

FOIA MARKER

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[Loose Documents Re: Family Planning & USAID (Agency for International Development)]
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is submitted for a country program in the People's Republic of China.

(B) If a report under subparagraph (A) indicates that the United Nations Population Fund plans to spend funds for a country program in the People's Republic of China in the year covered by the report, then the amount of such funds that the UNFPA plans to spend in the People's Republic of China shall be deducted from the funds made available to the UNFPA after March 1 for obligation for the remainder of the fiscal year in which the report is submitted.

AUTHORIZATION FOR POPULATION PLANNING

SEC. 599D. (a) Not to exceed \$385,000,000 of the funds appropriated in title II of this Act may be available for population planning activities or other population assistance.

~~(b) Such funds may be apportioned only on a monthly basis, and such monthly apportionments may not exceed 8.34 percent of the total available for such activities.~~

This Act may be cited as the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000".

And the Senate agree to the same.

SONNY CALLAHAN,
JOHN EDWARD PORTER,
FRANK WOLF,
RON PACKARD,
JOE KNOLLENBERG,
JACK KINGSTON,
JERRY LEWIS,
ROY BLUNT,
BILL YOUNG,

Managers on the Part of the House.

MITCH McCONNELL,
ARLEN SPECTER,
JUDD GREGG,
RICHARD SHELBY,
ROBERT F. BENNETT,
BEN NIGHTHORSE CAMPBELL,
C.S. BOND,
TED STEVENS,
DANIEL K. INOUE,
FRANK LAUTENBERG,
B.A. MIKULSKI,
ROBERT BYRD,

Managers on the Part of the Senate.

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metering*

● PostMaster

11/02/99 03:09:58 PM

Record Type: Record

To: All EOP Users, All USTR Users

CC:

Subject: REQUEST FOR DOCUMENTS

MEMO TO: All EOP Staff

FROM: Beth Nolan
Counsel to the President

SUBJECT: REQUEST FOR DOCUMENTS

We have received a request for documents relating to the President's October 13, 1999, directive to develop regulations to protect roadless areas of the National Forest System. Accordingly, please conduct a thorough and complete search of all your records -- whether in hard copy, computer form, or any other form -- for any of the following material:

Any and all documents relating to or concerning the President's October 13, 1999 Memorandum to the Secretary of Agriculture regarding Protection of Forest "Roadless" Areas, or the underlying policy contained therein. This memorandum included a direction to the Forest Service "to develop, and propose for public comment, regulations to provide appropriate long-term protection for most or all of [the] currently inventoried 'roadless' areas, and to determine whether such protection is warranted for any smaller 'roadless' areas not yet inventoried."

You do not need to provide publicly available materials such as newspaper articles or news summaries.

Every employee is responsible for searching his or her own files and records to ensure a comprehensive search. Each office head or Assistant to the President must certify that his or her staff has done a complete and thorough search. If you believe that files from your office that have been sent to the Office of Records Management may contain responsive information, please advise us so that we may ensure that all responsive documents have been located.

All materials must be provided to Shelli Peterson (OEOB Room 482) by noon on Monday, November 8, 1999. If you have any questions or concerns, Shelli can be reached at 456-7804.

POSSIBLE MODELS FOR LIMITATIONS ON LOBBYING

26 U.S.C. § 4911 (Provides for a limit on the amount of lobbying by 501C(3) organizations)

- Covers only contacts to “influence legislation”, does not include contacts on nonlegislative matters.
- “Influence legislation” does not include the following
 - making available the results of nonpartisan analysis, study or research
 - providing technical advice/assistance in response to a request by the governmental body
 - “self-defense” appearances or communications
 - communications between the organization and its members with respect to legislation or proposed legislation of direct interest to the organization and members.
 - Other communications with government officials not designed to influence legislation.
- Grassroots lobbying is included, but is defined in regulations to require that the communication with the public must
 - refer to a specific legislative proposal
 - reflect a view on that proposal, and
 - encourage the recipient of the communication to take action with respect to the proposal.

26 U.S.C. § 162 (Denies income tax deductions of certain lobbying expenses for businesses)

- Grassroots lobbying is included in a less defined way: grassroots lobbying consists of communications with the public that attempt to develop a grassroots point of view by influencing the general public to propose, support, or oppose legislation. Communication does not have to encourage the public to take action with respect to a specific legislative proposal.

Lobbying Disclosure Act (Requires lobbyists to register and report on their activities)

- Covered nonlegislative contacts include the “formulation, modification, or adoption of a federal rule, regulation, Executive order or any other program, policy, or position of the United States Government.”
- Covers contacts only with federal officials, not contacts with local governments or grassroots lobbying

PROS AND CONS

IRC definitions potentially cover contacts with more levels of executive branch officials than the LDA covers when those contacts are about legislation.

However, when contacts are about nonlegislative subject matters, such as regulations or policies, the LDA covers contacts with a broader range of federal officials than the IRC definitions.

The LDA definition includes an extensive list of nonlegislative matters.

