Zero Out International Abortion Funding

Pro-Life Congressmen Call on Federal Government to Close Loopholes in Mexico City Policy, Block Funding to Pro-Abortion Institutions at the U.N.

Jonathan Abbamonte / September 1, 2020


A letter signed by 11 U.S. Senators and 51 Congressmen has called on federal departments and agencies to stop U.S. foreign aid from being used to support organizations at the United Nations that promote abortion.

In the letter, the pro-life congressmen called on the U.S. Department of International Development (USAID) and the State Department to block funding to pro-abortion U.N. organizations by invoking the Siljander Amendment—a provision of federal law that bans U.S. foreign aid funds from being used to lobby for or against abortion.

The Siljander Amendment has been included as part of the annual state and foreign operations appropriations act since 1981 that Congress uses to fund the Department of State and U.S. foreign aid initiatives.

Last year, Secretary of State Mike Pompeo invoked the Siljander Amendment to cut $210,000 in U.S. foreign aid from the Organization of American States (OAS) after the State Department determined there was sufficient evidence that one of the organs of the OAS—the Inter-American Commission on Human Rights—was actively engaged in prohibited abortion-related activities. Pro-lifers have long criticized the OAS’ secretariat and human rights organs for routinely subjecting Latin American countries to significant pressure to legalize abortion in violation of international norms.

The recent letter from pro-life Congressmen calls on the State Department and USAID to extend enforcement of the Siljander Amendment on U.N. organizations that promote abortion or that routinely subject countries to pressure to liberalize their national laws on abortion.
Additionally, the pro-life Congressmen’s letter called on federal departments and agencies to close significant loopholes in the Mexico City Policy which currently exempt international organizations from having to abstain from promoting abortion while receiving U.S. government funding.

The Mexico City Policy prohibits certain kinds of U.S. foreign aid from funding foreign non-governmental organizations (NGOs) that perform or promote abortion as a method of family planning. The Mexico City Policy also blocks funding for any foreign NGO that provides financial assistance to another foreign NGO that performs or promotes abortion.

Over the years, the Mexico City Policy has blocked tens of millions of dollars in U.S. foreign aid from going to foreign NGOs such as the International Planned Parenthood Federation (IPPF) and Marie Stopes International (MSI) which perform millions of abortions annually worldwide.

However, there are several significant loopholes in the policy which allow U.S. government funding to continue to flow to organizations that perform or promote abortion. The Mexico City Policy only applies to foreign NGOs. NGOs based in the United States and international multilateral organizations such as the OAS and U.N. organizations are specifically exempt from the policy.

As a result, the Mexico City Policy does not apply to multilateral organizations that actively promote abortion such as the World Health Organization (WHO), the United Nations Population Fund (UNFPA), the OAS, and the African Union. Multilateral organizations get a free pass to continue receiving U.S. government funding even if they actively engage in abortion-related activities that would otherwise be prohibited for foreign NGO grant recipients.

The Mexico City Policy was first enacted under the Reagan administration in 1985 after the policy was announced by the United States at the U.N. International Conference on Population in Mexico City in 1984. The policy was subsequently rescinded under presidents Clinton and Obama and reinstated under presidents Bush and Trump, and for one year by act of Congress during the Clinton administration.

President Trump reinstated a significantly expanded version of the Mexico City Policy as one of his first acts as president via a presidential memorandum he signed on January 23, 2017. Under the Reagan, Bush, and Clinton administrations, the Mexico City Policy only applied to U.S. foreign family planning assistance (formerly called “population assistance”)

furnished by USAID or the Department of State. President Trump’s memorandum reinstating the Mexico City Policy, however, expanded the policy to apply not just to family planning assistance but to all U.S. global health assistance programs furnished by any department or agency in the federal government.

While U.S. family planning assistance since 2011 has hovered around $600 million per year, total appropriations for global health assistance amount to approximately $8.8 billion in U.S. foreign aid per year according to the Department of State.

The President’s memo specifically directed the Department of State and the Department of Health and Human Services to apply the Mexico City Policy to global health programs “to the extent allowable by law.”[1]

In response to the President’s memo to extend the Mexico City Policy to all global health programs, the Department of State and USAID drafted a new set of standard provisions to implement the President’s directive. These standard provisions are included in all global health assistance award agreements for NGOs and legally bind recipients to abide by the Mexico City Policy.

