

## What's Behind the Antiabortion Campaign Over 'Fungibility'?

By Susan A. Cohen

During last month's Senate floor debate on the Foreign Affairs Reform Act, Sen. Don Nickles (R-OK) initially defended the so-called Mexico City gag rule as necessary to prevent "U.S. tax money...from being used to lobby...[foreign] countries to change their [abortion] laws." When Sen. Joseph Biden (D-DE) reminded him that federal law since 1973 has prohibited the use of U.S. funds either to perform or "promote" abortion, Nickles switched gears. By subsidizing organizations that use their own funds for abortion-related activities, the United States is *indirectly* supporting abortion, he argued, since "money is fungible."

Indeed, the debate over the gag rule has nothing to do with how private-sector organizations spend U.S. government funds, but everything to do with how they spend their own. Promoted tirelessly by Rep. Chris Smith (R-NJ) and like-minded colleagues for the past four years, the gag rule would prohibit foreign nongovernmental organizations receiving U.S. family planning assistance from using their own funds either to provide legal abortions or to engage in a wide range of legal "advocacy" activities, including making "public statements" about abortion in virtually any context.

Smith argues that disqualifying family planning agencies from participating in government programs because of their legal, privately funded abortion-related activities is entirely legitimate. Not only *what* but "*who* we fund does matter," he says—and "we should have no part in empowering the abortion industry."

Yet the fact is that "fungibility"—the presumed interchangeability of government and private funds—is an across-the-board phenomenon. For good or ill, it must be acknowledged as the price of involving the private sector in any government-subsidized activity. And since it is almost an article of faith among conservatives and liberals alike that private-sector organizations are generally more innovative, cost-efficient and effective than government agencies in running programs and delivering services, it appears that fungibility is here to stay. The question is why it is deemed to be a problem only where family planning and abortion are concerned.

### The "Freeing-up" Theory

As a matter of law and in large measure public opinion, abortion opponents long ago won the battle over direct public subsidy of abortion; most states and the federal government ban the use of virtually all public funds for abortion or abortion "promotion." But decrying *indirect* taxpayer subsidy is also proving to be a politically adept strategy to further the antiabortion cause of weakening family planning programs, whose "real" agenda, allegedly, is to promote abortion worldwide.

The strategy is not new, nor has it been limited to the international debate; it has played a key role over the last two decades in domestic family planning politics as well. The argument basically goes like this: Subsidizing an organization's family planning activities "frees up" its nongovernmental resources to pursue its underlying abortion-rights

agenda. The family planning organization is strengthened both by the government funds it receives *and* the "legitimacy" that government backing confers. In the last analysis, then, the promotion of family planning is tantamount to the promotion of abortion.

At the moment, this rationale is the driving force behind Smith's campaign against U.S. aid for family planning overseas and against the International Planned Parenthood Federation in particular. While it is not currently the main line of attack

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in the ongoing Title X debate on the domestic side, it has been in the past. And after a period of dormancy, it recently has re-emerged at the state level as well.

As far back as 1978, Minnesota made a bold attempt to isolate the statewide Planned Parenthood affiliate, by passing legislation that effectively barred it from eligibility for state family planning funds. The U.S. Supreme Court, however, upheld the decision of the lower federal courts that such a ban violated the 14th Amendment's equal protection guarantee. North Dakota and Illinois, in 1979, without singling out Planned Parenthood, sought to deny public funds to any agency that provided abortions or abortion information. Their laws were struck down as well.

A 1980 Arizona law met the same fate. Defenders of the law raised the fungibility argument directly; they claimed that subsidizing the family planning program of an organization that per-

forms abortions with its own funds “frees up” more resources for its abortion-related activities, amounting indirectly to support for abortion. But the U.S. Court of Appeals for its Ninth Circuit explicitly rejected the argument. “[T]he freeing-up theory,” it said in 1993, “cannot justify withdrawing all state funds from otherwise eligible entities merely because they engage in abortion-related activities disfavored by the state.”

### **The Current Battle in Missouri**

None of these earlier precedents deterred the Missouri legislature, however. In 1995 (and again in 1996), the state enacted a law that effectively would have barred only Planned Parenthood affiliates from

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receiving state family planning funds. When that tactic was blocked by the courts on equal protection grounds, the legislature tried again the next year, this time disqualifying organizations that “provide or promote abortion” from eligibility to offer state-supported family planning services. This provision, too, was permanently enjoined.

