

What is the real purpose of the Helms Amendment to the Foreign Assistance Act?

By Rebecca Oas, Ph.D.

INTRODUCTION

In 1973, the United States Supreme Court decided, in *Roe v. Wade*, to strike down all laws protecting unborn children from abortion throughout the country. That same year, Congress moved to contain the liberalization of abortion, amending the Foreign Assistance Act of 1961 to prohibit the use of funds for the promotion or provision of abortions overseas.

This law, proposed by Republican Senator Jesse Helms of North Carolina, has been in effect for nearly half a century, but it has been the subject of recent controversy. Abortion advocates have campaigned for it to be rescinded entirely or, failing that, to be reinterpreted with exceptions that would substantively weaken it.

This issue of *Definitions* explores the history of the Helms Amendment: why it was adopted, what its impact has been, and how it fits into the present-day battle over abortion both domestically and abroad.

Abortion and U.S. foreign assistance in the early 1970s

Before 1973, at a time when U.S. domestic policy on abortion differed widely among the fifty states, foreign aid delivered by the U.S. Agency for International Development (USAID) was firmly pro-abortion, as was the Director of its Office of Population, Dr. Reimert T. Ravenholt. The year 1973

saw a reversal on both fronts. *Roe* overruled all state-level prohibitions on abortion, making abortion at all stages of pregnancy a legal right, a standard unusually permissive even when compared with European countries that had legalized it earlier, albeit with stricter gestational limits. On the other hand, as Harvard sociology lecturer Donald P. Warwick wrote in 1980, USAID “was an ardent supporter of abortion until it was brought to a standstill by the Helms Amendment.”¹

Under Ravenholt’s leadership, USAID had worked toward developing a method of early abortion that could be used without electricity, for use in developing countries where access to it was unreliable. The reusable plastic manual vacuum aspirator, equipped with a replaceable plastic cannula, or tube, was finalized for large-scale manufacture in spring of 1973, and Ravenholt placed an order for ten thousand of them and scheduled a conference to promote their use under the euphemistic name “menstrual regulation.” In October 1973, Ravenholt ordered a hundred thousand kits “believing [they] might as well get a really adequate supply,” but the order was never completed, as some Catholic members of Ravenholt’s staff were working to block it. “Anyway, they were in communication with Jack Sullivan and other Catholics, resulting in the creation of the Helms Amendment, introduced by Senator Jesse Helms and passed by the Congress and went into effect, in December of ’73,” said Ravenholt in a 2002 oral history he provided for Smith College. “We were not able to provide assistance for pregnancy termination after that.”²

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At the same time, according to Ravenholt, USAID was spending about \$10 million for the development of prostaglandins, which “when self-administered by a woman, on a single occasion would ensure the non-pregnant state at the completion of a monthly cycle,” according to Ravenholt.³

In his oral history, Ravenholt wryly points out, “with regard to the adversarial Roman Catholic Church one could do most anything provided it was ineffective.” But the prospect of hundreds of thousands of abortion kits being sent overseas—of which only one in Malaysia, reportedly was used in 6,800 abortions—was enough to generate strong opposition from Catholics as well as other pro-life Christians, including Senator Helms, a Baptist.⁴

Legislative history of the Helms Amendment

In October 1973, Helms introduced his amendment to the Foreign Assistance Act of 1961 in the Senate:

SEC. 116. PROHIBITING USE OF FUNDS FOR ABORTIONS – None of the funds made available to carry out this part shall be used in any manner, directly or indirectly, to pay for abortions, abortifacient drugs or devices, the promotion of the practice of abortion, or the support of research designed to develop methods of abortion. The provisions of this section shall not apply to any funds obligated prior to the date of its enactment.⁵