4911 only covers lobbying contacts that address specific legislative proposals

162 covers both legislative and nonlegislative subjects, but its coverage is somewhat more limited than LDA.

OPTION ONE

Limit lobbying to contacts made with government officials to influence legislation. (Modeled after IRC 4911, but without grassroots lobbying exclusion)

. . . no funds . . . until organization certifies that it will not . . . engage in any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

For purposes of this section, the term “influence any legislation” does not include –

- a. making available the results of academic or scientific analysis, study, or research;
- b. providing technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;
- c. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;
- d. any communication with a government official or employee, other than –
 - (i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation),
 - (ii) a communication the principal purpose of which is to influence legislation.

OPTION TWO

Limit both lobbying and grassroots lobbying with explicit exemptions.

. . . no funds . . . until organization certifies that it will not . . . engage in any attempt to influence any legislation through either an attempt to affect the opinions of the general public or any segment thereof or through any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

For purposes of this section, the term “influence any legislation” does not include –

- e. making available the results of academic or scientific analysis, study, or research;
- f. providing technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;
- g. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;
- h. any communication with a government official or employee, other than –

- (iii) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation),
- (iv) a communication the principal purpose of which is to influence legislation.

OPTION THREE

Limit both direct lobbying and grassroots organizing but leave definition less obvious and include “substantiality” test.

. . . no funds . . . until organization certifies that it will not . . . have a substantial¹ part of its activities involve carrying on propaganda, or otherwise attempting to influence legislation with respect to abortion, or involves participating in, or intervening in (including the publishing or distributing of statements), of any political campaign with respect to abortion.

NOTE: There is no statutory definition of “propaganda, or otherwise attempting, to influence legislation.” However, Treasury regulations provide a useful gloss. Thus, with this, we would need legislative history noting that it is intended to be comparable to the restrictions that exist on lobbying activity by tax exempt organizations under 501(c) 3 and 4911 (d)(1)

¹ Under 501(h), certain charities, including educational facilities and hospitals, can elect to use a mathematical test instead of the “substantial part” test. Under this test, all lobbying is limited to 20% of the first \$500,000, plus 15% of the next \$500,000, plus 10% of the third \$500,000, plus 5% of the additional expenditures, to a maximum allowable amount of \$1 million. Grassroots lobbying is subject to an additional limitation that it not exceed 25% of the overall permissible amount.

FOR
FROM DUFF

Implementing \$15 million limit in USAID funding of organizations undertaking abortion activities

We would need to notify missions and CAs immediately of the new restrictions and require that all affected organizations certify whether or not they are performing abortions or lobbying under the terms of the legislation. These certifications and planned USAID FY00 funding levels for these organizations would be collected centrally in G/PHN/POP and would be the basis for assuring that total funding for these organizations does not exceed \$15 million. USAID would determine how to allocate the authorized \$15 million among organizations that are unable or unwilling to certify that they do not perform abortions or lobby. If funding in the aggregate exceeds \$15 million, decisions will be needed to reduce funding or find alternative funding sources for some organizations.

Certification: Each mission and each CA (and G/PHN/POP for IPPF/L and WHO) would be responsible for collecting certifications from foreign, non-governmental organizations that they support. The certifications would be in the form of a letter from the organization CEO stating whether they are engaged or plan to engage in defined abortion activities over the two-year period October 1, 1999 through September 30, 2001. FY00 funding for all "at-risk" organizations* would be withheld until these certifications are received and final approval given from USAID/W. Withholding funding for these organizations is necessary to avoid inadvertently exceeding the \$15 million cap. USAID GC is exploring the ability to collect certification from subgrantees of U.S.-based organizations if the U.S. organization declines to participate in the exercise on the grounds of OMB regulations or for other reasons. Delays in obligations to "at-risk" organizations could disrupt programs and services, since this process does not take into consideration existing pipelines.

Definitions: The definition of lobbying is currently open to many interpretations. The ease of implementing this provision depends critically on providing a clear definition. It would be better to delete "any activity or effort" and narrow it down to "efforts to alter the laws or governmental policies..."

Initial Verification: Missions and CAs would review the submitted letters for accuracy based on their knowledge of the organization's activities.

Compilation: Letters would be sent to G/PHN/POP and planned FY00 funding levels for organizations engaged in defined abortion activities entered into a database and compiled.

Funding Decisions: If the total level of funding exceeds \$15 million, decisions will be made on stopping or reducing funding for some organizations.

Organizations Affected: In addition to country-based NGOs, certifications would be required from the World Health Organization and the International Planned Parenthood Federation/London. They would be asked to certify for their own direct activities and for their affiliates/subgrantees. As international organizations, they may be reluctant to provide a certification.

Additional Verification: The same procedures for auditing would be followed as under other restrictions. All organizations whether answering yes or no would be subject to monitoring and audits with regard to defined abortion activities.

New Awards: Any new awards using FY00 funding would need to certify before funds are obligated. If the \$15 million cap has been reached already, some awards may need to be denied.

