

Congress of the United States
Washington, DC 20515

June 13, 2019

The Honorable Margaret Weichert
Acting Director
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Acting Director Weichert:

We urge you to stop the Office of Personnel Management (OPM) from administering government contributions for Members of Congress and Congressional staff in connection with health insurance plans that cover elective abortion, in violation of the longstanding Smith (NJ) Amendment.

Since 1984, the Smith Amendment to the Financial Services Appropriations bill has prohibited the use of appropriated funds “to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions,” except in cases “where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest” (Consolidated Appropriations Act 2019, Pub. L. 116-6, Div. D, Title VI, sec. 613, 614, February 15, 2019). This longstanding provision of law restricts OPM from administering government contributions in connection with any health plan for federal employees that covers elective abortion.

However, OPM is currently subsidizing plans that cover elective abortion in clear violation of the Smith Amendment. While the Affordable Care Act (ACA) limits Members of Congress and designated Congressional staff to purchasing health plans offered through an Exchange, under a current Obama-era rule in effect since plan year 2014 (5 CFR § 890.501(h), 78 FR 60653, October 2, 2013), OPM administers government contributions under 5 U.S. Code § 8906 for Members of Congress and Congressional staff enrolled in any Gold level health insurance plan offered through the District of Columbia’s Small Business Health Options Program (DC SHOP), including plans that cover elective abortion. In plan year 2019, 87% of the Gold level plans on the DC SHOP covered elective abortion. Only 9 out of 67 plans excluded such coverage.

In its regulatory preamble (78 FR 60654, October 2, 2013) and on its Frequently Asked Questions webpage, OPM claims that these abortion subsidies are allowed by attributing the segregated costs of the elective abortion coverage and associated administrative expenses to the individual’s contribution, rather than the taxpayers’ contribution. OPM’s use of this accounting gimmick to grant abortion subsidies to Congress is not provided for under Section 1303 of the ACA, and is blatantly illegal under the Smith Amendment’s strict requirement for a complete exclusion of elective abortion coverage for federal employees. By flouting the Smith

Amendment, such subsidies also violate the Antideficiency Act, which prohibits the authorization of expenditures or obligations without an appropriation by law.

Taxpayers, who pay 72 to 75 percent of these health benefit premiums, do not want their hard-earned tax dollars to pay for abortions. The Smith Amendment does not allow Members of Congress and Congressional staff to operate under a different set of rules than other federal employees when it comes to taxpayer funding of abortion.

Therefore, we request swift action by OPM to ensure that any health insurance subsidies for members of Congress or Congressional staff are in full compliance with the clear terms of the Smith Amendment, at least by the beginning of plan year 2020. Any DC SHOP plan which covers elective abortion should not be eligible for a government contribution.

Sincerely,



Christopher H. Smith
Member of Congress



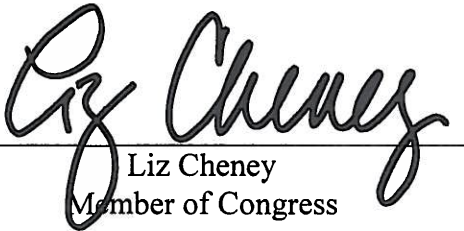
Steve Daines
United States Senator



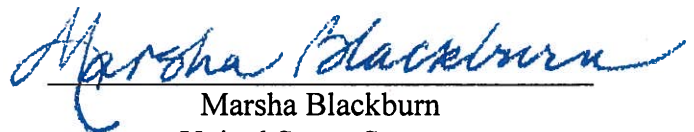
Vicky Hartzler
Member of Congress



James Lankford
United States Senator



Liz Cheney
Member of Congress



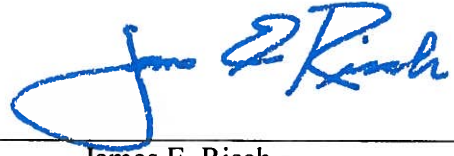
Marsha Blackburn
United States Senator

cc: The Honorable Mick Mulvaney
Director, Office of Management and Budget

The Honorable Seema Verma
Administrator, Centers for Medicare and Medicaid Services



