the Obama administration to [court](#) over it. The American Center for Law and Justice is representing 79



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members of Congress with amicus (friend of the court) briefs filed in 12 separate lawsuits over the requirement.

Edward White, senior counsel for the activist legal team, declared,

It is essential to defeat the HHS mandate. The mandate devastates the religious freedom of all employers seeking to comply with their religious beliefs.

This is not just an issue negatively impacting Catholics. This is an issue negatively impacting employers of all faiths.

Photo of former Rep. Bart Stupak (D-Mich.): AP Images



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