

The Unprecedented Expansion of the Global Gag Rule: Trampling Rights, Health and Free Speech

By Zara Ahmed

The Trump administration has established a clear pattern of attacking sexual and reproductive health and rights, both in the United States and abroad. It is part of a calculated strategy of going after services and systems that benefit critical populations, including women, immigrants, the LGBTQ+ community and many others.¹ Although this strategy is designed to support domestic political goals, its impact is felt acutely by individuals around the world.

The so-called global gag rule exemplifies this approach, as it prevents foreign nongovernmental organizations (NGOs) from using their own, non-U.S. funds to provide abortion services, information, counseling, referrals or advocacy.² Rather than serving public health, this policy curtails access to essential clinical services and strips health care providers of the ability to engage openly with their patients. New Guttmacher Institute research helps to demonstrate the widespread harms of the gag rule, and why it should be eliminated.

The Mushrooming of the Global Gag Rule

The last three years have witnessed an unprecedented expansion of the global gag rule, which is also known as the Mexico City Policy or the Protecting Life in Global Health Assistance policy. Historically, the gag rule has largely been in place under Republican presidents since 1984.² Under the gag rule, foreign NGOs that want to continue receiving any U.S. family planning funding must agree to stop providing abortion-related services or advocating for the expansion of abortion access, using any source of their funding. The global gag rule applies to work done with non-U.S. government funds, so that a single dollar of U.S. money taints an entire organization's operating budget from all sources. Organizations that do not agree to the policy are no longer eligible to receive U.S. government awards and must cease their U.S.-funded programs.

HIGHLIGHTS

- *The Trump administration has imposed an unprecedented and unjustified expansion of the "global gag rule," as part of a weaponization of U.S. foreign assistance to systematically target global sexual and reproductive health and rights programs.*
- *New research from the Guttmacher Institute demonstrates that the expanded global gag rule has already had a detrimental impact on clinical providers, community health workers and critical public health partners around the world.*
- *To reestablish U.S. leadership on global sexual and reproductive health and rights, Congress must permanently repeal the global gag rule and actively support the full range of services that people around the world want and need, including safe abortion services.*
- *This action is more critical than ever as the world confronts the COVID-19 pandemic and the ensuing negative effects on health care access, including for reproductive health services.*

In January 2017, the Trump administration reinstated the global gag rule, applying it to foreign NGOs receiving U.S. family planning resources (see figure 1).³ Later that year, the administration expanded the rule to apply to all U.S. global health assistance, increasing the amount of money affected by the policy from roughly \$600 million to about \$12 billion in estimated planned funding in 2018, a 20-fold increase.⁴ The new iteration covered work unrelated to family planning, including projects related to HIV/AIDS, nutrition, malaria, water and sanitation, tuberculosis and other infectious diseases.^{5,6} According to the U.S. Government Accountability Office (GAO), the policy applied to 1,309 prime awards active or made between May 2017 and September 2018 in at least 72 countries.⁴ The vast majority of these awards (96%) were managed by the U.S. Agency for

1 Trump administration expansions of the global gag rule to apply to larger groups of recipients made a bad policy worse

JANUARY 2017	MAY 2017	MAY 2019
Gag rule reinstated	Gag rule expanded	Gag rule expanded again
Foreign NGOs receiving U.S. global family planning assistance	Foreign NGOs receiving any U.S. global health assistance → the first-ever expansion beyond family planning	Foreign NGOs and sub-recipients → even if sub-recipient does not receive U.S. global assistance

International Development or the Centers for Disease Control and Prevention, with the remainder held by other U.S. Department of Health and Human Services agencies, the U.S. Department of State and the U.S. Department of Defense. Prior to 2017, the global gag rule had never been applied to this many public health programs, partners or agencies.

Even with this unparalleled proliferation of the global gag rule, the Trump administration was unsatisfied. In May 2019, the Department of State issued new guidance that the gag rule would apply to sub-recipients of “gagged” organizations, even if they do not receive any U.S. foreign assistance.⁷ Without warning, local organizations with no work supported by the U.S. government became subject to the policy simply because of an association with an organization that did, a stunning suppression of both the right to free speech and the practice of medicine.

