



**TESTIMONY OF JUDY WAXMAN, VICE PRESIDENT FOR HEALTH AND  
REPRODUCTIVE RIGHTS  
NATIONAL WOMEN'S LAW CENTER**

**BEFORE THE SUBCOMMITTEE ON SELECT REVENUE MEASURES OF  
THE HOUSE WAYS AND MEANS COMMITTEE**

**HEARING ON THE TAX-RELATED PROVISIONS OF H.R. 3**

**MARCH 16, 2011**

Mr. Chairman, members of the Committee, I am Judy Waxman, Vice President of Health and Reproductive Rights at the National Women's Law Center (NWLC). Since 1972, the National Women's Law Center has worked to protect and advance the progress of women and their families in core aspects of their lives, with an emphasis on the needs of low-income women. The Center utilizes a wide range of tools—including public policy research, monitoring, and analysis; litigation, advocacy, and coalition-building; and public education—to achieve gains for women and their families, including to protect and advance women's reproductive health and rights. Thank you for the opportunity to submit testimony on the tax-related provisions of H.R. 3, the provisions within the jurisdiction of the Committee.

H.R. 3, as modified by the manager's amendment offered in the House Judiciary Committee, is a dangerous and misleading bill that imposes a devastating tax increase on millions of families and small businesses that want to keep their comprehensive insurance plans that include coverage of abortion. The bill's sponsors argue falsely that it "merely codifies" federal law, which itself is already highly restrictive. By imposing tax increases on insurance plans that include coverage of abortion, H.R. 3 will likely force affected individuals and businesses to drop abortion coverage from their otherwise comprehensive insurance plans, with potentially devastating results for women and their families.

H.R. 3 could render millions of individuals and small businesses ineligible for a wide range of tax credits and deductions simply because their insurance plans include coverage of abortion. For example, H.R. 3 could make millions of small businesses ineligible for the Small Business Health Tax Credit. Enacted as part of the Affordable Care Act, the Small Business Health Tax Credit is worth up to 35 percent of an eligible small business's premium costs in 2010 and will be worth up to 50 percent in 2014.<sup>i</sup> The Council of Economic Advisors estimates that 4 million small businesses are eligible for the credit if they provide health care to their workers.<sup>ii</sup> H.R. 3 makes any insurance plan that includes coverage of abortion—right now, the majority of plans do—ineligible for the Small Business Health Tax Credit.

H.R. 3 will also make millions of individuals otherwise eligible for the premium assistance available under the Affordable Care Act ineligible if their insurance plans include coverage of abortion. Under current law, certain individuals will become eligible for “premium assistance credits” beginning in 2014 to help pay for health insurance.<sup>iii</sup> H.R. 3 makes any insurance plan that includes coverage of abortion ineligible for premium assistance. This is true even though the Affordable Care Act already includes substantial rules to ensure that no federal funds are used to pay for abortion coverage.<sup>iv</sup>

H.R. 3 will also make thousands of unemployed workers ineligible for tax credits to help pay the costs of their premiums if their insurance plans include coverage of abortion. Under current law, workers who lose their jobs as a result of outsourcing or shifts in company production to foreign countries may be eligible for a Health Coverage Tax Credit. The Health Coverage Tax Credit pays 65% of the costs of a qualified health plan premium for eligible workers.<sup>v</sup> H.R. 3 makes any insurance plan that includes coverage of abortion ineligible for the Health Coverage Tax Credit.

H.R. 3 would impose income taxes on money in tax preferred savings accounts, such as a flexible spending or a health savings account, if it is used to pay for abortion care. Under current law, individuals and employers can contribute to these accounts a portion of their wages, which are exempt from taxation so that such funds will be available for medical needs.<sup>vi</sup> Under H.R. 3, a woman who uses funds from a flexible spending or health savings account to pay for an abortion must pay income tax on the funds she uses to cover the procedure.

H.R. 3 would also raise taxes on a woman who spends a large percentage of her income on health needs if part of her needed health care is abortion care. Currently, medical expenses that exceed 7.5% of a taxpayer’s gross income are deductible.<sup>vii</sup> Under H.R. 3 a woman with serious medical complications requiring an abortion that cost tens of thousands of dollars would not be able to deduct the cost of her abortion. She would have to pay higher income taxes than a person with a similarly serious and expensive medical problem because her treatment required that her pregnancy be terminated.

