

Kemp-Kasten Amendment

Legislative History

Overview

Enacted for the first time August 15, 1985 as a part of appropriations law, what came to be called the Kemp-Kasten Amendment denies federal funding to organizations or programs that, as determined by the President, support or participate in a program of coercive abortion or involuntary sterilization. From then to the present, this amendment without substantial change has continued to be part of annual foreign operations appropriations law.

On September 25, 1985, acting on the just-passed amendment, the Reagan Administration determined that involvement by the United Nations Population Fund (UNFPA) in China's coercive population control program violated the Kemp-Kasten Amendment and disqualified the organization for a portion of its FY 1985 funding. This determination was challenged by the Population Institute in court, but a three-judge panel of the U.S. Court of Appeals for the District of Columbia unanimously upheld the determination on August 12, 1986.

A determination denying all funding to UNFPA was made in subsequent years, until 1993, when the Clinton Administration resumed funding, despite UNFPA's support for China's coercive policies. In 2002, the Bush Administration, relying on the Kemp-Kasten Amendment, made the determination that UNFPA supported the China program and again cut off funding. Abortion proponents have expressed their intent to try to amend the Kemp-Kasten Amendment.

Detailed Legislative History: FY 1984 to FY 2003

FY 1984. Initially the Administration withheld \$19 million of the \$38 million allocated for UNFPA for FY 1984, requiring "concrete assurances that the UNFPA is not engaged in, and does not provide funding for, abortion or coercive family planning programs." When assurances were given, the money was released.

FY 1985. A FY 1985 appropriations measure (H.J. Res. 648) that was signed into law October 12, 1984 (Public Law 98-473) contained the first legislative restriction denying funding to countries or organizations that supported involuntary abortion. FY 1985 funds for the U.S. Agency for International Development (USAID) carried a number of provisos, including: "*Provided further*, That none of the funds appropriated under this paragraph may be available to any country which includes as part of its population planning programs involuntary abortions: *Provided further*, That none of the funds appropriated under this paragraph may be available to any organization which includes as part of its population planning programs involuntary abortions" (98 STAT. 1887).

In 1985, Congress went further and required the President to make a formal determination to withhold funds. On March 30, 1985, the Administrator of AID announced his intention to withhold \$10 million of

the \$46 million earmarked for UNFPA for FY 1985, but sought additional Congressional support in law. On May 17, 1985, the President requested that Congress reduce the FY 1985 UNFPA earmark by \$10 million. Congress rejected the request. However, in the Supplemental Appropriations Act, 1985 (H.R. 2577) the House subsequently approved an additional limitation on population funding: “None of the funds made available in this bill nor any unobligated balances from prior appropriations may be made available to any organization or program which supports or participates in the management of a program of coercive abortion.” This amendment was sponsored by Rep. Jack Kemp (R-NY). In Senate committee, Sen. Daniel Inouye (D-HI), an opponent of defunding the UNFPA, successfully offered the addition: “as determined by the President of the United States.” In its report, the committee stated that the President should delegate this authority only to the Secretary of State, but this view was not expressed in statutory language. On the Senate floor, Sen. Jesse Helms (R-NC) added the words “or involuntary sterilization” to the provision.

As a result, what in time came to be called the Kemp-Kasten Amendment was first enacted into law as part of the Supplemental Appropriations Act, 1985 (H.R. 2577), signed into law August 15, 1985 (Public Law 99-88):

None of the funds made available in this bill nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

99 STAT. 323

This language is repeated verbatim in subsequent annual appropriations bills.

On September 19, 1985, the President delegated his authority to make the determination called for in the amendment to the Secretary of State, who then delegated the authority to the Administrator of USAID. On September 25, 1985, the Administrator of USAID withheld \$10 million of the \$46 million allocated for UNFPA for FY 1985. The Administrator also indicated that FY1986 funding was doubtful if China did not correct its abuses or if UNFPA did not withdraw its support. On September 30, 1985, the Population Institute and others went to court to block the denial of funds, but on August 12, 1986 the U.S. Court of Appeals for the District of Columbia upheld the Administration’s action. *Population Institute v. McPherson* (254 U.S. App. D.C. 395). The \$10 million was withheld from UNFPA.

