

## Biden's First 100 Days: Positioning the U.S. to be the World's Abortion Provider

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### INTRODUCTION

Never before in the history of the United States has an executive in chief sought to establish the country as the world's abortion provider. In just his first hundred days as President, Joe Biden has acted in sharp opposition to the position of the Catholic Church, in which his membership was a major part of his political identity for decades, by instituting executive actions, guiding multilateral policy and bilateral assistance creating the impetus that will contribute to ending the lives of unborn children around the world courtesy of the American people. This *Definitions* examines the actions taken by the Biden administration in its first hundred days as they pertain to the international abortion debate, and consider how they can help to predict what is yet to come in the remainder of his term.

### A sharp U-turn from the previous administration

Immediately after delivering an inaugural address promising to unite the country and “fight as hard for those who did not support [him] as for those who did,”<sup>1</sup> Biden set about unleashing a flurry of executive orders to reverse the legacy of his predecessor, former President Donald Trump. On January 20, the day of his inauguration, Biden sent a letter to António Guterres, the UN Secretary-General, announcing the reversal of Trump's decision to pull the U.S. out of the World

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Health Organization (WHO).<sup>2</sup> Although the stated reason for the withdrawal was the WHO's mismanagement of the COVID-19 pandemic and "alarming lack of independence" from the Chinese Communist government<sup>3</sup>, a concern shared by the U.S.'s European allies, the WHO had also long promoted abortion, including as part of its COVID-19 response.<sup>4</sup>

The following day, January 21, the president's chief medical advisor, Dr. Anthony Fauci, addressed the executive board of the WHO and announced the administration's intention to rescind the Protecting Life in Global Health Assistance policy, previously known as the Mexico City Policy:

And it will be our policy to support women's and girls' sexual and reproductive health and reproductive rights in the United States, as well as globally. To that end, President Biden will be revoking the Mexico City Policy in the coming days, as part of his broader commitment to protect women's health and advance gender equality at home and around the world.<sup>5</sup>

The Mexico City Policy, which bans U.S. foreign assistance from going to foreign-based organizations that promote or provide abortions, had been in place under Republican presidents since Ronald Reagan in the 1980s, and had been expanded by Trump to include not only family planning assistance, but all of global health funding, including for HIV/AIDS.

On January 28, Biden issued an executive order on "Protecting Women's Health at Home and Abroad" in which he repealed the Mexico City Policy.<sup>6</sup> The order also withdrew the U.S. from the Geneva Consensus Declaration, which is an agreement by over thirty countries and led by the previous U.S. administration that declared abortion is not an international human right and should never be promoted as a method of family planning, citing previous international agreements.<sup>7</sup>

Biden's executive action also instructed the administrator of the United States Agency for International Development (USAID) and other U.S. agencies to "ensure that adequate funds are being directed to support women's health needs globally, including sexual and reproductive health and reproductive rights" and took steps to restore funding to the United Nations Population Fund (UNFPA), which had been de-funded by the Trump administration for its partnership with China despite its coercive abortion and sterilization practices.

As he signed the memorandum, Biden stressed that he was

doing nothing new, but only attempting “to undo the damage Trump has done,” and “going back to what the situation was prior to [Trump’s] Executive orders.”<sup>8</sup>

### Moving the Biden administration’s abortion agenda forward

Simply reversing the policies of the Trump administration would never be sufficient for the Biden administration, much less for the pro-abortion lobby that campaigned strongly for Biden and have pledged to hold him accountable for his promises. Before the election, a coalition of over 90 “reproductive rights” organizations including abortion giant Planned Parenthood published a detailed “blueprint” outlining their agenda,<sup>9</sup> as well as a subsequent list of “first priorities” for Biden after he was elected.<sup>10</sup>

On January 22, the anniversary of the *Roe v. Wade* Supreme Court ruling which legalized abortion throughout the U.S. in 1973, President Biden and Vice President Kamala Harris issued a statement committing to codifying *Roe* in law and appointing judges that would support it as a “foundational precedent,” acknowledging the existing opposition for “reproductive health, including the right to choose.”<sup>11</sup> The public affairs office of the United States Conference of Catholic Bishops responded by calling the statement “deeply disturbing and tragic.”<sup>12</sup> To abortion proponents such as the Guttmacher Institute, the statement was disappointing because the word “abortion” was “conspicuously absent” and the reference to codifying *Roe* was deemed “at best, an outdated and overly narrow understanding of what must be done to ensure access to abortion.”<sup>13</sup>

