

VETO OF H.R. 2939

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS VETO OF H.R. 2939, A BILL MAKING APPROPRIATIONS FOR FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1990, AND FOR OTHER PURPOSES



NOVEMBER 19, 1989.—Message and accompanying bill referred to the Committee on Appropriations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1989

*To the House of Representatives:*

I am returning herewith without my approval H.R. 2939, the appropriations bill for foreign operations, export financing, and related programs for the fiscal year 1990.

I do not take this action lightly. In a good faith effort to resolve the constitutional and other problems contained in the bill, the Administration has engaged in extensive negotiations with the Congress. Those negotiations have not succeeded, and serious problems remain. Consequently, I must veto this bill.

Several sections of the bill, and in particular Section 582, interfere with my constitutional authority to conduct the foreign relations of the United States. The bill would also require the expenditure of millions of dollars to support a United Nations fund that, in turn, strongly defends and supports a foreign nation's policy of coercive abortion. United States assistance to the fund reverses existing United States policy and is unacceptable.

Section 582(a) would prohibit the obligation or expenditure of funds appropriated by the Act "for the purpose of furthering any military or foreign policy activity which is contrary to United States law." Section 582(b) would prohibit the use of funds appropriated by the Act "to solicit the provision of funds by any foreign government (including any instrumentality or agency thereof), foreign person, or United States person, for the purpose of furthering any military or foreign policy objective which is contrary to United States law." Subsequent provisions include a set of limiting definitions as well as a general limiting construction for the entire section.

Although I believe that the limiting provision may allow for a constitutional construction of Section 582, the section as a whole remains sufficiently ambiguous to present an unacceptable risk that it will chill the conduct of our Nation's foreign affairs.

Section 582 appears designed to prohibit, among other things, consultation between the United States and another sovereign nation regarding actions that nation may wish to undertake. It has, however, long been recognized—by the Framers, by the Supreme Court, and by past Congresses—that the President, both personally and through his subordinates in the executive branch, possesses the constitutional authority to communicate freely with representatives of foreign governments, and to encourage foreign nations to take such actions as the President believes are in our Nation's interest. Although Section 582(e) states that the section is not intended to limit the ability of the President or his subordinates to express their views, I am not convinced that this provision is sufficient to remove all constitutional doubt concerning Section 582. There would remain an unacceptable degree of uncertainty concerning what the section is intended to cover, and this uncertainty would inevitably restrict our contacts with foreign governments. I believe that this section impermissibly circumscribes a fundamental responsibility that the Constitution had entrusted to the President—the protection of our Nation's security through a vigorous representation of our interests abroad. I believe it is neither fair nor wise to make those who formulate and execute foreign policy serve the public under a vague and sweeping prohibition.

I am sensitive to the concerns that have prompted the adoption of Section 582. I have repeatedly emphasized in my meetings with the congressional leadership that through close consultation with the Congress I intend to build a new spirit of cooperation and trust between the legislative and executive branches. Section 582, however, is inimical to that spirit of trust and would cast a shadow over the executive branch in the conduct of our foreign policy at a time when the course of world events necessitates great flexibility.

The bill would also require the use of appropriated funds to support the United Nations Fund for Population Activities, which supports and participates in the management of a program in a foreign nation that involves coercive abortion.

On October 6, 1989, I informed the Congress of my continued strong support of the Kemp-Kasten Amendment, also known as the Kemp-Inouye-Helms Amendment, which has applied to foreign operations appropriations since 1985. The Kemp-Kasten Amendment denies United States population assistance funds to any organization that, as determined by the President, supports, or participates in the management of, a program of coercive abortion or involuntary sterilization. I stated that if this bill as ultimately presented to me by the Congress contained any language which would weaken the current Kemp-Kasten provision, or exempt the United Nations Fund or any other organization from its full application, I would veto the bill.

Let me restate my strong support for international family planning programs, and my view that the United States should support such efforts so long as they do not violate Kemp-Kasten or other established policies of the U.S. Government.

Unfortunately, the Congress has inserted in the bill the so-called Mikulski Amendment, which would fatally weaken the integrity of the Kemp-Kasten anti-coercion provision by earmarking funds for the United Nations Fund, the only organization that has ever been determined to violate that provision. The Fund participates in and strongly defends the program of a particular foreign government which relies heavily upon compulsory abortion. This fund has received no United States assistance since 1985, precisely because of its involvement in this coercive abortion policy. The current bill thus represents a radical and unwarranted change in policy.

The Mikulski Amendment is rendered no more acceptable by a clause which requires the Fund to keep its books in a manner so as to prevent the direct flow of United States assistance to the particular foreign government. The current Kemp-Kasten law tells all family planning organizations that they must refrain from supporting coercive programs, or the United States will direct its resources to alternative organizations which respect the fundamental principle of voluntariness. The bill would negate this essential human rights principle through substitution of a simple accounting requirement, and I find this unacceptable. The bookkeeping provision would clearly place the United States in the position of supporting a program that in turn supports coercive abortions, a program that is inconsistent with American values. Such support would undermine our position that family planning must be voluntary and would contradict the human rights character of our foreign policy around the world.

Although these provisions, standing alone, would lead me to veto this bill, many other provisions of the bill also pose constitutional problems. The Administration has discussed those provisions in detail in letters to both houses of Congress.

I look forward to working with the Congress to craft a bill that I can enthusiastically support and to passage of an appropriations bill that will facilitate our many foreign policy initiatives.

GEORGE BUSH.

THE WHITE HOUSE, *November 19, 1989.*