



NARAL
Pro-Choice America

Repeal the Helms Amendment

Enacted in 1973, the Helms amendment has resulted in a near-total ban on U.S. assistance to some of the world's poorest women who need abortion care.

Though the text of the amendment prohibits the use of foreign-assistance funds to pay for “the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions,”¹ it has been wrongly interpreted and implemented as a de facto ban on abortion funding at U.S.-funded clinics even when a woman's life is in danger, or she is a survivor of rape or incest. It has also deterred international health-care providers from offering abortion-related counseling or referrals, and sometimes interfered with tangentially associated care such as safe miscarriage management.

As a whole, the Helms amendment clearly makes it more difficult for women to obtain safe abortion care throughout the developing world. The situation on the ground is made even worse by this dangerous misinterpretation. Over the past year, important developments have demonstrated that there is growing momentum to repeal this harmful policy in its entirety. For the first time ever, the 2016 Democratic Party platform explicitly calls for repeal of the Helms amendment.²

Full repeal requires congressional action, a step that NARAL Pro-Choice America calls on lawmakers to take. In the meantime, the administration can act to clarify that the current-law policy is not a total ban. It is clear that abortion services in the instances of life endangerment, rape, or incest are not prohibited by the language of the law. The U.S. government can and should easily resolve this misinterpretation by issuing guidance to U.S.-funded health centers overseas clarifying that these exceptions—when consistent with local law—are permissible, and that U.S. funds may pay for abortion care in these cases.

Why Issue Clarifying Guidance?

Women in Need

Overseas health centers presume that abortion care in the case of life endangerment, rape, or incest is not permitted because these exceptions are not explicitly included in current Helms amendment guidance, as they are in other government programs. This presumption is incorrect, and clarifying the guidance is essential because many people in developing countries rely on U.S.-funded health centers for their medical care—and when women are denied abortion care even in cases of rape or life endangerment, the consequences are severe.

Sexual assault

Gender-based violence is a worldwide epidemic and rape as a weapon of war is all too common. U.S. foreign policy should not—and need not—deny survivors of sexual assault the option of safe abortion care at global health clinics.

- Physicians for Human Rights reports that every year, sexual violence is used against tens of thousands of women and girls during and after armed conflict, and that the crisis is acute in many East and Central African countries.³
- The International Rescue Committee’s 2013 report revealed that more than 600,000 refugees have fled the war in Syria and that rape was cited as “a primary reason” to flee. Gang rapes accompany other forms of violence including killings, torture and abductions.⁴
- The UN Population Fund estimated that in 2009, as many as 17,500 women were raped throughout the Congo as part of ongoing conflict there.⁵
- Perhaps as many as 500,000 women were systematically raped during the 1994 genocide in Rwanda.⁶
- During the war in Bosnia in the 1990s, more than 20,000 Muslim women were raped.⁷

Life endangerment

In developing countries, women suffer unacceptably high levels of pregnancy-related mortality, and common pregnancy complications can kill without proper medical intervention.

- The World Health Organization reports that eclampsia, or dangerously high blood pressure brought on by pregnancy, is one of the five leading causes of maternal death for women in low-resource settings.⁸ While this condition sometimes can be safely managed with other treatments, in severe cases abortion may be the only option to save the woman’s life.
- Additionally, back-to-back pregnancies can deplete essential nutrients, making mothers at higher risk for anemia and other complications such as uterine rupture, which can lead to fatal hemorrhage.⁹

A Matter of Fairness

Almost all other government programs permit federal coverage of abortion care in cases of life endangerment, rape, or incest:

Coverage permitted in cases of life endangerment, rape, or incest	Coverage banned without exception
<ul style="list-style-type: none"> • Medicaid¹⁰ • Medicare¹² • Children’s Health Insurance Program (CHIP)¹⁴ • Department of Defense¹⁵ • Federal Employee health Benefits Program¹⁶ • Indian Health Service¹⁷ • Bureau of Prisons¹⁸ • D.C. Medicaid¹⁹ • Peace Corps²⁰ 	<ul style="list-style-type: none"> • Helms amendment¹¹ • Department of Veterans Affairs¹³

The stark nature of the Helms amendment clearly does not comport with the abortion policies in most other programs. Proper guidance would settle this discrepancy.

Out of Step

Current Helms interpretation is not even in line with the views of prominent leaders of the anti-choice movement. Even the most ardently anti-choice advocates have voiced support for exceptions to abortion restrictions in cases of life endangerment, rape, and incest.