* Examples of "not at risk" organizations are: drug manufacturers, CDC, US Census Bureau, US-based CAs, and foreign governments.

11/15/99

Priority List

1. A strict definition of "lobbying". This should be as much as possible limited to direct lobbying of legislative and executive branches, with no grassroots activities included. Recognizing that it will be very difficult to change the bill language on this, we would have to satisfy ourselves that any definition in a White House signing statement or subsequent directive from the White House, be at least consistent with the language in the statute. In this regard, it would be helpful to delete the word "any" in (b) (2) (A) where the bill talks of "any" activity to alter laws. If that can't be done, than hopefully we have a shared understanding that the White House has the discretion to define the language as narrowly as possible.

2. Threshold. If at all possible, it would still be nice to incorporate a lobbying threshold, either by specifically exempting de minimis activities or exempting organizations which receive a de minimis amount of USG funding. Perhaps we don't need to define what that threshold would be, or reference could be made to levels applicable to U.S. charitable organizations.

3. We need to determine if foreign, prime NGOs are 'tainted' by the actions of their subs. See (3) of the draft legislation.

4. Operating Expenses. This will likely cause some additional costs to USAID to administer. Even though metering is deleted, there are still funds that need to be metered out from prior year appropriations. There would be little savings there. The certification process will have some unanticipated cost to USAID, and so it would be helpful to have some legislative history to the effect that population assistance funds could be used to administer the certification process.

11/15/99

“(5) MAXIMUM AMOUNT FOR POPULATION PLANNING.—The amount made available for population planning activities or other population assistance in any fiscal year shall not exceed \$ 385,000,000 . The restriction in this para-

~~graph~~ shall apply to all funds for programs and activities (except breastfeeding programs) designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading in an appropriations Act under which such funds are made available.

This would be
INSERTED AFTER
THE FIRST SENTENCE
IN subsection (a)
OF THE TEXT YOU
HAVE.

subsection

NO

The conference substitute prohibits inter alia, population assistance to foreign organizations that "engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited." ~~or engages in any~~

Such practices ~~do not~~ include attempting to influence legislation with respect to abortion or participating in or intervening in any political campaign with respect to abortion. Such activities do not include sponsoring or attending conferences or other educational programs relating to the topic of abortion, making available the results of academic or scientific analysis, study or research on abortion, or providing technical advice or assistance to a governmental body or subdivision thereof on the issue.

TALKING POINTS ON U.N. ARREARS-FAMILY PLANNING AGREEMENT

November 15, 1999

The agreement reached between the White House and Congress meets our goals of paying our UN arrears with no negative impact on family planning programs. It is a positive step because:

1. **It will not interfere with family planning programs.** The compromise restrictions imposed by Congress will not impact family planning programs in place around the world.
2. **It allows the President to waive the restrictions.** The U.S. will spend \$385 million this year on international family planning programs. Under the agreement, if the President chooses to waive the restrictions imposed by Congress, a nominal 3% cut in funding would result.
3. **It greatly benefits poor women and children by increasing debt relief and forgiveness.** Under this agreement, the IMF's debt relief and forgiveness efforts to the world's poorest nations will be expanded. By providing for \$90 million in international debt relief, the Helms-Biden bill will help improve economic conditions for poor women and children around the world.
4. **It paves the way for us to pay our UN dues.** We have worked for 7 years to pay our U.N. arrears. Faced with the threat of losing our vote in the UN General Assembly, it became critical that we reach a compromise with Congress to settle our UN arrears. Under the Helms-Biden bill, the UN will receive \$926 million over 3 years.
5. **It allows us to carry out the President's family planning policy around the world.** By settling our UN arrears, and thereby maintaining our vote in the UN General Assembly, the U.S. is guaranteed a strong voice in carrying out the Administration's family planning policy around the world.
6. **It protects our national security interests and world leadership role.** By meeting our obligations to the UN, we can be confident that our national security interests will be protected, and that the U.S. will continue to maintain a leadership role within the UN and around the world.
7. **It will not go into permanent law.** The agreement is only effective for this fiscal year - it will expire on October 1, 2000.

The President remains committed to supporting international family planning and a woman's right to choose.

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DRAFT - DRAFT - DRAFT

November 18, 1999, 1:00 p.m.

