



Silencing Progress

The Siljander Amendment and Global Censorship of Abortion Speech

For the last four years, the Trump administration has waged a war on sexual and reproductive health and rights around the world. Some of the tools in its arsenal are US foreign assistance restrictions on family planning and abortion. To be sure, many of these restrictions pre-date Trump, but this administration had a laser focus on weaponizing them to undermine and attack the fundamental human rights of women.

The change in US leadership with the Biden administration offers a chance for renewed attention and pressure on the need to repeal these odious restrictions, some of which are better known and understood than others.

Much has been said on the [Global Gag Rule](#) and to a lesser extent the [Helms Amendment](#) (“Helms”). However, little has been written or is understood about the Siljander Amendment (“Siljander”), which prohibits lobbying for or against abortion with US foreign assistance funds.

Even so, the Siljander Amendment has appeared in recent news: In August 2020, 60 US Senators and Representatives signed a letter to John Barsa, Acting Administrator of the US Agency for International Development (“USAID”) urging enforcement of Siljander by reducing “US contributions to UN Secretary-General and to UN organizations that lobby for abortion...in amounts proportional to their abortion-related lobbying,” also referring to “a fictitious international right to abortion.”¹ This flawed assessment comes, unsurprisingly, on the heels of the US government cutting assistance to the Organization of American States (“OAS”) in 2019 based on erroneous claims that its agencies engaged in lobbying for abortion in violation of the Siljander Amendment.

In light of these concerning developments, and with the new Biden administration taking office, this factsheet is intended to provide background information regarding the Siljander Amendment, how it has been applied – namely, to censor constitutional and legal reform and fundamental human rights – and why it should ultimately be repealed, along with all other US abortion restrictions on foreign assistance.

What is the Siljander Amendment?

The Siljander Amendment, introduced by Representative Mark Siljander into the Foreign Assistance and Related Programs Appropriations Act in 1981, prohibits US foreign assistance funds from being used for lobbying activities related to abortion. The Amendment’s restrictions originally only prohibited lobbying for abortion, but have since been amended to prohibit funds from being “used to lobby for or against abortion”² (emphasis added). Siljander is habitually included in annual appropriations measures and applies to all foreign assistance activities³ and all categories of grantees, including US non-governmental organizations (“NGOs”), foreign NGOs, and foreign governments.⁴ It has been broadly interpreted and implemented, but only to enforce the prohibition to not lobby for abortion (see below).

Abortion restrictions are fundamental cornerstones of US foreign assistance and have been rigorously enforced and monitored by both Democratic and Republican presidential administrations; as a result, for decades they have impeded efforts around the world to realize women’s fundamentally protected human rights to access safe abortion services. Siljander, like Helms, is imposed by the US Congress, whereas the Global Gag Rule is imposed

1 Letter from 60 US Senators and Representatives to John Barsa, Acting Administrator USAID (Aug. 13, 2020), <https://www.lankford.senate.gov/imo/media/doc/Lankford%20McMorris%20Rogers%20Letter%20to%20Barsa%208.13.20.pdf>.

2 Foreign Assistance and Related Programs Appropriations Act 1982, Pub. L. No. 97-121, 95 Stat. 1657 (Dec. 29, 1981) (“SEC. 525. None of the funds appropriated under this Act may be used to lobby for abortion.”); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, Pub. L. No. 109-102, 119 Stat. 2175, “Child Survival and Health Programs Fund” (“Provided further, That none of the funds made available under this Act may be used to lobby for or against abortion”); Luisa Blanchfield, Cong. Research Serv., R41360, Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy 5 (Updated Aug. 21, 2020), <https://fas.org/sgp/crs/row/R41360.pdf>.

3 USAID, USAID Guidance for Implementing the Siljander Amendment (Prohibition on Lobbying For or Against Abortion) (May 22, 2014), <https://www.usaid.gov/sites/default/files/documents/1864/USAID%20Guidance%20for%20Implementing%20the%20Siljander%20Amendment.pdf>.

4 Global Justice Center, FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women’s Rights & Human Rights 3 (Jan. 2018), https://globaljusticecenter.net/files/FAQ_Abortion_Restrictions.pdf.

by the executive branch. See the Global Justice Center’s [factsheet](#) for more detailed information on these other restrictions.

While both the Siljander and Helms restrictions technically only limit abortion services and speech with US funds, unless grantees undertake onerous efforts to keep segregated funding accounts and practices, especially as they relate to speech, US abortion restrictions de facto also affect the funds provided by other donors. While certain well-established organizations and agencies have such policies in place, many do not, which greatly expands the reach of these restrictions beyond US funds.⁵

How has the Siljander Amendment been applied?

