No. 19-177

In The Supreme Court of the United States

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, ET AL.,

Petitioners,

v.

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys often appear before this Court as counsel either for a party, *e.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009); *McConnell v. FEC*, 540 U.S. 93 (2003), or for amici, *e.g.*, *Matal v. Tam*, 137 S. Ct. 1744 (2017); *FCC v. Fox TV*, 567 U.S. 239 (2012). The ACLJ filed as amicus when this case was previously before this Court. *AID v. AOSI*, 570 U.S. 205 (2013) *(AID I)*.

The ACLJ believes the government has the authority, within limits, to set eligibility criteria for grantees to assure that taxpayer funds are used in ways that are most effective to furthering the goals of the funding program. In particular, while government cannot impose "policy loyalty" requirements willy-nilly, government can categorically prefer to give money to applicants who formally condemn inherently wrongful activity – such as prostitution and sex trafficking – when opposition to those activities is material to the program at issue. This Court's prior decision in this case unfortunately constrained that important government selection authority and should be reconsidered.

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[1]The parties in this case have consented to the filing of this amicus brief. No counsel for any party authored this brief in whole or in part. No person or entity aside from amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The federal government in its brief argues that this Court's prior decision in this litigation does not extend to the subsequent relief granted by the lower courts. Amicus wishes to go further and explain why this Court's divided prior decision, while generally correct in the principles it articulated, went astray in important respects. This Court ought not to read the First Amendment as barring the sort of policy at issue here *at all*, for either domestic or foreign grantees.

When selecting among competing applicants for discretionary funding, government can look to the relevant qualifications of the applicant to ensure the effectiveness of a government program. For example, government could disqualify tobacco merchants from an anti-smoking campaign, or require a documented pro-democracy record or policy for applicants to receive funding in a program to promote democratic principles and institutions abroad. This is not government imposition of policies upon private actors; rather, it is government selection, by transparent means, of the best suited applicants. Such criteria are not unconstitutional conditions, but rather *qualifications* akin to an individual's qualifications to carry out a job (e.g., having a bar license to be a Department of Justice litigator).

Since the funding at stake here is competitive, discretionary, and limited to a discrete program, and because application for such funding is completely voluntary, the compelled speech doctrine is no bar to the setting of qualifications for applicants. And while the "government speech" doctrine does not cover the policy requirement here – an entity's policies are its own speech, not that of the government – the

government does not need to fit under that doctrine to establish legitimate, program-related qualification criteria for applicants for taxpayer funding.

The government power to attach strings to money is potent and subject to grave abuse, and this Court should reaffirm the essential constitutional limits on that power. In the present case, however, the challenged policy requirement is no more than a permissible eligibility qualification for competitive, discretionary government grants.

ARGUMENT

This Court previously held by a 6-2 vote that the federal statutory anti-sex trafficking, anti-prostitution policy requirement at issue in this case, as applied to domestic grantees, violates the First Amendment. This Court should reconsider that conclusion, as it depends upon unworkable line-drawing and propositions that lack principled limits. The question is whether, when Congress reallocates U.S. tax money to the programs and causes of its choice, Congress also can ensure that those entities accepting federal funds are the ones most likely to be qualified and effective in carrying out those programs. The answer to that question must be "yes," and anything to the contrary in *AID v. AOSI* ought to be revisited.

I. THE FEDERAL GOVERNMENT HAS THE POWER TO SET ELIGIBILITY CRITERIA FOR GRANTEES.

The logic of the constitutionality of the challenged policy is straightforward. The points are summarized here, and then elaborated upon *infra*.

1. The government is generally entitled to take a policy position on an issue (subject to exceptions not relevant here, such as official adoption of religious professions in violation of the Establishment Clause).
2. The government is entitled to set up an otherwise permissible funding program in a way consistent with any *pertinent* policy position.
3. In particular, the government is entitled to give *preference* to grantees who have *demonstrated harmony* with the government's policy position.
4. A potential grantee's adoption or maintenance of an *explicit policy* that accords with the government's policy position is *strong evidence* of harmony with that policy position.
5. If the government is permitted, consistent with the First Amendment, to *prefer* potential grantees who have explicit policies, the government is likewise permitted *exclusively to prefer* such grantees.
6. Requiring grantees to have such a policy to be eligible for relevant grants is indistinguishable from giving exclusive preference to such entities; hence, an express policy requirement is constitutional.

