

Supreme Court Rejects Funding Condition Requiring Affirmation of Belief, as Urged by Wiley Rein Attorneys

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Wiley Rein, representing The Rutherford Institute, helped persuade the U.S. Supreme Court to reject the government's attempt to compel private parties to adopt subjective policy positions as a condition of participating in federal programs.

In *U.S. Agency for International Development v. Alliance for Open Society International*, No. 12-10, the Court struck down a provision of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the Leadership Act) requiring funding recipients to affirm their opposition to the legalization or practice of prostitution or sex trafficking. In a 6-2 decision today, the Court found that the provision, referred to as the Policy Requirement, violated the First Amendment "by demanding that funding recipients adopt—as their own—the Government's view on an issue of public concern."

In an *amicus* brief filed by Wiley Rein, the Rutherford Institute argued that the Policy Requirement compelled speech and impermissibly exceeded Congress' power under the Spending Clause, a position the Court agreed with today. The *amicus* brief pointed out the consequences of the government's broad approach to its Spending Clause power, which could have permitted the government to attach a variety of speech requirements to government programs.

"We are glad the Supreme Court saw the dangers in the government's attempt to control private beliefs and expression," said Wiley Rein partner Megan L. Brown, counsel of record for The Rutherford Institute. In rejecting the government's broad claim, "the Court affirmed that the government cannot use the power of the

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purse to compel private parties to agree with its views or espouse its opinions.”

“This is a strong victory for freedom of speech, belief and the First Amendment,” said Wiley Rein partner Joshua S. Turner, who also worked on the brief.

Ms. Brown and Mr. Turner, along with Wiley Rein associates May K. Chiang, Meredith M. Goldich and Christen M. Price, filed the *amicus* brief earlier this year.

The Supreme Court ruling can be read [here](#).

The *amicus* brief filed by Wiley Rein can be read [here](#).