



## Fact Sheet: Federal Funding Restrictions on Abortion

In the years leading up to and following the Supreme Court's 1973 decision in *Roe v. Wade* legalizing abortion nationwide, the federal government—primarily Congress—has enacted various measures governing the availability of federal funds for abortion and related services. The Medicaid program, established by President Lyndon Johnson in 1965 to provide health care for low-income Americans, began subsidizing abortions shortly after *Roe*.

Of what has now become a patchwork of funding restrictions on abortion, the most well-known is the Hyde Amendment. First passed in September 1976, the Hyde Amendment—named for its sponsor, Rep. Henry Hyde—prohibits federal funds from being used to pay for abortions or health plans that include abortion coverage, with certain exceptions. The Hyde Amendment has passed as a rider to annual appropriations bills every year since.

This fact sheet provides a concise timeline laying out the various funding restrictions on abortion enacted by the federal government since 1970, while noting changes in the various restrictions insofar as exceptions to the rule are concerned.

### 1970: Family Planning Services and Population Research Act [Title X]

- Prohibits the use of funds appropriated in the act for programs in which abortion is a method of family planning.<sup>1</sup>

### 1973: *Roe v. Wade*

- The Supreme Court held that a right to privacy under the Due Process Clause of the 14th Amendment encompassed a woman's right to have abortion, legalizing abortion throughout the country.<sup>2</sup>

### 1973: Helms Amendment

- Prohibits foreign aid from being spent on abortion as a method of family planning or to motivate or coerce anyone to practice abortion or involuntary sterilization.<sup>3</sup>

### 1974: Legal Services Corporation Act

- Prohibits lawyers in federally funded legal aid programs from providing legal assistance for procuring elective abortions or for compelling the provision of abortion services over and against an individual's religious or moral objections.<sup>4</sup>
  - 1996: Congress further prohibited abortion-related litigation of any kind.

<sup>1</sup> <https://www.gpo.gov/fdsys/pkg/STATUTE-84/pdf/STATUTE-84-Pg1504.pdf>.

<sup>2</sup> [https://www.law.cornell.edu/supremecourt/text/410/113#writing-USSC\\_CR\\_0410\\_0113\\_ZO](https://www.law.cornell.edu/supremecourt/text/410/113#writing-USSC_CR_0410_0113_ZO).

<sup>3</sup> <https://www.usaid.gov/what-we-do/global-health/family-planning/usaid-family-planning-guiding-principles-and-us>.

<sup>4</sup> <http://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs>.

#### 1976: Hyde Amendment

- Prohibits federal funds from being used to pay for abortions or health plans that include abortion coverage.<sup>5</sup> When enacted in 1976, there was an exception for when the life of the mother was endangered.
  - 1977: Exceptions include life of the mother, rape, incest, and severe and long-lasting physical health damage to the mother if pregnancy carried to term.
  - 1979: Exception for physical health of the mother is dropped.
  - 1981: Exceptions for rape and incest are dropped.
  - 1993: Exceptions for rape and incest are added.
  - 1997: Exceptions include life of the mother, rape, and incest. The life of the mother exception applies to life-endangering physical conditions caused by the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. This is the current version of the Hyde Amendment.

#### 1979: Peace Corps Volunteers

- Prohibits the Peace Corps from funding of abortions for its volunteers.<sup>6</sup>
  - 2014: Exceptions added for the cases of rape, incest, and life endangerment.<sup>7</sup>

#### 1979: Department of Defense

- Prohibits the Department of Defense from funding abortions for military personnel, retirees, and dependents through TRICARE. An exception is made for life endangerment.
  - 1985: The restriction is made permanent in the Department of Defense Authorization Act of 1984.<sup>8</sup>
  - 2013: Exceptions added for the cases of rape and incest.<sup>9</sup>

#### 1980: *Harris v. McRae*

- The Supreme Court upheld the constitutionality of congressional restrictions on abortion funding, and specifically the Hyde Amendment. The ruling held that a woman's freedom of choice does not entail a constitutional entitlement to the resources to avail herself of the full range of protected choices. The government may not place obstacles in the path of a woman's exercise of freedom of choice, but it need not remove those obstacles not of its own creation.<sup>10</sup>

#### 1982: Indian Health Service

- Indian Health Services (IHS) restricted the use of IHS funds for abortions, allowing the use of funds for abortions only when a doctor certified that the life of the mother would be in danger if the baby were carried to term.<sup>11</sup>
  - 1996: Exceptions added for the cases of rape and incest.

