

Congress of the United States
Washington, DC 20515

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, 2003.¹ 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.² When it passed the Senate with the support of

¹ "Actions Overview S.3 – 108th Congress (2003-2004)." Congress.gov. <<https://www.congress.gov/bill/108th-congress/senate-bill/3/actions>>

² <<https://clerk.house.gov/Votes/2003242>>, <<https://clerk.house.gov/Votes/2003530>>

17 Democrats, President Joe Biden was one of its supporters.³ 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 are 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.”⁴ 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.”⁵ 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.””⁶ 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.⁷

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.

³ Vote Summary. S. 3 (Partial Birth Abortion Ban Act of 2003).

<https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00402>

⁴ Health & Human Services Secretary Confirmation Hearing. CSPAN. February 24, 2021. < <https://www.c-span.org/video/?509117-1/health-human-services-secretary-confirmation-hearing>>

⁵ H. Comm. On Energy and Commerce hearing, “The Fiscal Year 2022 HHS Budget” (May 21, 2021), available at <https://republicans-energycommerce.house.gov/hearings/the-fiscal-year-2022-hhs-budget/>.

⁶ *Id.*

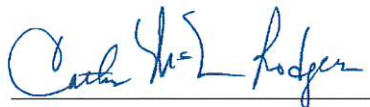
⁷ *Id.*

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



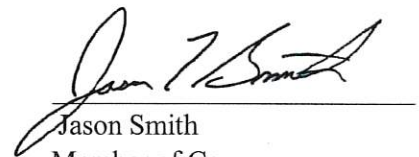
Dan Bishop
Member of Congress



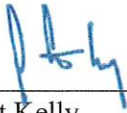
Gus Bilirakis
Member of Congress



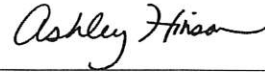
Dan Crenshaw
Member of Congress



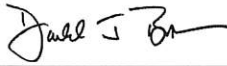
Jason Smith
Member of Congress



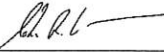
Trent Kelly
Member of Congress



Ashley Hinson
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Don Bacon
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John R. Curtis
Member of Congress



Lauren Boebert
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Kelly Armstrong
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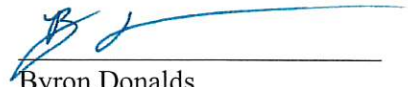
Glenn Grothman
Member of Congress



Diana Harshbarger
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Burgess Owens
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Byron Donalds
Member of Congress



Brett Guthrie
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Barry Moore
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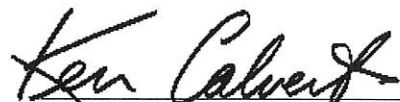
Daniel Webster
Member of Congress



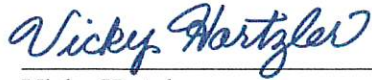
John H. Rutherford
Member of Congress



Kevin Brady
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Ken Calvert
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Vicky Hartzler
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David Schweikert
Member of Congress



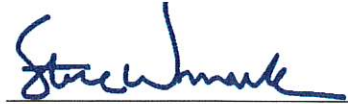
Robert Latta
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Rick W. Allen
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Larry Bueshon, M.D.
Member of Congress



Steve Womack
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Tim Walberg
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Brian Mast
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Greg Pence
Member of Congress



Lance Gooden
Member of Congress



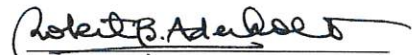
Darrell Issa
Member of Congress



Bruce Westerman
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David Kustoff
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Robert Aderholt
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Rick Crawford
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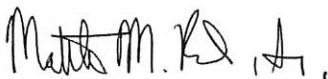



Ronny Jackson
Member of Congress


Billy Long
Member of Congress


Mike Kelly
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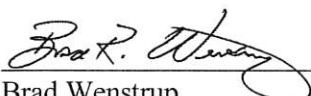

Glenn Thompson
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Matthew Rosendale
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Richard Hudson
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Debbie Lesko
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Brad Wenstrup
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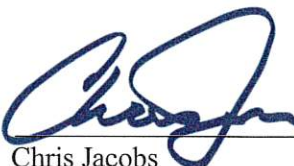

Bill Huizenga
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Ralph Norman
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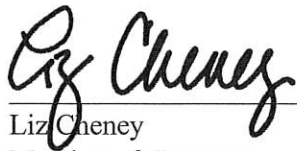

