

District of Columbia: A Brief Review of Provisions in District of Columbia Appropriations Acts Restricting the Funding of Abortion Services

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Summary

The public funding of abortion services for District of Columbia residents is a perennial issue debated by Congress during its annual deliberations on District of Columbia appropriations. District officials have cited the prohibition on the use of District funds as another example of congressional intrusion into local matters. Since 1979, with the passage of the District of Columbia Appropriations Act of 1980, P.L. 96-93 (93 Stat. 719), Congress has placed some limitation or prohibition on the use of public (federal or District) funds for abortion services for District residents. For instance, when Congress passed and the President signed the District of Columbia Appropriations Act of FY2010, the city was allowed to use its own funds, but not federal funds, for such services.

Subsequently, in public laws appropriating funds for the District of Columbia for FY2011 and FY2012, Congress included provisions prohibiting the use of both District and federal funds for abortion services, except in cases of rape, incest, or when the life of the mother was endangered. In an effort to reach final agreement on a FY2011 budget, in order to avert a government-wide shutdown, the Obama Administration and Senate and House leaders agreed to include a provision in H.R. 1473, a bill making full year appropriations for FY2011, prohibiting the District of Columbia from using federal and District raised funds for abortion services, except in cases of rape, incest, or when the woman's life was endangered. The inclusion of the provision generated protest by city officials on the grounds that the restriction on the use of city funds is a violation of home rule. The bill, including the abortion services provision, was signed into law on April 15, 2011, as P.L. 112-10. Congress continued this prohibition on the use of District and federal funds for abortion services with the enactment of the Consolidated Appropriations Act for FY2012, P.L. 112-74, which was signed by the President on December 23, 2011.

The Obama Administration's FY2013 budget request included a provision that would have prohibited the use of federal funds for abortion services except in cases of rape, incest, or when the woman's life would be endangered if the pregnancy were carried to term, but did not include language restricting the use of District funds for abortion services. The Senate bill, S. 3301, supported the Administration position restricting the use of federal funds. The House bill, H.R. 6020, included language that would have restricted the use of both federal and District funds for abortion services, except in instances of rape, incest, or when the woman's life was endangered. P.L. 113-6, the Consolidated and Further Continuing Appropriations Act, 2013, included language that prohibited the use of federal funds but continued to allow the District to use its own funds to provide abortion services, but only in cases of rape, incest, or when the life of the pregnant woman was jeopardized. For FY2014, the Administration's budget request included a provision that would have restricted the use of federal, but not District, funds for abortion services. A similar provision was included in the Senate bill. The House bill would have restricted the use of both District and federal funds to cases involving rape, incest, or a threat to the life of the pregnant woman. On January 17, 2014, the President signed into law the Consolidated Appropriations Act for FY2014, P.L. 113-76. The act included a provision that restricts the use of both District and federal funds for abortion services to cases involving rape, incest, or a threat to the life of the pregnant woman.

This report includes a brief overview of the District of Columbia appropriations process and a discussion of the current debate and legislative history of the abortion provisions included in District of Columbia appropriations acts. It will be updated as events warrant.

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Recent Developments¹

The public funding of abortion services for District of Columbia residents is a perennial issue debated by Congress during its annual deliberations on District of Columbia appropriations. Congress has exercised its constitutional prerogative with respect to this issue by including language in the general provisions of appropriations acts for the District of Columbia. Since 1979, with the passage of the District of Columbia Appropriations Act of 1980, P.L. 96-93 (93 Stat. 719), Congress has placed some limitation or prohibition on the use of public (federal or District) funds for abortion services for District residents. Since the passage of the District of Columbia Appropriations Act of FY2011, the city has been prohibited from using District and federal funds for abortion services, except in instances of rape, incest, or the life of the mother was threatened if the pregnancy was taken to term.

On April 7, 2011, the House of Representatives passed H.R. 1363, a short-term continuing resolution intended to fund the federal government through April 15, 2011. The measure, which passed the House by a vote of 247 to 181, included \$12 billion in spending cuts and would have appropriated full-year funding for the Defense Department. Immediately following the House vote, the President signaled, through the issuance of a Statement of Administration Policy, his intent to veto the measure should it reach his desk.² Some Senate Democrats also voiced opposition to the measure. Among the most controversial provisions included in the bill was language that would have restricted the use of both federal and District funds for abortion services. Those provisions were removed from the temporary continuing budget resolution, H.R. 1363, signed into law as P.L. 112-8 by the President on April 9, 2011.