James M. Inhofe
United States Senator



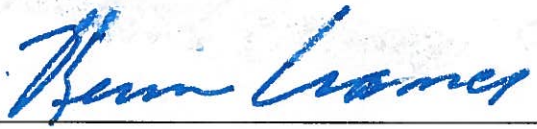
James E. Risch
United States Senator



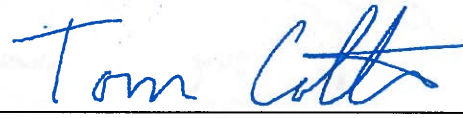
Mike Crapo
United States Senator



Roy Blunt
United States Senator



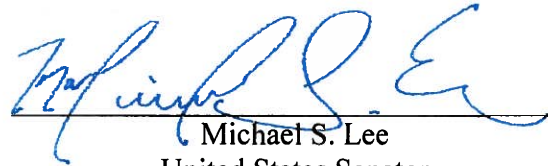
Kevin Cramer
United States Senator




Tom Cotton
United States Senator



Ted Cruz
United States Senator



Michael S. Lee
United States Senator



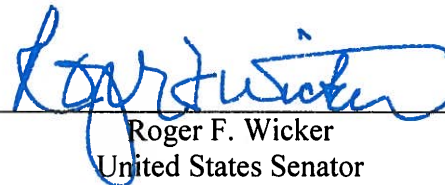
Joni K. Ernst
United States Senator



Thom Tillis
United States Senator



Michael B. Enzi
United States Senator



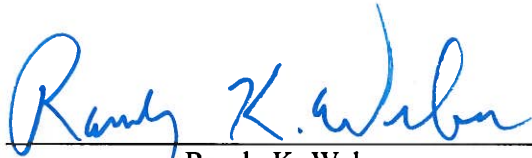
Roger F. Wicker
United States Senator



Marco Rubio
United States Senator



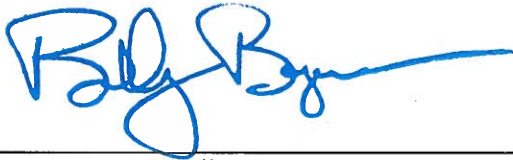
Tim Scott
United States Senator



Randy K. Weber
Member of Congress



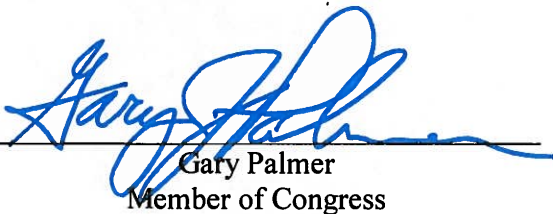
Ted Budd
Member of Congress



Bradley Byrne
Member of Congress



Francis Rooney
Member of Congress



Gary Palmer
Member of Congress



Paul Mitchell
Member of Congress



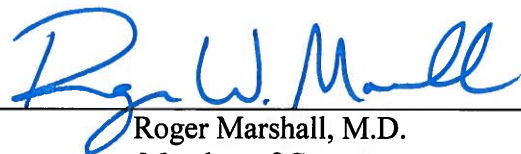
John Ratcliffe
Member of Congress



Ross Spano
Member of Congress



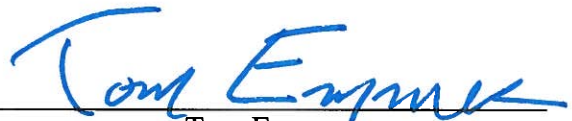
Michael Guest
Member of Congress



Roger Marshall, M.D.
Member of Congress



William R. Timmons, IV
Member of Congress



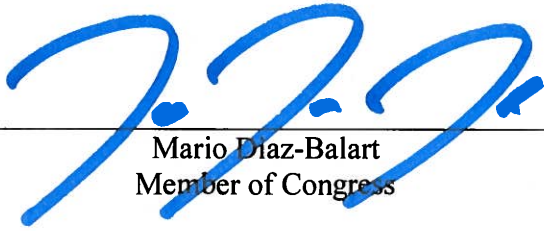
Tom Emmer
Member of Congress



Ralph Norman
Member of Congress



Doug LaMalfa
Member of Congress



Mario Diaz-Balart
Member of Congress



Jody Hice
Member of Congress