New Restrictions on USAID Family Planning Assistance: Actions and Next Steps

- **Consultations by USAID with White House and, with White House participation, Congress concerning matters of implementation and interpretation, e.g.:**
 - definition of lobbying and criteria for "de minimis" activity that would not violate the restrictions
 - procedures for collecting and validating the certifications necessary to implement the waiver and the \$15 million cap
 - guidance on handling of \$12.5 million funding transfer
 - content, format, and timing of report required by Congress - confirmation of previous understanding
- **Announcement from the White House (not USAID) on the agreement and discussion on the content of the announcement with respect to plans and process for Presidential waiver, whether it will include a definition of lobbying, and whether it will address the Administration's intentions with respect to the FY 2001 budget request and opposing repetition of the restrictions.**
- **Message to USAID staff, cooperating agencies, and field missions, following enactment of the provisions into law, explaining key aspects of implementation and alerting them that the certification process may take time and may result in delays of FY 2000 obligations to some organizations.**
- **Notice to USAID contractors and grantees (G/PHN, GC, and OP) to implement the procedures for certifying whether or not they are involved in defined abortion activities and determination of what amendments may be needed to contracts and grant agreements.**
- **Budget decisions on USAID accounts from which \$12.5 million is to be cut, which specific countries and programs will be cut, and how additional funds for the Child Survival and Disease Fund will be used.**

THE WHITE HOUSE

Office of the Press Secretary
(Istanbul, Turkey)

Internal Transcript

November 18, 1999

TELEPHONE INTERVIEW OF THE PRESIDENT
BY JEANNE CUMMINGS
THE WALL STREET JOURNAL

The Presidential Limousine
Istanbul, Turkey

8:44 P.M. (L)

Q Hi, it's Jeanne Cummings.

THE PRESIDENT: Hi, Jeanne.

Q Thank you so much for taking a few minutes to talk with me.

THE PRESIDENT: I'm glad to do it.

Q I'm sure that Joe talked to you in advance, and obviously I wanted to talk with you a little bit about the budget, and just get a few more thoughts from you on it. It looked like you came out pretty well in this deal, and I wondered if there was anything that you -- that you felt like you just got completely shut out on? I mean, was there anything you didn't get that you were looking for in the budget?

THE PRESIDENT: Well, first of all, Jeanne, you know what we did get, and I'm very pleased about it. I'm pleased about the teachers, and the doubling of the after-school programs, and the 50,000 police and the environmental investments. I'm very, very pleased about all that.

Q Right. I was at the --

THE PRESIDENT: And I'm immensely pleased about the, you know, paying the U.N. arrears, and financing the, you know, continuing our Middle East peace role, and reducing the nuclear threat in Russia, and having America continue to lead to relieve the debt of the world's poorest countries. So all that was very good.

But there were two things that we wanted that we didn't get, and one thing that we got that I was disappointed in. Obviously, I badly wanted to get the hate-crimes legislation, and I'm sorry we didn't. And then at the end, we asked the Congress just to put in a provision that any proceeds that might come out of a victory or a settlement of the tobacco lawsuit we filed be given to Social Security and Medicare. And neither of those was accepted, and I was disappointed about that.

And I was sorry that we -- you know, we had to make a compromise on the family planning issue that will result in, on a one-year basis, \$12.5 million being allocated out of family planning into the children's immunization fund. And I think it's very important that people not think the United States doesn't care about family planning, because I think it's very important. But I thought that on balance, it was worth accepting in order to pay our U.N. arrears, which I think is very important. And I think it's very important that we not lose our vote in the United Nations, so I did it.

But those were the only things in the budget, per se, that I was disappointed in. There are other things that are still undone, that I think are important -- the gun legislation, the patients' bill of rights, the minimum wage -- a lot of other things I'm going to try to pass when the Congress comes back.

Q Do you think that you can handle the women's groups who have expressed a lot of concern about the connection between family planning and the dues payment? Can you smooth things over there?

THE PRESIDENT: Well, I hope so. I think the -- you know, if you look at it, I would not have agreed to this if I hadn't been given a waiver, so that this Smith language is on the books, but we have a waiver. It's a one-year issue; we'll be able to deal with it again next year.

And of course the election will have a lot to say about this. I mean, the -- you know, if the Republicans were to have the White House and the Congress, they'd go -- they'd do a lot more than this. They'd go far beyond what Chris Smith proposed. And if they don't, well, then we'll be all right.

But in any case, we'll be -- I think we'll be fine next year. And this is something the American people will have to decide. It will be one of the factors in the election.

Q Okay. Do you feel -- speaking just in terms of the politics of the budget -- the 0.38 percent across-the-board cut is viewed by some as a political position, point or whatever, that the Republicans needed to secure, and that that's kind of why the White House went along with it. Is that -- does that sum up why you were willing in the end to accept it? Was it just a matter of understanding that they needed something like that in order to get the votes?

THE PRESIDENT: Yes, I think they did need something like that in order to get the votes. And the amount was much, much smaller than they had originally proposed.

And even more important to me, it was accepted after we got the funds we needed for education, for the environment, for other things. And we got the flexibility we needed in the management of the federal departments, so that it wouldn't just be across-the-board and -- for example, the Defense Department, one of the things they were worried about -- you remember when they testified they'd have to lay off 38,000 people?

Q Right.

THE PRESIDENT: If they had a 1 percent across-the-board cut? That's because they were afraid that they would have to fully fund all the projects that had been itemized by the Congress, so they'd have to take the money only out of personnel.

Q Right.