As part of final negotiations over the full-year FY2011 budget, a provision was included in H.R. 1473, prohibiting the use of federal and District of Columbia funds for abortion services, except in cases of rape, incest, or a threat to the life of the mother.³ The inclusion of the provision, as well as another provision providing federal funding of a school voucher program, provoked protest from District leaders claiming that such acts are an infringement on local government autonomy and home rule. On April 15, 2011, the President signed the bill into law as P.L. 112-10. The act included the provision restricting the use of federal and District funds for abortion services to only those instances involving rape, incest, or a threat to the mother's life.⁴ In December 2011, the House and Senate approved a Consolidated Appropriations Act for FY2012, H.R. 2055, that continued the restrictions on the use of both federal and District funds for abortion services, except in cases of rape, incest, or a threat to the life of the mother.⁵ The measure was signed into law as P.L. 112-74 by the President on December 23, 2011.

¹ The discussion in this report deals exclusively with the funding of abortion services as they relate to provisions included in the District of Columbia appropriation acts. For a discussion of the abortion services issue beyond the scope of this report see the following CRS reports: CRS Report 95-724, *Abortion Law Development: A Brief Overview*, by Jon O. Shimabukuro; CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro; and CRS Report RL34703, *The History and Effect of Abortion Conscience Clause Laws*, by Jon O. Shimabukuro.

² Executive Office of the President of the United States, Office of Management and Budget, Statement of Administration Policy: H.R. 1363 – Department of Defense and Further Additional Continuing Appropriations Act of 2011, April 7, 2011, <http://content.govdelivery.com/attachments/USEOPWHPO/2011/04/01>.

³ H.R. 1473, Division B, §1572.

⁴ P.L. 112-10, Division B, §1572.

⁵ P.L. 112-74, Division C, Title VIII §811; 125 Stat. 942.

Congressional Oversight of the District of Columbia

The authority for congressional review and approval of the District of Columbia's budget is derived from the Constitution and the District of Columbia Self-Government and Government Reorganization Act of 1973 (Home Rule Act).⁶ The Constitution gives Congress the power to “exercise exclusive Legislation in all Cases whatsoever” pertaining to the District of Columbia. In 1973, Congress granted the city limited home rule authority and empowered citizens of the District to elect a mayor and city council. However, Congress retained the authority to review and approve all District laws, including the District's annual budget.

Appropriations Process and Components

As required by the Home Rule Act, the city council must approve a budget within 56 days after receiving a budget proposal from the mayor.⁷ The approved budget must then be transmitted to the President, who forwards it to Congress for its review, modification, and approval.⁸

District of Columbia appropriations acts typically include the following three components:

1. *Special federal payments* appropriated by Congress to be used to fund particular initiatives or activities of interest to Congress or the Administration.
2. *The District's operating budget*, which includes funds to cover the day-to-day functions, activities, and responsibilities of the government; enterprise funds that provide for the operation and maintenance of government facilities or services that are entirely or primarily supported by user-based fees; and long-term capital outlays such as road improvements. District operating budget expenditures are paid for by revenues generated through local taxes (sales and income), federal funds for which the District qualifies, fees, and other sources of funds.
3. *General provisions* are typically the third component of the District's budget reviewed and approved by Congress. These provisions can be grouped into several distinct but overlapping categories, with the most predominant being provisions relating to fiscal and budgetary directives and controls. Other provisions include administrative directives and controls; limitations on lobbying for statehood or congressional voting representation; congressional oversight; and congressionally imposed restrictions and prohibitions related to social policy, including abortion services, medical marijuana, needle exchange, and domestic partners.

Abortion Provision in Appropriations Acts

The public funding of abortion services for District of Columbia residents is a perennial issue debated by Congress during its annual deliberations on District of Columbia appropriations.

⁶ See Article I, Section 8, clause 17 of the U.S. Constitution, and Section 446 of P.L. 93-198.

⁷ 120 Stat. 2028.

⁸ 87 Stat. 801.

District officials have cited the prohibition on the use of District funds as another example of congressional intrusion into local matters.⁹ Since 1979, with the passage of the District of Columbia Appropriations Act of 1980, P.L. 96-93 (93 Stat. 719), Congress has placed some limitation or prohibition on the use of public (federal or District) funds for abortion services for District residents.

Restrictions on the Use of Federal Funds: 1979-1988

From 1979 to 1988, Congress restricted the use of federal funds for abortion services to cases where the mother's life was endangered or the pregnancy resulted from rape or incest. The District was free to use District funds for abortion services.

