

September 20, 2019

Fear of Failure—Senate Republicans Bypass Committee to Avoid Loss on Global Gag Rule Amendment

Faced with the prospect of losing a vote in the Appropriations Committee on a bipartisan amendment bolstering international family planning and reproductive health programs, the Republican leadership elected to take the State Department and foreign operations appropriations bill straight to the floor on Wednesday as part of a four-bill FY 2020 spending package, bypassing consideration by the Appropriations Committee entirely.

As Appropriations Committee Ranking Member Patrick Leahy (D-VT) [asked](#) in successfully arguing to defeat a cloture motion to debate the combined Defense, Labor-Health and Human Services-Education, Energy and Water, and the State-Foreign Operations bill minibuss, “Is this how we are operating now? Things get complicated and difficult so we just skip parts of the legislative process? This is no way to proceed.”

The version of the State-Foreign Operations bill that Majority Leader Mitch McConnell (R-KY) sought to have the Senate debate is the “Chairman’s mark,” issued by Subcommittee Chair Lindsay Graham (R-SC). Under standard practice, subcommittee draft bills would be marked up by the full committee, with members of the committee being given the opportunity to offer amendments. However, both the State-Foreign Operations and the Labor-HHS bills were abruptly pulled from a full committee markup of the omnibus last Thursday when it became clear that there was bipartisan support for adoption of amendments, dubbed “poison pills” by Republicans, to repeal the Trump-Pence administration’s [expanded Global Gag Rule](#) (GGR) and its draconian domestic Title X gag rule in the respective bills.

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If the State-Foreign Operations subcommittee’s draft [bill](#) had been marked up by the full Appropriations Committee last week, Senator Jeanne Shaheen (D-NH) would have offered a variation on the amendment that she has had successfully adopted by the committee for the last six years which would repeal the Global Gag Rule, increase funding for bilateral FP/RH programs of the U.S. Agency for International Development (USAID), and earmark a U.S. voluntary contribution to the United Nations Population Fund (UNFPA) under most current law restrictions on the funds.

As Senator Leahy concluded his fiery [floor speech](#):

“For the past 30 years, I have been either chairman or ranking member of the State, Foreign Operations Subcommittee. We have a long tradition on that Subcommittee of producing bipartisan bills. That was true when the Majority Leader, Senator McConnell was chairman, when former Senator Judd Gregg was chairman, while Senator Graham has been chairman, and when I have been chairman. We were ready to mark up that bill last week, but because one Senator wanted to offer an amendment related to family planning—an amendment that had bipartisan support of a majority of members of the Committee—the markup was cancelled. Rather than vote, the majority cancelled the markup. What kind of process is that? What kind of democracy is that? We are better than this.”

As the graphic below plainly illustrates, in taking what is by all accounts the unprecedented step of bypassing a full committee markup and relying on a “Chairman’s mark” that is silent on the issue, a GGR repeal amendment of one variation or another will not be included in the Senate version of the State-Foreign Operations appropriations bill for the first time in 19 years—whether to amend the permanent foreign aid authorizing statute or to institute a one-year moratorium on the use of funds to implement the GGR. It will also be the first time in the last ten fiscal years (FY 2010-2019) that a GGR repeal amendment has not been offered and received a bipartisan vote of approval in full committee markup, first sponsored by the late Sen. Frank Lautenberg (D-NJ) and for the last six years, relentlessly championed by Senator Shaheen.

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GLOBAL GAG RULE REPEAL AMENDMENTS IN SENATE VERSIONS OF STATE-FOREIGN OPERATIONS APPROPRIATIONS BILLS FY 2000—FY 2020						
FY	GGR LANGUAGE INCLUDED IN BILL	PERMANENT REPEAL	ONE-YEAR REPEAL	COMMITTEE MARKUP AMENDMENT	SENATE PARTY CONTROL	PRESIDENT
2020	—	—	—	—	R	Trump
2019	X	—	X	X	R	Trump
2018	X	X	—	X	R	Trump
2017	X	—	X	X	R	Obama
2016	X	X	—	X	R	Obama
2015	X	X	—	X	D	Obama
2014	X	X	—	X—Shaheen	D	Obama
2013	X	X	—	X	D	Obama
2012	X	X	—	X	D	Obama
2011	X	X	—	X	D	Obama
2010	X	X	—	X—Lautenberg	D	Obama
2009	X	—	X	—	D	Bush
2008	X	—	X	—	D	Bush
2007	X	—	X	X—Leahy et. al.	R	Bush
2006	X	—	X	—	R	Bush
2005	X	—	X	—	R	Bush
2004	X	—	X	—	R	Bush
2003	X	—	X	—	D	Bush
2002	X	—	X	X—Leahy	D	Bush
2001	X	—	X	?	R	Clinton
2000	—	—	—	—	R	Clinton

