

May 18, 2005

President George W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

The undersigned represent a diverse group of public health, human rights, faith-based and community-based organizations. We strongly support the U.S. government's goals of preventing the spread of HIV and ending trafficking in persons worldwide. We are concerned, however, that U.S. anti-HIV/AIDS and anti-trafficking efforts will be severely undermined by policies restricting the range of interventions that can be used to protect the lives and health of women and men in prostitution, and of trafficked persons, the very groups intended as beneficiaries of U.S. efforts.

Current U.S. law requires organizations receiving U.S. global HIV/AIDS and anti-trafficking funds to adopt specific organization-wide positions opposing prostitution.¹ Until recently, these restrictions have been applied to foreign non-governmental organizations receiving U.S. HIV/AIDS and anti-trafficking funds.² A September 2004 opinion letter by the U.S. Department of Justice, however, proposes expanding these policies to U.S.-based organizations.³ Both U.S. AIDS law and anti-trafficking law also bar the use of funds, variously, to "promote, support, or advocate the legalization or practice of prostitution."⁴

Based on the experience of many of our organizations in advocating for the health and human rights of women and men in prostitution, we are deeply concerned that these restrictions will preclude recipients of U.S. funds from using the best practices at their disposal to prevent HIV/AIDS among these populations and to promote the fundamental human rights of all persons. In fact, evidence exists that these restrictions are already undermining promising interventions.

Women and men in prostitution, some of whom have been trafficked, are among the most marginalized persons in any society. The organizations with the most effective anti-AIDS and anti-trafficking strategies build their efforts on a sophisticated understanding of the social and personal dynamics underlying these issues, and start by building trust and credibility among the populations in question. They recognize that it is both possible and often necessary to provide social, legal and health services to men and women in prostitution without judging them, and without adopting positions on issues such as prostitution.⁵ They may work to provide persons in prostitution with new skills essential to moving out of the commercial sex sector, to secure the legal rights of men and women in prostitution to be free from violence and discrimination, or to empower them to demand universal condom use, thereby preventing the further spread of HIV infection within and outside this sector.⁶ They may also work to prevent people from being trafficked into the sex sector and to assist trafficking victims. Requiring organizations to adopt anti-prostitution policies makes it extremely difficult, if not impossible, to establish the trust necessary to provide services to these hard-to-reach groups.

We are strongly opposed to the current restrictions on working with women and men in prostitution inscribed in law and extended in U.S. HIV/AIDS and anti-trafficking policies. First, and most importantly, these policies run contrary to best practices in public health and will undermine efforts to stem the spread of HIV and human trafficking. For example, the Sonagachi Project in Calcutta, India, has reached more than 30,000 persons working in the commercial sex sector at risk of HIV, in large part through peer-based outreach services. Sonagachi's peer educators work to stop the spread of HIV among women and men in prostitution in part through strategies intended to earn their trust, reduce their social isolation, increase their participation in public life, and confront stigma and discrimination.⁷ Sonagachi's work has received strong positive evaluations from both UNAIDS and the World Bank, and has been cited by UNAIDS as a "best-practice" model of working with women and men in prostitution.⁸ These initiatives focus on promoting the fundamental human rights and health of persons working in prostitution, but do not equal

the *promotion* of prostitution. Yet valuable programs such as those run by Sonagachi and organizations like it are exactly the type threatened by current U.S. laws and policies.

