July 1, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Secretary Becerra:

As Members of Congress, we have an obligation to ensure all executive branch officials work to uphold and defend the Constitution and our nation’s fundamental rights and freedoms. This duty includes ensuring that existing legal protections for unborn children and conscience rights are properly enforced. We write to express our concern that, although you have repeatedly committed to follow the law, you denied the existence of the Partial-Birth Abortion Ban Act of 2003 (18 U.S. Code §1531) and then deflected questions about whether you would enforce it. We ask you to restate in writing your commitment to impartially enforcing the law and to clarify that you recognize the existence of the Partial-Birth Abortion Ban Act and will uphold it.

The Partial-Birth Abortion Ban Act of 2003 is included in federal law under Chapter 1531 of Title 18 of the U.S. Code where it is entitled “Partial-birth abortions prohibited.” The law makes it illegal to “[perform] a partial-birth abortion,” which it defines as “deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.”

We are grateful that this gruesome procedure was made illegal when the Partial-Birth Abortion Ban Act passed Congress and was signed into law on November 5, 2003. It was upheld by the Supreme Court in Gonzales v. Carhart and remains settled law. As you know, the Partial-Birth Abortion Ban Act passed with bipartisan support. It passed the House of Representatives twice in 2003 with the support of over 60 Democrats. When it passed the Senate with the support of

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17 Democrats, President Joe Biden was one of its supporters. However, we know that you disagreed with that legislation during your tenure as a House member representing California. You voted in opposition to the bill twice in 2003 before it was signed into law.

When you were asked during your confirmation hearings and during your tenure as Secretary about your stance on pro-life legislation, you have given a consistent reply: “I will follow the law.” For example, on February 24, 2021, during a confirmation hearing held by the Senate Finance Committee, Senator Steve Daines (R-MT) asked you if there were any restrictions on abortion you would support. When you declined to specify, he suggested preventing babies from being aborted solely based on their sex. You replied “...my job will be to make sure I am following the law.” Your answer to other similar questions by both Senator Daines and other Senators was consistent: you assured them that you were committed to follow the law on issues related to abortion.

Therefore, we were disheartened and disturbed by your responses when you were asked about the Partial-Birth Abortion Ban Act during a virtual hearing before members of the Subcommittee on Health of the House Energy and Commerce Committee on May 12, 2021.

When Rep. Gus Bilirakis (R-FL) asked you to affirm that your stated commitment to uphold the law included the Partial-Birth Abortion Ban Act, you responded that “…there is no law that deals specifically with the term partial-birth abortion.” Given your legal background and your own personal experience voting on this legislation, this denial was surprising and deeply concerning.

Rep. John Joyce (R-PA) followed up by citing that specific law. “It didn’t seem clear that you understood what my colleague Mr. Bilirakis meant by the term ‘Partial-Birth abortion.’ …Section 1531 of Title 18 USC is literally titled, “Partial-Birth Abortions prohibited.” When Rep. Joyce asked you to clarify whether you recognized that partial-birth abortions were prohibited under the law, you did not provide a clear answer. Follow-up from Rep. Dan Crenshaw (R-TX) also failed to receive a precise response.

Your refusal to, at first, acknowledge the existence of the Partial-Birth Abortion Ban Act, followed by your failure to commit to enforce it have cast doubt on your claims that you will follow the law. It is clear from your voting record and your personal statements that you do not personally support the Partial-Birth Abortion Ban Act. However, your disagreement with that law does not negate the existence of the law. Your responses have raised concern that, if you personally disagree with a law, you may choose to deny its existence. We seek clarification and assurance that you will not acknowledge and enforce only the laws you like.

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6 Id.
7 Id.
In light of these concerns, please provide clear, explicit and full responses to the following questions:

1. Do you concede that partial-birth abortion, as defined in 18 U.S. Code § 1531, is illegal and punishable by fine, imprisonment or both?

2. Do you agree that partial-birth abortions are a particularly grotesque method of late-term abortions?

3. Will you commit, as Secretary of Health and Human Services (HHS), to ensure that the Department acts in accordance with the Supreme Court decision to uphold the ban on partial-birth abortions in Gonzales v. Carhart?

4. Will you commit, as Secretary of Health and Human Services, to full oversight of HHS grant programs to ensure no grantees who violate, or have violated, 18 U.S. Code § 1531 continue to receive funding from HHS?

5. Will you commit, as Secretary of Health and Human Services, to fully uphold and enforce 18 U.S. Code § 1531, including but not limited to, by immediately referring violations to the Department of Justice for criminal prosecution?

Given the importance of understanding if you, as a senior official of the Biden administration, will comply with federal law we kindly request a response by July 9, 2021.

