

The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won't Go Away

By Sneha Barot and Susan A. Cohen

The 2014 elections ushered in a new era in Congress in which both the House and the Senate are led by those who are implacably opposed to reproductive rights and U.S. programs that promote reproductive health. In the House of Representatives, social conservatives have controlled the agenda since 2011 and have had many targets, including the U.S. program for family planning and reproductive health aid to developing countries. Historically, the Senate has rebuffed the House's efforts to undermine the program; however, now that social conservatives control the Senate's agenda too, it is much more vulnerable.

The most notorious of the attacks perennially in play are the global gag rule and the effort to defund the United Nations Population Fund (UNFPA). The global gag rule, also known as the Mexico City policy, was devised by the Reagan administration in 1984 to impose an expansive set of antiabortion rules on the overseas family planning program. That same year, socially conservative activists began accusing the program of complicity in coercive abortion practices—citing the annual U.S. contribution to UNFPA, which provides family planning assistance in China. Ever since, Republican presidents have imposed the global gag rule and blocked the U.S. contribution to UNFPA, while Democratic presidents—including President Obama—have rescinded the gag rule and supported UNFPA. In between presidential elections, the political battles over these issues have continued almost unabated in Congress.

Now seems to be a moment when these issues might attain renewed salience. As this Congress

HIGHLIGHTS

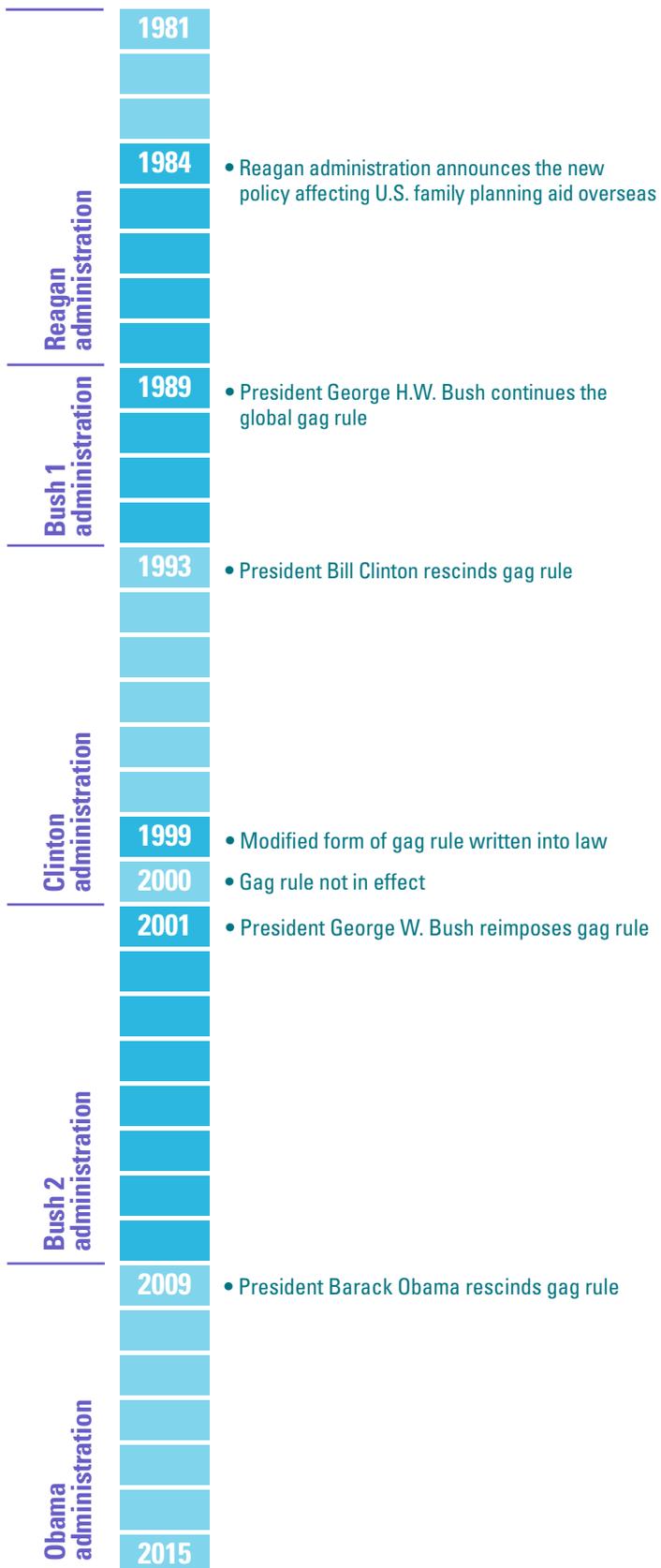
- *The U.S. overseas program for family planning and reproductive health has been under attack from policymakers who are antiabortion and increasingly anti-family planning.*
- *The two most notorious of these attacks are the blocking of U.S. funding for the United Nations Population Fund and the enforcement of the global gag rule, which prohibits aid to foreign nongovernmental organizations that engage in abortion services or advocacy with non-U.S. funds.*
- *In an ongoing counterproductive cycle, these restrictions have come in and out of effect depending on the political party in power—a struggle that is expected to heat up again with a socially conservative Congress.*

