

## IMPACT OF GLOBAL GAG RULE ON WOMEN'S HEALTH

January 2017

The Global Gag Rule (GGR) is a U.S. foreign policy that – when enacted – prohibits foreign non-governmental organizations (NGOs) that receive U.S. family planning funds from advocating for abortion or providing abortion as a method of family planning. It does not prohibit activities around abortion in the cases of rape, incest, and life endangerment. However, it is unclear as to whether or not services are actually provided under the three exceptions.

Under the GGR, foreign NGOs are forced to choose between one of two options:

1. Accept U.S. family planning funds and be prohibited from providing abortion counseling, referrals, or even advocacy efforts and from providing abortions outside of the three exceptions.
2. Refuse U.S. family planning funds and attempt to secure alternative sources of funding in order to keep health clinics open, continue providing a range of sexual and reproductive health services to clients, and continue advocating for law reforms to reduce unsafe abortion.

The GGR – also known as the “Mexico City Policy” – serves as a barrier to a wide range of health services for women and girls globally.

[Two hundred and twenty-five million](#) women who wish to avoid future pregnancies are not using modern methods of family planning to avoid pregnancy.<sup>1</sup> Every year, 74 million unintended pregnancies occur in developing countries, leading to an estimated 28 million unplanned births and [36 million abortions](#).<sup>2</sup> More than 21 million of these abortions are unsafe, and deaths due to unsafe abortion make up nearly [13% of all maternal deaths](#) globally.<sup>3</sup> USAID is a leading donor addressing women’s contraceptive needs, accounting for nearly half of all donor assistance in this area.

A [2010 study](#) from the Leitner Center for International Law and Justice at Fordham Law School found the GGR negatively impacted Ethiopia’s efforts to mitigate the high rates of **unsafe abortion**.<sup>4</sup> The report found that organizations that refused to comply with the GGR lost their USAID funding which **resulted in loss of service via clinics, contraceptive supplies, technical support, and equipment**. Organizations that did not comply were prohibited from attending NGO meetings funded by USAID, thus inhibiting cross-organizational information sharing about maternal mortality, supply chains, and clinical practices. Providers in clinics who complied with the GGR were unable to give their clients accurate medical information, resulting in women losing trust in their providers.

### The Global Gag Rule has:

- Prevented women and girls from accessing contraception and safe abortion consistent with the laws in their countries
- Been associated with increased abortion rates
- Hampered HIV prevention efforts
- Contributed to the closing of health clinics
- Obstructed rural communities access to health care
- The potential to negatively affect the speed and effectiveness of humanitarian aid.

A 2011 Stanford University study, published in the Bulletin of the World Health Organization, examined the effects of the GGR in sub-Saharan Africa after President George W. Bush reinstated it in 2001.

The [study](#) looked at the association between the GGR and abortion and found that the "Mexico City Policy is **associated with increases in abortion rates** in sub-Saharan African countries".<sup>5</sup> Possible causes include **reduced access to contraception** leading to increased unintended pregnancies and more reliance on abortion to prevent unwanted birth.

A threat to health and science, **the GGR hampers HIV prevention** efforts because of the closing of health clinics and disruption of relationships and supply chains of commodities – leading to reduced access to condoms and to sexual health services generally. For example, during the Clinton Administration, the Lesotho Planned Parenthood Association received 426,000 condoms over two years from USAID.<sup>6</sup> When the GGR went back into effect in 2001, USAID had to **suspend condom shipments** to Lesotho because the Planned Parenthood was the only provider of condoms in that country. At that time the condom shipments were ceased, one in four women in Lesotho was infected with HIV.

The GGR also results in the closure and consolidation of clinics. A [2015 study](#) found that Planned Parenthood Association of Ghana had to **close and consolidate many clinics** because they could not take USAID funding after the imposition of the GGR. In the aftermath, there was an **increase in unwanted pregnancies across the country**.<sup>7</sup>

Research conducted from 2002 to 2006, during the Bush imposition of the policy, showed the devastating impact of the GGR on the health of women in Kenya. The Family Planning Association of Kenya and Marie Stopes International (MSI) Kenya, leading providers of health care to people living in **poor and rural communities** in the country, refused USAID funding rather than comply with the GGR. A [2005](#) study from the Joseph R. Crowley Program at Fordham University found that this loss of U.S. funding drastically **curtailed community-based outreach activities for contraceptive counseling and provision, condom distribution, and HIV testing and the flow and availability of contraceptive supplies**.<sup>8</sup> A consortium of NGOs led by PAI also found that USAID had to cut off shipments of contraceptives – already in short supply – to 16 countries in Sub-Saharan Africa, Asia, and the Middle East.