- Although his record was inconsistent on the issue, in the heat of his last presidential campaign, former Gov. Mitt Romney declared: “I am pro-life and believe that abortion should be limited to only instances of rape, incest, or to save the life of the mother.”²¹
- An official spokesperson for President George W. Bush stated in 2006 that: “the President has made very clear that he is pro-life with three exceptions.”²²
- Even Rep. Henry Hyde—the namesake of the Hyde amendment—said he supported abortion funds in in cases of life endangerment: “If it were a life for a life, then I could accept it.”²³

Other Unintended and Unnecessary Obstacles to Care

The Helms amendment’s overly broad interpretation has had other harmful consequences as well.

International women's health groups have documented that the Helms amendment, as interpreted by U.S. Agency for International Development (USAID) policies, dissuades health centers from stocking medical equipment used to treat complications of unsafe, illegal abortion simply because the necessary medical device—known as a manual vacuum aspirator (MVA)—can also be used for elective abortion.²⁴ Not only does this block access to clearly permitted post-abortion care, but it means that centers cannot provide abortion services in cases of life endangerment, rape, and incest.

In addition to clarifying that these exceptions are permitted, the guidance should explain that the Helms amendment does not prohibit comprehensive options counseling or safe abortion referrals or training, nor should it block procurement of necessary medical supplies to provide abortion in cases of life endangerment, rape, or incest.

By taking this simple action, the U.S. government would ensure that women in developing countries are not wrongly denied access to safe, legal abortion care.

January 1, 2017

Notes:

¹ 22 U.S.C. § 2151b(f)(1).

² 2016 Democratic National Convention Platform Committee, *2016 Democratic Party Platform*, July 21, 2016, available at <https://www.demconvention.com/wp-content/uploads/2016/07/Democratic-Party-Platform-7.21.16-no-lines.pdf>.

³ Physicians for Human Rights, *Stop Rape in War* at <http://physiciansforhumanrights.org/issues/rape-in-war/> (last visited Oct. 5, 2015).

⁴ Emily Alpert, *Syria refugees say rape is a key reason they fled, report says*, LOS ANGELES TIMES, Jan. 14, 2013, at <http://www.latimes.com/news/world/worldnow/la-fg-wn-syria-refugees-rape-20130114,0,7106644.story> (last visited Oct. 5, 2015).

⁵ *15,000 rapes in war-torn DR Congo* ALJAZEERA, Oct. 10, 2010 at <http://www.aljazeera.com/news/africa/2010/10/201010160582650725.html> (last visited Oct. 5, 2015).

⁶ *War's overlooked victims: Rape is horrifyingly widespread in conflicts all around the world*, ECONOMIST, Jan. 13, 2011 at <http://www.economist.com/node/17900482> (last visited Oct. 5, 2015).

⁷ *War's overlooked victims: Rape is horrifyingly widespread in conflicts all around the world*, ECONOMIST, Jan. 13, 2011 at <http://www.economist.com/node/17900482> (last visited Oct. 5, 2015).

⁸ World Health Organization, *Maternal mortality* (May 2014) at <http://www.who.int/mediacentre/factsheets/fs348/en/index.html> (last visited Oct. 5, 2015)

⁹ Madison Park, *In giving life, woman face deadly risk*, CNN, Nov. 1, 2011, at <http://www.cnn.com/2011/11/01/health/multiple-pregnancies-mother/index.html> (last visited Oct. 5, 2015).

