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Abortion Funding Restrictions in Foreign Assistance Legislation

For nearly five decades, Congress has enacted abortion-related funding restrictions in U.S. foreign assistance legislation. Many of the restrictions were adopted against the backdrop of the Supreme Court’s 1973 *Roe v. Wade* ruling, which held that the Constitution protected a woman’s decision to terminate her pregnancy. Foremost among these is the “Helms amendment,” first enacted in 1973, which requires that certain foreign assistance funds may not be used to pay for the performance of abortion. Over the years, Congress has considered bills to amend, expand, or overturn some of these restrictions. Some Members have demonstrated an increased interest in these restrictions and their impacts in the wake of the Supreme Court’s 2022 ruling *Dobbs v. Jackson Women’s Health Organization*, which broadly overruled *Roe*.

Background and Legislative Vehicles

Debates over abortion in U.S. foreign assistance often reflect broader domestic disagreements on abortion, including the federal government’s role, if any, in funding abortion. Foreign assistance restrictions on abortion are generally included in two legislative vehicles: (1) *authorization legislation*, mainly the Foreign Assistance Act of 1961 (FAA) (P.L. 87-195; 22 U.S.C. 2151 et seq.); and (2) *appropriations legislation*, such as the annual Department of State, Foreign Operations and Related Program (SFOPS) appropriations acts.

The FAA and SFOPS Appropriations Acts

The FAA is the foundation of permanent foreign assistance authorization law. It is divided into several “parts” that authorize different types of foreign assistance, including development assistance (part I); military and security assistance (part II); general, administrative, and miscellaneous provisions (part III); the Enterprise for the Americas Initiative (part IV); and debt reduction for developing countries with tropical forests (part V). Some legislative restrictions on abortion apply specifically to programs authorized under part I. Congress is required to enact both an authorization and appropriation in order to fund foreign assistance programs (22 U.S.C. 2412). Most foreign assistance is appropriated in Titles 3 through 6 of annual SFOPS legislation.

These provisions are often controversial. At times, the presence (or absence) of abortion restrictions in legislation has played a role in delaying or halting the enactment of certain bills, including annual appropriations acts. Some proposed legislation addressing global women’s issues has similarly been affected, including bills on violence against women, and on women’s global development and prosperity.

Abortion restrictions in foreign assistance are part of broader U.S. efforts to prohibit federal funding for abortions. In addition to legislative restrictions on U.S. foreign assistance funding of abortions, Presidents have periodically, since 1985, used executive authorities to prohibit abortion funding. For example, the “Mexico City Policy,” as it is often called, requires foreign nongovernmental organizations (NGOs) that receive U.S. federal funds to certify that they do not perform or actively promote abortion as a method of family planning, even using non-U.S. funds. The policy is typically instated by Republican Presidents and rescinded by Democratic Presidents. (See CRS Report R41360, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy*.)

Domestically, the “Hyde amendment” (named for Representative Henry Hyde), which is included in annual Department of Labor-Health and Human Services (HHS) appropriations acts, prohibits HHS from using appropriated funds to pay for abortions, except when a pregnancy is the result of rape or incest, or the mother’s life would be endangered if an abortion were not performed. In addition, the Department of Defense is prohibited from using funds or facilities to perform an abortion, subject to similar exceptions. (See CRS In Focus IF12167, *The Hyde Amendment: An Overview*, and CRS Insight IN11960, *FY2023 NDAA: Military Abortion Policies*.)

Overview of Key Restrictions

Helms Amendment. The Helms amendment, introduced by Senator Jesse Helms in 1973, is included in both authorization and appropriations legislation. In the FAA, the provision, at Section 104(f) (22 U.S.C. 2151b(f)), states that none of the funds to carry out part I of the act (development assistance) “may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.” Since FY1980, the Helms amendment has also been stated in most of the annual SFOPS bills. In the FY2022 SFOPS Act (Division K of P.L. 117-103), Helms language is included in Section 7018 to apply to all activities in the act authorized under part I of the FAA. Similar language is found under the Global Health Programs heading in Title III, Bilateral Economic Assistance, and applies to all funding provided in the act.

Peace Corps. Since FY1979, annual SFOPS appropriations have included an abortion restriction on Peace Corps funding due to concerns that U.S. funding might be used to provide abortions for Peace Corps volunteers. The restriction states that “none of the funds appropriated under this heading shall be used to pay for abortions.” As in some previous fiscal years, the FY2022 SFOPS Act includes

exceptions to the abortion funding prohibition when a pregnancy is the result of rape or incest, or when a mother's life would be endangered if an abortion were not performed. (See CRS Report RS21168, *The Peace Corps: Overview and Issues*.)