starts gearing up for actual legislating, social conservatives in the House can be expected to continue their tradition of slapping a gag rule provision or a UNFPA funding ban on relevant foreign aid legislation. On the Senate side, the outlook remains a bit unclear, because of the existence of a few well-placed Republican senators who support the family planning program. For its part, the Obama administration would oppose any attempts to undermine the family planning program, but legislative negotiations are rarely straightforward and always unpredictable. Regardless, in less than two years, a new president will be in office and will have the power to decide whether to reinstate both restrictions with the stroke of a pen.

Global Gag Rule

For most of the 50 years that the United States has been providing international family planning assistance, the U.S. program has been embroiled

GLOBAL GAG RULE TIMELINE



in abortion politics. The Helms amendment—passed in 1973—bans the use of U.S. funds under the Foreign Assistance Act from paying “for the performance of abortion as a method of family planning.” Nonetheless, antiabortion activists have never believed that the law goes far enough. Reagan administration officials agreed to bypass Congress and go further, and announced the gag rule at the 1984 United Nations international conference on population in Mexico City.

The global gag rule disqualified foreign nongovernmental organizations (NGOs) from eligibility for U.S. family planning assistance if they used non-U.S. funds to provide abortion services, counseling or referrals, or to engage in advocacy within their own countries to liberalize abortion-related policies. (For political and diplomatic reasons, foreign governments were exempt, as were U.S.-based NGOs on constitutional grounds. Advocacy aimed at restricting abortion was deemed permissible under the policy.)

Since the global gag rule’s inception, Republican presidents have enforced it, and during those periods, international family planning proponents in Congress have sought unsuccessfully to overturn it. For their part, Democratic presidents have rescinded the policy, and congressional opponents of the program have sought to write it into law. Only once, in 1999, was any gag rule language placed into statutory law: In a case of legislative blackmail, Congress forced the Clinton administration to accept a modified version of the gag rule in exchange for authorizing \$1 billion in back dues owed to the United Nations. In 2000, the administration prevailed in getting that provision dropped, but it became a moot point when George W. Bush was elected president later that year (see chart).

The politics of the policy are volatile, but its programmatic impact has been consistent and clear. When enforced, it has led to the closing of some of the developing world’s most effective family planning programs.¹ Moreover, despite President George W. Bush’s belief that enforcement of the gag rule “will make abortion more rare,”² that has never been supported by the facts. Indeed, findings from the first-ever study to scientifically quantify the impact of the gag rule—published in

2011 by researchers from Stanford University—suggest the contrary may be true.³ Another study from 2011 looked at the impact of the gag rule in Ghana and found that abortion rates were higher during the gag rule years than non-gag rule years in rural and poor populations.⁴ The authors' conclusions that the gag rule's effect may be the opposite of what its proponents say they want are consistent with anecdotal data that its only impact on abortion has been to make the procedure more likely and unsafe (see box).^{1,5,6}