Eliminating tax benefits for individuals and small businesses whose insurance plans include coverage of abortion could result in devastating increased taxes and costs for those who choose to keep their insurance coverage for abortion care. Below are a number of hypothetical examples of the increased taxes and costs that millions of individuals and businesses would face if they keep their abortion coverage.

- Right now, a restaurant with forty half-time employees, wages totaling \$500,000, and \$240,000 per year in health care costs will be eligible for the Small Business Health Tax Credit. If the restaurant’s health insurance plan covers abortion, **H.R. 3 would raise the restaurant’s taxes by \$28,000 a year.**
- A non-profit organization that provides support to children in foster care has nine employees with an average wage of \$22,000 per worker and a total of \$72,000 in

health care costs. Right now, under the Small Business Health Tax Credit, this small non-profit organization would be eligible for a tax credit worth 25% of the costs of their health premiums up to the amount of payroll taxes they paid. If the restaurant's health insurance plan includes coverage of abortion, **H.R. 3 would raise the non-profit organization's annual taxes by \$18,000.**

- Right now, an air conditioning manufacturer with twelve employees, each earning \$35,000 per year, and health care costs totaling \$90,000 is eligible for the Small Business Health Tax Credit. **If the manufacturer's health insurance plan includes coverage of abortion, H.R. 3 would raise the business's taxes by \$14,700 a year.**
- When a local manufacturing plant closed, a man with a wife and three children working as an assembly lineman became eligible for certain federal support, including significant help paying for his monthly insurance premium through the Health Coverage Tax Credit. **Because his insurance plan includes coverage of abortion, however, H.R. 3 would make him ineligible for the benefit and cost him \$9,129.**<sup>viii</sup>
- A single mother with two young children struggled to find insurance coverage in the individual market. Because the family earned just \$24,000 per year and was not offered health insurance through her employer, the family would be eligible in 2014 to buy health insurance through an Exchange and would be eligible for premium assistance credits to help defray its cost. **If the family's health insurance plan includes coverage of abortion, H.R. 3 would cost a single mother earning \$24,000 per year \$3,173 in premium assistance.**

By substantially raising taxes and costs on millions of individuals and employers, H.R. 3 could force not only those individuals and employers to drop abortion from their health insurance plans, but would close down the entire private insurance market coverage of abortion. H.R. 3 prohibits health plans that include coverage of abortion from receiving a range of tax credits. Private insurers are therefore incentivized to exclude coverage of all abortions in order to ensure that they will be able to accept customers who receive federal subsidies.<sup>ix</sup> Similarly, H.R. 3 pushes individuals and small businesses to switch to plans that do not cover abortion by only offering tax-favored treatment to plans that exclude such coverage. This distorts the private market by driving customers away from plans that include abortion coverage, which would likely result in plans dropping abortion coverage. Some have argued that H.R. 3 and related legislation could result in the entire private market dropping abortion coverage, eliminating abortion coverage from the private insurance market altogether and making such coverage unavailable to anyone.<sup>x</sup> Contrary to the misleading bill title, H.R. 3 puts limits on abortion coverage that go far beyond so-called "federal funding;" it also limits the ability of individuals and small businesses to spend their own private premium dollars on insurance that includes coverage of abortion. For example, currently a small business can choose a health insurance plan for its employees. The employer and the employees each make contributions to pay the premium out of their private dollars. At the end of the year, the

employer can claim the Small Business Health Tax Credit, which refunds a portion of the employer's contributions. Under H.R. 3, the employer would not be eligible for the tax credit if the plan included coverage of abortion—even though the premiums were paid entirely by the employer and employee with their own, private dollars. If H.R. 3 results in the elimination of private insurance coverage of abortion altogether, it would go even further in restricting what individuals can purchase with their, preventing anyone from being able to purchase inclusive coverage—even if they receive no tax-preferred treatment at all.

H.R. 3 does even not make any exceptions for abortions that are necessary to save a woman's health, such as in cases where continuing the pregnancy could cause stroke or paralysis. Pregnancy can worsen some serious health conditions, such as heart disease,<sup>xi</sup> as well as delay treatment of other conditions, such as cancer.<sup>xii</sup> Under H.R. 3, women would be left without coverage for pregnancy termination necessitated by medical complications, which can cost thousands of dollars.