FY 1986. The Kemp-Kasten Amendment was included in the Omnibus Appropriations Bill (H.J. Res. 465), signed into law December 12, 1985 (Public Law 99-190). Sen. Robert Kasten (R-WI) was the sponsor of the Foreign Operations Appropriations Bill (S. 1816) in the Senate. The Administration denied all funding to UNFPA.

FY 1987. The Kemp-Kasten Amendment was included in the Omnibus Appropriations Bill (H.J. Res. 738), signed into law October 30, 1986 (Public Law 99-591). The Administration denied all funding to

UNFPA.

FY 1988. The Kemp-Kasten Amendment was included in the Omnibus Appropriations Bill (H.J. Res. 395), signed into law December 22, 1987 (Public Law 100-202). The Administration denied all funding to UNFPA.

FY 1989. The Kemp-Kasten Amendment was included in the FY 1989 Foreign Operations Appropriations Bill (H.R. 4637), signed into law October 1, 1988 (Public Law 100-461). The Administration denied all funding to UNFPA.

FY 1990. The Kemp-Kasten Amendment was included in the FY 1990 Foreign Operations Appropriations Bill (H.R. 2939), but with the proviso that, the Kemp-Kasten Amendment notwithstanding, not less than \$15 million would be made available to UNFPA. This earmark was added to the bill in the Senate by Sen. Barbara Mikulski (D-MD). Because of this and other provisions in H.R. 2939, President George H. Bush vetoed the bill on November 19, 1989. Thereafter Congress repassed the FY 1990 Foreign Operations Appropriations Bill (H.R. 3743); the Kemp-Kasten Amendment was included without any limiting provisos. H.R. 3743 was signed into law November 21, 1989 (Public Law 101-167). The Administration denied all funding to UNFPA.

FY 1991. The Kemp-Kasten Amendment was included in the FY 1991 Foreign Operations Appropriations Bill (H.R. 5114), signed into law November 5, 1990 (Public Law 101-513). The Administration denied all funding to UNFPA.

FY 1992. Efforts in the House and Senate to earmark funds for UNFPA were not successful. The Kemp-Kasten Amendment remained in effect through a Continuing Resolution (H.J. Res. 360) signed into law October 28, 1991 (Public Law 102-145) that extended the FY 1991 Foreign Operation Appropriations law to March 31, 1992. A second Continuing Resolution (H.J. Res. 456) signed into law April 1, 1992 (Public Law 102-266) extended Public Law 102-145 until September 30, 1992. The Administration denied all funding to UNFPA.

FY 1993. The Kemp-Kasten Amendment was included in the FY 1993 Foreign Operations Appropriations Bill (H.R. 5368), signed into law October 6, 1992 (Public Law 102-391). President William Clinton assumed office in 1993. USAID issued a new UNFPA Policy Determination, in which the Kemp-Kasten Amendment was reinterpreted. Only “direct” support for or participation in coercive abortion or involuntary sterilization would be considered in violation of the law. Based on this interpretation of the law, the administration released \$14.5 million of FY 1993 monies to UNFPA.

FY 1994. The Kemp-Kasten Amendment was included in the FY 1994 Foreign Operations Appropriations Bill (H.R. 2295), signed into law September 30, 1993 (Public Law 103-87). However, the law also provided that not more than \$40 million be made available to UNFPA, with provisos: that none of the money be used in China; that the money be kept in a separate account at UNFPA; that not more than one-half of the money be provided to UNFPA before March 1, 1994; that no later than February 15, 1994, the Secretary of State submit a report on the amount UNFPA is budgeting for

China in 1994; that any amount UNFPA plans to spend in China in 1994 above \$10 million be deducted from funds provided to UNFPA after March 1, 1994. The administration released \$40 million to UNFPA in FY 1994. On March 15, 1994, a court challenge to the Administration's interpretation of the Kemp-Kasten Amendment was dismissed for lack of standing and mootness. *Smith, et al., v. Atwood, et al.* U.S. District Court for the District of Columbia (Civil Action No. 93-2320 (SS)).

