FEDERAL LEGISLATIVE AND STATE JUDICIAL RESTRICTIONS ON THE REPRESENTATION OF INDIGENT COMMUNITES IN PUBLIC INTEREST AND LAW SCHOOL CLINIC PRACTICE IN LOUISIANA

I. INTRODUCTION

Imagine for a moment living as an indigent individual in St. John's Parish, Louisiana.[1] Another manufacturing company has decided to locate in your neighborhood—an area already commonly referred to as "cancer alley."[2] You have decided that 17.6 million pounds of pollutants in your air, land, and water a year is more than your fair share and that the addition of another 143,000 pounds of pollutants is just too much.[3] So you decide to pursue legal avenues to try and stop another plant from moving to your area. Unfortunately, considering the economic status of the community, it is likely that you make less than $15,000 a year and therefore cannot afford a private attorney.[4]

Your first alternative is to visit a law school clinic in the area to determine if it will represent you. Getting your neighbors involved is probably the best way to handle a fight against a multi-million dollar chemical company; however, the law student clinic cannot represent you or your neighbors if it helps to organize your group.[5] In addition, if you ask a

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1 This narrative is based on actual events involving residents of St. John's Parish, Louisiana and Shintech, Inc., a Japanese plastics company. Shortly after the residents of St. John's Parish successfully challenged the ability of the plastics company to begin manufacturing in that area, the Louisiana Supreme Court amended the student practice rule making it more difficult for other communities to retain legal representation from law clinics. Although the rule has been amended twice since the Louisiana Supreme Court first changed the rule in 1998, this introductory narrative is based on the status of the rule after the first change.

2 *See* Edmond Kelly, *A Power Play Against Environmental Justice*, NEW ORLEANS TIMES-PICAYUNE, June 25, 1998, at B6.

3 *See* Mark Schleifstein, *Foster, Clinics Face Off on Rules, Legal Debate Goes Beyond Shintech*, NEW ORLEANS TIMES-PICAYUNE, Aug. 2, 1998, at A1.

4 *See id.*

5 *See* LA. SUP. CT. R. XX, § 10 (1999) (as amended July 1998).

> No law school clinical program, no staffpersons of a law school clinical program who assist or work with certified student practitioners, and no certified student practitioners shall represent an indigent community organization pursuant to this rule if the clinical program, any staffperson, or any student practitioner provided legal assistance in forming, creating, or incorporating the organization.

(*continued*)

national environmental organization to help you organize, the law clinic cannot represent you either.[6] Finally, before the clinic can represent your neighborhood, you must prove at least 51% of your group, which you have not yet organized, meets federal indigencey standards.[7] Frustrated with the administrative difficulty of getting representation from the law clinic, and perhaps unwilling to pursue the case alone, you decide to pursue the other alternative open to you.

Your next step is to contact your local Legal Aid Office, which receives funding from Congress through the Legal Services Corporation.[8] The Legal Aid Office informs you that due to new restrictions on legal aid attorneys, it may not be able to take your case. Legal aid offices receiving federal funds are no longer permitted to represent individuals in class-action litigation.[9] Even if the office chooses to ignore the fact that a class-action may be the most efficient and most powerful way to pursue your case, if either side moves for class certification the Legal Aid Program must abandon the case.[10]

Id.

6 *See id.*

7 *See* LA. SUP. CT. R. XX, § 5 (1999) (as amended July 1998).

> Any indigent community organization that wishes to obtain representation pursuant to this rule must certify in writing to the inability to pay for legal services. The written certification shall be subject to inspection by the Supreme Court of Louisiana. Law school clinical program staff and student practitioners who appear in a representative capacity pursuant to this rule may represent any indigent community organization that is not affiliated with a national organization provided at least 51% of the organization's members are eligible for legal assistance pursuant to the Legal Services Corporation guidelines. The indigent community organization shall also provide financial information to clinic staff, which shows that the organization lacks, and has no practical means of obtaining, funds to retain private counsel.

Id.

8 *See infra* note 10.

9 "This rule is intended to ensure that LSC recipients do not initiate or participate in class actions." 45 C.F.R. § 1617.1 (2000). "Recipients are prohibited from initiating or participating in any class action." 45 C.F.R. § 1617.3 (2000).

10 "Initiating or participating in any class action means any involvement at any stage of a class action prior to or after an order granting relief. 'Involvement' includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action." 45 C.F.R. § 1617.2(b)(1) (2000).

The preceding narrative demonstrates how Congress and the Supreme Court of Louisiana have made it extremely difficult for low-income groups to receive legal representation from a local legal aid program or law clinic. In 1996, Congress drastically reduced the budget of the Legal Services Corporation, the umbrella non-profit organization that allocates federal funding to state legal aid societies.[11] In addition, Congress prohibited these organizations from participating in class-action lawsuits.[12] Now, the Supreme Court of Louisiana has made it even more difficult for low-income people in Louisiana to receive legal representation. The Supreme Court of Louisiana has attempted to amend its Student Practice Rule to prohibit law school clinics from representing groups of people unless at least 51% of the individuals meet the Legal Services Corporation indigence standards and the group is not affiliated with a national organization.[13] In addition, if the law clinic or any member of the law clinic participated in the formation of the organization, representation is prohibited.[14]

This paper will assert that the federal restrictions upon Legal Aid Clinic practice and the Supreme Court of Louisiana's restriction on law student representation results in virtually little to no possibility of group representation for low-income individuals, who wish to access the courts. To support this proposition, background information about the history of the Legal Services Corporation and the actions by Congress, which have resulted in the restriction on class-action litigation, will be presented and the events surrounding the changes in the Student Practice Rule will be described. Next, the paper will summarize the legal arguments against these restrictions. Finally, several public policy arguments will be made to show that these restrictions are unnecessary and place the interests of political officials and the business community above those of the poor.

II. BACKGROUND

A. *The Legal Services Corporation and Its Genesis*

In order to realize the effect of these restrictions it is important to understand the background and function of the Legal Services Corporation (LSC). The Legal Services Corporation is a non-profit entity that administers government funds to 275 legal services programs in the United States.[15] President Nixon signed the Legal Services Corporation Act in

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11 *See Annual LSC Appropriations 1980–1999* (last modified Dec. 23, 1998) <http://ltsi.net/lsc/fb98ihtml>.

12 *See* 45 C.F.R. § 1617.3 (2000).

13 *See* LA. SUP. CT. R. XX, § 5 (as amended July 1998).

14 *See id.* § 10.