The Siljander Amendment has caused an enormous amount of confusion, particularly as to what constitutes “lobbying” since it does not provide a definition.⁶ In fact, the US Government Accountability Office (“GAO”) detailed grantees’ confusion determining compliance with the Siljander Amendment in a 2011 report,⁷ finding that “[n]either State nor USAID has clear guidance for compliance with the Siljander Amendment, which makes it difficult for some agency officials and award recipients to determine what types of activities are prohibited,” and recommending that such guidance be developed and disseminated to award recipients and subrecipients.⁸ The vagueness of the term “lobbying” in Siljander, similar to the imprecise language used in Helms and the Global Gag Rule, and the general confusion regarding what activities and speech are allowed, chills abortion speech and leads to grantees’ self-censorship beyond what is required by the restrictions.⁹

Further, even though the Siljander Amendment’s censorship is abortion neutral, USAID, the State Department, and the GAO have only ever investigated alleged violations that implicate pro-abortion speech.¹⁰ In other words, even though Siljander restricts lobbying both for and against abortion, it is typically only applied in one direction – that is, to target pro-abortion action.¹¹

Where agencies do provide guidance, it is ambiguous at best. For example, USAID’s 2014 “guidance” for implementing the Siljander Amendment – released in part in response to the lack of guidance found in the 2011 GAO report – simply reminds grantees that “determinations of compliance with legal restrictions are fact specific” and that “at the outset of an activity, it is not always possible to identify whether a Siljander question may come up in [their] program.”¹² It asks staff and partners to check with USAID to address questions, effectively creating a problematic “check” on all organization activities by a funder.¹³ Such publications have done little to

5 While the US appears to have developed a formula for calculating the affected amount by which to cut funding to the Organization of American States (See discussion in section “How does the Siljander Amendment censor human rights and free speech?”), that methodology remains unclear.

6 U.S. Gov’t Accountability Office, GAO-12-35, Foreign Assistance: Clearer Guidance Needed on Compliance Overseas with Legislation Prohibiting Abortion-Related Lobbying (2011), <https://www.gao.gov/assets/590/585758.pdf> (examining the Siljander Amendment’s interaction with civic education and constitutional reform activities by U.S.-funded award recipients in Kenya).

7 Id.

8 Id. at 2.

9 See Kristina Kallas & Akila Radhakrishnan, If These Walls Could Talk, They Would Be Censored: U.S. Restrictions on Pro-Choice Speech, *Reproductive Laws for the 21st Century Papers*, Ctr. for Women Pol’y Studies 9 (June 2012), https://globaljusticecenter.net/documents/REPRO_IfTheseWallsCouldTalk_KristinaKallasAkilaRadhakrishnan.pdf; Global Justice Center, US Abortion Restrictions on Foreign Aid and Their Impact on Free Speech and Free Association: The Helms Amendment, Siljander Amendment and the Global Gag Rule Violate International Law 3 (Mar. 2018), https://globaljusticecenter.net/files/Brief.US_Abortion_Restrictions.pdf; Akila Radhakrishnan et al., Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers, 25 *Reproductive Health Matters*, 40-47 (Nov. 2017), <https://www.tandfonline.com/doi/full/10.1080/09688080.2017.1400361>; Sneha Barot, Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment, *Guttmacher Inst.* (Sept. 13, 2013), <https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment>.

10 Kallas & Radhakrishnan, *supra* note 9, at 26-29.

11 It is worth noting that the head of USAID’s own actions have been called into question with respect to compliance with Siljander. In particular, a group of Senators raised concerns with USAID Acting Administrator John Barsa’s letter to the UN Secretary-General demanding the removal of all references to sexual and reproductive health (SRH) from the Global Humanitarian Response Plan (HRP) for COVID-19: “In specifically demanding the Secretary-General “remove references to ‘SRH,’ and its derivatives from the Global HRP, and drop the provision of abortion as an essential component of the UN’s priorities to respond to the COVID-19 pandemic,” you are clearly lobbying against abortion. As such, the aim of the letter—pressuring the UN to remove references to SRH, which this administration clearly and incorrectly interprets as only meaning abortion—may violate the Siljander Amendment.” *Leading Senators Blast USAID Head for Attacking Sexual and Reproductive Health Provisions in UN’s COVID-19 Response Plan*, United States Senate Committee on Foreign Relations, Ranking Member’s Press (June 8, 2020), <https://www.foreign.senate.gov/press/ranking/release/leading-senators-blast-usaid-head-for-attacking-sexual-and-reproductive-health-provisions-in-uns-covid-19-response-plan>.

