



# Withdrawal from the World Health Organization: Legal Basis and Implications

June 5, 2020

On May 30, 2020, President Trump [announced](#) that he plans to terminate the United States' relationship with the World Health Organization (WHO). This Sidebar assumes that "terminate" means to withdraw from the WHO (as opposed to, for instance, stop sending funds to the WHO), and addresses the legal framework that applies to the President's authority and Congress's role in a potential withdrawal from the WHO.

## Background

On January 30, 2020, the WHO declared a [public health emergency](#) caused by the coronavirus disease. Some U.S. officials have expressed [dissatisfaction](#) with how the WHO has handled the crisis. In April 2020, President Trump announced that the United States would suspend funding to the WHO and, on May 18, 2020, [sent](#) a letter to the WHO Director-General, indicating his Administration may make such funding freezes "permanent" and may reconsider U.S. participation in the organization. On May 30, 2020, President Trump [announced](#) his intention to terminate the United States' relationship with the WHO.

## The President's Authority to Withdraw the United States from the WHO Without Congressional Action

An initial question is whether the President has the authority to terminate the United States' international obligations under the [WHO Constitution](#) and withdraw the United States from the WHO without further action from Congress. This question has two related parts: (1) whether, under international law, the President may terminate U.S. international obligations under the WHO Constitution without congressional approval; and (2) whether, under domestic law, the President, relying on constitutional or statutory authority, may unilaterally terminate U.S. international obligations under the WHO Constitution.

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## Withdrawal from the WHO Under International Law

Regarding the first question, the WHO Constitution does not include a provision on withdrawal from the WHO Agreement, though it does indicate that the Health Assembly (the WHO's governing body) may "suspend the voting privileges and services to which a Member is entitled" if it "fails to meet its financial obligations to the Organization." In the absence of a specific treaty provision on withdrawal, the [Vienna Convention on the Law of Treaties](#) (Vienna Convention) furnishes default rules for withdrawal from international agreements. The United States has not ratified the Vienna Convention but [considers](#) it to reflect, in many aspects, [customary international law](#) (i.e., those "aspects of international law that become binding on nations through general acceptance as a matter of legal obligation").

As relevant here, [Article 54](#) of the Vienna Convention provides that withdrawal from a treaty may occur "by consent of the parties." Assuming that the other WHO members fail to agree that the United States could withdraw from the WHO Agreement immediately, then [Article 56](#) may apply. This article provides that withdrawal from a treaty containing no provision regarding termination or withdrawal may take place only after the country that seeks to withdraw provides twelve months' notice to the other parties if the nature of the treaty implies a right of withdrawal or establishes that the parties intended the possibility of withdrawal.

Thus, under *international law*, the President appears to be able to terminate the United States' international obligations under the WHO Agreement by delivering twelve months' notice of withdrawal to the WHO's Director-General, provided such notice later becomes effective. This conclusion assumes (1) that a court does not enjoin the Executive from issuing the notice or declare such issuance unlawful on the grounds that it exceeds the Executive's authority, and (2) that the President does not revoke the notice of termination prior to its effective date.

## Withdrawal from the WHO Under Domestic Law

The answer to the second question—that is, whether under domestic law the President could rely upon constitutional or statutory authority to withdraw the United States from the WHO, is less clear. As described more fully in a [CRS Report](#) on the United States' withdrawal from international agreements, answering that question requires a reviewing court to confront several complicated issues of first impression, including the scope of the President's constitutional and statutory authority to terminate an international agreement. Justiciability questions (e.g., whether the scope of the President's authority is a political question) may prevent a court from definitively answering these questions, leaving the resolution of the President's constitutional authority to the political process. There is an emerging [scholarly debate](#) over the extent to which the Constitution permits the President to act without the approval of the legislative branch in such circumstances.

Perhaps notable in the context of WHO withdrawal, in 1948, Congress adopted a [joint resolution](#) authorizing the President to accept membership in the WHO. This resolution reserved the right of the "United States" to withdraw from the organization after a one-year notice, and specified that U.S. financial obligations to the organization must be met in full for the organization's "current fiscal year" before withdrawal could become effective. The resolution does not specify whether the "United States" includes the President as Head of State acting alone to effect withdrawal or the President and Congress acting jointly to accomplish withdrawal (e.g., by joint resolution). However, even if the 1948 joint resolution contemplates the President acting alone, the joint resolution appears to impose two conditions on the President's withdrawal from the organization: (1) that the President provide a one-year notice; and (2) that the United States meet its financial obligations to the organization in full for the organization's current fiscal year before withdrawing (discussed below).