Standard provisions for the new expanded policy were approved by the Department of State on May 9, 2017 and the policy was renamed the Protecting Life in Global Health Assistance Policy (a.k.a. “PLGHA”). Federal departments and agencies furnishing global health assistance have since included the Protecting Life in Global Health Assistance Policy in all new and revised grants and cooperative agreements for NGOs.

Despite the President’s directive to extend the policy “to the extent allowable by law,” international multilateral organizations and U.S. NGOs are still being exempted from the policy.

The president clearly has the legal authority to extend the Protecting Life in Global Health Assistance Policy to multilateral organizations.

The president’s statutory authority to invoke the current Mexico City Policy for foreign NGOs comes from Sections 104(b) and 104(c) of the Foreign Assistance Act of 1961. Section 104(b) of the Foreign Assistance Act of 1961 authorizes the president to “furnish assistance, on such terms and conditions as he may determine, for voluntary population planning.”[2]

The president enjoys wide discretion in setting the terms and conditions for U.S. foreign assistance for health programs. Indeed, when the D.C. Circuit Court of Appeals upheld the
Reagan administration’s Mexico City Policy in *Dkt Memorial Fund Ltd v. Agency for International Development* (1989), the Circuit Court ruled that the president had the authority to instate the Mexico City Policy because Section 104(b) granted the president “discretion as broadly worded as any we are likely to see.”

The president also enjoys equally wide discretion in setting the terms and conditions for grants to international organizations. Section 301 of the Foreign Assistance Act of 1961 similarly states that the president has the authority to “make voluntary contributions on a grant basis to international organizations and to programs administered by such organizations, on such terms and conditions as he may determine.” The wording of Section 301 is as “broadly worded” as the language seen in Sections 104(b) and 104(c), so there is no reason why the relevant federal departments and agencies cannot extend the Mexico City Policy to international organizations as well.

The president can also extend the Protecting Life in Global Health Assistance Policy to humanitarian and disaster relief assistance awarded to multilateral organizations if he so chooses. Section 491 of the Foreign Assistance Act of 1961 authorizes the president to furnish humanitarian assistance and disaster relief to international organizations “on such terms and conditions as he may determine.”

The president’s authority to limit funding to international organizations even extends to military assistance as the president is authorized to furnish U.S. foreign aid to international organizations that “the President finds will strengthen the security of the United States and promote world peace.” Certainly, banning military assistance to international organizations that promote the killing of the unborn would indeed go a long way towards promoting world peace.

The president’s authority to cut funding to multilateral organizations is not limitless, however. There are a few limiting factors on the president’s ability to cut funding to an international organization that performs or promotes abortion.

For one, Congress in some circumstances makes appropriations to specific international organizations. In such circumstances, the president (via the State Department) is obligated by statutory law to make any contributions to international organizations specified in any act passed by Congress. The one exception to this is if the president is able to invoke the Kemp-Kasten Amendment—a provision of the state and foreign operations appropriation act that grants the president the authority to cut funding to any organization that “supports or participates in the management of a program of coercive abortion or involuntary
sterilization.\(^{[7]}\)

International organizations singled out by Congress to receive appropriations are for the most part non-controversial, however, and they are generally not the organizations that are actively involved in the promotion of abortion. One exception, of course, is the UNFPA which Congress annually makes specific appropriations to. But the president is able to invoke the Kemp-Kasten Amendment on UNFPA on account of its activities in China which have been found to support the Chinese government’s implementation of the one-child policy.

Another limitation on the president’s ability to extend the Mexico City Policy to international organizations is that the United States is legally bound to provide contributions to certain international organizations if it has signed a treaty stipulating that certain contributions must be made to the organization. For instance, the U.S. government is bound by a treaty to provide contributions to the United Nations in accordance with the assessed contributions set for each country by a committee appointed by the General Assembly. Similarly, the U.S. government is also bound by a treaty to make contributions to the World Health Organization as assessed by the World Health Assembly.

However, mandatory contributions that the U.S. government makes to international organizations are generally derived from federal accounts unrelated to global health assistance. As such, these funds may be unaffected by PLGHA in any event, even if the policy were to be extended to multilateral organizations.