The power to set up a grant program necessarily entails the concomitant power to set up a program in a way that aims to be *effective*. The federal Spending Power "includes the authority to impose limits on the use of [federal] funds to ensure they are used in the manner Congress intends." *AID I*, 570 U.S. at 213. And ensuring effective use of funds necessarily includes imposing standards – eligibility criteria – for grant recipients.

One can well imagine how a representative of Big Tobacco would fare in trying to convince skeptical teens not to smoke. The purpose of eligibility criteria is to avoid such fiascos. It only makes sense, therefore, to say that a group like NORML (opposing bans on marijuana) has no First Amendment right to insist upon receipt of grants under a government program to combat the use of marijuana, and that the Socialist Party USA similarly has no First Amendment right to demand inclusion in a program of grants to further free market capitalism. To be sure, these examples are easy because the entities have policies that are plainly *incompatible* with the government's adopted policy position. But the principle extends beyond such easy cases. Hence, while a group with *no* relevant policy might well do a creditable job carrying out the federal project, Congress is certainly entitled to judge that those with a *demonstrated commitment* are *more* likely to be dependable and effective in carrying out the program as Congress designed it.

Congress therefore has the power, within limits, to establish *eligibility criteria*, even when those criteria touch upon an applicant's speech or viewpoint. "Government may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake." *NEA v. Finley*, 524 U.S. 569, 587-88 (1998). Would-be grantees must then satisfy those criteria in order to receive taxpayer funding as part of government programs. And, of course,

> if a party objects to a condition on the receipt of federal funding, its recourse is to decline the funds. This remains true when the objection is that a condition may affect the recipient's exercise of its First Amendment rights.

AID I, 570 U.S. at 214.

The policy requirement at issue here is just such an instance of government setting permissible eligibility criteria for competitive funding. If the government is entitled to adopt the pertinent anti-trafficking, anti-prostitution policy viewpoint in the first place – an undisputed proposition – then the government should be entitled to prefer, in making funding choices in a relevant program, those *embracing* the government's policy over those *opposing* or remaining *neutral*.

A. There is a Crucial Distinction Between Permissible Eligibility Criteria and Unconstitutional Conditions.

The "unconstitutional conditions" doctrine does not invalidate the policy requirement here.

1. The Policy Requirement Is a Legitimate Eligibility Requirement.

Certainly the government cannot willy-nilly use the carrot of taxpayer funding to obtain the forfeiture of constitutional rights. While he who "pays the piper" generally gets to "call the tune," *Democratic Senatorial Comm. v. FEC*, 660 F.2d 773, 781 (D.C. Cir. 1980) (per curiam opinion of Wright & GINSBURG, JJ.), this Court has repeatedly "recognize[d] a limit on Congress' ability to place conditions on the receipt of funds," *Rumsfeld v. FAIR*, 547 U.S. 47, 59 (2006). In particular, "'the government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.'" *Id.* (quoting *United States*

v. Am. Library Ass'n, 539 U.S. 194, 210 (2003) (plurality)). *Accord AID I*, 570 U.S. at 214 (same). A number of this Court's cases exemplify this "unconstitutional conditions" doctrine. *E.g.*, *FCC v. League of Women Voters of Cal.*, 468 U.S. 364 (1984); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001).

That does not mean, however, that Congress must be indifferent to the *qualifications* of the applicants for federal grants. "When Congress established a National Endowment for Democracy to encourage other countries to adopt democratic principles, . . ., it was not constitutionally required to fund a program to encourage competing lines of political philosophy such as communism and fascism." *Rust v. Sullivan*, 500 U.S. 173, 194 (1991). In the same way, Congress need not ignore whether applicants for funding under a government program in fact support the goals they are expected to promote. An overseas campaign *against* abortion can disqualify groups that *do* or *promote* abortions, even on their own time and money, just as an overseas campaign to *increase* access to abortion could presumably disqualify groups that *oppose* abortion, even on their own time and money.

