



Proceedings

A monthly newsletter from McGraw-Hill Education



December 2016 Volume 8, Issue 5

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Dear Professor,

Happy holidays! Welcome to McGraw-Hill Education's December 2016 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 8, Issue 5 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the December 2016 newsletter topics with the various McGraw-Hill Education business law textbooks.

The December 2016 issue of Proceedings is devoted exclusively to the election of Donald J. Trump as president of the United States. You will find a wide range of topics/issues in this publication, including:

1. President-elect Trump's consideration of whether to withdraw the United States from the Paris climate agreement;
2. President-elect Trump's decision to appoint Myron Ebell to oversee the Environmental Protection Agency (EPA) transition;
3. President-elect Trump's projected approach to Social Security;
4. Videos related to a) President-elect Trump's proposed 35% tariff on cars and trucks imported to the United States from Mexico and b) President-elect Trump's position regarding the Affordable Care Act (Obamacare);
5. An "ethical dilemma" related to what a Trump presidency could mean for Planned Parenthood and women's health; and
6. "Teaching tips" related to Article 3 ("Trump Advisers Back Deregulation, Privatized Social Security") and the Ethical Dilemma ("What a Trump Presidency Could Mean for Planned Parenthood and Women's Health") of the newsletter.

I wish all of you a safe and enjoyable holiday season!

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Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) President-elect Trump's consideration of whether to withdraw the United States from the Paris climate agreement;
- 2) President-elect Trump's decision to appoint Myron Ebell to oversee the Environmental Protection Agency (EPA) transition; and
- 3) President-elect Trump's projected approach to Social Security.

Hot Topics in Business Law

Article 1: "Trump Seeking Quickest Way to Quit Paris Climate Agreement, Says Report"

<https://www.theguardian.com/us-news/2016/nov/13/trump-looking-at-quickest-way-to-quit-paris-climate-agreement-says-report>

According to the article, Donald Trump is looking at quick ways of withdrawing from the Paris climate agreement in defiance of widening international backing for the plan to cut greenhouse gas emissions, Reuters has reported.

Since the US president-elect was chosen, governments ranging from China to small island states have reaffirmed support for the 2015 Paris agreement at 200-nation climate talks running until 18 November in Marrakesh, Morocco.

But, according to Reuters, a source in the Trump transition team said the victorious Republican, who has called global warming a hoax, was considering ways to bypass a theoretical four-year procedure for leaving the accord.

"It was reckless for the Paris agreement to enter into force before the election," said the source, who works on Trump's transition team for international energy and climate policy, speaking on condition of anonymity. The Paris agreement went into force on 4 November, four days before last Tuesday's election.

Alternatives were to send a letter withdrawing from a 1992 convention that is the parent treaty of the Paris agreement, voiding US involvement in both in a year's time, or to issue a presidential order simply deleting the US signature from the Paris accord, the source told Reuters.

Many nations have expressed hopes the United States will stay. Morocco, the host for the talks, said the agreement that seeks to phase out greenhouse gases in the second half of the century was strong enough to survive a pullout.

"If one party decides to withdraw that it doesn't call the agreement into question," foreign minister Salaheddine Mezouar told a news conference.



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Despite the threat of a US withdrawal, US secretary of state John Kerry said on Sunday that he would continue his efforts to implement the Paris agreement until Barack Obama leaves office on 20 January.

Speaking in New Zealand following a trip to Antarctica, Kerry appeared to take a swipe at Trump when he listed some of the ways in which global warming could already be seen. He said that there were more fires, floods and damaging storms around the world, and sea levels were rising.

“The evidence is mounting in ways that people in public life should not dare to avoid accepting as a mandate for action,” Kerry said.

“Now the world’s scientific community has concluded that climate change is happening beyond any doubt. And the evidence is there for everybody to see,” Kerry said.

The Paris agreement was reached by almost 200 nations in December, and has been formally ratified by 109 representing 76% of greenhouse gas emissions, including the United States with 18%.

The accord seeks to hold global warming to no more than 2C above pre-industrial levels to limit rising temperatures that have been linked to increasing economic damage from desertification, extinctions of animals and plants, heat waves, floods and rising sea levels.

United Nations climate chief Patricia Espinosa declined to comment on the Trump source’s remarks to Reuters.

“The Paris agreement carries an enormous amount of weight and credibility,” she told a news conference. She said the UN hoped for a strong and constructive relationship with Trump.

The Trump source blamed US president Barack Obama for joining up by an executive order, without getting approval from the Senate. “There wouldn’t be this diplomatic fallout on the broader international agenda if Obama hadn’t rushed the adoption,” he said.

Discussion Questions

1. Is global warming a “hoax?” What is the basis for your answer to this question?

Although student responses may vary, the overwhelming majority of the scientific community believes that global warming is real, and that humans are a substantial contributing factor to global warming. This is a good question to address the practice of critical thinking. Emphasize to your students that their opinions, if not based on factual support, are merely opinions.

2. Does the president have the legal authority to withdraw the United States from the Paris agreement? Explain your response.



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This is a controversial question; in fact, it is debatable whether President Barack Obama had the legal authority to commit the United States to the Paris agreement. For an article addressing that issue, please see the following internet site:

<http://www.washingtontimes.com/news/2016/sep/3/obama-xi-ratify-climate-change-agreement/>

3. Are you surprised that China agreed to participate in the Paris agreement? Explain your response.

This is an opinion question, so student responses may vary. As a growing nation committed to manufacturing (manufacturing is a substantial contributing factor to greenhouse gas emissions that the scientific community believes contributes to global warming), it would seem that China has a great deal to lose in terms of the commitment. Perhaps the Chinese government has realized that addressing global warming requires the commitment of those countries largely responsible for carbon emissions, including China and the United States.

Article 2: “Trump Taps Climate-Change Skeptic to Oversee EPA Transition”

<https://www.washingtonpost.com/news/energy-environment/wp/2016/11/11/meet-the-man-trump-is-relying-on-to-unravel-obamas-environmental-legacy/>

According to the article, president-elect Donald Trump has made no secret of his disdain for the Environmental Protection Agency, saying the regulations it has put out under President Obama are “a disgrace.” He has vowed to roll back Obama’s signature effort to reduce greenhouse-gas emissions, known as the Clean Power Plan, and to scrap a litany of other “unnecessary” rules, especially those imposed on the oil, gas and coal sectors.

