



November 13, 2020

U.S. Department of Defense
General Services Administration
National Aeronautics and Space Administration

RE: Federal Acquisition Regulation: Protecting Life in Global Health Assistance

To Whom It May Concern,

The American Center for Law and Justice (ACLJ) submits the following comments, on behalf of itself and tens of thousands of its members¹ supporting the adoption of the proposed rule issued by the Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) on September 14, 2020, regarding the implementation of the Protecting Life in Global Health Assistance policy in connection with the Presidential Memorandum regarding “The Mexico City Policy,” from January 23, 2017.

By way of introduction, the ACLJ is an organization dedicated to protecting human rights and religious freedom in the United States and around the world. ACLJ attorneys have argued and participated as counsel of record in numerous cases involving constitutional issues before the Supreme Court of the United States. *See Sumnum v. Pleasant Grove*, 555 U.S. 460 (2009); *NOW v. Scheidler*, 547 U.S. 9 (2006); *McConnell v. FEC*, 540 U.S. 93 (2003); *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987).

¹ These comments are joined by more than 45,000 ACLJ members who have signed our Petition – Don’t Allow U.S. Tax Dollars to Fund International Abortion, *available at* <https://aclj.org/pro-life/dont-allow-us-tax-dollars-to-fund-international-abortion>.

Background

On January 23, 2017, President Trump issued a Presidential Memorandum reinstating the 2001 Presidential Memorandum on the “Mexico City Policy,” which was issued under former President George W. Bush and was then revoked under former President Obama.² In the Memorandum, President Trump “direct[ed] the Secretary of State, in coordination with the Secretary of Health and Human Services . . . to implement a plan to extend requirements of the reinstated Memorandum to global health assistance furnished by all departments or agencies.”³ The President “further direct[ed] the Secretary of State to take all necessary actions . . . to ensure that U.S. taxpayer dollars do not fund organizations or programs that support or participate in the management of a program of coercive abortion or involuntary sterilization.”⁴ This directive implemented a plan called “Protecting Life in Global Health Assistance” (PLGHA), the purpose of which is, again, to ensure “that no U.S. taxpayer money should support foreign organizations that perform or actively promote abortion as a method of family planning in other nations.”⁵

Originally announced in 1984 by President Ronald Reagan, the Mexico City Policy prohibits foreign non-governmental organizations (NGOs) from receiving federal funds if such NGOs “perform or actively promote abortion as a method of family planning.”⁶

Under the previous version of the Mexico City Policy, the prohibition on abortion funding applied to about \$575 million each year. Under the extended PLGHA plan, \$8.8 billion in foreign aid is affected – a significant stride forward in the effort to ensure that U.S. foreign policy truly stands for a founding principle of our country – the right to life.

Historical and Statutory Framework

The Foreign Assistance Act of 1961 (FAA), 22 U.S.C. § 2151 *et seq.* (2008), authorizes the President to “furnish assistance, on such terms and conditions as he may determine, for voluntary population planning.” 22 U.S.C. § 2151b(b). Under a subsequently enacted amendment to the FAA, however, the President does not have unbridled discretion in furnishing such assistance. Enacted in 1973, the Helms Amendment

Prohibits use of USAID or international fund to pay for ‘the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortion; . . . the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations; . . . any biomedical research which relates, in whole or in part, to methods of, or the

² Presidential Memorandum Regarding the Mexico City Policy, WHITE HOUSE (Jan. 23, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-mexico-city-policy/>.

³ *Id.*

⁴ *Id.*

⁵ Federal Acquisition Regulation: Protecting Life in Global Health Assistance, FEDERAL REGISTER, <https://www.federalregister.gov/documents/2020/09/14/2020-17551/federal-acquisition-regulation-protecting-life-in-global-health-assistance> (last visited Nov. 12, 2020).

