

THE DETRIMENTAL EFFECTS OF PRESIDENT DONALD TRUMP'S EXECUTIVE ORDER RESTRICTING ACCESS TO HEALTHCARE IN FOREIGN COUNTRIES

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I. INTRODUCTION

Shortly after President Trump took office this year, he signed an executive order² reinstating and broadening The Mexico City Policy³ (“the Policy”).⁴ The Policy – which concerns non-governmental organizations (“NGO’s”) and abortion access⁵ – has been supported by the GOP party since it was first implemented during Ronald Reagan’s presidency.⁶ Its purpose is to strip federal funding from organizations that counsel patients on abortions or perform them.⁷ If a foreign organization wants to continue receiving federal funding from the United States then the organization must abstain from performing abortions and/or advising patients that abortions are an option available to them.⁸ This policy is commonly referred to as, the Global Gag Rule.⁹

Despite the policy’s purported goal to “respect innocent life,” Trump’s reinstatement and expansion of the Mexico City Policy will only have detrimental effects on the people living in developing

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² See, *Presidential Memorandum Regarding the Mexico City Policy*, THE WHITE HOUSE, (Jan. 23, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy> (last visited April 23, 2017).

³ The policy was first announced by the Reagan administration at the 2nd International Conference on Population, which was held in Mexico City, Mexico, on August 6-14, 1984. See, *The Mexico City Policy: An Explainer*, HENRY J. KAISER FAMILY FOUNDATION (March 6, 2017), http://kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/#endnote_link_210899-2.

⁴ This policy was originally implemented by Ronald Reagan in 1984, and had recently been repealed under the Obama administration. See, Michelle Goldberg, *Trump Didn’t Just Reinststate the Global Gag Rule: He Massively Expanded It*, Slate (Jan. 24, 2017), http://www.slate.com/articles/news_and_politics/politics/2017/01/trump_s_global_gag_rule_is_even_worse_than_it_seemed.html.

⁵ Major Garrett, *What is the Mexico City Policy?*, CBS NEWS (Jan. 23, 2017), <http://www.cbsnews.com/news/what-is-the-mexico-city-policy/>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

countries.¹⁰ Although the Policy's goal is to decrease the number of abortions that occur in accordance with "pro-life" ideals, previous versions of the Mexico City Policy have not succeeded in reducing the number of abortions or unplanned pregnancies.¹¹ Rather the Policy has only reduced the number of safe and legal abortions that are performed in developing countries when it has been instated.¹²

President Trump's executive order is a dangerous expansion of the Mexico City Policy that has been enforced in the past.¹³ While previous iterations have pulled funding from reproductive health clinics that have continued to perform abortions or advise their patients about abortion, Trump's order pulls funding from any health clinic that performs abortions or advises patients about them.¹⁴ The order will pull funding from clinics whose patients depend on United States' funding for their everyday healthcare needs.¹⁵ Many people in West African countries do not have places available to them that provide STI screenings, HIV/AIDS prevention, sexual education, or condoms – they rely on clinics, which receive funding from the United States, to provide these services.¹⁶ As a result, Trump's order prevents foreign citizens, who are desperately in need from getting any kind of health services in the name of "respecting life."¹⁷

This legislation is also indicative of similar anti-choice legislation that is pending in the United States.¹⁸ Additionally, the

¹⁰ Human Life International President Fr. Shenan Boquet also praised the decision. He called it a "common sense policy" supported by most that will help "restor[e] the credibility of the United States as having a foreign policy that respects innocent life. See, Peter LaBarbera, *Trump Signs Order Defunding International Planned Parenthood*, LIFESITE (Jan. 23, 2017), <https://www.lifesitenews.com/news/breaking-trump-signs-order-defunding-international-planned-parenthood-forei>.