THE PRESIDENT: Congress worked with us and gave us a great deal of flexibility in this, so that, in effect, the management of the federal government, through the departments, are being asked to save a certain amount of money. And the amount is small, and we can easily save it. And we can do it without undermining the fundamental missions of our departments, because of the flexibility we were given.

Q And will you use -- you do have a lot of discretion under the final language there. And I wondered if you will use your influence with your department heads and encourage them to take the money out of some of these earmarks, because the budget does have an unusually large number of earmarked projects?

THE PRESIDENT: Yes, we will. Now they -- the only commitment I made was that I wouldn't have any partisan targeting of the spending, and I won't do that. I won't do that.

But we will try to take the money, to the maximum extent of our ability to do so, out of areas that are less needed so that we can fund areas that are more needed.

Q How will you avoid --

THE PRESIDENT: But I won't play politics with it, and I will discuss with all the Secretaries how we're going to do it.

Q Okay.

MR. LOCKHART: Jeanne, this is Joe. Sorry, we're here, so if you've got one more, we've got to wrap up.

Q Okay. Can you tell me, basically, if somebody like the Bill Bradleys of the world look at the budget fight and they say, yes, the White House won a lot, but that's in large part because the White House wasn't shooting for very much -- most of these

fighting are over small programs -- and that that's what Washington has been reduced to these days. How do you feel about that?

THE PRESIDENT: Well, I think first of all, putting 100,000 teachers in the schools and giving kids in this country an average class size of 18 in the early grades -- something which has permanent learning benefits -- is not a small thing. Doubling the investment the nation makes in after-school programs for at-risk kids is not a small thing. Putting 50,000 more police on the street in the highest-crime neighborhoods in the country is not a small thing, when 100,000 has given us the lowest crime rate in 25 years and the lowest murder rate in over 30 years.

And the one thing that we didn't talk about, in some ways and historically maybe the biggest victory of the budget -- stopping the \$792 billion tax cut so that we can continue to pay down the debt, and so that Senator Bradley and Vice President Gore and even the Republicans can talk about how they can eliminate poverty among poor children and expand health care coverage -- was in some ways maybe the most major victory of all, because we'll continue to pay the debt down; we'll keep the economy strong; and there will be funds there to save Medicare, save Social Security, and continue to move the country forward.

So those things are very large things; they're not small things. And the environmental advances are large things. Having the United States leading the world in alleviating the debt of the poorest countries, so they can be partners with us, that's not a small thing. That's a big thing.

So I think that there were a lot of very large things done in this budget. And I think that one of the things that we've proved is that if you keep making substantial progress year in and year out, you look around after six or seven years have gone by, and you've done big things, not small things.

So I just don't agree with that. I think we have actually accomplished some very large things in this budget. And by defeating the tax cut, and keeping us on the path of paying our debt down and saving some money there, we've made it possible to save Social Security, to save and reform Medicare, and to deal with these other big challenges that candidates are talking about. All of their debates -- they couldn't have any conversations about any of this if that tax cut had gone through.

Q And do you -- could you explain a little bit how things went differently this year? A lot of people view this as one of the most partisan, difficult atmospheres they've seen in Washington in a very, very long time. Did you feel like --

THE PRESIDENT: Well, it was. It was difficult this year; it was difficult last year. But in the end, we had two very good results. And I think, you know, what happened is we stayed together. The Democrats in the House and Senate stayed united with me. And we kept the door open to talk. And we knew that in the end, as long as they stayed with me, that the Republican leaders would finally want to talk. And Speaker Hastert

and Senator Lott did. I had a lot of very cordial conversations with them, and we worked together in good faith at the end. And we made agreements, we stuck to them, and we got something that was good for America.

So I just refused to be affected by the partisan acrimony. I just -- I knew that if we all stood together and kept saying, here's what we believe in; here's what we want; here's what we're fighting for -- in the end there would be -- decision-making time would come and we'd all have to roll up our sleeves, work together, and do what was best for the country. And that's exactly what happened.

Q It looks like you're building a relationship --

MR. LOCKHART: Okay, Jeanne, we've got to jump off. We're holding up the dinner here.

Q Oh, okay.

MR. LOCKHART: Okay, thanks.

THE PRESIDENT: Good luck with your baby.

Q Oh, thank you so much. And thank you again for talking with me.

THE PRESIDENT: Okay. Bye-bye.

END 8:54 P.M. (L)

DEVELOPMENT OF DEMOCRACY IN SERBIA

The House bill (sec. 1713) expresses a sense of Congress regarding the various methods and actions that can be taken to support the development of democracy in the Republic of Serbia. The Senate amendment has no comparable provision.

The conference substitute (sec. 1814) is similar to the House bill with modifications to consolidate the findings.

CUBA ASSISTANCE

The House bill (sec. 1901) makes \$2 million available for democracy programs in Cuba under chapter 4 part II of the Foreign Assistance Act of 1961.

The Senate amendment has no comparable provision.

The conference substitute (sec. 1815) is the same as the House bill.

FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION;
FORCED ABORTION IN CHINA

The House bill (sec. 2101)

The Senate amendment had no comparable provision.

The conference substitute (sec. 1816) combines House bill sections 2101 and 2102. Section 2101 concerns U.S. population assistance to foreign organizations that perform or promote abortions. Section 2102 concerns UN Population Fund (UNFPA) activities in the People's Republic of China in relation to forced abortions carried out in connection with the Chinese government's population program.

~~The conference substitute prohibits, inter alia, population assistance to foreign organizations that "engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited." Such practices include not only overt lobbying for such changes, but also such other activities as sponsoring, rather than merely attending, conferences and workshops on the alleged defects of the abortion laws, as well the drafting and distribution of materials or public statements calling attention to such alleged defects.~~

DIVISION C—UNITED NATIONS REFORM

GENERAL PROVISIONS

SHORT TITLE

The House bill has no similar section.

The Senate bill (Sec. 2001) names this division the "United Nations Reform Act of 1997."

The conference substitute (Sec. 2001) is identical to the Senate bill.

DEFINITIONS

The House bill has no similar section.

The Senate bill (Sec. 2002) defines the terms: appropriate congressional committee, designated specialized agency, secretary gen-

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United States Department of State

Washington, D.C. 20520

October 4, 1999

SENSITIVE BUT UNCLASSIFIED

TO: H - Susan Jacobs

FROM: L/FO - Bill Kissinger 

SUBJECT: Possible Revisions to the Greenwood Language

You asked me to propose some revisions to the Greenwood language (attached) that would make it appear "tougher" without making it too "tough." Below I have suggested a two possible revisions. The first only creates the appearance of being tougher; the second option is "tougher" in the sense that it would be a somewhat bitter pill for the Administration to accept. These options are not mutually exclusive; they could be combined. I have not yet shared this with White House Counsel as you suggested. I wanted to get your reactions first.

Option 1: The "Looks Tough Only" Revision

Insert a new section (a)(1) that provides as follows:

"(1) it will not use such funds to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions."
[Existing (a)(1)-(4) would need to be renumbered accordingly.]

Revise section (a)(2) as follows:

(2) it will use such funds that are made available for funding planning services to ~~reduce the incidence of~~ to prevent abortion as a method of family planning.

Explanation: The first revision adds only an additional certification requirement. Existing law already prohibits USG funds from being used to pay for abortions. FAA section 104(f)(1). Thus, this revision only requires organizations to certify they will not do that which is already prohibited.

The second revision also makes the Greenwood language look tougher without substantively imposing additional restrictions. In interagency discussions that included AID almost two years ago, we concluded language along these lines was acceptable given the definition AID would provide to the phrase "prevent abortion as a method of family planning." [The agency would adopt the interpretation that providing information on other alternatives "prevents abortion as a method of family planning."]

Option 2: The "Slightly Bitter Pill" Revision

Insert a new section (a)(5) that provides as follows:

"(5) it will not have a substantial part of its activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion."

Explanation: This language is intended to be comparable to the restriction that exists on lobbying activity by domestic tax exempt organizations under 26 U.S.C. section 501(c)(3). This restriction was seriously considered as a revision to toughen the Gilman-Pelosi language in January 1998.

This approach was never floated on the Hill because there appeared no serious prospect of it going anywhere. There were, however, serious concerns about pursuing this approach. On the upside, this approach would preserve funding for most, if not all, organizations because even the largest organizations receiving funds spend only a de minimis amount on lobbying. By looking to a definition of lobbying based on existing US law, it is readily understandable by Congress and U.S. organizations and limited in scope.

The downsides associated with this approach are based on more general principles. It would codify the principle that abortion rights as defined under law are somehow different from other reproductive rights and that it is appropriate to limit NGO participation in the democratic process. It was also argued that it would set a precedent that the Administration acknowledges that what NGO's do with privately raised funds may be punished, something that is contrary to the President's policy as articulated in 1993. There were also concerns that the language, even with the 501(c)(3) gloss, would be ambiguous to recipients to US funds.

Attachment

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Maloney letter

500 miles - next yr (ask for more for next
{ symp. w/ NAIB on FP)
{ mtg. 1 on UNFPA groups
any others

Did we get anything out
in end game?

Stu + w/ waiver

conf of INGOs on FP ^{earlier} next yr

signing w/ Stu +

Alternative Lobbying Language

The following suggests different ways to legislatively define the term "lobbying." In each case, two versions are suggested, one that modifies the previously proposed Smith language, and another which would be a free-standing provision, i.e., without Smith language. In a number of instances more than one statutory model was used. In each case, the bolded text represents new legislative language.

1. Narrow Definition

Limit Lobbying to the "Buttonholing" Paradigm

The narrow definition for the term "lobbying" would be one which turns on contacts made with government officials to influence legislation. There are two statutory models that might prove useful. The first draws heavily on section 4911(d) of the Internal Revenue Code (IRC), 26 U.S.C. § 4911(d), which defines the term "influencing legislation" as it is used in IRC section 501(c)(3). The second model draws on the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1601, et seq. Draft language using both models follows.