The man planning how a Trump administration can obliterate Obama’s environmental legacy is Myron Ebell, a Washington fixture who has long been a cheerful warrior against what he sees as an alarmist, overzealous environmental movement that has used global warming as a pretext for expanding government. Ebell has argued for opening up more federal lands for logging, oil and gas exploration and coal mining, and for turning over more permitting authority to the states. And he has urged the Senate to vote to reject an international climate accord signed last year in Paris.

The self-described public-policy wonk has for years made his home at the Competitive Enterprise Institute (CEI), a conservative policy group that once received considerable funding from ExxonMobil. More recently, the organization has been funded in part by Donors Trust. The Virginia-based organization, which is not required by law to disclose its contributors, is staffed largely by people who have worked for Koch Industries or nonprofit groups supported by the conservative Koch brothers.

Ebell, who is not a scientist, has long questioned the overwhelming scientific consensus that human activity is fueling unprecedented global warming. He also has staunchly opposed what he calls



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energy rationing, instead arguing that the United States should unleash the full power of coal, oil and gas to fuel economic growth and job creation.

All that makes him an ideal ambassador for Trump, who has repeatedly called the notion of man-made climate change a “hoax.”

Ebell declined to comment this week on his work or the type of people likely to be appointed to run the EPA, instead referring inquiries to the Trump transition headquarters. But it doesn’t take much imagination to figure out the likely list of priorities.

The “energy independence” section of Trump’s transition website — there is no “environment” section — reads like an oil-and-gas-industry wish list.

“Rather than continuing the current path to undermine and block America’s fossil fuel producers, the Trump Administration will encourage the production of these resources by opening onshore and offshore leasing on federal lands and waters,” the site states. “We will streamline the permitting process for all energy projects, including the billions of dollars in projects held up by President Obama, and rescind the job-destroying executive actions under his Administration. We will end the war on coal, and rescind the coal mining lease moratorium, the excessive Interior Department stream rule, and conduct a top-down review of all anti-coal regulations issued by the Obama Administration.”

The site does say that Trump is “firmly committed to conserving our wonderful natural resources and beautiful natural habitats.” But it has no specifics on what that might mean, other than “America’s environmental agenda will be guided by true specialists in conservation, not those with radical political agendas.”

Presumably that means people such as Ebell. He has gleefully opposed environmentalists and railed against the policies of the Obama administration and others that take aim at reducing greenhouse-gas emissions — and by extension weaning the United States off its dependence of fossil fuels.

A 2007 Vanity Fair profile described Ebell as a “sound-bite artist” and an “oil-industry mouthpiece.”

“Almost no scientist doubts that global warming is here, that man-made greenhouse gases are to blame, or that if we don’t cut back on those gases fairly soon we’ll be in a heap of trouble,” the article said. “But as the ‘other hand’ in all those news stories, Ebell and his quotable cohorts sustain the impression that a scientific debate is still raging. The more studies that confirm global warming, the more ink Ebell gets.”

Last year, when Pope Francis in an encyclical wrote about the “urgent challenge to protect our common home” and said “the earth herself, burdened and laid waste, is among the most abandoned and maltreated of our poor,” Ebell was quick to pounce.



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“The Vatican seems to have forgotten to consider the effects that energy-rationing policies to reduce emissions will also have on poor people in poor countries,” he said on CEI’s website. “Putting the world on an energy-starvation diet will consign billions of people to perpetual energy poverty.”

Discussion Questions

1. Comment on the qualification(s) of Myron Ebell to lead the Environmental Protection Agency (EPA) transition team. Would an environmental scientist be more qualified to assume the role? Why or why not?

This is an opinion question, so student responses may vary. Arguably, since the Environmental Protection Agency (EPA) relies a great deal on science in making decisions regarding air, water and land pollution, a professional with scientific credentials could best lead the EPA transition team and ultimately serve as head of the agency.

2. According to the article, the Trump transition web site states that “America’s environmental agenda will be guided by true specialists in conservation, not those with radical political agendas.” Define “radical political agenda.”

In terms of “radical political agenda,” the “beauty” is most definitely “in the eye of the beholder!” There is no exacting definition of what constitutes a “radical political agenda.”

3. Is the scientific debate regarding global warming still “raging,” as Myron Ebell claims? Explain your response.

It is well-settled in the scientific community that global warming is real, and that humans are a substantial contributing factor to global warming. If 97 percent of the scientific community agrees and 3 percent either disagree or abstain from giving an opinion, does that really constitute a “raging” debate?

Article 3: “Trump Advisers Back Deregulation, Privatized Social Security”

<http://www.foxnews.com/politics/2016/11/12/trump-advisers-back-deregulation-privatized-social-security.html>

According to the article, during his triumphant presidential campaign, Donald Trump renounced Republican orthodoxy on a Social Security overhaul.

"We're not going to hurt the people who have been paying into Social Security their whole life," Trump declared, calling the payment of promised benefits "honoring a deal."

But the man heading the Trump transition team's Social Security effort? Michael Korbey, a former lobbyist who has spent much of his career advocating for cutting and privatizing the program.



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"It's a failed system, broken and bankrupt," Korbey said as a lobbyist in the mid-1990s. Korbey acknowledged that some of the changes his group backed would hurt retirees, but "our constituents aren't just senior citizens," he told a newspaper in 1996. A decade later, as a senior adviser to the Social Security Administration, Korbey was an advocate for the George W. Bush administration's failed attempt to privatize Social Security.

Korbey is just one example of apparent discord between Trump's populist economic platform and the people who have been put in charge of planning to carry it out. While there are some true Washington outsiders on the team — such as Dan DiMicco, a former steel industry executive who is Trump's transition head for the office of U.S. Trade Representative — many of the players are familiar from the Republican economic establishment. The mix indicates a strong leaning toward rolling back much of the Obama administration's post-financial collapse changes, and a general posture toward deregulation.

The team will not necessarily carry over into the Trump administration — though members of past transition teams often have. Instead, they are in charge of putting together hiring recommendations, working with outgoing appointees and laying the groundwork for administration's opening months.

Bill Walton, one of the two people overseeing the economic transition effort, is the former chief executive for Allied Capital, a financial firm that was sold after nearly failing during the financial crisis. He is both a trustee for the Heritage Foundation and a senior fellow at another conservative organization, the Discovery Institute.

