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Federal court panel dismisses ACLU challenge of USCCB trafficking grant

by Dennis Sadowski by Catholic News Service

Washington — A federal appeals court dismissed an American Civil Liberties Union of Massachusetts legal challenge to a contract between the Department of Health and Human Services and the U.S. Conference of Catholic Bishops, saying the case had become moot because the contract had expired.

In a unanimous ruling Tuesday, the three-judge panel of the 1st Circuit Court of Appeals also vacated an earlier ruling by District Court Judge Richard Stearns upholding the ACLU's claim that the contract violated the Establishment Clause of the Constitution.

"It's good that the decision is vacated," attorney Henry Dinger, representing the USCCB, told Catholic News Service on Wednesday.

The decision leaves unanswered the legal question of religious accommodation in the delivery of services under a federal contract.

"It doesn't resolve anything on the merits (of the ACLU's claim)," Dinger said. "The important thing to emphasize is that Judge Stearns' decision is now vacated and no longer has any effect."

Stearns ruled March 23 that HHS officials improperly delegated to the bishops' conference the decision on which services to offer or not offer to foreign-born victims of human trafficking under a federal contract.

Mercy Sr. Mary Ann Walsh, USCCB director of media relations, said the dismissal represents a legal victory for the bishops' conference, but only in a limited way because the core issue of whether the conscience clause in the contract with HHS violated the Establishment Clause.

"The court also didn't reach the more peripheral, but still important, question of whether ACLU alone has standing to challenge the contract solely as an interested association of taxpayers," she added. "The court only found that there is no more dispute left for the court to decide about because the original contract ran its course."

She described Stearns' ruling as a "blight" that is gone and that the vacating of his order was "something to be happy about," especially because it likely would have affected future contracts between the federal government and faith-based organizations exercising their conscience rights.

Walsh said the USCCB did not expect a further appeal of the decision.

ACLU attorney Brigitte Amiri said in a statement after the ruling that her organization would have preferred to see the questions raised by the lawsuit resolved by the courts.

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"The upshot of the ACLU's challenge is a victory for victims of human trafficking and for religious liberty," she said. "As a result of this case, the government stopped funneling taxpayer money from the program through the Catholic bishops, who for years had denied medical services to victims of human trafficking based on purely religious grounds."

The case originally was filed by the ACLU of Massachusetts against the Department of Health and Human Services in 2009. It challenged the legality of the government allowing the USCCB, through its Migration and Refugee Services Department, to decline offering abortion and contraceptive services to human trafficking victims under the contract.

The USCCB joined the lawsuit in mid-2010 as a defendant-intervenor.

The appeals court panel determined that because the contract between HHS and the USCCB had expired in October 2011 and that all payments owed the bishops' program through Migration and Refugee Services' program had been paid by last April, the reason for the court case to continue had ended.

The contract for services began in April 2006 and lasted five years. A six-month extension was granted by HHS administrators as the federal agency revamped the program and drafted new guidelines for services. When the proposals for funding trafficking victims' services were sought again in 2012, the guidelines stated that a "strong preference" would be given to applicants willing to offer "the full range of legally permissible gynecological and obstetric care."

While MRS submitted a proposal and received high scores from HHS reviewers, three-year grants were awarded to three other organizations to provide services to trafficking victims regionally. MRS was excluded from funding because it maintained that it would continue to follow church teaching and would not agree to pay for abortion and contraceptive services offered to trafficking victims through its established network of subcontractors.

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