
The Mexico City Policy

Summary: *The Mexico City Policy specifies that federal funds for family planning are available only to foreign nongovernmental organizations that agree not to perform or promote abortion as a method of family planning in other countries. This policy was put in place by President Reagan in 1984, but rescinded by President Clinton in 1993. Efforts to restore the policy by Congressional action were successful only for FY 2000 when a compromise was enacted into law. However, in 2001, the policy was reinstated by President George W. Bush. Since then, abortion advocates have been conducting a campaign to reverse the President's action.*

What are the origins of the Mexico City Policy?

During the 1970's and early 1980's, U.S. federal tax dollars were the major source of funding for private organizations that promoted abortion in Third World countries. At the 1984 International Conference on Population in Mexico City, sponsored by the United Nations, the Reagan Administration announced new guidelines on the use of U.S. foreign aid funds for family planning. These limitations became known as the "Mexico City Policy." The policy stated:

The United Nations Declaration of the Rights of the Child [1959] calls for legal protection for children before birth as well as after birth. In keeping with this obligation, the United States does not consider abortion an acceptable element of family planning programs and will no longer contribute to those of which it is a part. Accordingly . . . the United States will no longer contribute to separate nongovernmental organizations which perform or actively promote abortion as a method of family planning in other nations.

Under this policy the U.S. Agency for International Development (USAID) required potential recipients of U.S. family planning assistance to certify they would not promote or perform abortions as a method of family planning in other countries, whether with U.S. funds or with other funds. Only groups that limited themselves to pre-pregnancy methods of family planning were eligible for U.S. funds.

Two major pro-abortion organizations refused to comply with the policy. The London-based International Planned Parenthood Federation (IPPF) received \$17 million from USAID in 1984 but forfeited all its federal funding under the Mexico

City Policy. However, some 57 IPPF affiliates worldwide, including IPPF/Western Hemisphere (operating in Latin America), agreed to the "contraceptives only" requirement and thus continued to receive U.S. funds. Planned Parenthood Federation of America (PPFA) also refused to agree to USAID limitations; after legal action, PPFA's grant of \$18 million was cut off as of Oct. 31, 1990.

Is the Mexico City Policy constitutional?

The Mexico City Policy was challenged and upheld in federal court on both statutory and constitutional grounds. Federal appellate courts ruled that the President has the authority under the Foreign Assistance Act of 1961 to "furnish assistance, on such terms and conditions as he may determine, for voluntary population planning." Domestic organizations asserted that the policy violates their First Amendment rights, but the constitutionality of the policy was upheld by the U.S. Court of Appeals for the District of Columbia (*DKT Memorial Fund Ltd. v. A.I.D.*, Oct. 10, 1989) and by the U.S. Court of Appeals for the Second Circuit in New York (*Planned Parenthood Federation of America v. A.I.D.*, Sept. 19, 1990).

What is the Status of the Mexico City Policy today?

The Mexico City Policy was in place during the Reagan and Bush Administrations. However, when President Clinton assumed office, he issued a Jan. 22, 1993 executive memorandum overturning the policy. Abortion-on-request again could be exported to other countries with government support. Subsequently, for one year only--FY 2000--a compromise version became law. However, on Jan. 22, 2001, President George W. Bush issued an executive memorandum directing the Administrator of the U.S. Agency for International Development (USAID) to reinstate in

full all the requirements of the Mexico City Policy as in effect Jan.19, 1993. Because the subsequent February 15 USAID rule implementing this directive was subject to challenge under the Congressional Review Act (CRA), President Bush issued a second executive memorandum on March 28 that included the content of the USAID rule.^[1] The CRA does not make provision for Congress to challenge executive memoranda.

On Aug. 29, 2003, the President extended the requirements of the March 28, 2001 memorandum not only to family planning grants awarded by USAID but to all family planning assistance furnished by any part of the Department of State.^[2]

What are Some Key Features of the Mexico City Policy?

According to President Bush's March 28, 2001 memorandum, foreign nongovernmental organizations, and their subcontractors, must agree not to perform or actively promote abortion as a method of family planning. Foreign nongovernmental organizations are organizations not organized under the laws of any U.S. state, the District of Columbia, or Commonwealth of Puerto Rico. Abortion as a method of family planning does not include abortions performed to save the mother's life or in cases of rape or incest, nor does it include treatment of injuries or illnesses caused by legal or illegal abortions. Actively promoting abortion means substantial or continuing efforts by an organization to increase the availability or use of abortion as a method of family planning. The means through which this can be done include lobbying a foreign government, conducting a public information campaign, or operating a counseling service. Excluded from actively promoting abortion are referrals for abortion as a result of rape or incest, or to save the life of the mother, as well as treatment of

1 "The President: Memorandum of March 28, 2001 – Restoration of the Mexico City Policy," *Federal Register*, Vol. 66, No. 61 (March 29, 2001), 17303-13. See: frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-8011-filed.pdf

2 "Presidential Documents: Memorandum of August 29, 2003 – Assistance for Voluntary Population Planning," *Federal Register*, Vol. 68, No. 170 (September 3, 2003), 52323. See: a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-22544.pdf

injuries or illnesses caused by legal or illegal abortions.