Second, the broad language of the restrictions increases the risk that organizations will self-censor or curtail effective programs for fear of being seen as supporting or promoting prostitution. In fact, the restrictions are already having a chilling effect on work in the field. In Cambodia, for example, NGOs discontinued plans to provide English language training classes for people working in the commercial sex sector for fear such programs would be interpreted as “promoting prostitution.”⁹ Yet in Phnom Penh alone, the rapid growth of job opportunities in government, in non-governmental organizations, and in the tourist industry makes English language skills a valuable commodity and a means of accessing opportunities outside the sex sector. In Jamaica, health workers working with men and women in prostitution have expressed concern that these restrictions curtail their ability to support the efforts of people working in the commercial sex sector to protect their rights.¹⁰

We recognize that your goal is to address the dangers associated with prostitution and trafficking in persons. However, we are concerned that these policies will do little to advance this goal, and will instead exacerbate stigma and discrimination against already marginalized groups. Any anti-prostitution declaration by organizations working in the sex sector has the potential to judge and alienate the very people these organizations seek to assist, making it difficult or impossible to provide services or assistance to those at risk. Public statements against prostitution can also fuel the public opprobrium against men and women in prostitution, further driving them underground and away from lifesaving services. It was for these and other reasons that Brazil recently rejected \$40 million in U.S. global AIDS money, noting that such restrictions undermined the very programs responsible for Brazil’s success in reducing the spread of HIV.¹¹

Finally, we are gravely concerned that the potential expansion of these restrictions to U.S.-based groups contradicts the fundamental right to freedom of speech guaranteed in the U.S. Constitution.¹² Requiring domestic organizations with mixed funding to adopt positions consistent with U.S. government policy compels speech, which is an unconstitutional condition on government funding in violation of the First Amendment.¹³ While the U.S. government can legally require its funds be used to further government-approved messages,¹⁴ it has not previously compelled U.S. organizations with multiple funding sources to speak explicitly on an issue in compliance with a specific U.S. objective. The courts have long held that the government does not have power to compel a U.S. grantee to pledge allegiance to the government’s viewpoint in order to participate in a government program.¹⁵ We also strongly believe that compelling foreign organizations to adopt policies consistent with the government’s viewpoint raises important constitutional concerns and undermines the democratic principles for which the United States stands.¹⁶

Rather than requiring organizations to adopt explicit anti-prostitution policies, the U.S. government could fulfill its goals by permitting organizations that do not have a policy on prostitution to receive U.S. funds. There is bipartisan support in Congress for this solution.¹⁷ The advantage of this approach is that it does not pressure organizations, whether international or domestic, to adopt policies that run contrary to best health-care practices, may have nothing to do with their work or organizational mission, and have the potential to undercut the very purpose of U.S. grants. Such a policy would allow a wide range of organizations to participate in the global struggle against AIDS, while recognizing the importance of freedom of speech and freedom to receive and impart information in promoting the health and well-being of all citizens.

We urge you to act immediately to:

- ◆ Request that the Department of Justice reconsider its interpretation on the application of the restrictions in the Global AIDS Act of 2003 to domestic grantees, ensuring instead that all programs are consistent with human rights and public health norms and constitutional guarantees of freedom of speech;
- ◆ Institute the practice of consultation with a broad range of experts in both the HIV/AIDS and trafficking fields before any agency or office issues program directives interpreting U.S. HIV/AIDS

and trafficking laws to ensure transparency in policymaking, consistency with U.S. and international human rights law, and the promotion of best practices in public health;

- ◆ Work with Congress to amend the TVPRA and the Global AIDS Act of 2003 so that these laws are consistent with U.S. and international human rights law and with best practices in public health.

We share your concerns about the need to stop the spread of HIV worldwide and to address the needs of trafficked persons. We hope, however, that in the future funding will be distributed to organizations based solely upon their demonstrated capacity to prevent the spread of HIV and human trafficking according to best practices in the fields of public health and human rights, to provide treatment for those suffering from AIDS, and to provide services and support to trafficked persons while simultaneously promoting the basic human rights and freedom of speech of all persons.

