

# A New Form of “Ideological Capture”: Abortion Politics and the Trafficking Victims Protection Act

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## I. INTRODUCTION

In late 2011, advocates watched, bewildered, as the nation’s anti-trafficking law—a measure with near-universal support in Congress—expired in the midst of partisan controversy.<sup>1</sup> Many wondered how the Trafficking Victims Protection Act (TVPA),<sup>2</sup> a law that had sailed to reauthorization three times since its initial passage in 2000,<sup>3</sup> had become so contentious.

The answer was that abortion politics had entered the realm of the TVPA. In October 2011, the Department of Health and Human Services (HHS) refused to renew funding to the U.S. Conference of Catholic Bishops (USCCB)—which had overseen social services for trafficking victims nationwide for more than five years—because USCCB would not provide abortion and contraceptive services to trafficking victims.<sup>4</sup> This prompted a firestorm of criticism from faith-based organizations and conservative lawmakers,<sup>5</sup> who called the move “pro-abortion favoritism” and assailed the Obama Administration for waging a war against Catholics and religious freedom.<sup>6</sup> Some conservative lawmakers sought to add a “conscience

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<sup>1</sup> See Elizabeth Bewley, *Abortion Issue Slows Action on Trafficking Bill*, GANNETT NEWS SERV. (Apr. 9, 2012), <http://www.wbir.com/news/article/215403/2/Abortion-issue-slows-action-on-trafficking-bill>.

<sup>2</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 [hereinafter TVPA] (codified as amended at 22 U.S.C. § 7101–7113 and scattered sections of the U.S. Code).

<sup>3</sup> See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 [hereinafter TVPRA 2003] (codified as amended at 22 U.S.C. § 7101–7113 and scattered sections of the U.S. Code); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) [hereinafter TVPRA 2005] (codified as amended at 22 U.S.C. § 7101–7113 and scattered sections of the U.S. Code); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 [hereinafter TVPRA 2008] (codified as amended at 22 U.S.C. § 7101–7113 and scattered sections of the U.S. Code).

<sup>4</sup> See Jerry Markon, *Catholic Group Unfairly Denied Grant, GOP Says*, WASH. POST, Nov. 12, 2011, at A4.

<sup>5</sup> *Id.*

<sup>6</sup> *HHS and the Catholic Church: Examining the Politicization of Grants: Hearing Before the H. Comm. on Oversight and Gov’t Reform*, 112th Cong. 58 (2011), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg73939/pdf/CHRG-112hhrg73939.pdf> (statement of Hon. Christopher H. Smith, Rep. of New Jersey).

clause” to the newest TVPA reauthorization bill (TVPRA) to prevent the Administration from denying funds to any organization based on its moral or religious beliefs.<sup>7</sup> Democratic legislators rejected this idea, arguing that victims of trafficking—many of whom were forced into sex work—desperately needed access to abortion and contraception.<sup>8</sup>

The reauthorization that finally passed in February 2013, after more than a year of negotiation, did not include a conscience clause.<sup>9</sup> But the debate signaled that, to borrow a phrase from Professor Janie Chuang, the anti-trafficking movement is at risk of “ideological capture”<sup>10</sup> by the anti-abortion movement. Just as powerful anti-prostitution advocates have conflated the anti-trafficking movement in the United States with a campaign against prostitution,<sup>11</sup> abortion opponents may continue their attempt—seen in the recent reauthorization debate—to reorient the anti-trafficking movement to align with anti-abortion ideology. To ease the reauthorization process when the current version of the law expires in 2017, anti-trafficking advocates on both sides of the aisle should guard against future insertion of abortion politics into the legislative debate.

Part II of this article examines the problem of human trafficking and the major international and domestic efforts aimed at combating it. Part III then describes the influence of socially conservative interest groups and lawmakers, motivated in large part by evangelical and Catholic religious beliefs, in putting trafficking on the domestic agenda, moving the TVPA through Congress in 2000, and implementing it over the following decade. This Part argues that, for two reasons, the involvement of these social conservatives set the TVPA on course to eventually collide with the anti-abortion movement. First, such involvement turned trafficking into a “woman’s issue” that focused on sex and morality. Second, it created a regime in which many of the anti-trafficking movement’s biggest advocates also vehemently opposed abortion rights.

Part IV explores two high-profile intersections between abortion politics and anti-trafficking advocacy. Part IV.A examines a series of “stings” on Planned Parenthood clinics by an anti-abortion group, in which clinic employees were filmed purportedly advising sex traffickers on how to obtain medical care for trafficked girls without attracting the attention of law enforcement. It argues that this incident alerted lawmakers to potential links between sex trafficking and abortion and convinced some abortion oppo-

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<sup>7</sup> See H.R. 3589, 112th Cong. § 303 (1st Sess. 2011).

<sup>8</sup> See Huma Khan, *Abortion Issue in Catholic Bishops Sex Trafficking Victim Funding*, ABC NEWS (Dec. 1, 2011, 2:23 PM), <http://abcnews.go.com/blogs/politics/2011/12/abortion-issue-in-catholic-bishops-sex-trafficking-victim-funding>.

<sup>9</sup> See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, tit. XII, 127 Stat. 54.

<sup>10</sup> Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655 (2010).

<sup>11</sup> See *id.* at 1699–1701.

nents that abortion providers “aid and abet” sex traffickers. Part IV.B describes the ways in which these anxieties and others played out in the 2011–2013 TVPA reauthorization debate. It explores conservative efforts to frame a critique in terms of religious freedom and the importance of victim consent, rather than in terms of immorality.

Finally, Part V makes recommendations to help advocates ensure that controversy over abortion does not endanger future TVPA reauthorizations. It encourages anti-trafficking advocates to time the next TVPA reauthorization wisely and to facilitate compromise between HHS and faith-based groups. This article concludes by suggesting that shifting the focus of anti-trafficking policy toward the human rights of male and female victims—of labor *and* sex trafficking—would reduce lawmakers’ and advocates’ tunnel vision on women and sexual morality, thereby lessening the power of the anti-abortion movement in the anti-trafficking field. A broader focus on the human rights of forced laborers of all stripes—including, but not limited to, sex workers—would also refocus some attention on migrant laborers, domestic workers, and other victims whose plights are underappreciated in the current regime.

## II. ADDRESSING THE PROBLEM OF HUMAN TRAFFICKING

While it is difficult, if not impossible, to determine how many victims exist, trafficking is believed to be a widespread problem.<sup>12</sup> The International Labour Organization estimates that nearly twenty-one million people worldwide are in forced labor or forced sexual exploitation.<sup>13</sup> Between 14,500 and 17,500 people are trafficked into the United States each year, according to the U.S. State Department.<sup>14</sup> Globally, fifty-five to sixty percent of all trafficking victims are women, and almost all sex trafficking victims are women.<sup>15</sup>

Trafficking attracted international attention in the mid-1990s due to the convergence of several factors: the growth of the women’s human rights movement, the growing recognition of the importance of organized crime in migration, and an overall rise in international labor migration due to globalization.<sup>16</sup> Specifically, increased migration in Eastern Europe after the col-

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<sup>12</sup> Estimating the scope of the trafficking problem is challenging, both because trafficking victims are often hidden and unlikely to identify themselves to researchers, and because researchers themselves have published widely varying, unverifiable estimates.

<sup>13</sup> *21 Million People Are Now Victims of Forced Labour, ILO Says*, INT’L LABOUR ORG. (June 1, 2012), [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_181961/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang-en/index.htm).

<sup>14</sup> HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE, 4 (2009), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/index.pdf>

<sup>15</sup> UNITED NATIONS OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS, 7 (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

<sup>16</sup> Chuang, *supra* note 10, at 1660.

lapse of the Soviet Union turned attention to trafficking.<sup>17</sup> Furthermore, the rapid spread of HIV/AIDS during this period amplified concerns about the health effects of sex trafficking.<sup>18</sup> A coalition spanning the political spectrum developed in the mid-1990s to tackle the growing scourge of so-called “modern-day slavery”; its members included feminists, human rights organizations, government agencies, and religious groups, including evangelical, Catholic and Jewish activists.<sup>19</sup>

The heightened visibility of trafficking came to a head in 2000 with the adoption of international and U.S. anti-trafficking laws: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. Protocol),<sup>20</sup> and the U.S. TVPA. The U.N. Protocol requires participating nations to criminalize trafficking and encourages, but does not require, states to protect and support victims.<sup>21</sup> It defines human trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>22</sup>

The protocol defines exploitation as including “the exploitation of the prostitution of others or other forms of sexual exploitation,” forced labor, slavery, servitude, or the removal of organs.<sup>23</sup>

This definition was the result of months of debate among interest groups. In particular, fault lines emerged between so-called “abolitionists”—an unlikely pairing of social conservatives, feminists, religious groups, and others who considered all prostitution coercive and therefore a form of trafficking<sup>24</sup>—and those who believed non-coerced sex work is pos-

<sup>17</sup> Barbara Stolz, *Educating Policymakers and Setting the Criminal Justice Policymaking Agenda: Interest Groups and the ‘Victims of Trafficking and Violence Act of 2000’*, 5 CRIM. JUST. 407, 408 (2005).