With regard to the U.S. policy on abortion in the international context, the largest constraint is the Helms Amendment to the Foreign Assistance Act, a rider that has been in place since 1973 and prohibits U.S. funding for the provision or promotion of abortions overseas. Unlike its domestic counterpart, the Hyde Amendment, it does not carve out exceptions, and it has been consistently interpreted to prevent the use of U.S. funds to procure drugs or devices for inducing abortions.<sup>14</sup> Both Biden and Harris have expressed the desire to see Helms repealed,<sup>15</sup> although the executive branch lacks the competency to do so without Congress.

Abortion groups are increasingly calling on Biden to use his executive authority to reinterpret the law, or, in their words, to “clarify” it or correct the “misinterpretation” that the law is a total ban.<sup>16</sup> A letter dated April 29 from a coalition of over 140 pro-abortion groups urges Biden to “mitigate” Helms until Congress

can repeal it, citing the Biden administration's acceptance of recommendations from foreign countries to allow funding for abortions overseas in exceptional cases.<sup>17</sup>

These recommendations were issued as part of the Universal Periodic Review, a mechanism within the UN Human Rights Council in which each of the 193 UN member States undergo a human rights audit by their fellow countries every four to five years and receive recommendations on improving their records. These recommendations are either "supported" or "noted" by the recipient country. Supporting the recommendations is an admission of the merit of such recommendations and a commitment to remedy any alleged human rights violation. The United States' third review in the UPR took place in November 2020, before Biden's inauguration, but the U.S. response to the recommendations received was issued under Biden.

Most notably, the Biden administration "supported," among other similar recommendations, one from the Netherlands calling on the U.S. to "repeal the Helms Amendment...and, in the interim, allow United States foreign assistance to be used, at a minimum, for safe abortion in cases of rape, incest and life endangerment."<sup>18</sup> This amounts to an admission that the Helms amendment, as interpreted and applied by Democratic and Republican administrations for nearly 50 years, is a violation of human rights, and therefore, that the United States has an international obligation or commitment to fund abortion.

On March 17, during the adoption of the U.S.'s UPR report, the U.S. delivered a statement acknowledging and expressing support for recommendations "related to sexual and reproductive health and rights," most of which were direct attacks on Helms.<sup>19</sup>

This is not the first time a Democratic president has been called on to reinterpret Helms. Former President Barack Obama was faced with a similar campaign. Rather than welcome the calls to reinterpret the Helms amendment, the Obama administration merely noted them without supporting them, thereby defending the prerogative of U.S. voters and their elected representatives not to fund abortion overseas.<sup>20</sup> According to communications made public by Wikileaks, Obama had been willing to allow for conscientious objection by health care providers, a concession abortion groups were unwilling to tolerate. During her unsuccessful campaign for the presidency, former Secretary of State Hillary Clinton signaled her willingness to reinterpret Helms without conscience protections, but ultimately lost to Trump.<sup>21</sup>

It remains to be seen what Biden will do, but there are multiple examples of countries in which exceptions in laws that criminalize abortion are widened to the point of making abortion effectively available on request, such as the United Kingdom, where the vast majority of abortions are permitted under the ground of mental health.<sup>22</sup> If abortion is technically allowed in only very few cases, to the extent that it is regarded as a right in those cases, the means to induce “safe” abortions, and the necessary providers, must be made accessible. Once the infrastructure—provider training, drugs, devices, and provisions to force medical professionals to provide abortions or at least refer for them—is in place, it becomes far more difficult to restrict abortion to the allowable cases. From the perspective of the U.S. taxpayers and their representatives voting to send money overseas, the possibility of oversight and accountability is minimal.