Here, the federal program aims to fight the spread of HIV/AIDS and "Congress found that the 'sex industry, the trafficking of individuals into such industry, and sexual violence' were factors in the spread of the HIV/AIDS epidemic." *AID I*, 570 U.S. at 209. It is thus perfectly reasonable for the program to prefer, indeed to insist upon, grantees who expressly oppose sexually exploitative and irresponsible activities like prostitution and sex trafficking, activities that contribute to the spread of the very pathologies the government program is trying to halt.

(The *AID I* majority did not dispute the relevance of the policy to the program here.)

Importantly, the constitutionality of the requirement here would *not* license the government to impose even the very same requirement in unrelated contexts.

> It would not, for example, permit the Government to exclude from bidding on defense contracts anyone who refuses to abjure prostitution. But here a central part of the Government's HIV/AIDS strategy is the suppression of prostitution, by which HIV is transmitted. It is entirely reasonable to admit to participation in the program only those who believe in that goal.

AID I, 570 U.S. at 223 (Scalia, J., dissenting).

An analogy may be helpful. Consider a campaign to combat teen suicide. Certainly a government could prefer, when implementing such a program through private entities, to fund groups with strong, express policies against all suicides, rather than groups that favor, or take no position on, suicide for some cases (like assisted suicide for terminal illness). The government could rightly judge that an entity's retreat in principle from a condemnation of all suicides weakens its credibility or effectiveness in combating the scourge of teen suicide.

That said, the unconstitutional conditions doctrine would not permit the government to condition unrelated grants, such as grants to assist taxpayers with IRS filings, or grants for remediation of environmental degradation, on an express anti-suicide policy. In such cases, the policy requirement would not be a related eligibility criterion, but rather an attempt

by government to leverage policy agreement through unrelated funding strings.

Here, the policy requirement supports the government's goals. It is not an unrelated measure gratuitously imposing the government's favored position, but rather a germane eligibility standard.

Notably, in both cases – related and unrelated conditions – "[w]ere it enacted as a direct regulation of speech, the Policy Requirement would plainly violate the First Amendment." *AID I*, 570 U.S. at 213. But that observation is not decisive. If it were, the government could never require, or even prefer, applicants on a basis that had First Amendment significance. Indeed, such an approach would transform the unconstitutional conditions doctrine into a general ban on any speech-related funding criteria. The *AID I* majority did not go so far: "[t]he question is whether the Government may nonetheless impose that requirement as a condition on the receipt of federal funds," 570 U.S. at 231 – or more specifically, the receipt of federal funds *under this particular program*. As explained above, the answer to that question is "Yes."

2. Eligibility Criteria Define Qualified Grantees, Not the Program Itself.

The *AID I* majority declared that

> the relevant distinction that has emerged from our cases is between conditions that define the limits of the government spending program—those that specify the activities Congress wants to subsidize—and conditions that seek to leverage

> funding to regulate speech outside the contours of the program itself.

570 U.S. at 214-15. That distinction, however, is not only "hardly clear," as this Court acknowledged, *id.* at 215. It is downright inapt.

If the Policy Requirement here "regulate[s] speech outside the contours of the program itself," then so does disqualifying NORML from a government-funded anti-drug program because of its (First Amendment-protected) expression. In neither case does the requirement "specify the activities Congress wants to subsidize." Instead, it specifies the criteria Congress looks for in a qualified grantee. In short, the rule enunciated by the *AID I* majority fails to take account of the difference between unrelated political correctness tests and legitimate eligibility standards. Both look to independent First Amendment activities, but only the former is unconstitutional. The distinction between "conditions that define the federal program" and "those that reach outside it" (570 U.S. at 218) is simply not helpful in identifying the proper First Amendment boundary when assessing eligibility criteria.