The global gag rule builds on and exacerbates existing antiabortion U.S. laws that constrain global health partners. Chief among these is the 1973 Helms Amendment, which prohibits U.S. foreign assistance funding for the “performance of abortion as a method of family planning.”⁸ This policy is complemented by the 1981 Siljander Amendment, which forbids U.S. funding from being used to lobby for or against abortion, and the 1985 Kemp-Kasten Amendment, which prohibits funding for any organization that the president determines supports programs that include coercive abortion or involuntary sterilization. For the last three years, the Trump administration has withheld congressionally appropriated funds for the United Nations Population Fund (UNFPA) by hiding behind the thinly veiled rationale of the Kemp-Kasten Amendment.⁹

Together, this legislative infrastructure inhibits the ability of organizations to freely conduct core clinical practices and provide much-needed services to people

around the world. These preexisting constraints have been bolstered by the global gag rule’s rapid, far-reaching expansion.

Devastating Impacts

The global gag rule is bad public policy on every level. To date, there is no evidence of any positive developments (for instance, an increase in contraceptive access or a decrease in maternal mortality) stemming from the global gag rule or its expansion, either provided by the Trump administration or external validators. Rather, research has consistently demonstrated that the gag rule is harmful, both in the short and long term (see figure 2). New evidence from the Guttmacher Institute builds on that body of work, further establishing that the gag rule lacks any public health value.

Impacts on people seeking care. At the most fundamental level, for people seeking abortion services, the global gag rule has caused fear, anxiety and narrowed options. When performed correctly, abortion is an extremely safe procedure and prevents maternal deaths caused from unsafe abortion or lack of postabortion care.¹⁰ The gag rule infringes on individuals’ right to access this fundamental reproductive health service by decreasing the availability of information on abortion and access to safe abortion providers, as recipient organizations are forced to choose between accepting the terms of the gag rule or shutting down.¹¹

Even when abortion providers may be available in their area, patients may not know about their existence, as gagged partners and service providers are prohibited from providing information about or referrals to them. This makes it extremely challenging for women to find safe, high-quality abortion providers in their area and may push them to seek out unsafe ways of ending their pregnancy. People seeking abortions should not be forced to accept subpar care or put their lives at risk because of a lack of knowledge about safe abortion services.

2 The global gag rule has devastating impacts at every level

People seeking care	Health care providers	Implementing partners	Public health systems	Foreign policy
<p>Decreased access to</p> <ul style="list-style-type: none"> • abortion information and providers • contraceptive care 	<ul style="list-style-type: none"> • Interference in patient-provider relationship • Chilling effect on clinicians 	<ul style="list-style-type: none"> • Cuts to family planning programs • Silencing of reproductive health and rights advocates 	<ul style="list-style-type: none"> • Reduced outreach by community health workers • Increased time spent securing stop-gap funding 	<ul style="list-style-type: none"> • Abdication of U.S. leadership in global health policy • Imposition of regressive policies • Infringement on other countries' sovereignty

In addition, the global gag rule is harmful even to people not seeking abortion services. Due to changes in organizations' capacity and services as a result of the loss of U.S. funding, there may be decreased availability of contraceptives, especially in areas with significant need. A 2011 study on the implementation of the gag rule during the George W. Bush administration (i.e., without the expansion beyond family planning programs) found that in rural Ghana alone, there was a 12% increase in pregnancies, leading to an additional 200,000 abortions and between 500,000 and 750,000 additional unplanned births.¹² This is a likely scenario for the current iteration of the global gag rule, as people contend with decreased availability of services, including contraception.

