

## **Phoning It In: State Department Determination Withholds U.S. Contribution to UNFPA**

On March 30th, Under Secretary of State for Political Affairs Thomas A. Shannon, Jr. signed the [official determination](#) cutting off the entire U.S. contribution to the United Nations Population Fund (UNFPA), required under the so-called Kemp-Kasten amendment, using UNFPA's



country program in China as a pretext for the decision. Yesterday, the State Department notified congressional authorizers and appropriators and furnished the justification for the decision to Congress as required by a longstanding provision in annual appropriations legislation.

In reading the skimpy two-page justification, it is clear that it was quickly assembled to meet a statutory deadline and presents a wholly unconvincing argument in support of a politically-motivated decision to cut off UNFPA, the principal multilateral organization working to advance family planning and reproductive health around the world.

The Trump-Pence administration's intent toward UNFPA was signaled by the inclusion of a paragraph directing the Secretary of State to implement the [Kemp-Kasten amendment](#) on coercive abortion and involuntary sterilization in its January 23rd presidential [memorandum](#), otherwise devoted to its dramatic expansion of the [Global Gag Rule](#) to all U.S. government global health assistance. The memorandum instructs the Secretary of State to "take all necessary actions, to the extent permitted by law, to ensure U.S. taxpayer dollars do not fund organizations or programs that support or participate in the management of a program of coercive abortion or involuntary sterilization," mirroring the Kemp-Kasten language included in annual appropriations bill since fiscal year (FY) 1985. The Trump-Pence administration's animus toward UNFPA was also demonstrated in the [funding reductions proposed by OMB](#) to congressional appropriators for an FY 2017 omnibus spending bill in which the voluntary contribution to UNFPA was pointedly zeroed-out.

At the time of the presidential memorandum, the explicit direction to Secretary Tillerson was viewed by seasoned observers as simply a thinly-veiled

message to the administration's social conservative political supporters that they had not forgotten about UNFPA and efforts would be soon be underway to punish the agency. The paragraph may also have served as the formal delegation of authority to make the determination from the President to the Secretary of State. The statute technically requires the President to make the decision. During the Reagan administration, the failure to delegate this responsibility led to a legal challenge after the first enactment of the Kemp-Kasten restriction.

The decision to defund UNFPA was not surprising or unexpected. Given the broad formulation of the language, widely divergent interpretations of the phrase "support or participate in the management of a program" have been employed over the last three decades, and the fate of the U.S. contribution to UNFPA has been totally dependent upon the direction of the prevailing political winds.

But this latest determination was even more blatantly political and transparent than those made in previous Republican administrations. In order to withdraw funds from an organization judged to be in violation of the Kemp-Kasten amendment, the annual appropriations bill requires that a determination has to be made within six months of enactment of the bill and "must be accompanied by the evidence and criteria utilized to make the determination." The State Department seems to have only in recent weeks realized that the six-month deadline for making a determination was fast approaching at the end of March and began to try to assemble a credible justification for their pre-ordained conclusion. They failed.

Without a doubt, the human rights abuses of coercive abortion and involuntary sterilization continue to occur in government facilities in China, and large monetary fines and other sanctions are still imposed for "out-of-plan births," despite a liberalization of the infamous "one-child policy" in December 2015. And there is no reason to question the conclusions of the State Department's own annual *County Reports of Human Rights Practices*, the bipartisan Congressional-Executive Commission on China, Amnesty International, and Human Rights Watch that Chinese law, policy, and practice remain coercive even under the new "two-child policy."

However, the justification contains just a two-paragraph rationale to support its verdict of UNFPA's guilt, the bottom-line of which is that UNFPA "continues to partner with the [National Health and Family Planning Commission] on family planning." In other words, guilt by association. The NHFPC, the product of a

2013 merger of the Ministry of Health and National Population and Family Planning Commission, is charged with implementation of government law and policy and furnishing health services besides family planning to the Chinese citizenry. For the record, other UN agencies, who shall remain nameless, “partner” with NHFPC on family planning and other health programs but emerge unscathed in the determination. The justification also acknowledges that there is “no evidence that UNFPA directly engages in coercive abortion or involuntary sterilizations in China.”

