

SCOTUS Opinion: Court Declines to Extend First Amendment Protections to Foreign Corporate Affiliates

29 Jun 2020

The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act was enacted in 2003 as a foreign aid program focused on global health. Congress dedicated billions of dollars in funding to the Act, but required that organizations could only receive funds if they had a “policy explicitly opposing prostitution and sex trafficking.” In *Agency for Int’l Development v. Alliance for Open Society Int’l, Inc.*, 570 U.S. 205 (2013), the Court held that this policy violated the First Amendment rights of American organizations that received funds under the Act. In this case, the same parties returned to court, this time arguing whether the policy should also be enjoined from applying to the American organizations’ foreign affiliates. The Second Circuit held that the First Amendment protected the foreign affiliates.

The Court, in a 5-3 decision by Justice Kavanaugh (Justice Kagan recused), reversed, holding that it was a bedrock principle that foreign citizens did not have rights under the Constitution unless they were present in the United States. The Court also recognized that the foreign affiliates, as legally separate entities from the American companies, could not be held to enjoy the same rights. Justice Thomas lodged a concurrence noting his continued disagreement with the result of the prior case. Justice Breyer, joined by Justices Ginsburg and Sotomayor, dissented, arguing that the present case was really about the First Amendment rights of American organizations, not foreign affiliates.

A link to the decision in *Agency for Int’l Development v. Alliance for Open Society Int’l, Inc.* is here:
https://www.supremecourt.gov/opinions/19pdf/19-177_b97c.pdf

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TAGGED: First Amendment, Agency for Int'l Development v. Alliance for Open Society Int'l Inc, United States Leadership Against HIV/AIDS Tuberculosis and Malaria Act