David Malpass, who is overseeing both the Treasury Department staffing and part of the broader economic issues portfolio, was Bear Stearns' chief economist in the years leading up to its collapse. In August 2007, as U.S. economic growth ground to a halt and the debt markets shuddered, he wrote a Wall Street Journal op-ed titled "Don't Panic About the Credit Market."

"Housing and debt markets are not that big a part of the U.S. economy, or of job creation," the piece declared, predicting continued economic growth and dismissing concerns that recent growth had been dependent on the housing bubble.

Eight months later, Bear Stearns collapsed, unable to withstand the toxic combination of overheated home prices and shoddily assembled debt that Malpass dismissed. But Malpass landed on his feet, founding a consulting firm called Encima Partners.

Since then, he's faulted both the Federal Reserve's monetary response to the financial crisis and regulations intended to prevent future such calamities.

In a 2010 National Review article titled "Chris Dodd's Big, Misguided Bill," Malpass argued against the value of creating the consumer financial protection bureau, writing that the Obama administration should "streamline and concentrate" existing consumer protection regulators, a step that he said "would result in a reduction of government jobs."



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In Paul Atkins, Trump has found a leading proponent of the theory that government should get out of the financial industry's way.

Appointed to the Securities and Exchange commission in July 2002 at the height of the era's corporate accounting scandals, he was considered the most conservative member of the SEC during his tenure. Atkins objected to stiff penalties imposed on companies for allegedly fraudulent conduct, contending that they don't effectively deter crime. And in 2005, he defended the practice of backdating stock options — a practice in which executives paid themselves for fictitious outperformance in their companies' stocks. Numerous executives went to jail for those activities — but Atkins caused a stir by saying he found nothing objectionable about it.

In the years that led up to the financial crisis, Atkins warned of dangers posed by "enacting regulations that supplant the market's judgment." Among the initiatives he successfully backed at the SEC was a loosening of leverage restrictions on investment banks, a step that allowed firms like Bear Stearns and Lehman brothers to borrow more money and invest it in mortgage-backed securities.

Atkins resigned in August of 2008, and now runs a financial services industry consulting firm. But he has maintained his vigorously pro-market stance.

"We all know that overregulation can "kill the goose that laid the golden egg," he said in a 2012 speech opposing the regulation of money market funds.

Discussion Questions

1. As the article indicates, the person heading the Trump transition team's Social Security effort is Michael Korbey, a former lobbyist who has spent much of his career advocating for cutting and privatizing the program. What is meant by Social Security privatization?

Social Security privatization would shift some (eventually, perhaps all) of the responsibility of retirement to the individual. Initially, the government would allow an individual to divert a percentage of her Social Security tax contributions to a private account and make investment decisions in the stock market. If the stock market "melts down," or if the individual makes poor investment choices, the individual would absorb the loss.

2. According to the article, Michael Korbey has claimed that Social Security is "a failed system, broken and bankrupt." Comment on the accuracy of this statement.

By any objective measure, the Social Security system has not failed, it is not broken, and it is not bankrupt. The system has honored every obligation owed to retirees since it was first created in the 1930s.

The program will first face a shortfall in 2034, and even if the Social Security trust fund becomes depleted (a huge "if" that presupposes Congress does not take steps to ensure its solvency), annual



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revenues from the Social Security payroll tax and taxation of Social Security benefits will be enough to fund 74% of scheduled benefits through 2090 (See the article featured in Teaching Tip 1 of this newsletter, “The Truth about Social Security’s Solvency and You.” In your author’s opinion, the projected shortfall in the system could easily be addressed by raising the cap on income eligible for Social Security taxation (According to the Social Security website, https://www.ssa.gov/policy/docs/quickfacts/prog_highlights/RatesLimits2016.html, the current cap on income subject to Social Security taxation is \$118,500, meaning that a person with an annual income of \$118,500 pays the same Social Security tax as a person with an annual income of \$20 million!

3. If Social Security is privatized, what (if anything) should the government do if an elderly person has made unfortunate investment choices or the stock market crashes, resulting in insufficient proceeds in the retiree’s account?

This is an opinion question, so student responses may vary. According to the Social Security website (<https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf>), among elderly Social Security beneficiaries, 48% of married couples and 71% of unmarried persons receive 50% or more of their income from Social Security. Further, among elderly Social Security beneficiaries, 21% of married couples and about 43% of unmarried persons rely on Social Security for 90% or more of their income. In your author’s opinion, the scenario framed in this Discussion Question would be potentially disastrous for the retiree.



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Video Suggestions

Video 1: “Where is the Global Economy Headed?”

<http://www.usatoday.com/story/money/cars/2016/11/15/ford-ceo-warns-trumps-car-tariff/93906064/>

Note: In addition to the video, please see the following article, also included at the above-referenced internet address:

“Ford CEO Warns Trump’s 35% Car Tariff Would Harm the Economy”

According to the article, Ford Motors CEO Mark Fields said recently that a 35% tariff on cars and trucks imported from Mexico — an idea promoted by President-elect Donald Trump — would have a "huge impact" on the entire U.S. economy.

Fields, who delivered the keynote speech at the Los Angeles Auto Show recently, spoke about Donald Trump for the first time in public since the businessman was elected to become the next president.

On the campaign trail Trump frequently criticized Ford for deciding to move the production of small cars from the U.S. to Mexico, leading to a feud between the candidate and the automaker. Trump also has promised to bring manufacturing jobs back to the U.S. and has talked about imposing a 35% tariff on cars made in Mexico.

"A tariff like that would be imposed on the entire auto sector, and that could have a huge impact on the U.S. economy," Fields said.

In September, Fields appeared on CNN to say no jobs would be lost in the U.S. as it moves production of the Ford Focus and C-Max hybrids to Mexico.

Experts also say a punitive tariff imposed on a single country would violate the rules of the World Trade Organization, a global body of 164 countries the U.S. joined in 1995.

Fields said Ford sent Trump a congratulatory letter after he was elected.



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"We have had conversations with the transition team. I've sent a congratulatory letter to the president elect, and we look forward to working with a new administration and the entire newly elected Congress," Fields said.

Still, Fields emphasized that Ford is a global company and believes in free trade. Trump, in contrast, has said he will try to renegotiate NAFTA or pull the U.S. out of the three-nation trade agreement. Trump also opposes the Trans-Pacific Partnership, a 12-nation trade agreement the U.S. signed earlier this year but has not been approved by Congress.