15 *See Legal Services Corporation 1996 Annual Report: A Message from the Board Chair and President* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

August 1974, days before his resignation.[16] Congress appropriated to the LSC in its first year a budget of $71.5 million.[17] Nixon said the structure was designed to take the provision of legal services for the poor out of politics and give it a stable and efficient administration.[18] By law, five of the eleven members of the national board of directors must not be a member of the president's political party and the Senate must confirm all of the members.[19] In fact, the Declaration of Purpose in the United States Code section, which authorizes the Legal Services Corporation, states:

> Congress finds and declares that . . . there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances . . . to preserve its strength, the legal service program must be kept free from the influence of or use by it of political pressures.[20]

In 1919, approximately forty legal aid programs existed.[21] That number has gradually grown through the years.[22] Today there are many public and private entities, which provide such legal assistance to the poor.[23] Of these programs, LSC provides government funding to approximately 275 legal aid clinics across the United States.[24] Ninety-seven percent of all funds appropriated by Congress go directly to local programs.[25] In 1996, local legal services programs handled a total of 1.4 million cases.[26] Typical LSC funded cases include matters such as

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16 Mary Wisniewski Holden, *Clipped Wings and Budget Cuts Tax Legal Aid*, CHICAGO LAWYER, Aug. 1997, at 1.

17 *See id.*

18 *See Legal Service Corporation 1996 Annual Report: A History of Bipartisan Sponsorship and Support* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>; *see also* Nancy Hardin Rogers, *Save the Legal Navigators*, CLEV. PLAIN DEALER, Feb. 7, 1995, at 9B.

19 *See What is the Legal Services Corporation* (visited Jan. 12, 1999) <http://ltsi.net/lsc/aboutlsc.html>; *see also* Rogers, *supra* note 18.

20 42 U.S.C. § 2996(1),(5) (1999).

21 *See* Holden, *supra* note 16.

22 *See id.*

23 Examples of these programs include those conducted by local bar associations, United Way programs, foundations and corporations, and private pro bono work.

24 *See Legal Services Corporation 1996 Annual Report: Tthe Legal Services Delivery System* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

25 *See id.*; *see also* Terrence F. MacCarthy, *Americans Understand the Poor are Entitled to Use Justice System*, CHI. DAILY BULL., Sept. 10, 1997, at 2.

26 *See Legal Services Corporation 1996 Annual Report: A Message from the Board Chair and President* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

housing, employment, government benefits, consumer disagreements, and family law.[27] As the LSC budget decreased, the distribution of funds changed from being based on the population of low-income people living in a specific area [28] to a grant-competition system.[29] Based on the way in which the LSC is organized and funds are administered, it is clear that Congress intended the LSC to be free from political influence.

B. *Budget Cuts and Representation Restrictions*

Despite Congress' intention of keeping the LSC free from political influence, the program has been under attack in recent years. Evidence of Congress' disfavor with the program is the recent, dramatic cuts in the LSC budget. The budget of the LSC gradually increased from $71.5 million in its first year of existence[30] to $321 million in 1981.[31] In 1982, the LSC experienced its first budget cut, from $321 million in the previous year to $241 million.[32] In addition, over the years there have been several initiatives to replace the whole LSC system with a block-grant system.[33] Since 1980, the Legal Services Corporation has survived on continuing resolutions and appropriations by Congress despite these initiatives.[34] From 1981 to 1986, LSC funding from Congress decreased by 9%,[35] while the cost of living for the same period rose 72.6%.[36] From 1986, the LSC budget was increased yearly until 1995 when Congress cut the budget from $400 million to $278 million for 1996.[37] This 33% cut was the largest in the LSC's twenty-three year history.[38] In mid-July 1997, a House Appropriations Committee recommended the LSC budget be cut in half, from $283 million to $141 million.[39] In contrast, the Senate subcommittee recommended the budget be increased to $300 million.[40]

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27 *See Legal Services Corporation 1996 Annual Report: LSC Cases* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

28 *See* Frances Griggs, *Senate May End Legal Aid for Poor*, CINCINNATI POST, Sept. 15, 1995, at 1A.

29 *See Legal Services Corporation 1996 Annual Report: Legal Services in Congress in 1996* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

30 *See* Holden, *supra* note 16.

31 *See id.*

32 *See id.*

33 *See* Griggs, *supra* note 28.

34 *See id.*

35 *See Annual LSC Appropriations 1980–1999*, *supra* note 11.

36 *See* Holden, *supra* note 16.

37 *See Annual LSC Appropriations 1980–1999*, *supra* note 11.

38 *See* Holden, *supra* note 16.

39 *See id.*

40 *See id.*

Congress reached a compromise and adopted a budget of $278 million for fiscal year 1996.[41] Although in 1998 Congress increased the LSC's budget to $300 million, the LSC still has less resources than it had just five years ago.[42] The result of the decreased budget has been a reduction in the number of people represented by LSC programs.[43]

C. *The Rules Relating to Class-Action Litigation*

In addition to limiting the amount of funds available, in 1996, the 104th Congress imposed restrictions on LSC recipients, prohibiting agencies receiving LSC funds from participating in class actions and legislative and administrative advocacy.[44] These new federal restrictions called for all LSC attorneys to withdraw from class-action suits by August 1, 1996, as a condition for the agency's continued federal funding.[45] The Legal Services Corporation, facing threats of total elimination of federal funding, agreed to accept a 25% budget cut, drop more than 630 pending class action suits, and pledged not take on similar suits in the future.[46] The applicable rules passed by Congress are contained in the Code of Federal Regulations.[47] The "Definitions" section defines "initiating" or "participating" in a class-action as "involvement at any stage of a class action prior to or after an order granting relief. Involvement includes acting as amicus curiae, co-counsel or otherwise providing representation."[48] A Senate report states that the purpose of this class action reform is to improve the accountability and the effectiveness of the LSC.[49] The legislature will "refocus LSC on its primary mission, which

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41 *See Annual LSC Appropriations 1980–1999*, *supra* note 11.

42 *See Fiscal Year 1999 Appropriations* (visited Mar. 8, 2000) <http://www.lsc.gov/pressr/pr_budg.htm>.

43 *See Legal Services Corporation 1996 Annual Report: A Message from the Board Chair and President*, *supra* note 15.

44 *See Legal Services Corporation 1996 Annual Report: Legal Services in Congress in 1996*, *supra* note 29; *see also* Holden, *supra* note 16.

45 *See* Kathryn Ericson, *New York Judge: Laws Barring Legal Services From Class Actions Unconstitutional*, WEST'S LEGAL NEWS, Jan. 6, 1997, at 1.