Disqualifying certain foreign NGOs from receiving US funding will also have a **negative impact on the speed and effectiveness of humanitarian aid**, thereby increasing hardships for women and their families. Marie Stopes International United States (MSI-US), which would be disqualified from receiving U.S. funding under the GGR, [wrote](#) that in the few months after the devastating Nepal earthquake in April 2015, they used U.S. assistance to give 2,843 general and gynecological examinations, provide 586 contraceptive-implants, distribute 355 safe-delivery kits, and provide 886 pre- and postnatal visits for women and their infants.<sup>9</sup> Such services by MSI and others would be reduced or eliminated under the GGR.

## THE GLOBAL GAG RULE: A TIMELINE OF POLICY AND LEGAL ACTIONS

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### **1984 Mexico City Policy Announced**

At the International Conference on Population and Development held in Mexico City in 1984, the Reagan Administration announced a policy, referred to as “The Mexico City Policy”, or “the Global Gag Rule”: Foreign non-governmental organizations (NGOs) receiving U.S. family planning assistance must certify, through a Standard Provision – as a condition of funding – that they will not use their own, non-U.S. funds, for performing, advising on, or endorsing abortion as a method of family planning. The policy includes exceptions for abortions performed in cases of rape, incest, and life endangerment.

### **1989 DKT Mem'l Fund Ltd. v. Agency for Int'l Dev., 887 F.2d 275, 278 (D.C. Cir. 1989)**

In this first court challenge on whether the GGR violates domestic NGOs free speech, the majority did not find that the policy infringed on the NGO's First Amendment free speech rights, since the certification requirement of the GGR did not restrict the domestic NGO from using its private funds for abortion services nor for abortion promotion and did not require the NGO to promote government policy with its own funds.

### **1990 Planned Parenthood Fed'n of Am., Inc. v. Agency for Int'l Dev., 915 F.2d 59 (2d Cir. 1990)**

The domestic NGO PPFA alleged that the GGR infringed on its First Amendment rights to freely associate and collaborate with foreign NGOs, such as Planned Parenthood's foreign affiliates. The court rejected this, finding "no constitutional rights implicated" by the Standard Provision because domestic NGOs can use their own private funds to pursue abortion-related activities in foreign countries and that any harm is the result of foreign NGOs choosing to take USAID funds.

### **1990 Pathfinder Fund v. Agency for Int'l Dev., 746 F. Supp. 192 (D.D.C. 1990)**

In this challenge, the court addressed the issue left undecided in DKT International. It considered whether the First Amendment right of expressive association of Pathfinder and two other domestic NGOs was infringed by the GGR. The court held that the NGOs' right of expressive association was not infringed and that the Standard Provision did not impose a "substantial burden" on Pathfinder et al. The court determined that the Standard Provision was “rationally related” to the government's interests and that it was constitutional as applied.

**1993** President Bill Clinton [rescinds](#) the Global Gag Rule on January 22, 1993.<sup>10</sup>

**1999** A modified Global Gag Rule is written into law as a “one-year deal” by the Republican Congress, and President Bill Clinton signs in exchange for the release of more than one billion dollars of unpaid United Nations dues.

**2000** After the one-year legislative restriction [lapses](#), the GGR is not in effect.<sup>11</sup>

**2001** President George W. Bush [re-imposes](#) the GGR in a memorandum on January 22, 2001.<sup>12</sup> In March of that year, an additional presidential memorandum is issued permitting post-abortion care but requiring foreign NGOs to certify that they do not “perform or actively promote abortion as a method of family planning” as a condition of receiving U.S. family planning assistance and will not do so while receiving such assistance.<sup>13</sup> Assistance is defined to include not just funds but the provision of technical assistance, customized training, and commodities, including contraceptive supplies. Medical equipment purchased with U.S. funds, as well as facilities supported by U.S. funds, may not be used to provide abortion services as a method of family planning.

