

February 13, 2019

Honorable Mike Pompeo
Secretary of State
United States Department of State
2201 C St., NW
Washington, D.C. 20520
(and by email)

Dear Secretary Pompeo,

As former United States members of and nominees to the Inter-American Commission on Human Rights, we urge you not to grant the request by nine United States Senators to stop U.S. funding of this vitally important institution. Based on a misreading of the Siljander Amendment, which bars use of U.S. foreign appropriations funds “to lobby for or against abortion,” their request would severely impair the capacity of the Commission to carry out its historical and continuing mission to defend democracy, human rights and the rule of law throughout the western hemisphere. At a time when democracy and human rights are under siege in countries like Venezuela, Nicaragua, Cuba, Guatemala and Honduras, the valuable work of the Commission in support of these longstanding U.S. foreign policy goals is needed more than ever.

The Senators’ request, made in a letter to you dated December 21, 2018, is ill-advised as a matter of both law and our bipartisan national commitment to democracy and human rights.

Law:

The nine Senators contend that the Commission “lobb[ies] and coerc[es] pro-life nations into legalizing abortion.” The Commission neither coerces nor even possesses coercive powers. The real contention in the Senators’ letter is that the Commission allegedly engages in lobbying activities in violation of the Siljander Amendment. That Amendment provides that no funds included in Foreign Operations Appropriations “may be used to lobby for or against abortion.”¹

However, the Commission does not violate this condition, because its activities are not “lobbying activities” as defined in federal law.² The Lobbying Disclosure Act defines “lobbying activities” as “lobbying contacts and efforts in support of such contacts.”³ The Act then defines “lobbying contacts” to mean any communication “to a covered executive branch official or legislative branch official that is made on behalf of a client” in regard to federal law, regulation, policy or administration.⁴

¹ Originally section 525 of P.L. 97-121, 95 Stat. 1532 (1981), most recently at p. 498 of the FY2018 State-Foreign Operations Appropriations Act.

² The Siljander Amendment has no definition of lobbying activities. The federal law definition appears in the Lobbying Disclosure Act, as discussed in text above.

³ 2 U.S. Code § 1602 (7).

⁴ 2 U.S. Code § 1602 (8) (A).

There are three main reasons why the activities of the Commission do not constitute “lobbying activities” as thus defined and applied to the lobbying of foreign officials.

First, the Commission does not act “on behalf of a client.” It speaks, not on behalf of private interests, but on behalf of public interests.

Second, the Commission communicates in its official capacity. Its Statute specifically empowers it “to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights.”⁵ Its communications are thus analogous to communications by U.S. officials under the Lobbying Disclosure Act. The Act provides that “lobbying contact” does not include a communication “made by a public official acting in the public official’s official capacity.”⁶

Third, the Commission does not lobby in private. The Lobbying Disclosure Act makes clear that “lobbying activities” do not include communications “made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication.”⁷ The communications made by the Commission, including those cited by the nine Senators, were public communications, published on the Commission’s web site.⁸

For all three reasons – lack of clients, official capacity, and lack of private communications – the activities of the Commission do not constitute “lobbying activities” within the meaning of federal law. These three reasons are not mere technicalities. They reflect important policies underlying the federal lobbying law, which seeks to balance two competing public interests. On the one hand, the law seeks to bring private communications, made on behalf of clients to particular public officials, out into the open, in order to promote transparency and integrity in government. On the other hand, the law respects rights of free expression, by protecting public advocacy such as that engaged in by the Commission. The Commission’s communications are not lobbying, but public advocacy, protected by both U.S. and international law.

⁵ Article 18 (b).

⁶ 2 U.S. Code § 8 (B) (i).

⁷ 2 U.S. Code § 8 (B) (iii).

⁸ An Argentine lawmaker claimed that the Commission responded to his question on whether an embryo is a person. Mariana Iglesias, *Debate Caliente: Para la Comisión Interamericana de Derechos Humanos “el embrión no es persona,”* CLARÍN, June 9, 2018. However, in response to an inquiry from the Argentine government, the Commission denied that it had given any official response. The government was reportedly told that, although the unsigned document came from the office of the Commission’s Executive Secretary, it had neither his knowledge nor his consent, nor did it come from any member of the Commission. Agencia Informativa Católica Argentina, *Es falso el supuesto pronunciamiento de la CIDH a favor de la legalización del aborto,* June 13, 2018; BAE Negocios, *Desmienten a Lipovetzky sobre el apoyo de la CIDH,* June 13, 2018. Whatever may be the facts, this single isolated incident of possibly improper conduct by a staff person is hardly a basis to cut off all U.S. funding for the Commission.