FY 1995. The Kemp-Kasten Amendment was included in the FY 1995 Foreign Operations Appropriations Bill (H.R. 4426), signed into law August 23, 1994 (Public Law 103-306). However, the law also provided that not more than \$50 million be made available to UNFPA, with the provisos: that none of the money be used in China; that the money be kept in a separate account at UNFPA; that not more than one-half of the money be provided to UNFPA before March 1, 1995; that no later than February 15, 1995, the Secretary of State submit a report on the amount UNFPA is budgeting for China in 1995; that any amount UNFPA plans to spend in China in 1995 above \$7 million be deducted from funds provided to UNFPA after March 1, 1995. The administration released \$35 million to UNFPA in FY 1995.

FY 1996. The Kemp-Kasten Amendment was included in the FY 1996 Foreign Operations Appropriations Act (H.R. 1868), signed into law February 12, 1996 (Public Law 104-107). (The entirety of H.R. 1868 had already been included as part of a Continuing Resolution, H.R. 2880, that was signed into law January 26, 1996, Public Law 104-99. The final Continuing Resolution for FY 1996 did not become law until April 26, 1996.) However, the law also provided that not more than \$30 million be available to UNFPA, with the provisos: that none of the funds be used in China; that the funds be maintained in a separate account by UNFPA; that not more than half of the amount be provided to UNFPA before March 1, 1996; that no later than February 15, 1996, the Secretary of State submit a report indicating the amount UNFPA is budgeting for China in 1996; that any amount UNFPA plans to spend in China above \$7 million be deducted from the U.S. contribution provided after March 1, 1996. However, as Congress fought over UNFPA policy in its prolonged debate on FY 1996 appropriations, additional important provisos were placed in the law. A compromise was reached: language containing pro-life policies was dropped in exchange for limitations on population funding, including monies for UNFPA: UNFPA contribution could not be expended prior to July 1, 1996, unless authorized by law; any funds expended prior to July 1, 1996 could not exceed 65% of the FY 1995 appropriations for UNFPA; FY 1996 UNFPA funding could be released July 1, 1996 to September 30, 1997 on monthly apportionments not to exceed 6.67% monthly. The FY 1996 funds would be released over 15 months, from July 1, 1996 to September 30, 1997. The Administration released \$22.8 million of FY 1996 monies to UNFPA.

FY 1997. The Kemp-Kasten Amendment was included in the Omnibus Consolidated Appropriations Act of 1997 (H.R. 3610), signed into law September 30, 1996 (Public Law 104-208). However, the law also provided that not more than \$25 million be made available to UNFPA, with the provisos: that none of the funds be used in China; that the funds be maintained in a separate account by UNFPA; that not more than half of the amount be provided to UNFPA before March 1, 1997; that no later than February 15, 1997, the Secretary of State submit a report indicating the amount UNFPA is budgeting

for China in 1997; that any amount UNFPA plans to spend in China in 1997 be deducted from the U.S. contribution provided after March 1, 1997. The Administration released \$25 million of FY 1997 monies to UNFPA.

FY 1998. The Kemp-Kasten Amendment was included in the FY 1998 Foreign Operations Appropriations Bill (H.R. 2159), signed into law November 26, 1997 (Public Law 105-118). However, the law also provided that not more than \$25 million be made available to UNFPA, with the provisos: that none of the funds be used in China; that the funds be maintained in a separate account by UNFPA; that not more than half of the amount be provided to UNFPA before March 1, 1998; that no later than February 15, 1998, the Secretary of State submit a report indicating the amount UNFPA is budgeting for China in 1998; that any amount UNFPA plans to spend in China in 1998 be deducted from the U.S. contribution provided after March 1, 1997. The Administration released \$20 million of FY 1998 funds to UNFPA.

