



April 3, 2020

Commission on Unalienable Rights  
U.S. Department of State  
2201 C Street NW  
Washington, DC 20520

Dear U.S. Department of State Commission on Unalienable Rights,

NARAL Pro-Choice America (“NARAL”) submits these comments to express our deep concern about the work of U.S. Department of State’s Commission on Unalienable Rights (the “Commission”) to date and the potential harm that a final report produced by this Commission may have on internationally recognized human rights, including reproductive freedom.

As outlined below, we are deeply concerned that the composition of the Commission and statements made by commissioners during public meetings indicate that the Commission’s final product will seek to prioritize some rights over others and diminish the value of reproductive freedom and the rights of LGBTQ people specifically. NARAL urges you to immediately disband the Commission and to focus the Department of State’s attention on the significant challenges currently facing the protection of human rights globally, including reproductive freedom.

## **I. Background**

The Commission is an advisory body that was organized and chartered by Secretary of State Mike Pompeo under the Federal Advisory Committee Act (“FACA”). The purpose of the Commission, according to Secretary Pompeo, is to identify which internationally recognized human rights are “unalienable” and which are “ad hoc,” in apparent opposition to U.S. treaty and legal obligations and longstanding foreign policy positions.<sup>1</sup> From its inception, the Commission’s mandate, the opaque process by which it came into being, the duplicative nature of the body vis-à-vis the State Department’s legally authorized human rights bureau, the publicly-stated views of several of its members, and the lack of diversity of expertise of its membership have deeply troubled hundreds of organizations (including NARAL), human rights scholars, and other concerned citizens, who asked that the Commission be disbanded.<sup>2</sup>

Over the past several months, the work of the Commission has only reinforced our concerns. To date, the Commission has held five meetings. These have been made accessible only to a

small number of individuals who have been able to register in advance and dedicate up to six hours to observing the proceedings in person at the State Department in Washington, D.C. To date, the Commission has also largely ignored the procedural requirements of FACA, including by failing to make all Commission records available to the general public. It is only through the reporting of human rights advocates that the public has been made aware of the deeply troubling views expressed by several commissioners. These views as articulated support one of our most significant concerns; namely, that the Commission's objective is to produce recommendations that would narrow the scope of U.S. obligations under international human rights law and wrongly justify a ranking of rights that prioritizes some rights over others.

## **II. The Composition of the Commission Raises Serious Concerns About the Commission's Final Product**

The composition of the Commission raises serious concerns about the Commission's work, as well as violates rules requiring that federal advisory committees be "fairly balanced in its membership in terms of the points of view represented."<sup>3</sup> While many members' expertise are in religious freedom or public ethics, the body contains no experts on reproductive freedom, gender equality, children's rights, LGBTQ rights, immigrants' rights, or asylum protections. There are critics of reproductive rights and LGBTQ rights on the Commission, but no advocates of such rights. There are no experts on poverty and inequality, and no specialists on how rights are impacted by climate change. Of the 12 commission members, only three are women and two are people of color. Additionally, the body includes two members of the State Department's Office of Policy Planning, but no representatives from the Department's Bureau of Democracy, Human Rights, and Labor, whose assistant secretary is required by law to lead in advising the Secretary of State on human rights matters.

NARAL is deeply concerned about what the prior activities and statements of several commissioners may mean for the Commission's final product. Several commissioners have expressed throughout their careers the view that freedom of religion sits atop so-called "lesser" or subsidiary rights, and that the violation or infringement of these rights must be tolerated in order to ensure the full protection of religious freedom. As a result, we are deeply concerned that the Commission's work may seek to justify the rolling back of hard-won advances, particularly with respect to reproductive freedom, as well as the rights of LGBTQ people. NARAL is particularly concerned about the following commissioners:

- Ambassador Mary Ann Glendon
  - In 2018, Ambassador Glendon received "what is arguably the most prestigious pro-life prize" for her decades of anti-abortion advocacy work.<sup>4</sup>
  - In 2018, Ambassador Glendon signed a letter supporting anti-choice Justice Brett Kavanaugh's nomination to the U.S. Supreme Court.<sup>5</sup>
  - Ambassador Glendon represented several anti-choice groups, including Massachusetts Citizens for Life and The Pro-Life Legal Defense Fund, who

- submitted an amicus brief to the U.S. Supreme Court in the case of *NIFLA v. Becerra*.<sup>6</sup>
- During the 2012 presidential election, Ambassador Glendon appeared in a video defending then-candidate Mitt Romney’s anti-choice record.<sup>7</sup>
  - Ambassador Glendon has been a longtime opponent of LGBTQ rights and argued in a 2004 Wall Street Journal opinion piece that the legalization of same-sex marriage would “impair” the rights of children.<sup>8</sup>
  - Dr. Peter Berkowitz
    - Dr. Berkowitz has been a featured speaker for panels hosted by Alliance Defending Freedom (ADF).<sup>9</sup> ADF’s work includes funding cases and training attorneys about “religious freedom,” “the sanctity of life,” and “marriage and family.”<sup>10</sup> ADF has been designated as a hate group by the Southern Poverty Law Center.<sup>11</sup>
  - Professor Paolo Carozza
    - In 2016, Professor Carozza spoke on a panel hosted by the Notre Dame Right to Life Club about creating a “pro-life world.”<sup>12</sup> Professor Carozza’s remarks focused specifically on the role of his “pro-life vision” in international development.<sup>13</sup>
    - Professor Carozza has argued that for-profit companies should be allowed to use religion to justify refusing to include coverage of contraception in employer-sponsored health insurance.<sup>14</sup>
    - In a 2015 law journal article, Professor Carozza discussed the “right to life of the unborn” in the context of international human rights and criticized a decision by the Inter-American Court that ended a ban on in vitro fertilization in Costa Rica.<sup>15</sup>
  - Professor Hamza Yusuf Hanson
    - In 2018, Professor Yusuf Hanson published an article in which he argued that “the desire for independence from children in a world that has devalued motherhood through intense individualistic social pressures related to meritocracy, psychology, and even the misuse of praiseworthy gender egalitarianism” is one of the “primary reasons people in the West today choose abortions.”<sup>16</sup> He further stated that “abortion, with rare exception, must be seen for what it is: an assault on a sanctified life, in a sacred space, by a profane hand.”<sup>17</sup>
  - Dr. Jacqueline Rivers
    - Dr. Rivers signed onto a letter with dozens of anti-choice advocates criticizing then-candidate Hillary Clinton for her pro-choice views.<sup>18</sup>
    - Dr. Rivers has been a longtime opponent of LGBTQ rights and has endorsed the view that same-sex marriage is a “parody” and a “fiction.”<sup>19</sup>
  - Rabbi Dr. Meir Soloveichik
    - In 2012, Rabbi Soloveichik argued against insurance coverage of contraception in an opinion piece in the Wall Street Journal.<sup>20</sup>

- Dr. Christopher Tollefsen
  - Dr. Tollefsen has argued that “contraception is morally impermissible” and that abortion is “the unjust and intentional taking of innocent human life.”<sup>21</sup>
- Mr. F. Cartwright Weiland
  - While working for the Texas Conservative Coalition Research Institute, Mr. Weiland helped prepare several amicus briefs submitted to the U.S. Supreme Court in *Whole Woman’s Health v. Hellerstedt* in defense of Texas’s unconstitutional clinic shutdown law.<sup>22</sup>
  - Mr. Weiland has cited heavily doctored and now discredited videos from the anti-choice group Center for Medical Progress as evidence that states should impose more restrictive laws on abortion providers.<sup>23</sup>

### **III. Commissioners’ Statements During Public Hearings Suggest the Commission Will Seek to Establish a False Hierarchy of Rights and Diminish the Value of Reproductive Freedom**

Based on comments made by members of the Commission during public hearings, NARAL is deeply concerned that the Commission’s final product will seek to reinterpret the agreed-upon international human rights framework in a manner that seeks to establish a false and preferential hierarchy of rights that specifically prioritizes freedom of religion or belief over other human rights, particularly reproductive freedom.

