

POLICY *Analysis*

Center for Family and Human Rights

TALKING POINTS ON THE HELMS AMENDMENT: Against the repeal or reinterpretation of the Helms Amendment to allow U.S. funding for abortions overseas

Democrat control of both houses of Congress sets up the real possibility that the Biden administration will either sign the repeal of the Helms Amendment or re-interpret Helms to allow U.S. funding for abortion overseas. Below are suggested talking points to defend the Helms Amendment from attacks from both the Democrat controlled 117th Congress and the Biden administration.

BACKGROUND

Language of the Helms Amendment and Implementation

None of the funds made available to carry this part may 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—Section 104(f)(1) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2151b(f)(1)), as amended by the Foreign Assistance Act of 1973 (P.L. 93-189), approved December 17, 1973.

Since its enactment in 1973, the Helms Amendment has been interpreted by both Democratic and Republican administrations as [a complete prohibition on the use of U.S. foreign assistance for abortions](#).¹ Even though the same language of the Helms Amendment about abortion “as a method of family planning” in the Mexico City Policy has been interpreted by Republican administrations as allowing abortion in cases of rape or when the life of a woman is in danger due to a pregnancy, the Helms Amendment continues to have its own implementing provision in USAID standard provisions under both Republican and Democratic administrations prohibiting the use of U.S. foreign assistance to purchase abortion equipment.

The current standard provision in U.S. foreign aid contracts that implements the Helms Amendment for both domestic and foreign non-governmental organizations lists “abortion equipment and services” as “ineligible, commodities and services” that recipients of USAID “must not, under any circumstances, procure.”² In short, it is a longstanding U.S. policy to separate U.S. taxpayer funds from abortions overseas. And it is justified because once the abortion equipment and services are made available there would be no way to restrict their use.³

The Campaign to Repeal Helms

For over a decade there has been an international [campaign to repeal or reinterpret the Helms Amendment by](#)

[European countries and global abortion advocates](#).⁴ Foreign countries and organizations have called on the U.S. government to repeal or reinterpret the Helms Amendment, [as recent as last year](#) at the U.S. Human Rights Council. The U.S. government did not welcome these challenges to longstanding U.S. law until the Biden administration in March 2021.⁵

The U.S. State Department did not “support” these and similar claims during the last Periodic Review of the U.S. government’s human rights record in the Human Rights Council in 2011 under the Obama administration. The Obama State Department merely “noted” the recommendations, which is the same as saying that the U.S. government disagrees with the claims and does not believe it has an obligation to fund abortion.

It is highly significant to note that the Obama administration defended U.S. federal restrictions on funding abortion even though he politically agreed with the substance of the recommendations.

Emails from the John Podesta [Wikileaks hack](#) in 2016 document how the Obama-Biden administration planned to reinterpret the Helms Amendment to allow funding for abortion in humanitarian situations like war and natural disasters, following calls from these governments and global abortion industry groups.⁶ Government insiders confirmed this to staff of the Center for the Family and Human Rights (C-Fam).

The leaked emails reveal that the Obama administration ultimately did not go through with the plan, because abortion groups backed down. When they learned that the Obama administration would have included conscience protections to prevent discrimination against pro-life and faith-based groups, they held off on their move waiting for the Clinton administration. Like Clinton before him, Biden is expected to deliver a reinterpretation of Helms to allow abortion funding without conscience protections or restrictions of any kind.

Once funding for abortion is allowed through a reinterpretation of the Helms Amendment, there is nothing to stop abortion from becoming a requirement of U.S. foreign assistance. Gender specialists at the U.S. Agency for International Development, under the broad authority vested in them by the Women’s Entrepreneurship and Economic Empowerment Act of 2018 (WEEE Act), could simply add abortion to the list of essential services that U.S. foreign aid recipients are required to provide.

Recent Developments Under the Biden Administration

The Biden administration welcomed the calls of foreign governments to eliminate federal laws that prohibit the use of U.S. foreign assistance to fund abortion during an appearance at the Human Rights Council in Geneva.⁷

The 14 countries (Australia, Austria, Canada, Denmark, Finland, France, Iceland, Luxembourg, Mexico, Malaysia, the Netherlands, Norway, New Zealand, and the United Kingdom) called on the U.S. to “ensure access to sexual and reproductive health” and “remove restrictions” on abortion funding in U.S. law and policy in the context of the Universal Periodic Review.

