

Global Gag Rule Threatens International Family Planning Programs

By Susan A. Cohen

Yielding to the demands of a hostile and strongly antiabortion congressional leadership after five years of resistance, the Clinton administration in the closing days of last year's legislative session reluctantly accepted a "deal" on international family planning that promises to wreak havoc with the program and with U.S. democratic principles. Immediately after Congress adjourned, both the secretary of state and the president himself condemned the leadership's hostage-taking tactics and the terms of the deal itself, and they pledged to reverse the situation this year. In the meantime, the administration is striving to implement the new restrictions in the least onerous way possible, recognizing that congressional opponents of the program are determined to exploit their new opening.

Abortion Advocacy Targeted

From the moment Republicans took control of Congress in 1995, Rep. Chris Smith (R-NJ) has relentlessly sought to write into federal law some version of the administratively imposed Reagan-era "Mexico City gag rule." At its core, that policy seeks to disqualify foreign non-governmental organizations (NGOs) from eligibility for U.S. family planning assistance if—with their own funds—they provide legal abortion services or "lobby" on abortion. For his part, President Bill Clinton—who rescinded the policy on his third day in office in 1993—has been adamant in his opposition to the effort. In 1998, Clinton went so far as to veto major legislation because the gag rule was included. The price, however, was high: That same bill also

would have provided \$900 million in back U.S. dues to the United Nations (UN), repayment of which was one of the administration's top foreign policy priorities.

As pressure mounted throughout 1999 to pay the UN debt by the end of the year to stave off the imminent loss of the United States' vote in the General Assembly, so did the pressure to find a resolution to the international family planning standoff. In the final rush toward Congress' adjournment in late November, a secret deal was brokered between top White House staff and House Republican leaders.

Under the terms of the deal, the essence of the Mexico City gag rule was written into federal law as a one-year "rider" to the FY 2000 foreign aid appropriations bill. The rider provides that overseas NGOs are to be eligible for U.S. family planning funds only if they refrain from using their own funds to provide legal abortion services and to

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engage in "activities or efforts to alter the laws or governmental policies of any foreign country" concerning abortion. As a concession, the president demanded and won the authority to waive these restrictions in their entirety. Indeed, he

exercised his waiver authority within hours of signing the larger budget bill on November 29.

Again, however, the price was high. The new law stipulates two consequences of a presidential waiver. First, \$12.5 million of the family planning program's \$385 million appropriation was immediately transferred to the child survival program of the U.S. Agency for International Development (USAID). Second, no more than \$15 million of the remaining funds may go to NGOs that exercise their right to participate in the "offending" activities.

The Administration Rallies

Not surprisingly, announcement of the deal was met with a storm of protest from reproductive rights supporters in Congress and among the advocacy groups. Rep. Carolyn Maloney (D-NY), along with 18 other members of Congress, wrote to the president even before the ink on the deal was dry to demand a game plan to reverse the losses. The Maloney letter called on the administration to show its good faith in concrete terms, starting with its FY 2001 budget request, then in the process of being finalized.

The administration neither hesitated nor disappointed. Almost immediately, the secretary of state announced—and the president subsequently reiterated—that in the FY 2001 budget it would formally submit to Congress on February 7, the administration would ask Congress to fund USAID's population assistance program at \$542 million. This would amount to a 45% increase, which, if approved by Congress, would return the program's funding level to its high-water mark attained in FY 1995 (see *For the Record*, page 12).

In her statement announcing the budget request, Secretary of State Madeleine Albright blasted the "extremist agenda" of certain members of Congress and expressed

regret at the “no-win choice between protecting our national security interests at the UN and maintaining full support for programs that helped save women’s lives.” On behalf of the administration, she pledged to fight hard to win the increased funds from Congress and to see that the restrictions expire at the end of this fiscal year.

Clinton made clear his position on the new law in his statement accompanying the signing of the budget bill. “I do not believe it is appropriate,” he said, “to limit foreign NGOs’ use of their own money, or their ability to participate in the democratic process in their own countries.” Having accepted these restrictions for now, however, he stated that he “instructed USAID to implement the new restrictions...in such a way as to minimize to the extent possible the impact on international family planning efforts and to respect the rights of citizens to speak freely on issues of importance in their countries, such as the rights of women to make their own reproductive decisions.”

A Delicate Balance

USAID is charged with implementing the new law, and it is proceeding in accordance with the president’s mandate. Legally, USAID has the authority to interpret the statutory language without regard to previous statements from individual members of Congress, such as Smith, that “lobbying” means everything from sponsoring conferences to making “public statements” about abortion law or policy. Politically, however, USAID remains vulnerable, since every move it makes will be scrutinized in the minutest detail by a hostile congressional leadership. How this balance is struck is critical and will determine what kinds of “activities or efforts” are defined as those to “alter” abortion laws or policies. This, in turn, will affect whether or not the amount of prospective U.S. aid to NGOs that use their own funds to provide or

“lobby” on abortion will exceed the \$15 million cap and force the administration to make cuts.

USAID plans to have disseminated a “guidance” to the field by February that will explain this and other operational aspects in detail. For now, what is known is that under the law, no U.S.-based organizations will be

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directly affected, nor will funds that flow directly to foreign governments. (U.S.-based groups were exempted to avoid a challenge under the U.S. Constitution on free speech grounds, and foreign governments were exempted for political and diplomatic reasons. The United Nations Population Fund, which will receive approximately \$20 million from the United States in FY 2000, is not subject to these restrictions either.)

U.S. groups will be required, however, to enforce the policy against their foreign partners, since a large proportion of the roughly 2,500 foreign NGOs now receiving family planning support from the U.S. government do so through U.S.-based organizations. Foreign NGOs will be asked to certify that for the period during which FY 2000 funds will be available (through September 2001), they will not provide abortions or involve themselves in “altering” abortion laws. If they are unable or unwilling to so certify, the total amount they receive from the United States will count toward the \$15 million cap. USAID officials have said that they expect it to take a couple of months, at least, for the guidance to be translated and disseminated to the field and for the results to be returned and analyzed.

An Uphill Battle

Meanwhile, prospects for overturning the new policy this year are uncertain. Considering that USAID is under a mandate to minimize harm to the program, and that the new rules likely will not be operationalized until spring, the political case against the restrictions will have to be based more on principle than on their actual effect. The FY 2001 foreign aid appropriations bill, the vehicle for population program funding and policy, will almost certainly begin moving in Congress by May or June, well before any real impact of the new restrictions can be known.

At the same time, the fact that the House (the undisputed stumbling block) last year did endorse an alternative approach to the gag rule—one that was at least minimally acceptable to family planning supporters, the administration and a bipartisan majority in the House, if not its leadership—is cause for some optimism. Optimism also stems from the fact that the Clinton administration, having won payment of the UN dues, has clearly come out swinging in an effort to reestablish its strong position in defense of good reproductive health policy and programs. Between now and October is all the time the administration has, in its last legislative session, to ensure that it does not leave behind a statutory version of the international family planning policy it revoked with alacrity seven years ago. At the moment, the administration’s determination undeniably is showing; the extent to which it continues and whether it is enough are more open questions. ☉