



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20550

September 20, 2004

Honorable Alex M. Azar II
General Counsel
Department of Health and Human Services
700 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA") and United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 ("AIDS Act")

Dear Alex:

I understand that earlier this year the Department of Health and Human Services (HHS) asked the Department of Justice (DOJ) whether HHS could implement certain provisions of the TVPRA and of the AIDS Act. At that time, I understand that DOJ gave its tentative advice that the so-called "organization restrictions" set forth in 22 U.S.C.A. § 7110(g)(2) and 22 U.S.C.A. § 7631(f) could, under the Constitution, be applied only to foreign organizations acting overseas.

We have reviewed the matter further and are withdrawing that tentative advice. The statutes are clear on their face that the organization restrictions were intended by Congress to apply without the limitations identified in our earlier advice. We have consulted with the Civil Division and, in these circumstances, given that the provisions do not raise separation of powers concerns and that there are reasonable arguments to support their constitutionality,¹ we believe that HHS may implement these provisions.² If the provisions are challenged in court, the

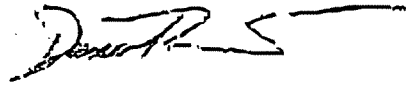
¹ Although the constitutionality of organization restrictions is a complex question, where, as here, they are closely tailored to the purpose of the grant program, there are reasonable arguments to support their constitutionality. See *South Dakota v. Dole*, 483 U.S. 203, 206-08 (1987) (holding that the government may condition funds on the recipient's relinquishment of a right where the condition is directly related to the purpose for which the funds are expended); *American Communications Ass'n v. Domb*, 239 U.S. 382, 390-91 (1950) (upholding a government benefit tied to a restriction on the recipient's speech where the restriction "bore reasonable relation to the evil which the statute was designed to reach").

² Nothing in this letter should be construed to question the authority of the President to decline to enforce a statute he views as unconstitutional. See generally Memorandum Opinion for the Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, *Presidential Authority to Decline to Enforce*

Department stands ready to defend their constitutionality in accordance with its longstanding practice of defending congressional enactments under such circumstances.³

Please do not hesitate to contact me if you have any further questions. I apologize for any confusion or inconvenience caused by our earlier tentative advice.

Sincerely,



Daniel Levin
Acting Assistant Attorney General

Unconstitutional Statutes, 18 Op. O.L.C. 700 (1994).

³ Consistent with that practice, any decision as to whether to appeal an adverse decision would be made by the Solicitor General.