46 *See* Evelyn Apgar, *New Jersey legal Services: Studying Class Action Overturn*, N.J. LAW. WKLY., Jan. 6, 1997, at 5. The government may deny a benefit for any number of reasons, however, the government cannot restrict a benefit in such a way that infringes upon a recipient's constitutional rights. *See* Perry v. Sindermann, 408 U.S. 593, 597 (1972).

47 "This rule is intended to ensure that LSC recipients do not initiate or participate in class actions." 45 C.F.R. § 1617.1 (1999).

48 45 C.F.R. § 1617.2(b) (1999).

49 *See* S. REP NO. 104-392, pt. 1, at 1 (1996).

is to provide basic legal services to indigent American citizens."[50] William McCollum testified that "[o]ver the years, we have seen extensive abuses within the LSC by lawyers with their own political agendas actively recruiting clients, creating claims, and advancing their own social causes."[51] In short, Congress' goal in passing these restrictions is to limit cases, which some representatives believe, are political in nature and to increase individual representation.

D. *The Tulane Environmental Law Clinic and St. John's Parish*

As legal aid clinics in Louisiana and in other states began to execute these new LSC guidelines, the Supreme Court of Louisiana further limited the ability of low-income groups to access the courts by restricting the ability of law school clinics to provide group representation to low-income communities. Before discussing the restrictions, however, it is important to briefly describe the evolution of clinical education in the United States and to describe the case that became the impetus for the Supreme Court of Louisiana's restrictions.

Although some scholars called for clinical education at law schools as early as 1930, it was not until the 1960s that clinical programs were developed in many American law schools.[52] In 1973, a law review article by Supreme Court Chief Justice Warren Burger brought public attention to the need for the clinical training of lawyers. The article stated that "from one-third to one-half of lawyers who appear in the serious cases are not really qualified to render fully adequate representation."[53] Other groups, including the United States Court of Appeals for the District of Columbia and the American Bar Association's Task Force on Law Schools and the Profession, encouraged the role of the law school in teaching students practical skills.[54] Increasingly, law schools began to adopt clinical programs into their curriculum. Currently, each law school approved by the American Bar Association must offer some real client experience.[55]

The purpose of clinical education is to "'develop students' understanding of lawyering tasks, provid[e] opportunities to . . . engage in actual skills performance in the role, and develop [students'] capacity to

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50 *Id.*

51 *Id.* pt. 2.

52 *See* Jorge de Neve et al., *Submission of the Association of American Law Schools to The Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLINICAL L. REV. 539, 542 (1998).

53 *Id.* at 542 (quoting Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice*, 42 FORDHAM L. REV. 227, 234 (1973)).

54 *See id.* at 543.

55 *See id.*

reflect upon professional conduct through the use of critique."[56] Recent data indicates there are real-client clinics, as opposed to programs where students work with clients through other organizations, at approximately 147 law schools.[57]

One such law clinic is the Tulane Environmental Law Clinic, which is staffed by thirty, third-year law students[58] and is ranked seventh in the country.[59] In 1996, the students represented members of a community in an area known as St. John's Parish, who were opposed to plans to locate in their community a $700 million plastics plant owned by Shintech, Inc.[60] Some of the Tulane Environmental Clinic students acted as "outreach coordinators" to organize the plaintiffs.[61]

There were about 300 people living within a mile of the proposed plant site of whom 95% were black and 49% of the households had incomes of less than $15,000 per year.[62] The new plant would add 626,000 pounds of pollutants to the air including 143,000 pounds of vinyl chloride in the area.[63] According to the President of Tulane University, the area is already commonly referred to as cancer alley.[64] In 1996, the plants currently located in the area released a total of 17.6 million pounds of pollutants in the air, land, and water.[65]

E. *Business and Political Reaction*

As students began to successfully represent this community in court, some individuals from the business and political community reacted strongly. Governor Mike Foster became particularly enraged with the Tulane Law Clinic's effort to prevent the plant from locating in that community.[66] He had offered the company $130 million in tax breaks to

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56 *Id.* at 544 (quoting TASK FORCE ON LAW SCH. AND THE PROFESSION, AMERICAN BAR ASSOC., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT 243 (1992)).

57 *Id.* at 547.

58 *See* Mark Ballard, *Tulane Law Clinic Will be Scrutinized*, NAT'L L. J., Oct. 20, 1997, at A8.

59 *See* Edmond Kelly, *A Power Play Against Environmental Justice*, NEW ORLEANS TIMES-PICAYUNE, June 25, 1998, at B6.

60 *See Clinic Restrictions May Go Too Far*, BATON ROUGE SUNDAY ADVOC., June 21, 1998, at 14B.

61 Mark Ballard, *Louisiana High Court Reins in Legal Clinic, Is it Revenge for Tulanes' Win in the Shintech Case?*, NAT'L L. J., July 6, 1998, at A11.

62 *See* Schleifstein, *supra* note 3.

63 *See id.*

64 *See* Kelly, *supra* note 59.

65 *See* Schleifstein, *supra* note 3.

66 *See id.*

construct the plant in Louisiana[67] and threatened to revoke tax breaks granted to Tulane.[68]

Business groups in the area, including the Louisiana Association of Business and Industry (LABI), asked for rules to require "balanced representation" of government, small business, and environmental interest and for a panel of attorneys to screen cases to determine whether it would be appropriate for law clinics to handle them.[69] These groups also accused Tulane of "fostering 'social positions' that conflict with the business community, improper solicitation, obstructionist practices and contacting opposing parties outside the presence of their counsel."[70]

The Supreme Court of Louisiana responded to the complaints in late June by announcing a unanimous decision to change the Student Practice Rule. The changes include prohibiting law clinic representation of any group that is affiliated with a national organization;[71] requiring law clinics to follow the guidelines in determining indigence used by the LSC before representing clients;[72] requiring community organizations represented by a law clinic to certify in writing, subject to public inspection, their inability to pay for legal services;[73] and prohibiting the solicitation of cases or clients including forming, creating, or incorporating any organization.[74] All of the rules were scheduled to begin on July 1, 1998, with the exception of one provision, which requires law clinic student practitioners to have taken one course in legal ethics.[75] According to the Association of American Law Schools, the new rule is the "most restrictive student practice rule in the nation."[76] The changes in the rule limit the type of cases in which a law clinic may participate, a limitation which is not experienced by any law clinic in other states.

In contrast, public disapproval of the Supreme Court of Louisiana's actions influenced the court to back off of its initial decision. In early July 1998, the Supreme Court of Louisiana decided to drop the requirement under Rule XX that 75% of the members of a group, which the law clinic

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67 *See id.*

68 *See* Ballard, *supra* note 61.