¹¹ *The Bigger and Even Worse 'Gag Rule'*, THE NY TIMES, Jan. 27, 2017, at A24.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *The Bigger and Even Worse 'Gag Rule'*, *supra* note 11. Previous versions of the policy have only restricted "family planning funds" with currently total around \$600 million, but Trump's order "global health assistance furnished by all departments or agencies" which applies to about \$9 billion in global funding. *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Melanie Israel, *Latest Court Decision Blocking Texas' Attempt to Defund Planned Parenthood Shows Need for Congressional Action*, THE DAILY SIGNAL (Feb. 22, 2017), <http://dailysignal.com/2017/02/22/latest-court-decision-blocking-texas-attempt-to-defund-planned-parenthood-shows-need-for-congressional-action/>.

implementation of this policy abroad may lead to similar legislation being enacted domestically as well.¹⁹

This article will discuss and analyze the implications that the Mexico City Policy has had in the past, and how Trump's executive order is an expanded version of this policy. First, the article will present the purpose behind the Mexico City Policy, and how Trump's order is also aligned with the purpose of trying to make less abortions happen. Second, the article will discuss the negative effects the Policy has previously had on reproductive health clinics globally and how Trump's order as it stands threatens to negatively affect all health clinics, not just those geared towards reproductive health. The final part of the analysis of Trump's order will argue that this order's anti-abortion purpose is indicative of the similar legislation within the United States that is attempting to restrict abortion services.

Finally, the article will conclude that this new policy should be revoked because of the harmful global effects, or at least be revised to include exceptions so that health clinics working on the AIDS epidemic in West Africa will not have funding cut due to the Global Gag Rule.

II. BACKGROUND

1. *The Mexico City Policy*

The Mexico City Policy, dubbed by critics as the "Global Gag Rule", has the primary function of restricting foreign nongovernmental organizations (NGO) that receive American aid from counseling clients about abortion, advocating abortion, or performing abortion because of the GOP's anti-choice or pro-life agenda.²⁰ The policy directly aligns with the GOP's platform which calls for a "wall of separation" between taxpayer money and abortion.²¹

In the past, the policy stripped family planning funding from foreign organizations that provided abortion services.²² However,

¹⁹ *Id.*

²⁰ Goldberg, *supra* n. 4.

²¹ Erkins noted that a post-election survey found that "nearly 60 percent of Trump voters were impacted by the Republican Party's strong pro-life, pro-religious liberty platform." He said Trump's executive order aligns with GOP platform language stating that funding or participating in abortion violates the principle that there should be a "wall of separation" between taxpayer money and abortion. LaBarbera, *supra* n. 9.

²² Goldberg, *supra* n. 4.

Trump's executive order expands the Mexico City Policy to include all global health aid; which means instead of affecting \$600 million in U.S. aid for family planning, the policy will affect \$9.5 billion in global health aid given by the United States.²³ Consequently, any foreign organization that receives American aid and provides *any* health services must prohibit abortion services in order to continue receiving such aid.²⁴ This policy advances the GOP's Christian anti-abortion stance to an international level; and while the American government has a constitutional requirement for the separation of church and state, Christian views are being advanced by this executive order.²⁵

2. President Trump's Executive Order to Reinstate the Mexico City Policy

President Trump's order is essentially a reinstatement of the Mexico City Policy that President Bush implemented in 2001, except it has a section that expands the Policy's reach to include a restriction on all global health funds instead of those just geared towards reproductive health.²⁶ The other significant difference between Bush's reinstatement and Trump's order is that, as of this date, President Trump has not included an exemption for PEPFAR²⁷ or AIDs research.²⁸ President Trump's administration has continued with PEPFAR, but has made no comment on how the current Mexico City Policy will work in tandem with the AIDS program.²⁹

²³ Under the previous policy, the funding would only apply to clinics that work with maternal health, but now organizations that work with malaria patients will be prohibited from mentioning abortion if they want to continue to receive funding from the United States. Many organizations that focus on the prevention and treatment of HIV/AIDs would be affected by the policy as well. Goldberg, *supra* n. 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Presidential Memorandum Regarding the Mexico City Policy, supra* n. 2.