Now, antiabortion activists are pinning their hopes on an even more radical strategy. Specifically, the state is poised to enact a law that would require the state’s attorney general to re-litigate Missouri’s previous attempts to cut off aid to local Planned Parenthoods or all abortion providers. Once the legal avenue is exhausted, the fallback position endorsed by the legislature is to exclude *all* nonprofit groups from the state family planning program.

While this would solve the fungibility problem and would appear to overcome the constitutional obstacles presented by the other approaches, it certainly raises profound public policy questions. The state would have to create—at enormous public expense—a network of family planning centers entirely within its state, county and local health departments. (Indeed, the Missouri House proposed an infrastructure budget for this idea twice as large as what it would have allocated for family planning services.)

While the Missouri proposal is extreme, it is at least honest in acknowledging that the only way to escape fungibility is to have the government shun the entire private sector and deliver the services by itself.

### **Nonprofits Are Key**

The American tradition, in all venues and across the spectrum of service areas, is to rely upon and to promote the private, nonprofit sector as a partner in advancing U.S. policy interests. It is neither feasible nor, from most Americans’ point of view, desirable for the government through public facilities to provide all of the vast array of government-subsidized services.

Congressional intent regarding reliance on private-sector partnerships in implementing the U.S. family planning program is quite clear. The original Title X statute declared as one of the express purposes of the program “to enable public and nonprofit private entities to plan and develop comprehensive programs of family planning services.” That remains a fundamental objective today. Similarly, under the Foreign Assistance Act, activities ranging from family planning to global immunization, nutrition and education and other primary health care efforts “should include support for appropriate activities...carried out by international organizations and by private and voluntary organizations....”

Indeed, a strong and vibrant private nonprofit sector has emerged in this country providing a host of important social services—and it is viewed as a model to be encouraged through U.S. foreign assistance to developing nations. But having arrived at this well-entrenched American value, fungibility necessarily comes along with it.

According to the American Council for Voluntary International Action (InterAction), for example, federal subsidies account for almost three-quarters of the budget of Catholic Relief Services, “the official overseas relief and development agency of the Catholic Church in the U.S.” The funds are to be used for the provision of humanitarian aid worldwide. Yet, no one has publicly suggested that this subsidy improperly provides indirect support for the intensive antiabortion advocacy efforts of the U.S. Catholic Conference or the Vatican’s worldwide antiabortion/anticontraception agenda.

Likewise, the U.S. government provides one-sixth of the total budget of World Vision, an evangelical Christian organization, for its international relief efforts. Yet, no one is making the argument that by doing so the U.S. government is inappropriately taking a position in support of a core aspect of World Vision’s mission—to “bear witness to the good news of the Kingdom of God” and “encourage people to respond to the Gospel.”

During the April 24 Senate floor debate on the gag rule, Sen. Patrick Leahy (D-VT) laid bare the ludicrousness and the hypocrisy of defining fungibility as a problem and attaching a gag rule to family planning funds as the solution. “Does that mean that because abortion is legal in Israel,” he asked, “we should shut off aid to Israel because other Israeli government funds are used for abortion?...Should we stop funding nuclear safety programs in Russia because abortion is legal there and...performed at govern-

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ment hospitals?...Maybe we should cut off aid to any State in the U.S. because abortion is legal.”

**A Strategy Born of Frustration**

Smith charges that providing family planning funding to organizations that refuse to renounce any involvement with legal abortion is equivalent to hiring the liquor industry to prevent alcoholism or the casino owners to prevent gambling. The analogy falls flat, however. The primary mission of family planning agencies has always been preven-

tion, notwithstanding that they also may provide a means for women to exercise their right to abortion services or information. It is these agencies that have played a major role in reducing unintended pregnancy and, thereby, abortion.

Fundamentally, then, this debate is no more about actually reducing abortions than it is about the generic issue of fungibility. Indeed, Smith and his allies have called both for cutting family planning funding overall and specifically for excluding those organizations that have the strongest track records in making abortion less necessary. Rather, the campaign against family planning

organizations appears to stem from the frustration of abortion opponents over a series of realities: that abortion remains legal in the United States and in many countries around the world; that, legal or not, women confronting unwanted pregnancy have abortions; that they have them in much higher numbers in the absence of contraceptive services; and that government and other citizen support for organizations that daily confront these realities may, in fact, lend a legitimacy to their efforts that the antiabortion movement cannot bear—and for which, as yet, it offers no practical solution. ⊕