What are Highlights in the Policy Debate?

From 1995 until the Mexico City Policy was reinstated in 2001, Rep. Chris Smith (R-NJ) offered amendments to foreign aid bills for the purpose of enacting the basic features of the Mexico City Policy into law. An organization must certify that it "will not . . . perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest." An organization must also certify that it "will not . . . violate the laws of any foreign country" on abortion or "engage in any activity or effort to alter the laws or governmental policies of any foreign country" concerning abortion.^[3] Throughout the debate, President Clinton threatened to veto any legislation that contained the Mexico City Policy.

In 1995 and 1996. During these two years, the House and Senate reached an impasse on the Smith Amendment. The Mexico City Policy was not included in law but restrictions were placed on the amount of international family planning monies released each month.

In 1997. The Smith Amendment was attached to both the FY 1998 Foreign Operations Appropriations Bill (HR 2159) and the State Department Authorization Act (HR 1757). As the debate progressed, House leadership linked the passage of three important foreign policies to acceptance of a compromise version of the Mexico City Policy. The three policies in question were \$3.5 billion for the International Monetary Fund (IMF), \$926 million for U.N. back payments, and authorization of a State Department reorganization plan. The compromise in the Mexico City Policy would allow the President to waive that part of the policy that prohibited the performance of abortion and leave standing that part related to violating foreign abortion laws or lobbying to change them. In the case of a waiver, the funds appropriated for population control would be reduced. The White House objected. The Mexico City Policy did not become law and the Administration did not secure passage of its three foreign policy priorities.

In 1998. House leadership continued to maintain the link between passage of the three foreign policy

3 See FY 1998 Foreign Operations Appropriations Bill (H.R. 2159), approved by the U.S. House of Representatives on Sept. 4, 1997.

priorities and enactment of the Mexico City Policy into law. The conference report to HR 1757, which contained the compromise version of the Smith Amendment, was cleared for the White House on April 28, 1998. Congress held the bill until the fall. The President vetoed the bill as soon as he received it, again demonstrating that promotion of abortion in other countries superceded important foreign policy considerations. (At year's end, the IMF money and the State Department reorganization plan were included in the end-of-year Omnibus Appropriations Bill that became law. However, approval of the U.N. back payments remained linked to passage of the Mexico City Policy.)

In 1999. As part of the FY 2000 Foreign Operations Appropriations Bill (H.R. 2606), the House approved the Foreign Families Protection Amendment cosponsored by Reps. Chris Smith and James Barcia (D-MI). This amendment contained a compromise Mexico City Policy that allowed the President to waive that part related to performing abortions. However, in conference committee the compromise policy was dropped. For unrelated reasons, the President vetoed the bill. In negotiations with the White House in passage of a new bill, Rep. Chris Smith, backed by House leadership, continued to insist that payment of UN arrears must be linked to passage of the Mexico City Policy. The White House relented and agreed to inclusion of a new compromise version of the policy in the newly introduced FY 2000 Foreign Operations Bill (H.R. 3422). The latter was included by reference in the Consolidated Appropriations Bill (H.R. 3194), which was signed into law (PL 106-113). As in FY 1999, \$385 million was provided for population control programs. The Mexico City Policy in its entirety covered at least 96% of these funds. The President had the right to waive the policy's application to the other 4 percent, but if he did so, \$12.5 million of the population control monies would be transferred to the Child Survival and Disease Program Funds. On Nov. 30, 1999, the President exercised the waiver.

In 2000 and 2001. The House-passed version of the FY 2001 Foreign Operations Appropriations Bill (H.R. 4811) contained the same family planning funding level as last year along with last year's compromise version of the Mexico City Policy. The President threatened to veto the final bill if it contained the Mexico City Policy. In conference committee, the modified policy was stripped from the bill, and international family planning funds were increased from \$385 to \$425 million, but with the

proviso the funds not are spent until Feb. 15, 2001. The next President would have the opportunity, if he so deemed, to restore the Mexico City Policy before any monies were dispersed. On January 22, 2001, President Bush moved to reinstate the policy in full.

In 2003 and 2005. In each year, the Senate approved an amendment by Sen. Barbara Boxer (D-CA) that would overturn the Mexico City Policy by prohibiting the application of the policy's funding eligibility requirements to nongovernmental organizations. The amendment did not become law.

In 2007. The Senate again passed the Boxer Amendment and the House passed an amendment by Rep. Nita Lowey (D-NY) that would negate the application of the Mexico City Policy in specific circumstances. These amendments were attached to the Fiscal Year 2008 State Department/Foreign Operations Appropriations Bill (H.R. 2764). President Bush has said that he would veto the measure if it weakened existing pro-life policies. Congress has not yet approved its final version of H.R. 2764.

What are the goals of organizations like IPPF and PPFA?