Impacts on health care providers. The global gag rule is also damaging to health care providers and their relationships with patients. These individuals are dedicated to a profession based on science, technical excellence and a commitment to the best interests of their patients. The gag rule harms them by undermining those values and inserting ideology in what should be a relationship grounded in trust and compassion. Even in countries where abortion is broadly legal, providers working for gagged organizations are largely unable to mention abortion as an option to people in need.² The constantly evolving nature of the gag rule and its relationship to other restrictive U.S. policies creates confusion among providers, who are forced by political considerations to self-censor. This creates a real chilling effect, as providers are so afraid of violating U.S. policy that they fail to correctly apply exemptions or offer reproductive health services that are allowed.¹³

Impacts on implementing partners. The global gag rule puts long-standing partner organizations implementing U.S. aid programs and their sub-recipients in a bind and wreaks havoc on their operations. These organizations can choose to sign on to the gag rule or they can refuse and forgo U.S. funding, which is often a significant portion of their budget. The GAO study found that seven prime awards and 47 sub-awards were declined by foreign NGOs in 2017–2018 because of their refusal to comply with the global gag rule.⁴ For example, in Uganda, one large non-U.S. organization that lost U.S. funding because of the gag rule was forced to cut or scale back mobile outreach teams that provide long-acting contraceptives to women in public health facilities.¹⁴ Another organization in Uganda had to close down a health facility and prematurely end several programs, including community education on family planning methods.¹⁴ In turn, these cuts meant having to let go of key staff and lose institutional memory.

Early research shows that other nonsigning partners have been able to mobilize emergency, short-term funding, but it is often precarious and insufficient.¹⁴ Organizations must divert time and energy to obtaining this funding, which takes them away from core technical work, and the scale of U.S. support cannot be easily matched.¹⁵ This challenge may be exacerbated by the global COVID-19 pandemic, as countries look inward and may deprioritize foreign assistance. Furthermore, under normal circumstances, the incoming funding would be used to accelerate progress on priority health issues, rather than to plug holes created by malicious policies.

For those partners who do sign on to the gag rule, they are forced to stop all advocacy work on abortion, even work funded by non-U.S. resources; the same is true for all of their sub-partners, even if they do not engage on U.S.-supported projects. This is an infringement on free speech and an imposition of the U.S. administration's agenda on their priorities. In Uganda and Senegal, partners have stated that they are fearful of participating in programs that address unsafe abortion and maternal mortality because of the global gag rule and have dropped out of national partnerships.¹⁶ The silencing of important voices is not only disheartening, but dangerous for the advancement of health goals.

Impacts on public health systems. Beyond individual partners, the global gag rule has negative impacts on ministries of health and public health systems of entire countries. Because so many government partners extensively support public health facilities and community-based programs, the ripples are felt throughout the system and are not isolated to a few private clinics.

In Uganda, the Guttmacher Institute, in partnership with Makerere University and Performance Monitoring for Action, conducted a multiyear, national study of facilities providing family planning services to assess the impact of the global gag rule.¹⁴ The analysis found that the gag rule had a substantial negative impact on the community health worker (CHW) program. These individuals support local health facilities and provide outreach to expand access to family planning services. In areas with more exposure to the global gag rule, health facilities supported on average four fewer CHWs after the gag rule came into effect compared with facilities that were less exposed to the rule, severely curtailing the amount of outreach conducted.¹⁴ Less engagement by CHWs will likely lead to decreased access to family planning services and in turn to more unintended pregnancies; given the cross-cutting work of CHWs, there may be impacts on other primary health services as well.

In addition, the global gag rule forces countries to find stop-gap funding and shift resources around to cover deficiencies created by cuts to U.S. funding. The costs created by this management challenge, and complying with multiple donors' requirements, are a drain on health systems already contending with limited capacity.

Impacts on foreign policy. Lastly, the global gag rule is dangerous foreign policy. The United States has abdicated its role as a leader on supporting reproductive rights and global health programs more broadly. Other countries are stepping in to fill this void, but they cannot match the financial and technical contributions of the United States.¹⁷ And with nearly 220 million women who want to avoid pregnancy not using a modern method of contraception, it would not be enough to merely maintain the status quo in terms of funding for reproductive health, even if that were possible.¹⁸

Furthermore, at a time when investing in multilateral health institutions is paramount, the Trump administration has chosen to withhold funding from UNFPA and to expand the global gag rule so far that it indirectly affects the work of the Global Fund to Fight AIDS, Tuberculosis and Malaria. An initial analysis indicates that up to 12% of Global Fund resources (over \$1 billion) could be subject to the gag rule, with Nigeria, South Africa and Tanzania among the most affected countries.¹⁹ This harms relationships with other donors and recipients, as it is an imposition of regressive U.S. values on the taxpayer resources of other nations and infringes on the sovereignty of host countries.