But if the Protecting Life in Global Health Assistance Policy is somehow extended to all U.S. foreign assistance from all federal accounts, then the policy would be enabled to cut all funding—possibly even mandatory contributions—from international organizations that actively promote abortion. The Siljander Amendment could also be used instead to this end. The Siljander Amendment already applies to all U.S. foreign assistance regardless of the federal account from which the money is coming from so it would be easy for the State Department to invoke Siljander to cut funding to any violating organization so long as there are no treaty obligations obstructing the U.S. government’s ability to cut funding.

Oftentimes the U.S. government will make significant voluntary contributions to international organizations such as the WHO or UNFPA in addition to and on top of the mandatory contributions the government is required to pay in fulfillment of its treaty obligations to the organization. The president can easily cut these voluntary contributions the United States makes to international organizations.
But cutting mandatory contributions may require greater effort. Doing so may require the United States to first formally withdraw from whichever treaty mandates funding to the international organization in question. Many treaties with international organizations, however, including the U.N. Charter and the Constitution of the World Health Organization, do not have formal withdrawal procedures written into their founding treaties.

A nation’s formal withdrawal from treaties that do not contain explicit withdrawal procedures is generally be subject to Article 56 of the Vienna Convention on the Law of Treaties. However, the United States has not acceded to the Vienna Convention so the particularities of Article 56 would not apply to the U.S. unless the manner with which the withdrawal is undertaken is generally considered to be in violation of customary international law.

But there is another way around this. The U.S. government could simply choose to violate its treaty obligations and simply stop making its mandatory contributions to international organizations that promote abortion. In most cases, the immediate consequences of failing to fund an international organization are benign. The worst thing that could happen in most cases is that the United States would simply lose its voting rights with the international organization in question—a small price to pay for standing up for the inviolable right to life of every human person.

For some international organizations, where treaties permit, the president may also be able to apply the Mexico City Policy to a certain multilateral organization by revoking its designation status as a Public International Organization (PIO). The U.S. government designates certain international organizations as PIOs if they are founded pursuant to an international treaty or if Congress recognizes them as an international organization of a similar character.

The Department of State and USAID have chosen to exempt all PIOs from having to comply with the Mexico City Policy. Simply revoking an organization’s status as a Public International Organization would make it more difficult for USAID to treat that organization as a PIO for the purposes of grantmaking, particularly if the president makes clear his intent to ban U.S. foreign assistance for that organization.

Under the International Organizations and Immunities Act, the president has the authority to grant or revoke an international organization’s designation status as a Public International Organization. Federal law authorizes the president to revoke an international organization’s designation as a PIO “at any time” if the president, “in his judgment,”
determines that the organization has abused its privileges or immunities “or for any other reason” (emphasis added). All that is needed is for this to take place is for the president to issue an executive order revoking an organization’s PIO status.

In any event, the State Department and USAID can, and should, extend the Mexico City Policy to multilateral organizations. This would provide consistency across all global health programs and would ensure that all international organizations that receive U.S. global health assistance are not engaged in performing or promoting abortion as a method of family planning.

There are several ways to go about extending the Mexico City Policy. The relevant departments and agencies can take the course of action that they believe is most tenable and in the best interest of the United States.

However, the Department of State and USAID have an obligation to extend the Mexico City Policy to multilateral organizations. The president’s memorandum reinstating the Mexico City Policy states that the policy must be applied “to the extent allowable by law.” And, as is clear by now, federal law permits the president to apply funding restrictions to international organizations.

The State Department and USAID could also choose to invoke the Siljander Amendment on any international organization found to be actively involved in pressuring lawmakers or policymakers in sovereign countries to change their national laws or regulations on abortion. Applying the Siljander Amendment to an international organization that promotes abortion would have greater impact than applying the Mexico City Policy because Siljander applies to all U.S. foreign assistance, not just global health assistance.

At the same time though, there are no reliable structures in place at the State Department or USAID to consistently apply the Siljander Amendment. So far, the Siljander Amendment has only been applied once to the Organization of American States. Yet, there are many international organizations which the U.S. government continues to fund that promote abortion just as much if not more than the OAS. It took Secretary Pompeo himself to invoke the Siljander Amendment on OAS and it seems doubtful that the department would have applied the funding restriction if not for the Secretary’s leadership.

Thus, structures ought to be put in place at the Department of State to screen international organizations for violations of the Siljander Amendment. In addition to extending the Mexico City Policy to multilateral organizations, this is a necessary step to ensuring that U.S. funds
are not used to subsidize the promotion of abortion in foreign countries.