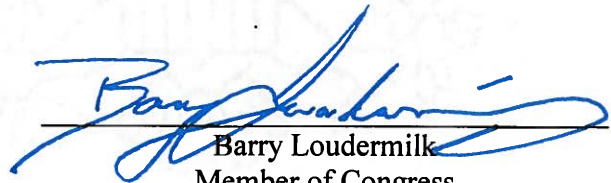
Ralph Abraham, M.D.
Member of Congress




Mike Johnson
Member of Congress



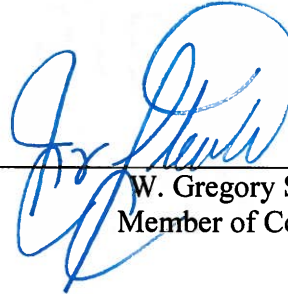
Jackie Walorski
Member of Congress



Barry Loudermilk
Member of Congress



Ron Wright
Member of Congress



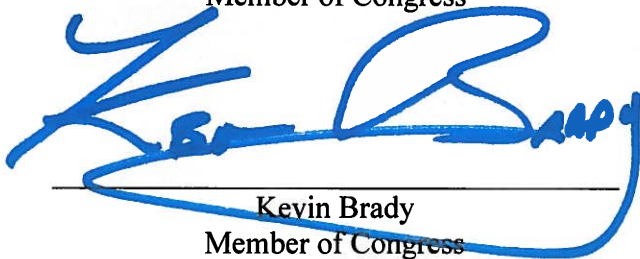
W. Gregory Steube
Member of Congress



David Kustoff
Member of Congress



Ben Cline
Member of Congress



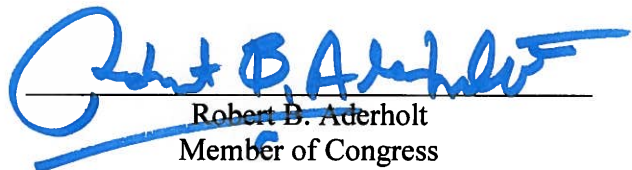
Kevin Brady
Member of Congress



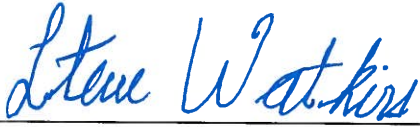
Kevin Hern
Member of Congress



Garret Graves
Member of Congress



Robert B. Aderholt
Member of Congress



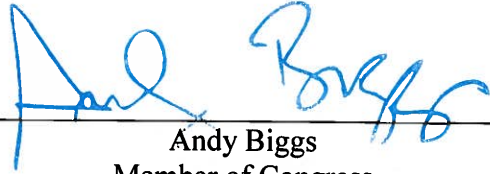
Steve Watkins
Member of Congress



Greg Gianforte
Member of Congress



John Rose
Member of Congress



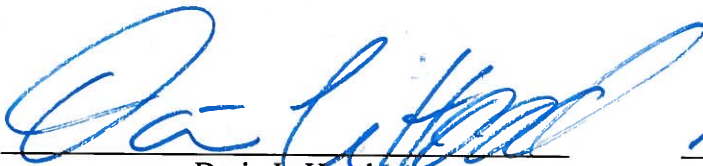
Andy Biggs
Member of Congress



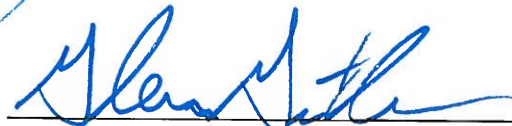
Debbie Lesko
Member of Congress



Bryan Steil
Member of Congress



Darin LaHood
Member of Congress



Glenn Grothman
Member of Congress



Mike Bost
Member of Congress



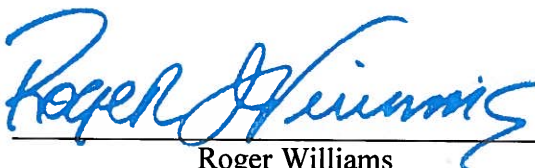
Jeff Fortenberry
Member of Congress



Carol D. Miller
Member of Congress



Mike Kelly
Member of Congress



Roger Williams
Member of Congress



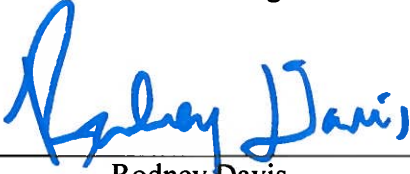
Jim Banks
Member of Congress



Sean Duffy
Member of Congress



Matt Gaetz
Member of Congress



Rodney Davis
Member of Congress



Jim Jordan
Member of Congress



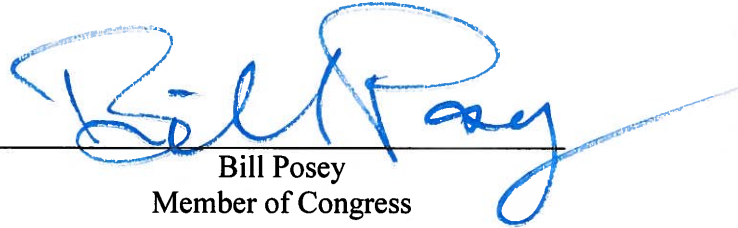
Paul A. Gosar, D.D.S.
Member of Congress



