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You Can't Get There from Here: PEPFAR Reauthorization Stuck in a Ditch on World AIDS Day

The President's Emergency Plan for AIDS Relief (PEPFAR) is the largest commitment in history made by any country to combat a single disease. In its two decades of existence, PEPFAR has saved over 25 million lives, supported treatment for approximately 20 million people and enabled 5.5 million infants to be born HIV-free to mothers living with HIV.

This World AIDS Day will be the first time since PEPFAR was created under George W. Bush in 2003 that Congress has not passed a new five-year statutory authorization governing PEPFAR's policy and programs by December 1. The most recent authorizing statute technically expired on September 30 of this year. Congress has routinely and uneventfully reauthorized PEPFAR every five years with broad bipartisan support since its creation 20 years ago, the last two times in 2013 and 2018 by voice votes or unanimous consent.

But this year, opponents of sexual and reproductive health and rights (SRHR)—both inside and outside Congress—have engaged in a mendacious campaign of disinformation, harassment and misrepresentation of both the laws that govern PEPFAR and the legal activities of organizations that implement U.S.-funded HIV/AIDS programs. These opposition efforts aim to slow and derail a “clean” PEPFAR reauthorization, which would roll over existing programmatic parameters for another five years. These anti-SRHR activists have sought to insert their extreme anti-abortion agenda into the reauthorization discussion to leverage the vast popularity of PEPFAR to force the acceptance of extreme anti-abortion legal restrictions that they seek but cannot achieve through the regular legislative process. Their explicit goal is to reimpose the Trump administration's expanded Global Gag Rule—a.k.a. “Protecting Life in Global Health Assistance” (PLGHA)—on global HIV programs.

The delayed reauthorization concerns PEPFAR-funded implementing partners and their patients and staff, who worry about slowing progress on stemming the epidemic and what it would mean for access to critical health services in their communities. It also invites questions from recipient countries and other donor governments about the durability of the U.S. commitment to and investments in HIV prevention and treatment over the long term. The impact of the inability to reauthorize PEPFAR is mainly symbolic now, but a continued delay could cause real pain. The roadblock erected by House Republicans to quick passage of a “clean” five-year reauthorization is just the latest demonstration of their failure to accomplish one of the most routine legislative tasks—extending the life of a beneficial, effective and politically popular government program.

Sustained bipartisan support is essential for PEPFAR to continue saving lives, preventing new HIV infections and accelerating progress toward controlling the global HIV/AIDS pandemic.

Misinformation

In the wake of the June 2022 Dobbs decision ending the constitutional right to abortion established under *Roe v. Wade*, abortion politics have been interjected into practically every area of public policy in Washington, both domestic and international. PEPFAR reauthorization is no exception.

The first sign that the path to a smooth and straightforward reauthorization of PEPFAR was in jeopardy—basically a change in the expiration date to five years from now and extending a small number of statutory provisions that were about to “sunset” and needed renewal—was the emergence of a seemingly coordinated attack last spring first by a coalition of right-wing, religio-political organizations, then by a think tank influential in extreme MAGA Republican circles and finally by the leading House Republican anti-abortion crusader, Congressman Chris Smith (R-NJ). The organized campaign featured a flurry of letters, press releases and a deeply flawed [report](#) purporting to expose the Biden administration’s misuse of PEPFAR to “promote its domestic radical social agenda overseas” and calling for a complete overhaul and restructuring of the program.

Anti-abortion zealots have accused the Biden administration of hijacking PEPFAR to promote “abortion on demand” in PEPFAR-recipient countries, citing language and terminology used in PEPFAR strategic planning documents and the latest country and regional operational plan (COP) guidance and pointing to grants and contracts provided to organizations with missions historically focused on advancing SRHR. In his June 6 [Dear Colleague letter](#), Rep. Chris Smith (R-NJ), the dean of the anti-abortion caucus in the House, specifically called out Population Services International (PSI) and Pathfinder International, organizations that provide abortion services and support advocacy efforts to liberalize restrictive abortion laws, but do so utilizing funding from private, non-U.S. government sources.

Rumors and unfounded allegations that PEPFAR dollars are being used to fund abortion overseas began to be circulated by SRHR opponents. A [May 1 letter](#) from anti-abortion, “pro-family” groups expressed their concern that “grants from [PEPFAR] are used by nongovernmental organizations that promote abortions and push a radical gender ideology abroad.” They urged the Republican leadership of the House Foreign Affairs and Senate Foreign Relations Committees to “ensure that any reauthorization of PEPFAR ensures that taxpayer money is not used for such purposes.” These anti-SRHR organizations need not worry. It can be categorically stated that no PEPFAR funds are being or have been used for abortion-related activities.