The cases the *AID I* majority cited for its purported distinction, 570 U.S. at 215-16, in fact fully comport with the distinction between legitimate eligibility criteria and illegitimate leveraging of political obeisance. In *Regan v. Taxation With Representation*, 416 U.S. 540 (2003), eligibility for 501(c)(3) tax exemption required refraining from (First Amendment protected) lobbying, and this Court said that was constitutional. But in *FCC v. League of Women Voters of California*, 468 U.S. 364 (1984), this Court ruled that hinging the funding of "educational broadcasting"

on the forswearing of all "editorializing," *id.* at 366 – which this Court said "directly prohibits the broadcaster from speaking out on public issues even in a balanced and fair manner," *id.* at 385 – "impermissibly sweeps within its prohibition" a "wide range of speech by wholly private [entities] on topics that . . . have nothing whatever to do with" the relevant government concern, *id.* at 395. In short, the condition in *Regan* imposed relevant eligibility criteria, while the condition in *FCC* leveraged an overbroad surrender of First Amendment rights.[2]

3. In the Context of a Discretionary Grant Program, There Is No Coherent Distinction between Selecting Grantees who Support the Government's Agenda and "Imposing" such Support on Grantees.

The *AID I* majority ultimately turned on what it saw as the difference between "the Government's ability to enlist the assistance of those with whom it already agrees" and "compelling a grant recipient to adopt a particular belief as a condition of funding," 570 U.S. at 218.[3] But this supposed distinction is no more than a

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[2]*Rust v. Sullivan*, 500 U.S. 173 (1991), involved a condition imposed on an entire project, not just on the use of funds, but this Court held that the condition properly supported the government's desired focus in its funding program. It thus qualified as a legitimate selection criterion.

[3]That the condition is "ongoing" and "a ground for terminating a grant," *id.* at 218, is makeweight. The same could be said of the non-lobbying restriction in *Regan*, the bar on abortion counseling in *Rust*, or for that matter, such unobjectionable conditions as

semantic recharacterization of two sides of the same coin. Consider the following:

Case A. The government states it *prefers* those with express anti-smoking policies as grantees for an anti-smoking campaign. Constitutional? Of course! To be sure, when the government announces such a preference, this creates an incentive to adopt the characteristics that will boost the chance of a successful application for funding. Such an incentive is not compulsion, however, as no one is compelled to apply for the grant. Nor is the incentive to meet the criteria an improper "unconstitutional condition," so long as the criteria legitimately relate to the effectiveness of the program.

Case B. The government states it *prefers* those with express anti-smoking policies and that it *will await such a grantee before awarding any funds*. It is hard to see how this is materially different from Case A. The consequence is that only those with the preferred policy will be funded, but so what? There is still no compulsion or unconstitutional condition.

Case C. The government announces that *only* those with an express anti-smoking policy will be considered for funding in an anti-smoking campaign. Constitutional? Case C is indistinguishable from Case B, except in its greater forthrightness and transparency about the importance of having the express policy. If Case C violates the First Amendment, then it is hard to see how Case B does not. Which in turn makes it hard to see how Case A would be permissible. But if Case A is unconstitutional, then the

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maintaining any required licensing and insurance.

government cannot set any eligibility standards for grantees that touch upon First Amendment activities.

The present case, of course, is Case C. The government has frankly identified a level of commitment to have to the government's mission that it expects of grantees. That the relevant commitment is demonstrated by speech does not make it any less powerful an indicator of harmony with the government's goals.

The *AID I* majority noted that adopting a policy would have implications for the policyholder's ability to utter incompatible messages:

> A recipient cannot avow the belief dictated by the Policy Requirement when spending Leadership Act funds, and then turn around and assert a contrary belief, or claim neutrality, when participating in activities on its own time and dime.

570 U.S. at 218. This is true, but all it means is that the grantee must be *honest* when it adopts the policy. This is a good thing, not a strike against the requirement.

B. Eligibility Criteria for Competitive Funding of a Discrete, Limited, Discretionary Program Do Not Compel Speech.

The compelled speech doctrine does not require a different result.