Restrictions on the Use of Federal and District Funds: 1989-1993

When Congress passed the District of Columbia Appropriations Act for FY1989, P.L. 100-462 (102 Stat. 2269-9), it restricted the use of District and federal funds for abortion services to cases where the mother's life would be endangered if the pregnancy were taken to term. The inclusion of District funds, and the elimination of rape or incest as qualifying conditions for public funding of abortion services, was endorsed by President Reagan, who threatened to veto the District's appropriations act if the abortion provision was not modified.¹⁰ In 1989, President George H. W. Bush twice vetoed the District's FY1990 appropriations act over the abortion issue. He signed P.L. 101-168 (103 Stat. 1278) after insisting that Congress include language prohibiting the use of District revenues to pay for abortion services, except in cases where the mother's life was endangered.¹¹

Restrictions on the Use of Federal Funds: 1994-1995

The District successfully sought the removal of the provision limiting District funding of abortion services when Congress considered and passed the District of Columbia Appropriations Act for FY1994, P.L. 103-127 (107 Stat. 1350). The FY1994 act also reinstated rape and incest as qualifying circumstances allowing for the public funding of abortion services.

Restrictions on the Use of District and Federal Funds: 1996-2009

The District of Columbia Appropriations Act for FY1996, P.L. 104-134 (110 Stat. 1321-91), and subsequent District of Columbia appropriations acts, limited the use of District and federal funds for abortion services to cases where the mother's life was endangered or cases where the pregnancy was the result of rape or incest.

⁹ Ben Pershing, "GOP Bill Would Block D.C. Abortion Funding," *Washington Post*, January 21, 2011, http://voices.washingtonpost.com/dc/2011/01/locals_decry_gop_bill_to_block.html.

¹⁰ "District Policies Hit Hard in Spending Bill," *Congressional Quarterly Almanac*, vol. XLIV (1988), p. 713.

¹¹ "D.C. Bill Vetoed Twice Over Abortion Funding," *Congressional Quarterly Almanac*, vol. XLV (1989), p. 757.

Restrictions on the Use of Federal Funds: 2010

P.L. 111-117, Consolidated Appropriations Act for FY2010, removed the prohibition on the use of District funds for abortion services, but maintained the restriction on the use of federal funds for such services except in cases of rape, incest, or a threat to the life of the mother. This was consistent with provisions included in House and Senate measures (H.R. 3170 and S. 1432) appropriating funds for the District of Columbia for FY2010. As part of its budget submission for FY2010, the Obama Administration included in its budget appendix language that would have prohibited the use of federal funds for abortion services, including payment under any health insurance plan that may be funded in part with federal funds. However, this restriction would not have applied if the pregnancy was the result of rape or incest, or the woman suffered from a disorder, injury, condition, or illness that endangered her life. The provision included a clarifying clause that noted that the restriction on the use of federal funds would not prohibit the use of District or private funds for abortion services, except the District's Medicaid matching fund contribution.¹²

Restrictions on the Use of Federal and District Funds: 2011 and 2012

The Obama Administration's FY2011 budget request included a provision that would have prohibited the use of federal funds for abortion services except in cases of rape or incest, or when the life of the mother would be endangered. The provision would have allowed the District to use locally raised funds for abortion services. During negotiations over the FY2011 budget, government funding of abortion services became a contentious issue. In an effort to reach final agreement on a FY2011 budget, in order to avert a government-wide shutdown, the Obama Administration and Senate and House leaders agreed to include a provision in H.R. 1473, a bill making full year appropriations for FY2011, prohibiting the District of Columbia from using federal and District of Columbia raised funds for abortion services, except in cases of rape, incest, or when the mother's life was endangered.¹³ The inclusion of the provision generated protest by city officials on the grounds that the restriction on the use of city funds is a violation of home rule. On April 11, 2011, Capitol Hill Police arrested 41 individuals, including the mayor of the District of Columbia, for unlawful assembly during a rally protesting the inclusion of the provision in H.R. 1473.¹⁴ On April 15, 2011, the President signed H.R. 1473 into law as P.L. 112-10. The law included the provision restricting the use of federal and District funds for abortion services, except in cases of rape, incest, or a threat to the life of the mother.¹⁵

The Obama Administration's FY2012 budget included language that would have prohibited the use of federal funds for abortion services except in cases of rape, incest, or when the mother's life would be endangered if the pregnancy were carried to term. The Administration did not include language prohibiting the use of District funds for abortion services.

¹² Office of Management and Budget, Budget of the United States; Appendix, Washington, DC, May 16, 2009, p. 1209, <http://www.whitehouse.gov/omb/budget/fy2010/assets/oia.pdf>.

¹³ H.R. 1473, Division B, §1572.

¹⁴ Ben Pershing, "Mayor, Council Members Are Arrested; D.C Rally Protest Budget Bill Riders that Restrict City Spending," *Washington Post*, April 12, 2011, p. A11, http://www.washingtonpost.com/todays_paper?dt=2011-04-12&bk=A&pg=11.

¹⁵ P.L. 112-10, Division B, §1572.