The purpose of the amendment was simple, as Helms said on the Senate floor: “It is intended to prevent the use of [US]AID funds – that is to say, funds collected from the taxpayers of the United States – in the practice and promotion of abortion.” Additionally, Helms said his amendment would “stop the use of U.S. Government funds to promote and develop ways of killing unborn children,” such as the prostaglandin research mentioned by Ravenholt. Helms insisted his amendment would not affect other USAID programs, including population programs promoting family planning. “It requires only that U.S. Government funds made available for legitimate purposes not be commingled with funds from other sources that might be used for abortion.”⁶

Helms acknowledged the rapid onset of the abortion issue in U.S. political discourse: “I doubt that any Senator who first voted for the Foreign Assistance Act in 1961 ever dreamed that AID’s population programs in foreign countries would allow abortion, much less become potentially structured around abortion in 1973. I believe that is the reason that the 1961 act failed to contain a specific prohibition or even to mention abortion.”⁷

“Unless Congress [reverses USAID’s policy] now, we will soon see the day when abortifacient drugs and techniques dominate AID’s program, and the United States becomes the world’s largest exporter of death,” warned Helms.⁸

The amendment was adopted in the Senate, by a vote of 54 to 42. By late November, the House of Representatives had proposed an altered text of the amendment in their version of the bill:

SEC. 114. LIMITING USE OF FUNDS FOR ABORTIONS. – None of the funds made available to carry out this part shall be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.⁹

In the words of Representative Lawrence Hogan of Maryland, “while this amendment is considerably less specific than that introduced by Senator Helms, it is clearly another step in demonstrating Congress’ opposition to the policy of abortion, which is so repugnant to the American people.”¹⁰ In early December, the revised version of the amendment was adopted by the Senate, and the bill was subsequently signed into law by President Nixon.

Interpretation and impact of the Helms Amendment

When the final version of the amendment was adopted, Helms took the floor and offered a few observations about the text, firstly, on the word “performance.” “Performance is a word which has a very wide latitude of interpretation,” he said, “and includes everything associated with ‘performance,’ including not only physicians’ and hospital fees, salaries, or expenses, but also associated equipment and necessities, such as drugs, medical instruments, and other devices specifically designed to effect or to assist in effecting abortions.”¹¹

Helms pointed out that “the language specifically talks not just about abortions, but abortions as a method of family planning. I would think that this would include counseling abortions as a method of family planning, as well.”¹²

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Since its initial adoption, Helms Amendment language has also been brought into other legislation, such as foreign operations appropriations measures, although not continuously as in the foreign assistance act.¹³

The Helms Amendment restricts the use of U.S. funds to support abortion internationally, by prohibiting the commingling of funds. In other words, organizations that perform abortions are still eligible for U.S. funding, but the funding streams they use for abortion must be kept separate from their other work that receives U.S. government support. (This is distinct from the Mexico City Policy first enacted in 1984 by President Ronald Reagan and by Republican presidents thereafter, which prohibits all U.S. funding to foreign organizations that promote or provide abortions at all.)

With regard to the implementation of the amendment, the administrator of USAID issued a policy document in June of 1974 with some more specific requirements. Among these was a requirement that no USAID funding would be used to “procure or distribute equipment provided for the purpose of inducing abortions as a method of family planning.”¹⁴

This procurement requirement led to Ravenholt outsourcing the distribution of manual vacuum aspirators to a new organization: “International Pregnancy Advisory Service” or IPAS, with funding from the Mellon Foundation.¹⁵

The impact of the Helms Amendment at USAID was significant. According to Warwick, it led to at least a fivefold increase in monitoring in related fields, and multiple layers of approval required for anything seen as politically sensitive. “Needless to say, this process dampens the enthusiasm of those most committed to providing abortion services,” Warwick noted, citing the International Planned Parenthood Federation and the Pathfinder Fund as examples.¹⁶

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Another example of an organization eager to provide abortion by Warwick in 1980 was the Population Crisis Committee (PCC), now known as Population Action International (PAI). Unlike other organizations whose enthusiasm was “dampened” by Helms, PCC saw it as a “blessing in disguise” according to Warwick, as it “forced abortion advocates to rely less on large donors and the public sector and make productive explorations into abortion as a business venture.” IPAS was similarly optimistic about the marketability of abortion, which was its sole focus, unlike PCC, which also promoted contraceptives.¹⁷