FY 1999. The Kemp-Kasten Amendment was included in the Omnibus Appropriations Bill for FY 1999 (H.R. 4328), signed into law October 21, 1998 (Public Law 105-277). In addition, the law banned any funds be made available to UNFPA. The Administration released no funds to UNFPA for FY 1999.

FY 2000. The Kemp-Kasten Amendment was included in the FY 2000 Foreign Operations Appropriations Bill (H.R. 3422), which was incorporated by reference in the FY 2000 Consolidated Appropriations Bill (H.R. 3194), signed into law November 29, 1999 (Public Law 106-113). In addition, the law provided that not more than \$25 million shall be made available to UNFPA, with the provisos: the funds may not be used in China; UNFPA maintains these funds in a separate account and does not commingle them with other funds; UNFPA does not fund abortions; no later than February 15, 2000, the Secretary of State shall submit a report on the funds UNFPA is budgeting for China; the amount UNFPA plans to spend in China shall be deducted from funds made available after March 1. Authorization to fund UNFPA was also included in the State Department FY 2000 Authorization Bill (H.R. 3427), which also was incorporated by reference in H.R. 3194. Not more than \$25 million for FY 2000 and \$25 million for FY 2001 shall be made available to UNFPA, with the same basic provisos found in the appropriations bill. The Administration released \$21.5 million to UNFPA for FY 2000.

FY 2001. The Kemp-Kasten Amendment was included in the FY 2001 Foreign Operations Appropriations Bill (H.R. 5526), that was incorporated by reference in an earlier version of the Foreign Operations Appropriations Bill (H.R. 4811), signed into law November 6, 2000 (Public Law 106-429). In addition, the law provided that not more than \$25 million be made available for UNFPA, with the provisos: the funds may not be used in China; UNFPA maintains these funds in a separate account and does not commingle them with other funds; UNFPA does not fund abortions; no later than February 15, 2001, the Secretary of State shall submit a report on the funds UNFPA is budgeting for China; the amount UNFPA plans to spend in China shall be deducted from funds made available after March 1. In February 2001 the new Bush Administration's State Department made the determination that UNFPA did not violate the Kemp-Kasten Amendment. The Administration released \$25 million to

UNFPA for FY 2001.

FY 2002. The Kemp-Kasten Amendment was included in the FY 2002 Foreign Operations Appropriations Bill (H.R. 2506), signed into law January 10, 2002 (Public Law 107-115). In addition, the law provided that not more than \$34 millions be made available to UNFPA, with the provisos: the funds may not be used in China; UNFPA maintains these funds in a separate account and does not commingle them with other funds; UNFPA does not fund abortions. When signing H.R. 2506 into law, the president stated that “the act provides additional discretion to determine the appropriate level of funding” for UNFPA. After studying the issue, on July 22, 2002, the State Department, citing the Kemp-Kasten Amendment, denied any funding to UNFPA for FY 2002. In Presidential Determination No. 2002-32, issued September 30, 2002, the president transferred the \$34 million to the Child Survival and Health Program Fund. The money is available to USAID for this purpose through FY 2003. The administration was reprogramming that money for Afghanistan and Pakistan, but Sen. Patrick Leahy (D-VT) blocked that effort.

FY 2003. The Kemp-Kasten Amendment was included in the FY 2003 Consolidated Appropriations Resolution (H.J. Res. 2), signed into law February 20, 2003 (Public Law 108-7). The amendment reads as follows:

Provided further, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

In addition, the law provided that the \$34 million from FY 2002 and an additional \$34 million from FY 2003 be made available to UNFPA, with the provisos: the president determines UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization; the funds may not be used in China; limitations on the use of funds for abortion found in PL 107-115 and in this act apply to UNFPA; limitations on funds for UNFPA found in PL 107-115 apply to funds provided to UNFPA in this act; the funds UNFPA plans to spend in China in 2002 and 2003 be deducted from funds made available to UNFPA in PL 107-115 and this act. UNFPA will receive FY 2002 or FY 2003 funding only if the president makes a determination UNFPA no longer supports or participates in China’s coercive population control program.

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