69 *See Clinic Restrictions May Go Too Far*, BATON ROUGE SUNDAY ADVOC., June 21, 1998, at 14B.

70 *Tulane Law Clinic Will be Scrutinized*, NAT'L L.J., Oct. 20, 1997, at A8.

71 *See* LA. SUP. CT. R. XX, § 5.

72 *See id.*

73 *See id.*

74 *See id.* § 10.

75 *See id.* § 6(c) (effective Sept. 1, 2000).

76 *Group Says Student Law Rule Restrictive*, BATON ROUGE ADVOC., Aug. 26, 1994, at 1A, *available in* 1998 WL 4909918.

represents, meet LSC indigence standards.[77] Now, the court has stated that a least 51% of group members must meet LSC indigence standards.[78] Robert Kuehn, the director of Tulane's Environmental Law Clinic states that a 51% rule will still prohibit virtually all community groups in Louisiana from getting free legal assistance from university law clinics in the state."[79]

In addition, the Supreme Court of Louisiana is no longer requiring community groups seeking representation to certify in writing, subject to public inspection, their inability to pay for legal services because this requirement may conflict with the individuals' right to association under the First Amendment.[80] Now, the community must reveal their inability to pay for legal services only to the courts.[81]

Some critics have attributed the court's initial retreat from the rule as an attempt to avoid the controversial topic until after the 1998 election in November. In fact, the rule induced Loyola University law professor Bill Quigley to enter the race for a Supreme Court seat.[82] Professor Quigley promised to stand up for the rights of working and poor people.[83] As a result, the rule became a controversial topic in the election debates. Although Chief Justice Pascal Calogero, who was up for re-election in November, managed to retain his seat on the court, he was forced to defend the rule during the campaign.[84]

Other organizations have intervened on behalf of law clinics. The Louisiana Bar Association has joined two Louisiana law schools in asking the state Supreme Court to halt the enforcement of the amended Louisiana

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77 *See* Joe Gyan, Jr., *Law Clinics Ruling Softened,* BATON ROUGE ADVOC., July 2, 1998, at 1A.

78 *See id.*

79 *Id.*

80 *See id*; *see also* NAACP v. Alabama, 357 U.S. 449 (1958) (holding that compelled disclosure of membership is likely to affect adversely the ability of plaintiff's members to pursue their collective effort to foster beliefs which they have the right to advocate).

81 *See id.*

82 *See* Schleifstein, *supra* note 3.

83 *See id.*

84 *See* Hugh M. Collins, *High Court Explains Student-Lawyer Rule Change*, NEW ORLEANS TIMES-PICAYUNE, June 25, 1998, at B6. (This article was written by a judicial administrator for the Louisiana Supreme Court on behalf of Chief Justice Pascal Calogero).

rule.[85] As a result, the court gave the Louisiana Bar Association until the end of November 1998 to submit its comments.[86]

In addition, Richard Ieyoub, Louisiana Attorney General asked the court to suspend its new rules so student law clinics and organizations affected by the changes can present their views to the court.[87]

On August 20, 1998, the Supreme Court of Louisiana gave the Louisiana Association of Business and Industry (LABI) and three other business groups thirty days to respond to the law schools' request that the court reconsider its restriction on the way law clinics may represent the poor.[88] The court suspended the changes preventing clinics from soliciting clients or providing legal information to potential clients or outside organizations during this time.[89]

On January 8, 1999, approximately 200 law school professors from across the country protested the restrictions by participating in a march to the Supreme Court of Louisiana.[90] The protesters delivered a petition to the Supreme Court containing 900 signatures from professors at more than 70 law schools.[91] The petition stated that the restrictions "seriously curtail the ethical obligations and rights of law students and law faculty in Louisiana."[92]

In early 1999, the rule was again amended.[93] This time, the court increased the standard for eligibility and removed the restriction on the representation of community organizations affiliated with a national organization.[94] Students are now able to represent any individual whose annual income does not exceed 200% of the federal poverty guidelines.[95] In addition, clinics must show that at least 51% of the individuals' incomes

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85 *See* Joe Gyan, Jr., *Louisiana Bar Backs Clinics . . . Supreme Court urged to delay rule changes*, BATON ROUGE ADVOC., Sept. 9, 1998, at 1A.

86 *See* Mark Schleifstein, *Ieyoub asks High Court to Suspend Clinic Rules*, NEW ORLEANS TIMES-PICAYUNE, Oct. 7, 1998, at A2.

87 *See id.*

88 *See* Gyan, *supra* note 77.

89 *See id.*

90 *See* Joe Gyan, Jr., *Law clinic restrictions protested*, BATON ROUGE ADVOC., Jan. 8, 1999, at 1A, *available in* 1999 WL 6093397.

91 *See id.*

92 *Id.*

93 *See* Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 250 (1999).

94 *See* LA. SUP. CT. R. XX (as amended March 22, 1999).

95 *See id.* § 4. "Law School clinical program staff and student practitioners who appear in a representative capacity pursuant to this rule may represent any individual or family unit who annual income does not exceed 200% of the federal poverty guidelines established by the Department of Health and Human Services." *Id.*

from any community organization it represents do not exceed 200% of the poverty guidelines, regardless of whether the community group is affiliated with a national organization.[96] Convinced that it had struck an adequate compromise, the Supreme Court of Louisiana published the final rule on March 22, 1999.[97] The rule became effective on April 15, 1999.[98]

In the meantime, the residents of St. John's Parish have managed to avoid Shintech's pollution for now. The Houston-based subsidiary of Shin-Etsu Chemical Company of Japan announced that it has decided to build a much smaller $250 million facility in an industrial zone farther upriver.[99]

III. RECENT DEVELOPMENTS

A. *LSC Lawyers Battle Restrictions in Court*

Attorneys, who are employed by LSC programs, have attempted to fight the restrictions. What is particularly bothersome is that in issuing the restriction, which prevents LSC attorneys from participating in class-action law suits, Congress not only prohibited the use of LSC money to fund class-action litigation, but also prohibited LSC funded organizations to participate in class-action law suits at all, regardless of the source of funding.[100] In at least two cases in the past two years, LSC lawyers have unsuccessfully challenged the constitutionality of these restrictions.[101] In

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96 *See id.* § 5.

> Law school clinical program staff and student practitioners who appear in a representative capacity pursuant to this rule may represent any indigent community organization provided at least 51% of the organization's members are eligible for legal assistance pursuant to Section 4 of this rule. The indigent community organization shall also provide information to clinic staff which shows that the organization lacks, and has no practical means of obtaining, funds to retain private counsel.