In reality, attempts to stop abortion through restrictive laws—or by withholding family planning aid—can never eliminate abortion, because those methods do not eliminate women's need

for abortion. The abortion rates in Africa and Latin America—regions where the procedure is mostly illegal—are 29 and 32 per 1,000 women of reproductive age, respectively; in contrast, the rate in Western Europe—where abortion is lawful on broad grounds—is 12 per 1,000.⁸ Where abortion is permitted on broad legal grounds, it is generally much safer than where it is highly restricted. The vast majority of abortions are sought by women in the world's poorest countries, and most of those abortions—about 20 million—are unsafe (i.e., performed by an untrained person or in an environment that does not meet minimum medical standards, or both).⁹ According to the World Health Organization, unsafe abortion remains a leading cause of maternal death.¹⁰

Impact of the Global Gag Rule

Several organizations have documented the devastating impact of the global gag rule. When the policy has been in effect, health providers have been forced to fire staff, reduce their services or even close their clinics altogether. Thousands of women lost access to family planning and reproductive health services from trusted local providers—sometimes the only provider of these services in their community—putting them at risk of unintended pregnancy and unsafe abortion.

After President George W. Bush reimposed the gag rule in 2001, a consortium of NGOs led by Population Action International organized a study to assess the policy's effects.¹ Between 2002 and 2006, the research teams made site visits to the Dominican Republic, Ethiopia, Ghana, Kenya, Nepal, Tanzania, Zambia and Zimbabwe. They found that in Kenya, for example, the gag rule led to the termination of critical activities run by the Family Planning Association of Kenya and Marie Stopes International (MSI) Kenya—the leading

providers of health care to people living in poor and rural communities in the country. In addition, enforcement of the policy drastically curtailed community-based outreach activities and the flow and availability of contraceptive supplies. Government clinics, exempt from the gag rule, were never able to pick up the slack nor regain the trust of women turned away by the NGOs.

The NGO investigators found that the U.S. Agency for International Development (USAID) had to cut off shipments of contraceptives—already in short supply—to 16 countries in Sub-Saharan Africa, Asia and the Middle East. The Lesotho Planned Parenthood Association, for example, had received 426,000 condoms from USAID over two years during the Clinton administration. Once the gag rule went back into effect, USAID had to end condom shipments to Lesotho entirely because the association was the only available conduit for condoms in that country. At that time, one in four women in Lesotho was infected with HIV.

Under the Obama administration, funding for international family planning assistance has increased and partnerships with organizations implementing reproductive health programs abroad have expanded, which has allowed U.S. aid to reach underserved or never-served populations. MSI, for example, first received USAID funding in 2010 to scale up delivery of free or highly subsidized family planning services in Madagascar to rural and hard-to-reach areas. Since 2010, U.S.-funded work has enabled 436,000 women and men to receive voluntary family planning services; about 40% of all women using a modern family planning method in Madagascar have received their method from the U.S.-supported MSI-Madagascar program.⁷ Given that the United States is one of the largest government donors of MSI's work in developing countries, many of these critical health services could be put at risk if the Mexico City policy were reinstated.

Undermining access to family planning services ultimately hurts women by denying them the tools they need to prevent unwanted pregnancies—and, therefore, to avert abortions. Placing legal barriers between women’s reproductive health needs and desires and their access to safe abortion services only leads to unsafe abortion. History has shown that the gag rule has done and can do nothing to alter this reality, except to exacerbate it.

The United States and UNFPA

The relationship between the U.S. government and UNFPA has followed a path similar to that of the gag rule in terms of both its politics and its counterproductive impact. At the urging of President Nixon, the United States became a founding member of UNFPA in 1969. By 1984, however, the Reagan White House turned against the agency. The administration accepted that UNFPA did not directly support either abortion or coercion in any way, but based on the mere presence of UNFPA’s program in China, it accused the agency of indirectly supporting the coercive practices stemming from the Chinese government’s “one child per family” policy.

In 1985, Congress made it easier for the Reagan administration to defund UNFPA outright when it passed the Kemp-Kasten amendment. The amendment, which remains law today, prohibits U.S. funds from going to any entity that—as determined by the president—“supports or participates in the management of a program of coercive abortion or involuntary sterilization.” That was all the Reagan administration needed to justify its conclusion. The next year, the United States terminated its entire \$36 million contribution to UNFPA.