Tom Graves
Member of Congress



Pete Olson
Member of Congress



Bill Posey
Member of Congress



Mark Meadows
Member of Congress



Steve King
Member of Congress



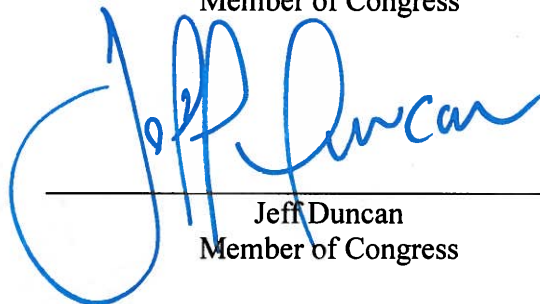
John Shimkus
Member of Congress



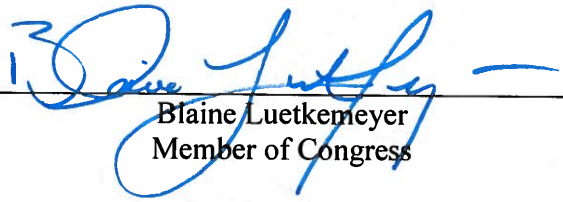
Gus M. Bilirakis
Member of Congress

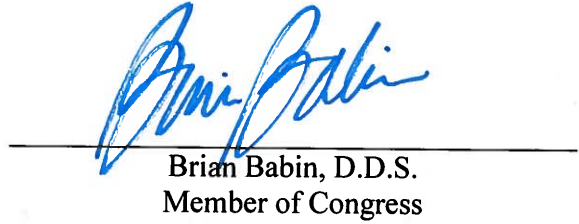


Bill Flores
Member of Congress



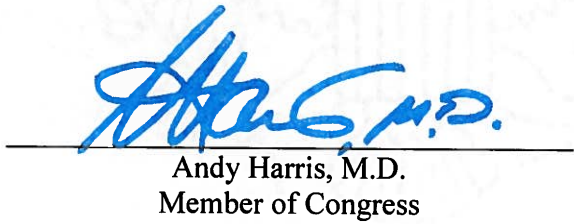
Jeff Duncan
Member of Congress

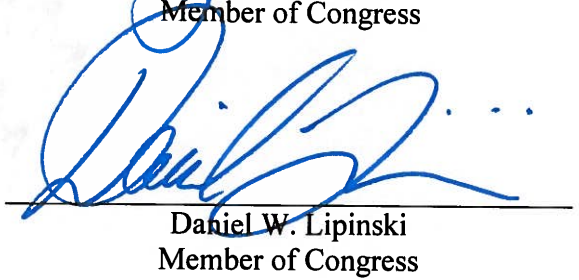

Blaine Luetkemeyer
Member of Congress

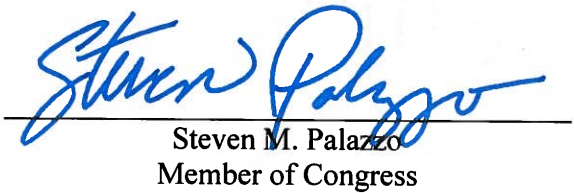

Brian Babin, D.D.S.
Member of Congress


Adam Kinzinger
Member of Congress


Kenny Marchant
Member of Congress