The recent debate on Helms interpretation

While abortion advocates have called continuously for the repeal of the Helms Amendment, during the Obama administration, a campaign was launched asking for it to be reinterpreted at the policy level, such as in a Presidential Memorandum, as sufficient support to overturn it in Congress was lacking. The argument raised by these groups was that the phrase “as a method of family planning” did not include abortions for women pregnant by rape or incest, or whose life was potentially threatened by the pregnancy. Others specifically called for the law to be interpreted with an exception for women raped in conflict. A similar recommendation was raised by a handful of European countries during the U.S.’s participation in the Universal Periodic Review, a Geneva-based human rights mechanism within the Human Rights Council. The Obama-led State Department rebuffed the recommendations as incompatible with existing U.S. law.¹⁸

Ultimately, the Obama administration did not issue any executive guidance reinterpreting the Helms Amendment, to the frustration of many abortion advocates. During the 2016 presidential election, the site Wikileaks released a collection

of leaked emails from candidate Hillary Clinton’s campaign manager John Podesta. In an exchange with fellow Clinton advisor Jennifer Klein, it was revealed that Obama had been prepared to reinterpret Helms, but with some conscience protections and a provision that applicants for U.S. grants should not be discriminated against due to their objection to providing abortions.¹⁹

Klein wrote, “I have also heard that after listening to the strong concerns of the advocates, this may not be going forward [...] Both of these [limitations] pose problems, and in my view, leaving Helms intact is a better alternative at the moment. The conscience clause is at best odd and at worst harmful.”²⁰

Prior to the Democratic primary, both Clinton and challenger Bernie Sanders pledged to reinterpret Helms;²¹ Klein’s emails indicated that Clinton intended to do so without conscience protections or nondiscrimination provisions for grant applicants. While the election of President Donald Trump effectively ruled out reinterpretation of Helms—and ushered in the expanded Mexico City Policy, now known as Protecting Life in Global Health Assistance, the Helms Amendment remains a target of the pro-abortion movement.

As the 2020 campaign heats up, at least ten Democratic candidates have expressed opposition to the Helms Amendment, both in terms of issuing a reinterpretation and working with Congress to repeal it permanently.²²

Conclusion

While the reinterpretation of the Helms Amendment by a future Democrat U.S. president would likely be a matter of politics rather than legal argumentation, it might nevertheless end up in the courts if challenged. One interesting aspect of the debate over the amendment as originally proposed in Congress is that the topic of rape was not discussed at all, nor any of the other “hard case” exceptions that have become inescapable in discussions of the legality of abortion ever since. It is clear from Helms’ own words that he saw the “as a method of family planning” language as expanding, not limiting, the law’s application, covering not only medical services but also the counseling related to them.

It is also clear that the amendment was proposed to stop the export of what many taxpayers—whose funding pays for international aid—as well as many members of Congress viewed then, as today, as a grave moral evil. The interpretation

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the following year by USAID included as its first item the prohibition of procuring abortion-causing equipment. If an exception to the law were to be made even for the most extreme cases, such as rape in conflict, as a practical matter, this would mean reintroducing supply chains, training, and plans for providing abortion. Once in place, the restriction of such things to the rare exceptions allowed would be unrealistic—as Ravenholt’s boast about thousands of abortions performed with a single manual vacuum aspirator can attest.

While Helms’ original language about abortifacient drugs did not make it into the final text of the amendment, his concerns were relevant at the time and even more so today. He was aware that USAID was funding research on drugs that could induce abortions and even be self-administered. “Unlike the pill which is merely contraceptive, this will be the pill that kills,” he said. “My amendment would therefore stop the use of U.S. Government funds to promote and develop ways of killing unborn children.”²³

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