Under [UNFPA’s eighth China country program](#) (2016-2020), what UNFPA “partners” with the NHFPC on is increased access to integrated sexual and reproductive health services (including family planning, maternal health and HIV) that are gender-sensitive and meet human rights standards for quality of care, increased attention to the sexual and reproductive health needs of adolescents and youth, advancement of gender equality and women’s and girl’s empowerment, and strengthened evidence-based policymaking.

The approved level of funding for the current UNFPA-China program is \$22.5 million over five years. In FY 2016, UNFPA reportedly spent only \$1.5 million in China, an amount that was withheld under another punitive legislative restriction targeting UNFPA since the mid-1990s. That restriction reduces the U.S. contribution dollar-for-dollar by the amount that UNFPA is spending in China during that fiscal year. All of these funding levels are dwarfed by the \$1 billion that the Chinese government reputedly spent annually enforcing the “one-child policy” during the 1980s.

This slap-dash Trump administration effort contrasts with the history of the first year of the presidency of George W. Bush and the process that the Bush administration went through before terminating the UNFPA contribution. In FY 2001, the new Bush administration reviewed UNFPA’s activities and determined UNFPA was not in violation of Kemp-Kasten and provided \$21.5 million to UNFPA. In December 2001, the State Department even gave an additional \$600,000 to help the women of Afghanistan.

In considering the fate of the FY 2002 contribution, the State Department dispatched a three-person investigation team, led by a former ambassador, for a two-week, fact-finding mission to China in May 2002. The team produced a 10-page report that found no evidence that UNFPA “has knowingly supported or participated in the management” of the Chinese government’s coercive population control program and recommended that \$34 million in previously appropriated funds be released to UNFPA. Unfortunately,

Secretary of State Powell ignored the findings and recommendations of the investigation and [declared](#) UNFPA ineligible two months later, but at least an objective and impartial examination of the work of UNFPA in China was conducted before a political judgement was rendered.

The Kemp-Kasten amendment applies to any funds provided within the annual State Department and foreign operation appropriations bill. That is, “none of the funds made available in this Act nor any unobligated balances from prior appropriations Acts may be made available.” As a result, not just the voluntary contribution to UNFPA from the International Organizations and Programs (IO&P) account, but any funding provided to UNFPA from refugee, humanitarian, or disaster accounts in the bill will also be withheld. This amounts to a loss of U.S. funding to UNFPA of about \$71 million in FY 2017—\$32.5 million core contribution from the IO&P account and about \$38 million for the provision of reproductive and maternal health services in humanitarian settings, including most notably to Syrian refugee women in Jordan.

One positive note is contained in the cover letter from the State Department to congressional authorizers and appropriators accompanying the Kemp-Kasten determination. Consistent with a provision in the annual appropriations bill, the State Department affirms that it will transfer to the Global Health Programs account any funds “not made available for UNFPA because of the operation of any provision of law” to support USAID bilateral family planning, maternal and reproductive health activities. So there’s that.

In 2016, the United States contributed a total of \$69 million to UNFPA, including a \$30.7 million core voluntary contribution and the remainder to address the urgent reproductive and maternal health needs in humanitarian crises. UNFPA [estimates](#) that U.S. funds last year alone helped UNFPA to provide contraceptive services to approximately 3 million couples, averting 947,000 unintended pregnancies and 295,000 unsafe abortions and reach 9 million people in humanitarian settings and refugee camps with sexual and reproductive health and gender-based violence prevention services.

As congressional family planning champion Senator Patrick Leahy (D-VT), Ranking Member on Senate Appropriations Committee, [reacted](#) today, “This decision is another egregious, unfounded, know-nothing example of the Trump Administration ignoring the facts and putting politics over women’s lives.”