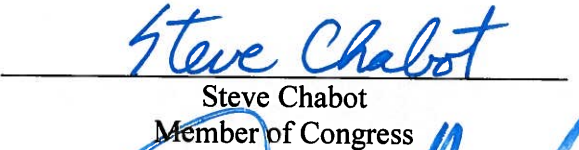

Andy Harris, M.D.
Member of Congress

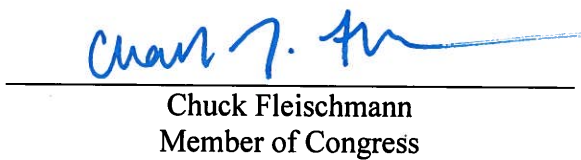

Daniel W. Lipinski
Member of Congress

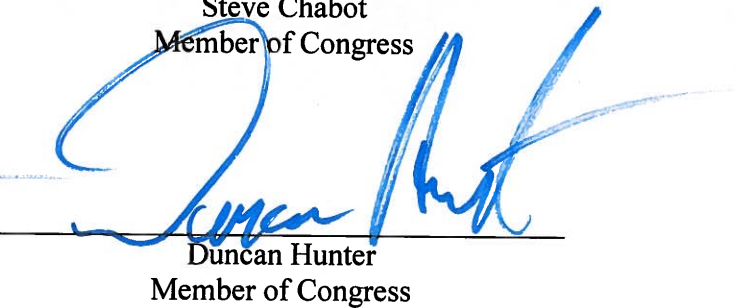

Steven M. Palazzo
Member of Congress


Doug Lamborn
Member of Congress

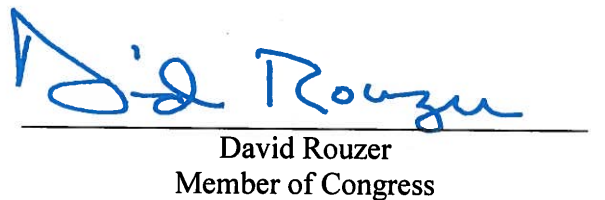

Rick W. Allen
Member of Congress


Steve Chabot
Member of Congress


Chuck Fleischmann
Member of Congress


Duncan Hunter
Member of Congress


Earl L. 'Buddy' Carter
Member of Congress


David Rouzer
Member of Congress

Alex X. Mooney

Alex X. Mooney
Member of Congress

Virginia Foxx

Virginia Foxx
Member of Congress

Robert E. Latta

Robert E. Latta
Member of Congress

Mike Conaway

Mike Conaway
Member of Congress