Under another hypothetical example, which could be all too true, a pregnant woman who is diagnosed with a serious and rapidly spreading cancer could be in grave danger if she does not terminate her pregnancy so she can immediately begin chemotherapy and radiation treatment. Unfortunately, because of her current health status, the abortion procedure she needs to protect her health and possibly her life is expensive. Because of H.R. 3's limitations on tax credits, she would be forced to drop the inclusive policy she had for years, which included abortion coverage. She would be willing to make a separate payment, as required under the Affordable Care Act, to keep her abortion coverage, but if H.R. 3 were passed, she would not be afford to give up premium assistance credits and still stay insured. So, if H.R. 3 passed, her health insurance policy would not cover abortion. Nor would it allow her to use monies she had put into a flexible spending account to help her cover unexpected health expenses without paying additional taxes, even if her pregnancy termination cost a substantial portion of her salary that year. These barriers could force the woman into bankruptcy, but not having health insurance, or remain pregnant at great risk.

The government has used economic coercion to prevent women who depend on the government for health insurance from getting abortions for over 30 years. Now this harmful policy is being vastly expanded by using the tax code to prevent millions of additional women from obtaining health insurance that covers abortion, even when it is paid for using their own money. The National Women's Law Center urges the Committee to reject this dangerous and misleading bill.

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<sup>i</sup> I.R.C. § 45R (2010).

<sup>ii</sup> See Council of Econ. Advisors, Health Insurance Reform Will Help Small Businesses (Feb. 26, 2010), available at <http://www.whitehouse.gov/blog/2010/02/26/health-insurance-reform-will-help-small-businesses>. (CEA estimates indicate that more than 60 percent of small employers would be eligible for the

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new \$40 billion small business tax credit in the President’s proposal. This represents a total of nearly 4 million small firms eligible for the credit.).

<sup>iii</sup> I.R.C. § 36B (2010).

<sup>iv</sup> If a health care plan chooses to cover abortion services beyond those currently permitted under the Hyde Amendment, the issuer of the plan is prohibited from using federal subsidies to pay for those abortion services and must follow the segregation requirements in the federal health care reform law. Specifically, a health care plan that covers abortion services beyond those currently permitted under the Hyde Amendment must collect two payments from individuals in the health care plan – one payment for abortion coverage and another for the remainder of the premium. Additionally, the plan must establish separate accounts in which to deposit the separate payments from individuals who receive federal subsidies.

<sup>v</sup> I.R.C. §§ 35(a), 7527(b) (2011).

<sup>vi</sup> 26 U.S.C. § 106 (2011).

<sup>vii</sup> I.R.C. § 213 (2010).

<sup>viii</sup> The average total premium for a family is \$13,770. If the father bought COBRA, he would pay 102% of this, or \$14,045. His credit would be 65% of \$14,045.

<sup>ix</sup> See *No Taxpayer Funding for Abortion Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 112th Cong. (2011) (testimony of Sara Rosenbaum, Chair, Dept. of Health Pol’y, George Washington Univ. Sch. Pub. Health and Health Servs.).

<sup>x</sup> See generally *id.*

<sup>xi</sup> See e.g. Samuel C. Siu et al., *Risk and Predictors for Pregnancy-Related Complications in Women with Heart Disease*, 96 *Circulation* 2789 (1997).

<sup>xii</sup> See e.g. Int’l Comm. on Radiological Protection, *Pregnancy and Medical Radiation*, 30 *Annals of the ICRP* iii (2000) (fetal exposure to radiation above a certain level expose fetus to risk; “Cancers in the pelvis cannot be adequately treated during pregnancy without severe or lethal consequences for the fetus.”); U. Ebert et al, *Cytotoxic Therapy and Pregnancy*, 74 *Pharmacol. Ther.* 207 (1997) (“The use of cytotoxic agents during pregnancy may be unavoidable in order to ensure maternal survival-despite the dangers to the developing fetus.”); Richard L. Theriault et al., *Cancer and Pregnancy*, in *Cancer Medicine* (6th ed. D.W. Kufe et al., eds. 2003) (“Systemic treatment ... should be avoided during the first trimester of pregnancy except in circumstances in which any delay in cancer treatment would jeopardize the life of the patient (acute leukemia).”).