<sup>18</sup> *Id.*

<sup>19</sup> Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism,”* 18 DIFFERENCES: J. FEMINIST CULTURAL STUDS. 128, 129 (2007); Elisabeth Bumiller, *Evangelicals Sway White House On Human Rights Issues Abroad*, N.Y. TIMES, Oct. 26, 2003, at A1.

<sup>20</sup> United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Dec. 12, 2000, 2237 U.N.T.S. 319. This Protocol is a supplement to the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209.

<sup>21</sup> *Id.* Arts. 5–6.

<sup>22</sup> *Id.* Art. 3(a).

<sup>23</sup> *Id.*

<sup>24</sup> Although the groups comprising the abolitionist coalition held dramatically divergent views on many topics, they shared a desire to eliminate prostitution around the world. See Chuang, *supra* note 10, at 1658 (defining “neo-abolitionists”). In this article, the term “abolitionist” will most often be used to refer to conservative Christian abolitionists, who played a key role in establishing the dominance of the abolitionist perspective in U.S. anti-trafficking policy, see *infra* Part III.B–III.D.

sible. While neither side won a clear victory in the U.N. definition, its expansive definition of trafficking—which includes such factors as “the abuse of power or of a position of vulnerability”—reflects, at least in part, abolitionists’ power.<sup>25</sup>

Abolitionists also exerted influence over the trafficking definition in the TVPA, signed into law two months before the U.N. Protocol, in October 2000.<sup>26</sup> Unlike the U.N. Protocol, the TVPA defines “sex trafficking” to encompass even non-coerced commercial sex.<sup>27</sup> The TVPA penalizes only “severe forms of trafficking,” however, which it defines as:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>28</sup>

This definition is narrower than the U.N. Protocol’s definition of trafficking, as it does not criminalize such factors as the abuse of power or the removal of organs.<sup>29</sup>

While the TVPA’s distinction between sex trafficking—which includes, but does not penalize, non-coerced commercial sex—and “severe forms” of sex trafficking has had little if any practical impact, it represented a symbolic victory for the religious and feminist abolitionists who had pushed for legislation that treated all prostitution as trafficking. As one journalist wrote, the separate definition of sex trafficking “pleased conservative feminists but more significantly enabled the broader social agenda of the Christian right. If trafficking is prostitution per se, then evangelicals can fight all prostitution, throughout the world, in the name of trafficking.”<sup>30</sup> Furthermore, the TVPA does not require movement across an international border, meaning that in the United States, anyone who forces someone into prostitution can be prosecuted as a sex trafficker.<sup>31</sup>

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<sup>25</sup> Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 359 (2006).

<sup>26</sup> See Chuang, *supra* note 10, at 1677–80.

<sup>27</sup> TVPA § 103(9) (defining “sex trafficking” as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”).

<sup>28</sup> *Id.* § 103(8).

<sup>29</sup> Halley et al., *supra* note 25, at 359.

<sup>30</sup> Jennifer Block, *Sex Trafficking: Why the Faith Trade Is Interested in the Sex Trade*, CONSCIENCE (2004), [http://www.catholicsforchoice.org/conscience/archives/c2004sum\\_sex-trafficking.asp](http://www.catholicsforchoice.org/conscience/archives/c2004sum_sex-trafficking.asp).

<sup>31</sup> See Stephanie M. Berger, *No End in Sight: Why the End Demand Movement Is the Wrong Focus for Efforts to Eliminate Human Trafficking*, 35 HARV. J.L. & GENDER 523, 536 (2012).

The TVPA aimed at “three P’s”: prosecution of traffickers, prevention of trafficking, and protection of victims.<sup>32</sup> As for prosecution, the act created new crimes—for example, trafficking in children<sup>33</sup> and forced labor<sup>34</sup>—and increased penalties for existing trafficking crimes.<sup>35</sup> The law’s prevention provisions created a Trafficking in Persons (TIP) Office within the U.S. State Department, requiring it to produce annual reports on countries’ efforts to reduce trafficking.<sup>36</sup> Countries that do not meet the TVPA’s anti-trafficking standards and do not take “significant” strides to improve can be cut off from U.S. non-humanitarian, non-trade-related aid.<sup>37</sup>

Victim protection in the TVPA centers on immigration measures and social services. Trafficking victims can receive temporary “T” visas, which provide a pathway to permanent legal status.<sup>38</sup> HHS administers social services by awarding grants to organizations providing counseling, housing, medical care, and other aid.<sup>39</sup> From 2006–2011, HHS contracted with USCCB to oversee the provision of victim services nationwide.<sup>40</sup> These victim-services funds would become the most controversial part of anti-trafficking policy when lawmakers tried to reauthorize the bill in 2011.

### III. “IDEOLOGICAL CAPTURE”: THE ROLE OF ABOLITIONISTS IN PASSING AND IMPLEMENTING THE TVPA

#### A. A New Form of “Ideological Capture”

While much of the movement to end the injustices faced by sex workers in the early and mid-1990s focused on sex workers’ rights, these efforts were soon overshadowed by the work of abolitionists: an unusual coalition of feminists, NGOs, state agencies, evangelical Christians, and other religious groups lobbying for the abolition of prostitution worldwide.<sup>41</sup>

The alliance between feminist and conservative interest groups in passing the TVPA was surprising, not least because these groups tend to disagree on reproductive rights, including support for access to abortion, and, in some cases, contraception.<sup>42</sup> Although the TVPA defines trafficking to include a wide variety of offenses—including forced labor—this powerful abolitionist

<sup>32</sup> OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, THE 3 PS: PREVENTION, PROTECTION, PROSECUTION (2011), available at <http://www.state.gov/documents/organization/167334.pdf>.

<sup>33</sup> TVPA § 1591.

<sup>34</sup> *Id.* § 1590.

<sup>35</sup> *Id.* § 112.

<sup>36</sup> *Id.* §§ 104–105.

<sup>37</sup> *Id.* § 110.

<sup>38</sup> *Id.* § 1513.

<sup>39</sup> *Id.* § 107.

<sup>40</sup> See *ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 50 (1st Cir. 2013) (describing the history of HHS’ victim-services contracts with USCCB).

<sup>41</sup> Bernstein, *supra* note 19, at 129.

<sup>42</sup> See Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. COMP. & INT’L L. 269, 271–72 (2006).

coalition has influenced U.S. enforcement priorities so strongly that much of the anti-trafficking movement has morphed into an anti-prostitution campaign.<sup>43</sup> Abolitionists believe that prostitution is inherently coercive, and that all prostitutes are therefore trafficked. According to this perspective, no one freely consents to sex work; if a sex worker believes she has consented, it is because she has convinced herself as a survival mechanism that she is acting voluntarily.<sup>44</sup>

Chuang contends that abolitionists’ ascendance in the anti-trafficking movement amounts to “ideological capture”: abolitionists have promoted “criminal justice responses that target prostitution and leave unquestioned the exploitative labor practices and migrant abuse that characterize the majority of trafficking cases.”<sup>45</sup> Chuang argues that abolitionists have embraced a “crusader impulse,” using law-and-order approaches to “rescue” women in brothels and, in doing so, invoking stereotypes of “naïve Third World women.”<sup>46</sup> As is the case with most “moral crusades,” Chuang writes, abolitionists have avoided critically evaluating the effectiveness of their approach.<sup>47</sup> This focus on ideology over evidence in the use of anti-prostitution criminal sanctions hurts trafficking victims, according to Chuang, because it fails to address the underlying causes of trafficking: gender, race, and class discrimination; inadequate migration avenues; and socioeconomic inequality that increases vulnerability to exploitation.<sup>48</sup>

Abolitionists’ initial framing of the debate has placed the anti-trafficking movement at risk for a second “ideological capture”—this time, by anti-abortion activists. The role of abolitionists turned the anti-trafficking field into a fertile ground for anti-abortion activism in two ways. First, abolitionists transformed trafficking into an issue that centered on women, sexuality, and sexual morality, rather than on coercive labor affecting both sexes; sexualizing the debate in this way enabled abortion politics to more easily enter the dialogue, since abortion is inextricably tied to female sexuality. Second, the influence of abolitionists placed conservative evangelicals and Catholics at the anti-trafficking movement’s helm—in Congress, in the Bush Administration, and in many advocacy organizations. Because these conservatives tended to oppose abortion rights, their close involvement in the anti-trafficking movement increased the likelihood that abortion politics would eventually enter the anti-trafficking realm.

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<sup>43</sup> Bernstein, *supra* note 19, at 130; Chuang, *supra* note 10, at 1658.

<sup>44</sup> See, e.g., Melissa Farley, “Bad for the Body, Bad for the Heart”: *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087, 1106–09 (2004) (arguing that women who appear to consent to sex work have dissociated identities, which allow them to suppress their emotions in order to survive).

<sup>45</sup> Chuang, *supra* note 10, at 1659.

<sup>46</sup> *Id.* at 1659, 1715.

<sup>47</sup> *Id.* at 1721.

<sup>48</sup> *Id.* at 1727–28.