When it is in effect, the Mexico City Policy operates in concert with Helms by restricting funds to groups that would otherwise have to segregate funding in order to provide abortions with funding from other sources. Yet officials within the Trump administration seeking to implement the policy encountered institutional hurdles. According to former Assistant Administrator for USAID’s Bureau for Global Health, Dr. Alma Golden:

There was a very significant obstacle around actually understanding who was delivering care. We had problems on getting a list of our sub-recipients and descriptions of their activities. This had not been required by previous administrations; there was this sense that it was fully the responsibility of the primary recipient to manage the sub-recipients, and there was an honor system in place for whether the sub-recipients were complying with the PLGHA or Mexico City Policy. Clearly that was problematic. [...] There were many traditional and bureaucratic obstacles to having visibility.<sup>23</sup>

Given this history, pro-life advocates have no reason to believe that ostensibly narrow exceptions to Helms would remain narrow in practice.

The United States is the single largest donor to international family planning and global health, and, apart from COVID-19 supplemental funding, will contribute \$11.4 billion in fiscal year 2021, slightly less than half of which will go to addressing the HIV/AIDS pandemic.<sup>24</sup> Yet if Helms were to be repealed or

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redefined, the effects would go beyond global health funding and would include humanitarian assistance as well. As much of this work is carried out by faith-based organizations funding by grants from the U.S., the inclusion of abortion in U.S.-funded humanitarian work could render such organizations ineligible if they were unwilling to provide the full range of “sexual and reproductive health” services.

Another consideration worth bearing in mind is the overall effect on humanitarian policy that funding abortion, even if just in limited circumstances, will have. The perverse incentive to make abortion the default response to pregnancy in humanitarian emergencies could become very strong when one considers that abortion is a low-cost intervention compared to maternal and child health care. And there is always the danger that abortion be implemented as a tool of population control against ethnic and religious minorities.

It must be emphasized that the drive to repeal or redefine Helms is being driven by the international abortion lobby, and much of the pressure comes from abroad, including from European countries that do fund humanitarian abortion (a subject that will be addressed further later in the context of the UN Security Council),<sup>25</sup> and other organizations that stand to benefit from increased funding for abortion, such as Ipas. Anu Kumar, the president of Ipas, said that as the U.S. is the world’s largest global health donor, it has “essentially bullied those other donors into complying with the Helms Amendment” when donor countries pool funding.<sup>26</sup>

The influence of the Helms Amendment beyond U.S. funding alone is further evidenced by a report from the European Union urging “the provision of EU humanitarian aid to be made effectively independent from the restrictions on humanitarian aid imposed by the USA, in particular by ensuring access to abortion for women and girls who are victims of rape in armed conflicts.”<sup>27</sup> Just as the U.S. has exerted global leadership in protecting life through the Helms Amendment, it could become a global leader in exporting abortion if the amendment were gutted or repealed.

### **Accelerating the export of gender ideology**

The Trump administration was less strident in promoting issues regarding sexual orientation and gender identity (SOGI) abroad than the previous Obama administration (for instance, stopping the practice of flying rainbow “pride” flags at U.S. embassies overseas<sup>28</sup>). Nevertheless, social conservatives were disappointed that the U.S. remained a member of the “LGBT

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Core Group” at the UN, and that the Trump administration made decriminalization of sodomy a core component of its foreign policy, not only in bilateral diplomacy but in multilateral venues like the Universal Periodic Review, implying that countries should change their laws on the basis of an international human rights claim, as opposed to a preference of the U.S. government.<sup>29</sup>

For all that, LGBT groups gave little credit to the Trump administration, and representatives of organizations promoting SOGI in international institutions like the UN expressed high hopes that Biden would “maintain the same line” as Obama, and even go further, so that the U.S. would “at a minimum be a buffer against social conservatism around the world.”<sup>30</sup>

In his first hundred days in office, Biden has worked hard to ramp up his administration’s support for LGBT causes. At the beginning of February, Biden issued a memorandum on “Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World,” which “reaffirms and supplements” a previous Obama executive order.<sup>31</sup> Among its provisions is training for government workers to identify and respond to LGBTQI+ refugees and asylum seekers, including by giving them higher priority, and using “the full range of diplomatic and assistance tools and, as appropriate, financial sanctions, visa restrictions, and other actions” in response to foreign governments whose laws and policies are deemed to “contribut[e] to a climate of intolerance” or restrict the rights of LGBTQI+ persons. While all persons have equal rights according to both domestic and international human rights standards, it is clear that the Biden administration endorses specific “LGBTQI+ rights” that have no basis in international human rights agreements and are, in many cases, controversial within the U.S. as well.