To resolve certain separation-of-powers conflicts, the Supreme Court typically applies the approach set forth in Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, which states that the President’s constitutional powers often “are not fixed but fluctuate, depending on their disjunction or conjunction with those of Congress.” Under this test, the President’s power is at its “lowest ebb” when Congress shares power with the President over a particular subject matter and the President takes measures incompatible with the will of Congress. Thus, the President arguably may lack the authority to withdraw from the WHO if he does not adhere to these conditions because Congress enacted them using its constitutional Spending Clause power. However, it appears that the joint resolution would only prohibit the President from withdrawing *immediately*. The President could, consistent with the joint resolution, submit a notice of intent to withdraw, but it would not take effect for at least twelve months.

## Withdrawal and U.S. Financial Obligations to the WHO

This section briefly describes the WHO funding structure and the issue of how withdrawal affects current U.S. obligations to pay assessed contributions to the organization.

### Background on WHO Budget and U.S. Funding

The WHO [requires](#) that all of its members pay assessed contributions to the organization’s two-year budget. Congress has [authorized](#) appropriations to the Department of State to cover U.S. obligations to the WHO, and [appropriated](#) funds to cover U.S. annual obligations to international organizations through September 30, 2021. In making such sums available, the text of Congress’s relevant appropriations acts does not specifically appropriate sums to pay WHO assessed contributions. (For a more detailed discussion of U.S. funding to the WHO, see this [CRS Insight](#).)

### Effect of Withdrawal on Existing Financial Obligations

The WHO’s governing documents do not include rules for collecting outstanding financial obligations of a member who intends to withdraw, at most [stating](#) that the organization may suspend the voting rights of, and services to, any member in arrears. Thus, the WHO itself seemingly cannot prevent withdrawal if a member has failed to submit all existing financial requirements. However, under [Article 70](#) of the Vienna Convention, withdrawal from a treaty extinguishes a former member’s obligations going forward, but does not “affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.” Thus, the United States would likely continue to have an *international obligation* to meet any financial commitments under the treaty it incurred prior to its withdrawal from the WHO, although it is unclear how such an obligation would be enforced.

As indicated above, Congress [requires](#) that U.S. financial obligations to the WHO “shall be met in full for the Organization’s current fiscal year.” It is unclear whether the “current fiscal year” refers to the fiscal year in which the United States submits a twelve-month notice of intent to withdraw or the fiscal year in which the twelve-month notice period expires. In either case, although the President may decide to send a formal notice of withdrawal without congressional approval, it would appear that the notice cannot legally take effect until the United States pays all current obligations.

If a situation arises in which the United States fails to pay its obligations in accordance with the joint resolution, and therefore does not legally withdraw from the WHO, the WHO may ultimately suspend the United States’ voting privileges or other services to the United States. Should Congress seek to ensure withdrawal occurs in accordance with the twelve-month notice period, it may consider making a specific appropriation to the WHO for this purpose. However, if Congress seeks to oppose withdrawal while avoiding a situation in which the United States may remain in the WHO but lose its voting rights, it may

consider creating additional conditions for withdrawal (e.g., withdrawal may take effect only with congressional approval) and provide for more direct appropriations to the WHO.

In sum, to the extent that the United States **has not paid** all **current** financial obligations, the WHO appears to lack authority to mandate payment, although it may suspend U.S. voting rights if, during the twelve-month notice period, it finds the United States to be in arrears. Congress has conditioned withdrawal from the WHO on fulfillment of U.S. financial obligations. Thus, it appears that a formal notice to withdraw may not take legal effect until the United States satisfies its current financial obligations.

## Considerations for Congress

Although the WHO Constitution does not set out rules for withdrawal, Congress has imposed some limits on how the President may withdraw the United States from the organization, namely by requiring a twelve-month notice period and full payment of financial obligations to the WHO for the organization's current fiscal year. Although it is unclear whether a court would enforce such limitations, to the extent that Members of Congress may consider these limits insufficient, Congress may consider imposing additional conditions on withdrawal. For example, Congress may extend the statutory time period for withdrawal to take effect; require approval from Congress via a joint resolution or other means; or require that the United States meet its financial obligations to the WHO for the two-year budget cycle, instead of the current fiscal year. On the other hand, if Congress would like to facilitate withdrawal, it could amend the statute to shorten the twelve-month notice period and provide direct appropriations to ensure the U.S. obligations are fulfilled, as required by the joint resolution, or amend the statute to eliminate the payment obligation.

The WHO is only one of a number of international organizations and treaties to which the United States is a member. Where legislation implementing U.S. participation in those organizations and treaties does not specify conditions for withdrawal, Congress might consider whether to impose conditions similar or different from those for the WHO, provided such provisions are consistent with any more specific rules set out in the relevant treaties.

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