While abolitionist feminist interest groups played a key role in the passage and implementation of the TVPA, conservative Christian abolitionists<sup>49</sup> arguably played a greater role in the expansion of the abolitionist agenda in the anti-trafficking regime.<sup>50</sup> Likewise, because of their firm opposition to abortion, conservative Christian lawmakers and interest groups were largely behind the delay in the most recent reauthorization of the TVPA.<sup>51</sup> Thus, to understand the forces that put the anti-trafficking field at risk for capture by anti-abortion advocates, it is first necessary to explore the central role of the religious right in passing and implementing the TVPA.

*B. Pre-Passage: Building Conservative and Evangelical Advocacy*

Nicholas Kristof coined the term “new internationalism” to describe the brand of global humanitarian activism practiced by the Christian right in the 1990s and 2000s.<sup>52</sup> While in the 1980s, conservative Christians focused on divisive domestic issues such as abortion, by the late 1990s they had shifted their focus toward international social justice issues that would allow them to build consensus with the left and secular activists.<sup>53</sup> As Rev. Richard Cizik of the National Association of Evangelicals said in 2003: “Evangelicals today are more interested in making a difference than in making a statement. . . . We made a lot of statements in the 1980’s and got zip.”<sup>54</sup>

This “leftward sweep”<sup>55</sup> of the Christian right culminated first in the passage of the International Religious Freedom Act of 1998, which established freedom from religious persecution as a central objective of U.S. foreign policy.<sup>56</sup> Michael Horowitz of the Hudson Institute, a conservative think tank, pulled together a coalition of evangelical groups to lobby for the passage of the International Religious Freedom Act.<sup>57</sup> The Act set up a dedicated office in the U.S. State Department tasked with evaluating religious freedom around the world and allowed for economic sanctions to be levied

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<sup>49</sup> Some scholars and journalists have referred to “evangelical Christians” as the primary religious group driving anti-trafficking policy. *See id.* at 1658. However, this overlooks the strong influence of Catholic interest groups and lawmakers. Thus, this article will use the term “conservative Christian” when referring to the politically and socially conservative evangelical and Catholic interests active in the anti-trafficking movement.

<sup>50</sup> *See* Berman, *supra* note 42, at 270, 272; Block, *supra* note 30; Bumiller, *supra* note 19, at A1.

<sup>51</sup> Many conservative activists have contended that HHS (and not abortion opponents) initially inserted abortion politics into the anti-trafficking agenda when it declined to renew USCCB’s grant. Regardless of who kicked off the controversy, however, anti-abortion lawmakers—who tended also to be evangelical or Catholic—were primarily responsible for delaying action on the reauthorization bill in 2011–2013. *See infra* IV.B.

<sup>52</sup> Nicholas D. Kristof, *When the Right is Right*, N.Y. TIMES, Dec. 22, 2004, at A31.

<sup>53</sup> Bumiller, *supra* note 19, at A6.

<sup>54</sup> *Id.*

<sup>55</sup> Bernstein, *supra* note 19, at 144.

<sup>56</sup> Block, *supra* note 30.

<sup>57</sup> *Id.*



against countries deemed guilty of severe violations of religious freedom.<sup>58</sup> The State Department’s Trafficking in Persons (TIP) Office and annual TIP reports created by the TVPA a few years later would mirror this structure. Critics of the International Religious Freedom Act said it merely created an office for evangelicals in the State Department and made cash available to faith-based groups, giving them a platform from which to launch their next international initiative.<sup>59</sup>

That next initiative was human trafficking.<sup>60</sup> By 1998, President Bill Clinton had signed a directive tasking the President’s Interagency Council on Women (PICW) with coordinating U.S. domestic and foreign policy to reduce trafficking in women and children.<sup>61</sup> The Clinton Administration’s perspective “conceptualized prostitution and trafficking as distinct” and “envisioned the possibility of noncoerced prostitution.”<sup>62</sup> In negotiations over the U.N. Protocol, the Administration sought to exclude voluntary prostitution from the definition of sex trafficking.

This approach did not sit well with conservative Christian interest groups, which wanted all prostitution to be considered trafficking. Notable evangelical and conservative leaders—including Richard Land of the Southern Baptist Convention, Bill Bright of Campus Crusade for Christ, Kay Cole James of the Heritage Foundation, and Diane Knippers of the Institute on Religion and Democracy (a Christian alliance promoting democracy abroad)—wrote a letter expressing concern about the Administration’s stance on prostitution.<sup>63</sup> Chuck Colson, founder of the evangelical Prison Fellowship and a former Nixon aide,<sup>64</sup> and Bill Bennett, a conservative Catholic and Education Secretary under George H.W. Bush,<sup>65</sup> said the Administration’s position would “lend legitimacy to prostitution” and “contradict common sense and decency.”<sup>66</sup> Though these interest groups did not win over the Clinton Administration, they found a more receptive audience when they turned to Congress to lobby for a domestic anti-trafficking bill.

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<sup>58</sup> *Religious Freedom*, U.S. DEPT OF STATE, <http://www.state.gov/j/drl/irf> (last visited Nov. 24, 2013).

<sup>59</sup> Block, *supra* note 30.

<sup>60</sup> *Id.*

<sup>61</sup> *Government Action Plans*, HUMANTRAFFICKING.ORG, [http://www.humantrafficking.org/action\\_plans/15](http://www.humantrafficking.org/action_plans/15) (last visited Nov. 24, 2013).

<sup>62</sup> Halley et al., *supra* note 25, at 356.

<sup>63</sup> Stolz, *supra* note 17, at 418; Tony Carnes, *Washington: “Odd Couple” Politics: Evangelicals, Feminists Make Common Cause Against Sex Trafficking*, CHRISTIANITY TODAY (Mar. 6, 2000), <http://www.christianitytoday.com/ct/2000/march6/14.24.html>.

<sup>64</sup> Michael Dobbs, *Charles Colson, Nixon’s “Dirty Tricks” Man, Dies at 80*, WASH. POST (Apr. 21, 2012), [http://www.washingtonpost.com/politics/whitehouse/chuck-colson-nixons-dirty-tricks-man-dies-at-80/2012/04/21/gIQAaoOHYT\\_story.html](http://www.washingtonpost.com/politics/whitehouse/chuck-colson-nixons-dirty-tricks-man-dies-at-80/2012/04/21/gIQAaoOHYT_story.html).

<sup>65</sup> Joshua Green, *The Bookie of Virtue*, WASH. MONTHLY (June 2003), <http://www.washingtonmonthly.com/features/2003/0306.green.html>.

<sup>66</sup> William J. Bennett & Charles Colson, *The Clintons Shrug at Sex Trafficking*, WALL ST. J., Jan. 10, 2000, at A26.

C. *Passage: Conservative Christian Backers of the TVPA in Congress*

Among the strongest backers of anti-trafficking legislation in Congress were conservative Christian lawmakers. Like the interest groups that helped guide their policy decisions, these legislators focused primarily on sex trafficking, not labor trafficking, and supported a definition of trafficking that would include all commercial sex work.

Rep. Chris Smith (R-NJ), the lead sponsor of the House version of the TVPA, and Sen. Sam Brownback (R-KS), who co-sponsored the Senate version with Sen. Paul Wellstone (D-MN), approached anti-trafficking work from a faith-based perspective. (Both Smith and Brownback are devout Catholics.) Smith called trafficking a “sinister trade” that violates “the God-given dignity and integrity of each individual,”<sup>67</sup> while Brownback said he was motivated to tackle trafficking and other international human-rights violations because they were “the things that the Lord would want done.”<sup>68</sup> Smith and Brownback were among Congress’ most socially conservative members—both strongly opposed abortion rights, for example—but were also known for their work on international human rights issues.<sup>69</sup> One journalist called Brownback a “bleeding heart right winger,” citing his work on trafficking, malaria, and immigration reform.<sup>70</sup> When he began considering anti-trafficking legislation, Brownback sought out the coalition of religious and human rights groups that had worked together to pass the International Religious Freedom Act of 1998.<sup>71</sup>

Thus, Smith and Brownback were perfect partners for faith-based groups, whose representatives met with lawmakers to discuss legislation.<sup>72</sup> Among the groups that advised legislators and testified at congressional hearings were the Family Research Council, the National Association of Evangelicals, International Justice Mission, and the Southern Baptist Convention.<sup>73</sup> Leaders such as Horowitz, Colson, and Bennett also provided input.<sup>74</sup> As Professor Jayashri Srikantiah wrote, the legislative record “reflected the abolitionist/conservative perspective, centering on the female ‘innocent victims’ of sex trafficking whose participation was ‘involuntary’

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<sup>67</sup> Tony Carnes, *Alliance Targets Sex Trafficking*, CHRISTIANITY TODAY (Aug. 9, 1999), <http://www.christianitytoday.com/ct/1999/august9/9t918a.html>.

<sup>68</sup> Kristof, *supra* note 52.

<sup>69</sup> See, e.g., Joelle Farrell, *Rep. Chris Smith Tries to Keep the Pressure on for Chinese Activist*, PHILA. INQUIRER, May 15, 2012, at A1 (characterizing Smith as a “staunch opponent of abortion” and a “champion for human rights”); Adam C. Smith, *Sam Brownback Seeks Winning Niche as Bleeding-Heart Right Winger*, TAMPA BAY TIMES, Feb. 25, 2007, at 1P (describing Brownback as “a hero to antiabortion activists” who also has a “compassionate conservative agenda”).

