



WHAT YOU NEED TO KNOW ABOUT THE GLOBAL GAG RULE

Discriminatory and Unequal: Debunking the Fungibility and Fraud Arguments for Trump's Global Gag Rule

The Trump-Pence Administration and anti-choice Members of Congress have cited the fungibility (the idea that government funds and private funds are interchangeable) of U.S. government funding with foreign organizations' private funding as a rationale for imposing the Global Gag Rule. This notion is premised on the falsehood that the Global Gag Rule is necessary to prevent U.S. taxpayers' money from paying for abortions overseas.

The Global Gag Rule is not and has never been about U.S. taxpayer funding for abortion.

A statutory provision, the Helms Amendment to the Foreign Assistance Act of 1961, has restricted the use of U.S. foreign assistance funds for "abortion as a method of family planning" since 1973. The truth is that the Global Gag Rule denies foreign organizations receiving U.S. global

assistance the right to use *their own* non-U.S. funds to provide information, referrals or services for legal abortion or to advocate for the legalization of abortion in their country.

Still, myths and misconceptions about fungibility and the Global Gag Rule persist. There are two equally misleading variants of the fungibility argument:

fungibility-as-subsidy and **fungibility-as-fraud**.

FUNGIBILITY-AS-SUBSIDY

Fungibility-as-subsidy arguments build on decades of anti-choice activists' efforts to curb access to family planning and reproductive rights at home and abroad, including access to safe and legal abortion. This argument claims that taxpayer funds which go to organizations that perform abortions or abortion-related services free up other financial resources for such work, thereby acting as a subsidy.

The fungibility-as-subsidy argument is discriminatory and selectively applied. For example, under Trump's Global Gag Rule,

foreign NGOs are rendered ineligible to receive any U.S. global health assistance if the organization uses funding from any other source to perform abortion, counsel or refer for abortion, or advocate to make abortion legal or more available in their own countries. In contrast, USAID allows funding for faith-based organizations who need only separate their proscribed religious activities from their development and health programs and services directly funded by USAID to remain eligible. The regulation states:

A religious organization that applies for, or participates in, USAID-funded programs or services (including through a prime award or sub-award) may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID (including through a prime award or sub-award)

to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law (emphasis added).

When similar funding regulations are proposed to distinguish between direct and indirect USAID support of the programs and services of foreign NGOs pursuing abortion-related services or advocacy with their own funds, family planning opponents in Congress routinely deride them as merely “bookkeeping tricks” or “shell games” and assert that money is fungible. In other words, there is a double-standard where fungibility arguments are applied. The effectiveness of U.S. foreign assistance depends on the strength of a diversity of implementing partners who are among the best in their fields. To ensure the highest quality of service delivery—and the most transparent and efficient use of taxpayer funds—these organizations should all be held to the same standard.

FUNGIBILITY-AS-FRAUD

Another variation on the fungibility argument *incorrectly conflates fungibility with fraud*, by implying that a foreign non-governmental organization receiving U.S. global health assistance funds could

inappropriately use those funds for abortion services, counseling, and referral or advocacy in support of abortion law reform.

Not only is this claim incorrect but it also undermines the integrity of the U.S. aid system and its implementing partners. The U.S. government has very strict requirements for recipients of foreign aid. To qualify for USAID funding, organizations must go through a complicated vetting procedure. USAID also has very strict compliance requirements and employs dedicated staff to monitor program compliance with the law and agency policy. Implementing partners also have their own internal compliance and auditing mechanisms.

Additionally, all U.S. foreign aid is ultimately overseen by Congress. If a recipient of foreign aid misused funds for any purpose, there are immediate actions that would be taken to protect the integrity of U.S. global health assistance. Only a very small number of violations of the numerous legal and policy restrictions or requirements governing USAID family planning assistance have ever occurred, most of them minor, inadvertent, uncovered and reported to USAID by the organizations themselves, and quickly corrected. USAID is responsible for reporting any violations to the congressional committees with jurisdiction over foreign assistance in a timely and complete manner, including corrective action.

CONCLUSION

Whether they center on fraud or subsidy, fungibility arguments are arbitrary and non-factual rationales for Trump’s Global Gag Rule. The Global Gag Rule jeopardizes women’s health by violating the trusted relationship between a woman and her provider and violating the free speech of foreign NGOs who provide critical services. If the Global Gag Rule were applied to U.S. NGOs, it would be unconstitutional. This fundamental inequity at the heart of the policy underscores not only its arbitrary nature but also its ideologically driven roots.

Eligibility for U.S. global health assistance should be rooted in a rigorous, evidence-based set of standards for all implementing partners. Arbitrary government restrictions on private funding should be a problem for everyone—no matter their place on the political spectrum.

The bottom line is that fungibility arguments are a selectively applied and are veiled excuses to legitimize the Global Gag Rule. The policy attacks foreign nongovernmental organizations providing desperately-needed health care services in developing countries. The Global Gag Rule not only undermines women’s health and wellbeing, it also forces organizations to disregard laws established by their own governments—a requirement which would be unconstitutional if applied in the United States.

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