Just as the gag rule has come and gone repeatedly since the mid-1980s, so has the U.S. contribution to UNFPA, on essentially the same schedule. Administrations hostile to family planning have used the Kemp-Kasten law to justify defunding the agency. By contrast, administrations cognizant of family planning’s importance have understood that support for UNFPA’s mission cannot be conflated with coercive practices employed by a sovereign country and have viewed compliance with the Kemp-Kasten law to be compatible with and

even strengthened by funding for UNFPA, which promotes voluntarism in reproductive decision making. As with the gag rule, factions in Congress at odds with a given administration over its stance on UNFPA have waged legislative efforts challenging the president’s determination. This tactic worked only in 1999, the same year that social conservatives pressured Clinton to accept the gag rule, when they also forced Clinton to accept a one-year blanket ban on U.S. support for UNFPA. (By 2000, Clinton was able to secure a renewed U.S. contribution to UNFPA.)

Notably, during President George W. Bush’s first year in office in 2001, then-Secretary of State Colin Powell determined that supporting UNFPA did not violate the Kemp-Kasten anticoercion law and made the decision to continue funding the agency. Furious, leading anti-family planning players in Congress pressured Powell and the administration to reverse course. In an attempt to save political face, the administration in early 2002 dispatched a team of hand-picked investigators to visit UNFPA’s program in China. Embarrassingly for the White House, the team found “no evidence” that UNFPA was in violation of the anticoercion law and recommended that the United States proceed with its \$34 million contribution.¹¹ (The U.S. team’s findings were consistent with those of a three-person delegation of British members of Parliament. That delegation concluded that UNFPA was “playing an important and catalytic role” in China, by demonstrating the benefits of shifting toward “a client-oriented, quality-of-care approach, where women are given a choice over their own lives.”¹²) The White House gave its orders, however, and UNFPA funding was cut off on essentially trumped-up charges for the remainder of the Bush presidency.

When the Obama State Department resumed support in 2009 (at \$50 million that year), it described UNFPA as the “principal international organization supporting programs that provide access to voluntary family planning and reproductive health services, including information and counseling on a range of safe and affordable contraceptive methods.”¹³ Indeed, UNFPA works in dozens of countries that the U.S. Agency for International Development does not, often in places rife with

About UNFPA

UNFPA is governed by an executive board comprising representatives of 36 member countries, including the United States. The largest donors to UNFPA are European nations such as Norway, Sweden, the Netherlands, the United Kingdom and Finland—with the United States having fallen to the seventh spot on that list. However, most of the agency's roughly 180 government donors are developing countries themselves. With its nearly \$1 billion budget, UNFPA provides global leadership in program areas such as the provision of family planning services; promotion of maternal and newborn health; prevention of STIs, including HIV; campaigning against child marriage; eradication of female genital mutilation; prevention and treatment of obstetric fistula; and provision of essential reproductive health care to women in humanitarian settings, including postconflict and postdisaster situations.

From its inception, UNFPA has been committed to the principle that all couples and individuals have the right to decide freely and responsibly the number and spacing of their children, and to have access to the information and means to do so. Accordingly, UNFPA flatly condemns all forms of coercion. UNFPA does not promote or support abortion as a method of family planning. It accords highest priority and support to voluntary family planning to prevent unwanted pregnancies, so as to eliminate recourse to abortion.

UNFPA operates in any country whose government requests its assistance (currently about 150)—including China, where it contributes about \$3.5 million. In 2011, UNFPA shifted its assistance in China from promotion of informed consent protocols in family planning service delivery at the county level to a stronger focus on providing evidence-based advocacy and policy assistance at the national and

provincial levels to promote change in China's fertility policy and regulations. Additionally, UNFPA increased its technical and policy assistance on gender-biased sex selection and the resulting skewed sex ratios, adolescent sexual and reproductive health, and such emerging issues as urbanization, ageing, emergency responsiveness and the needs of minorities. In light of some of these emerging challenges, particularly the ageing population and anticipated shortfall in the labor supply, China announced in 2013 that it would loosen its one-child policy to permit two children in cases in which one of the parents is a single child. It also merged its National Population and Family Planning Commission with the Ministry of Health. As such, China is expected to make further changes to its fertility policy in the coming five years. And UNFPA will continue to provide assistance to promote human rights in the formulation of China's population and development policy.

political turmoil and where the need for basic health care—including reproductive health care—is especially vital. UNFPA provides a politically neutral source of funds, and its presence, therefore, is an important complement to the U.S. effort (see box).