Sincerely,

Cathy McMorris Rodgers
Member of Congress

John Joyce
Member of Congress

Dan Bishop
Member of Congress

Gus Bilirakis
Member of Congress

Dan Crenshaw
Member of Congress

Jason Smith
Member of Congress
Trent Kelly
Member of Congress

Don Bacon
Member of Congress

Lauren Boebert
Member of Congress

Glenn Grothman
Member of Congress

Burgess Owens
Member of Congress

Brett Guthrie
Member of Congress

Daniel Webster
Member of Congress

Kevin Brady
Member of Congress

Ashley Hinson
Member of Congress

John R. Curtis
Member of Congress

Kelly Armstrong
Member of Congress

Diana Harshbarger
Member of Congress

Byron Donalds
Member of Congress

Barry Moore
Member of Congress

John H. Rutherford
Member of Congress

Ken Calvert
Member of Congress
Vicky Hartzler
Member of Congress

Robert Latta
Member of Congress

Larry Buschon, M.D.
Member of Congress

Tim Walberg
Member of Congress

Greg Pence
Member of Congress

Darrell Issa
Member of Congress

David Kustoff
Member of Congress

David Schweikert
Member of Congress

Rick W. Allen
Member of Congress

Steve Womack
Member of Congress

Brian Mast
Member of Congress

Lance Gooden
Member of Congress

Bruce Westerman
Member of Congress

Robert Aderholt
Member of Congress

Ronny Jackson
Member of Congress
Billy Long
Member of Congress

Bill Huizenga
Member of Congress

Mike Kelly
Member of Congress

Steve Chabot
Member of Congress

Glenn Thompson
Member of Congress

Ralph Norman
Member of Congress

Matthew Rosendale
Member of Congress

H. Morgan Griffith
Member of Congress

Richard Hudson
Member of Congress

Gary Palmer
Member of Congress

Debbie Lesko
Member of Congress

Chris Jacobs
Member of Congress

Guy Reschenthaler
Member of Congress

Tracey Mann
Member of Congress

Brad Wenstrup
Member of Congress

Mary Miller
Member of Congress
Russ Fulcher  
Member of Congress

Warren Davidson  
Member of Congress

Tony Gonzales  
Member of Congress

Troy Balderson  
Member of Congress

Ben Cline  
Member of Congress

Gregory W. Steube  
Member of Congress

Mike Johnson  
Member of Congress

Anthony Gonzalez  
Member of Congress

Jim Jordan  
Member of Congress

Lisa McClain  
Member of Congress

Steve Scalise  
Member of Congress

John Rose  
Member of Congress

Andrew S. Clyde  
Member of Congress

Bill Johnson  
Member of Congress

Christopher H. Smith  
Member of Congress

Robert Wittman  
Member of Congress
Michael Waltz  
Member of Congress

Jody Hice  
Member of Congress

Ted Budd  
Member of Congress

Anh Wagner  
Member of Congress

Blake Moore  
Member of Congress

Dan Meuser  
Member of Congress

Chuck Fleischmann  
Member of Congress

Alex X. Mooney  
Member of Congress

Doug Lamborn  
Member of Congress

Jim Banks  
Member of Congress

Roger Williams  
Member of Congress

Brian Babin  
Member of Congress

Jake LaTurner  
Member of Congress

David B. McKinley, P.E.  
Member of Congress

Éarl L. “Buddy” Carter  
Member of Congress

Andrew Garbarino  
Member of Congress
Doug LaMalfa
Member of Congress

Bill Posey
Member of Congress

Stephanie Bice
Member of Congress

Julia Letlow
Member of Congress

Scott Perry
Member of Congress

Marjorie Taylor Greene
Member of Congress

Yvette Herrell
Member of Congress

Bob Good
Member of Congress

Jodey C. Arrington
Member of Congress

Darin LaHood
Member of Congress

Michael C. Burgess, M.D.
Member of Congress

Scott Franklin
Member of Congress

Beth Van Duyne
Member of Congress

Adrian Smith
Member of Congress

Adam Kinzinger
Member of Congress

Jeff Van Drew
Member of Congress
Fred Upton  
Member of Congress

Randy K. Weber  
Member of Congress

Andy Harris, M.D.  
Member of Congress

Kevin McCarthy  
Member of Congress

Chris Stewart  
Member of Congress

Kat Cammack  
Member of Congress

Dusty Johnson  
Member of Congress

Louie Gohmert  
Member of Congress

Gregory F. Murphy, M.D.  
Member of Congress

Jackie Walorski  
Member of Congress

Randy Feenstra  
Member of Congress

Madison Cawthorn  
Member of Congress

Tom Tiffany  
Member of Congress

Lloyd Smucker  
Member of Congress

Bob Gibbs  
Member of Congress
Elise Stefanik  
Member of Congress

James R. Baird  
Member of Congress

Jeff Fortenberry  
Member of Congress

French Hill  
Member of Congress

Young Kim  
Member of Congress