The Biden administration “supported” each of these 14 recommendations. To “support” human rights claims such as these in the context of the Universal Periodic Review, means to accept that the claims are well-founded and to commit to do something about it.

Most forthcoming was the Netherlands, which explicitly called on the executive branch of the U.S. government to undermine federal law as enacted by the American People. Here is the recommendation:

Repeal the Helms Amendment and the Protecting Life in Global Health Assistance Policy 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.

The Biden administration supported this recommendation also, committing itself, before the entire world, to undermine federal law. And by implication, the U.S. government agreed that restrictions on U.S. funding for abortion in federal law are a violation of human rights or humanitarian law. This would include the Helms Amendment, the Hyde Amendment, the Siljander Amendment, and the Mexico City Policy.

The administration essentially agreed that there is an obligation to ensure access to abortion under international human rights law or at very least that the U.S. government at some point in the past made a human rights commitment to fund abortion and facilitate access to abortion as part of “sexual and reproductive health.” This is an extreme position that was not supported by the Obama administration.

The 2022 Biden Administration Budget Proposal End-Run Around Helms

In the 2022 Biden proposed budget, the President has proposed a new area of funding for “gender equality” with a “notwithstanding other provision of law” clause that would effectively create a legal loophole around the Helms amendment.

Section [7059]7045 (1) of the budget proposal includes the broad loophole that, “Funds appropriated by this Act [shall] may be made available notwithstanding any other provision of law to promote gender equality [in United States Government diplomatic and development efforts by] including by such activities as raising the status, increasing the economic participation, increasing opportunity for leadership positions, increasing the role in peace and security, and protecting the rights of women and girls worldwide.”

The “notwithstanding other provision of law” clause will likely be understood to exclude the application of the Helms and Siljander Amendments to funding for gender equality.

And the pro-life concerns are compounded by the fact that the funds can be made available to implement the Women’s Entrepreneurship and Economic Empowerment Act of 2018 (Public Law 115–428) under section [7059]7045 (2) of the budget proposal. This means that all the funds appropriated may be subject to USAID’s internal guidance, ADS Chapter 205 on “Integrating Gender Equality and Female Empowerment in USAID’s Program Cycle”,⁸ which enshrined the Obama administration’s gender policies throughout USAID programming and remains in place today.

The Women’s Entrepreneurship and Economic Empowerment Act of 2018 codified this internal policy process whereby all USAID policies must be vetted by USAID “gender specialists” through “gender analysis and integration”. Under the act, the bureaus and operational units of USAID have wide discretion in carrying out gender analysis and integration, which includes deciding the gender components of USAID policies, programs, and grants. There is the real possibility that this will be used to create mandates related to abortion if programs are not covered by the Helms and Siljander amendments.

The budget proposal includes \$200 million for a “Gender Equality Fund” under section [7059]7045 (3) of the budget proposal. This fund was previously called the Women’s Global prosperity and Development Fund under the Trump administration and was limited to economic empowerment initiatives. With the change of administration the change of name for the fund, it is clear that the focus of the fund will be broadened to other gender programming, opening up the possibility of a new funding stream that can be dedicated to promoting and paying for abortion outside the scope of the Helms and Siljander restrictions in the Foreign Assistance Act.

It should be noted that gender equality in section [7059]7045 of the budget proposal is defined broadly as “protecting the rights of women and girls” and Democratic administrations are on the record stating that abortion is indeed a “reproductive right.” The Biden administration’s welcoming of the recommendations of foreign countries to scrap the Helms amendment, under the rubric of reproductive health and rights, signals

an intention to characterize abortion as a reproductive right, consistent with the President's "Memorandum on Protecting Women's Health at Home and Abroad" of January 18, 2021.

The Memorandum expressly criticized U.S. restrictions on abortion funding. The report states that, "It is the policy of my Administration to support women's and girls' sexual and reproductive health and rights in the United States, as well as globally" and with regard to restrictions on abortion funding it criticizes "excessive conditions on foreign and development assistance *undermine the United States' efforts to advance gender equality globally by restricting our ability to support women's health and programs that prevent and respond to gender-based violence.*" (Emphasis added)⁹ Moreover the Memorandum instructs the U.S. Secretary of State to "work with the Administrator of USAID and across United States Government foreign assistance programs to ensure that adequate funds are being directed to support women's health needs globally, including sexual and reproductive health and reproductive rights."