²⁷ President's Emergency Plan for AIDS Relief.

²⁸ *Presidential Memorandum Regarding the Mexico City Policy, supra* n. 2.

²⁹ *Id.*

III. ANALYSIS

1. *The Damaging Effects of Policies that Restrict Access to Abortion.*

Although the claimed purpose of the Global Gag Rule is to establish a respect for innocent life in the name of Christian values, the resulting effects of this rule are contrary to that purpose.³⁰ There is a very significant demand for women in developing countries to have reliable access to family planning resources.³¹ There are tens of thousands of women every year that lose their lives because they do not have access to safe and legal abortions, and countless more of these abortions lead to hospitalization and injury.³² Additionally, in developing countries approximately 830 women die each day due to complications from labor and pregnancy.³³ President Trump's reinstatement and expansion of the Global Gag Rule will greatly increase these numbers.³⁴

Dr. Eunice Brookman-Amisshah, the former Minister of Health in Ghana, explained that after the Global Gag Rule had been implemented in 2003 by George W. Bush there had only been an increase in unwanted pregnancies, unsafe abortions, and deaths among young girls and women in African countries.³⁵ There have been several empirical studies that all support the conclusion that policies that resemble the Global Gag Rule do not have the effect of decreasing abortion rates or "protecting innocent life".³⁶ These

³⁰ Judy Stone, *Trump's 'Global Gag Rule' on Abortion Hurts All Women*, FORBES (Jan. 25, 107) <https://www.forbes.com/sites/judystone/2017/01/25/trump-is-hell-bent-on-punishing-women-with-yuge-global-gag-rule/#393767801c75>.

³¹ Many countries around the world recognize that laws criminalizing abortion put women's health and lives at risk. Since 1994 over 30 countries worldwide have liberalized their abortion laws to promote women's health and safeguard their rights. See, Aram Schvey, *Trump's Global Gag Rule Hurts the World's Most Vulnerable Women*, THE HILL (Jan. 30, 2017), <http://thehill.com/blogs/pundits-blog/the-administration/316930-trumps-global-gag-rule-on-abortion-hurts-the-worlds>.

³² *Id.*

³³ *Id.*

³⁴ *Id.* Instead, loss of funding from this punitive regulation eliminates access to contraceptives for more than 225 million women globally, greatly increasing the need for abortion. Schvey, *supra* n. 31.

³⁵ Schvey, *supra* n. 31. After Bush's administration implemented the gag rule, Family Health Options Kenya was forced to close six clinic locations, resulting in 9,000 people being deprived of health care services. *The Bigger and Even Worse 'Gag Rule'*, *supra* n. 11.

³⁶ *The Bigger and Even Worse 'Gag Rule'*, *supra* n. 11.

policies actually have the documented effect of increasing abortion rates and unplanned pregnancies.³⁷

International Planned Parenthood³⁸ provides services that help to prevent unwanted pregnancy, such as providing birth control pills, condoms, and pregnancy test to low-income women.³⁹ Depriving these organizations of funding will lead to a deprivation of preventative pregnancy services.⁴⁰

2. *The Expanded Harm of President Trump's Reinstatement*

Unfortunately, Trump's executive order is an expanded version of the original Global Gag Rule and as it is currently written, will cause more harm than when the Mexico City Policy was implemented.⁴¹ Trump's order expands the Policy to pull funding from any type of health clinic that offers abortion services, and leaves no exemptions that previous orders have had.⁴² Organizations working with Ebola, Zika, and HIV/AIDS will have to ensure that none of their programs include abortion referral if they are to continue to receive aid from the United States.⁴³

George W. Bush had exempted AIDS relief from his version of the Global Gag Rule because it was understood that the goals of

³⁷ A 2011 Stanford University study, published in the Bulletin of the World Health Organization, examined the impact of a previous iteration of the Trump global gag rule in 20 African countries. It found that the policy was strongly "associated with increases in abortion rates in sub-Saharan African countries." Another 2011 study, published by the International Food Policy Research Institute, found that the policy reduced access to modern contraceptives, leading to an increase in unintended pregnancies, especially among rural women. Schvey, *supra* n. 31.