Since its enactment 50 years ago this month, the 1973 Helms amendment has restricted the use of U.S. foreign assistance funds “to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions.” In the nearly 60-year history of the U.S. government’s international family planning and reproductive health program—the health sector most directly subject to and targeted by a voluminous set of legal restrictions in both the permanent authorizing statute and annual appropriations bills—the only known violations of the Helms amendment have been extremely rare, inadvertent, uncovered by the organization itself, and quickly rectified once discovered. No independent watchdogs such as the Government Accountability Office, U.S. Agency for International Development (USAID) or Department of State Inspectors General have found evidence of significant instances of noncompliance with the Helms amendment or other abortion-related restrictions. Unsurprisingly, nongovernmental organization (NGO) recipients of U.S. foreign assistance take compliance with laws, rules, and regulations extremely seriously with strict procedures for administering government funds, compulsory staff training, diligent procurement and contracts personnel and retaining in-house and outside legal counsel. Organizations that implement programs funded by U.S. foreign assistance know that violations could impose significant financial consequences and potential debarment from eligibility to receive U.S. government funding in the future.

But don’t take our word for it. Troubled by the rumors, Shepherd Smith, co-founder of the Children’s AIDS Fund International, a Christian faith-based organization that has received PEPFAR funding, set out to conduct his own [investigation](#) of the recent allegations of the use of PEPFAR funds for abortion. Shepherd Smith and Rep. Chris Smith have been close allies on HIV/AIDS issues for decades, though [the latter has led the charge](#) in the latest false claims that PEPFAR funds have been used for abortion. Given his strong anti-abortion convictions [and promotion of abstinence-only programs](#), SRHR advocates have long viewed Shepherd Smith with considerable suspicion. Nevertheless, because of inquiries made to his extensive set of contacts both in government and the NGO community, he concluded that “there is simply no factual evidence to support the rumor that PEPFAR is funding, or has funded, abortion or promoted abortion” and that he was “unable to find any evidence that such misuse of funds occurred in any PEPFAR program.” These findings have been supported by Ambassador John Nkengasong, the head of PEPFAR, who [publicly stated](#) that PEPFAR does not provide a platform for abortion in Africa and that it is “implemented strictly within the context of the laws it was created [by].” PEPFAR also [communicated to all its implementers](#) about current laws and policies in this area.

The central demand of SRHR opponents is that PEPFAR reauthorization should not occur without concessions from the Biden administration on SRHR policy to prevent U.S. government HIV/AIDS assistance

from being used to fund abortion services or to promote abortion—either directly OR indirectly. Now that the question of whether direct funding is occurring has been settled, attention can be directed to opponents’ true objective—using the threat to PEPFAR reauthorization as leverage to reinstate the Trump-era expanded version of the Global Gag Rule (GGR) that applied to all U.S. global health assistance, including HIV/AIDS assistance. This goal has failed to be achieved through the regular legislative process due to a lack of support. In the Senate, there are not sufficient votes to adopt an amendment to reinstate the expanded GGR, neither a simple majority nor the 60 votes necessary to invoke cloture to enable the Senate to proceed to debate. Such an amendment would also struggle to pass the House due to Democratic unanimity and a slim, fractious GOP majority which would risk losing the votes of vulnerable Republicans serving in purple districts carried by Joe Biden in the 2020 presidential election.

As PSI’s CEO, Karl Hofmann, wrote in an excellent [op-ed](#) offering the perspective of an implementer targeted by the SRHR opponent’s PEPFAR leverage campaign for its use of non-U.S. government funds for safe abortion programs: “We comply with all American laws and regulations, including the Mexico City Policy and [PLGHA], when they are in force. Those policies do not constrain American NGOs such as PSI from doing legal things with other people’s money. The effort to muzzle U.S. organizations was challenged and litigated through federal courts, which have found the U.S. Constitution protects this freedom.”

But the true scope of the anti-SRHR opposition’s ambition is revealed in a 1000-page strategy document prepared for the potential second Trump term—or the arrival of another Republican presidential administration—in 2025 by far-right organizations led by the Heritage Foundation called [Project 2025](#). The USAID chapter recommends a dramatic expansion of the reach of PLGHA to close “loopholes that allowed support for the global abortion industry to continue” by banning all U.S. foreign assistance from being used to fund abortion-related activities, not just in the global health sector but for humanitarian aid, women’s empowerment and economic development programs. The new and improved PLGHA would also apply to not just to foreign NGOs as it has in previous iterations of the GGR but to U.S.-based NGOs, multilateral organizations like the UN Population Fund (UNFPA) and even bilateral government-to-government programs.

Arguments in support of barring U.S. government funding to organizations that engage in activities with non-U.S. government funding that one might find personally objectionable rests on the notion of “fungibility”—that by providing funding to an organization, the U.S. government is indirectly funding those objectionable activities by freeing up funds from other sources to be used. [In his memo](#), Shepherd Smith sagely observes: “A total ban on funding to any entity that, with its private dollars, carries out activities contrary to moral teachings, would render it impossible to invest in anything from infrastructure, to defense, to antipoverty programs, to lifesaving international assistance.”