H. Morgan Griffith
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Tracey Mann
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Michael Guest
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Markwayne Mullin
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David Valadao
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Andy Biggs
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Tom Emmer
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Mike Bost
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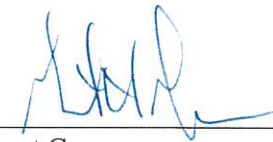
Vern Buchanan
Member of Congress



Fred Keller
Member of Congress



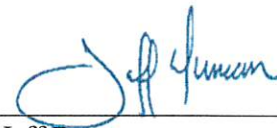
Chip Roy
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Garret Graves
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Neal Dunn
Member of Congress



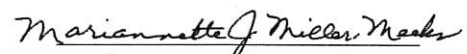
Jeff Duncan
Member of Congress



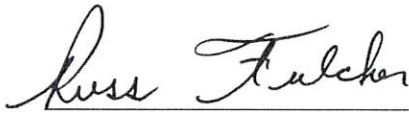
Steven Palazzo
Member of Congress



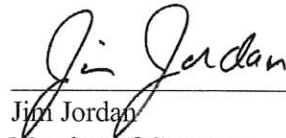
Tim Burchett
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Mariannette Miller-Meeks
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Russ Fulcher
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Jim Jordan
Member of Congress



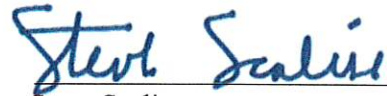
Warren Davidson
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Lisa McClain
Member of Congress



Tony Gonzales
Member of Congress



Steve Scalise
Member of Congress




Troy Balderson
Member of Congress



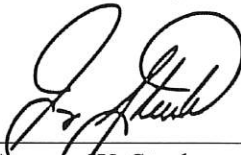
John Rose
Member of Congress



Ben Cline
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Andrew S. Clyde
Member of Congress



Gregory W. Steube
Member of Congress



Bill Johnson
Member of Congress



Mike Johnson
Member of Congress



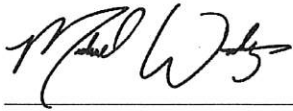
Christopher H. Smith
Member of Congress



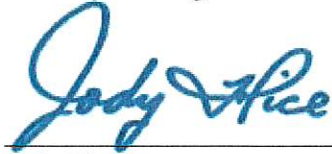
Anthony Gonzalez
Member of Congress



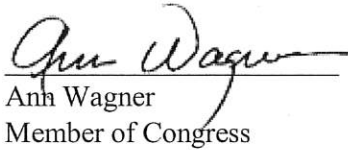
Robert Wittman
Member of Congress



Michael Waltz
Member of Congress



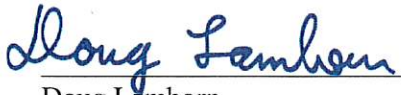
Jody Hice
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Ann Wagner
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Chuck Fleischmann
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Doug Lamborn
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Roger Williams
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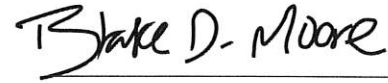
Jake LaTurner
Member of Congress



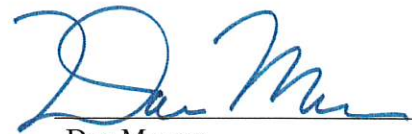
Earl L. "Buddy" Carter
Member of Congress



Ted Budd
Member of Congress



Blake Moore
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Dan Meuser
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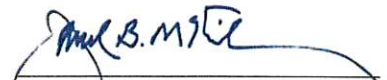
Alex X. Mooney
Member of Congress



Jim Banks
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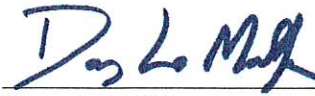
Brian Babin
Member of Congress



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



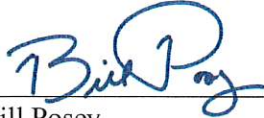
Andrew Garbarino
Member of Congress



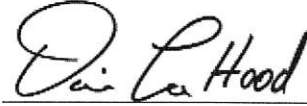
Doug LaMalfa
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Jodey C. Arrington
Member of Congress



