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Build Back Better: Biden Victory Paves the Way for Repair of Trump's Damage to Family Planning Programs

The election and inauguration of former Vice President Joe Biden and Senator Kamala Harris will end the relentless assaults that international family planning and reproductive health (FP/RH) programs have suffered under the Trump-Pence administration, which would have only escalated during a second term. More importantly, the arrival of a Biden-Harris administration in the White House presents a tremendous opportunity to apply the campaign's slogan of "build back better" to U.S. foreign assistance programs in general and international FP/RH funding and policy in particular.

In anticipation of this moment, sexual and reproductive health and rights (SRHR) advocates for both domestic and international programs have helpfully assembled the [Blueprint for Sexual and Reproductive Health, Rights, and Justice](#). This blueprint lays out in great detail all of the needed repairs and promising opportunities to construct a better FP/RH policy and funding architecture that will provide higher quality and more comprehensive health services to people both at home and abroad.

In the international sphere, SRHR advocates expect that two of President-elect Biden's initial fixes will include rescinding the Trump-Pence administration's expanded Global Gag Rule (GGR) and signaling the restoration of a U.S. contribution to the United Nations Population Fund (UNFPA). If history is any guide, tearing down the GGR could occur on January 22nd, the 48th anniversary of the increasingly threatened 1973 *Roe v. Wade* Supreme Court decision. In the past, this has been an occasion when Republican presidents have imposed the policy, and their Democratic successors have used the anniversary to dispose of it. In addition, a revised fiscal year (FY) 2022 budget request will be due from the Biden-Harris administration early in the new year, a chance to pave the way toward reversing the decade-long stagnation in funding from the U.S. government for bilateral and multilateral FP/RH programs.

Following the election, the House of Representatives has maintained a pro-choice Democratic majority, albeit slightly diminished, which will aid the Biden-Harris administration in its reconstruction efforts. The overall outcome of this year's Senate races has proved disappointing — so far. But with run-off elections for both Georgia seats slated for January 5th, there is still a chance that a narrow pro-choice majority in the Senate can be gained in the incoming 117th Congress and that Senate Majority Leader Mitch McConnell (R-KY), obstructor of progressive SRHR legislation, can finally be deposed.

A preliminary analysis of the November 3rd congressional election results indicates a slight decrease in the level of political support for international FP/RH programs in the House. With 13 races left to be called (and a run-off in Louisiana between two anti-choice Republicans that will not affect the headcount), **SRHR advocates have likely lost a net two votes but still remain above the threshold of 218 votes needed to pass positive — or defeat negative — policy-related amendments (e.g., on GGR or a UNFPA contribution) by a simple majority, if they are offered on the House floor.**

Regardless of the final headcount of members' positions on the substance of FP/RH issues, retaining majority control of the House enables Democrats to set the legislative agenda for the chamber. This includes leading key authorizing and appropriations committees and subcommittees with jurisdiction over international FP/RH programs and fostering cooperative efforts between the executive and legislative branches to move U.S. policy and funding in a more constructive direction.

As of today, the projected FP/RH headcount for the House in the 117th Congress is as follows: 217 supportive, three leaning supportive, none mixed, none leaning opposed and 201 opposed. This tally does not include 14 races from around the country for which winners have yet to be declared. Seven of the contested races feature a pro-choice Democrat incumbent versus an anti-choice Republican challenger. The bulk of the unresolved races are in California (three) and New York (eight), where officials did not begin counting mail-in and absentee ballots until this week.

In the Senate, SRHR advocates are up at least one vote and remain just short of a majority on both policy-related amendments (e.g., GGR repeal or UNFPA contribution) and in support of current funding levels. The Arizona and Colorado seats went from the opposed category to solidly supportive, whereas the Alabama seat switched to solidly opposed. The Kansas, Tennessee and Wyoming seats were a wash with FP/RH opponents replacing similarly opposed retiring incumbents, as was the New Mexico seat which remained in the hands of an FP/RH supporter.