Defending Democracy, Human Rights and the Rule of Law

A cut-off of funding for the Commission is not only unjustified in law, it would also be a short-sighted measure that would inflict severe damage to the Commission's capacity to carry out its historic and continuing mission to defend democracy, human rights and the rule of law in the hemisphere. For decades and especially at present, the Commission's vitally important work spans a wide range of human rights issues for which there is broad bipartisan support in this country. No other entity, public or private, can carry out this essential role, let alone with the authority and credibility of the hemisphere's principal human rights organ, which has been established by the 35 Member States of the Organization of American States. The Commission regularly denounces and acts against massacres, extrajudicial executions, forced disappearances, torture, violence against women, unfair trials, intimidation of judges, violations of freedom of the press, and even assaults on democracy itself, such as are now underway in Venezuela and Nicaragua, and which have characterized Cuba for over half a century.

Countless statistics could be marshalled to demonstrate the important nature of the Commission's work. Recent data on two of its core functions are illustrative. One critical function is to issue "precautionary measures," requesting States to take concrete measures to protect individuals and groups whose lives or security are in imminent danger. In 2018, of the total of 120 requests for precautionary measures granted by the Commission, more than half – 67 requests – were directed to the government of Nicaragua,⁹ thereby seeking to protect a total of at least "137 individuals and, in several cases, their families" from the ongoing repression in that country.¹⁰

If U.S. funding to the Commission were cut off, this life-saving function of the Commission would itself be endangered.

Another key function of the Commission is to issue press releases to bring international attention to issues and threats to human rights. Of 259 press releases issued by the Commission in 2018,¹¹ only one focused on abortion.¹² In contrast, the Commission focused on authoritarian

⁹ Commission Press release 27/19, February 7, 2019.

¹⁰ Commission Press Release no. 271/18, *IACHR Concludes 170th Period of Sessions*, December 18, 2018.

¹¹ Accessible at http://www.oas.org/en/iachr/media_center/PReleases/2018/press_releases_2018.asp. They were numbered through no. 276, but the following 17 press release numbers are missing and were apparently not publicly issued: 3,21,23,27,30,33,35,36,40,56,61,109,147,172,188,201 and 231.

¹² In that press release, the Commission applauded the Supreme Court of El Salvador for releasing a young woman who had served ten years of a 30-year sentence for having had a suspected abortion. Press Release no. 42/18, *IACHR Urges El Salvador to End the Total Criminalization of Abortion*, March 7, 2018.

governments of both left and right. It issued 41 press releases on Nicaragua,¹³ 12 on Venezuela,¹⁴ 12 on Guatemala,¹⁵ six on Honduras,¹⁶ and 43 on acts of murder or violence in other countries.¹⁷

Other Commission activities also centered on abusive regimes. Even though Cuba does not participate in the Organization of American States and refuses to acknowledge the Commission's work, the Commission dedicated an entire section of its annual report, as it does every year, to human rights issues in Cuba.¹⁸ Likewise, as in other recent years, another entire section of the annual report was devoted to human rights violations in Venezuela.¹⁹ In addition, the Commission's most recent, separate Country Reports concern human rights violations in Nicaragua (2018),²⁰ Venezuela (2017)²¹ and Guatemala (2017).²²

The Commission's work in early 2019 continues this essential activity. Its two precautionary measures published this year to date are to protect Juan Guaidó of Venezuela²³ and an anti-government prisoner in Nicaragua.²⁴ Of its 28 press releases through February 8, five are on Venezuela,²⁵ three on Nicaragua,²⁶ two on Guatemala,²⁷ and eight on deaths and acts of violence in other countries.²⁸

The invaluable work of the Commission is especially important in the current context. Repression of human rights, and retreat from democracy and the rule of law, are notorious in several of our hemispheric neighbors. Depriving the Commission of the substantial funding provided by the U.S., even in part,²⁹ would amount to a gift to thugs and corrupt and

¹³ Press releases, all in 2018, nos. 68,90,94,105,108,111,113,116,118,121,122,124,127,128,134, 135,141,145,146, 148,150,156,169,179,183,187,195,203,205,210,222,223,233,245,248,255,265,267,273 and 274.