⁶ *Id.*

performance of, abortions or involuntary sterilization as a means of family planning.’⁷

At the 1984 United Nations International Conference on Population in Mexico City, the United States announced that it would begin imposing additional restrictions on its disbursement of family planning funds to foreign nations and FNGOs. In its Policy Statement, the United States declared the following:

The United Nations Declaration of the Rights of the Child (1959) calls for legal protection for children *before birth as well as after birth*. In keeping with this obligation, the United States does not consider abortion an acceptable element of family planning programs and will no longer contribute to those of which it is a part. Accordingly, when dealing with nations which support abortion with funds not provided by the United States Government, the United States will contribute to such nations through segregated accounts which cannot be used for abortion. Moreover, the United States will no longer contribute to separate nongovernmental organizations which perform or actively promote abortion as a method of family planning in other nations. With regard to the United Nations Fund for Population Activities (UNFPA), the U.S. will insist that no part of its contribution be used for abortion. The U.S. will also call for concrete assurances that the UNFPA is not engaged in, or does not provide funding for, abortion or coercive family planning programs; if such assurances are not forthcoming, the U.S. will redirect the amount of its contribution to other, non-UNFPA, family planning programs.

In addition, when efforts to lower population growth are deemed advisable, U.S. policy considers it imperative that such efforts respect the religious beliefs and culture of each society, and the right of couples to determine the size of their own families. Accordingly, the U.S. will not provide family planning funds to any nation which engages in forcible coercion to achieve population growth objectives.⁸

Accordingly, USAID, to whom allocation of FAA family planning funds has been delegated,⁹ incorporated the so-called “Standard Clause into its family planning assistance agreements and contracts.”¹⁰ The Standard Clause essentially conditions receipt of USAID funds on an NGO’s written certification that it will not “perform or actively promote abortion as a method of family planning in AID-recipient countries or provide financial support to other [NGOs] that conduct such activities.”¹¹ Importantly, the Standard Clause

⁷ Ctr. for Reprod. Law & Pol’y v. Bush, 2001 U.S. Dist. LEXIS 10903, No. 01 Civ. 4986, *10 (S.D.N.Y. July 31, 2001) (quoting the Helms Amendment, 22 U.S.C. § 2151b(f)).

⁸ Policy Statement of the United States of America at the United Nations International Conference on Population (2nd Session, Aug. 1984), available at http://www.populationaction.org/Publications/Reports/Global_Gag_Rule_Restrictions/MexicoCityPolicy1984.pdf (emphasis added).

⁹ Ctr. for Reprod. Law & Policy, 2001 U.S. Dist. LEXIS 10903 at **10-11.

¹⁰ Id. at *13 (citing Planned Parenthood Fed. of Am. v. AID, 1990 U.S. Dist. LEXIS 2430, No. 8/Civ. 0248, at **1-2 (S.D.N.Y. Mar. 7, 1990)).

¹¹ Planned Parenthood Fed. of Am., 1990 U.S. Dist. LEXIS 2430 at **4-5.

prohibits an NGO from using any funding, private or otherwise, to perform abortions or to promote the practice as a viable method of family planning.¹²

The PLGHA plan is consistent with Federal law, and merely extends the Mexico City Policy's protections of life to global health funds furnished to NGOs by all federal departments or agencies.

Notably, under the PLGHA plan, the total amount of global health assistance being used to support health programs around the world is not reduced, and humanitarian assistance and lifesaving HIV/AIDS work/services are provided without interruption. Furthermore, according to a 2018 report, out of the 733 organizations whose funding was up for renewal under the new policy, 729 agreed to the rules and had their grants approved¹³. These NGOs were thus able to continue providing much needed aid around the world.

Societal Interest in the Enactment of this Rule

Our nation was founded on the principle that human beings have God-given, inalienable rights as stated in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.¹⁴

Generally, it is good for society to shape its laws in ways that acknowledge these rights and protect them. As Americans, we have always valued the right to life, and we should continue to do so. While there is certainly robust debate surrounding the issue of abortion in the United States, a recent poll revealed that a large majority of American's support restrictions on abortion, and "the finding that 70% of Americans either oppose abortion or favor limits on it rather than having it legal under any circumstances is echoed in the large majorities of Americans who have consistently said it should not be legal in the second (65%) and third (81%) trimesters."¹⁵

Indeed, abortion is one of the gravest of all offenses against human life and against justice because it entails the deliberate killing of an innocent human being. A procedure that deliberately takes the life of a live human being, heart pounding away in his or her mother's womb, is plainly a procedure that fosters insensitivity to, and disdain of, the life in the womb. Indeed, such a killing is the embodiment of disdain for human life.