Either approach would permit NGO's to participate in democratic processes up to a point. They could participate in official debates on government policy as well as grass roots organizing. However, they could not "lobby" in the traditional sense of buttonholing government officials and advocating a particular viewpoint.

Overall, the IRC model is the more elegant of the two. However, it focuses only on legislation. By contrast, the LDA focuses on both legislation and executive branch policy making.

a. Using the Internal Revenue Code Model

- With Smith Language

2) LOBBYING ACTIVITIES. - (A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private,

nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

1. For purposes of this section, the term "influence any legislation", with respect to an organization does not include --

a. making available the results of academic or scientific analysis, study, or research;

b. providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;

c. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;

d. any communication with a government official or employee, other than --

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.¹

- Without Smith Language

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

[Subpart 1 noted above would follow identically in this version]

b. Using Legislative Disclosure Act Model

- With Smith Language

2) LOBBYING ACTIVITIES. - (A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any lobbying contact with regard to the formulation, modification or adoption of legislation or any regulation, executive order, program, policy or position of a foreign

¹ Bold language replaces: "activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

government regarding the circumstances under which abortion is permitted, regulated, or prohibited.

1. For purposes of the preceding provision, lobbying contact means any oral or written communication with any official of a foreign government.

2. The term lobbying contact does not include a communication that is --

i. made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television or other medium of mass communication;

ii. a request for a meeting, a request for the status of an action, or any other similar administrative request if the request does not include an attempt to influence a government official;

iii. testimony given before legislative hearing or submitted for inclusion in the public record of a legislative hearing;

iv. information provided in writing in response to an oral or written request by a government official for specific information;

v. required by subpoena, civil investigative demand or otherwise compelled by statute, regulation, or other action of the legislature or an administrative agency;

vi. made in response to a notice in a government publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

vii. made to an official in an agency with regard to --

(I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or

(II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,

if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

viii. a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

ix. a petition for agency action made in writing and required to be a matter of public record pursuant to established agency proceedings;

x. made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual.²

- Without Smith Language

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any lobbying contact with regard to the formulation,

² Bold language replaces: "activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

modification or adoption of legislation or any regulation, executive order, program, policy or position of a foreign government regarding the circumstances under which abortion is permitted, regulated or prohibited.

[Subparts 1 and 2 noted above would follow identically in this version]

2. Alternative Narrow Definition: Define to Include Grassroots Organizing But Allow "Buttonholing"

Section 4911(d)(1) of the Internal Revenue Code (IRC), 26 U.S.C. § 4911(d)(1), identifies two distinct activities that constitute "influencing legislation" as that term is used in section 501(c)(3) of the IRC: a) efforts to influence specific legislation through grassroots organizing; and, b) efforts to influence legislation through communication with any member or employee of a legislative body. The options above focused on the second activity, influencing legislation through "buttonholing."

One variation would be to do the reverse -- define "lobbying" to include grassroots organizing but not buttonholing.³

- With Smith Language

2) LOBBYING ACTIVITIES. -(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

1. For purposes of this section, the term "influence any legislation", with respect to an organization does not include --

³ Because the Lobbying Disclosure Act does not address grassroots organizing, it does not provide a suitable legislative model here. Accordingly, this approach draws exclusively from IRC Code § 4911(d)(1)(A).

a. making available the results of academic or scientific analysis, study, or research;

b. providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;

c. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;

d. communications between the organization and its bonafide members with respect to legislation or proposed legislation of direct interest to the organization and such members, so long as such communication does not directly encourage such member to communicate with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation in order to influence any legislation.⁴

• Without Smith Language

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any attempt to influence any legislation through an

⁴ Bold language replaces: "activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

attempt to affect the opinions of the general public or any segment thereof.

[Subpart 1 noted above would follow identically in this version]

3. Moderately Narrow Definition: Limit Lobbying to "Buttonholing" and Grassroots Organizing

A somewhat broader definition of lobbying would follow the model contemplated by section 501(c)(3) the Internal Revenue Code ("IRC"). Under this model, lobbying would include not only the button-holing paradigm identified above but also grassroots efforts to promote particular legislation. Thus, it would prohibit grassroots organizing for particular legislation but not for a general position, such as, for example, that abortion should be "safe, legal and rare."

The words of the statute, by themselves, do not make this clear. One must instead look elsewhere in the IRC as well as to the gloss developed by the Internal Revenue Service and Courts in interpreting the statute. Reference in the legislative history to the section 501(c)(3) lineage is important. Language accomplishing this is provided below.

- With Smith Language

2) LOBBYING ACTIVITIES. - (A) Notwithstanding section 614 of this Act, or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, and will not have any part of its activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion, or involves participating in, or intervening in (including the publishing or distributing or

statements), of any political campaign with respect to abortion.⁵

Statement of Managers Revision

Activity or effort attempting to influence legislation with respect to abortion. The language is intended to be comparable to restrictions that exist on lobbying activity by tax exempt organizations under 26 U.S.C. § 501(c)(3). Reference should therefore be made to this provision as well as 26 U.S.C. § 4911(d)(1).