Harassment

One of the tactics that anti-abortion Republicans in the House deployed to advance their agenda is the use of congressional holds to block the release of previously appropriated funds by the Department of State’s Office of the Global AIDS Coordinator and USAID’s Office of HIV/AIDS. This tactic is used to force concessions in programmatic guidance that would undermine PEPFAR’s evidence-based and integrated response to HIV and run counter to the U.S. government’s support for SRHR, LGBTQI+ equality and gender equity under the current administration. Reportedly, staff on the Republican-controlled House Foreign Affairs Committee have been highly Vigil-ant in scrubbing PEPFAR program documents and insisting on the removal or revision of references to abortion, SRHR, transgender people, sex workers, family planning and even human rights, along with other internationally recognized terminology, before giving their blessing to allow blocked HIV funds to be spent.

While it’s not unprecedented for Congress to place holds on the release of foreign assistance funding, the magnitude of the amount stuck in limbo right now has not been seen before, in my recollection. According to a [story in the Washington Post](#), HIV program funding currently being delayed by Republicans amounts to more than \$1 billion in blocked funds, with some reports from Democratic staff suggesting that the amount might be closer to \$2 billion. Much of PEPFAR’s funding remains unaffected, but some of the funds currently on hold reportedly needed to reach programs in the field by the end of November to avoid disruptions in life-saving services. The executive branch is only legally required to notify the relevant authorizing and appropriations committees 15 days in advance of the reprogramming of the funds noticed. Honoring congressional holds is a courtesy, and at some point, the Biden administration should consider blowing through the holds and doing what is needed to ensure the integrity and continuity of U.S. government investments in preventing the spread of HIV and treating those afflicted with AIDS.

Since the narrow House Republican majority was sworn in back in early January, an unprecedented amount of scrutiny and oversight from GOP authorizing and appropriations committee leaders has been directed at multiple bureaus and offices at USAID and the Department of State on U.S. law and policy related to SRHR, in particular abortion. The aggressive oversight has taken the form of incessant questions, including multiple letters and questions for the record (QFR), following testimony on Capitol Hill by executive branch witnesses.

In a worrisome development, congressional holds have not been confined to just those programs related to global health but gender as well. For example, a hold was placed on gender funding to a U.S. NGO engaged in supporting feminist climate justice movements and climate crisis response in Africa, the Pacific Islands and the Caribbean. “[False claims by extremist law makers](#)” led to the eventual withdrawal of the award by the government funding agency, jeopardizing critical work to involve women in climate change mitigation and adaptation activities in their communities.

Additionally, new report language accompanying the House-passed version of the fiscal year (FY) 2024 State Department and foreign operations appropriations bill doubles down on House Republicans’ aggressive oversight agenda, stating that “the Committee continues to support rigorous monitoring and oversight of all uses of funds provided under Global Health Programs, including full compliance with statutory prohibitions on United States assistance and restrictions related to abortion included in this Act and prior acts.” It further requires a report from the Secretary of State and USAID Administrator within 180 days of the bill’s enactment listing all prime and sub-partners that received global health assistance since FY 2020 “disaggregated by global health program and include, for each partner, the amount of funding received, the activity description and purpose and the country or region for such activity.” If this language were to find its way into the final conference report, the burden of compiling such an explicitly detailed report on over \$10 billion worth of global health programs would be a bureaucratic nightmare and utterly pointless use of staff time and resources. But perhaps this is the point.

Where to Next?

It is difficult to predict how PEPFAR reauthorization will be pulled out of the ditch it finds itself in and how the journey will end. The possibility remains that PEPFAR’s congressional champions may attempt to attach a PEPFAR reauthorization to a larger, must-pass piece of legislation like a final spending package to fund the government for the rest of the fiscal year. But a committed bipartisan coalition on Capitol Hill and off (including some old-school, non-MAGA Republicans), backed by a united global health community, will need to step up to drive that effort to its final destination.

Notwithstanding the negative symbolic consequences of failing to pass a clean five-year reauthorization in a timely fashion, PEPFAR will continue to be able to provide funding to its overseas partners, at least in the short run. It is important to remember that every other global health program, including family planning and reproductive health (FP/RH), has been operating without an authorization since 1986 due to a provision included in the annual appropriations bill that allows waiving the requirement for an enacted authorization before funds can be appropriated.

House Republican appropriators attached a one-year PEPFAR reauthorization in the FY 2024 State-foreign operations bill, which met with the approval of Congressman Smith because the House-passed legislation also includes the expanded GGR as a policy “rider.” Without a multi-year PEPFAR reauthorization, advocates fear that HIV/AIDS programs will become an annual struggle in the appropriations process akin to that which occurs every year on international FP/RH funding and policy issues. That is not a fate that SRHR advocates would wish on anyone, especially our global health colleagues.