Indeed, the global gag rule applies even in countries where abortion is broadly legal. The majority of countries that receive U.S. global health funding allow for legal abortion in at least one case not permissible by the exemptions of the gag rule (rape, incest or the life of the mother).²⁰ In these instances, the United States is attempting to override or disregard local laws and dragging health care providers back to a time when abortion had to be performed clandestinely.

Time for Congressional Action

The intent of the global gag rule and the related array of restrictive U.S. policies is clear: to target abortion and score political points at home. This is about ideology, not evidence. The evidence says that there will always be people who want and obtain abortion services, and that the best way to save lives is to make abortion safe, legal and readily accessible. The ideology of the Trump administration is to make a show of targeting specific populations, attempt the impossible task of legislating abortion out of existence and put lives at risk. The expansion of the global gag rule is particularly

egregious, as the people most affected—health care providers and patients overseas—are exactly those who lack legal or political recourse against U.S. policy.

The global gag rule does not have to stand: Congress can act and lay the groundwork for a permanent end to the policy. The Global Health, Empowerment and Rights (HER) Act, which has been introduced in both the House and Senate, would reverse and permanently repeal the global gag rule.²¹ Upon introduction, the legislation had 192 cosponsors in the House and 46 in the Senate, including two Republicans.

If enacted, the Global HER Act would enable organizations to use their own funds to provide safe abortion care, in line with local laws, while receiving U.S. foreign assistance. NGOs would be able to speak freely in support of abortion rights and promote the democratic process in their own countries. Because the gag rule repeal would be permanent, there would no longer be a massive switch in global health policy with every change in federal administration, bringing much-needed stability to partners' work.

At the same time, Congress must address the larger legislative architecture that prevents abortion from being included as part of the full package of comprehensive sexual and reproductive health services, as recommended by the Guttmacher-*Lancet* Commission.²² The main policy that must be repealed is the Helms Amendment, which prohibits U.S. funding from being used to provide safe abortion services, with limited exceptions. This amendment has been in place since 1973, a time when women in the United States did not have the guaranteed right to serve on a jury, unmarried women were often unable to get a credit card without a male signatory, and pregnant women had no legal protection from being discriminated against at work.²³ Clearly, it is a throwback to another era and out of step with our current vision for sexual and reproductive health and rights.

Today, a majority (54%) of American voters believe that people around the world should have access to the full range of sexual and reproductive health services, including abortion, and that the Helms Amendment should be overturned.²⁴ Not only is reversing Helms the correct thing to do for health and human rights, but Congress would get to reflect the will of the American people. Allowing abortion to become a part of holistic U.S. global health programs would recognize that there

cannot be health without rights, and that being able to talk about abortion is insufficient if you cannot access the service.

Addressing these issues and expanding access to sexual and reproductive health services is more vital than ever, as the world confronts the effects of the COVID-19 pandemic and massive disruptions to health systems. If just 10% of the 34 million safe abortions that currently occur annually in low- and middle-income countries became unsafe because of a lack of access to health facilities and trained providers, an additional 3.3 million unsafe abortions and 1,000 maternal deaths would result.²⁵ Ensuring that foreign NGO partners can use U.S. foreign assistance funds to address critical sexual and reproductive health needs, including safe abortion, is of paramount importance, especially during this global crisis.²⁶

By enacting the Global HER Act and repealing the Helms Amendment, as well as appropriating more funding for international reproductive health initiatives, the United States could once again be the world's leader on sexual and reproductive health and rights. Taking action to mitigate the harm caused by this expanded iteration of the global gag rule and prevent its implementation in the future is a critical policy change to make after using the lives and choices of so many as a political football. ■

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