U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 27, 2005

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Waxman:

This responds to your letters to the Attorney General and to President George W. Bush, dated April 13, 2005, requesting an explanation of the Department's legal advice regarding the so-called "organization restrictions" contained in the Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA") and in the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("AIDS Act"). Your letter also requests certain documents detailing the Department's prior advice regarding the constitutionality of those provisions.

We wish to make clear that the provisions about which you have asked are statutory provisions that Congress enacted; they are not Department of Justice policies or positions. In December 2003, Congress enacted the TVPRA, which States, in relevant part: "No funds . . . may be used to implement any program that targets victims of severe forms of trafficking in persons . . . through any 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." 22 U.S.C.A. § 7110(g)(2). Likewise, in May 2003, Congress enacted the AIDS Act, which States, in relevant part: "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 . . . ." Id. at § 7631(f).

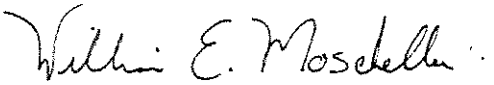
The Department has determined that there are reasonable arguments to support the organization restrictions enacted by Congress in the TVPRA and AIDS Act, notwithstanding the constitutional concerns identified in your letter. The constitutionality of organization restrictions is a complex question, but where, as here, such restrictions are closely tailored to the purpose of the grant program, there are reasonable arguments to support their constitutionality. The cases cited in your letter, *FCC* v. *League of Women Voters*, *Rust* v. *Sullivan, and Regan* v. *Taxation With*

Representation, do not foreclose these arguments. Consistent with past practice in similar circumstances, because there are reasonable arguments to support the constitutionality of these particular statutes, the Department will defend them against a challenge in court.

You have also requested copies of opinion letters or other documents reflecting the Department's legal advice with respect to these provisions. There are substantial confidentiality interests associated with any such documents, which would consist of advisory and deliberative materials and internal legal analyses. Although we appreciate your interest in any such documents, their disclosure outside the Executive Branch would harm the deliberative processes of the Executive Branch and disrupt attorney-client relationships.

We hope that this information is helpful. If you would like assistance regarding any other matter, please do not hesitate to contact this office.

Sincerely,



William E. Moschella
Assistant Attorney General

cc: The Honorable Thomas M. Davis, III
Chairman