#### 1983: Smith Amendment

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<sup>5</sup> <http://www.nrlc.org/archive/AHC/HydeAmendmentText.html>.

<sup>6</sup> <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1045&context=jsj>.

<sup>7</sup> <https://www.washingtonpost.com/news/federal-eye/wp/2014/12/18/spending>.

<sup>8</sup> <https://www.congress.gov/bill/98th-congress/house-bill/5167>.

<sup>9</sup> <http://www.usmedicine.com/uncategorized/dod-now-will-fund-abortion-in-pregnancies-from-rape-incest/>.

<sup>10</sup> <https://www.law.cornell.edu/supremecourt/text/448/297>.

<sup>11</sup> [https://www.ihs.gov/ihtm/index.cfm?module=dsp\\_ihm\\_sgm\\_main&sgm=ihtm\\_sgm\\_9601](https://www.ihs.gov/ihtm/index.cfm?module=dsp_ihm_sgm_main&sgm=ihtm_sgm_9601).

- Congress added a rider to funds appropriated for the Federal Employees Health Benefits Program to prohibit the program from paying for insurance plans that cover abortions, except when the life of the woman was in danger.<sup>12</sup>
  - 1994: The Smith Amendment was not enacted for two consecutive years beginning in 1994.
  - 1996: The Smith Amendment was enacted again, adding exceptions for the cases of rape and incest. It has been included as a rider in annual appropriations bills each year since.

#### 1984: Mexico City Policy

- President Ronald Reagan instituted this policy requiring foreign NGO's receiving USAID family planning assistance to certify they will not perform or promote abortion as a method of family planning.<sup>13</sup>
  - 1993: The Mexico City Policy was overturned by President William Clinton.
  - 2001: The Mexico City Policy was reinstated by President George W. Bush.
  - 2009: The Mexico City Policy was overturned by President Barack Obama.

#### 1985: Kemp-Kasten Amendment

- Allows the President to discontinue funding to organizations that support or participate in the management of a coercive abortion program.<sup>14</sup>
  - Presidents Ronald Reagan, George H.W. Bush, and George W. Bush used this provision to withhold funds from the United Nations Population Fund.

#### 1987: Federal Prisoners

- The Department of Justice is prohibited from paying for abortions for women in federal prisons. Exceptions include the cases of life endangerment, rape, and incest.<sup>15</sup>
  - 1994: This restriction was not enacted.
  - 1995: Restriction was re-enacted.
  - 2015: Exception for incest added.<sup>16</sup>

#### 1988: Dornan Amendment

- Prohibits the District of Columbia from using its local revenues to pay for abortions for its residents. Exceptions include the cases of life endangerment, rape, and incest.<sup>17</sup>
  - 1993: The Dornan Amendment was not enacted for two consecutive years.
  - 1995: The Dornan Amendment was reinstated.
  - 2009: The Dornan Amendment was not enacted for fiscal year 2010.<sup>18</sup>
  - 2010: The Dornan Amendment was reinstated for fiscal year 2011 and subsequent years.

<sup>12</sup> <https://www.fas.org/sgp/crs/misc/R42741.pdf>.

<sup>13</sup> <https://www.fas.org/sgp/crs/row/R41360.pdf>.

<sup>14</sup> <http://www.aul.org/2010/04/the-kemp-kasten-provision-and-unfpa-funding/>.

<sup>15</sup> <http://www.thedailybeast.com/articles/2014/12/13/the-gop-s-hidden-ban-on-prison-abortion.html>.

<sup>16</sup> <http://www.prochoiceamerica.org/media/fact-sheets/bans-on-abortion-coverage-government-programs.pdf> at 13.

<sup>17</sup> <https://www.sba-list.org/newsroom/press-releases/sba-list-praises-house-leadership-securing-life-saving-dornan-amendment>.

<sup>18</sup> [http://www.nwlc.org/sites/default/files/pdfs/dc\\_ban\\_fact\\_sheet\\_2011\\_final\\_11-14-11.pdf](http://www.nwlc.org/sites/default/files/pdfs/dc_ban_fact_sheet_2011_final_11-14-11.pdf).