Sincerely,

Organizations by Region

Africa

AIDS Law Project, Centre for Applied Legal Studies, Wits University, South Africa
BAOBAB for Women's Human Rights, Lagos, Nigeria
Gays and Lesbians of Zimbabwe, Harare, Zimbabwe
Greater Nelspruit Rape Intervention Program, Mpumalanga, South Africa
International Centre for Reproductive Health and Sexual Rights, Nigeria

National Forum of People Living with HIV/AIDS Networks in Uganda, Kampala, Uganda
Resource Centre Library, Institute of Training and Education for Capacity-building, East London, South Africa
SWEAT (Sex Worker Education and Advocacy Taskforce), Cape Town, South Africa
Youth Empowered to Succeed, Kisumu, Kenya

Asia and Pacific

Action for REACH OUT, Hong Kong, China
Alternate Visions, Bangkok, Thailand
Asia Pacific Network of People Living with HIV/AIDS, Bangkok, Thailand
Australian AIDS Fund Incorporated, Melbourne, Australia
Australian Reproductive Health Alliance, Deakin, Canberra, Australia
Center for the Study of Sexualities, National Central University, Chungli, Taiwan
Centre for Feminist Legal Research, New Delhi, India
Delhi Network of People Living with HIV/AIDS, Delhi, India
Durbar Mahila Samanwaya Committee (Sonagachi Project), Kolkata, India
Empowering Women to Fight AIDS in Asia, Islamabad, Pakistan
Family Planning Association of New Zealand, Wellington, New Zealand
Freedom Foundation-India, Centers of Excellence, Substance Abuse & HIV/AIDS, Bangalore, India
Friends of Hope PLWHA NGO, Pokhara, Nepal
HuMaNis Foundation, Mataram, West Nusa Tenggara, Indonesia

International Secretariat of the Global Alliance Against Traffic in Women (GAATW), Bangkok, Thailand
Lawyers Collective HIV/AIDS Unit, New Delhi, India
MTAAG+ (Positive Malaysian Treatment Access & Advocacy Group), Malaysia
Nari Unnayan Shakti (Women's Power for Development), Dhaka, Bangladesh
National Association of People Living with HIV/AIDS-Australia, Australia
National Association of PLHWHA in Nepal, Kathmandu, Nepal
Network of Sex Work Projects, Hong Kong
Pelangi Community Foundation, Batu Caves, Malaysia
RISE, Peshawar, Pakistan
SANGRAM (Sampada Grameen Mahila Sanstha), Sangli, India
Scarlet Alliance, Australian Sex Workers Association Inc, Canberra, Australia
Solidaritas Perempuan (Women Solidarity for Human Rights), Jakarta, Indonesia
TARSHI (Talking About Reproductive and Sexual Health Issues), New Delhi, India

TREAT Pokhara, Nepal

Europe/Central Asia

AIDS Action Europe, the Pan European NGO Partnership on HIV and AIDS, Amsterdam, The Netherlands
AIDS Foundation East-West, Moscow, Russia
AIDS Information & Support Center, Tallinn, Estonia
All-Ukrainian Network of People Living with HIV/AIDS, Kiev, Ukraine
Anti Trafficking Center, Belgrade, Serbia
CABIRIA, Lyon, France
Child in Need Institute International, Italy
CHOICE for Youth and Sexuality, The Netherlands
Comitato per i Diritti Civili delle Prostitute Onlus, Pordenone, Italy
Droits et libertés dans les Eglises, France
European AIDS Treatment Group, Brussels, Belgium
Foundation La Strada, Programme for Prevention of Trafficking in Central and Eastern Europe, Bosnia and Herzegovina
GAT (Grupo Português de Activistas sobre Tratamentos de VIH/SIDA), Lisbon, Portugal
GNP+ (Global Network of People living with HIV/AIDS), Amsterdam, The Netherlands
Grupo de Trabajo sobre Tratamientos del VIH, Barcelona, Spain
HDN (Health & Development Networks), Dublin, Ireland
Health and Social Development Foundation, Sofia, Bulgaria
Health Education Association NGO, Yerevan, Armenia
Hope, Sofia, Bulgaria

Latin America

Accion Ciudadana Contra el SIDA, Caracas, Venezuela
Agua Buena Human Rights Association, San Jose, Costa Rica
Católicas por el Derecho a Decidir, Córdoba, Argentina
Ecuadorian Coalition of People Living with HIV/AIDS, Ecuador
Foundation for Studies and Research on Women, Argentina

