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Right to remain silent

The US Supreme Court should overturn the 2003 law that requires federally funded HIV/AIDS programmes abroad to denounce prostitution.

What kind of strings can government funders attach to the money they hand out to organizations? Controlling how the cash is spent is surely a reasonable one. And the US Supreme Court has ruled in the past that it is fair for the government to prohibit recipients of such funding from saying certain things.

But what about compelling funding recipients to make prescribed statements? Given the importance assigned in the United States to the right to free speech, it might surprise some that the US government has tried to force would-be recipients of funds from a high-profile HIV/AIDS programme to denounce prostitution. It certainly surprised many of the groups involved, who in 2005 brought a lawsuit against the government in protest. In 2006, a district court stopped the restrictions from being enforced while the case wound its way through the courts. Last month, the litigation reached the US Supreme Court. The verdict, expected next month, will be important for any scientist funded by a US agency.

The case, *Agency for International Development* et al. v. *The Alliance for Open Society International, Inc.,* et al., turns on the wording of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act, a 2003 law that authorized a historic disease-directed government programme. The act allowed Congress to spend US$44 billion between 2004 and 2012 to combat HIV/AIDS through the President's Emergency Plan for AIDS Relief (PEPFAR). At the end of 2012, PEPFAR was providing antiretroviral therapy for more than 5.1 million people globally; the same year, it provided HIV testing and counselling for nearly 47 million people, many of them pregnant women.

For all its virtues, the law that established PEPFAR contains the troubling stipulation that none of its funding may go to "any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking". What is more, it states that any group receiving its funds must refrain from speech that the government judges "inconsistent with" that anti-prostitution policy. The prohibition pertains to all activities by the recipient group, even those funded with private money.

At first, even the US Department of Justice deemed the restrictions unconstitutional and declined to enforce them on groups based in the United States. But officials changed their minds in 2005, prompting many non-governmental organizations to sue. One of the litigants — InterAction, an alliance based in Washington DC — represents more than 190 US-based groups.

Lawyers for the justice department argue that the government has the authority to ensure that its message is "effectively communicated, and not undermined" by recipients of its funds. In the past, the Supreme Court has agreed — up to a point. For instance, in a landmark abortion case, the high court said that the government did not trample on free speech when it forbade groups receiving US family-planning funds to counsel women to have abortions. But to require a group to remain silent on a certain issue is quite different from compelling the group, as a condition of funding, to proclaim a point of view it disagrees with — a compulsion that justice Samuel Alito called "a dangerous proposition" during last month's oral arguments.

It is not clear how the high court will rule. If it sides with the government, the immediate result would be sobering. Many private organizations receiving PEPFAR funding would face a choice. They could give up that funding. Or they could stop publishing papers, speaking at conferences or preparing training materials about how, for example, to improve sex workers' access to HIV testing or condoms — unless, of course, those speeches or materials explicitly denounce prostitution. Never mind that such proclamations are likely to compromise efforts to educate and deliver health care to sex workers.

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More broadly still, a court decision in favour of the government could open the door to making all manner of grants, including awards to scientists, conditional on the broadcasting of whatever point of view a US funding agency happens to deem desirable at a given time. In the past, the Supreme Court has resisted the compelling of behaviour — as when it refused, for instance, to require students in publicly funded schools to salute the US flag. It should now do so again. ■

The cleaner state

Federal regulators could learn much from California's low-carbon fuel programme.

Last week, researchers at the University of California, Davis (UC Davis), released their latest analysis of California's Low Carbon Fuel Standard. The 2009 regulation requires oil companies and refineries to reduce the carbon intensity of transportation fuels — how much carbon dioxide they emit per unit of energy — by 10% by 2020. For 2013, this translates to a reduction of 1%, and the UC Davis researchers found that companies racked up enough gains last year to meet half of their obligations for the current year.

The study confirms what California has reported: a steady shift towards cleaner fuels since the regulations took hold in 2011. The idea is that providers can either document their own cuts in carbon intensity or buy credits from others who have gone beyond their requirements. Advanced biofuels — made from waste products or non-food plant material — still make up less than 1% of the state's fuel, but they represent 10% of the credits that have gone towards meeting the standard.