³⁸ The International Planned Parenthood Federation ("IPPF") is funded from governments, corporations and private individuals. About Us: Financial, IPPF.ORG, <http://www.ippf.org/about-us/financial> (last visited, Mar. 23, 2017). As a result of Trump's executive order reinstating the Mexico City Policy, "[t]he IPPF acknowledged it will lose \$100 million U.S. tax dollars for its programs, but declared that it and its partners in 170 countries around the world will not sign a policy that denies human rights and puts the lives of women at risk." Patrick Goodenough, *International Planned Parenthood Will Lose U.S. Funds Because of Trump's Pro-Life Policy*, CNSNEWS.COM, <http://www.cnsnews.com/news/article/patrick-goodenough/intl-abortion-providers-say-they-will-not-comply-reinstated-us> (last visited Mar. 23, 2017).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Goldberg, *supra* n. 4.

⁴² Previous exemptions have included funding for PEPFAR and funding for general health services. *The Bigger and Even Worse 'Gag Rule'*, *supra* n. 11.

⁴³ Such restrictions can be problematic for women who are infected then become pregnant. *Id.*

PEPFAR could not be met if the program was deprived of funding.⁴⁴ Trump's order has no such exception for PEPFAR, and that lack of exception will be harmful to AIDS prevention in developing countries, where AIDS is a real and serious threat that was taken seriously by the Bush administration.⁴⁵

As a consequence, Trump's version of the Global Gag Rule will not only deprive women of reproductive healthcare, but also general healthcare considering many women in developing countries receive general care from clinics that provide family planning services.⁴⁶

The policy is also inconsistent with international laws and other individual countries' laws that permit access to abortion, and permit clinicians to counsel patients on all of the family planning services available to them.⁴⁷ International organizations such as the United Nations and countries outside the United States have recognized the importance of giving women access to sexual health services and have expressed their unwillingness to accept policies like the Global Gag Rule that have the effect of harming women.⁴⁸

The broad and restrictive language in Trump's order means that many organizations will have to forgo government funding and lose valuable support in the fight against AIDS and the battle for women's health.⁴⁹ The International Planned Parenthood

⁴⁴ President's Emergency Plan for AIDS Relief, Scott Evertz, who served as director of the White House Office of National AIDS Policy under George W. Bush, explained, "It would have been impossible to treat HIV/AIDS in the developing world as the emergency that PEPFAR said it was if the global gag rule were to be applied to the thousands of organizations with which those of us involved in PEPFAR would be working." Goldberg, *supra* n. 4.

⁴⁵ *Id.*

⁴⁶ Emily Crockett, *Trump Reinstated the Global Gag Rule. It Won't Stop Abortion, but it Will Make it Less Safe*, VOX (Jan. 25, 2017), <http://www.vox.com/identities/2017/1/23/14356582/trump-global-gag-rule-abortion>.

⁴⁷ Schvey, *supra* n. 31. The Coalition Statement on Opposing the Global Gag Rule, from Refugees International, has more than 140 signatories. Their reasoned assessment: "U.S. foreign aid should never be used as a tool to limit women's access to healthcare or to censor free speech. Organizations should not be disqualified from receiving U.S. assistance because they use their own funds to provide health services and information that are legal in their home country and legal in the U.S." Stone, *supra* n. 30.

⁴⁸ Stone, *supra* n. 30.

⁴⁹ Geeta Rao Gupta, a senior fellow at the United Nations Foundation who previously served as deputy executive director of UNICEF stated, "Just knowing the organizations we work with, whose mission is overall health, I can't imagine they would accept a foreign government's requirement that is so broad," she says. Goldberg, *supra* n. 4.