Until the run-off elections for the two Georgia Senate seats take place in January, as of today, 49 senators can be expected to vote in favor of FP/RH with 48 opposed. Only one other senator is classified in a swing category — Sen. Joe Manchin (D-WV), who leans opposed.

In the Georgia run-offs, two pro-choice Democrats are challenging two anti-choice Republican incumbents. The worst-case scenario for SRHR advocates would be a final Senate headcount falling at 49 solid votes for and 51 against FP/RH. The best-case scenario is having both Georgia Democratic challengers winning their run-offs, resulting in 51 FP/RH supporters and a Democratic majority. Even if Republicans hold onto the majority, the narrow partisan breakdown between Republicans and Democrats will strongly influence the Senate position on FP/RH issues, as it will affect the party ratio in the composition of the Appropriations Committee membership. If Republican supporters on the committee do not defect, Senate champions may be able to eke out a win on pro-FP/RH amendments. However, this would require a return to “regular order,” where offering amendments is once again allowed during full committee markups.

One observation worth highlighting is the stark partisan divide on reproductive rights issues — and by extension, on international FP/RH policies and funding — which has continued to widen since the late 1990s and, at this point, is essentially complete. In the projected headcounts on FP/RH issues for the 117th Congress, no House Republicans are categorized as supporters and no Democrats are classified as opponents. (Interestingly, the only two anti-choice Democratic incumbents in the current Congress were not reelected — one defeated in a party primary by a pro-choice challenger and one in the general election, who lost to an anti-choice activist and former Republican state senator who grew up in the anti-abortion movement.) Similarly, in the incoming Senate, only two Republicans can be considered reliable FP/RH supporters, while only one Democrat is categorized as a swing vote and none are solidly opposed. The level of bipartisan support that international FP/RH issues once enjoyed is now a thing of the past.

Regardless of the final outcome of the congressional races, much work remains to be done between now and the inauguration of a new president and vice president as well as the swearing-in of a new Congress in January. The ongoing pandemic and its economic fallout continue to demand a response from Washington — including additional global health investments — but the prospects of another stimulus package under the current Congress remain very much in doubt. The entire federal government is also currently funded and operating under a continuing resolution, which is set to expire on December 11th.

A strong consensus has emerged among the Senate Republican and House Democratic leadership that a government shutdown is to be avoided at all costs and that an omnibus package composed of all 12 appropriations bills is the preferred legislative vehicle to finalize the FY 2021 appropriations process. Both parties consider that deferring a final resolution until after the new year is not in their best interest. The Democrats hope this immediate action will allow President-elect Biden to start his term with a clean slate and the Republican leadership believe it has more leverage to negotiate now before the arrival of a Biden-Harris administration.

On Tuesday, November 10th, the Senate Appropriations Committee introduced **Republican-authored versions** of the 12 bills comprising this omnibus package. Earlier this year, the full **House approved** 10 of the 12 bills, including the State Department and foreign operations bill, which contains a dramatic increase in FP/RH funding, two legislative repeals of the GGR and an earmarked U.S. contribution to UNFPA. In stark contrast, the Senate Republican committee State Department and foreign operations bill mirrors last year's version — a 25% bilateral funding cut, a legislatively mandated GGR and an explicit prohibition on a U.S. contribution to UNFPA.

Unfortunately, one can envision that the post-election omnibus negotiations might play out during the lame duck session exactly the same way it has for the last 11 fiscal years — resulting in more or less level funding for the bilateral U.S. Agency for International Development FP/RH program; an earmarked contribution for UNFPA under current legal restrictions; and no new abortion-related policy provisions, either positive or negative. However, one can still hope for at a least a modest funding increase in exchange for retaining the status quo on FP/RH policy provisions, unlike the **disappointing outcome** of last year's end-game negotiation.

Once FY 2021 appropriations are finalized, the SRHR community and allies can ideally look forward to the launch of an “infrastructure week” devoted to rebuilding FP/RH programs immediately after the inauguration of President Biden.