

U.S. GLOBAL AIDS FUNDING AND ITS DISCONTENTS: WHY THE SUPREME COURT MUST STRIKE DOWN THE ANTI-PROSTITUTION PLEDGE

By Chi Adanna Mgbako

ON APRIL 22, 2013, THE UNITED STATES SUPREME COURT heard arguments in *U.S. Agency for International Development (USAID) v. Alliance for Open Society International, Inc.*, a case whose outcome will affect international efforts to safeguard the health of sex workers, a marginalized population in the global HIV/AIDS response. At the case's core rests the fate of the U.S. "anti-prostitution pledge," a Congressional requirement attached to the 2003 *United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act* that forces U.S. and international-based organizations receiving U.S. global AIDS funding to adopt policies "opposing prostitution and sex trafficking."¹ The anti-prostitution pledge also prohibits these groups from using their private funds to engage in undefined activities that "promote" sex work.

Not only is the anti-prostitution pledge a clear violation of U.S.-based groups' free-speech rights, as it forces them to parrot the government's viewpoint and restricts privately funded speech, it is also a prime example of harmful global HIV/AIDS policy. Effective HIV outreach with stigmatized groups like sex workers requires a non-judgmental approach that builds constructive partnerships with affected communities.²

Organizations servicing sex workers in countries as diverse as Bangladesh, Brazil, Burma, Cambodia, India, Mali, Thailand, and Uganda have passionately decried the anti-prostitution pledge.³ They have either rejected direct U.S. AIDS funding because the restrictions make it difficult or impossible to work with sex workers, or their international partners who signed the pledge have shunned them, fearful of jeopardizing their U.S. funding. This has resulted in the tragic defunding of critical HIV intervention services for sex workers.

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In 2005, a consortium of U.S.-based public health organizations filed a lawsuit against the Bush administration-controlled USAID, arguing that the anti-prostitution pledge violates their First Amendment rights and impedes their ability to work in partnership with overseas populations deeply affected by HIV/AIDS. As the case wound its way through the federal courts over the years, the Bush administration morphed into the Obama administration, which continues to defend the pledge despite clear cries from public health organizations about its harmful effects on global HIV/AIDS intervention programs.⁴ In 2012, the case reached the U.S. Court of Appeals for the Second Circuit, which sided with the public health organizations' legal claims. The Obama administration appealed the Second Circuit ruling to the Supreme Court, which will decide the fate of the anti-prostitution pledge this summer.

The administration's determination to see the anti-prostitution pledge upheld is puzzling in light of the administration's divergent approach to the Mexico City Policy, known as the "Global Gag Rule," another dubious government policy that placed political moralizing over evidence-based global health interventions. First instituted by the Reagan administration in 1984, the Global Gag Rule prevented foreign organizations receiving U.S. aid from using their private funds to engage in activity that "promotes abortion" through the provision of abortion services or counseling. Like the anti-prostitution pledge, the Global Gag Rule's health consequences were dire. Lack of access to safe abortion care remains a major contributor to maternal deaths of the world's poorest and most vulnerable women. The Global Gag Rule forced organizations to stop providing family planning services that save women's lives.

On January 23, 2009, Barack Obama repealed the Global Gag Rule by executive order, one of his first acts as president. He stated that the policy had "undermined efforts to promote safe and effective voluntary family planning in developing countries" and that its rescission would "end the politicization of this issue."⁵ The administration's repeal of the Global Gag Rule and acknowledgement that the U.S. government should not sacrifice global health concerns to the political winds stands in striking contrast to its fight to uphold the anti-prostitution pledge, even though the pledge also obstructs organizations' efforts to provide vulnerable groups with life-saving health services and information.

In championing the survival of the anti-prostitution pledge, Solicitor General Donald B. Verrilli, Jr. has argued that the pledge's partial purpose is to discourage the "behavioral risks" associated with "participation in the sex trade" that "foster" the spread of HIV.⁶ It is unfortunate that in its defense of the pledge, the administration has chosen to recycle old stigmatizing tropes that paint sex workers as vectors of disease. In recent years, influential global bodies have taken public stances that refute these stigmatizing and condescending notions and present sex workers as essential partners in the global fight against HIV/AIDS. In 2012 the Global Commission on HIV and the Law and several UN agencies released reports disavowing the stigmatization of sex workers and their trade and highlighting the U.S. anti-prostitution pledge as harmful to HIV intervention efforts.⁷ The World Health Organization also released a watershed 2012 report calling for de-stigmatization and championing sex workers as vital partners in the struggle against the HIV epidemic.⁸

The anti-prostitution pledge is steeped in moral objections to sex work and not in sound public health policy regarding tried-and-true HIV interventions involving marginalized populations, just as the Global Gag Rule was grounded in anti-choice ideology and not in the reality that unobstructed access to safe abortion information and services save the lives of poor women globally. A ruling by the Supreme Court striking down the anti-prostitution pledge would be a victory in the global struggle against HIV/AIDS. If it is a fight that the global community will ever win, we must work *with* highly affected communities, not in judgment but in deep and unwavering solidarity. ▼

– *Jake Nelson served as Lead Editor for this op-ed.*

NOTES

¹ H.R. 1298 (108th): United States Leadership Act Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003.

² “HIV/AIDS sex work toolkit: Key principles,” World Health Organization, accessed February 25, 2013, http://www.who.int/hiv/topics/vct/sw_toolkit/context/en/index4.html.

³ For informative interviews with global activists watch the short documentary “Taking the Pledge: The USAID PEPFAR Clause, Sex Work, and HIV Prevention,” Network of Sex Work Projects, accessed February 25, 2013, <http://www.youtube.com/watch?v=t1gXFD4CAT4>. In the film, a Bangladeshi activist who experienced the pledge-prompted defunding and closure of drop-in-centers that provided condoms and safe sex information to street-based sex workers lamented, “Since we have been forced to close our centers, we have lost our communities. We are nowhere now.” *Ibid*; see also Claire Provost, “Anti-prostitution pledge in US Aids funding ‘damaging’ HIV response,” guardian.co.uk, July 24, 2012, accessed February 26, 2013, <http://www.guardian.co.uk/global-development/2012/jul/24/prostitution-us-aids-funding-sex>.

⁴ Hundreds of HIV/AIDS, human rights, and sex worker rights groups have signed an online petition demanding a reorientation of U.S. policy toward sex work and HIV and the removal of damaging funding restrictions. See “A Call to Change U.S. Policy on Sex Work and HIV,” accessed February 25, 2013, <http://sexworkandhiv.org/>.

⁵ “Statement of President Barack Obama on Rescinding the Mexico City Policy,” The White House: Office of the Press Secretary, last modified January 23, 2009, <http://www.whitehouse.gov/the-press-office/statement-president-barack-obama-rescinding-mexico-city-policy>.

⁶ Robert Barnes, “Supreme Court to decide restrictions on groups fighting HIV/AIDS,” *The Washington Post*, January 11, 2013.

⁷ United Nations Development Program, United Nations Population Fund, Joint United Nations Program on HIV/AIDS, *Sex Work and the Law in South Asia and the Pacific* (Thailand: UNDP, 2012); Global Commission on *HIV and the Law, HIV and the Law: Risks, Rights, and Health* (New York: UNDP, 2012).

⁸ World Health Organization, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach* (Geneva: WHO, 2012).