

The Hyde Amendment of 1976

In 1976, the US Congress passed the Hyde Amendment, which banned the use of federal funding to pay for abortions through Medicaid. In 1976, Illinois Congressman Henry J. Hyde proposed the amendment to the Departments of Labor and Health, Education, and Welfare, Appropriation Act of 1977. In 1980, the US Supreme Court in *Harris v. McRae* (1980) upheld the constitutionality of the Hyde Amendment. Included annually in every Congressional appropriation act after the one passed in 1976, amended versions of the Hyde Amendment have restricted federal funding of abortion services for women participating in Medicaid.

In the 1973 case *Roe v. Wade*, the US Supreme Court in Washington, D.C., legalized abortions in the US and established limitations on the ability of a state to interfere with women's rights to obtain abortions. In a seven to two decision, the court ruled that women's rights to seek abortions are protected by the US Constitution. *Roe v. Wade* fueled legal controversies about women's rights many years after the 1973 decision. After the Supreme Court legalized abortions, political powers opposed to abortions attempted to weaken the court's decision by limiting women's access to abortion services.

In 1976, Hyde, a Republican Congressman from the state of Illinois, proposed an amendment to the yearly appropriation act of US Congress. The amendment, outlined in Section 209 of the Department of Labor and Health, Education, and Welfare Appropriation Act of 1977, came to be called the Hyde Amendment. The Hyde Amendment stated that no federal funds granted to states through Medicaid could be used to pay for abortion services. Medicaid, a joint federal and state funded program, provided qualifying low-income individuals and families with healthcare benefits. The amendment also applied to recipients of the Indian Health Service, a federal program that provided health care coverage to American Indians. The Hyde Amendment made an exception in coverage of abortions only for cases in which the pregnancy threatened the life of the pregnant woman. The Hyde Amendment was added to the Congressional appropriation bill, and in 30 September 1976 Congress passed the Appropriation Act of 1977, which included Hyde's amendment banning the use of Medicaid to pay for abortion services.

On 30 September 1976, the day the Appropriation Act of 1977 became law, Cora McRae filed a lawsuit against David F. Matthews, the secretary of the US Department of Health, Education, and Welfare, seeking to invalidate the Hyde Amendment. McRae, a pregnant New York Medicaid recipient, filed the lawsuit in the US District Court for the Eastern District of New York, located in Brooklyn, New York. Planned Parenthood and a group of sixteen New York Hospitals, collectively called New York City Health and Hospital Corp, joined McRae in the suit. On 22 October 1976, the district court judge John F. Dooling Jr. issued a preliminary injunction that required the US Department of Health, Education, and Welfare in Washington, D.C., to halt implementation of the Hyde Amendment nationwide until all court challenges to it were decided. The preliminary injunction restored conditions prior to the Hyde Amendment, meaning that federal funding was once again available for abortion procedures performed for women who received Medicaid or Indian Health Services.

After Dooling's decision, the Department of Health, Education, and Welfare appealed the case to the US Supreme Court in Washington, D.C., On 29 June 1977, in the case *Califano v. McRae* (1977), the US Supreme Court vacated, or canceled, Dooling's injunction and sent the case back to his court for reevaluation. The Court cited two US Supreme Court decisions published earlier that month, *Maher v. Roe* (1977) and *Beal v. Doe* (1977), as the reasons the case was to be reevaluated. In *Beal v. Doe*, the Supreme Court ruled that states are not required to fund nontherapeutic abortions, or any other

particular medical procedure, that were nevertheless permissible by law. Instead, they argued that states are only required to fund medically necessary abortions and can allocate remaining funds as they see fit. In *Maier v. Roe*, the Court upheld a Connecticut law that restricted funding of abortions within the first-trimester to those that are medically necessary.