Middle East/North Africa

Egyptian Initiative for Personal Rights, Egypt

North America

ACT UP East Bay, Oakland, CA, USA
ACT UP New York, NY, USA

Zi Teng, Hong Kong, China

Humanist Committee for Human Rights, Utrecht, The Netherlands
Humanist Institute for Co-operation with Developing Countries, The Hague, Netherlands
International Community of Women living with HIV/AIDS, London, United Kingdom
International Drug Policy Consortium, London, United Kingdom
International La Strada Association, Amersfoort, T Netherlands
International Planned Parenthood Federation, London, United Kingdom
Irish Family Planning Association, Dublin, Ireland
John Mordaunt Trust, London, United Kingdom
La Strada Czech Republic, Prague, Czech Republic
LEFÓ Beratung, Bildung und Begleitung für Migrantinnen (Counselling, Education and Support for Migrant Women), Vienna, Austria
Lesbian and Gay Federation in Germany, Cologne, Germany
NGO "TRUST," Skopje, Republic of Macedonia
Russian Harm Reduction Network, Moscow, Russia
Until the Violence Stops, London, United Kingdom
We Are Church-YOUTH, Cologne & Munich, Germany
Women for Women's Human Rights - New Ways, Istanbul, Turkey
Women in Black, Belgrade, Serbia
World Population Foundation, Hilversum, Netherlands

Huellas+, Quito, Ecuador
Intercambios Asociación Civil, Buenos Aires, Argentina
International Council of Jewish Women, Montevideo, Uruguay
Latin American and Caribbean Council of AIDS Service Organizations, Caracas, Venezuela
Red Argentina de Reducción de Daños (Argentinean Harm Reduction Network), Buenos Aires, Argentina

Persepolis Harm Reduction NGO, Tehran, Iran

Action Canada for Population and Development, Ottawa, ON, Canada
Advocates for Youth, Washington, DC, USA