It is debatable how much influence UNFPA or any entity can have in moving such a huge and antidemocratic country as China toward a more enlightened and human rights-based approach to individual reproductive rights or anything else. That said, U.S. attempts to punish UNFPA to send a message to China have been demonstrably ineffective. Notably, under U.S. law, no U.S. funds ever may be used in UNFPA's China program. So, the United States' actions do not hurt China, but rather it is the other roughly 150 countries in which UNFPA works that suffer as a result.

The Current Scene

Proponents of the overseas family planning program have gone on the offense in recent years, starting with the Global Democracy Promotion Act (GDPA). If passed, the GDPA would prevent future presidents from bringing the gag rule back with the stroke of a pen by prohibiting the disqualification of foreign NGOs from U.S. aid if they provide health services, including abortions, with non-U.S. money in countries where those services are legal and if such services are also legal in the United States. In addition, it would prevent free speech restrictions on advocacy and lobbying from applying to foreign NGOs if they are not also legally imposed on domestic NGOs that receive U.S. foreign assistance.

A major motivation for the GDPA is to counter the chilling effect of the global gag rule even when it is not in place: Because of the high risk of the

global gag rule returning with a change in U.S. administration—which could lead to an abrupt cut-off in funding—some potentially valuable partner organizations are reluctant to accept U.S. government funding or partner with potential targets of the gag rule. Such is the case with the Nepal-based Center for Research on Environment Health and Population Activities (CREHPA), an organization that conducts policy-relevant research on sexual and reproductive health issues. When the global gag rule was reinstated in 2001, CREHPA—which had previously partnered with and received U.S. funds through U.S. NGOs working in Nepal—refused to accept the conditions of the policy. At that time, CREHPA was working with the Nepalese government to reform Nepal's highly restrictive and punitive law on abortion, by conducting research and raising awareness of the role of unsafe abortion in Nepal's extremely high maternal mortality rate. Even now, the founding chair and current director of CREHPA, Anand Tamang, notes the chilling and lingering impact of the gag rule: "Our doors to funding from the U.S. government are shut irrespective of whoever is running the U.S. government, whether Democrats or Republicans."¹⁴

There is no chance that the GDPA will pass in the near future, though, and the prospects for whether and how much the United States will contribute to UNFPA are uncertain. And given that congressional leaders are pursuing an expansive and aggressive anti-family planning and antiabortion agenda, it is increasingly likely that Congress could present the president with ultimatums on these and many other topics.

It is difficult to predict the outcome of such an ultimatum. Presidents possess a lot of leverage in these standoffs, but sometimes not enough to win on everything. Indeed, in addition to President Clinton's compromise on the gag rule against his own principles, President Obama more recently acquiesced on a matter of domestic abortion politics. In 2011, the newly minted conservative leaders of the House of Representatives backed off their demand to bar federal funds from going to Planned Parenthood and its affiliates in exchange for forcing Obama to accept a ban on the District

of Columbia's ability to use its own funds to pay for abortion services for its poorest residents.

The United States remains stuck in its counterproductive pattern of lurching back and forth depending on the prevailing politics, even as the world advances sexual and reproductive health and rights. The global trend toward countries liberalizing their abortion laws—including more than a dozen countries since Obama took office—has reflected the heightened global recognition of the major public health problem of unsafe abortion, especially its connection to maternal mortality.

Social conservatives have made it quite clear in recent years that they are not merely against abortion, but against access to family planning too. Since 2011, the House has passed provisions—that never became law—that would have eliminated the domestic family planning program entirely and disproportionately slashed funding for the international program by one-third. Yet, the facts are that the current U.S. investment overseas in family planning and reproductive health of \$610 million (including \$35 million for UNFPA) is preventing 2.4 million abortions in fiscal year 2015 by averting six million unintended pregnancies.¹⁵ All the anti-abortion rhetoric and misinformation that social conservatives can muster cannot compete with that reality. ■

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