**2002 CRLP v. Bush, 304 F.3d 183 (2d Cir. 2002)** This case was brought against the Bush Administration by a United States-based human rights organization and individually-named international human rights attorneys, asserting that the GGR violated their free speech, due process, and equal protection rights by impeding their ability to work overseas with women’s rights organizations seeking law reform to expand access to abortion. The free speech claim was denied based on the *Planned Parenthood* decision, the due process claim was rejected for lack of standing (the organizations harmed by vague language are foreign NGOs, not CRLP) and the equal protection claim was rejected because the United States “Supreme Court has made clear that the government is free to favor the anti-abortion position over the pro-choice position, and can do so with public funds.”

**2009** President Barack Obama [rescinds](#) the Global Gag Rule memorandum on Jan. 23, 2009.<sup>14</sup>

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<sup>1</sup> World Health Organization, *Fact Sheet: Family Planning/Contraception* (Dec. 2016), available at <http://who.int/mediacentre/factsheets/fs351/en/>.

<sup>2</sup> Singh, et al., *Adding it Up: The Costs and Benefits of Investing in Sexual and Reproductive Health*, Guttmacher Institute (2014), available at [https://www.guttmacher.org/sites/default/files/report\\_pdf/addingitup2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/addingitup2014.pdf).

<sup>3</sup> World Health Organization, *Preventing unsafe abortion* (2017), available at [http://www.who.int/reproductivehealth/topics/unsafe\\_abortion/magnitude/en/](http://www.who.int/reproductivehealth/topics/unsafe_abortion/magnitude/en/).

<sup>4</sup> Leitner Center for International Law and Justice, *Exploring Confusion: U.S. Foreign Policy as an Obstacle to the Implementation of Ethiopia’s Liberalized Abortion Law*, Fordham Law School (May 2010).

<sup>5</sup> Bendavid, et al., *United States aid policy and induced abortion in sub-Saharan Africa*, Bulletin of the 89 World Health Organization 12, 873-880 (2011).

<sup>6</sup> Sneha Barot & Susan A. Cohen, *The Global Gag Rule and Fights Over Funding UNFPA: The Issues That Won’t Go Away*, 18 Guttmacher Policy Review 2, 27-33 (2015).

<sup>7</sup> Kelly M. Jones, *Contraceptive Supply and Fertility Outcomes: Evidence from Ghana*, 64 Economic Development and Cultural Change 1, 31-69 (2015).

<sup>8</sup> Hoodbhoy, et al., *Exporting Despair: The Human Rights Implications of U.S. Restrictions on Foreign Health Care Funding in Kenya*, 29 Fordham Int’l L.J. 1, 1-126 (2005).

<sup>9</sup> Marie Stopes International United States, *The US Presidential Election: What will it mean for the women we serve?* (2016), available at <https://www.mariestopes-us.org/2016/us-funding-international-family-planning/>.

<sup>10</sup> U.S. Office of the Press Secretary, *Memorandum for the Acting Administrator of the Agency on International Development*, (Jan. 22, 1993), available at <https://clinton6.nara.gov/1993/01/1993-01-22-aid-family-planning-grants-mexico-city-policy.html>.

<sup>11</sup> Center for Reproductive Rights, *The Bush Global Gag Rule: Endangering Women’s Health, Free Speech and Democracy*, (July 1, 2013), available at <https://www.reproductiverights.org/document/the-bush-global-gag-rule-endangering-womens-health-free-speech-and-democracy>.

<sup>12</sup> U.S. Office of the Press Secretary, *Memorandum for the Administrator of the United States Agency for International Development*, (Jan. 22, 2001), available at <https://georgewbush-whitehouse.archives.gov/news/releases/20010123-5.html>.

<sup>13</sup> U.S. Office of the Press Secretary, *Memorandum for the Administrator of the United States Agency for International Development*, (Mar. 28, 2001), available at <http://www.jurist.org/documents/presidentialmemos/2001/03/01-8011.php>.

<sup>14</sup> U.S. Office of the Press Secretary, *Statement of President Barack Obama on Rescinding the Mexico City Policy*, (Jan. 23, 2009), available at <https://www.whitehouse.gov/the-press-office/statement-president-barack-obama-rescinding-mexico-city-policy>.