Of particular relevance in this context, during a congressional hearing in 2009 Secretary Clinton responded affirmatively to the question of whether "reproductive health" includes abortion.¹⁰ "We are now an Administration that will protect the rights of women, including their rights to reproductive health care," Clinton said in her testimony.

In this vein, UN human rights mandate holders and UN treaty body have stated repeatedly that denying abortion is a form of discrimination against women. Most recently, the UN Working Group on Discrimination Against Women in Law and Practice stated in an April 2021 report that "the criminalization of abortion is a profound failure to meet the obligation to guarantee equality in the area of sexual and reproductive health."¹¹

It is of vital importance to monitor the appropriations process in the House and Senate to ensure any appropriation bill does not retain the "notwithstanding" clause and that both the Helms and Siljander amendment apply.

WHY REPEALING HELMS IS BAD POLICY

Below are 7 reasons why repealing or reinterpreting the Helms amendment is a bad policy.

1. Repealing or Re-interpreting Helms would be inconsistent with U.S. government actions over the last 50 years both in U.S. foreign assistance and international diplomatic mechanisms under both Republicans and Democrats

- Since its adoption in 1973, both Republican and Democratic administrations have understood the Helms Amendment to prohibit U.S. foreign assistance from being used to perform abortion under any circumstance.
- The Biden administration would break the law if it unilaterally reinterpreted Helms inconsistently with its application for 50 years.
- The U.S. has never understood abortion to be required under any circumstance by humanitarian law.
- Both the Obama administration and the Trump administration did not welcome suggestions that abortion is a humanitarian right and that the U.S. Government has an obligation to fund abortion overseas when the United States human rights record was reviewed by the Council.
- Since its adoption, the Helms Amendment has been understood as a way to prevent U.S. taxpayers who morally object to abortion on religious or conscientious grounds from being complicit in paying

for abortions.

- The Helms Amendment has always been understood as a shield to protect humanitarian operators. If humanitarian operators were caught performing abortions in countries where abortion carries social stigma and other negative moral connotations it could endanger humanitarian personnel.

2. Repealing or re-interpreting Helms would prevent people of faith and others with moral or conscientious objections to performing abortions from partnering with the American people in delivering aid to the poor.

- The Helms Amendment was designed also to prevent the use of U.S. taxpayer money to motivate or coerce anyone into performing an abortion. This protects the conscience of healthcare providers, who overwhelmingly object to performing abortions.
- If the Helms Amendment is repealed or reinterpreted to allow U.S. funding for abortion, the Biden administration will create abortion mandates in federal and international programs, just like the Obama-Biden administration did through Obamacare and reproductive health mandates in anti-trafficking programming.
- Making abortion a requirement of U.S. foreign aid programs would prevent pro-life charitable organizations from delivering aid to the poor overseas. This might include faith-based groups, including Catholics, Jews, Muslims, Buddhists, Hindus, and any other groups with pro-life convictions or moral objections to abortion. Surely these are people the American People are allowed to partner with.
- Faith-based groups that might be excluded from U.S. foreign assistance through abortion mandates are some of the most respected and reliable providers of humanitarian assistance.
- Faith-based groups tend to be the first to be on the scene of a humanitarian emergency and the last to leave. They provide an essential link in the transition from humanitarian emergencies to development.

3. Repealing or reinterpreting Helms will create perverse incentives for humanitarian aid organizations to promote abortion as the default response to rape in emergencies.