- Without Smith Language

Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if any part of its activities involve carrying on propaganda, or otherwise attempting, to influence legislation with respect to abortion, or involves participating in, or intervening in (including the publishing or distributing or statements), any political campaign with respect to abortion.

Statement of Managers Revision

Same as above

⁵ Bold language replaces: "or engage in any activity or effort to alter the laws or government policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited."

4. **Broad Definition That Prohibits Overt Lobbying and Other Forms of Advocacy**

One of the concerns posed by the Smith language is that its broad terminology might be construed to extend to activities that one would not ordinarily consider "lobbying." Prior statements made by Representative Smith and others suggest that they may intend their language to extend to such activities as attending a conference that touches on abortion. One approach might be to set out in the statute itself what activities are not considered "lobbying." The language below seeks to do this.

- **With Smith Language**

2) LOBBYING ACTIVITIES - (A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited. **Such activities do not include sponsoring or attending conferences or other educational programs relating to the topic of abortion, making available the results of academic or scientific analysis, study, or research on abortion, or providing technical advice or assistance to a governmental body or subdivision thereof in response to a written request by such body or subdivision on the issue.**

- Without Smith Language

(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization if the organization engages in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited. Such activities do not include sponsoring or attending conferences or other educational programs relating to the topic of abortion, making available the results of academic or scientific analysis, study, or research on abortion, or providing technical advice or assistance to a governmental body or subdivision thereof in response to a written request by such body or subdivision on the issue.

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Clearance:White House:BMarshall

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Draft 01/06/00 12:20 pm
Heather Hurlburt

**PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS
THE WHITE HOUSE
WASHINGTON, DC
January 7, 2000**

Good morning. Every January, many of us work hard to keep our New Year's Resolutions by leading healthier lives. When I became President, I resolved to do everything I could to make every new baby in America a healthy, wanted baby, raised by a healthy, strong family.

Today I want to talk about how we are keeping that resolution -- by improving family planning services and providing health care for mothers, babies and pregnant women.

I have fought to make sure all women have access to prenatal care. We know that when women see a doctor several times before a baby is born, that child is much more likely to be born healthy. And good health is the most precious gift we can offer a child -- or a family.

My Administration has reached out to community groups, schools and health care professionals -- and we have made real progress in reducing teen pregnancy.

We have made a broad range of family planning and sex education programs more widely available for all Americans. We are keeping abortion safe, legal and accessible. And, by making sure women have other choices, we are helping make abortion more rare.

I am proud that support for family planning services has risen every year of my Administration. My budget for 2001 will include \$250 million in grants for family planning and reproductive health care. That is 15 percent more than last year -- the largest increase in 15 years.

Those grants fund clinics and community-based health care that serve more than 5 million low-income women and families. The \$35 million increase will prevent as many as a million unwanted pregnancies, and save thousands of lives.

It will help make contraceptives available, and keep them affordable. It will fund counseling for teenagers, and support educational programs that encourage young people to postpone sexual activity. It will help more than 4,600 clinics screen for cancer, AIDS and other diseases. And it will fund partnerships with community organizations and health care professionals who are reaching out to teenagers and others at risk.

These services make a critical difference in people's lives. They help young people who may not know the basics of caring for a newborn child. They help working women who

otherwise could not afford medical tests that may save their lives. They help AIDS patients who desperately need counseling and support. And they help pregnant women who face difficult and painful choices. It is in the interest of every American that no one miss out on this kind of care – and that no child miss its chance at a healthy start.

I have also fought to help women and families overseas gain access to the basics of reproductive health care, which most Americans take for granted. Around the world, 150 million married women would like to limit the size of their families, but have no access to family planning of any kind. In Africa, women face a one in twenty chance of dying in childbirth – because the most basic health care is lacking.

These are personal tragedies – and they hold whole societies back.

America has long been a leader in giving women and families the tools they need to safeguard their health and make their own decisions about bearing children. These children will grow up to be our neighbors and partners; it only makes sense that they too should start life healthy and wanted.

Last year, a minority in Congress succeeded in imposing new cuts and restrictions on our family planning assistance. Although our assistance never funds or promotes abortion, those restrictions make it difficult for us to fund groups that even talk about abortion – whether or not they are American and subject to our laws. These restrictions are wrong: they are a restraint on free speech that no American would accept. And by blocking funds that would have gone to providing health care and contraceptives, they cost human lives – lives that we all agree we want to save.

I waived those restrictions, although that allowed Congress to take more of our funds away. Our family planning assistance is getting to the people who need it. And my budget for 2001 will raise funding for these programs to its highest level ever.

At home and abroad, we don't have a woman's life – or a child's healthy start – to waste. Thanks for listening.