Africa Action, Washington, DC, USA
 AIDS Action Council, Washington, DC, USA
 AIDS Foundation of Chicago, Chicago IL, USA
 AIDS Project Los Angeles, CA, USA
 AIDS Taskforce of Greater Cleveland, Cleveland, OH, USA
 American Academy of HIV Medicine, Washington, DC, USA
 American Humanist Association, Washington, DC, USA
 American Jewish World Service, New York, NY, USA
 amfAR (The Foundation for AIDS Research), New York, NY, USA
 Amnesty International USA, New York, NY, USA
 Best Practices Policy Project, Washington, DC, USA
 Boston Consortium for Gender, Security and Human Rights, Boston, MA, USA
 Canadian HIV/AIDS Legal Network, Montreal, Canada
 Canadian Research Institute for the Advancement of Women, Ottawa, Canada
 Canadian Society for International Health, Ottawa, Canada
 Catholics for a Free Choice, Washington, DC, USA
 Catholics for a Free Choice-Canada, Peterborough, Ontario, Canada
 Catholics Speak Out, Quixote Center, Brentwood, MD, USA
 Center for Health and Gender Equity, Takoma Park, MD, USA
 Center for Reproductive Rights, New York, NY, USA
 Center for Women Policy Studies, Washington, DC, USA
 Center for Women's Global Leadership, New Brunswick, NJ, USA
 Central Conference of American Rabbis, New York, NY, USA
 CHAMP (Community HIV/AIDS Mobilization Project), New York, NY, USA
 Chicago Recovery Alliance, Chicago IL, USA
 Choice USA, Washington, DC, USA
 Columbia University Social Intervention Group, New York, NY, USA
 Drug Overdose Prevention and Education Project, San Francisco, CA, USA
 Episcopal Church, USA
 Eve & The Snake, New York, USA and Brasilia, Brazil
 Family Care International, New York, USA
 Feminist Majority Foundation, Arlington, VA, USA
 Foundation for Integrative AIDS Research, Brooklyn, NY, USA
 Gay Men's Health Crisis, New York, NY, USA
 General Board of Church and Society, United Methodist Church, Washington, DC, USA
 Global AIDS Alliance, Washington, DC, USA
 Global Campaign for Microbicides, Washington, DC, USA
 Global Fund for Women, San Francisco, CA, USA
 Global Philanthropy Partnership, Chicago, IL, USA
 Global Rights, Washington, DC, USA
 GW Student Global AIDS Campaign, Washington DC, USA
 Gynuity Health Projects, New York, NY, USA
 Harm Reduction Coalition, New York, NY, USA
 Harm Reduction Project, Denver / Salt Lake City, USA
 Health Equity Project, New York, NY, USA
 Health GAP (Global Access Project), New York, NY, USA
 Hepatitis, AIDS, Research Trust, Florence, CO, USA
 HIV Advocacy Council of Oregon and SW Washington, Portland, OR, USA
 HIV Resource Center, Roseburg, OR, USA
 Huairou Commission, Brooklyn, NY, USA
 Human Rights Watch, New York, NY, USA
 Institute for Community Research, Hartford, CT, USA
 International Council of AIDS Service Organizations, Toronto, ON, USA
 International Gay and Lesbian Human Rights Commission, New York, NY, USA
 International Planned Parenthood Federation, Western Hemisphere Region, New York, NY, USA
 International Rescue Committee, New York, NY, USA
 International Sex Worker Foundation for Art, Culture and Education, Panorama City, CA, USA
 International Women's Health Coalition, New York, NY, USA
 Ipas, Chapel Hill, NC, USA and 11 country offices worldwide
 Lambda Legal Defense & Education Fund, Inc., New York, NY, USA
 MADRE, An International Women's Human Rights Organization, New York, NY, USA
 National Asian Pacific American Women's Forum, Washington DC, USA
 National Association of Nurse Practitioners in Women's Health (NPWH), Washington, DC, USA
 National Association of People with AIDS (NAPWA-US), Silver Spring, MD, USA
 National Coalition of American Nuns, USA
 National Council of Jewish Women, New York, NY, USA

National Family Planning and Reproductive Health Association, Washington, DC, USA	Student Campaign for Child Survival, Washington, DC, USA
National Lesbian and Gay Task Force, USA	Student Global AIDS Campaign, Washington, DC, USA
PATH, USA	Treatment Action Group (TAG), New York, NY, USA
Physicians for Human Rights, Cambridge, MA, USA	Union for Reform Judaism, New York, NY, USA
Project Inform, San Francisco, CA, USA	Unitarian Universalist Association of Congregations, USA
Religious Consultation on Population, Reproductive Health and Ethics, Milwaukee, WI, USA	Washington Office on Africa, Washington, DC, USA
Sakyadhita International Association of Buddhist Women, Kailua, HI, USA	WATER (Women's Alliance for Theology, Ethics and Ritual), Silver Spring, MD, USA
Search For A Cure, Boston, MA, USA	WEDO (Women's Environment & Development Organization), New York, NY, USA
Sex Workers Project at the Urban Justice Center, New York, NY, USA	Women's Commission for Refugee Women and Children, New York, NY, USA
Sexuality Information and Education Council of the United States, New York, NY, USA	Women's World Organization for Rights, Literature and Development (Women's WORLD), New York, NY, USA
SisterSong Women of Color Reproductive Health Collective, Atlanta, GA, USA	
Street Works, Nashville, TN, USA	

Individuals (*Note: Institutional affiliation is provided for identification purposes only)