Ford was against the Trans-Pacific Partnership because the automaker said it lacked adequate currency manipulation rules. Fields suggested today that that is one area that the automaker and Trump could work together.

"I continue to be convinced that the right policies will prevail, because we all share the same objective, which is a healthy and vibrant U.S. economy," Fields said.

Recently, Ford revealed a new EcoSport subcompact SUV that it has sold around the world since 2003 but never in the U.S. Ford plans to import the EcoSport into the U.S. from Chennai, India.

Discussion Questions

1. As the article indicates, president-elect Donald Trump has said he will try to either renegotiate the North American Free Trade Agreement (NAFTA) or pull the United States out of the three-nation trade agreement altogether. Does the president of the United States have this authority? Explain your response.

The North American Free Trade Agreement (NAFTA) was enacted by the United States Congress. In your author's opinion, if Congress enacted NAFTA, it would have to approve the United States' withdrawal from the agreement.

2. In your estimation, what impact would a thirty-five (35) percent tariff on cars and trucks imported from Mexico have on the price of automobiles sold in the United States?

Obviously, such a tariff would result in higher automobile prices for consumers. The exact increase would be difficult to predict, since companies importing cars and trucks from Mexico might choose to absorb some of the tariff expense (although it is difficult for your author to imagine those companies assuming all of the expense), and since cars and trucks coming from countries other than Mexico would not be subject to the tariff (although President Trump might lead the initiative to increase tariffs "across-the-board" in order to attempt to fulfill his campaign promise of "bringing jobs back to America.")



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3. In your opinion, what effect (if any) would the unilateral termination of the North American Free Trade Agreement (NAFTA) have on the United States' ability to effectively negotiate international agreements (trade and otherwise) in the future?

In your author's opinion, the unilateral termination of the North American Free Trade Agreement (NAFTA) would make it difficult for the United States to effectively negotiate international agreements in the future. Ask students how willing they would be to enter into a contract with a person who had breached a previous contract with them. "A person is only as good as his word," as the old saying goes!

Video 2: "How Obamacare's Individual Mandate Works"

<https://www.youtube.com/watch?v=D8n8gYVdThg>

Note: In addition to the video, please refer to the following article:

"Donald Trump Is About to Face a Rude Awakening Over Obamacare"

<https://www.washingtonpost.com/news/wonk/wp/2016/11/12/donald-trump-is-beginning-to-face-a-rude-awakening-over-obamacare/>

Note: This is an opinion-editorial article written by Steven Pearlstein, a Washington Post business and economics writer. He is also Robinson Professor of Public Affairs at George Mason University.

After reiterating his promise to repeal and replace the Affordable Care Act, President-elect Donald Trump has indicated that he may keep two of the law's most popular provisions. One is straightforward enough — children up to age 26 being allowed to stay on their parents' plan. The other — preventing insurance companies from denying coverage because of preexisting conditions — offers a perfect illustration of why Trump and most of the other Republicans critics of Obamacare don't understand the health insurance market.

Let's say that in the beautiful new world of "repeal and replace," insurers are required to sell you insurance despite the fact that your kid has a brain tumor. Insurance companies know what to do with that. Their actuaries can calculate that kids with brain tumors typically require (I'm making this number up) about \$200,000 a year in medical care. So they'll offer to sell you a policy at an annual premium of \$240,000.

At this point your response will probably be that such an outcome is not fair. When the law says insurance companies can't discriminate on the basis for preexisting conditions, surely what it means is that they have to charge roughly the same price for health insurance, irrespective of your preexisting condition. In the language of insurance, that's called "guaranteed issue at community rates."



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Unfortunately, in the states that have tried guaranteed issues at community rates, the insurance markets have collapsed. That's because if you guarantee everyone the right to buy health insurance at community rates, then some consumers will game the system. The young and healthy ones won't buy any health insurance at all — they'll go without until they are diagnosed with diabetes or a brain tumor or get hit by a truck crossing the street. And when that happens, they will immediately call up Aetna or Anthem and exercise their right to buy health insurance at the low community rate, irrespective of their medical condition. It won't be long before insurance companies begin losing a ton of money and are forced either to raise premiums through the roof or stop writing policies altogether.

So how do you prevent that kind of gaming of the system by consumers? Well, that's easy. You require that everyone buy some minimal level of insurance at the beginning of every year, so they can't buy insurance only after they get sick. Let's call that an "individual mandate." But because you can't expect poor people to pay \$1,000 a month, they will require subsidies to keep their out-of-pocket costs to something like 10 percent of income. To pay for the subsidies, a new tax will be required.

So let's review what just happened. To guarantee that people with preexisting conditions can get affordable health insurance, you need to have rules requiring guaranteed issue and community rating. To keep insurance companies in business because of guaranteed issue and community rating, you need to have an individual mandate. And because poor people can't afford health insurance, you need subsidies. Combine all three, and what you have, in a nutshell, is ... Obamacare.

Yes, it's more complicated than that, but not much. It's possible to allow insurance companies to charge twice or three times as much to people who are older or sicker. You can let healthy people buy somewhat more bare-bones "catastrophic" policies to satisfy their obligation under the individual mandate. You could even avoid community rating by sending sick people into "high risk pools," where their premiums would be subsidized by a tax on everyone else's health-care premiums.

But at the end of the day, once you decide that everyone, regardless of age or medical condition, should be able to buy health insurance at an affordable price, you have essentially bought into the idea that young and healthy people have an obligation to subsidize the older and sicker people in some fashion. And once you do that, it's sort of inevitable you end up where every health-reform plan has ended up since the days of Richard Nixon. You end up with some variation on Obamacare.

Of course, if you want to scrap guaranteed issue, scrap community rating, scrap the individual mandate and scrap the subsidies, as Republicans propose, then you end up where the country was in 2008: with a market system that inevitably gives way to an insurance spiral in which steadily rising premiums cause a steadily rising percentage of Americans without health insurance.

There are no easy solutions here, no free lunches. You can't have all the good parts of an unregulated insurance market (freedom to buy what you want, when you want, with market pricing) without the



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bad parts (steadily rising premiums and insurance that is unaffordable for people who are old and sick).

At the same time, you can't have all the good parts of a socialized system (universal coverage at affordable prices) without freedom-reducing mandates and regulations and large doses of subsidies from some people to other people. Anyone who says otherwise — anyone promising better-quality health care at a lower cost with fewer regulations and lower taxes — is peddling hokum.