Id.

97 *See id.*

98 *See id.*

99 *See Shintech Changes Its Mind*, NAT'L L. J., Sept. 28, 1998, at 10B.

100 *See* Holden, *supra* note 16.

101 *See* Legal Aid Society of Hawaii v. LSC, 145 F.3d 1017 (9th Cir. 1998) (holding that LSC regulations which only permitted restricted activities when pursued by a legally separate entity did not unconstitutionally condition receipt of federal funds on relinquishment of First Amendment rights and plaintiffs failed to establish standing to raise equal protection and due process challenges); *see also* Velasquez v. LSC, 985 F. Supp. 323

(*continued*)

addition, LSC organizations have been criticized for not challenging the restrictions, based on a fear that Congress will become enraged by the challenges in court and cut off federal funding to the program entirely.[102] Because the LSC is a funded by Congress, it is mandatory for it to comply with these new guidelines. Although many LSC attorneys have started working part-time so that they may still participate in lobbying and class-action litigation during personal time, such an arrangement is difficult to maintain because the LSC enforces stringent administrative standards upon these attorneys.[103] Although LSC attorneys have pursued several alternatives to circumvent these restrictions, unless the public becomes vocal enough to influence Congress to repeal these restrictions, there is little possibility that these restrictions will be lifted in the immediate future.

B. *Law Clinic Supporters Sue the Louisiana Supreme Court*

On March 22, 1999, after amending the rule twice, the Louisiana Supreme Court published its final version of the rule, which became effective on April 15, 1999.[104] On April 16, 1999, several plaintiffs, including future and past clients of the clinics, a private donor to the clinics, professors, and students filed a suit against the Louisiana Supreme Court in the U.S. District Court for the Eastern District of Louisiana.[105] The suit alleged that under section 1983, the new rule deprived the plaintiffs of their First Amendment Rights to speak and associate under color of state law.[106]

On May 26, 1999, the Louisiana Supreme Court filed a motion to dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).[107] The defendant argued that the there is no right to counsel in civil matters and that the Louisiana Supreme Court is free to regulate who can practice law in the state; therefore, the plaintiffs have no constitutional claim.[108] Ultimately, the

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(E.D.N.Y. 1997) (holding that restrictions did not violate plaintiffs First or Fifth Amendment rights).

102 *See Keep the Faith*, N.J. LAW.: WKLY, Jan. 27, 1997, at 174.

103 *See* Legal Aid Society v. LSC, 145 F.3d 1017, 1025 (9th Cir. 1998). Factors in determining whether program is a legally separate entity include separate accounting records, separate personnel, and no transfer of funds between the LSC funded organization and the non-funded organization. *See id.* Whether sufficient physical and financial separation exists will be determined on a case-by-case basis. *See id.*

104 *See* LA. SUP. CT. R. XX (as amended March 22, 1999).

105 *See* Southern Christian Leadership Conference v. Supreme Court of La., 61 F. Supp. 2d 499, 502 (E.D. La. 1999).

106 *See id.*

107 *See id.* at 503.

108 *See id.* at 514.

court agreed for reasons discussed in Section IV and dismissed the suit.[109] On August 17, 1999, the plaintiffs appealed the decision to the United States Fifth Circuit Court of Appeals.[110]

IV. ANALYSIS

A. *Constitutional Challenges Against Congress' Restrictions on Class Action Litigation*

The LSC restrictions have been challenged on First Amendment, equal protection, and due process grounds in the cases *of Varshavsky v. Geller*,[111] *Velasquez v. LSC*,[112] and *Legal Aid Society of Hawaii v. LSC*.[113] The argument centers around the LSC's restriction on private funding received by agencies and clinics receiving LSC funds. Under the LSC regulations, "funds held by organizations under the 'control' of an organization receiving LSC funding were 'subject to the same restrictions as if the funds were held by the recipient.'"[114] Therefore, even if an attorney, who works for an LSC program, uses private funds to represent a client in a class-action suit for example, the LSC prohibits the representation and will revoke funding to the program if the representation continues.

In *Legal Aid Society of Hawaii*, the plaintiffs argued that the restrictions were unconstitutional because "they condition the receipt of a benefit, in this case the grant of federal funds, on the relinquishment of the right to engage in protected activities."[115] The plaintiffs argued that under *Perry v. Sindermann*, "'even though the government may deny [a] benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech.'"[116] The court found, however that the LSC regulation, which required legal aid organizations accepting LSC funds to conduct restricted First Amendment activities only through a "legally separate entity" with separate personnel and facilities did not unconstitutionally condition receipt of federal funds on relinquishment of a

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109 *See id.*

110 *See Appeal Filed on Tight Controls for State's Student Law Clinics*, BATON ROUGE ADVOC., Aug. 18, 1999, at 3B.

111 *See* Varshavsky v. Geller, 216 N.Y. L.J., Dec. 31, 1996, at 22 (N.Y. Sup. Ct. Dec. 31, 1996).

112 985 F. Supp. 323 (E.D.N.Y. 1997).

113 145 F.3d 1017 (9th Cir. 1998).

114 *Id.* at 1022.

115 *See id.* at 1024.

116 *Id.* (quoting Perry v. Sindermann, 408 U.S. 593, 597 (1972)).

First Amendment right.[117] The court did not require the government to establish a compelling interest in support of regulations restricting First Amendment activities of legal aid organizations receiving federal funds from the Legal Services Corporation, and did not compel the recipients to accept the subsidy.[118] Any recipient wishing to engage in prohibited activities would remain free to use private funds to finance such activities so long as it complied with regulatory separation requirements.[119] These separation requirements include the existence of separate personnel and facilities and the requirement that the unrestricted organization must be a separate legal entity.[120]

The plaintiffs also challenged the regulations on due process and equal protection grounds in that the restrictions implicated the indigent individuals' right to meaningful access to the courts.[121] The court held, however, that the plaintiffs did not have third-party standing to challenge the restrictions on these grounds because they could not show that their clients were unable to assert their own interests.[122] It appears that whether a potential client, who is turned away as a result of a restriction, may be able to successfully argue that the restriction infringes upon his or her right to meaningful access to the courts has not yet been decided by a court.

The court decided issues of equal protection and due process in *Velasquez*.[123] In that case, the court found that because plaintiffs were not absolutely precluded from engaging in prohibited activities and have no constitutional entitlement to the benefits provided by the legal services program, their due process rights were not violated.[124] In addition, the court rejected plaintiffs' equal protection argument because poverty is not a suspect class and the government had a rational basis for restricting the activities of recipients.[125]

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117 *See id.* at 1025.

