

# Prostitution Policy Splits NGOs in Top Court AIDS Case

A Supreme Court case that challenges a law requiring anti-prostitution policies for HIV/AIDS programs seeking federal money has generated a split among nonprofit groups that counsel sex workers overseas.

The case involves a 2003 law that bars funding for groups that work on HIV/AIDS prevention but do not have a policy opposing prostitution and sex trafficking.

It has pitted two non-governmental organizations that operate programs overseas, backed by umbrella organizations representing others like them, against 46 organizations that have sided with the federal government in defending the law.

"The split is about whether you support the sex industry," Norma Ramos, executive director of the Coalition Against Trafficking in Women, one of the groups siding with the government.

"Prostitution is the end point of sex trafficking" and cannot be separated out from efforts to fight public health problems, including the spread of HIV/AIDS, she said.

The organizations challenging the provision on First Amendment grounds do not want to take a stand on prostitution. They say the law interferes with their work providing advice and counseling to prostitutes about the risks of HIV infection.

The court on April 22 will consider whether the requirement, which has not been enforced since a 2006 injunction, is valid under the U.S. Constitution.

The 2003 law outlined a plan to fight the spread of the HIV virus that causes AIDS, malaria and tuberculosis, part of

which would involve providing funding for non-governmental organizations. Congress so far has provided \$63 billion. Some entities that receive funding, including the World Health Organization, were exempted from the provision.

The Alliance for Open Society International and Pathfinder International—NGOs that receive funding for overseas HIV/AIDS prevention—sued in 2005, citing the First Amendment’s guarantee of free speech.

The two groups have since been joined in the litigation by the Global Health Council and InterAction, two sizable alliances of NGOs that work in developing countries. InterAction has almost 200 member organizations that, between them, receive more than \$1 billion a year in funding from the U.S. government, according to court papers.

But when the justices review the court papers, they will see that Ramos’ group and 45 others have filed a brief in support of the government. Many of the groups focus on women’s rights, especially in the context of prostitution, violence and sex trafficking.

### **Different Views**

In response to their criticism, Punima Mane, the president and CEO of Pathfinder, said it would be a “gross misinterpretation” to suggest her group was somehow supportive of the sex industry or sex trafficking.

She said Pathfinder would likely not have a problem if the policy related only to sex trafficking. The reference to prostitution raises obstacles because of the work the organization does with sex workers, she said. Pathfinder runs programs that, among other things, have taught sex workers how to avoid HIV infections.

“We would not want to condemn the groups we work with and for,” Mane said. Such a move would threaten her organization’s ability to provide “lifesaving health services” to a

vulnerable population, she added.

The main United Nations body that coordinates anti-HIV/AIDS action, known as the UNAIDS Secretariat, supports the groups challenging the law. It has filed a brief echoing Mane's sentiments, noting that programs "work best when they involve, and do not stigmatize, the affected populations."

Outside the courtroom, a group representing sex workers started a petition to reverse the policy, saying it has "resulted in the reduction or complete elimination of HIV prevention and treatment services for sex workers in numerous countries."

The U.S. government "is preventing the delivery of successful health programs and important resources to sex workers worldwide," according to the petition, which has been endorsed by around 150 nonprofit groups including some representing sex workers.

### **Preliminary Injunction**

So far, Pathfinder and its allies have had success in pursuing the argument that the law violates the First Amendment.

A federal judge ruled in 2006 that under First Amendment precedents, the law was infringing on private speech because it compelled the groups to accept the government's policy position on prostitution. The restriction applies across all programs an NGO operates, even those not funded by the federal government.

The judge imposed a preliminary injunction preventing enforcement of the provision, which remains in effect.

The George W. Bush administration tried to circumvent the issue by issuing guidelines, updated by the Obama administration in 2010, that allow groups to set up affiliates that are not bound by the anti-prostitution policy.

But in July 2011, the 2nd U.S. Circuit Court of Appeals in New York upheld the injunction.

In court papers, the Obama administration maintained there was no First Amendment violation because groups “have been given a voluntary choice” of whether to participate in the program.

“Offering private entities that type of choice does not violate the First Amendment,” Solicitor General Donald Verrilli wrote. He said Congress has “wide latitude to attach conditions to the receipt of federal funds.”

Justice Elena Kagan is recused, most likely due to her previous role as solicitor general, meaning only eight justices will hear the case.

The case is U.S. AID v. Alliance for Open Society International, U.S. Supreme Court, No. 12-10.

For petitioners: Donald Verrilli, solicitor general, Department of Justice.

For respondents: David Bowker, WilmerHale.

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