As a result of bypassing the committee and refusing to debate and vote on the Shaheen amendment, the Senate bill's treatment of FP/RH funding and policy going forward in the FY 2020 appropriations process represents a dramatic diminishment of the Senate's consistently solid previous support for the U.S. government's leadership role in international FP/RH programs around the world, specifically:

- **Funding**—cuts bilateral and multilateral FP/RH funding to \$575 million, \$57.5 million less than the committee approved last year and \$37.5 million less than current enacted levels;
- **Global Gag Rule**—leaves in effect and unchallenged legislatively the Trump-Pence administration's expanded version of the GGR, applying even more stringent restrictions on a vastly wider range of health programs than at any time in the history of the Mexico City Policy, dating back to the Reagan administration; and
- **United Nations Population Fund (UNFPA)**—zeroes out a U.S. voluntary contribution to UNFPA, the only intergovernmental institution with an explicit mandate to address the reproductive health needs of people worldwide.

With Senator Shaheen having been denied the opportunity to offer her amendment in committee, the Senate bill stands in stark contrast with the version [passed by the full House](#) on June 19, 2019 in how it addresses these key FP/RH funding and policy issues.

The House-passed bill ([H.R. 2740](#)) contains not one, but two, GGR repeal amendments—one a permanent statutory repeal using the operative language of the Global HER Act to amend the Foreign Assistance Act of 1961 and the other a one-year repeal that would expire at the end of the fiscal year that prohibits the use of appropriated funds “to implement the Presidential Memorandum dated January 23, 2017” by which the Trump-Pence administration expanded the GGR to cover all U.S. global health assistance.

As the funding chart below starkly details, the [House bill](#) would also markedly increase bilateral FP/RH funding to \$750 million, \$175 million above FY 2019 enacted level and more than triple the amount that the Trump-Pence administration indicated it was prepared to invest in these life-saving programs in its FY 2020 President's budget request. The legislation also earmarks \$55.5 million for a U.S. contribution to UNFPA, a \$23 million—or 71 percent—increase above the current level.

(in millions of dollars)	FY 2019 Enacted (P.L. 116-6)	FY 2020 President's Budget Request	FY 2020 House-passed Bill (H.R. 2839)	FY 2020 Senate Chairman's Mark	FY 2019 Senate Committee-passed Bill
Global Health Programs account	(523.95)	237.0	750.0	(523.95)	(544.0)
Economic Support Fund (ESF)	(51.05)	22.0	—	(51.05)	(51.05)
TOTAL, bilateral FP/RH	575.0	259.0	750.0	575.0	595.05
U.S. contribution to UNFPA (IO&P)	32.5	0	55.5	0	37.5
TOTAL, bilateral & multilateral	607.5	259.0	805.5	575.0	(632.5)

*NOTE: FP/RH funding levels that were earmarked in the statute are indicated in **bold**, while funding levels that were specified in report language are denoted in (parentheses).*

One can perhaps appreciate the dilemma that the Senate Republican leaders were facing if the Shaheen amendment had been attached to the bill in a committee markup. If the bill were to be put on the Senate floor, supporters of the Trump-Pence GGR would be unable to strike the Shaheen amendment because there are not the 60 votes necessary to invoke cloture allowing them the ability to offer an amendment to strike, even though family planning opponents currently enjoy a slim simple majority in the full Senate. Regardless of whether the State-Foreign Operations bill makes it to the floor, adoption of the Shaheen amendment would set up a scenario for the House-Senate negotiation in which the GGR repeal language would be technically “non-conferenceable,” due the existence of similar language in the House-passed bill—emphasis on “technically.” In reality, a conference committee can handle any issue in whatever way it wishes—and inevitably will.

Nevertheless, House Democratic appropriators and their Senate allies will have a strong hand and a lot of chips to play on international FP/RH funding and policy in the upcoming negotiations with the Republican Senate appropriators at the table as they bid to wrap up the FY 2020 appropriations endgame later this fall.