A prioritization of freedom of religion or belief over the enjoyment of other human rights would constitute a violation of the United States’ binding obligations under human rights law. As the Universal Declaration of Human Rights (“UDHR”) and subsequent human rights treaties make clear, human rights are interdependent, interrelated, and equal in importance.<sup>24</sup> The principle that all rights are equal is a product of the indivisibility of human rights: the denial of one right necessarily impedes the enjoyment of other rights. As Ken Roth, Executive Director of Human Rights Watch, highlighted during his testimony before the Commission, the Human Rights Committee (the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights (“ICCPR”) by its State parties) “has explained that freedom of thought, conscience, and religion does not protect religiously motivated discrimination against women or racial minorities.”<sup>25</sup>

Some members of the Commission have openly discussed the “prioritization” of some rights over others during Commission meetings. This discussion has primarily focused on prioritizing freedom of religion over other rights, such as the right to health or the right to be free from discrimination. Some commissioners have suggested that the human rights framework is poorly defined or has been stretched to cover “new” rights. Some have also suggested that it is up to the Commission to differentiate between “alleged” rights claims and those rights that are “unalienable.”<sup>26</sup> During the Commission’s third meeting, Commissioner David Pan responded to remarks by Michael Abramowitz of Freedom House

regarding concerns over the Commission's apparent desire to create a "hierarchy of rights," asking Mr. Abramowitz if he would "support that same prioritization that we want to do." The Commission also reproduced a discussion regarding the "prioritization" of rights in the published "minutes" of the third meeting.<sup>27</sup>

Some commissioners have argued that a tension exists between the exercise of religious freedom and the promotion and protection of other rights, including reproductive freedom. During the Commission's fourth meeting, Commissioners Peter Berkowitz, Christopher Tellefsen, and Katrina Lantos Swett, each suggested that a "tension" exists between reproductive rights and the free exercise of religion. Comments and questions from members of the Commission have demonstrated a clear belief that this tension should always be resolved in favor of the exercise of religious freedom. The necessary consequence of the Commission's logic is that discrimination against women, LGBTQ individuals, and other minorities would be permissible under international human rights law if based on a supposed claim of religious freedom.

By contrast, human rights bodies have already provided guidance on how to avoid such tensions, ensuring people's access to reproductive healthcare is not deterred. In its General Comment No. 36, the Human Rights Committee said that nations "should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscientious objection by individual medical providers."<sup>28</sup> In its concluding observations, the Human Rights Committee has repeatedly provided guidance on how to avoid such barriers by instructing states to enhance the effectiveness of referral mechanisms in cases of conscientious objection by individual health care providers, in order to ensure access to abortion services. Likewise, the Committee on Economic, Social and Cultural Rights ("CESCR"), in its General Comment No. 22 on the right to sexual and reproductive health, gives guidance on how states can appropriately regulate conscientious objection in healthcare settings to ensure that it does not inhibit anyone's access to sexual and reproductive health care, including by requiring referrals to an accessible provider capable of and willing to provide the services being sought, and that it does not inhibit the performance of services in urgent or emergency situations.<sup>29</sup>

Despite there being guidance on how to respect all rights, Commission members have rejected this guidance in favor of a deeply troubling hierarchical view. As Human Rights Watch Executive Director Ken Roth explained during his testimony before the Commission, ICCPR Article 18 makes clear that the right to freedom of thought, conscience, and religion cannot be used to excuse religiously motivated discrimination under international law and cannot justify denying women and girls access to reproductive healthcare.