1. The compelled speech doctrine

To be sure, the government violates the First Amendment when it coerces involuntary speech from a private party, for example when the government

extracts statements of points of view on ideologically contested issues. *Wooley v. Maynard*, 430 U.S. 705 (1977). And, of course, coercion need not come in the form of a gun to the head. Government may not "leverage . . . subsidies . . . into a penalty on disfavored viewpoints," *NEA v. Finley*, 524 U.S. at 587. Where the government denies generally available public benefits because the target declines to adopt a particular policy – e.g., no welfare benefits to those who do not profess to support the idea of reducing the federal budget, or no access to a forum for speech by those who refuse to take the position that all religions are equally valid – this blatantly infringes upon the First Amendment right to free speech (and freedom of thought as well). The government cannot make ideological conformity the price of the incidents of citizenship. "Authority here is to be controlled by public opinion, not public opinion by authority." *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943). "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Id*. *Accord AID I*, 570 U.S. at 220-21.

2. Absence of speech compulsion here

Here, however, the government requires no speech at all – application for grants is purely voluntary. Nor does the government engage in indirect coercion, for example by imposing conditions upon generally available public benefits like use of a park or highway, receipt of medical safety net coverage, professional license acquisition, or admission to state schools or their programs. *Compare Trinity Lutheran Church v.*

Comer, 137 S. Ct. 2012 (2017) (forbidding churches from participation in recycled tire resurfacing program). As in the striker/food stamps case, *Lyng v. Int'l Union*, 485 U.S. 360 (1988), the government has merely adopted rules that exclusively prefer certain applicants – in *Lyng*, individuals who are not on strike; here, entities that declare opposition to prostitution and sex trafficking – for eligibility to receive certain government funds. Just as it was permissible for the government to require libraries to adopt Internet filters in order to receive certain government funding, *Amer. Library Ass'n*, so here it is permissible for the government exclusively to prefer entities with a policy against prostitution and sex trafficking when disbursing funding to combat the very ills these behaviors help propagate.

3. Important doctrinal limits

It is important to emphasize the limited nature of the government power to attach conditions to funding. In addition to the First Amendment principles discussed elsewhere in this brief, funding conditions must at a minimum be *related to the legitimate government interests* that the program is intended to further. *South Dakota v. Dole*, 483 U.S. 203, 207-08 (1987). Excluding entities from federal funding programs just because they decline to espouse a particular viewpoint, regardless of the lack of a connection to the purposes of the particular program at issue, would fail this threshold test and thus unconstitutionally penalize those entities for their speech (or refusal to speak).

More generally, there is a difference in kind between, on the one hand, the setting of eligibility

criteria in a discretionary program affecting a small, voluntary pool of applicants, where the eligibility criteria tie directly to the program at issue, and on the other hand, the imposition of policy-linked disqualifiers upon an entire subset of the population, or upon the receipt of common or universally available benefits, or upon the disbursement of benefits having no obvious connection to the program at issue. Discretionary funding for overseas programs, for example, is not the same as entitlement to a child tax credit. Setting criteria for a small set of NGO's seeking program grants is materially distinct from imposing speech-linked requirements on parents wishing to send their children to public schools. And hinging funding for the fight against sexually transmitted diseases upon a policy against sexually irresponsible behavior is different in principle from requiring public fealty to, say, same-sex marriage as a condition of receiving a business license.

4. The need to cabin *CLS v. Martinez*

One decision of this Court would appear to undermine these crucial limiting principles – *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010) – but that case should not control the analysis going forward, either because it should be limited to its facts or because it should be repudiated.

In *CLS*, a government entity imposed the requirement that, as a condition of the benefits available to student clubs, every club must adopt a policy of indifferentism regarding religion and sexual behavior. *Id.* at 669-73. In other words, student groups were relegated to second-class status unless they in effect professed that a member's religious beliefs were

irrelevant to the identity and effectiveness of a religious club, and that one's departure from traditional Christian sexual norms – and the consequent scandal – was irrelevant to the mission integrity of a Christian group.

