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## The Supreme Court Should Overturn the Anti-Prostitution Pledge Requirement

By: Elizabeth Gavin – April 25, 2013

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On Monday, April 22nd, the Supreme Court heard oral arguments in a First Amendment case that challenges Congress' ability to require private organizations to adopt a policy "opposing prostitution" as a condition for receiving federal HIV/AIDS funding for overseas programs. The requirement comes from a provision of the 2003 Leadership Act, which Congress passed to provide organizations and foreign countries with USAID funding to combat preventable diseases such as HIV/AIDS, tuberculosis, and malaria.

Commonly referred to as the "anti-prostitution pledge," the requirement is not based on any evidence that such a policy is effective in preventing and treating HIV/AIDS. In fact, the anti-prostitution pledge has severely undermined public health efforts. The Supreme Court should overturn the anti-prostitution pledge because, in addition to curtailing HIV/AIDS programs, it violates the First Amendment.

The government can impose restrictions that ensure its funds are only used for programs that encourage activities with which it agrees. In fact, the Leadership Act does this, by including another provision that bars recipients from using federal funds to "promote prostitution." The plaintiffs, a consortium of public health organizations, are not challenging this provision.

But by requiring an organization-wide pledge, the government overreaches because it either compels organizations to forego any contrary beliefs they may have or requires them to feign like-mindedness with the government on an ideological position regarding sex work.

The opposition to the anti-prostitution pledge has united a diverse set of groups, including the ACLU, the Cato Institute, and the Christian Legal Society. Despite the political viewpoints that divide them, these organizations all agree that upholding the pledge would give government the power to destroy the marketplace of ideas upon which a democracy relies.

The pledge requirement abuses the power of the purse by strengthening organizations that ingratiate themselves with the government and financially paralyzing those that do not. Because the requirement dictates which beliefs a recipient organization can have, organizations that disagree with the government, or have no opinion either way about sex work, are excluded from the funding program.

It is the value judgment of the pledge requirement that makes compelling this speech the most alarming. Freedom of thought is particularly critical in the realm of public health, where organizations on the ground must develop realistic and evidence-based methods without ideological restraints. Instead, the pledge requirement forces public health organizations to blindly take an oath that they will subscribe to the government's viewpoint.

The Supreme Court has consistently overturned laws where the government tries to purchase a relinquishment of fundamental rights. The fact that organizations can choose to not receive the funding is not enough for the pledge requirement to pass a First Amendment test because all government aid is to some degree voluntary.

Congress is not free to barter for a waiver of First Amendment protections. The power of our government derives from the consent of the governed. The government undermines that power when it coerces this consent.