Congresswoman Betty McCollum, U.S. House of Representatives, 4th district of Minnesota	Susie Daniel, Cooperante Tecnica - VIH/SIDA, Cooperacion Internacional para el Desarrollo, Republica Dominicana
Moisés Agosto, Health Care Consultant, member of the New York City AIDS Commission, community member of AIDS Research Advisory Council of the Division of AIDS of the NIAID, USA	Brian R. Edlin, M.D., Associate Professor of Medicine and Public Health, Center for the Study of Hepatitis C, Weill Medical College of Cornell University, New York, NY, USA
Avni Amin, Ph.D., World Health Organization, Geneva, Switzerland	Lila Elman, Public Health Programs Assistant, Open Society Institute, New York City, USA
Noor Ayesha, Electoral Support Officer, United Nations Volunteers, Liberia	Prim. d-r Slavica Gajdadzis-Knezevik, psychiatrist and Director, Center for prevention and treatment of drug addiction, Psychiatric Hospital "Skopje", Republic of Macedonia
Phil Bossenbroek, Peer Counselor/ Southern Arizona AIDS Foundation, Member Social Justice Committee/ St Marks Presbyterian Church, Tucson, AZ, USA	Raquel Gandelsman, Secretaria de Saúde do Recife, Programa de Redução de Danos no Consumo de Álcool, Fumo e Outras Drogas, Prefeitura da Cidade do Recife, Brazil
Lynn Buffington, Beaver creek, OH, USA	Tina Gianoulis, member Women in Black, Bainbridge Island; Dyke Community Activists, WA, USA
Therese Burstow, Needle and Syringe Program Policy Officer, Northern Territory AIDS and Hepatitis Council, Australia	Janice Gutman, member Women in Black, Bainbridge Island; Dyke Community Activists; Suquamish-Ollalla Neighbors Association, WA, USA
Dr. Wendy Chapkis, Associate Professor of Women's Studies and Sociology, University of Southern Maine, USA	Emma Harvey, Project Coordinator, International Human Rights Exchange, Cape Town, South Africa
Helena Chiquele, Project Officer of the Joint Oxfam Advocacy Program, Mozambique	Geoff Heaviside, Convenor - Brimbank Community Initiatives Inc, Secretary - International Centre for Health Equity Inc, Member - Australasian Society for HIV Medicine Inc, Victoria. Australia
Claire Christie, Reproductive Health Program Advisor, CARE Cambodia, Phnom Penh, Cambodia	
Judith Collins, Health Consultant, Chapel Hill, NC, USA	

Robert Heimer, Ph.D., Center for Interdisciplinary Research on AIDS, Yale University School of Medicine, New Haven, CT, USA

Chen Hong, Program Manager, Population Services International/Yunnan, China

Alice M. Miller, Assistant Professor, Clinical Public Health, Columbia University School of Public Health, New York, NY, USA

Sandhya Jain, New Delhi, India

Philippa Jungova Lawson, HIV/AIDS specialist, active member of International Community of Women Living with HIV/AIDS, Glastonbury, CT, USA

Anne Ruedisili Langdji, Primary Health Care Project Coordinator, Eglise Evangelique Luthérienne du Senegal

Teresa Lanza M., Coordinator of Catholics For the Right to Decide/Bolivia, La Paz, Bolivia

I.S. Levine, Chairman, Board of Directors, Adult Industry Medical Healthcare Foundation, Los Angeles, CA, USA

Professor Ann Lucas, San Jose State University, San Jose, CA, USA

Alexandra Lutnick, Research Coordinator, St. James Infirmary, Staff Research Associate II, University of California San Francisco, San Francisco, Ca, USA

Anna Marsiana, Working Group Committee, Asian Women Resource Centre for Culture and Theology, Kuala Lumpur, Malaysia

Sanja Milivojevic, Monash University, Melbourne, Australia

Veronica Monet, Sex Educator and the author of Sex Secrets of Escorts (Alpha Books 2005), member of SWOP-USA, Woodside, Ca, USA

Elena Obieta, MD, Infectious Diseases, Hospital de Boulogne and Fundacion SPES, Buenos Aires, Argentina

Julia O'Connell Davidson, Professor, School of Sociology & Social Policy, University of Nottingham, Nottingham, United Kingdom

