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Lawsuit challenging HHS contract with USCCB awaits judge's decision

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This story is the third in a series on the decision by federal officials to discontinue funding the U.S. bishops' Migration and Refugee Services program to assist foreign-born victims of human trafficking.

WASHINGTON -- A lawsuit pending in a Massachusetts federal court may determine if the U.S. Department of Health and Human Services can allow religiously based restrictions on reproductive health services in agreements with private agencies to provide social services.

The suit, filed by the American Civil Liberties Union in Boston in January 2009, stems from a now ended five-year contract that HHS signed with the U.S. Conference of Catholic Bishops to provide case management services to foreign-born victims of human trafficking through its Migration and Refugee Services.

ACLU claims that the bishops' conference dictated terms of the contract it received from the government to serve trafficking victims in violation of the separation of church and state provisions of the U.S. Constitution. ACLU attorneys maintain that the government, because it is spending taxpayer dollars, must set the terms of the contract.

Michael O. Leavitt, then Secretary of Health and Human Services, was named as the chief defendant. Since then Kathleen Sebelius, current health and human services secretary, has replaced Leavitt as the government's defendant.

The USCCB joined the case as an intervenor and, through its attorney, argued that its intention under the contract not to fund abortion or contraceptive services was permitted because of religious freedom and conscience provisions in federal law.

The parties submitted final arguments to Judge Richard G. Stearns Oct. 18. He is expected to issue his decision early in 2012.

The contract in question, which expired Oct. 10, permitted MRS to adhere to church teaching and restrict agencies subcontracted to work with trafficking victims from providing services that were contrary to church teaching.

ACLU attorney Brigitte Amiri told CNS the case was filed because it is not the government's prerogative to restrict access to health services that are legal.

"We believe it's a violation of the separation of church and state to allow a religious entity to dictate the terms of a federal contract on how money should be spent," Amiri said. "Not all trafficking victims need such services, but they need a host of reproductive services including contraception and, if pregnant, abortion."

She added that the civil liberties organization found it "disturbing that the Catholic bishops forced this on the case managers even if they themselves have no objection to referring for such services."

Attorney Henry C. Dinger, representing the USCCB, told CNS that a key argument focused on whether the ACLU was permitted to challenge the provisions of the contract because it was not an injured party.

The judge ruled that ACLU was within its rights to file the suit.

"If they have standing, then we've argued that the decision to award the contract was not a violation of the Establishment Clause (in the Constitution)," Dinger said.

"Health and Human Services awarded the contract in spite of the conscience exemption over abortion and contraceptive services," he explained. "They didn't view the unwillingness to fund abortion and contraceptive services as an impediment and that the other positives (MRS provided) outweighed that."

U.S. Department of Justice attorneys argued that the contract had expired, making the case moot.

A Justice Department spokesman declined to comment on the case.

Dinger and Amiri said it was in both organizations' interest to get a decision because it is likely the issue will surface again. An appeal is expected no matter how Stearns rules.

The suit has moved slowly because of numerous freedom of information requests filed by the ACLU to obtain public documents related to the contract award and subsequent motions by both parties.

Among the documents cited in the lawsuit was the church agency's Feb. 23, 2006, technical proposal to the HHS office that administers human trafficking programs. It said, "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. ... Specifically, subcontractors could not provide or refer for abortion services or contraceptive materials."

The HHS office then asked the USCCB, according to the lawsuit, whether a "'don't ask, don't tell' policy (would) work regarding the exception. What if a subcontractor referred victims supported by stipend to a third-party agency for such services?"

In response, the lawsuit said, the USCCB explained it "cannot be associated with an agency that performs abortions or offers contraceptives to our clients. If they sign the written agreement (the subcontract), the 'don't ask, don't tell' wouldn't apply because they are giving an assurance to us that they wouldn't refer for or provide abortion service to our client using contract funding."

The USCCB program received slightly more than $19 million during the five-and-a-half years of the contract, assisting nearly 2,783 trafficking victims and family members.

MRS officials have maintained that requests for services the church opposes were rare during the contract term.

More:

- Part one: USCCB seeks answers to why plan to help trafficking victims was denied [1]
- Part two: HHS announcement made MRS plan to help trafficking victims a tough sell [2]
- Part four: Advocates say reproductive services 'important' for trafficking victims [3]

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