

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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AMERICAN CIVIL LIBERTIES UNION of )  
MASSACHUSETTS, )  
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 )  
Plaintiff, )  
 )  
v. )  
 )  
MICHAEL O. LEAVITT, Secretary of U.S. )

Civil Action No.:

severe forms of human trafficking. The federal government has recognized that its success in combating human trafficking domestically hinges on a victim-centered approach.

3. Under the TVPA, the federal government provides an array of services to these individuals, including medical services, to help them become self-sufficient. The Defendants, pursuant to their authority under the TVPA to distribute funds for such services, have provided a multi-million dollar contract to a religious organization, the United States Conference of Catholic Bishops (“USCCB”), to provide subgrants to organizations that directly serve trafficked individuals. In that contract, HHS permitted USCCB to impose its own religiously based substantive restrictions on the use of grant funds. Specifically, HHS permitted USCCB, based solely on USCCB’s religious objections to contraception and abortion, to prohibit all subgrantees from using grant funds to pay for contraceptive and abortion referrals and contraceptives.

4. By permitting USCCB to impose its religiously based restrictions on the types of services trafficked individuals can receive with taxpayer funds, the Defendants have violated the Establishment Clause.

5. Plaintiff – whose members include taxpayers whose tax dollars finance the contract between the Defendants and USCCB – seeks, among other relief, an injunction ordering Defendants to ensure that the TVPA grant is implemented without the imposition of religiously based restrictions.

### **JURISDICTION AND VENUE**

6. This action arises under the First Amendment of the United States Constitution and presents a federal question within this Court’s jurisdiction under Article



individuals can receive with taxpayer funds, Defendant Leavitt has violated the Establishment Clause. Defendant Leavitt and his successors are sued in their official capacity.

12. Defendant Daniel Schneider is the Acting Assistant Secretary for ACF. Defendant Schneider has authority over the Office of Refugee Resettlement (“ORR”), a subdivision of ACF. By permitting USCCB to impose its religiously based restrictions on the types of services trafficked individuals can receive with taxpayer funds, Defendant Schneider has violated the Establishment Clause. Defendant Schneider and his successors are sued in their official capacity.

13. Defendant David H. Siegel is the Acting Director of ORR. By permitting USCCB to impose its religiously based restrictions on the types of services trafficked individuals can receive with taxpayer funds, Defendant Siegel has violated the Establishment Clause. Defendant Siegel and his successors are sued in their official capacity.

### **FACTS GIVING RISE TO THIS ACTION**

#### **A. Human Trafficking**

14. The federal government has estimated that between 14,500 and 17,500 individuals are trafficked in the United States on an annual basis.

15. Human trafficking is a form of modern-day slavery. It occurs when adults are compelled, through force, fraud, or coercion, to engage in commercial sex or to provide other forms of labor.

16. The vast majority of those who are trafficked into the United States are female.

17. Almost all women who are trafficked for prostitution are also violently assaulted.
18. Many women who are forced, defrauded, or coerced to act as prostitutes are also raped by traffickers, pimps, and acquaintances of traffickers and pimps.
19. Some women trafficked for other forms of forced labor are also raped or sexually abused by their traffickers.
20. Sexual and reproductive health problems are common among women who are trafficked.
21. Some women who have been trafficked become pregnant after being raped.
22. Moreover, sex trafficking plays a role in spreading sexually transmitted diseases, such as Human Immunodeficiency Virus (HIV). Indeed, women who have been trafficked for prostitution generally have a high incidence of HIV compared to the rest of the population.
23. Accordingly, victims of severe forms of human trafficking frequently need reproductive health care referrals and services to lead safe lives, become self-sufficient, and protect themselves and others. These services, and referrals to these services, include emergency contraception, condoms, and, in some cases, abortion services.
24. Denying reproductive health services, and referral for these services, can further victimize trafficked individuals.
25. For example, some traffickers prohibit trafficked women from accessing contraceptives, including condoms, and force trafficked women to carry a pregnancy to term.

26. Additionally, denying reproductive health services and referrals – particularly access to condoms – has public health consequences because of the risk of further transmission of sexually transmitted infections, including HIV.

**B. HHS’s Grant to USCCB**

27. To combat human trafficking, Congress passed the Trafficking Victims Protection Act (“TVPA”), 22 U.S.C. § 7105, in 2000, and reauthorized that Act in 2003, 2005, and 2008. *See* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 112 Stat. 5044 (2008).

28. The TVPA mandates that victims of severe forms of trafficking, as defined by 22 U.S.C. § 7102, are eligible for federally-funded or -administered benefits and services. The TVPA specifically requires HHS to fund programs to provide assistance to victims of severe forms of trafficking who are in the United States. 22 U.S.C. § 7105(b).