- If abortion becomes a component of US humanitarian programming, it will easily become the default response to pregnancy in emergency situations. Humanitarian donors and operators will have a perverse incentive to see abortion as a cheaper alternative to making more expensive maternal and child health available. As a result, humanitarian operators will be pressured to perform abortions and women will be under pressure to abort their children.
- Requiring abortion in U.S. humanitarian assistance will lend legitimacy to global abortion groups like the International Planned Parenthood Federation which have already moved into the humanitarian space to gain access to humanitarian funding.
- If abortion is the default response to pregnancy in emergency situations, donors and aid agencies will have less of an incentive to establish and fund holistic programs focused on women's health and well-being, including maternal health, and justice for rape survivors, education, and other social and economic support, including removing stigma for children born of war.
- Helms protects women from dangerous health complications due to abortion and from pressure to abort their babies. Abortion in humanitarian settings is highly dangerous for women since they would not have access to basic health infrastructure for adequate follow-ups or the treatment of inevitable complications that result from abortion.

4. The Helms Amendment is a highly popular piece of federal law

- According to a Marist Poll published on January 27, 2021, 77% of Americans either “oppose” or “strongly oppose” using tax dollars to support international abortion.¹²

5. Reinterpretation of Helms, even for exceptional circumstances, will result in the export of abortion commodities and training overseas

- Once U.S.-based systems for abortion provision are established internationally, it will create the potential for use outside of narrow exceptions, as well as fueling the push to make abortion the rule rather than the exception.¹³
- Redefining Helms to allow for exceptions will allow the purchase of abortion commodities like the manual vacuum aspirator (MVA) and medical abortion pills. It will be impossible to provide the oversight to assure they are used for exceptions only.

6. The Helms Amendment is not Racist

- Abortion advocates now claim that the motivation behind the Helms amendment and its practical effect is racist. These claims are as baseless as the accusations that Senator Helms was racist.
- In fact, the Helms amendment has protected U.S. taxpayer funds from becoming complicit in the use of abortion as a racist tool of oppression against ethnic and religious minorities, a concern also reflected in congressional legislation like the Kemp-Kasten Amendment.

7. The problem with repealing or reinterpreting the Helms amendment is not about the rape and incest exceptions.

- Abortion advocates will try to make the repeal and reinterpretation of Helms about rape and race to distract from what is really at stake.
- The crux of the matter is whether abortion is a human right and whether the U.S. has an obligation to fund abortion internationally. This is categorically not the case. The U.S. government does not have an obligation to export abortion to the whole world.
- Moreover, U.S. funding for abortion is unnecessary and duplicative. According to studies 61% of unintended pregnancies globally are ended through abortion. In poor countries and humanitarian situations European development agencies fund dozens of international organizations that perform abortion, including affiliates of abortion industry giants Marie Stopes International and International Planned Parenthood Federation.
- U.S. funding for maternal and child health must increase. 39% of unintended pregnancies are carried to term. Therefore, millions of women and their children still need maternal and child health, which is woefully underfunded internationally. Keeping the Helms amendment in place is about making sure U.S. taxpayer funds are used to help these women and children, and not to already well-funded abortion groups.

Endnotes

- 1 <https://c-fam.org/wp-content/uploads/Definitions-What-is-the-real-purpose-of-the-Helms-Amendment-to-the-Foreign-Assistance-Act.pdf>
- 2 USAID Standard Provisions for U.S. Nongovernmental Organizations A Mandatory Reference for ADS Chapter 303, Partial Revision Date: 05/22/2019 and USAID Standard Provisions for Non-U.S. Nongovernmental Organizations A Mandatory

- 3 Ibid., *supra* note 1.
- 4 <https://ir.stthomas.edu/ustjlp/vol9/iss1/1/>
- 5 https://c-fam.org/friday_fax/u-s-pushes-back-on-abortion-at-human-rights-council/
- 6 https://c-fam.org/friday_fax/wikileaks-clinton-will-fund-overseas-abortion-without-conscience-protections/
- 7 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/USIndex.aspx>
- 8 <https://www.usaid.gov/ads/policy/200/205>
- 9 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/>
- 10 News Item, “Obama: Export Abortion to the World”, available at: <https://chrissmith.house.gov/news/documentsingle.aspx?DocumentID=123424>
- 11 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/096/69/PDF/G2109669.pdf?OpenElement>
- 12 <http://www.kofc.org/en/resources/news-room/polls/american-abortion-opinions-remain-consistent.pdf>
- 13 Ibid., *supra* note 1.



757 3rd Avenue, Suite 2119
New York, New York 10017
(212) 754-5948
info@c-fam.org
www.c-fam.org

© Center for Family & Human Rights. All rights reserved