#### IV. Conclusion

The COVID-19 pandemic reveals how rewriting human rights law and policy to exclude certain protections is a life and death mistake. This global health crisis demonstrates how all human rights are essential and interdependent. Health care must be given to all who need it without discrimination on the basis of sex, wealth, race, ethnicity, sexual orientation, gender identity, political affiliation, or immigration status. Religious freedom cannot be used as a basis for denying essential health care. There can be no disposing of any of these rights, nor is there a hierarchy among them. Since a society's response to a pandemic is only as strong as its most vulnerable person, all of these rights must be honored to protect everyone. Unlike the work of the Commission thus far, a good faith review of the role of human rights in U.S. government policy would necessarily focus on how the U.S. could both improve its human rights record at home and promote greater protections for *all* human rights abroad, including reproductive freedom.

Sincerely,

NARAL Pro-Choice America

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<sup>1</sup> See Michael Pompeo, *Unalienable Rights and U.S. Foreign Policy*, WALL STREET JOURNAL (July 7, 2019), <https://www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448> (last visited Apr. 3, 2020).

<sup>2</sup> Letter from U.S. Foreign Policy, Human Rights, Civil Liberties, Social Justice, & Faith Leaders, Experts, Scholars, & Organizations to Hon. Michael Pompeo, Secretary of State, U.S. Department of State (July 23, 2019), <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf> (last visited Apr. 3, 2020).

<sup>3</sup> See 41 C.F.R. § 102-3.30.

<sup>4</sup> Jayne Huckerby, Sara Knuckey & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, JUST SECURITY (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/> (last visited Apr. 3, 2020); Christopher Write, *Accepting UND Award, Glendon Lauds Female Role in Pro-Life Movement*, CRUX (Apr. 30, 2018), <https://cruxnow.com/church-in-the-usa/2018/04/accepting-und-award-glendon-lauds-female-role-in-pro-life-movement/> (last visited Apr. 3, 2020).

<sup>5</sup> Letter from Legal Scholars to Hon. Charles Grassley, Chairman, U.S. Senate Committee on the Judiciary, & Hon. Dianne Feinstein, Ranking Member, U.S. Senate Committee on the Judiciary (Aug. 28, 2018), <https://www.judiciary.senate.gov/imo/media/doc/2018-08-28%20144%20Law%20Professors%20to%20Grassley,%20Feinstein%20-%20Kavanaugh%20Nomination.pdf> (last visited Apr. 3, 2020).

<sup>6</sup> Brief for Massachusetts Citizens for Life, Eleanor McCullen, Expectant Mother Care, and the Pro-Life Legal Defense Fund as *Amici Curiae* in Support of Petitioners, *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018) (No. 16-1140).

<sup>7</sup> Jayne Huckerby, Sara Knuckey & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, JUST SECURITY (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/> (last visited Apr. 3, 2020).