<sup>70</sup> Smith, *supra* note 69.

<sup>71</sup> Stolz, *supra* note 17, at 415–16.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

and who would ‘face retribution or other serious harm upon return.’”<sup>75</sup> Brownback, for example, shared on the Senate floor his impressions of a trip to Nepal:

There were young girls, 16, 17, 18 years of age, most of whom had been tricked out of their villages in Nepal and promised a job at a carpet factory or a job as a housekeeper. . . . Once taking the job and moving out of their villages and away from their families they were forced into a brothel. They were locked in a room, beaten, starved, and submitted to the sex trade, at times being subjected to as many as 30 clients a night. . . . Once they were freed and got back to Nepal, most of these girls returned only to die. Two-thirds of them come back with such things as AIDS or tuberculosis. They are coming back to die.<sup>76</sup>

The legislative history described how law enforcement ultimately rescued some of the victims,<sup>77</sup> suggesting lawmakers’ belief in the power of the criminal justice system to combat trafficking.

Consistent with “the perspectives of conservative and religious interests,”<sup>78</sup> Smith’s initial bill targeted sex trafficking of women and children and largely ignored labor trafficking. Pushed by Wellstone and Rep. Sam Gejdenson (D-CT), Smith and Brownback ultimately accepted a broader definition that encompassed sex trafficking and trafficking into other sectors,<sup>79</sup> but they continued to describe the TVPA as aimed primarily at the trafficking of women into sex work.<sup>80</sup> The broader definition did not deter Smith, Brownback, or other conservatives from championing the bill; Brownback, now governor of Kansas, even called the TVPA his greatest legislative achievement.<sup>81</sup> The TVPA enjoyed near-universal support in Congress, passing the House 371–1<sup>82</sup> and the Senate 95–0.<sup>83</sup>

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<sup>75</sup> Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 170 (2007).

<sup>76</sup> 146 CONG. REC. 5084–01 (2000) (statement of Sen. Brownback).

<sup>77</sup> Srikantiah, *supra* note 75, at 171.

<sup>78</sup> Stolz, *supra* note 17, at 416.

<sup>79</sup> The Comprehensive Antitrafficking in Persons Act of 1999, H.R. 3154, S. 1842, 106th Cong. (1999).

<sup>80</sup> *See, e.g.*, 147 CONG. REC. 10924–01 (2001) (quoting Brownback as saying the focus of the TVPA “was to get at the people who are trafficking, generally, young women and children for the purposes of prostitution”); *House Passes \$3 Billion Anti-Crime Bill Aimed at Protecting Women*, ST. LOUIS POST-DISPATCH, Oct. 7, 2000, at 22 (quoting Smith as saying the TVPA “aims at those who “make money off the exploitation of *women and children*” (emphasis added)).

<sup>81</sup> Smith, *supra* note 69.

<sup>82</sup> *See* 146 CONG. REC. H9047–48 (daily ed. Oct. 6, 2000) (recording that the lone ‘no’ vote was cast by Republican Rep. Mark Sanford of South Carolina, a hard-line fiscal conservative).

<sup>83</sup> *See* 146 CONG. REC. S10228 (daily ed. Oct. 11, 2000).

*D. Post-Passage: Expansion of the Evangelical Anti-Trafficking Agenda*

While the TVPA's broad definition of trafficking reflected the preferences of many congressional Democrats and human rights groups, the TVPA's implementation took on a decidedly abolitionist bent under the newly installed Bush Administration. Cognizant that white evangelicals accounted for at least forty percent of the votes Bush received in 2000,<sup>84</sup> the Administration was influenced by the religious right to make sex trafficking a foreign-policy priority, and it spent millions on anti-trafficking initiatives that hewed closely to the abolitionist agenda.

At the urging of religious groups, Bush increased spending on the TVPA provisions that required the State Department to grade other countries' efforts to reduce trafficking.<sup>85</sup> The amount of money authorized to combat trafficking climbed from \$31.8 million in 2001<sup>86</sup> to over \$100 million in 2009,<sup>87</sup> the last fiscal year that began while Bush was in office. Bush portrayed sex trafficking as a key focus of U.S. foreign policy in an address to the United Nations General Assembly in 2003—a move that religious leaders such as Colson and Land encouraged. Aides said a focus on anti-trafficking, an issue palatable to voters of both parties, helped soften Bush's controversial, war-driven foreign policy agenda.<sup>88</sup>

The influx of federal funding under Bush gave rise to new anti-trafficking nonprofits,<sup>89</sup> and grants flowed to religious organizations such as USCCB, Catholic Charities, the YMCA, International Justice Mission, Concerned Women for America, and the Salvation Army.<sup>90</sup> Such grants were made possible in part by Bush's "Charitable Choice" initiative, which made it easier for religious groups to receive federal grants to provide social services.<sup>91</sup>

Not only was the influence of the religious right evident in who benefited from the Administration's spending, but it also was apparent in the

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<sup>84</sup> Bumiller, *supra* note 19.

<sup>85</sup> Halley et al., *supra* note 25, at 360.

<sup>86</sup> S. REP. NO. 112-96, at 27 (2011).

<sup>87</sup> See Emily Cadei, *Culture Wars Claim Trafficking Law*, CQ ROLL CALL (Apr. 28, 2012, 8:43 PM), <http://public.cq.com/docs/weeklyreport/weeklyreport-000004072374.html> (including chart that lists the federal budget for trafficking in 2009 at \$103.5 million).

<sup>88</sup> See Mike Allen, *Bush Warns U.N. Assembly About Dangers of Trade in Sex Slaves*, WASH. POST, Sept. 24, 2003, at A23; Bumiller, *supra* note 19.

<sup>89</sup> Jerry Markon, *Human Trafficking Evokes Outrage, Little Evidence*, WASH. POST (Sept. 23, 2007), [http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401\\_5.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401_5.html).

<sup>90</sup> See USASPENDING.GOV, <http://www.usaspending.gov> (last visited Dec. 25, 2013) (providing searchable database of federal grants).

<sup>91</sup> See Ira Lupu, *Hiring Law for Groups Following a Higher Law: Faith-Based Hiring and the Obama Administration*, PEW RES. CENTER (Jan. 30, 2009), <http://www.pewforum.org/Church-State-Law/Hiring-Law-for-Groups-Following-a-Higher-Law-Faith-Based-Hiring-and-the-Obama-Administration.aspx> (explaining evolution of charitable choice initiative). In particular, in *Mitchell v. Helms*, 530 U.S. 793 (2000), the Supreme Court held that under the Establishment Clause, the federal government could fund religious groups directly as long as the funds would be used only for secular programs. Lupu, *supra*, at 25.

strings attached to that spending. In 2002, Bush issued a directive prohibiting federal funds from going to foreign organizations that advocated legalized prostitution.<sup>92</sup> Explaining the directive, the State Department called prostitution “inherently harmful and dehumanizing” and said it fueled human trafficking.<sup>93</sup> A similar prohibition appeared in the 2003 reauthorization of the TVPA; grantees had to state in writing that they did not support or advocate the legalization of prostitution.<sup>94</sup> Moreover, Bush’s appointee to head the TIP Office, former Republican Congressman John Miller, shared the view that all prostitution is a form of trafficking.<sup>95</sup> Miller had close ties to the religious groups fighting trafficking: they lobbied the Bush Administration to tap Miller to replace the diplomat initially appointed to run the TIP Office,<sup>96</sup> and Miller said the work of the religious groups on trafficking “keeps the whole government focused.”<sup>97</sup>

In sum, while a diverse range of interest groups made their mark on the text of the TVPA in the years leading up to its passage in 2000, the influence of the religious right arguably outstripped that of other interest groups in subsequent years. The ascendance of conservative Christians in the field sharpened the anti-trafficking movement’s focus on sex trafficking of women and girls, instead of labor trafficking affecting both sexes, and ensured that many of the biggest players in the anti-trafficking movement staunchly opposed abortion. These two factors set the domestic anti-trafficking movement onto a collision course with anti-abortion advocates.

#### IV. THE ANTI-ABORTION AND ANTI-TRAFFICKING MOVEMENTS COLLIDE

At first blush, abortion and human trafficking seem unrelated. For this reason, many in the anti-trafficking field were surprised when abortion politics stalled the latest reauthorization of the TVPA.<sup>98</sup> But a deeper look at the issues reveals that anti-trafficking efforts necessarily touch on reproductive healthcare. Because victims are perceived to be women trafficked for sex, advocates on both sides of the abortion debate saw reproductive healthcare as a crucial need. However, they disagreed on whether that care should include abortions (in cases of rape, incest, or life endangerment) and abortion referrals.<sup>99</sup>

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<sup>92</sup> *The Link Between Prostitution and Sex Trafficking*, U.S. DEP’T OF STATE, BUREAU OF PUB. AFFAIRS (Nov. 24, 2004).

<sup>93</sup> *Id.*

<sup>94</sup> TVPRA 2003 § 7.

<sup>95</sup> Berman, *supra* note 42, at 274 (quoting Miller as arguing that “trafficking in women, the sex pillar of slavery, cannot be viewed separately from prostitution”).