Discussion Questions

1. As the article indicates, Republican leaders have indicated that they intend to “repeal and replace” the Affordable Care Act. What is your understanding of the “replace” component?

The details of the “replace” component of “repeal and replace” have been scarce thus far in the political debate.

2. As the article indicates, Mr. Pearlstein asserts that it is not possible to effectively retain the “preexisting condition” component of the Affordable Care Act without maintaining the individual mandate. Do you agree or disagree with Mr. Pearlstein’s assertion? Explain your response.

In your author’s opinion, Mr. Pearlstein makes a compelling argument that it is impossible to retain the “preexisting condition” component of the Affordable Care Act without maintaining the individual mandate. Requiring everyone to have health insurance makes it financially possible for insurance companies to offer affordable coverage to individuals with preexisting conditions.

3. In your reasoned opinion, what is the likelihood that Republican leadership in the United States Congress will repeal the Affordable Care Act? Explain your response.

In your author’s opinion, it is very likely that Republican leadership in the United States Congress will repeal the Affordable Care Act. According to the Washington Post, as of March 2014, the United States Congress has voted to repeal or modify the Affordable Care Act fifty-four (54) times. None of this was effective, since President Obama had veto power. In the upcoming Trump administration, Republican leadership in Congress has vowed to repeal Obamacare, and with Donald Trump in the Oval Office, a veto of such legislation is not likely.



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Of Special Interest

This section of the newsletter addresses what a Trump presidency could mean for Planned Parenthood and women's health.

Ethical Dilemma

“What a Trump Presidency Could Mean for Planned Parenthood and Women’s Health”

<http://www.cbsnews.com/news/what-donald-trump-presidency-could-mean-for-planned-parenthood-womens-health/>

According to the article, throughout the campaign, Donald Trump vowed to defund Planned Parenthood and end Obamacare. Now with his victory — in a campaign marked by degrading language about women that sharply divided male and female voters — many women are expressing concern about what his administration might mean for their reproductive rights and health care options.

As women flooded social media recently urging others to get birth control now, Planned Parenthood issued a statement on where it stands.

“These doors stay open,” the organization tweeted.

But Cecile Richards, President of Planned Parenthood Action Fund, sounded a worried tone. “There are almost no words to capture the threat that this election result poses to our democracy, to our economic security, to access to reproductive health care and most especially to the safety and dignity of people of color,” she said in the statement.

Richards raised alarms over Trump’s campaign promise to dismantle the Affordable Care Act — Obamacare — after he takes office. If it happens, insurance companies would no longer be required to cover birth control with no copay and young adults under the age of 26 will no longer be guaranteed coverage on parents’ plans.

Speaking to the media last month, Richards — who campaigned for Hillary Clinton — said 55 million women now have access to preventive care with no copay and no cost.

In her recent statement, Richards said: “We will fight alongside our partners to make sure that the progress of the past eight years, including emerging from the worst recession we’ve had in close to a century, expanding health care coverage to more than 20 million Americans, breaking down barriers of discrimination and racism, and upholding marriage equality, is protected. We



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cannot allow the acceptance of institutionalized racism, sexism, and discrimination to become our new normal.”

Meanwhile, women on Twitter encouraged others to get a prescription for an IUD—a long-term birth control device — before it’s too late.

“Get an IUD tomorrow,” tweeted @MorningGloria in all capital letters. (She also suggested her followers get a Canadian boyfriend, like herself.)

Republicans in Congress voted to bar Planned Parenthood from receiving about \$500 million in federal funds, but Democrats held off the attempt last year. Now the fate of that funding is likely to be in the balance again.

Trump’s soon-to-be vice president, Indiana Governor Mike Pence, is a conservative Republican and fierce critic of abortion who championed a restrictive law in his state that bans abortion due to a genetic abnormality of the fetus.

In March, Trump drew heavy criticism when he said there should be “some form of punishment” for women who seek abortions, though he later revised that and only said their doctors should be penalized.

Richards said the majority of Americans, including Trump’s own voters, support access to health care at Planned Parenthood and want abortion to stay legal and safe.

“We will fight to make sure those rights are protected and that people can still access the care they need. We will not give up, we will not back down, and we will not be silenced,” she said.

Discussion Questions

1. As indicated in the “Teaching Tip 2” article included later in this newsletter (“How Planned Parenthood Actually Uses Its Federal Funding”), federal dollars are *not* used to provide the service at the center of the political debate around Planned Parenthood: abortions. That has been banned by law in almost all cases since 1976. Instead, the organization uses money from other sources — private donors and foundations as well as fees — to fund its abortion services. Should this fact influence the United States government’s decision regarding federal funding for Planned Parenthood? Explain your response.

This is an opinion question, so student responses will likely vary.

2. As indicated in the “Teaching Tip 2” article included later in this newsletter (“How Planned Parenthood Actually Uses Its Federal Funding”), abortions comprise only about 3 percent of all the services Planned Parenthood provides (other services include STI/STD testing and treatment,



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contraception, and cancer screening and prevention). Should this fact influence the United States government's decision regarding federal funding for Planned Parenthood? Explain your response.

This is an opinion question, so student responses will likely vary.

3. In your reasoned opinion, what is the likelihood that Planned Parenthood could survive the elimination of federal funding for its organization? Explain your response.

It is difficult to imagine Planned Parenthood's survival without federal funding for its organization. Planned Parenthood would have to rely upon private contributions to address the shortfall, and the sufficiency of such contributions is difficult to predict.



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Of Special Interest

This section of the newsletter will assist you in addressing Article 3 (“Trump Advisers Back Deregulation, Privatized Social Security”) and the Ethical Dilemma (“What a Trump Presidency Could Mean for Planned Parenthood and Women’s Health”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 3—“Trump Advisers Back Deregulation, Privatized Social Security”):

“The Truth about Social Security’s Solvency and You”

<http://www.forbes.com/sites/nextavenue/2016/06/24/the-truth-about-social-securitys-solvency-and-you/#138d1b432a5e>

According to the article, Social Security’s recently released 2016 Annual Report of the Board of Trustees on the system’s financial condition is 272 pages long and a doorstop.

The report is dense, full of detailed tables and conservative projections — a policy wonk’s dream. The dry recitation of numbers in its opening sentences are a powerful reminder, however, of just how critical Social Security’s combined Old Age and Disability program is to Americans. Last year, the program paid benefits to some 60 million people, comprised of 43 million retired workers and their dependents, 6 million survivors of deceased workers and 11 million disabled workers and their dependents.