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- <sup>8</sup> Jayne Huckerby, Sara Knuckey & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, JUST SECURITY (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/> (last visited Apr. 3, 2020).
- <sup>9</sup> *Anti-LGBT Roundup 5/16/17*, SOUTHERN POVERTY LAW CENTER (May 16, 2017), <https://www.splcenter.org/hatewatch/2017/05/16/anti-lgbt-roundup-51617> (last visited Apr. 3, 2020).
- <sup>10</sup> *Who We Are*, ALLIANCE DEFENDING FREEDOM, <https://www.adflegal.org/about-us> (last visited Mar. 18, 2020).
- <sup>11</sup> *Alliance Defending Freedom*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom> (last visited Mar. 18, 2020).
- <sup>12</sup> Natalie Weber, *ND Right to Life Panel Reflects on Notion of a Pro-Life World*, THE OBSERVER (Nov. 18, 2016), <https://ndsmcobserver.com/2016/11/right-to-life/> (last visited Apr. 3, 2020).
- <sup>13</sup> *Id.*
- <sup>14</sup> Jayne Huckerby, Sara Knuckey & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, JUST SECURITY (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/> (last visited Apr. 3, 2020).
- <sup>15</sup> Paolo Carozza, *The Anglo-Latin Divide and the Future of the Inter-American System of Human Rights*, 5 NOTRE DAME J. INT'L & COMP. L. 153 (2015).
- <sup>16</sup> Hamza Yusuf, *When Does a Human Fetus Become a Human?*, RENOVATIO (June 22, 2018), <https://renovatio.zaytuna.edu/article/when-does-a-human-fetus-become-human> (last visited Apr. 3, 2020).
- <sup>17</sup> *Id.*
- <sup>18</sup> Ruth Gledhill, *Black Church Leaders Challenge Hillary Clinton On Abortion And Religious Freedom*, CHRISTIAN TODAY (Nov. 1, 2016), <https://www.christiantoday.com/article/black-church-leaders-challenge-hillary-clinton-on-abortion-and-religious-freedom/99499.htm> (last visited Apr. 3, 2020).
- <sup>19</sup> Jayne Huckerby, Sara Knuckey & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, JUST SECURITY (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/> (last visited Apr. 3, 2020).
- <sup>20</sup> *Id.*
- <sup>21</sup> *Id.*
- <sup>22</sup> John D. Colyandro & F. Cartwright Weiland, *Undercover Footage Undermines Abortion Advocates' Case in Texas Abortion Case*, THE DALLAS MORNING NEWS (Mar. 2, 2016), <https://www.dallasnews.com/opinion/commentary/2016/03/02/weiland-and-colyandro-undercover-footage-undermines-abortion-advocates-case-in-texas-abortion-case/> (last visited Apr. 3, 2020).
- <sup>23</sup> *Id.*
- <sup>24</sup> Article 5 of the 1993 Vienna Declaration specifically notes that “[a]ll human rights are universal, indivisible and interdependent and interrelated.” UN OHCHR, *Vienna Declaration and Programme of Action* (1993), <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx> (last visited Apr. 3, 2020). See also Human Rights Committee, General Comment No. 12: Art. 1 (Right to Self-determination), U.N. Doc. HRI/GEN/1/Rev.6 (March 13, 1984); Committee on Economic, Social and Cultural Rights, General Comment No. 22 (right to sexual and reproductive health (Art. 12)), UN Doc. E/C.12/GC/22 (March 4, 2016).
- <sup>25</sup> Ken Roth, *Prepared Testimony to Commission on 'Unalienable' Rights*, Human Rights Watch (Jan. 10, 2020), <https://www.hrw.org/news/2020/01/10/prepared-testimony-commission-unalienable-rights> (last visited Apr. 3, 2020). See also 2020 Report of the Special Rapporteur on freedom of religion or belief (Freedom of religion or belief and Gender Equality), A/HRC/43/48, <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx> (last visited Apr. 3, 2020). Notably, in response, Commissioners Berkowitz, Carozza, Tollefsen, Tse-Chien Pan, and Lantos Swett criticized Roth's assertion that the rights of women and girls to receive sexual and reproductive healthcare, including access to abortion, should not be absolutely subjugated to the rights of those

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who would deny such care on the basis of their religious beliefs. In contrast, none of the commissioners suggested that Mr. Roth's position had merit, though it is understood to be an accurate representation of international human rights law by human rights advocates and experts. Complaint, *Robert F. Kennedy Human Rights et al. v. Pompeo*, No. 1:20-cv-02002, ¶¶ 84-85 (S.D.N.Y. filed March 6, 2020), <https://democracyforward.org/wp-content/uploads/2020/03/Complaint-As-Filed.pdf> (last visited Apr. 3, 2020).

<sup>26</sup> During the Commission's second meeting (held 11/1/2019), the Chair of the Commission, Mary Ann Glendon, stated that it was the responsibility of the Commission "to help the U.S. to think more clearly about alleged human rights . . . ."

<sup>27</sup> See U.S. Department of State Commission on Unalienable Rights Minutes (Dec. 11, 2019) <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes-3/> (last visited Apr. 3, 2020).

<sup>28</sup> Human Rights Committee, General Comment No. 36: Art. 6 (Right to Life), U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

<sup>29</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 (right to sexual and reproductive health (Art. 12)), UN Doc. E/C.12/GC/22 (March 4, 2016).