Prisci Orozovich, MPH, HIV/AIDS Researcher, University of California at San Diego, USA

Rosalind Petchesky, Women's Environment & Development Organization, Distinguished Professor, Hunter College & the Graduate Center, City University of New York, USA

Edith Rubinstein, Women in Black, Bursseles, Belgium

Larissa Sandy, Graduate Scholar/Research Assistant, Gender Relations Centre, Research School of Pacific and Asian Studies, Australian National University, Canberra, Australia

Dr. Jennifer Suchland, Assistant Professor, Southwestern University, Georgetown, Texas, USA

Celina Schocken, International Affairs Fellow with the Council on Foreign Relations, USA

Brooke Slick, WV State Director, AIDS Watch/Campaign to End AIDS, Shepherdstown, WV, USA

Laurie Sylla, Director, Connecticut AIDS Education and Training Center, Yale School of Nursing, New Haven, CT, USA

Dechen Tsering, Program Officer, Asia and Oceania, Global Fund for Women, San Francisco, CA, USA

Stephanie Urdang, Montclair, NJ, USA

Wei V. Wang, Wellesley College, Wellesley, MA, USA

Patricia Weisenfeld, Asia Regional Program Manager, The Female Health Foundation, Chiang Mai, Thailand

Patricia Whelehan, Ph.D., medical anthropologist, HIV/AIDS education coordinator and counselor, NY, USA

Mohammad Ziaul Ahsan, Director, Program & Finance, Organization for Social Development of Unemployed Youth, Dhaka, Bangladesh

Cc:

Alex M. Azar II, General Counsel, U.S. Department of Health and Human Services

Hon. Joseph Biden, Ranking Minority Member, Committee on Foreign Relations, U.S. Senate

Hon. Bill Frist, Majority Leader, U.S. Senate

Hon. Alberto R. Gonzales, Attorney General, U.S. Department of Justice

Kent Hill, Acting Assistant Administrator, USAID

Hon. Henry Hyde, Chair, Committee on International Relations, U.S. House of Representatives

Hon. Tom Lantos, Ranking Minority Member, Committee on International Relations, U.S. House of Representatives

Hon. Patrick Leahy, U.S. Senate

Hon. Richard Lugar, Chair, Committee on Foreign Relations, U.S. Senate

Ambassador John Miller, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State
Andrew Natsios, Administrator, USAID
Hon. Chris Smith, Member, Committee on International Relations, U.S. House of Representatives
Ambassador Randall Tobias, Global AIDS Coordinator, Department of State

¹ See *United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003*, 22 U.S.C. § 7631(f) (2003) [hereinafter, Global AIDS Act]; *Trafficking Victims Protection Reauthorization Act of 2003*, 22 U.S.C. § 7110(g) (2) (2003) [hereinafter, TVPRA].

² See, e.g., Centers for Disease Control and Prevention, U.S. Dep't of Health and Human Svcs., *Rapid Expansion of HIV/AIDS Activities by National Ivorian Nongovernmental Organizations and Associations Serving Highly Vulnerable Populations in Cote d'Ivoire Under the President's Emergency Plan for AIDS Relief*, Funding Opportunity No. 04199, Jul. 2004, at 9 (stating, "[A]ny foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking..."). See also Bureau of Administration, U.S. Dep't of State, *Anti-Trafficking in Persons*, Funding Opportunity No. DOS-GTIP, Mar. 2005, at 11-12 (stating, "U.S. law... prohibits such funds from being used to implement any program that targets victims of severe forms of trafficking in persons involving sex trafficking by an organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution. It is the responsibility of the primary grantee to ensure these criteria are met by its sub-grantees").

³ Letter from Daniel Levin, Acting Assistant Attorney General, U.S. Dep't of Justice, to Alex M. Azar II, General Counsel, U.S. Dep't of Health and Human Svcs. (Sept. 20, 2004).