In response to this memorandum, the Department of Defense issued its own memorandum directing the Pentagon to broadly and aggressively implement its objectives, including by working to increase the number of countries promoting the LGBTQI+ agenda in international institutions.<sup>32</sup>

In March, Biden issued an executive order establishing the “White House Gender Policy Council” to “promote sexual and reproductive health and rights” and “advance gender equity and equality.”<sup>33</sup> An accompanying fact sheet stated that the Counsel will “aggressively protect” certain groups, including the LGBT community.<sup>34</sup>

Issues of sexual orientation and gender identity have become

inseparable from the abortion issue in the international context, in part due to the “sexual and reproductive health and rights” (SRHR) framework, which incorporates both and ensures that proponents of both support each other’s work.<sup>35</sup>

### Exerting influence in multilateral negotiations

On March 8, the Biden administration joined with over 60 other countries notable for supporting abortion language in UN resolutions in issuing a statement for International Women’s Day. It included a reference to SRHR:

Women and girls have faced a roll back on human rights in general and on sexual and reproductive health and rights in particular. In the midst of the crisis, sexual and reproductive health services remain essential, and should be part of national plans dealing with the COVID pandemic.<sup>36</sup>

Under Trump, the U.S. spearheaded an initiative called the Geneva Consensus Declaration, which, along with 34 other countries, reaffirmed the fact that there is no international human right to abortion and that the family is the natural and fundamental group unit of society, as specified in the Universal Declaration of Human Rights, one of the founding documents of the UN.<sup>37</sup> Biden sent a letter withdrawing the U.S. from the declaration in late February<sup>38</sup>, after signaling his intention to do so in his January executive order rescinding the Mexico City Policy:

Upon reviewing the Declaration, we have reservations that aspects of the document are not consistent with our current Administration’s policies, including those relating to women’s health, LGBTQI equality, and gender equality.<sup>39</sup>

In a similar step back from the previous administration’s work on human rights, in a March 30 press conference, Biden’s Secretary of State Anthony Blinken repudiated the findings of the Trump administration’s Commission on Unalienable Rights, which sought to focus America’s attention on the human rights enumerated in America’s founding documents and the Universal Declaration of Human Rights. At the same press conference Blinken promised to elevate “sexual and reproductive rights” in the annual human rights report issued by the State Department. This is also a reversal from the Trump administration that removed abortion from the annual report because abortion is not recognized as a human right.<sup>40</sup>

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It is of critical importance that all of these assisted reproductive “options” are being posited as components of a definition that frames them in the language of “rights.”



February, March, and April at the UN feature the annual commissions on the status of women, social development, and population and development, under the auspices of the Economic and Social Council of the General Assembly. The Biden administration's actions and statements during these commissions, particularly with regard to their negotiated outcome documents, provide insights into its priorities on international social issues.

The 65<sup>th</sup> Commission on the Status of Women (CSW) took place in March, and the U.S. delegation included the chairs of the White House's new Gender Policy Council, as well as a transgender activist and a representative of the International Center for Research on Women (ICRW), an organization that has been campaigning for the Biden administration to announce a "feminist foreign policy," following the lead of countries like Sweden, Canada, France, and Mexico.<sup>41</sup> While the meaning of the term differs between countries, and Mexico's policy has yet to be clearly defined, proponents of the concept of "feminist foreign policy," including ICRW, consider SRHR, including abortion, as an integral component.<sup>42</sup>

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U.S. delegates repeatedly called for SRHR language, including abortion, LGBTQ rights, and sexual autonomy for children.