Biden Amendment. In 1981, Congress amended the FAA to prohibit certain foreign assistance for biomedical research related to abortion or involuntary sterilization (see 22 U.S.C. §2151b(f)(3)). The amendment, named after then-Senator Joseph Biden, states, “None of the funds made available to carry out this part may be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.” It is also included in appropriations legislation, most recently Section 7018 of the FY2022 SFOPS Act. In both laws the provision applies to activities authorized by part I of the FAA.

Siljander Amendment. In 1981, Congress enacted an amendment, named after Representative Mark Siljander, to the FY1982 Foreign Assistance and Related Programs Appropriations Act specifying that no U.S. funds may be used to lobby for abortion. Congress subsequently modified the amendment to state that funds may not be used to “lobby for *or against* abortion” (emphasis added). The amendment has been included in subsequent SFOPS appropriations acts, including under the Global Health Programs heading in the FY2022 SFOPS Act. It applies to all programs and activities appropriated under the act.

Presidential Certification of Restrictions. In 1985, Congress included a provision in the FY1986 Foreign Assistance and Related Programs Appropriations Act requiring that no funds made available under part I of the FAA may be obligated or expended for any country or organization if the President certifies that the use of these funds would violate any of the provisions related to abortions (e.g., the Helms and Biden amendments). Subsequent SFOPS, including Section 7018 of the FY2022 SFOPS Act, included this requirement. It applies to all activities authorized under part I of the FAA.

Kemp-Kasten Amendment. Congress enacted the Kemp-Kasten amendment in the FY1985 Supplemental Appropriations Act. The measure, introduced by Senator Bob Kasten and Representative Jack Kemp, states that no funds under the act “may be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization.” It has been included in annual SFOPS since FY1985 due to concerns that the United Nations Population Fund (UNFPA) program in China is engaged in or funding abortion or coercive family planning programs. Kemp-Kasten could apply to any entity; determinations have been made only regarding UNFPA. (See CRS Report R46962, *The United Nations Population Fund (UNFPA): Background and U.S. Funding*.)

Leahy Amendment. The Leahy amendment, introduced by Senator Patrick Leahy in 1994 as part of the FY1995 Foreign Operations, Export Financing, and Related

Programs Appropriations Act, seeks to clarify the term “motivate” in the Helms amendment. Some version of the Leahy amendment has been included in SFOPS since FY1995, including FY2022. It applies to all enacted authorization and SFOPS appropriations. The FY2022 SFOPS bill states, “the term ‘motivate,’ as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.”

Selected Congressional Considerations

Application of assistance. When considering abortion funding restrictions, Members may take into account the types of foreign assistance to which certain provisions apply. For example, the Helms amendment is permanently authorized in the FAA and applies only to part I. To cover additional categories of foreign aid, Helms-like language is included in annual SFOPS acts, and applied to all funding in the act. Conversely, some restrictions are included in annual SFOPS rather than authorization legislation and may only apply to certain entities or parts of the act.

Oversight of executive branch. Some Members may consider or debate executive branch interpretation and/or implementation of legislative restrictions on abortion, including the extent to which, if any, abortion is equated with family planning and reproductive health (FP/RH) activities. For example, in August 2020, 60 Members wrote to the Trump Administration urging U.S. diplomats to insist that international agreements and multilateral assistance not include abortion “under the guise of sexual and reproductive health,” an action that they deemed “necessary to enforce the Siljander amendment.” In August 2022, 76 Members wrote a letter requesting that the Biden Administration “communicate and implement Helms Amendment exceptions to countries and organizations that receive U.S. foreign assistance.” (Since Helms was enacted, the executive branch has not appeared to interpret any exceptions. Similar letters were written to President Obama in 2011 and 2015.) Members have also asked the Government Accountability Office (GAO) to investigate possible violations of restrictions (e.g., GAO Report 12-35 on the Siljander amendment) and enacted related reporting requirements (e.g., SFOPS acts since FY2019 require the President to provide written justifications for Kemp-Kasten determinations in a certain timeframe).

Possible impact on U.S. global health programs. Some Members have debated the impact, if any, that existing abortion funding restrictions might have on broader U.S. global health programming, including FP/RH activities funded by the U.S. Agency for International Development (USAID). Some advocates of abortion restrictions contend that the full range of restrictions are necessary to ensure that U.S. taxpayer dollars are not used to pay for abortions, while some women's health advocates argue that such restrictions are duplicative, sometimes unclear, and may deter USAID global health partners from providing legal FP/RH services (such as post-abortion care or counseling on family planning options) due to concerns they might lose USAID funding or because they lack sufficient guidance on how to comply with the restrictions.

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