In December 2011, the House and Senate approved a conference measure (H.R. 2055) that continued the restrictions on the use of both federal and District funds for abortion services, except in cases of rape, incest, or a threat to the life of the mother.¹⁶ On December 23, 2011, the President signed the measure into law as P.L. 112-74. The restrictions on the public financing of abortion services in the District of Columbia included in the public law were consistent with language included in earlier versions of the Financial Services and General Government Appropriations Act of FY2012, H.R. 2434 and S. 1573, as reported by the their respective Appropriations Committees.

Stand-Alone Measures

During the 112th Congress, two other bills advanced in the House that would have banned or restricted the provision of abortion services in the District of Columbia. On May 4, 2012, the House passed H.R. 3, the No Taxpayer Funding for Abortions Act. The measure included a provision (Section 309) that would have permanently prohibited the use of federal and District funds for abortion services, except in instances of rape, incest, or a threat to the life of the woman.¹⁷

On June 17, 2012, the House Judiciary Committee ordered reported H.R. 3803, the District of Columbia Pain-Capable Unborn Child Protection Act. The bill would have permanently banned doctors and health facilities from performing abortions in the District after the 20th week of pregnancy, except when the pregnancy would result in the woman suffering from a physical disorder, injury, or illness that endangered her life. It would have imposed fines and imprisonment on doctors who violated the act and would have allowed the pregnant woman, the father of the unborn child, or maternal grandparents of a pregnant minor to bring a civil action against any person who performed an abortion after the 20th week of pregnancy. The act would have required any physician that performs an abortion to report specific information to the relevant health agency in the District, including post-fertilization age of the fetus and the abortion method used. The District health agency would be required to compile such information and issued an annual report to the public. The District's delegate to Congress, Eleanor Holmes Norton, though not allowed to testify before the Committee, spoke out against the measures as infringements on home rule.¹⁸

Current Congress

FY2013 Appropriations

The Obama Administration's FY2013 budget request included a provision that would have prohibited the use of federal funds for abortion services except in cases of rape, incest, or when

¹⁶ P.L. 112-74, Division C, Title VIII §811; 125 Stat. 942.

¹⁷ Identical measures (H.R. 7 and S. 946) were introduced during the 113th Congress. On January 9, 2014, the House Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice held a hearing on the bill, H.R. 7.

¹⁸ Similar measures (H.R. 1797 and S. 886) have been introduced during the 113th Congress. On June 19, 2013, the House approved an amended version of H.R. 1797, deleting any reference to the District of Columbia and expanding the bill's restrictions and requirements to the entire country. The bill, S. 886, introduced in the Senate on May 7, 2013 was referred to the Senate Committee on Homeland Security and Governmental Affairs.

the mother's life would be endangered if the pregnancy were carried to term. The request did not include language that would have restricted the use of District funds for abortion services. The Senate bill, S. 3301, supported the Administration position restricting the use of federal funds. The House bill, H.R. 6020, included language that would have restricted the use of both federal and District funds for abortion services, except in instances of rape, incest, or when the woman's life is endangered. P.L. 113-6 continues to allow the District to use its own funds to provide abortion services, but only in cases of rape, incest, or when the life of the pregnant woman was jeopardized.

FY2014 Appropriations

On April 10, 2013, the Obama Administration released its detailed budget request for FY2014. The Administration's proposed budget included \$676.3 million in special federal payments to the District of Columbia, which is slightly higher than the \$674.1 (excluding sequester) appropriated for FY2013. The Administration's FY2014 budget request also included a provision that would prohibit the use of federal funds for abortion services except in cases of rape, incest, or when the mother's life would be endangered if the pregnancy were carried to term. The Administration's budget request did not include language that would have restricted the use of District funds for abortion services.

On July 25, 2013, the Senate Appropriations Committee reported S. 1371, its version of the Financial Services and General Government Appropriations Act for FY2014, with an accompanying report (S.Rept. 113-80). S. 1371, as reported, supported the Administration position restricting the use of federal funds for abortion services, except in instances of rape, incest, or when the woman's life is endangered. H.R. 2786, the Financial Services and General Government Appropriations Act for FY2014, as reported by the House Appropriations Committee on July 17, 2013, included language that would have restricted the use of both federal and District funds for abortion services, except in instances of rape, incest, or when the woman's life is endangered. The Continuing Appropriations Act for FY2014, P.L. 113-46, which provided short-term appropriations through January 15, 2014, did not include language addressing the provision of abortion services in the District of Columbia. In mid-January, 2014, after months of negotiations, the House and Senate reached agreement and passed a consolidated appropriations measure, H.R. 3547, that provided funding for federal activities for the remainder of the 2014 fiscal year. That measure was signed into law by the President on January 17, 2014, as the Consolidated Appropriations Act for FY2014, P.L. 113-76. The act included a provision restricting the use of both District and federal funds for abortion services to cases involving rape, incest, or a threat to the life of the pregnant woman.

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