118 *See id.*

119 *See id.*

120 *See Legal Aid Society of Hawaii*, 145 F.3d at 1023.

121 *See id.*

122 *See id.*

123 *See* 985 F. Supp. at 344.

124 *See id.*

125 *See id.* The Supreme Court has only found poverty as a suspect class when individuals because of their indigence were completely unable to pay for a benefit and as a consequence they sustained an absolute deprivation of a meaningful opportunity to enjoy the benefit. *See* San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), (citing Griffin v. Illinois, 351 U.S. 12 (1956) (involving a criminal's access to a trial transcript) and Douglas v. California, 372 U.S. 353 (1963) (involving an indigent defendant's right to court-appointed counsel)).

In *Velasquez*, the court also decided the issue of whether the restrictions were void for vagueness and overbroad.[126] The court held that the restrictions were not void for vagueness because "the separation factors give fair warning to recipients of the standards by which their program integrity compliance certifications will be evaluated."[127] The court stated that the possibility of arbitrary enforcement alone does not render the restrictions void for vagueness.[128] The court also found that the restrictions were not overbroad in the sense that the regulations either could never be applied in a valid manner or that even though they could be validly applied that they would inhibit constitutionally protected speech of third parties.[129] Overbreadth challenges are to be accepted "'sparingly and only as a last resort' . . . such a challenge 'may prevail only if plaintiffs can show that an impermissible risk is created that ideas may be chilled whenever' the law is applied."[130] The court held that in applying this standard to the restrictions, "neither the Act nor the regulations can plausibly be perceived as having such a preclusive effect upon the exercise of the plaintiffs' or third parties' First Amendment rights."[131] Furthermore, the court held that the restrictions are "appropriately tailored to advance the Government's legitimate interest in preventing the appearance of endorsement."[132] When considering the First Amendment issue alone, the court upheld the statute on the same grounds as the court in *Legal Aid Society of Hawaii*.[133]

At least one court, however, has found the restrictions unconstitutional under the First Amendment. In *Varshavsy v. Geller*, the court stated:

> The legislative history of the restriction on class-action litigation challenged here reveals that the actual state interest in passing the legislation as a blatant attempt to inhibit the First Amendment rights of LSC lawyers, their clients and anyone who agrees with them. The restrictions were designed to minimize, if not prevent, the political impact of the causes of the poor and their champions. The class action restriction served to insure that the poor, if

126 *See* 985 F. Supp. at 341–42.
127 *Id.* at 341.
128 *See id.*
129 *See id.* at 342.
130 *Id.*
131 *Id.*
132 *Id.*
133 *Id.*

> they were to have counsel at all, would be relegated to counsel rendered less effective . . . .[134]

In reaching this conclusion, Judge Cohen found that under *NAACP v. Button*, the First Amendment right to associate was implicated; therefore, state action, which may have the effect of curtailing this freedom to associate, is subject to the closest scrutiny.[135] In deciding whether the government had a compelling state interest the court looked at remarks made by Phil Gramm in describing the purpose of the act. Senator Gramm stated, "[T]hese restrictions will ensure that scarce resources available for this purpose are not diverted to costly class action or impact litigation, or to activities which promote a particular political agenda."[136] Representative Dornan stated, "It's time to defund the left. . . ."[137]

The court found no compelling state interest and found the restrictions to be unconstitutional. Judge Cohen stated, "the legislation weakens the ability of poor people to stand up for their legal rights and to have an impact, when it may be their only effective method to petition the government for redress of grievances."[138] This case, however, is a state district court case and other courts have not followed its reasoning or result.

B. *Constitutional Challenges Against the Louisiana Student Practice Rule*

Like the LSC restrictions, the Student Practice Rule changes have been challenged in court.[139] In *Southern Christian Leadership Conference*, the court dismissed the plaintiffs' claim that the amendments to the student practice rule unconstitutionally deprived the plaintiffs of their First Amendment rights because it failed to state a claim upon which relief could be granted.[140] The plaintiffs pointed to the case of *NAACP v. Button*,[141] where the court held that a statute that prevented a non-profit organization from soliciting clients violated the clients and the lawyers freedom to associate."[142] Under this rationale, the law clinic clients' participation in litigation should be given some First Amendment protection.

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134 Varshavsky v. Geller, *supra* note 111.

135 *See id.* (citing NAACP v. Button, 371 U.S. 415 (1963).

136 *Id.*

137 *Id.*

138 *Id.*

139 *See* Southern Christian Leadership Conference v. Supreme Court of the State of La., 61 F. Supp. 2d 499 (E.D. La. 1999).

140 *See id.* at 514.

141 *See id.* at 507 (citing NAACP v. Button, 371 U.S. 415 (1978)).

142 *See Button*, 371 U.S. at 433.

The court responded to this argument by stating that the *Button* case was distinguishable in that those regulations foreclosed the ability of the organization to advance its causes directly.[143] Here, the student practice rule merely affects one avenue open to these individuals—law clinic representation. The court stated that "[a]ny licensed attorney . . . whom the client-plaintiffs hire, or who volunteer their services to the client-plaintiffs would not be limited . . . with regard to the scope of their advocacy."[144] Although this view ignores the fact that prohibiting law school clinics from representing organizations may block the 'sole practicable avenue open to [these individuals] to petition for redress by way of litigation,[145] the court stated that without a constitutional right to counsel in civil matters this result is not unconstitutional.[146]

In addition, the student plaintiffs argued that in *Button*,[147] however, the court found "solicitation of prospective litigants by nonprofit organizations that engage in litigation as a form of political expression and political association constitutes express and associational conduct entitled to First Amendment protections.[148] Therefore, the students' solicitation of prospective clients was entitled to first amendment protection as well. The court responded by stating that the Louisiana Supreme Court has the power to regulate the practice of law, trumping any First Amendment right of the students.[149] In addition, the court stated that "the only connection alleged between the clinics and the client plaintiffs is a history of past representation and a desire for future representation," intimating that the students are not involved for political reasons.[150] This statement ignores the reality of law clinic practice. Students are not only involved for the purposes of learning, but are often involved because advocating for these clients is a way to express their political beliefs, including environmental racism and equal access to the justice system for all including the indigent. The fact that *Button* expressly protects this activity should trigger strict scrutiny and requires a further inquiry into whether these restrictions are narrowly drawn to serve a compelling governmental interest that utilizes the least intrusive means.