29. The goal of HHS’s domestic trafficking program, including its related grants, is to restore self-sufficiency to individuals who have been trafficked, so that they may rebuild their lives safely in the United States. These efforts “hinge[] on pursuing a victim-centered approach.” *See Attorney General’s Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007*, at 3 (May 2008), available at <http://www.usdoj.gov/ag/annualreports/tr2007/agrepthumantrafficking2007.pdf>.

provided assistance to individuals in the United States who were victims of severe forms of trafficking.

31. Upon information and belief, ORR gave these block grants directly to the NGOs to be used by the NGOs to provide a range of services to assist trafficked individuals, including referrals for contraception and abortion, and for contraceptive services.

32. Upon information and belief, other funding streams authorized by the TVPA that are used to provide services to individuals in the United States who have experienced a severe form of trafficking have historically permitted, and continue to permit, use of funds for referrals for abortion and contraception, and payment for contraceptives.

33. Upon information and belief, NGOs used these funds to provide referrals for contraception and abortion, and to pay for contraceptives.

34. In March 2005, ORR, through its Director of Human Trafficking, sent a memorandum to Wade Horn, then-Assistant Secretary of ACF.

35. This memorandum sought ACF's approval to change the manner in which the grant program to NGOs was administered.

36. ORR proposed a "per capita" grant to organizations serving trafficked individuals. This new per capita grant of TVPA funds would be administered by a private entity.

37. Upon information and belief, ACF approved this new funding mechanism. Accordingly, on November 9, 2005, ORR released a Request for Proposals ("RFP") to find an entity to administer the grant. *See Request for Proposals 06Y007781.*

38. ORR's Request for Proposals did not include a prohibition on the use of TVPA funds for contraceptive and abortion referrals or contraceptives.

39. Upon information and belief, ORR anticipated that funds could be used for such purposes.

40. USCCB applied for the grant.

41. USCCB is a religious organization whose membership consists of the Catholic bishops in the United States, and USCCB carries out the bishops' mission. USCCB's purposes include, "unify, coordinate, encourage, promote and carry on Catholic activities in the United States" and "organize and conduct religious, charitable and social welfare work at home and abroad." *See*



46. The document also stated, however, that “as we are a Catholic organization, we need to ensure that our victim services funds are not used to refer or fund activities that would be contrary to our moral convictions and religious beliefs. Therefore, we would explain to potential subcontractors our disclaimer of the parameters within which we can work. Specifically, subcontractors could not provide or refer for abortion services or contraceptive materials . . . .”

47. After USCCB submitted its response to the RFP, HHS/ORR asked USCCB a number of questions related to their proposal.

48. One question asked USCCB to elaborate on the so-called “conscience exception,” namely, USCCB’s statement that it intended to prohibit NGOs from using TVPA grant funds for abortion and contraceptive referrals and services.

49. HHS/ORR asked, “Would a ‘don’t ask, don’t tell’ policy work regarding the exception? What if a subcontractor referred victims supported by stipend to a third-party agency for such services?”

50. USCCB responded by saying, “We cannot be associated with an agency that performs abortions or offers contraceptives to our clients. ?uy6(d a ‘dTc -0.0018 Tw -6./uTJ0n agency )

52. The contract between USCCB and ORR provides that TVPA grant funds should be distributed to NGOs on a per capita basis. Each NGO should receive a set amount per client, plus reimbursement for certain expenses.

53. Under this contract, the NGOs may seek reimbursement for such services as health screenings and medical care, food, public transportation, and clothing.

54. The contract between USCCB and ORR, however, incorporates by reference USCCB's response to ORR's RFP, which includes the Technical Proposal (both the original and the amended version).

55. Therefore, by way of incorporation by reference, the final contract between USCCB and ORR incorporates USCCB's statement that because of its Catholic beliefs, USCCB will prohibit NGOs from using federal government funds administered by USCCB for abortion and contraceptive referrals and services.

56. Accordingly, ORR delegated to USCCB authority to impose religiously based restrictions on TVPA grant funds.

57. The subcontract agreements between USCCB and the NGOs explicitly prohibit the NGOs from using TVPA funds to provide "referral for abortion services or contraceptive materials."

58. USCCB distributes a Program Operations Manual ("POM") to the subgrantee NGOs.

59. Although the POM indicates that "[h]ealth care services are an appropriate use of program funding," the POM reiterates that "program funding cannot be used for abortion services or contraceptive materials. Subcontractors will not be reimbursed for these services."

60. The contract is now in its third year. USCCB has subgranted TVPA funds to NGOs directly serving individuals in the United States that have experienced a severe form of human trafficking.



Dated: January 12, 2009

Respectfully Submitted,

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\*Motion for *pro hac vice* admission pending