⁴ See Global AIDS Act, 22 U.S.C. § 7631(e) (barring use of funds to "promote or advocate the legalization or practice of prostitution or sex trafficking"); TVPRA, 22 U.S.C. § 7110(g) (1) (barring use of funds to "promote, support, or advocate the legalization or practice of prostitution").

⁵ See WORLD HEALTH ORG. (WHO), TOOLKIT FOR TARGETED HIV/AIDS PREVENTION AND CARE IN SEX WORK SETTINGS (2004), available at http://www.who.int/hiv/pub/prev_care/swtoolkit/en/.

⁶ See *id.* at 6 (noting "The diversity of sex work settings requires flexible, locally adapted responses. However, experience shows that HIV prevention in sex work settings should work toward three main outcomes: 1. Increased condom use and safer sex 2. Increased sex worker involvement and control over working and social conditions 3. Reduced STI burden").

⁷ See UNAIDS, *Female Sex Worker HIV Prevention Projects: Lessons Learnt from Papua New Guinea, India and Bangladesh*, UNAIDS BEST PRACTICE COLLECTION, Nov. 2000, at 57-90.

⁸ See *id.*

⁹ Interview by Alice Miller, Columbia Univ. Law School, with Elaine Pearson, Anti-Slavery International, Bangkok, Thailand (July 2004).

¹⁰ Interview by Human Rights Watch with Jamaican health worker, Kingston, Jamaica (June 2004).

¹¹ See Michael M. Phillips and Matt Moffett, *Brazil Refuses U.S. Aids Funds, Rejects Conditions*, WALL ST. J., May 2, 2005, at A3.

¹² See U.S. CONST. Amend. I.

¹³ See *FCC v. League of Women Voters*, 468 U.S. 364 (1984). See also *Regan v. Taxation w. Representation of Washington*, 461 U.S. 540 (1983) (holding permissible speech restrictions on a government subsidy because other, non-federal contributions could be used to fund prohibited speech).

¹⁴ See *Rust v. Sullivan*, 500 U.S. 173, 196 (1991) (holding that the Government may make a value judgment, implement that judgment by the allocation of public funds, and "leave the grantee unfettered in its other activities" funded by other sources).

¹⁵ See *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (invalidating a requirement that children pledge allegiance to the U.S. flag in order to attend public school). See also *Speiser v. Randall*, 357 U.S. 513 (1958) (holding unconstitutional a requirement that receipt of a tax exemption was contingent on the filing of a loyalty oath to the U.S. Government); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977), *citing* *Barnette* (holding that forcing an individual to be "an instrument for fostering public adherence to an ideological point of view he finds unacceptable . . . 'invades the sphere of intellect and spirit which it is the purpose of the First Amendment . . . to reserve from all official control'").

¹⁶ See *DKT Memorial Fund Ltd. v. Agency for Intern. Dev't*, 887 F.2d 275 (D.C. Cir. 1989) (Ginsberg, J., dissenting).

¹⁷ See 108 Cong. Rec. H10287 (2003) (colloquy of Reps. Chris Smith and Tom Lantos during the reauthorization of the TVRPA). Congressman Smith, Republican Vice-Chair of the House International Relations Committee (HIRC), and Congressman Lantos, Ranking Democrat Member on the HIRC, agreed on the proper interpretation of the TVPRA funding restriction related to sex trafficking and prostitution. According to Congressman Smith, "an organization can satisfy the prohibition...if it states in a grant application, a grant agreement, or both that it does not promote, support, or advocate such actions since it has no policy regarding this issue." See also 149 Cong. Rec. S6457 (2003) (colloquy of Senator Leahy and Senator Frist during the authorization of the Global AIDS Act) Senator

Frist, President Pro Tempore of the Senate, and Senator Leahy, Ranking Democrat Member on the Judiciary Committee, agreed on the proper interpretation of the Global AIDS Act funding restriction related to sex trafficking and prostitution. Senator Frist stated that "a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women . . . would satisfy the intent of the provision."