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- ¹⁰ Commonly known as the Hyde amendment, this budget rider has been in place since the 1970s as part of the Health and Human Services appropriation budget, but was first enacted in its current form in 1994. See 107 STAT. 1084, 1113 (1994); Jon O. Shimabukuro, *Abortion: Judicial History and Legislative Response*, CONGRESSIONAL RESEARCH SERVICE, Sept. 16, 2015, at 11, available at www.fas.org/sgp/crs/misc/RL33467.pdf.
- ¹¹ The Foreign Assistance Act, 22 U.S.C. § 2151b(f)(1) (First passed in 1961, amended to include relevant provision in 1973).
- ¹² Like Medicaid, Medicare also receives its funding through the Health and Human Services appropriations and is therefore subject to the Hyde amendment. Several decades ago, however, there was some debate on that issue due to the trust system Medicare funds are subject to. In the late 1990s, however, the Secretary of Health and Human Services clarified that Hyde applied to Medicare funds. Letter from U.S. Health and Human Services Secretary Donna E. Shalala to U.S. Senator Don Nickles (June 22, 1998) (on file with the Clinton Presidential Library; http://www.clintonlibrary.gov/previous/KAGAN%20DPC/DPC%201-4/515_DOMESTIC%20POLICY%20COUNCIL%20BOXES%201-4.pdf). That clarification was later codified in the 1999 Omnibus Appropriations Act. 112 STAT. 2681–362 (1998).
- ¹³ This budget rider has been in place since 1992. 106 STAT. 4943, 4947 (1992); Sidath Viranga Panagala, *Health Care for Veterans: Answers to Frequently Asked Questions*, Apr. 30, 2015, at 8, available at <https://www.fas.org/sgp/crs/misc/R42747.pdf>.
- ¹⁴ CHIP is a program run by Medicaid and is therefore subject to the Hyde amendment. See generally Children’s Health Insurance Program, <http://www.medicaid.gov/chip/chip-program-information.html>; 107 STAT. 1084, 1113 (1994); Jon O. Shimabukuro, *Abortion: Judicial History and Legislative Response*, CONGRESSIONAL RESEARCH SERVICE, Sept. 16, 2015, at 11, available at <http://www.fas.org/sgp/crs/misc/RL33467.pdf>.
- ¹⁵ 10 U.S.C. § 1093(a) (2013).
- ¹⁶ This rider has been in place since 1995. 109 STAT 468, 495 (1995); Kirstin B. Bloom & Ada S. Cornell, *Laws Affecting the Federal Employee Health Benefits Program (FEHBP)*, CONGRESSIONAL RESEARCH SERVICE, Jul. 22, 2015, at 4, available at <http://www.fas.org/sgp/crs/misc/R42741.pdf>.
- ¹⁷ Indian Health Service, *Current Restrictions on Use of Indian Health Service Funds for Abortions*, SGM 96-01 (Aug. 12, 1996), http://www.ihs.gov/ihm/index.cfm?module=dsp_ihm_sgm_main&sgm=ihm_sgm_9601; See 107 STAT. 1084, 1113 (1994); Jon O. Shimabukuro, *Abortion: Judicial History and Legislative Response*, CONGRESSIONAL RESEARCH SERVICE, Sept. 16, 2015, at 11, available at www.fas.org/sgp/crs/misc/RL33467.pdf.
- ¹⁸ This rider has been in place since 1987. 101 STAT. 1329–17 (1987); P.L. 114-113, 114th Cong. (2015).
- ¹⁹ P.L. 112-10, 112th Cong. (2011); Jon O. Shimabukuro, *Abortion: Judicial History and Legislative Response*, CONGRESSIONAL RESEARCH SERVICE, Sept. 16, 2015, at 12, available at www.fas.org/sgp/crs/misc/RL33467.pdf.
- ²⁰ The Foreign Assistance Act, 22 U.S.C. § 2151b(f)(1) (First passed in 1961, amended to include relevant provision in 1973). Curt Tarnoff, *The Peace Corps: Current Issues*, CONGRESSIONAL RESEARCH SERVICE, Dec. 23, 2014, at 1, available at <http://www.fas.org/sgp/crs/misc/RS21168.pdf>.

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- ²¹ Jon Greenberg and Molly Moorhead, *PolitiFact's guide to Mitt Romney and abortion*, POLITIFACT, Oct. 12, 2012 at <http://www.politifact.com/truth-o-meter/article/2012/oct/19/politifacts-guide-mitt-romney-and-abortion/> (last visited Oct. 5, 2015).
- ²² John-Henry Westen *President Bush Supports Abortion in Cases of Rape and Incest Says Official Spokesman*, LIFESITENEWS.COM, Feb. 28, 2006 at <http://www.lifesitenews.com/news/archive//ldn/2006/feb/06022809> (last visited Oct. 31, 2014).
- ²³ *Compromise is defeated*, WILMINGTON MORNING STAR, Dec. 7, 1977.
- ²⁴ Ipas, *The Abortion Ban in U.S. Foreign Assistance: Obstructing efforts to save women's lives and fulfill women's human rights* (2009), available at <http://www.ipas.org/~media/Files/Ipas%20Publications/HELMSE09.ashx> (last visited Oct. 5, 2015).