<sup>96</sup> Ori Nir, *U.S. Official Does ‘God’s Work’: Eradicating Slavery*, FORWARD (May 7, 2004), <http://forward.com/articles/5602/us-official-does-egodes-worke-eradicating-sl/>.

<sup>97</sup> Bumiller, *supra* note 19.

<sup>98</sup> Telephone interview with Jesse Eaves, Senior Policy Advisor, World Vision (Apr. 26, 2013) (notes on file with author).

<sup>99</sup> Under the TVPA, certified trafficking victims are eligible for the same federally funded services as refugees: contraception, and abortion in the cases of rape, incest, and life endanger-

Victims' stories, recounted by anti-trafficking groups, law enforcement agencies, and lawmakers, emphasize the unplanned pregnancies, sexually transmitted diseases, and lack of access to healthcare that trafficking victims frequently experience. A police manual published by the U.S. Justice Department highlights the dire reproductive health needs of victims:

Trafficked women in the sex trade are so isolated from the community that their clients and handlers physically abuse them with impunity, subjecting them to repeated rape and assault. They also deny them prenatal care or medical care in case of pregnancy, infections or injury, and force them to have abortions. Having no recourse, the women are forced to comply with client demands, the majority of whom, research has shown, refuse to use condoms. Thus, the spread of HIV and other sexually transmitted disease is more likely.<sup>100</sup>

Advocates of reproductive rights for trafficking victims have insisted that victims need access to abortion and contraception because participating in sex work—especially under coercive and violent conditions—puts them at risk of unintended pregnancies.<sup>101</sup> Some anti-abortion activists, on the other hand, have claimed that abortion providers “aid and abet” traffickers.<sup>102</sup> According to this view, a trafficker can keep a pregnant victim in sex work by forcing her to have an abortion,<sup>103</sup> whereas without an abortion, she might

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ment. Brief for Appellee ACLU of Mass. at 10, *ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44 (1st Cir. 2013) (No. 12-1466) [hereinafter *ACLUM Brief*].

<sup>100</sup> GRAEME R. NEWMAN, U.S. DEP'T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERVS., *THE EXPLOITATION OF TRAFFICKED WOMEN 6* (2006), available at <http://www.cops.usdoj.gov/Publications/e02061007.pdf>.

<sup>101</sup> See, e.g., *ACLUM Brief*, *supra* note 99, at 3, 6–7; Florrie Burke, *Adjusting an Aid Program Is Not Anti-Catholic*, WASH. POST, Nov. 18, 2011, at A20.

<sup>102</sup> Kathleen Hennessey, *GOP Targets Funding for Planned Parenthood*, CHI. TRIB., Feb. 11, 2011, at 17 (quoting Live Action President Lila Rose). See also Wendy Wright, *Abortionists: Human Traffickers' Best Ally*, TOWNHALL (Mar. 22, 2011), [http://townhall.com/columnists/wendywright/2011/03/22/abortionists\\_human\\_traffickers%E2%80%99\\_best\\_ally/page/full](http://townhall.com/columnists/wendywright/2011/03/22/abortionists_human_traffickers%E2%80%99_best_ally/page/full).

<sup>103</sup> See, e.g., Wright, *supra* note 102. Indeed, reports suggest that forced abortions are a serious and all-too-common problem for trafficking victims. See, e.g., Maria Tavano, *Trafficking in Persons: A Focus on Preventing Forced Labor*, 32 WOMEN'S RTS. L. REP. 324, 350 (2011); NEWMAN, *supra* note 100, at 6. However, forced abortions can and should be distinguished from abortions freely chosen by victims, which reports indicate do exist. In the context of HHS-funded health services, discerning whether a victim is freely choosing an abortion may be more straightforward than abortion opponents contend, as many victims receiving healthcare via programs designed for trafficking survivors are no longer under the control of a trafficker. See, e.g., Written Testimony from Susie Baldwin, MD, MPH, FACPM, for Hearing on 'HHS And The Catholic Church: Examining the Politicization of Grants' (Minority Day of Hearing) 7–8 (Dec. 14, 2011), available at <http://paa2013.princeton.edu/papers/130765> (describing the story of a victim named Celia, who received a voluntary abortion through an NGO referral after law enforcement broke up the trafficking ring of which she had been a victim); *HHS and the Catholic Church: Examining the Politicization of Grants (Minority Day of Hearing): Hearing Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. 10–11 (2011), available at <http://oversight.house.gov/wp-content/uploads/2012/04/12-14-11-Full-Committee-Hearing-Transcript1.pdf> (statement of Florrie Burke, Chair Emeritus of the Freedom Network) (“It is rare that traffickers will allow their victims to receive any health

have found some respite from exploitation; indeed, pregnancy might have prompted her to “seek rescue and a new life.”<sup>104</sup> Anti-abortion advocates who share this view have two motivations to oppose a regime that allows victims access to abortion: first, they believe that abortion is morally wrong, and second, they believe that abortion facilitates trafficking and further strips victims of their agency. This perspective fueled a recent controversy involving Planned Parenthood clinics.

A. “Aiding and Abetting” Traffickers: The Planned Parenthood “Sting”

Abortion politics collided with human trafficking in a highly visible way in January 2011, when people pretending to be sex traffickers visited at least twelve Planned Parenthood clinics across the nation as part of a “sting” by the anti-abortion group Live Action.<sup>105</sup> These high-profile incidents alerted anti-abortion lawmakers and advocates to potential links between sex trafficking and abortion and publicized the notion that abortion worsens trafficking.

Live Action released a series of videos of the visits, which purport to show medical personnel giving advice to people appearing to traffic underage girls into the sex industry.<sup>106</sup> Planned Parenthood said most of the videos were doctored,<sup>107</sup> but it fired a New Jersey clinic manager who was seen in a video advising an apparent sex trafficker on how to get medical exams for underage sex workers without attracting the attention of law enforcement.<sup>108</sup> When the man in the video asked if the girls, some as young as fourteen or fifteen, could get abortions, the clinic manager told him to visit another clinic where “protocols aren’t as strict as ours.”<sup>109</sup>

Live Action used the videos to fuel a campaign called “Expose Planned Parenthood,” which sought to eliminate the more than \$75 million in federal family-planning funds that Planned Parenthood receives each year.<sup>110</sup> Some conservative lawmakers wasted no time in acting. Rep. Mike Pence (R-IN) introduced legislation to cut funding to the organization soon after the video

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care during the period of enslavement. . . . A more common occurrence is that after victims are rescued or escaped, they come into contact with service providers.”).

<sup>104</sup> Steven Wagner, *Kathleen Sebelius’ Gruesome Moral Calculus*, NAT’L CATHOLIC REG. (Nov. 29, 2011), <http://www.ncregister.com/daily-news/kathleen-sebelius-gruesome-moral-calculus#ixzz2Qx3wbMjc>.

<sup>105</sup> Erick Eckholm & Jennifer Medina, *Anti-Abortion Groups Step Up Campaign Against Planned Parenthood*, N.Y. TIMES (Feb. 2, 2011), [http://www.nytimes.com/2011/02/03/us/03parenthood.html?\\_r=0](http://www.nytimes.com/2011/02/03/us/03parenthood.html?_r=0).

<sup>106</sup> Hennessey, *supra* note 102.

<sup>107</sup> *Planned Parenthood Informs Federal Authorities of Potential Sex Trafficking*, PLANNED PARENTHOOD (Jan. 24, 2011), <http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-informs-federal-authorities-potential-sex-trafficking-35888.htm>.

<sup>108</sup> Eckholm & Medina, *supra* note 105.

<sup>109</sup> *Caught on Tape: Planned Parenthood Aids Pimp’s Underage Sex Ring*, LIVE ACTION (Feb. 1, 2011), <http://liveaction.org/blog/planned-parenthood-aids-sex-ring>.

<sup>110</sup> Eckholm & Medina, *supra* note 105.

was released<sup>111</sup> and other legislators blasted the group for “aiding and abetting” sex traffickers.<sup>112</sup> Among them was Smith, who said that as a co-sponsor of the TVPA, he “found it appalling to watch Planned Parenthood personnel again and again offer to provide and facilitate abortions for hypothetical sex trafficking victims as young as 13.”<sup>113</sup>

Notable in these criticisms of Planned Parenthood was the vocabulary that anti-abortion advocates used: they expanded their rhetoric to include concerns about consent, coercion, and agency, rather than focusing only on the inherent immorality of abortion. As Professor Mary Ziegler wrote, the Live Action sting presented situations in which the consent of women to sex was ambiguous:

The minors in [the] videos were handicapped by age, financial dependence, and perhaps even the threat of violence at the hands of an older man. What was the role of Planned Parenthood in this equation? By providing abortion services, the videos suggested, Planned Parenthood facilitated the continued sexual exploitation of women.<sup>114</sup>

Moreover, just as the women’s consent to sex was unclear, so too was their consent to abortion: were they freely choosing an abortion, or was the choice made for them? Lila Rose, founder of Live Action, said her group’s videos revealed Planned Parenthood’s complicity in the “coercion and manipulation of women,”<sup>115</sup> and Marjorie Dannenfelser, president of the anti-abortion group Susan B. Anthony List, said Planned Parenthood had “collaborated with the exploitation of young girls.”<sup>116</sup>

In discussing consent, coercion and exploitation, anti-abortion activists were, somewhat ironically, borrowing feminist vocabulary. Ziegler noted that the concerns of anti-abortion activists echoed “feminist claims about the ways in which women’s financial or political vulnerability informed their sexual experiences.”<sup>117</sup> For example, in the 1980s, Catharine MacKinnon suggested that abortion could be exploitative as long as men remained in control of women’s sexuality, because it allowed men to coerce women into sex without consequences.<sup>118</sup> In the wake of the Live Action videos, anti-

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<sup>111</sup> David Nather & Kate Nocera, *House Votes to Defund Planned Parenthood*, POLITICO (Feb. 18, 2011), <http://www.politico.com/news/stories/0211/49830.html>. Rep. Pence’s legislation passed the House but died in the Senate.