It is an indisputable scientific fact that the human child in the womb is a distinct biological organism, is alive, and belongs to the species *homo sapiens*. Thus, any justification of

¹² See Richard P. Cincotta and Barbara B. Crane, The Mexico City Policy on U.S. Family Planning Assistance, *SCIENCE*, Oct. 19, 2001, at 525.

¹³ Matthew Lee, *US Says Abortion Gag Rule Cost Only 4 Organizations Funding*, ASSOCIATED PRESS (7 Feb. 2018), <https://apnews.com/f5472c575bee40fd8ded4efd7dbb94fd>.

¹⁴ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

¹⁵ Lydia Saad, *Where Do Americans Stand on Abortion?* GALLUP (Sept. 29, 2020), <https://news.gallup.com/poll/321143/americans-stand-abortion.aspx>.

abortion (aside from the extremely rare life vs. life situations where a mother is at serious risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, the right to live. That proposition is incompatible not only with our Declaration of Independence, but with International Law and the very notion of human rights found in documents such as the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states: “*of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, [that] these rights derive from the *inherent dignity of the human person*, . . . [and that] every human being has the inherent right to life. This right shall be protected by law.”¹⁶*

For over 50 years, these words have been enumerated in the International Covenant on Civil and Political Rights (ICCPR) – one of the international community’s commitments to protecting the life of *every human being*. It is not just in the United States that life is to be valued, nor is it the only place where abortion is found repugnant.

Legality of Abortion World-Wide

According to the Center for Reproductive Rights, abortion is accessible to women in 67 countries, with some gestational limitations, the most common of which is a limit on abortions after 12 weeks of pregnancy¹⁷. Fourteen countries allow abortion on “broad social or economic grounds”¹⁸; 56 countries “permit abortion to preserve” the mother’s life or health, including mental health; 39 countries permit abortion only where the mother’s life is at risk. Finally, 26 countries prohibit abortion altogether. Thus, out of the 202 countries discussed, a large majority – 121 countries – have strict limitations on abortion. The remaining 81 countries also have varying degrees of limitations on abortion.

Clearly, induced abortion is a controversial topic, and is not viewed favorably in a majority of countries. Moreover, abortion laws and regulations in specific countries are not clear cut, but are complicated and complex. In many countries where abortion is allowed more freely, there are still legal restrictions on government funding of abortion, as well as limits on the reasons for which a woman may have an abortion. As one report notes:

[t]he existence of multiple [abortion] laws for a given country is an additional aspect that contributes to the complexity of comparing abortion laws across countries. Some countries, for example, have enacted special, dedicated abortion laws, while others have developed public health codes or medical ethics codes containing certain provisions that clarify how to interpret an abortion law¹⁹.

¹⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, preamble, art. 6.

¹⁷ *The World’s Abortion Laws*, CENTER FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/worldabortionlaws> (last visited 29 Aug. 2020).

¹⁸ *Id.*

¹⁹ World Population Policies 2017, Department of Economic and Social Affairs, Population Division, ST/ESA/SER.A/447, United Nations, New York 2020, *available at*

What most countries do agree on is that the State has an interest, not only in protecting women and girls, but also in protecting the lives of all their citizens – including the unborn²⁰. This interest is enshrined in national and international documents alike, as well as through the legislation of individual countries.

For instance, the Universal Declaration of Human Rights recognizes that “the inherent dignity and . . . equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world,” and that *[e]veryone* has the right to life . . .”²¹. Article 6 of the International Covenant on Civil and Political Rights likewise states that “*[e]very* human being has the inherent right to life. [And that this] right shall be protected by law”²². It is important to note that while many international treaties contain provisions for the protection and promotion of the right to life, not one contains a “right to abortion.”