Instead the court states that the rule "does not implicate the students' constitutional freedoms due to the Louisiana Supreme Court's inherent

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143 *See Southern Christian Leadership Conference*, 61 F. Supp. 2d at 507.

144 *Id.*

145 *See* de Neve, *supra* note 52, at 569 n.19 (quoting NAACP v. Button, 371 U.S. 415, 430 (1963)).

146 *See Southern Christian Leadership Conference*, 61 F. Supp. 2d at 507.

147 371 U.S. 415, 434–44 (1963).

148 *Id.*

149 *See Southern Christian Leadership Conference*, 61 F. Supp. 2d at 512.

150 *Id.* at 507.

power to regulate student practice, and even if it did, the Court believes . . . (the rule) strikes the proper balance . . . it is rationally related to a legitimate state interest."[151] The legitimate state interest the court references is the Louisiana Supreme Court's concern about the ethical problems associated with solicitation.[152] The same concern for "ethics" was used to justify the statute in the case of *NAACP v. Button*.[153] The Court held "that the activities of the NAACP, its affiliates and legal staff shown on this record are modes of expression and association protected by the First and Fourteenth Amendments which Virginia may not prohibit, under its power to regulate the legal profession, as improper solicitation of legal business."[154] Arguably there is a constitutional right implicated here and the court should have used the strict scrutiny test. If the concern for ethical problems associated with solicitation were not compelling enough in *Button*, then those same justifications should not be sufficient in this case. In addition, the prohibition against solicitation does not constitute the least intrusive means considering the students are already required to work under a supervising attorney, who is responsible for any ethical violations that occur.[155] In addition, students are required to certify in writing to abide by and adhere to the ethical standards of the Code of Professional Responsibility.[156]

Another Constitutional argument against the changes in the rule is that it infringes upon academic freedom. The law clinics argue that by dictating whom the clinics may represent and what cases may be chosen, the Supreme Court of Louisiana is infringing upon the academic rights of the law school. In *Sweezy v. New Hampshire*,[157] the Supreme Court recognized the importance of "the essentiality of freedom in the community of American universities."[158] Specifically, Justice Frankfurter's concurrence in that case stated "'four essential freedoms' of a university: 'to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'"[159] The Supreme Court has implicated that the notion of academic freedom should receive some First Amendment protection by

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151 *Id.* at 512.

152 *See id.*

153 *See Button*, 371 U.S. at 428–29.

154 *Id.*

155 *See* LA. SUP. CT. R. XX, § 9(b).

156 *See id.* § 6.

157 354 U.S. 234, 250 (1957).

158 *Id.* (holding that a contempt conviction based on a professor's refusal to answer about his knowledge of a particular political party was an invasion of the professor's liberties in the areas of academic freedom and political expression).

159 *Id.* at 263. (Frankfurter, J., concurring).

stating that academic freedom "'is a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.'"[160]

The court found, however, that the student practice rule does not infringe on academic freedom because it does not prohibit law clinics, law professors, and law students from providing information to the public about legal rights and remedies, but rather, that the rule only addresses appearances by law students as litigators.[161] Representing clients in court, however, is one of the most important teaching mediums which clinics use to teach students how to practice law. In addition, advising clients without the ability to represent them in court does nothing to help these groups access the legal system.

C. *Public Policy Concerns and Counter-Analysis*

1. *LSC restrictions*

Although members of Congress claim the restrictions will result in more individual representation and less political influence, they have undermined this result by simultaneously cutting the LSC budget and using their own political agenda in justifying the restrictions. According to members of Congress, the reason for instituting the class-action prohibition is to focus federal funds on "individual cases with particular legal needs, leaving broader efforts to address the problems of the client community to other entities."[162] Congress has also suggested priorities for the Legal Services Corporation, which focuses on protecting the safety, well being, and integrity of families.[163]

Although Congress' goal is to focus federal funds on individual cases, the budget cuts the LSC experienced in the year of the new restrictions resulted in 300,000 fewer clients being represented in 1996.[164] As a result of the restrictions, LSC attorneys were also forced to dispose of more than 600 class action suits and some 3,400 individual cases.[165] Statistics in 1996 also revealed the number of cases closed fell from 1.7 million in 1995 to 1.4 million in 1996.[166] "Since most cases affect not only the named

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160 de Neve, *supra* note 52, at 554 (quoting Keyishian v. Board of Regents, 385 U.S. 598, 603 (1967)).

161 *See Southern Christian Leadership Conference*, 61 F. Supp. 2d at 509–10.

162 *See Legal Services Corporation 1996 Annual Report: Legal Services in Congress in 1996*, *supra* note 44.

163 *See id.*

164 *See Legal Services Corporation 1996 Annual Report: A Message from the Board Chair and President*, *supra* note 15.

165 *See id.*

166 *See id.*

client, but family members as well, this means that almost one million fewer individuals, overwhelmingly women and children, benefited from legal service representation."[167]

In addition, the broader problems of the client community, which arguably affect more individuals, have been left to entities that do not receive federal funds; the reality is that there are not as many private alternatives as there are programs that receive LSC funding. In fact, even private donations to LSC funded programs fell by twenty-five percent in 1996 and only increased by eight percent in 1997.[168]

Congressman Dan Burton testified before the House Appropriations Committee that "[t]he Legal Services Corporation has routinely been involved in controversial class action suits and other litigation that promotes a radical agenda."[169] Some of the cases Burton submitted as promoting this radical agenda include: a case in which New Jersey Legal Services and the American Civil Liberties Union (ACLU) sued to prevent the state from implementing a family cap on welfare benefits to mothers who have additional children;[170] a case seeking to prohibit the arrest of students who assault teachers;[171] cases involving improved prison conditions, including the purchase of recreational equipment and cable television for prisoners;[172] and cases in which LSC grantees have attempted to prevent public housing projects from expelling drug dealers from subsidized housing.[173] In total Congressman Burton submitted approximately eleven cases to the Judiciary Committee, which promote a "radical agenda."[174]

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167 *Id.*

168 *See Non-LSC Funding Received by Programs 1980–87* (last modified July 21, 1998) <http://ltsi.net/lsc/fb98j.html>.

169 *See* Dan Burton, *Congressional Testimony before the House Appropriations Committee, Subcommittee on Commerce, Justice, State and Judiciary*, 1996 WL 7137702 (Mar. 29, 1996).

170 *See id.*; *see also* C.K. v. New Jersey Dep't of Health and Human Servs., 92 F.3d 171 (3rd Cir. 1996) (holding that regulations did not infringe upon AFDC recipients' procreative rights).