<sup>112</sup> See, e.g., 157 CONG. REC. 1162-03 (2011) (statements of Reps. Cantor, Landry, and Roby).

<sup>113</sup> *Id.* (statement of Rep. Smith).

<sup>114</sup> Mary Ziegler, *Sexing Harris: The Law and Politics of the Movement to Defund Planned Parenthood*, 60 BUFF. L. REV. 701, 722 (2012).

<sup>115</sup> Steven Ertelt, *Pro-Life Groups Cheer Upcoming Probe of Planned Parenthood*, LIFE NEWS (Sept. 27, 2011, 6:37 PM), <http://www.lifenews.com/2011/09/27/pro-life-groups-cheer-upcoming-probe-of-planned-parenthood>.

<sup>116</sup> Eckholm & Medina, *supra* note 105.

<sup>117</sup> Ziegler, *supra* note 114, at 723.

<sup>118</sup> *Id.* at 723 (citing CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 99 (1987)).



abortion activists applied this concept to sex trafficking—perhaps the most extreme example of men controlling women’s sexuality—suggesting that abortion under these circumstances is inherently exploitative. These references to consent and agency would reappear during the 2011–2013 TVPA reauthorization debate.

Live Action’s “sting” operations set the stage for conservative outrage when, later in 2011, HHS denied a grant to USCCB because it would not refer trafficking victims to abortion and contraceptive services.

### B. *The 2011–2013 Reauthorization Debate*

The TVPA authorized HHS to expand benefits and services to victims of trafficking in the United States.<sup>119</sup> Eligible victims can receive services such as counseling, housing and food assistance, job training, and health-care.<sup>120</sup> HHS initially awarded grants directly to service providers, but changed its approach in 2005 to award a contract to a single organization to administer the agency’s victim-services funds nationwide through subcontractors.<sup>121</sup> In 2006, HHS awarded the contract to USCCB.<sup>122</sup>

In its proposal, USCCB noted that it would not fund any activities contrary to its religious beliefs.<sup>123</sup> Specifically, subcontractors would not be permitted to “provide or refer for abortion services or contraceptive materials for our clients.”<sup>124</sup> Some HHS officials voiced concern about this restriction during the grant review process, but the agency ultimately decided that even with the limitation, USCCB’s proposal was stronger than the other proposal the agency received, from the Salvation Army.<sup>125</sup>

In total, USCCB received roughly \$16 million through the contract over more than five years and subcontracted with more than 100 organizations to provide victim services.<sup>126</sup> While it did not disqualify any subcontracting organizations because they offered abortion or contraception, it did not reimburse subcontractors for abortion, abortion counseling, or contraceptive services.<sup>127</sup> According to a USCCB official, sixty percent of the organization’s subcontractors were faith-based.<sup>128</sup> Of those, half were Catholic.<sup>129</sup> HHS of-

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<sup>119</sup> See TVPA § 107(b).

<sup>120</sup> Fact Sheet, Office of Refugee Resettlement, U.S. Department of Health and Human Services (Aug. 7, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-victim-assistance-english>.

<sup>121</sup> *ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 49 (1st Cir. 2013).

<sup>122</sup> *Id.* at 50.

<sup>123</sup> *Id.* at 49.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 50.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Peter Jesserer Smith, *U.S. Bishops Bring New Weapon to Human-Trafficking Fight*, NAT’L CATHOLIC REG. (Jan. 28, 2013), <http://www.ncregister.com/daily-news/u.s.-bishops-bring-new-weapon-to-human-trafficking-fight>.

<sup>129</sup> *Id.*

ficials do not track the number of specific reproductive health services provided,<sup>130</sup> so it is unclear how many trafficking victims receiving federally funded services requested abortions or contraception.

In May 2011, with a new Democratic administration in place, HHS announced that it would give “strong preference” to grant applicants that would provide victims with “the full range of legally permissible gynecological and obstetric care.”<sup>131</sup> The agency also said it would return to a competitive direct grant system instead of a contract-based system.<sup>132</sup> In October, when USCCB’s contract expired, the agency rejected USCCB’s proposal for a three-year grant in favor of proposals from three other organizations, even though the bishops’ organization received the second-highest rating from the panel reviewing the proposals.<sup>133</sup>

The three-year grant amounts to a tiny portion of the anti-trafficking funding authorized in 2011,<sup>134</sup> but the rejection of USCCB nevertheless sparked outrage among anti-abortion lawmakers and activists. What is more, the decision came at a politically sensitive time: a presidential election was just a year away, and the 2008 reauthorization of the TVPA was set to expire in late 2011. Smith and his Senate counterparts had introduced new reauthorization bills in the summer of 2011, with more than forty co-sponsors each, but progress on the bills stalled when HHS announced its grant decisions.<sup>135</sup> The TVPA, legislation with a decade’s worth of bipartisan congressional support, had rapidly become controversial. Perhaps most surprisingly, many of the lawmakers and interest groups holding up its reauthorization had numbered among the TVPA’s strongest initial supporters: conservative evangelicals and Catholics who opposed abortion rights.

One of those lawmakers was Rep. Smith. After championing the original TVPA in 2000 and sponsoring each of its reauthorizations in 2003,<sup>136</sup> 2005,<sup>137</sup> and 2008,<sup>138</sup> Smith called the HHS decision an “unconscionable abuse of power” and “pro-abortion favoritism.”<sup>139</sup> He introduced a new reauthorization bill that would shift victim-services funding from HHS to the Justice Department and would add a conscience clause requiring that the

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<sup>130</sup> *Id.*

<sup>131</sup> *ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d at 50.

<sup>132</sup> *Id.*

<sup>133</sup> Khan, *supra* note 8.

<sup>134</sup> See Cadei, *supra* note 87 (noting that the three-year grant amounts to just four percent of total funding authorized in 2011). Other trafficking funds go to the Departments of State, Justice, Homeland Security, and Labor, among other agencies. See *id.*

<sup>135</sup> See H.R. 2830, 112th Cong. (2011); S. 1301, 112th Cong. (2011); Bewley, *supra* note 1.

<sup>136</sup> Summary: H.R.2620 — 108th Congress (2003-2004), CONGRESS.GOV, <http://beta.congress.gov/bill/108th-congress/house-bill/2620> (last visited Dec. 25, 2013).

<sup>137</sup> Summary: H.R.972 — 109th Congress (2005-2006), CONGRESS.GOV, <http://beta.congress.gov/bill/109th-congress/house-bill/972> (last visited Dec. 25, 2013).

<sup>138</sup> Cosponsors: H.R.7311 — 110th Congress (2007-2008), CONGRESS.GOV, <http://beta.congress.gov/bill/110th-congress/house-bill/7311/cosponsors> (last visited Dec. 25, 2013).

<sup>139</sup> *Oversight and Gov’t Reform Hearing*, *supra* note 6, at 2–3.

agency could not deny grant funding to any organization based on its religious convictions.<sup>140</sup>

Smith and other conservative anti-trafficking advocates framed their resistance to the existing anti-trafficking program not in terms of the immorality of abortion, but rather in the more politically palatable language of religious freedom and consent. Michael Gerson, a former policy advisor to President George W. Bush, summarized the right’s religious-freedom concerns when he called the HHS policy an example of “anti-religious extremism” that denied grant funding to organizations based solely on their pro-life religious beliefs.<sup>141</sup> He and other conservatives complained of a systemic anti-Catholic bias under President Obama, citing (in addition to the USCCB grant decision) an HHS mandate under the Affordable Care Act that required employers—including some religiously affiliated ones—to offer health insurance that provides birth control free of charge.<sup>142</sup>

Reproductive rights advocates and liberals, on the other hand, argued that to continue to allow USCCB to administer all TVPA victim-services funding would itself infringe upon religious freedom. In fact, in 2009 the American Civil Liberties Union of Massachusetts sued HHS, alleging that the grant program, as then administered through USCCB, violated the Establishment Clause of the First Amendment by “allowing USCCB to impose its religion on its contractors and their clients.”<sup>143</sup> A Massachusetts federal court granted summary judgment for the ACLU in March 2012, but the First Circuit reversed, finding the case moot because the contract had expired by the time of appeal and HHS had changed its policy.<sup>144</sup>

In addition to religious freedom, some conservatives used the language of consent and agency to argue that providing abortions to trafficking victims should not be a policy priority, echoing anti-abortion groups’ arguments in the aftermath of the Planned Parenthood stings. Steven Wagner, the head of the HHS trafficking program under Bush, argued that providing an abortion or contraceptives to a victim of trafficking “might very well be a death sentence” because such services would keep her in a state of exploitation.<sup>145</sup> Wagner went so far as to argue that trafficking victims are incapable of providing consent:

If someone is being trafficked — which is to say, under the domination of a pimp/trafficker — she is by definition unable to provide informed consent to an abortion or to a regime of contraception. The victim has no voice in this decision. Indeed,

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<sup>140</sup> See H.R. 3589, 112th Cong. § 201, 303 (1st Sess. 2011); Cadei, *supra* note 87.