In November 2019, the United States, on behalf of Brazil, Belarus, Egypt, Haiti, Hungary, Libya, Poland, Senegal, St. Lucia, and Uganda issued a joint statement on the Nairobi Summit highlighting an active agenda on the part of some within the United Nations to push abortion in disregard of the sovereign rights of each country. In that statement, the countries noted that “ambiguous terms and expressions, such a sexual and reproductive health and rights . . . do not enjoy international consensus,” and that “the use of the term . . . may be used to actively promote practices like abortion”²³. The countries further noted that “[t]here is no international right to abortion”²⁴. Moreover, the statement correctly noted that “[a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the legislative process”²⁵. Not through the efforts of pro-abortion advocates who push the funding of abortion through means such as humanitarian aid packages.

Abortion is Dangerous for Women and No U.S. Aid Funds Should Be Used to Promote or Pay for It

Published research strongly indicates that abortion, rather than being safe – even safer than childbirth as most pro-abortion advocates falsely claim – is in fact more dangerous.

In Finland, for example, researchers drew upon national health care data to examine the pregnancy history of all women of childbearing age who died, for any reason, within one

https://www.un.org/en/development/desa/population/publications/pdf/policy/WPP2017/WPP2017_Report.pdf.

²⁰ *Id.*

²¹ Universal Declaration of Human Rights preamble, Art. 3.

²² International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 6.

²³ Joint Statement on Nairobi Summit, Nairobi, 25th Anniversary of the International Conference on Population & Development (14 Nov. 2019), *available at* <https://www.hhs.gov/about/agencies/oga/global-health-diplomacy/protecting-life-global-health-policy/joint-statement-on-the-nairobi-summit-on-the-icpd25.html>.

²⁴ *Id.*

²⁵ *Id.*

year of childbirth, abortion, or miscarriage, between the years of 1987 and 1994 (a total of nearly 10,000 women). The study found that, adjusting for age, women who had abortions were 3.5 times more likely to die within a year than women who carried to term²⁶.

A subsequent study based upon Medicaid records in U.S. State, California, likewise found significantly higher mortality rates after abortion. The study linked abortion and childbirth records in 1989 with death certificates for the years 1989-97. This study found that, adjusting for age, women who had an abortion were 62% more likely to die from any cause than women who gave birth²⁷.

Yet another study, this one of nearly a half million Danish women, found that the risk of death after abortion was significantly higher than the risk of death after childbirth²⁸. The study specifically examined both early (before 12 weeks' gestation) and late (after 12 weeks' gestation) abortions, and found statistically significantly higher death rates for both groups as compared to mortality after childbirth.

A more recent meta-analysis of nearly 1000 studies concluded that a woman's risk of premature death increases by 50% after having an abortion, and that this lethal effect lasts at least ten years²⁹.

The Finland and California studies mentioned above both showed, *inter alia*, a heightened risk of suicide after abortion³⁰. (The Danish study did not examine this aspect.) A British study found the same thing³¹. All these studies are consistent with the many studies documenting adverse emotional consequences after abortion³².

Of course, abortion can also cause physical harm, beyond the harm (i.e., death) to the unborn child. This can result directly from the procedure itself (e.g., perforation of the uterus, laceration of the cervix), from the deprivation of the health benefits of continuing pregnancy (e.g., eliminating the protective effect of a full-term pregnancy against breast

²⁶ Mika Gissler, et al., Pregnancy-associated deaths in Finland 1987-1994-definition problems and benefits of record linkage, 76 *Acta Obstetrica et Gynecologica Scandinavica* 651 (1997).

²⁷ David C. Reardon, et al., Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women, 95 *SO. MED. J.* 834 (2002).

²⁸ David C. Reardon & Priscilla K. Coleman, Short and Long Term Mortality Rates Associated with First Pregnancy Outcome: Population Register Based Study for Denmark 1980-2004, 18 *MED. SCI. MON.* 71 (2012).

²⁹ David C. Reardon & John M. Thorp, Pregnancy Associated Death in Record Linkage Studies Relative to Delivery, Termination of Pregnancy, and Natural Losses: A Systematic Review with a Narrative Synthesis and Metaanalysis, 5 *Sage Open Medicine* 1 (2017).

³⁰ See also Mika Gissler, et al., Suicides after Pregnancy in Finland: 1987-94: Register Linkage Study, 313 *BRITISH MED. J.* 1431 (1996) (suicide rate after induced abortion was six times higher than suicide rate after childbirth).