Federation has calculated that it may lose \$100 million over four years, which will lead to a reduction in services in thirty countries.⁵⁰

Marie Stopes International⁵¹ has issued a statement explaining that without alternative funding, the loss of its services alone will cause an estimated 6.5 million unintended pregnancies, 2.2 million abortions, 2.1 million unsafe abortions, and 21,700 maternal deaths.⁵² The organization says it will also be prevented from reaching 1.5 million women with contraception every year.⁵³ Women in West African countries will be a majority of those harmed by the Global Gag Rule considering the already present serious lack in women's healthcare.⁵⁴

Consequently, other countries will have to help the organizations and clinics that will be hurt by Trump's order by providing their own funds to make up for the damages the United States will cause.⁵⁵ Organizations such as International Planned Parenthood will not agree to stop abortion services, so in order to help those organizations make up for the loss in funding countries outside the United States will have to offer their support in order to help the foreign men and women who are desperately in need of health services.⁵⁶

Countries in Europe that support reproductive rights, such as the United Kingdom and Sweden, have also been offended by this new Gag Rule and its effect of stripping women and men of healthcare needs.⁵⁷ They believe the order is making a statement that the United States does not support reproductive rights, and the European countries that do support those rights will become less

⁵⁰ *The Bigger and Even Worse 'Gag Rule'*, *supra* n. 11. International Planned Parenthood Federation/Western Hemisphere Region (IPPF/WHR) confirmed that they will not sign on to the gag rule's conditions: "As a rights-based health organization that seeks to protect and enhance the lives of women, men and young people throughout the Americas and Caribbean, IPPF/WHR will not sign a policy that denies human rights and puts the lives of women at risk." Crockett, *supra* n. 45.

⁵¹ An international organization that provides family planning services.

⁵² Crockett, *supra* n. 45.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ On January 25th, the Dutch government announced plans to "establish an international fund to help fill the gap left by reinstatement of the policy, paying for contraception, abortion, and education for women. *The Bigger and Even Worse 'Gag Rule'*, *supra* n. 11.

⁵⁶ Patrick Goodenough, *International Planned Parenthood Will Lose U.S. Funds Because of Trump's Pro-Life Policy*, CSNNEWS.COM, <http://www.csnnews.com/news/article/patrick-goodenough/intl-abortion-providers-say-they-will-not-comply-reinstated-us> (last visited Mar. 23, 2017).

⁵⁷ Crockett, *supra* n. 45.

likely to partner with the United States due to its restrictive Gag Rule.⁵⁸

3. *Similar Legislation Pending Within the United States*

It is important to note, that the Mexico City Policy is indicative of the antagonism that Planned Parenthood and family planning services face in the United States from the GOP.⁵⁹ On January 5th, Paul Ryan announced plans to “strip federal funding for Planned Parenthood in a budget bill”.⁶⁰ This announcement was good news for pro-life organizations who want to see an end to any federal support of abortions, but this would be disastrous for the 1 out of 5 women who rely on Planned Parenthood for reproductive healthcare.⁶¹

But federal funds are already not permitted to be used to fund abortions⁶², and defunding Planned Parenthood in the United States would have the same effect domestically that the Mexico City Policy had internationally – taking away sexual health services from people who do not have reliable access to it.⁶³ Since the enactment of the Helms Amendment in 1973, no federal funds have been permitted to be used to perform abortions unless they are

⁵⁸ *Id.*

⁵⁹ Vice President Mike Pence was almost single-handedly to blame for an HIV epidemic in Indiana because of his rabid opposition to Planned Parenthood, which provided the counseling and treatment of sexually transmitted infections in Scott County. Stone, *supra* n. 30.

⁶⁰ The proposed legislation will also repeal the Affordable Care Act. See, Elizabeth Dias, *Republicans Take Upper Hand in Fight to Defund Planned Parenthood*, TIME (Jan. 7, 2017), <http://time.com/4626516/planned-parenthood-defund-republicans/>.