<sup>141</sup> Michael Gerson, *Obama Turns His Back on Catholics*, WASH. POST (Nov. 14, 2011), [http://www.washingtonpost.com/opinions/obama-turns-his-back-on-catholics/2011/11/14/gIQABHCKMN\\_story.html](http://www.washingtonpost.com/opinions/obama-turns-his-back-on-catholics/2011/11/14/gIQABHCKMN_story.html).

<sup>142</sup> *Id.*

<sup>143</sup> ACLUM Brief, *supra* note 99, at 4.

<sup>144</sup> *ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 52 (1st Cir. 2013).

<sup>145</sup> Wagner, *supra* note 104.

providing such services to a victim of sexual trafficking benefits only the trafficker by getting the victim back out on the street and making money sooner. . . . The mortality rate for someone in commercial sexual exploitation is 40 times higher than for a non-exploited person of the same age. Helping a victim return to exploitation more quickly by terminating a pregnancy increases the odds of death.<sup>146</sup>

Under this view, abortions further chip away at what little agency a trafficked woman has left—first, by subjecting her to an invasive medical procedure to which she by definition cannot consent while under the control of her trafficker, and second, by facilitating her quick return to the sex industry, where she will continue to be exploited. The argument uses the language of agency and exploitation in a way that appears to empower victims by insisting that they, and not their traffickers, should control their reproductive health.<sup>147</sup> Conservative efforts to center the debate on religious freedom and consent, rather than on the immorality of abortion, further reflect the “leftward sweep” of the religious right<sup>148</sup>—its desire to frame political interventions in terms that build consensus, rather than highlight well-established divisions.

Reproductive rights advocates, for their part, used the concepts of agency and consent to reach the opposite conclusion, insisting that trafficked women can consent to abortion and contraception and that permitting them to do so will help them regain control of their lives. In the ACLU’s appellate brief, for example, the organization wrote: “Allowing trafficking survivors to make their own decisions about their reproductive health is important to helping them become self-sufficient, particularly because many traffickers control their victims by withholding reproductive health care.”<sup>149</sup> The organization noted that many trafficking victims do not speak English, so they rely on the organizations funded by TVPA grants to point them toward medical care. Preventing nonprofits from providing referrals to abortion and contraceptive services, the ACLU argued, is essentially “the same as denying medical services for this population.”<sup>150</sup>

Framing his objections to the Obama Administration’s grant decision in terms of religious freedom, Smith introduced a new TVPRA in December 2011 with a conscience clause, which sought to bar the government from withholding funds from groups based on their moral or religious beliefs.<sup>151</sup> The strategy was familiar to Smith; he had introduced similar conscience

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<sup>146</sup> *Id.*

<sup>147</sup> While evidence suggests that traffickers indeed coerce some victims into having abortions, reports also indicate some victims voluntarily choose them. See Written Testimony from Susie Baldwin *supra* note 103, at 7–8. It is also worth noting that many women receiving TVPA-funded services may no longer be under the control of their traffickers.

<sup>148</sup> Bernstein, *supra* note 19, at 144.

<sup>149</sup> ACLUM Brief, *supra* note 99, at 7.

<sup>150</sup> *Id.* at 8.

<sup>151</sup> See H.R. 3589, 112th Cong. § 303 (1st Sess. 2011).

clauses in federal-employee benefits legislation in the late 1990s<sup>152</sup> and in the 2003 global AIDS legislation known as the President’s Emergency Plan for AIDS Relief (PEPFAR).<sup>153</sup> Smith’s conscience clause would have prohibited the government from requiring an organization to “endorse[,] . . . make a referral to, . . . or otherwise participate in any program . . . to which the organization has a religious or moral objection” and from withholding grants or contracts from groups based on their refusal to endorse or provide such services.<sup>154</sup> Smith’s new legislation garnered the support of sixteen cosponsors, all Republicans<sup>155</sup>—not enough to pass, but enough to grind the reauthorization process to a halt.<sup>156</sup>

Interviewees involved in the reauthorization process said momentum to pass a reauthorization began to build again in December 2012, after the presidential election.<sup>157</sup> By that time, the political imperatives to oppose the Obama Administration’s agenda had faded, as had some of the outrage over the USCCB grant denial. Perhaps most importantly, first-term Sen. Marco Rubio (R-FL) had decided to back the measure.<sup>158</sup> Rubio had made human trafficking one of his key foreign policy concerns and had the political capital to rally support for the reauthorization.<sup>159</sup> Rubio and Sen. Patrick Leahy’s (D-VT) first attempt to pass the reauthorization—without a conscience clause<sup>160</sup>—failed when Sen. Tom Coburn (R-OK) objected to the bill’s cost and the “wasteful” bureaucracy the TVPA had created, even though the new bill cut spending levels by a third compared to the prior TVPRA.<sup>161</sup> Leahy and Rubio finally succeeded in February by tacking the TVPA reauthorization onto the reauthorization of the Violence Against Women Act (VAWA), a landmark sexual-assault and domestic-violence prevention bill whose reauthorization had also languished in the prior Congress.<sup>162</sup> Concerned that

<sup>152</sup> *Californians, Federal Employees Secure Contraceptive Coverage*, 2 GUTTMACHER REP. ON PUB. POL’Y 11 (1999), available at <http://www.guttmacher.org/pubs/tgr/02/5/gr020510a.pdf>.

<sup>153</sup> Melissa Gira Grant, *Anti-Prostitution Pledge Heads to Supreme Court*, NATION (Apr. 9, 2013, 3:22 PM), <http://www.thenation.com/blog/173955/anti-prostitution-pledge-heads-supreme-court#> (describing PEPFAR’s conscience clause); Ilene Leventhal, Note, *PEPFAR: Preaching Abstinence at the Cost of Global Health and Other Misguided Relief Policies*, 24 TEMP. INT’L & COMP. L.J. 173, 186 (2010).

<sup>154</sup> See H.R. 3589, 112th Cong. § 303 (1st Sess. 2011).

<sup>155</sup> *Cosponsors: H.R.3589 — 112th Congress (2011-2012)*, CONGRESS.GOV, <http://beta.congress.gov/bill/112th/house-bill/3589/cosponsors> (last visited Dec. 25, 2013).

<sup>156</sup> See Bewley, *supra* note 1.

<sup>157</sup> Telephone interview with Jesse Eaves, *supra* note 98; Telephone interview with Cory Smith, Senior Policy Counsel, Alliance to End Slavery and Trafficking (Apr. 24, 2013) (notes on file with author). See also Cadei, *supra* note 87.

<sup>158</sup> Cadei, *supra* note 87.

<sup>159</sup> *Id.*

<sup>160</sup> See Telephone interview with Cory Smith, *supra* note 157.

<sup>161</sup> See Cadei, *supra* note 87 (quoting Sen. Coburn as saying the TVPA had created a “growing bureaucracy of anti-trafficking programs that is wasteful, mismanaged, and duplicative”).

<sup>162</sup> See David Abramowitz, *Passage of Human Trafficking Bill Sends Clear Message*, THE HILL (Mar. 8, 2013, 8:45 PM), <http://thehill.com/blogs/congress-blog/foreign-policy/287087-passage-of-human-trafficking-bill-sends-clear-message>; Telephone interview with Cory Smith, *supra* note 157.

a lawmaker might try to amend the measure to include a conscience clause, Leahy added the TVPRA as a “second-degree” amendment to VAWA—one that generally cannot be amended.<sup>163</sup> The Senate accepted the amendment 93–5,<sup>164</sup> and voted 78–22 to pass VAWA.<sup>165</sup>

When the bill moved to the House, Smith and conservative interest groups continued to voice concern about the lack of a conscience clause. Concerned Women for America, the Family Research Council, and the USCCB wrote letters to legislators expressing their concern about the bill’s failure “to protect the conscience of organizations like the U.S. Conference of Catholic Bishops, who seek to protect trafficking victims but oppose abortion.”<sup>166</sup> Ultimately, Smith and 137 other House Republicans voted against the reauthorization of VAWA<sup>167</sup>—a bill controversial among Republicans even without the conscience issue.<sup>168</sup> In a floor speech the day of the vote, Smith did not explicitly say that the absence of a conscience clause induced his “no” vote,<sup>169</sup> but interviewees believed that it remained his main objection.<sup>170</sup> On the day the reauthorization passed the House, Smith re-introduced a competing measure with a conscience clause, signaling that the abortion issue remained a concern.<sup>171</sup> However, that move proved merely symbolic, as the measure’s fate was sealed by day’s end.