12 USAID, *supra* note 3.

13 Id.

mitigate confusion among grantees on what speech is allowed; rather, such overly broad interpretations have contributed to a “chilling effect” on speech regarding the availability of abortion and the need for safe abortion services, even where it is legal under national and international law.¹⁴

There is added confusion when it comes to the different terminology used and their respective definitions – or lack thereof – in the various US abortion restrictions. For example, in the Siljander Amendment there is uncertainty and uneven application with respect to the term “lobbying.” Comparatively, the Global Gag Rule – which prohibits foreign NGOs from performing or “actively promot[ing]” abortion as a method of family planning – uses a definition that incorporates the term “lobbying” differently than does Siljander. Specifically, the definition of “actively promot[ing] abortion” includes: “Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning,”¹⁵ which is juxtaposed with the general requirement under the Siljander amendment to not lobby for or against abortion.

How does the Siljander Amendment censor constitutional and other legal reform?

The Siljander Amendment has been used in attempts to restrain foreign countries from engaging in essential debate about a particular human right and censor speech around constitutional or other legal reform.¹⁶ USAID includes the restrictions as standard clauses¹⁷ in agreements not only with NGOs, but also with foreign governments, requiring their application to all “democracy and governance activities that will support constitutional or any health-related legislative reform.”

As an example, in the early 2000s Kenya had a disproportionately high maternal mortality rate compared to neighboring countries.¹⁸ In 2010 the Kenyan constitution made abortion legal under certain circumstances, and the Kenyan Ministry of Health sought to implement guidelines to provide explanation for the permitted circumstances.¹⁹ However, in 2013 USAID’s Kenya mission advised Kenyan grantees against attending a Ministry of Health meeting on reducing maternal mortality because attendance would likely fall under “restricted activities” of the Helms and Siljander Amendments.²⁰ The next day the Ministry’s guidelines were withdrawn, and later the Ministry wrote a letter “instructing all health providers to halt safe abortion trainings” and cease stocking drugs needed for medical abortions.²¹ This highlights the influence and potential for long-term impact of US abortion restrictions on censoring speech and activities and shutting down advocacy spaces about issues of critical public importance in another country.

There is a deep irony in America touting the principles of democracy and sovereignty,²² yet restricting debate, development, and reform in other countries – especially with respect to the bodily autonomy of those citizens and human rights required under international law.

How does the Siljander Amendment censor human rights and free speech?

In March 2019, US Secretary of State Mike Pompeo announced that the US would cut its assistance to the OAS

¹⁴ See supra note 10.

¹⁵ Protecting Life in Global Health Assistance, Health and Human Services – Standard Provision 4, 9-10 (May 31, 2017), <https://www.hhs.gov/sites/default/files/hhs-standard-provision-protecting-life-global-assistance-may-2017.pdf>.

¹⁶ Kallas & Radhakrishnan, supra note 9, at 26-30.

¹⁷ USAID, Development Objective Agreement and Bilateral Project Agreement Template, Annex 2, art. F, § F.2 (revised July 28, 2014), https://www.usaid.gov/sites/default/files/documents/1868/350mac_o.pdf; USAID, Standard Provisions for Non-U.S. Nongovernmental Organizations, § M16(b), § RAA23(d) (partial revision Nov. 19, 2020), <https://www.usaid.gov/sites/default/files/documents/303mab.pdf>; USAID, Standard Provisions for U.S. Nongovernmental Organizations, § M19, § RAA6 (d) (1) (partial revision Nov. 19, 2020), <https://www.usaid.gov/sites/default/files/documents/303maa.pdf>.

¹⁸ Global Justice Center, U.S. Restrictions on Free Speech & Association: How U.S. Anti-Abortion Policy Violates International Law, https://globaljusticecenter.net/files/GagAndSpeech_General.pdf.

¹⁹ Laura Bassett, Instruments of Oppression, The Huffington Post, <https://highline.huffingtonpost.com/articles/en/kenya-abortion/>.

²⁰ Global Justice Center, supra note 18; Laura Bassett, supra note 19; Ipas, The Harmful Impact of the Helms Amendment on Women in Kenya 2 (2020), <https://www.ipas.org/wp-content/uploads/2020/07/Helms-Kenya-FS.pdf>.

²¹ Laura Bassett, supra note 19.