Vice President Harris addressed the plenary session of the CSW, the highest-ranking U.S. official ever to have done so, giving a largely uncontroversial statement. However, during negotiations on the CSW outcome document, U.S. delegates repeatedly called for SRHR language, including abortion, LGBTQ rights, and sexual autonomy for children.<sup>43</sup>

When the final text was adopted, the U.S. gave a lengthy explanation of its position, in which it affirmed its commitments to advancing SRHR as "fundamental to women's empowerment," and strongly supported references to "women and girls in all their diversity," a phrase that has been used to advance LGBTQ issues through its intentional ambiguity. The U.S. statement added, "we regret the lack of an explicit reference to sexual orientation and gender identity. LGBTI women and girls face significant additional challenges across all societies that deserve explicit inclusion."<sup>44</sup>

Biden's UN Ambassador, Linda Thomas-Greenfield, delivered a statement on March 31 in honor of International Transgender Day of Visibility:

The United States Mission to the United Nations is committed to promoting and protecting the human rights of all LGBTQI+ persons through our active participation and leadership in the United Nations LGBTI Core Group and engagement with the UN Independent Expert

on Sexual Orientation and Gender Identity. We were particularly proud that the U.S. delegation to the 65th Session on the Commission of the Status of Women for the first time represented women and girls in all their diversity. We join the UN LGBTI Core Group today in amplifying the voices of transgender activists from around the world.<sup>45</sup>

Thomas-Greenfield was referring to the presence of the transgender-identified person on the U.S. delegation, implying that the full diversity of women and girls cannot be recognized without including people who are biologically male.

In April, at the 54<sup>th</sup> Commission on Population and Development, the Biden administration's U.S. delegation followed a similar playbook, despite the fact that the theme of the commission was food security and nutrition, a seemingly less politically divisive topic.<sup>46</sup> Upon adoption of the agreed conclusions, the U.S. again relentlessly promoted SRHR as a prerequisite for "leaving no one behind."<sup>47</sup>

The UN Security Council held a debate on the issue of sexual violence in conflict situations, an area that has been used by abortion activists as an opportunity to advance the notion of an international humanitarian right to abortion—a claim that fails on its merits, but has gained traction with several European countries.<sup>48</sup> Thomas-Greenfield made comments that indicated support for abortion as a response to sexual violence in conflict:

President Biden has committed the United States to providing sexual and reproductive healthcare and services for women around the world, especially women who have been impacted by conflict-related sexual violence.<sup>49</sup>

While the abortion issue is cloaked in euphemistic language, there is no doubt that it is present: the U.S. has received recommendations in the UPR explicitly calling on the U.S. to fund abortions for women raped in conflict situations, and the Obama administration, which received those recommendations in the first and second cycles of the UPR, all of which were "noted" and not "supported," despite Obama's overall support for abortion as a right.<sup>50</sup>

### **Where the domestic and the international intersect**

The U.S. is famously reticent to ratify multilateral human rights treaties, for a variety of reasons. The U.S. has always

drawn a distinction between civil and political rights, which its founding documents characterize as universal and God-given, and economic, social, and cultural rights, which it acknowledges as societal goods, but not on the same level, as this creates inevitable clashes between competing rights.<sup>51</sup> Another reason for U.S. reluctance to ratify UN human rights treaties is structural: it would require a two-thirds vote in the Senate, which in a closely divided Congress is a difficult bar to clear. In response to recommendations in the UPR by several countries urging the U.S. to ratify more treaties, the U.S. said the following:

We support a number of recommendations asking us to consider ratifying additional human rights treaties, including the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, the International Labor Organization's Convention #111, and the Convention on the Rights of the Child. The Biden Administration will continue to review how we can approach ratification of these treaties.<sup>52</sup>

While arguments for and against ratifying UN human rights treaties can be made on the basis of sovereignty, promotion of international human rights, and the lack of any meaningful enforcement mechanism for countries that ratify them in name only, there are important implications for social issues as well.

None of the UN's core human rights treaties mentions abortion, much less implies that it is a right. Only the Convention on the Rights of Persons with Disabilities (CRPD) includes a reference to "sexual and reproductive health."<sup>53</sup> This phrase does not create a right to abortion, as it was defined at the International Conference on Population and Development in 1994 as including abortion only where legal, with the legal status being for individual countries to determine. However, UN agencies such as the WHO, and, critically, its human rights bodies, have increasingly interpreted it in to include abortion as a right, and have pressured countries to change their laws accordingly.

