

WHAT IS THE ANTI-PROSTITUTION LOYALTY OATH?

The anti-prostitution loyalty oath (APLO) is a provision in the U.S. Leadership Act of 2003 (the Act) which requires all recipients of the President’s Emergency Plan for AIDS Relief (PEPFAR) funding to “have a policy explicitly opposing prostitution.” The Act is a federal law that authorized billions of dollars to support both U.S. and foreign non-governmental organizations to fight HIV/AIDS overseas. The Act contains two related limitations on federal funding:

- No funds “may be used to promote or advocate the legalization or practice of prostitution or sex trafficking”
- No funds “may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking”

The second limitation, which is known as the anti-prostitution loyalty oath (APLO) or Prostitution Pledge, was challenged in the Supreme Court and held as an unconstitutional limit on free speech.

THE APLO HAS BEEN RULED UNCONSTITUTIONAL

<p><i>USAID v. AOSI</i>, U.S. SUPREME COURT</p>	<ul style="list-style-type: none"> • In 2013, the Supreme Court held that the APLO violates the First Amendment since it requires funding recipients to “pledge allegiance to the Government’s policy of eradicating prostitution.” • Congress cannot compel a grant recipient to “adopt a particular belief as a condition of funding;” to do so would limit the constitutionally protected right of free speech.
<p><i>AOSI v. USAID</i>, DISTRICT COURT OF NEW YORK</p>	<ul style="list-style-type: none"> • In 2015, the Alliance for Open Society International (AOSI) brought the U.S. Agency for International Development (USAID) back to court to compel USAID to abide by the Supreme Court’s 2013 ruling. • The district court held that USAID and other funding agencies must provide clear and explicit exceptions to the APLO for U.S. NGOs and their affiliates, and the exception language must be included in all communication between the funding agencies and the recipients, in order to avoid confusion or ambiguity which could lead to the chilling of constitutionally protected speech. • Regulations published by funding agencies must be clear and comply with the Supreme Court’s decision, so as to prevent ambiguity and needless closures of sex worker programs.

WHO IS AFFECTED BY THE APLO?

The 2013 Supreme Court ruling, holding the APLO unconstitutional, applies only to *U.S. NGOs and their foreign affiliates*. The APLO is not unconstitutional when applied to foreign NGOs, and therefore foreign NGOs are still required to have a policy opposing sex work in order to receive PEPFAR funding. Foreign NGOs are not protected by the U.S. Constitution’s First Amendment, and are thus not provided the constitutional right of free speech.

WHAT ARE THE EFFECTS OF THE APLO?

- The APLO has had pervasive and direct negative effects on the global goal of preventing HIV worldwide and prevents PEPFAR from engaging with many effective organizations globally.
- It is unclear what activities and services are prohibited by the APLO, which has led to arbitrary and unpredictable interpretations of its restrictions.¹¹ Many organizations fear that their funds will be at risk if they provide services to sex workers, and so have eliminated these services from their programs. This abandonment of programs for sex workers by recipients of PEPFAR funding is known as the “chilling effect.”
- Organizations find that publicly opposing sex work while also providing social and health services to sex workers both stigmatizes sex workers and is hypocritical. For this reason, some organizations refuse to pledge their opposition to sex work and therefore must reject PEPFAR funding.
- Sex workers have been called by USAID a “most-at-risk population”¹⁵ and studies show the high success rate of sex worker involvement and leadership in HIV prevention and treatment programs. Since the APLO reduces engagement with sex workers, its continued existence prevents best practices for preventing HIV infection.

Studies reveal that sex workers worldwide are disproportionately affected by HIV due to their exposure to legal, social, and economic injustices. Sex workers often face discrimination and denial of health services, including HIV testing and treatment, assurance of confidentiality, counseling, and other health care services. Violations of sex workers' human rights, including daily violence and abuse from clients, police officers, and intimate partners; social condemnation; and exclusion from the legal and health systems; lead to higher HIV susceptibility and transmission rates. Sex workers' continued exclusion from HIV prevention programs undermines the goal of implementing successful and comprehensive HIV initiatives.

DECRIMINALIZATION OF SEX WORK REDUCES HIV INFECTIONS

- Decriminalization of sex work could avert 33-46% of HIV infections among all people worldwide, within the next decade.
- Decriminalization of sex work and the promotion of HIV interventions for sex workers can overcome barriers to accessing health care. For example:
 - Behavioral interventions like condom promotion and distribution show a 70% reduction in HIV transmission, and pre-exposure prophylaxis and test and treat could reduce incidence by another 40%.
 - Increasing sex worker access to antiretroviral therapy (ART) to meet current WHO guidelines could reduce HIV infections by 34%, in sex workers and their clients, if structural support is also ensured.
 - Increased outreach and support programs led by sex workers could prevent an additional 20% of infections in sex workers and their clients in the next decade.
- Studies in both Kenya and Canada show that the elimination of violence by police, clients, and others could lead to a 17-20% reduction in HIV infections of female sex workers and their clients, in the next decade.
- Decriminalization is essential to achieving PEPFAR's goals, to prevent HIV infections, and to prevent human rights violations in the sex worker community.

THE ANTI-PROSTITUTION LOYALTY OATH (APLO) IS A BARRIER TO REDUCING HIV INFECTIONS

- The APLO creates barriers for sex workers trying to access effective HIV prevention programs and services, reduces the effectiveness of HIV prevention, and promotes stigma and discrimination against this group.
- The APLO often prevents sex workers' involvement in the development, implementation, and assessment of HIV programs and services, undermining the public health best practices approach of community empowerment.
- HIV prevention programs that engage the sex worker community have been reduced because of the APLO, due to a reduction in funding.
- Reductions in programs benefitting sex workers actively impede the goal of combatting HIV and preventing future infections.

For a fully referenced version of this fact sheet please see: <http://bit.ly/1IVSL5u>

ABOUT THE CENTER FOR HEALTH AND GENDER EQUITY (CHANGE)

[The Center for Health and Gender Equity \(CHANGE\)](http://www.change.org) is a U.S.-based nongovernmental organization that promotes the sexual and reproductive health and human rights of women and girls worldwide through education and advocacy efforts that affect the development and implementation of U.S. policies.