#### V. LEARNING FROM THE GRIDLOCK: RECOMMENDATIONS

Abortion is politically powerful. Like prostitution, abortion implicates deeply held beliefs about morality, faith, individual autonomy, women’s rights, and sexuality. The recent reauthorization debate reveals that, regardless of one’s beliefs about the merits of adding a conscience clause to the TVPA, there is insufficient political support for such a move.<sup>172</sup> Thus, at-

<sup>163</sup> Telephone interview with Cory Smith, *supra* note 157.

<sup>164</sup> 159 CONG. REC. 433, 609–10 (2013).

<sup>165</sup> *Id.* at 616. Notably, Sen. Rubio voted against the reauthorization of VAWA despite his support for reauthorizing the TVPA.

<sup>166</sup> Letter from Penny Nance, Chief Exec. Officer, Concerned Women for Am., to U.S. House of Reps. (Feb. 27, 2013) (on file with author); *see also* Letter from Jayd Henricks, Dir. of Gov’t Relations, U.S. Conference of Catholic Bishops, to U.S. House of Reps. (Feb. 27, 2013) (on file with author); Letter from Thomas McClusky, Senior Vice President, Family Research Council, to U.S. House of Reps. (Feb. 27, 2013) (on file with author).

<sup>167</sup> *See Final Vote Results for Roll Call 55*, OFF. OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES (Feb. 28, 2013), <http://clerk.house.gov/evs/2013/roll055.xml#N>.

<sup>168</sup> For an explanation of Republican objections to VAWA, see Adam Serwer, *Rights Groups to GOP: Stop Watering Down the Violence Against Women Act*, MOTHER JONES (Feb. 25, 2013, 9:52 AM), <http://www.motherjones.com/mojo/2013/02/gop-ava-bill-lgbt-undocumented-immigrants>.

<sup>169</sup> 159 CONG. REC. 29, 744 (2013) (statement of Rep. Smith). Rather, Smith criticized the bill for reducing funding to the TIP Office and for shifting some anti-trafficking responsibilities to the State Department’s regional offices. *Id.*

<sup>170</sup> *See, e.g.*, Telephone interview with Cory Smith, *supra* note 157.

<sup>171</sup> *See* H.R. 898, 113th Cong. (2013).

<sup>172</sup> As mentioned above, the vote to add the reauthorization to VAWA passed the Senate—without a conscience clause—by a wide margin of 93–5. *See supra* note 164 and accompanying text. Moreover, anti-trafficking advocates indicated that few, if any, lawmakers opposed

tempting to insert a conscience clause or similar provision into future reauthorizations could eviscerate the once-solid bipartisan support for the legislation, threatening the existence of the entire anti-trafficking regime. Moreover, even if lawmakers could win enough support to pass a reauthorization with such a clause—effectively capturing the anti-trafficking program by realigning it with anti-abortion and anti-contraception ideology—the consequences for victims’ health could be significant.

While adding conscience clauses to grant programs may seem like a harmless move toward religious freedom and nondiscrimination, some scholars have argued that these provisions can significantly reduce access to certain health services. PEPFAR, which has authorized \$63 billion over ten years toward the prevention of HIV, tuberculosis, and malaria,<sup>173</sup> contains a conscience clause written by Smith—nearly identical to the one he proposed for the TVPA—that allows faith-based organizations receiving federal grants to opt out of offering condoms and other contraceptives, abortions, and other services that do not conform to their religious beliefs.<sup>174</sup> According to one scholar, because of this provision and other funding limitations, few organizations in the program provide contraception and abortion services or referrals, and those that do offer such services “have been deterred from treating the most at-risk communities or integrating their work with organizations that do.”<sup>175</sup> Similarly, advocates who believe that trafficking victims should be able to obtain contraception and abortion services have reason to fear that adding a conscience clause to the TVPA could restrict such access, particularly for victims without the resources to seek medical care outside the program.<sup>176</sup>

At least for now, Congress has averted any consequences that might arise from a conscience clause. Advocates hailed the passage of the recent reauthorization without a conscience clause as a sign of the TVPA’s continued bipartisan support, or at the very least, lawmakers’ awareness that rejecting a bill that purports to tackle “human slavery” might not win voters’ hearts. But the new reauthorization will expire in 2017. In just a few years, legislative gridlock over trafficking victims’ access to abortion and contraception may return. Whether reproductive health services will become a sticking point in negotiations over the next reauthorization may depend in

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the final legislation on conscience grounds. Telephone Interview with Cory Smith, *supra* note 157.

<sup>173</sup> See *Reauthorization of PEPFAR, The United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act: A Side-by-Side Comparison to Current Law*, KAISER FAM. FOUND. (July 2008), <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/7799.pdf>.

<sup>174</sup> See Leventhal, *supra* note 153, at 186.

<sup>175</sup> *Id.* at 193. Of course, where faith-based organizations fill a gap that other groups cannot or will not—which may be the case in some international aid programs like PEPFAR—it could be argued that providing incomplete healthcare is better than providing none at all. Further, Leventhal explains that the conscience clause was not the only factor that limited access to reproductive health services in PEPFAR. See *id.* at 182–97.

<sup>176</sup> See *supra* notes 149–50 and accompanying text for summary of reproductive rights advocates’ concerns along these lines.

part on factors beyond the control of anti-trafficking advocates: for example, whether Congress remains as deeply partisan as it currently is, or whether lawmakers like Smith—who are active in both the anti-trafficking and anti-abortion movements—remain in Congress. However, advocates who want to avoid miring the TVPA in further controversy can take several steps to prevent abortion politics from re-entering the anti-trafficking sphere, such as facilitating compromise between the executive branch and religious groups, timing the expiration of reauthorization bills wisely, and broadening the concept of trafficking to reach beyond the sexual exploitation of women.

Improving the relationship between the executive branch and faith-based groups may help ensure that the TVPA's path to reauthorization is smoother in 2017. Conservative politicians and activists are not the only ones who have perceived some tension between the Obama Administration and, in particular, Catholic groups; scholars, too, have noted the "increasingly strained relations between the two"<sup>177</sup> that have led to a "political maelstrom."<sup>178</sup> If faith-based groups had not seen the HHS grant decision as symptomatic of a larger war on Catholics waged by the executive branch, perhaps they would have opposed the decision less vehemently. While there is no simple resolution to this problem, compromise may be possible in the context of trafficking. News reports suggest HHS and USCCB have discussed a potential agreement that would allow the latter to continue receiving grants in some capacity;<sup>179</sup> this could reduce political controversy during the next reauthorization debate. For example, lawmakers and regulators might consider splitting victim-services grant money into separate pots: one for healthcare and another for non-health-related services, such as housing, job training, and legal assistance. In such a bifurcated program, USCCB could provide non-health-related services without ethical objection, and HHS could offer victims access to the full range of reproductive health-care.<sup>180</sup> By proposing compromises and promoting dialogue between faith-based groups and the administration, anti-trafficking advocates may be able to stave off a fight over the next TVPA reauthorization.

Advocates should also push for future reauthorizations to be introduced at the right time: soon after a presidential election. Introducing the current reauthorization in 2011, with an election just a year away, made it possible

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<sup>177</sup> Daniel J. Rudary, Note, *Drafting a "Sensible" Conscience Clause: A Proposal For Meaningful Conscience Protections for Religious Employers Objecting to the Mandated Coverage of Prescription Contraceptives*, 23 HEALTH MATRIX 353, 393 (2013).

<sup>178</sup> Robin F. Wilson, *The Calculus of Accommodation: Contraception, Abortion, Same-Sex Marriage, and Other Clashes Between Religion and the State*, 53 B.C. L. REV. 1417, 1418 (2012).

<sup>179</sup> See Cadei, *supra* note 87.

<sup>180</sup> A bifurcated program could be more difficult for HHS to administer, and could mean victims receive care that is not as well integrated as it would be under the current program, in which each grantee can refer victims to the full range of necessary services. It is suggested not as a surefire solution to this complicated problem, but rather as an example of the type of rethinking that advocates might pursue.



for Obama’s opponents to use the TVPA for political purposes. Soon after the 2012 election, however, roadblocks to the reauthorization cleared. The 2017 reauthorization should be introduced after, not before, the 2016 election. Because pressure from interest groups plays a key role in putting legislation on the congressional agenda, anti-trafficking advocates should work together—and with allies in Congress—to properly time the next reauthorization.<sup>181</sup>

Finally, and perhaps most importantly, a shift toward viewing trafficking as a human rights problem affecting men and women—rather than as a problem of sex and sexual morality primarily affecting women—would reduce the power of the anti-abortion movement in the anti-trafficking field. As we have seen, abortion entered the trafficking sphere in part because abolitionists framed trafficking as an issue that revolves around sex and primarily affects vulnerable women. Focusing on restoring the human rights of victims of all kinds of trafficking would reduce the tunnel vision on women, sex, and sexual morality—topics that readily give rise to abortion debates—and would expand the anti-trafficking movement to benefit a wider range of exploited workers.

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<sup>181</sup> Pushing debate on the reauthorization until after the 2016 election also ensures that debate begins with a new administration in the White House. Because tension between the current administration and Catholic groups may have contributed to the lengthy reauthorization debate in 2011–2013, reauthorization under a new administration may be smoother. *See supra* notes 178–80 and accompanying text.

