

For Immediate Release
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Contact:
Laura Abel, (212) 998-6737 or (917) 859-9147
Rebekah Diller, (212) 992-8635 or (347) 330-7464

Broad Range of Humanitarian Groups Must Benefit From Injunction Against Speech Restriction In HIV/AIDS Program, Says Federal Court
New government guidelines do not cure unconstitutionality of anti-prostitution pledge requirement, court holds

NEW YORK, NY - A federal judge ruled today that a sweeping restriction on the speech of groups participating in the federal government's international HIV/AIDS program continues to violate the First Amendment. The court enjoined the government from enforcing the restriction against the members of two preeminent public health and humanitarian membership groups.

At issue in the case is a requirement that public health groups receiving U.S. funds under the U.S. Leadership Against HIV/AIDS, Tuberculosis and Malaria Act pledge their opposition to prostitution in order to continue their life-saving HIV prevention work. Under this "pledge requirement," recipients of U.S. funds are forced to censor even their privately funded speech regarding the most effective ways to engage high-risk groups in HIV prevention. In May 2006, Judge Victor Marrero of the U.S. District Court for the Southern District of New York ruled that the requirement violates the First Amendment rights of two plaintiff organizations, Alliance for Open Society International and Pathfinder International, by restricting their privately funded speech and forcing them to adopt the government's viewpoint.

Today's ruling extends that injunction to the members of InterAction, the largest alliance of U.S.-based humanitarian organizations, and to the U.S.-based members of Global Health Council, a preeminent public health membership group. The ruling also rejects the claims of the defendants – U.S. Agency for International Development and Department of Health and Human Services (HHS) – that the constitutional flaws identified in the May 2006 decision had been cured by the issuance of government guidelines that purport to provide recipients a means of speaking freely with their private funds.

Today's ruling holds that the guidelines continue the pledge requirement's flaws, by continuing to require independent organizations to espouse the government's point of view in order to participate in the HIV/AIDS program. The court also held that the guidelines – which require recipient organizations to set up legally and physically separate affiliates, with separate management, board and staff in order to speak freely with private funds – are too burdensome to survive scrutiny under the First Amendment. "The Court finds that the Guidelines require more separation than is reasonably necessary to satisfy the Government's legitimate interest . . . and that the Guidelines are not narrowly tailored to achieve Congress's goals," wrote Judge Marrero.

The ruling comes as defendant HHS engages in a "notice and comment process" to arrive at a final regulation implementing the pledge requirement. HHS's proposed regulation is nearly identical to the guidelines found unconstitutional in today's decision. In May 2008, several

dozen public health and humanitarian groups had submitted comments to the agency expressing concerns about the draconian separation requirements.

The plaintiffs are represented by the Brennan Center for Justice at NYU School of Law and the law firm of Wilmer Hale.

Today's opinion, and all the legal filings in the case, can be found on the Brennan Center website at: http://www.brennancenter.org/content/resource/aosi_v_usaid

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