¹⁴ Press releases, all in 2018, nos. 16,18,25,48,50,77,112,184,193,197,215 and 226.

¹⁵ Press releases, all in 2018, nos. 17,19,64,91,95,101,137,142,158,190,196 and 230.

¹⁶ Press releases, all in 2018, nos. 7,8,131,164,171 and 256.

¹⁷ Press releases, all in 2018, nos. 5,10,28,32,38,52,62,65,66,71,76,79,84,86,92,102,106,114,115,119,125,126, 138,140,143,144,149,155,165,168,173,176,191,202,209,212,235,249,254,261,263 and 276.

¹⁸ Annual Report for 2017 (issued in 2018), Chapter IV, Part B, "Cuba." The Commission also issued two press releases on Cuba during 2018: Nos. 82, *IACHR publishes merit report in case related to the criminalization of political opinion and deliberation in Cuba*, April 11, 2018, and 152, *Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba*, July 17, 2018.

¹⁹ Annual Report for 2017 (issued in 2018), Chapter IV, Part B, "Venezuela."

²⁰ *Gross Human Rights Violations in the Context of Social Protest in Nicaragua* (2018).

²¹ *Democratic Institutions, the Rule of Law and Human Rights in Venezuela* (2017).

²² *Situation of Human Rights in Guatemala* (2017).

²³ Press release 17/19, January 25, 2019.

²⁴ Resolution 2/19, PM 84/19, Ruth Esther Matute Valdivia, Nicaragua.

²⁵ Press releases, all in 2019, nos. 5,12,15,17 and 22.

²⁶ Press releases, all in 2019, nos. 6,21 and 26.

²⁷ Press releases, all in 2019, nos. 7 and 14.

²⁸ Press releases, all in 2019, nos. 1,8,9,11,13,16, 19 and 24.

²⁹ Even if the Commission's activities were deemed (incorrectly) to constitute lobbying, the miniscule proportion of its overall work which involves public communications on abortion could not justify cutting of all funds to the Commission. USAID guidance has stated, "While an organization is prohibited from using U.S. foreign assistance funds to lobby for or against abortion, the restriction does not prohibit the organization from engaging in such activities with its own funds or other non-USG funds (e.g., funding from other donor governments)." USAID GUIDANCE FOR IMPLEMENTING THE SILJANDER AMENDMENT, May 22, 2014 (accessible at <https://www.usaid.gov/sites/default/files/documents/1864/USAID%20Guidance%20for%20Implementing>

authoritarian governments, of both left and right, while alienating U.S. allies who support and depend upon a vibrant Inter-American Human Rights System.

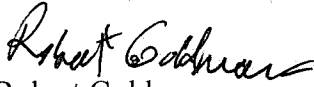
For these reasons, we urge you, Mr. Secretary, not to grant the request to stop funding for the Inter-American Commission on Human Rights.

Sincerely,



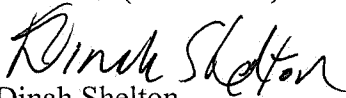
Tom Farer

President (1980-1982) and Member of the Commission (1976-1983)



Robert Goldman

President (1999-2000) and Member of the Commission (1996-2003)



Dinah Shelton

President (2011-2012) and Member of the Commission (2010-2013)



James Cavallaro

President (2016-2017) and Member of the Commission (2014-2017)



Douglass Cassel

U.S. nominee to the Commission (2017)

Cc: John J. Sullivan, Deputy Secretary of State
Jennifer Gillian Newstead, Legal Adviser
Kimberly Breier, Assistant Secretary, Bureau of Western Hemisphere Affairs
Ambassador Carlos Trujillo, U.S. Permanent Representative to the OAS
Alexis F. Ludwig, U.S. Deputy Permanent Representative to the OAS
Ambassador Michael G. Kozak, Senior Bureau Official,
Bureau of Democracy, Human Rights, and Labor

[%20the%20Siljander%20Amendment.pdf](#)). Similarly, State Department Standard Terms and Conditions for U.S. foreign assistance provide simply, "The Recipient agrees that none of the funds provided by this award shall be used to issue grant funds to lobby for or against abortion." (accessible at <https://www.state.gov/documents/organization/237685.pdf>). The Commission receives non-USG funding, including from other governments.