

Reuters New Media

U.S. justices strike down AIDS funding restriction

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June 20, 2013

WASHINGTON (Reuters) - The U.S. Supreme Court on Thursday struck down a George W. Bush-era law requiring non-profit organizations to adopt an anti-prostitution policy in order to obtain federal funding for HIV/AIDS programs abroad.

Chief Justice John Roberts wrote in his majority opinion that the 2003 law violated the First Amendment free speech rights of non-governmental organizations that work on HIV/AIDS prevention.

The court vote was 6-2 with Justice Elena Kagan recused, most likely due to her previous role as solicitor general in the Obama administration, when she may have been involved in the litigation.

The law barred funding for organizations that operate programs overseas but do not have a blanket policy opposing prostitution and sex trafficking.

The organizations challenging the provision did not want to take a stand on prostitution. They said the law interfered with their work providing advice and counseling to prostitutes about the risks of HIV infection.

The non-profit world was divided, with 46 groups, many of which focus on women's rights, supporting the law.

The Alliance for Open Society International and Pathfinder International - non-governmental organizations (NGOs) that receive funding for overseas HIV/AIDS prevention - sued in 2005, citing the guarantee of free speech in the U.S. Constitution's First Amendment.

The groups obtained an injunction in 2006 that has prevented the policy from being enforced. Now it never will be.

Thursday's ruling upheld the appeals court's injunction.

"Condemnation and alienation are not public health strategies," said Marine Buissonniere, director of the Open Society Public Health Program, one of the groups that challenged the policy. "The pledge ignores years of evidence that sex workers are critical partners in the fight against AIDS," she added.

FIRST AMENDMENT AT ISSUE

In his opinion, Roberts noted that under Supreme Court precedent, the government can set conditions on funding that relate to the specific way the money is spent but cannot "seek to leverage funding to regulate speech" that falls outside the limits of the program.

"The case is not about the government's ability to enlist the assistance of those with whom it already agrees," Roberts said. "It is about compelling a grant recipient to adopt a particular belief as a condition of funding."

In this instance, the condition constituted "the affirmation of a belief that by its nature cannot be confined within the scope of the government program," meaning it violates the First Amendment, he wrote.

Justices Antonin Scalia and Clarence Thomas dissented.

Scalia wrote in his dissenting opinion that the policy requirement was "nothing more than a means of selecting suitable agents to perform the government's chosen strategy."

Under the First Amendment, the government is not required to be "viewpoint neutral," he added. "Moreover, the government may enlist the assistance of those who believe in its ideas to carry them to fruition," Scalia said.

Representatives from the U.S. Agency for International Development, which oversees foreign aid, were not immediately available for comment.

The case prompted an unusual coalition of groups, some conservative and some liberal, to back the NGOs.

Eugene Volokh, a First Amendment expert at the University of California, Los Angeles School of Law, said if the court had endorsed the government's position, it could have led to all kinds of conditions being imposed on government funding and even other forms of government benefits, such as tax exemptions.

"The court wasn't willing to allow the government that kind of power," he said. Volokh filed a brief in the case in support of the challengers.

The American Civil Liberties Union took a similar position.

The government's ability to impose conditions on groups that receive funding does not allow it "to dictate what they believe or what they say with private funds," said attorney Steven Shapiro.

The case is Agency for International Development v. Alliance for Open Society International, U.S. Supreme Court, No. 12-19.

(Reporting by Lawrence Hurley; Editing by Howard Goller and Eric Beech)

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