However, no entity has done more to advance the notion of a human right to abortion within the UN system than the expert bodies tasked with monitoring compliance with human rights treaties, or "treaty bodies." When a country ratifies a human rights treaty, it must submit periodic reports to these bodies and receive recommendations that are, unlike the text of the treaty itself, nonbinding, but nevertheless influential. Moreover, the treaty bodies have increasingly exceeded their mandates

by pressuring countries to change their laws and policies with regard to abortion and LGBTQ issues; in the case of some treaty bodies, this occurs in the vast majority of their country-level reviews.<sup>54</sup>

Given the ongoing effort to hijack the concept of human rights for niche issues that lack global consensus, and given the Biden administration's support for this agenda, it is likely that ratifying any of the remaining human rights treaties at the UN would open the floodgates for global pressure on the U.S. with regard to human life and the family—pressure to which the Biden administration has already demonstrated would gratefully succumb at every available opportunity.

In a similar way, U.S. laws and policies that focus on international issues have to be evaluated not only with regard to their domestic interpretation, but also with regard to how they will be received outside the U.S. The international abortion lobby has made great strides in inserting itself into a wide variety of policy spaces, including HIV/AIDS, women's advancement, protecting women and girls from violence, education, and other issues. In particular, preventing and responding to violence against women and girls (often termed "gender-based violence" in part to include those who identify as transgender women), abortion groups have gained a strong international foothold through the health dimension.<sup>55</sup>

In contrast, during the Trump administration, the initiative championed by Ivanka Trump to advance the economic empowerment of women overseas was slammed by feminist groups for its compatibility with the Trump administration's policies on abortion internationally, and the fact that it focused on economic issues without incorporating other areas, such as health. "Women's economic empowerment cannot happen without bodily autonomy, without reproductive health services," said Serra Sippel, president of the Center for Health and Gender Equity (CHANGE).<sup>56</sup>

Under the Biden administration, especially without the safeguards of the Mexico City Policy, abortion groups will likely receive increased funding through both development and humanitarian assistance through the channels of economic empowerment and gender-based violence response, as well as other areas of U.S. programming overseas.

### **Evaluating the first hundred days of the Biden administration**

From an international pro-life and pro-family perspective, the

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Biden administration has explicitly opposed and attempted to undo all the advances made by the Trump administration, and is positioning itself to move U.S. influence strongly in the opposite direction. In this context, the Biden administration's impact on global social issues must be measured against the demands—or blueprint<sup>57</sup>—of the SRHR lobby, bearing in mind that the administration's failure to accomplish all of its demands in the first hundred days does not mean a lack of intent to do so in Biden's remaining time in office.

For feminists, the chief complaint is that Biden's progress in advancing their agenda is moving too slowly—a common critique of new administrations of either party by their civil society supporters—and that he and his officials have been reticent to use the word “abortion,” in favor of euphemistic terms like “reproductive health” and “reproductive rights.”

ICRW and its Coalition for a Feminist Foreign Policy gave the Biden administration an “A-” grade for its first hundred days, with the caveat that it only deducted points when it concluded that an action not yet taken could feasibly have been done within the tight time frame.<sup>58</sup> In a podcast interview, Christina Krynski, Counsel and Senior Manager of Policy at NARAL Pro-Choice America, emphasized the importance of appointing personnel, noting that as more appointments are made, the pace of change will increase. In particular, she expressed “hope to see a nominee for the Ambassador at Large for Global Women's Issues that understands that sexual and reproductive health and rights really play a critical role in advancing gender equity around the world,” adding that such an understanding “has been at times lacking in that space.”<sup>59</sup> She also called on Biden to propose a budget without any pro-life “riders” such as the Helms and Hyde amendments.

As predicted by pro-life and pro-family organizations focusing on both the domestic and international arenas, the Biden administration is unambiguously working to undermine the gains of the past four years and stake out new territory in advancing abortion and gender ideology around the world, including in the U.S. Moreover, as this administration is led by the consummate political insider Biden, supported by a deeply entrenched bureaucracy that notably tilts left politically, he is able to do so without many of the “deep state” constraints that hampered his predecessor's ability to enforce his policies.

#### Endnotes

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