And here’s why you should care: The bottom-line message from the 2016 Trustees report for current and future Social Security beneficiaries: Social Security isn’t running out of money. (That will be good news to the 68% of future retirees who worry Social Security will run out of money in their lifetime; that figure is based on a recent Nationwide Retirement Institute survey.)

It’s Not Going Bankrupt

Social Security isn’t bankrupt. Social Security will be there when it’s time for younger boomers, Gen X’ers, Millennials and younger generations to file for benefits.

To be sure, the report said, the combined Old Age and Disability program will first face a shortfall in 2034 (see the cliff chart below), a projection that’s unchanged from last year’s report. Even if the trust fund becomes depleted (a huge “if” that presupposes Congress doesn’t take steps to shore it up), annual revenues from the dedicated payroll tax and taxation of Social Security benefits will be enough to fund 74% of scheduled benefits through 2090.



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That isn't a desirable outcome, of course. But it's a far cry from the all-too-common refrain that Social Security is hurtling toward insolvency.

Put somewhat differently, over the 75-year projection by the bipartisan Trustees, the combined program has a financial imbalance equal to 0.95% of the U.S. Gross Domestic Product. That's a smaller economic burden than the cost of the wars in Iraq and Afghanistan.

It's important to remember that the Trustees actually make three projections, involving different demographic, economic, and program-specific assumptions. Common practice is to use the intermediate assumptions, the set that leads to the shortfall in 2034. This projection assumes U.S. productivity grows at a 1.68% average annual rate and that unemployment averages 5.5%. But under the optimistic set of assumptions— including productivity growth of 1.98% and unemployment at 4.5% — there never is a shortfall. The fiscal situation deteriorates more rapidly with the pessimistic scenario, of course, including productivity growth of 1.38% and unemployment of 6.5%.

The different scenarios are a good reminder that a vibrant economy where the average worker shares in the bounty matters a lot when it comes to the future of Social Security.

A Call to Address the Looming Shortfall

The report's authors also included their annual plea for Washington legislators to take steps to avoid the looming 2034 problem. "The Trustees recommend that lawmakers address the projected trust fund shortfalls in a timely way in order to phase in necessary changes gradually and give workers and beneficiaries time to adjust to them," they wrote.

They're right. Sadly, nothing has been done to shore up Social Security in polarized Washington, even though legislators of both parties know what's ahead.

This coming year just might break the logjam, though, largely thanks to the dynamics of the Presidential election.

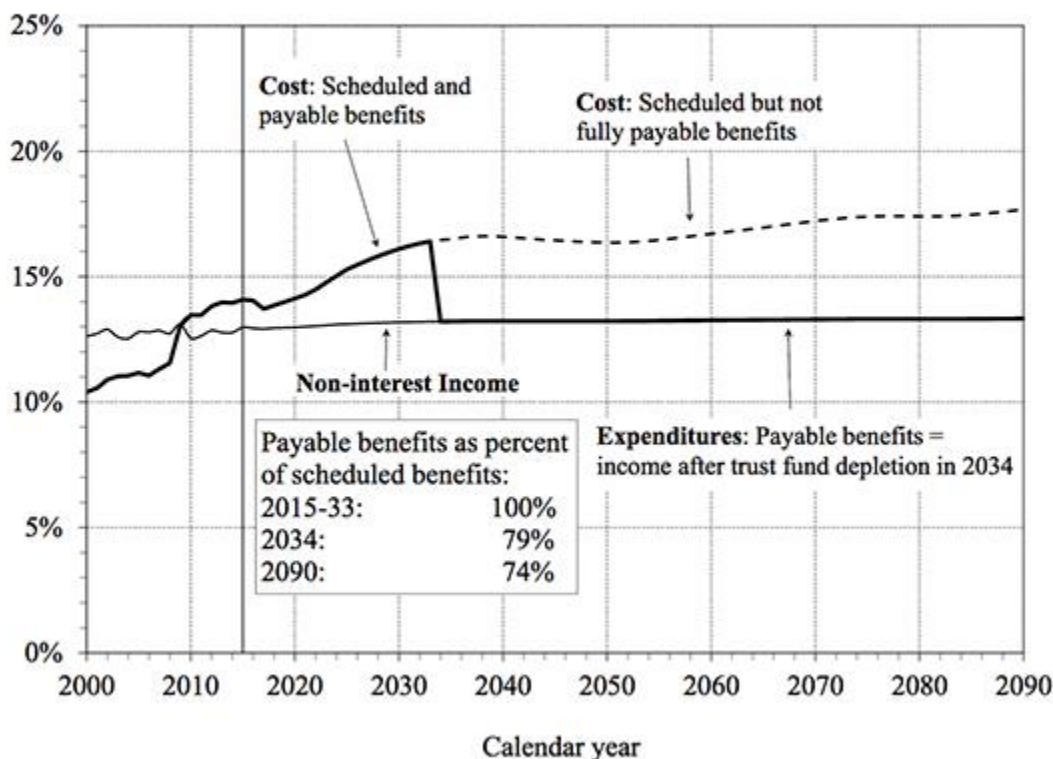
How the Election May Turn the Tide

Social Security has been a backburner issue in the race to the White House so far. But that's changing. The signal moment came earlier this month when President Obama urged legislators to make Social Security more generous. That was something of a reversal. Several times in his first term, Obama flirted with the idea of striking of grand fiscal bargain with Republicans that would have included some kind of reduction in Social Security benefits. No more.

"We can't afford to weaken Social Security, we should be *strengthening* Social Security," he just said in a speech in Elkhart, Ind. "And not only do we need to strengthen its long term health, it's

time we finally made Social Security more generous and increased its benefits so today's retirees and future generations get the dignified retirement that they have earned."

Figure II.D2.—OASDI Income, Cost, and Expenditures as Percentages of Taxable Payroll
[Under Intermediate Assumptions]



Hillary Clinton, the presumptive Democratic nominee for the presidency and her rival Bernie Sanders, agree on boosting Social Security benefits. Clinton takes a more targeted approach, specifically helping out vulnerable groups, like low-income women. Sanders has called for an across-the-board benefit increase.

"I like the enthusiasm," says Alicia Munnell, director of the Center for Retirement Research at Boston College. "I also like that recognition that many people have nothing else for their retirement but Social Security."