³¹ Christopher L. Morgan, et al., Mental Health May Deteriorate as a Direct Effect of Induced Abortion, 314 *BRITISH MED. J.* 902 (Mar. 22, 1997) (letters section) (found suicide attempts more than four times as frequent after abortion than after childbirth).

³² See David C. Reardon, Abortion Decisions and the Duty to Screen: Clinical, Ethical and Legal Implications of Predictive Risk Factors of Post-Abortion Maladjustment, 20 *J. CONTEMP. HEALTH L. & POL'Y* 33, 39 n.14 (2003) (citing nearly three dozen sources).

cancer)³³, or by masking other dangerous symptoms (e.g., a woman with an infection or an ectopic pregnancy may believe her symptoms are merely normal after-effects of abortion, leading her to delay seeking medical help)³⁴.

Furthermore, another U.S. study revealed that

58.3% of the women reported aborting to make others happy, 73.8% disagreed that their decision to abort was entirely free from even subtle pressure from others to abort, 28.4% aborted out of fear of losing their partner if they did not abort, 49.2% reported believing the fetus was a human being at the time of the abortion, 66% said they knew in their hearts that they were making a mistake when they underwent the abortion, 67.5% revealed that the abortion decision was one of the hardest decisions of their lives, and 33.2% felt emotionally connected to the fetus before the abortion³⁵.

In that same study, the women were asked what positives stemmed from their decision to abort. Twenty-two percent of the women chose not to answer this question, while 31.6% responded by choosing the survey answer as “none”³⁶.

When asked about the most significant negatives that had impacted them from the decision to abort, women listed the following:

- Took a life/loss of a life of lives
- Depression
- Guilt/Remorse
- Self-hatred/anger at self/self-loathing/feelings of worthlessness/unworthy of love
- Shame
- Addiction, alcohol or drug abuse
- Regret
- Self-destructive behaviors including promiscuity, self-punishment, and poor choices
- Low self-esteem
- Anxiety/fear
- Suicidal/suicidal thoughts/wanting to die/self-harm/dangerous risks/suicidal attempts³⁷

³³ See Justin D. Heminger, Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco, 54 CATH. U.L. REV. 1273, 1288-89 & nn.119 & 121 (2005).

³⁴ See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, THE UNCHOICE, www.theunchoice.com/physical.htm (listing sequelae and referencing sources) (last visited 29 Aug. 2020).

³⁵ Priscilla K. Coleman, Ph.D., et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, JOURNAL OF AMERICAN PHYSICIANS & SURGEONS, Vol. 22 No. 4, p. 115 (2017), available at <https://www.jpands.org/vol22no4/coleman.pdf>.

³⁶ *Id.*

³⁷ *Id.* at 116-17.

All of these factors contribute to the repugnant nature of abortion and to the reasons why U.S. taxpayers should not be forced to fund it abroad.

VI. CONCLUSION

The ACLJ urges the DoD, GSA, and NASA to adopt the Rule in its entirety. The PLGHA plan is absolutely crucial to preventing the use of American taxpayer dollars for the performance and promotion of abortion and abortion-related activities (such as biomedical research and sterilization) in foreign nations. The Rule is consistent with both the original Executive Order and with Federal law, and contrary to what some may believe, the plan does not reduce family planning funding overseas nor does it cripple women in their fight for reproductive rights. The PLGHA plan merely ensures that federal funds are not used to promote a practice that many Americans find repugnant and that many foreign nations still oppose.

Finally, the ACLJ commends and supports the agencies in their mission to make ensure that innocent human life is protected around the world. In prior administrations, federal agencies implemented policies that demonstrated a disregard for the sanctity of human life, agnosticism toward its duty to uphold the law, and hostility toward states that wished to act in the best interests of their citizens on the issue of life. Notwithstanding its past acts, however, the ACLJ is greatly encouraged by strides made by federal agencies to change course and correct these past mistakes, preferring to recognize the humanity of the unborn, respect the freedom of conscience, and uphold the law. The Rule should be adopted.

Thank you for the opportunity to provide comment on this critical matter.

A handwritten signature in black ink that reads "Jordan Sekulow". The signature is written in a cursive, flowing style.

Jordan Sekulow
Executive Director
AMERICAN CENTER FOR LAW & JUSTICE