Contrary to the principles described above, the policy requirement in *CLS* was not limited to participation in a particular, discretionary program – e.g., a student workcamp project aimed at helping AIDS victims. Nor was the requirement limited to a small subset of the population – e.g., those applying for an assistantship position in the "diversity office" or campus chaplaincy. Instead, the rule was imposed upon the entire relevant universe – all students attending the state law school – as a condition of a standard, generally available benefit – forming a recognized club. Furthermore, the requirement was not directly linked to the program at issue: a policy on religion or sexual behavior generally has nothing to do with student club activities (e.g., playing chess), and where such a policy might be relevant, it could as easily be completely counterproductive, indeed nonsensical – e.g., forcing a Jewish club to allow Muslim or Christian officers.

To the extent that *CLS* stands for the proposition that the above-described essential limits on governmental power to impose ideological strings on benefits are in fact no limits at all, it should be overruled. To the extent that *CLS* says a government body can extract a pledge of submission to a currently regnant ideology or else impose second-class status upon the population it governs, the *CLS* decision is deeply and fundamentally inconsistent with liberty in general and free speech in particular, and should be overruled.

At a minimum, *CLS* must be read as limited to its peculiar facts. The *CLS* Court observed that, while a Christian group bizarrely had to agree that its officers need not be Christian and need not profess to follow Christian norms, such a group could nevertheless adopt "generally applicable membership requirements unrelated to status or beliefs." *Id.* at 2979 n.2 (internal quotation marks omitted). If these permissible "good-behavior," "attendance, [and] skill measurements" requirements, *id.*, allow a club to maintain its identity and integrity – e.g., by treating profound ignorance or disregard of the club's Christianity-derived norms as a disqualifier – then *CLS* would stand only for the dangerous, but more narrow, proposition that clubs must *profess* indifference to their identity but may nevertheless *maintain* mission coherence through conduct and skill requirements.

In sum, if *CLS* is taken at face value, the present case is easy indeed. Obviously, if a government body can relegate to second-class status those who do not profess adherence to a deeply controversial policy position, even in the context of access to a speech forum, then *a fortiori* the government can require espousal of a policy condemning activities traditionally regarded as evil, as a condition of receipt of special discretionary funding in a program addressing the consequences of that evil. But because *CLS* is so profoundly inconsistent with broader, preexisting First Amendment principles – principles *CLS* did not purport to overturn – this Court should not rely upon *CLS* here, but rather should disavow its pernicious holding (or at least ignore it, as *AID I* did).

In any event, the government does not need *CLS* to prevail in this case.

II. THE POLICY REQUIREMENT IS CONSTITUTIONAL INDEPENDENT OF THE "GOVERNMENT SPEECH" DOCTRINE.

Nor does the government need the "government speech" doctrine to prevail here. While that doctrine bolsters the *government's* ability to oppose sex trafficking and prostitution, the grantees need not be deemed government speakers to uphold the policy here.

"The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009). Here, however, any anti-prostitution and anti-sex trafficking policy of grantees is not *government* speech, but rather a policy *the grantee itself* adopts. Nor is this a case where the government is dictating the parameters of an entity's speech within the four corners of the government program, as in *Rust v. Sullivan*, 500 U.S. 173 (1991). Hence, the "government speech" doctrine is not controlling here.

The government speech doctrine, however, does not exhaust the government's authority to set rules for grantees. The government can constitutionally require that a grantee, for example, be a tax-exempt entity, or certify its compliance with workplace safety obligations, or have the necessary plant facilities to complete a certain government project. Eligibility criteria of these sorts are part and parcel of the government's ability to negotiate work bids, or allocate competitive grants. And as already discussed, *supra* § I, the policy requirement here is a permissible eligibility requirement.

CONCLUSION

The statutory requirement that grantees have an express policy against sex trafficking and prostitution is "nothing more than a means of selecting suitable agents to implement the Government's chosen strategy." *AID I*, 570 U.S. at 221 (Scalia, J., dissenting). As such, the requirement does not violate the First Amendment as to foreign *or* domestic entities. This Court should reverse the judgment of the Second Circuit.

Respectfully submitted,

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