²² For instance, in a recent letter from USAID Acting Administrator Barsa to the UN Secretary General, Barsa condemns correspondence from UN mandate-holders as “an affront to national sovereignty, as it criticizes the laws and policies of U.S. States while commending activist judicial rulings that expand access to abortion.” Letter from John Barsa, USAID Acting Administrator, to Antonio Guterres, UN Secretary General (Oct. 30, 2020), <https://www.usaid.gov/news-information/press-releases/oct-30-2020-acting-administrator-barsa-letter-un-secretary-general>.

based on claims that its agencies are lobbying for abortion in violation of the Siljander Amendment.²³ Pompeo's announcement came after nine US Senators wrote to him regarding their concerns that OAS organs – specifically the Inter-American Commission on Human Rights (“IACHR”) and the Inter-American Commission of Women (“CIM”) – were “aggressively lobby[ing] pro-life sovereign nations to legalize abortion.”²⁴ However, as a quasi-governmental, regional body, OAS – and in particular its bodies like IACHR and CIM – issue recommendations as expert guidance, and as a result, their actions do not constitute lobbying.²⁵ In addition, these recommendations are essential to carrying out their mandate to ensure the fundamental human rights of women living in member states of the OAS.

By misapplying the Siljander Amendment to justify decreasing contributions to the OAS on purely ideological grounds, the US aims to censor these expert bodies and the very content of human rights protections. Threatening these international institutions' ability to carry out their mandate through the power of the purse is both unconscionable and illegal.

As we have seen in the last few months, there has been a similar call by many of the same actors to decrease contributions to the UN on the same flawed reasoning. A group of Senators and Representatives urged enforcement of Siljander “so that the billions of US taxpayer dollars given annually to the UN are not used to lobby for abortion.”²⁶ They accuse UN organizations such as the World Health Organization, the United Nations Population Fund, the UN Commission on Human Rights, and the United Nations Entity for Gender Equality and the Empowerment of Women of lobbying for abortion. However, these are expert agencies similar to the bodies of OAS in that they are not in fact lobbying, but rather engaged in critical work to ensure universal health, access to sexual and reproductive health, monitor human rights situations, and achieve gender equality. Such threats to multilateral institutions should not be ignored, and they highlight the need for greater cooperation by other member states to oppose these egregious actions by the US.

Conclusion

The Siljander Amendment Violates Human Rights and Should Be Repealed

US abortion restrictions including the Siljander Amendment have negatively impacted global healthcare and services far beyond counseling, advising, or performing abortion. Siljander – along with the Helms Amendment and the Global Gag Rule – violates human rights and impermissibly restricts abortion-related speech and activities in contravention to the requirements of international law.²⁷ In particular, these restrictions violate international law – including both the freedom of speech and the freedom of association guaranteed by the International Covenant on Civil and Political Rights – to which the US is a party and thereby undertakes obligations.²⁸

Many US abortion restrictions, like Siljander and Helms, have consistently been in place for decades, thereby causing generations' worth of damage – and they will continue to do so if action is not taken. With the spaces for civil society already shrinking globally and exacerbated even more by the COVID-19 pandemic, policies like Siljander add further harm by restricting speech and activities around women's ability to access their reproductive rights.

For all these reasons, the US government under the leadership of the Biden administration should repeal or end all abortion restrictions on foreign assistance, including the Siljander Amendment, the Helms Amendment and the Global Gag Rule.

23 Michael R. Pompeo, U.S. Sec'y of State, Remarks to the Press (Mar. 26, 2019), <https://www.state.gov/remarks-to-the-press-7/>; PAI, Pompeo Whacks OAS Contribution, Escalating Administration's Crackdown on Reproductive Rights (Mar. 28, 2019), https://pai.org/wp-content/uploads/2019/03/Washington-Memo_3.28.19.pdf.

24 Letter from 9 U.S. Senators to Mike Pompeo, U.S. Sec'y of State (Dec. 21, 2018), <https://www.lankford.senate.gov/jimo/media/doc/OAS%20letter%20to%20Sec%20Pompeo.pdf>.

25 Letter from 5 former U.S. members of the IACHR to Mike Pompeo, U.S. Sec'y of State (Feb. 13, 2019), https://theglobalamericans.org/wp-content/uploads/2019/02/Pompeo.IACHR_2.13.19.pdf; PAI, Pompeo Whacks OAS Contribution, Escalating Administration's Crackdown on Reproductive Rights (Mar. 28, 2019), https://pai.org/wp-content/uploads/2019/03/Washington-Memo_3.28.19.pdf.

26 Letter from 60 US Senators and Representatives to John Barsa, Acting Administrator USAID, supra note 1.

27 Global Justice Center, supra note 9.

28 Id.