

# Biden's HHS vs. abortion common ground

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Dec. 1 will see oral arguments before the Supreme Court in the most important abortion case in 40 years. And when *Dobbs v. Jackson* is decided this summer, the court will likely give more power to individual states to regulate abortion according to the democratic will of their people — rather than the will of nine unelected judges serving for life.

Political and other tensions are already extremely high, what with disagreement about responses to pandemic, continuing racialized division, 30-year-high inflation and more. This isn't a great time for the most polarizing issue of the last two generations to come to a head.

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It is therefore prudent to focus on common ground in the abortion debate. Large majorities of Americans, for instance, [agree](#) with efforts to ban abortion in the second and third trimesters, which is what underlies the *Dobbs* case. Pro-choicers and pro-lifers want women to have the resources to choose to keep their baby, especially if they are facing difficult circumstances. And I think everyone can agree with the aphorism, “If you don't like abortion, don't have one.” Closely related to that final example is, “If you don't like abortion, don't perform one.” But in the midst of the cultural powder-keg that is our public abortion discourse, the Biden administration's Department of Health and Human Services (HHS) appears set to try to force pro-life health care providers and hospitals to perform abortions.

Don't believe it? Read [the documents](#) for yourself — or the story as [first reported by the National Catholic Register](#).

Here's a bit of history setting up what looks to be happening. Obama's HHS 2016 regulations arguably mandated coverage of abortion in employer health plans, but also [overruled conscience protections for health-care providers](#) who objected to abortion as the taking of a

vulnerable human life. Then, in 2018, Trump’s HHS not only rolled back the 2016 regulations but [created a new division](#) to protect the conscience rights of pro-life health care providers. Now the Biden administration is signaling what it will do by advising a federal court that, after consultation with 29 activist organizations called the “Leadership Conference,” it will issue its new rules “no later than April 2022” and suggested that it was “far from theoretical” that they would address that conference’s concerns.



HHS Secretary Xavier Becerra is going too far. (Rich Pedroncelli/AP)

The concerns of the Leadership Conference are listed in a 74-page memo that HHS attached to their brief. The memo’s insists that discrimination “on the basis of sex” includes “termination of pregnancy,” so that “abortion care” is protected. Since no one is permitted to violate civil rights, this new HHS-mandated understanding of what that means would force pro-life providers and hospitals to perform abortions.

The 2016 HHS rule included no religious exemptions, and the 2021 memo that HHS attached to their brief is explicitly hostile to the notion that religious individuals or organizations would be exempt. The memo argues that the Religious Freedom Restoration Act should be ignored — and even takes explicit aim at the “Ethical and Religious Directives” which govern Catholic providers and hospitals.

Since prenatal justice is a non-negotiable value for Catholic institutions, the regulations which appear to be forthcoming from HHS would essentially force Catholic health care in the United States to shut down.

As a Catholic president like Joe Biden should understand, this would be an absolute disaster for the country. The Leadership Conference itself points out that the 10 largest Catholic health systems operate 864 urgent-care centers, 385 ambulatory surgical centers and 274 physician groups, and many other health care facilities. One in seven Americans who go to a hospital today are seen in a Catholic hospital. These institutions often serve the health-care needs of many rural communities who, if faced with their closure, would be hundreds of miles away from the next closest hospital.

If Biden's HHS pushes regulations that reflect the memo's concerns, they not only risk blowing up our abortion discourse. They risk blowing up our health care system altogether.

This kind of unconscionable behavior misses something very important: Americans are not extreme on abortion. Wild proposals like this inflame tensions, hide common ground and make it difficult to show tolerance for different points of view.

Again, it is likely the Supreme Court will soon give states more freedom to reflect the will of their people. If it does, then we are simply going to have to get comfortable with views on abortion that we do not share. As with everything from the death penalty to gun laws, abortion laws will likely look quite different in different states.

Don't like it? Marshal facts and evidence — not power plays — to make an argument and persuade your fellow citizens. That's what it means to live in a pluralistic republic which respects multiple visions of the good.

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