Bill Posey
Member of Congress



Darin LaHood
Member of Congress



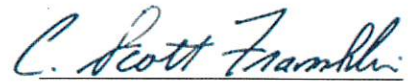
Stephanie Bice
Member of Congress



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



Julia Letlow
Member of Congress



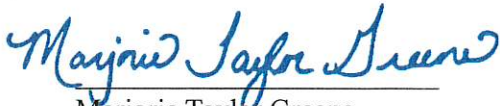
Scott Franklin
Member of Congress



Scott Perry
Member of Congress



Beth Van Duyne
Member of Congress



Marjorie Taylor Greene
Member of Congress



Adrian Smith
Member of Congress



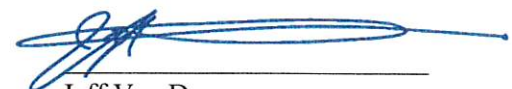
Yvette Herrell
Member of Congress



Adam Kinzinger
Member of Congress



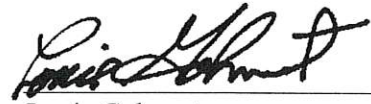
Bob Good
Member of Congress



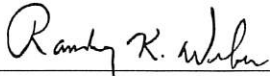
Jeff Van Drew
Member of Congress



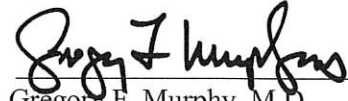
Fred Upton
Member of Congress



Louie Gohmert
Member of Congress



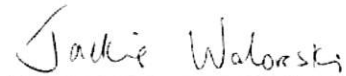
Randy K. Weber
Member of Congress



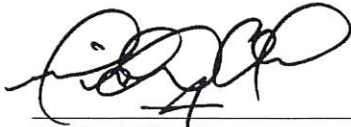
Gregory F. Murphy, M.D.
Member of Congress



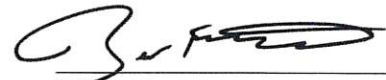
Andy Harris, M.D.
Member of Congress



Jackie Walorski
Member of Congress



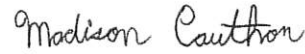
Michael Cloud
Member of Congress



Randy Feenstra
Member of Congress



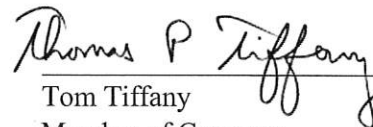
Kevin McCarthy
Member of Congress



Madison Cawthorn
Member of Congress



Chris Stewart
Member of Congress



Tom Tiffany
Member of Congress



Kat Cammack
Member of Congress



Lloyd Smucker
Member of Congress



Dusty Johnson
Member of Congress



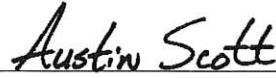
Bob Gibbs
Member of Congress



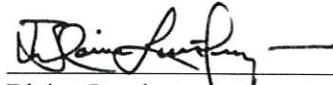
Pete Sessions
Member of Congress



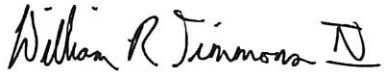
Peter Meijer
Member of Congress



Austin Scott
Member of Congress



Blaine Luetkemeyer
Member of Congress




William Timmons
Member of Congress



Kevin Hern
Member of Congress



Mike Garcia
Member of Congress



Jim Hagedorn
Member of Congress



August Pfluger
Member of Congress



Sam Graves
Member of Congress



Jaime Herrera Beutler
Member of Congress



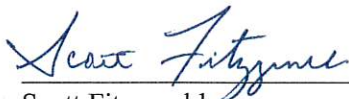
Mark Green
Member of Congress



Carol Miller
Member of Congress



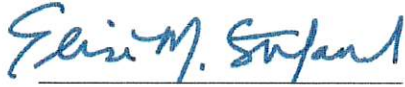
Mario Diaz-Balart
Member of Congress



Scott Fitzgerald
Member of Congress



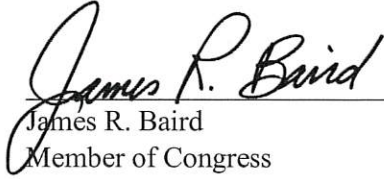
Mo Brooks
Member of Congress



Elise Stefanik
Member of Congress



French Hill
Member of Congress



James R. Baird
Member of Congress



Young Kim
Member of Congress



Jeff Fortenberry
Member of Congress