How to pay for improved benefits? The culprit for almost 40% of the projected shortfall is attributable to the upward redistribution of income over the last four decades, calculates Dean Baker, co-director of the Center for Economic and Policy Research in Washington, D.C. That's why both Clinton and Sanders are keen on raising the current \$118,500 limit on earnings subject to Social Security payroll taxes.



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Clinton has been open to that idea and Sanders has explicitly advocated lifting the cap so everyone “who makes over \$250,000 a year pays the same percentage of their income into Social Security as the middle class and working families,” according to his campaign web site.

If the cap is raised (or perhaps eliminated), odds are the day of a shortfall reckoning will be delayed. Another option is increasing the payroll tax itself. The Trustees note that the Social Security system would be fully solvent over the 75-year time horizon of the report if the payroll tax went up by 2.58% to 14.98%.

“I’m of the view that the real question is first, what level of benefits we want and second how do we pay for it?” says Nancy Altman, founding co-director of Social Security Works.

Trump and the Republicans

The mystery lies with the Republicans’ answer to Altman’s question. Republican orthodoxy has been to describe Social Security as unaffordable, a catastrophic burden. The conservative rule book with entitlement spending — including Social Security — is to promote privatizing or partially privatizing Social Security, means-testing the program, raising retirement age from age 67 for those born in 1960 or later, reducing the annual cost of living adjustment (which the report forecasts to be a paltry 0.2% in 2017) or some combination of these ideas.

Except Donald Trump, the presumptive Republican candidate for the presidency, doesn’t buy into the conservative canon. He likes Social Security (and Medicare) as they are just fine. “We should not touch Social Security,” he writes in *Crippled America: How to Make America Great Again*. “It’s off the table.”

Those lines echo what Trump said during the March primary debate in Miami. “I will do everything within my power not to touch Social Security, to leave it the way it is,” he said. “And it’s my absolute intention to leave Social Security the way it is. Not increase the age and to leave it as is.” This stance was a key part of his appeal to the conservative base during the Republican primary.

Medicare’s Outlook

And what about Medicare? The Social Security Trustees also made a forecast for the health insurance program that covers more than 55 million Americans (mostly 65 and older). Here, the report paints a mixed picture, and a bit darker than last year’s report.

The Trustees now predict Medicare will exhaust its reserves by 2028, two years sooner than last year’s estimate. The reason: the actuaries expect higher use of inpatient hospital services, lower projected improvements in productivity and lower payroll tax revenue due to slower wage growth.

Here, too, changes could be made to stave off the forecasted doomsday.



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Republican Speaker of the House Paul Ryan wants to gradually increase the Medicare eligibility age from 65 to 67 for people born after 1960 (matching Social Security). He also proposes providing beneficiaries with a fixed dollar subsidy to buy their Medicare coverage, a policy shift that moves the risk of rising health care costs from taxpayers overall to older Americans in particular.

Whether either of those will happen will, of course, depend largely on what happens in November 2016.

Teaching Tip 2 (Related to the Ethical Dilemma—“What a Trump Presidency Could Mean for Planned Parenthood and Women’s Health”):

“How Planned Parenthood Actually Uses Its Federal Funding”

<https://www.washingtonpost.com/news/the-fix/wp/2015/08/04/how-planned-parenthood-actually-uses-its-federal-funding/>

According to the article, the long-running calls for the federal government to cease all funding directed toward Planned Parenthood have once again come to the fore. This time, a congressional vote and debate took shape after an anti-abortion group secretly recorded a series of videos with the organization's medical officers and staff speaking dispassionately — some would say dismissively — about the work of extracting fetal tissue from aborted fetuses and transferring it to research facilities. And even though the defund Planned Parenthood fight on the Senate floor didn't move the needle — in terms of actual impacts on funding — it did bring to the fore some important facts about how much federal money goes to the group, and what it's used for.

So, here's what we know.

During the fiscal year that ended June 30, 2014, the most recent for which data is available, Planned Parenthood affiliates around the country received \$528.4 million in government funds (a combination of state, federal and sometimes local government dollars), according to the organization's own annual report and information it's required to share with the IRS.

Those federal dollars were the single largest source of money coming into the organization and its local affiliates, by far. Another \$305.3 million came from nongovernment sources, about \$257.4 million reached the organization after private donors and foundations made contributions and bequests. The organization also raised another \$54.7 million in fees charged for its services. So, government funding — with federal dollars comprising the biggest portion of this part of the organization's budget — are absolutely critical to Planned Parenthood's total operation.