The ultimate goal of organizations that oppose the Mexico City Policy is to make abortion-on-request as a method of "family planning" available in all nations. Planned Parenthood is the largest abortion provider in the world. Such groups seek to export abortion to countries even where it is illegal. According to a 1994 U.N. report, abortion on request and abortion for economic or social reasons is legal in only 12 out of 133 developing nations. In its unsuccessful complaint to a U.S. District Court in New York, PPFA said the organization's objectives include increasing access in developing countries to family planning services, "including legal abortion, through information and education, provision of medical services, commodity distribution and lobbying."

Some leaders of family planning organizations have even urged national family planning groups to disobey the anti-abortion laws of their own countries, as shown in a 1983 resolution signed by then-PPFA President Faye Wattleton:

Family Planning Associations and other nongovernmental organizations should not use the absence of a law or the existence of an unfavorable law as an excuse for inaction;

action outside the law, and even in violation of it is part of the process of stimulating change.

In 2000, when the Mexico City Policy covered 96% of the international family planning funds, the IPPF had an agreement with the U.S. Agency for International Development (USAID) that it would give USAID funds only to affiliates that “do not engage in any abortion-related activities.”^[4] However, prior to an audit by Congress’s General Accounting Office (GAO), IPPF restored \$700,000 in USAID funds given to two affiliates in India and Uganda that did “engage in abortion-related activities.” IPPF’s violation of their own agreement with the government only underlined concerns about IPPF’s willingness to adhere to the law.^[5]

Why should the U.S. retain the Mexico City Policy?

In 1985, the U.S. Agency for International Development told Congress:

Abortion is a controversial issue in many countries, especially those with large Catholic or Moslem populations. The U.S. has been criticized in developing countries for its funding of groups (such as IPPF and some of its affiliates) which perform abortions with their own funds . . . The Administration believes that it is important to avoid the damage to U.S. interests which results from the belief it supports abortion.

The Philippines are an example of a country that had a law against abortion but in which abortion was being promoted as part of a population control program.^[6] This took place during the Marcos regime. With the change of government and the approval of a new constitution in 1987, the people of the Philippines gave new constitutional protection to the lives of unborn children and deleted a provision of the 1973 constitution that had made population control a national priority.

4 “Foreign Assistance: USAID Compliance with Family Planning Restrictions,” *Report of U.S. General Accounting Office (GAO-01-3)*, Oct. 2000.

5 “Fearing Audit, Group Repays \$700,000 Used to Fund Abortions,” *Washington Times* (Oct. 5, 2000), A3.

6 See, Donald P. Warwick, “Foreign Aid and Abortion,” *Hastings Center Report* (April 1980), pp. 33, 34, 36.

To fund organizations that work to overturn sovereign countries' anti-abortion laws--laws that reflect their legal, cultural, and religious values--violates those countries' national autonomy. Without the Mexico City Policy, the U.S. is in the position of supporting, and taxpayers in the position of paying for, these immoral and subversive activities.

Despite the efforts of the U.S. and population control advocates, the 1994 U.N. Population Conference at Cairo reaffirmed the position first adopted by U.N. delegates at the 1984 Mexico City population conference: “In no case should abortion be promoted as a method of family planning.”

Did this policy hurt family planning efforts overseas?

No. By withholding funds from groups that violate the Mexico City Policy, the U.S. does not reduce the amount of foreign family planning assistance. The moneys are simply redirected to organizations that agree not to promote abortion or lobby to legalize abortion abroad. Most family planning organizations agree to the Mexico City terms. According to a USAID report, approximately 400 nongovernmental organizations were receiving funds under the Mexico City terms in 1991.^[7] Under the Mexico City Policy, the United States provided “about 45 percent of all international family planning assistance in more than 100 countries . . . 85 of those countries were developing countries.”^[8]

Was the policy effective?

Yes. *The New York Times* (Feb. 27, 1989) reported that there was a “near halt in the liberalization of abortion laws in third world countries” as a direct result of the Mexico City Policy.

At the same time, population control programs were not hindered in pursuing their intended objectives.

What are the current arguments against the policy?

Many opponents of the Mexico City Policy state that restrictions placed on the use of population assistance funds must be consistent with U.S. abortion law under *Roe v. Wade* and with domestic family planning policy under Title X of the Public Health Service Act. But in fact, federal courts have found

7 *Congressional Record*, June 12, 1991, H4336-4338.

8 *Congressional Record*, June 12, 1991, H4338.

the Mexico City Policy to be constitutionally sound; and even the domestic Title X statute bans federal funding of any program “where abortion is a method of family planning.”^[2] Requiring that foreign policy concerning abortion reflect the most pro-abortion aspects of current domestic law is not based on any principle but is simply a ploy to make abortion-on-demand available throughout the world. Very few countries have abortion laws as permissive as *Roe*. Without the Mexico City Policy, the U.S. would allow its foreign family planning funds to be used to export pro-abortion policies in most of the Third World. The United States would be a willing accomplice to this violation of human rights and national sovereignty. The retention of the Mexico City Policy places a needed wall of separation between abortion and family planning in U.S. foreign policy.

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