⁶¹ Dias, *supra* n. 59.

⁶² “The Helms amendment prohibits the use of U.S. foreign assistance funds to perform abortions or to motivate or coerce individuals to practice abortions. Introduced by Senator Jesse Helms in 1973, it was adopted as an amendment to the FAA because of concerns that federal funds could be used to perform abortions overseas. Under the FAA heading “Prohibition on Use of Funds for Abortions and Involuntary Sterilizations,” the Helms amendment states: (1) 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. The amendment as written in the FAA applies to all foreign assistance activities authorized by part I of that act (development assistance)”. 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. EveryCRSReport, <https://www.everycrsreport.com/reports/R41360.html>.

⁶³ *Id.*

necessary to save the mother's life or a woman has become pregnant as a result of rape.⁶⁴

Quite to the contrary, a majority of the federal funds given to Planned Parenthood are used for preventative care – specifically, to reimburse Medicaid patients for cervical cancer and STI screenings and are not used for abortions.⁶⁵ This Order will only succeed in pulling funding from organizations that help low-income citizens who have no other way to receive general or sexual health services in the United States.⁶⁶

Those same low-income citizens will then have to obtain emergency services for some of their general health and reproductive needs, since the Global Gag Rule will make it very difficult for low-income men and women to get preventative care.⁶⁷

The implementation of this anti-abortion legislation will also have the same effect domestically as it has had abroad; it will not lead to a decrease in abortion or unwanted pregnancy, but an increase in abortions performed illegally, and deaths and complications resulting from pregnancy.⁶⁸

4. Conflicting Purposes Behind Policies That Restrict Access to Abortion

The motivation behind the Global Gag Rule is questionable since there is evidence that establishes policies that restrict access to abortion do not succeed in reducing abortion numbers.⁶⁹ The policy promotes the GOP's anti-choice Christian agenda while depriving many women of vital healthcare services.⁷⁰ It does not reduce the number of abortions that occur, but increases the amount of illegal abortions that occur.⁷¹

IV. Conclusion

President Donald Trump's executive order will undoubtedly cause harm to women and men who are in need of many kinds of health services.⁷² The Mexico City Policy does not succeed in

⁶⁴ This amendment applies domestically and internationally. Stone, *supra* n. 30.

⁶⁵ Dias, *supra* n. 59.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *The Bigger and Even Worse 'Gag Rule'*, *supra* n. 11.

⁶⁹ Schvey, *supra* n. 31.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Infra* Sec. III

lowering the amount of abortions that occur, it only guarantees that women in developing countries do not get safe and legal abortions from reproductive centers.⁷³ And President Trump's expanded version of the Policy will cause greater harm since it will pull funding not just from clinics that deal in reproductive services, but any health organization that offers abortions.⁷⁴

Considering the harm the Policy will cause as it is currently written, I believe the Order should be revoked or President Trump's administration should announce PEPFAR exempt from the order so that America can continue to give aid to organizations that help in the prevention and treatments of AIDS. There are three avenues by which an executive order can be revoked or modified; the President can revoke or modify an order, Congress can revoke or modify an order if the President was acting under Congressional authority, or the courts can declare the order illegal or unconstitutional.⁷⁵ However, the latter two options rarely happen with executive order.⁷⁶

A revocation of the Policy from President Trump would be beneficial to global health, considering that the implementation of the Policy only increases the amount of unsafe abortions that occur, but considering how the Policy has been treated by previous republican administration, a revocation does not seem likely, but only an announcement that PEPFAR is exempt from the Policy.⁷⁷

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Sarah Kessler, *There are three ways to revoke a US president's executive orders, and they rarely succeed* QUARTZ (Jan. 31, 2017), <https://qz.com/898683/can-an-executive-order-be-revoked/>

⁷⁶ *Id.*

⁷⁷ *Id.*