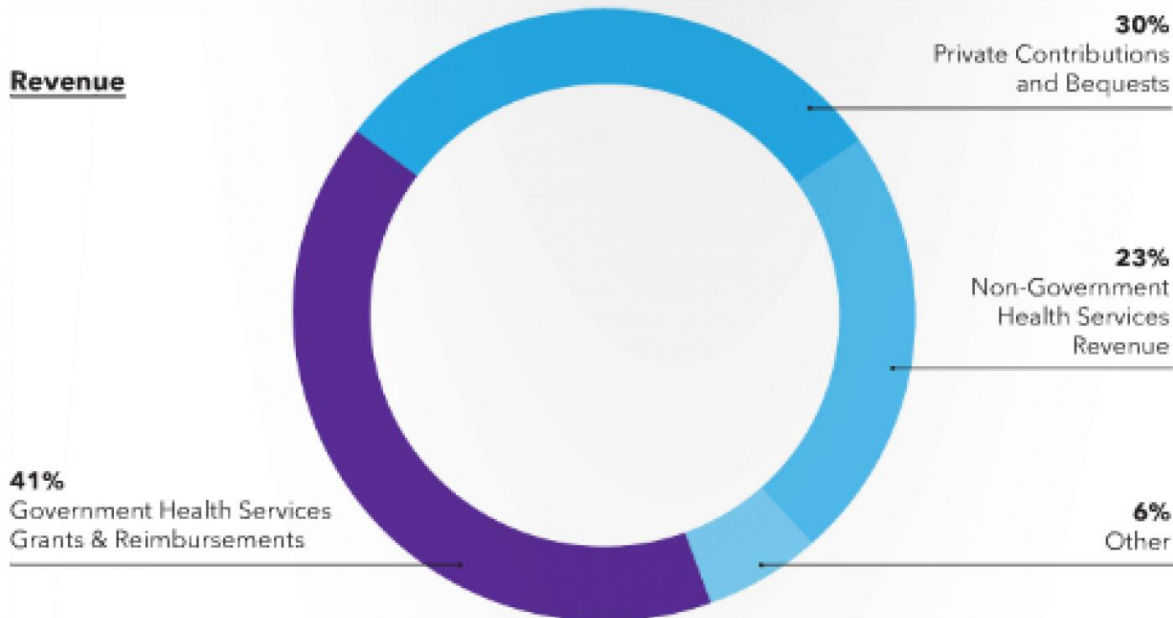
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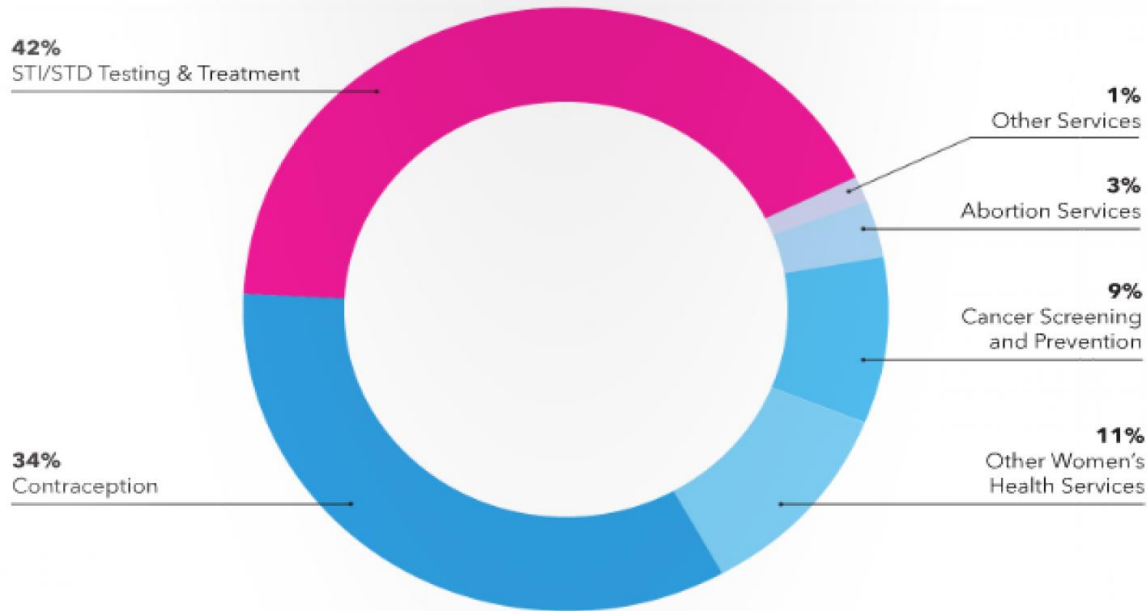
Revenue



Planned Parenthood's Financial Year 2013-2014 annual report

But, it's important to note that federal dollars are *not* used to provide the service at the center of the political debate around Planned Parenthood: abortions. That's been banned by law in almost all cases since 1976. (The details of the ban have shifted over time.) Instead, the organization uses money from other sources — private donors and foundations as well as fees — to fund its abortion services.

All told, abortions comprise about 3 percent of all the services Planned Parenthood provides, according to the organization's own data. (In 2011, FactCheck.org also examined this question and found the organization's reports to be accurate) The rest of the organization's revenue, including government dollars, are used to fund services in a way that breaks down like this:



Source: Planned Parenthood fiscal year 2013-2014 annual report

So, while it's true that the Planned Parenthood's political opponents would quite likely strike a major blow to the organization if it was stripped of all federal dollars, it's far less likely that such a change would significantly reduce the number of abortions the agency's doctors perform each year or how those procedures contribute to the total number of pregnancies terminated in the United States.

Those who pushed for the vote Monday night have also, no doubt, heard Planned Parenthood supporters offer some version of this argument for years. Planned Parenthood provides critical and preventative health care to a lot of low and moderate income women, that argument goes.

Among those services supported with federal dollars are STD screenings and contraception.

Most public health experts agree that this combination does help to preserve women's overall health and fertility while also limiting unwanted pregnancies.

Perhaps that's why even Planned Parenthood's biggest critics saw to it that the organization's federal funding — if it was zeroed out — would be directed toward other health care organizations. The bill that stalled last night, specifically called for that. The reasons to include that provision may be practical, political or some combination thereof.

This year, when unwanted pregnancy and abortion rates fell, those opposed to abortion and in favor of a range of policies that have made abortions more difficult to obtain sought to take credit.

But the most apolitical public health experts agree that critical combination — access to care and contraception — should take most of the credit.



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Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 25 and 47	Chapter 25	Chapter 3	Chapters 3 and 25
Bennett-Alexander & Hartman, Employment Law for Business	N/A	Chapter 16	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapter 46	Chapters 5 and 6	Chapter 2	Chapter 2
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapter 46	Chapters 5 and 6	Chapter 2	Chapter 2
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 1 and 4	Chapters 1 and 5	Chapter 2	Chapter 2
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapter 52	Chapter 3	Chapter 4	Chapter 4
McAdams et al., Law, Business & Society	Chapter 17	Chapters 8 and 16	Chapter 2	Chapter 2
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 12 and 19	Chapters 1, 2 and 26	Chapter 5	Chapters 5 and 12
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 19 and 21	Chapters 2, 3, 6 12 and 21	Chapter 2	Chapters 2 and 21
Sukys, Brown, Business Law with UCC Applications	Chapters 1, 19, 23 and 33	Chapter 34	Chapter 1	Chapters 1, 19 and 23



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This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 12th Edition 2015© (0078023815) – New edition coming January 2017
- Bennett-Alexander et al., Employment Law for Business, 8th Edition 2015© (0078023793)
- Kubasek et al., Dynamic Business Law, 4th Edition 2017© (1259723585) – New edition now available!
- Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
- Kubasek et al., Dynamic Business Law: The Essentials, 3rd Edition 2016© (007802384X)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 16th Edition 2016© (0077733711)
- McAdams et al., Law, Business & Society, 11th Edition 2015© (0078023866)
- Melvin, The Legal Environment of Business: A Managerial Approach, 2nd edition 2015© (0078023807) – New edition coming January 2017
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 17th Edition 2016© (0078023858)
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