After the US Supreme Court sent *McRae v. Califano* (1980) back to the district court, on 27 July 1977, Dooling issued a temporary restraining order that prohibited enforcement of the Hyde Amendment. On 8 August 1977, he vacated the order. Over the next couple years he heard arguments from both *McRae* and those that she represented, and from Joseph A. Califano, Jr., the secretary of the US Department of Health, Education and Welfare. On 15 January 1980, Dooling ruled in favor of *McRae*. In his opinion in *McRae v. Califano*, Dooling claimed that the Hyde Amendment, in spite of the decisions in *Maier v. Roe* and *Beal v. Doe*, was unconstitutional, as it violated the First and Fifth Amendments to the US Constitution. He agreed with *McRae* who had argued that the Hyde Amendment violated the Due Process Clause of the Fifth Amendment to the US Constitution by purposely discouraging low-income women from seeking their constitutional right to an abortion. *McRae* had also argued that the Hyde Amendment violated the Establishment Clause of the First Amendment to the US Constitution, which forbids government laws from favoring or disfavoring particular religious beliefs over others. Dooling ordered the US Department of Health, Education and Welfare to stop enforcing the Hyde Amendment.

After the decision in *McRae v. Califano*, Patricia Harris, the secretary of Health and Human Services (formerly the US Department of Health, Education and Welfare), appealed the case to the US Supreme Court. On 21 April 1980, the US Supreme Court heard arguments for the case *Harris v. McRae*. *McRae's* lawyers used arguments similar to those used in *McRae v. Califano*. They argued that the Hyde Amendment violated the First and Fifth Amendments to the US Constitution.

On 30 June 1980, in a five to four decision, the US Supreme Court ruled that the Hyde Amendment did not violate the US Constitution by banning the use of federal Medicaid funds to pay for abortion services. The Supreme Court's ruling overturned the district court's initial decision, and the enforcement of the Hyde Amendment began in 1980.

According to Thurgood Marshall, a Supreme Court Justice who ruled against the constitutionality of the Hyde Amendment in *Harris v. McRae*, the Hyde Amendment purposely restricted access to abortion services for low-income women. The Hyde Amendment, according to Marshall, exemplified a direct attempt to weaken the Supreme Court decision in *Roe v. Wade*.

In 1980, the year of the Supreme Court's ruling, Congress passed a revised version of the Hyde Amendment which included exceptions for women seeking abortion services for pregnancies resulting from incest or rape. The following year, Congress again amended the Hyde Amendment to remove the exception for pregnancies caused by incest or rape, and that exception was not added again until the amended version of the Hyde Amendment passed in 1993. Following the ruling in *Harris v. McRae*, Congress passed similar amendments limiting federal funding of abortion services for federal government employees, prisoners, and military personal.

As of 2017, Congress had included revised versions of the Hyde Amendment each year in the Congressional appropriation bill. Organizations that advocate for women's reproductive rights, including Planned Parenthood headquartered in Washington, D.C., and the American Civil Liberties Union in New York City, New York, have argued that the Hyde Amendment has endangered and harmed low-income women by banning funding needed to practice their constitutional rights to seek abortions. Planned Parenthood estimated that in 2016, 12.5 million women between the ages of nineteen and sixty-four relied on Medicaid coverage. Restriction of abortion access for those women, Planned Parenthood advocates argued, can lead low-income women to seek unsafe and illegal abortion services which pose a great threat to the lives and health of pregnant women.

Proponents of the Hyde Amendment argued that the Amendment protects federal funding by banning abortion services. Anti-abortion organizations such as Susan B. Anthony List, headquartered in Washington, D.C., have argued that federal funding, which originates from taxes collected from the public, should not be used to fund services that are unsupported by the entire population. According to Susan B. Anthony List, many consider abortion services immoral. Accordingly, they have argued that funding abortions with federal money will require some taxpayers to fund a procedure

they may be strongly opposed to.

On 24 January 2017, the US House of Representatives passed a bill titled "No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2017," which would effectively codify the Hyde Amendment into permanent law if later approved by the both the US Senate and US President. The House had passed similar bills in years prior, but the US Senate had yet to pass companion bills, preventing the bill from becoming a permanent law. In a White House press release issued on 24 January, US President Donald Trump's administration stated that it supported the legislation and that the President would approve it.

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