171 *See* Burton, *supra* note 169.

172 *See id.*; *see also* Duran v. Elrod, 542 F.2d 998 (7th Cir. 1976) (holding court erred in striking portion of a complaint alleging in adequate recreation, exercise, and living resources).

173 *See id.*; *see also* Housing Auth. of Norwalk v. Harris, 625 A.2d 816 (Conn. 1993) (holding housing authority was required to give notice to tenant before issuing summary eviction proceedings against her where tenant's daughter was arrested for selling drugs on the premises).

174 Burton, *supra* note 169.

Although Congressman Burton cited eleven cases from the past three years to the Judiciary Committee as cases furthering a "radical agenda," low-income individuals involved in more than 500 other class-action suits paid the price of the Judiciary Committee's perception of these eleven cases. Despite the obvious displeasure that some politicians have with the political motivation behind some of the cases handled by LSC funded programs, these same politicians have not hesitated to set forth a list of politically motivated priorities LSC funded programs should adopt.[175] These restrictions have been imposed despite the fact that class-action litigation, along with other kinds of advocacy, have "always been recognized as important tools for attorneys to employ on behalf of their clients."[176]

Ironically, despite the fact that the mission of the LSC is "to promote equal access to the system of justice and improve opportunities for low-income people throughout the United States."[177] In 1996, poor Americans were served by less than one-half the number of legal services attorneys that were available to them in 1980.[178] By cutting the LSC budget and justifying the restrictions based on political opinions, members of Congress have defeated their goals of providing more individual representation to low-income people and keeping the LSC system free from political influence.

2. *The Student Practice Rule*

The reason for limiting the representation of indigents, according to Supreme Court of Louisiana Chief Justice Calegoro, is that the prior rule made no mention of community organizations.[179] The court felt this constituted an ambiguity and felt the need to clarify.[180] Calegoro also argued that the rule was only enacted after the court initiated a nine-month review of the law student practice rule and a study of student activities in the law clinics.[181]

Justices Walter Marcus Jr., Jeffrey Victory, and Chet Traylor feel that the rule has not gone far enough to ensure that organizations, represented

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175 *See Legal Services Corporation 1996 Annual Report: Legal Services in Congress in 1996*, *supra* note 44.

176 *Id.*

177 *Mission Statement* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

178 *See Legal Services Corporation 1996 Annual Report: A History of Bipartisan Sponsorship and Support* (visited Jan. 12, 1999) <http://ltsi.net/lsc/anrep.html>.

179 *See* Collins, *supra* note 84.

180 *See id.*

181 *See id.*

by student law clinics, are truly indigent.[182] Those justices favor the elimination of representations of organizations altogether leaving only indigent individual clients.[183]

Although the Louisiana felt that an "ambiguity" resulted from the absence of language in the student practice rule addressing community organizations,[184] no other state has such language in its student practice rule, and no other state has put similar restrictions on student practice.[185] Although, the court claims it made its decision only after a nine-month review of student clinic practice, the court has not publicly released the results of this nine-month review.[186]

The Supreme Court of Louisiana argues that the reason for adopting these changes is to clarify an ambiguity. However, it seems that the factors surrounding the change point to political motivation. Approximately eight years ago, business interests approached the Supreme Court of Louisiana about changes to the Student Practice Rule, but were unsuccessful.[187] This time the Supreme Court of Louisiana was approached by the LABI during an election year when the chief justice and one of the associate justices were up for re-election.[188] In addition, according to Edward Sherman, the dean of Tulane's law school, "'[t]he LABI has become the principal donor to judicial campaigns.'"[189]

Although the decision to amend the Student Practice Rule is unanimous, with two justices arguing for the elimination of group representation altogether, Justice Harry Lemmon has stated that it is inconsistent to allow student practitioners to represent community organizations of indigent persons, and yet require the low-income persons to seek paid legal assistance to form a legal entity before a student practitioner can represent the organization.[190] Justice Lemmon's comment seems to acknowledge the fact that in reality, it is difficult for low-income groups of people to organize and most groups will need some aid in organization.

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182 *See* Order Amending LA. SUP. CT. R. XX (La. June 17, 1998) (Marcus, Victory, and Traylor, J.J., concurring).

183 *See id.*

184 *See* Collins, *supra* note 84.

185 *See* de Neve, *supra* note 52, at 540.

186 *See* Roth Siobhan, *Ruling Chills Legal Clinicians*, N.J. L. J., Sept. 21, 1998, at 1235.

187 *See id.*

188 *See id.*

189 *Id.*

190 *See* Order Amending LA. SUP. CT. R. xx (La. June 17, 1998) (Lemmon, J., concurring).

The reasoning behind the regulation, which prohibits students from aiding groups in their efforts to organize, seems to be a concern with the ethical ramifications of recruiting clients. The Louisiana Student Practice Rule has always required students to work under a supervising attorney, who is responsible for any ethical breaches on the part of the student.[191] Also, students are required to certify in writing to abide by and adhere to the ethical standards of the Code of Professional Responsibility.[192]

The portion of the rule, which prohibits law schools from representing groups unless 51% of the members of the group qualify, hurts the working poor. The rule in effect excludes any single person making only $20,000 a year.[193] Many of these individuals, who cannot turn to LSC clinics, are now unable to seek help from law clinics either. It is impractical to expect individuals making $20,000 a year to hire a private attorney to gain access to the courts.

Even LSC regulations give latitude for an LSC program to consider local circumstances and its own resource limitations in considering whether to represent a client.[194] In addition, LSC regulations state that they do not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established if the assistance provided the client is supported by funds from a source other than a corporation.[195] Therefore even the LSC, in drafting its indigence standards, allows some flexibility on the part of the program in deciding whether to represent clients who may not meet the indigence definition. The Supreme Court of Louisiana's stringent restriction hampers the ability of indigent individuals to get representation.

According to Dean of Tulane Law School Edward Sherman, it is unclear whether the changes have resulted in individuals or organizations not being represented by clinics at state law schools yet.[196] Sherman has stated, however, that this would be the result if the rule is not changed.[197] The Louisiana Supreme Court, however, does not seem concerned about

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191 *See* LA. SUP. CT. R. XX, § 9(b).

192 *Id.* § 6.

193 *See* 45 C.F.R. § 1611 (1999).

194 *See id.* § 1611.1. This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. *Id.*

195 *See id.* § 1611.3(e). This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than a corporation. *Id.*

196 *See* Schleifstein, *supra* note 3.

197 *See id.*

this possibility, instead they defend the amendments to the rules, arguing that no constitutional violation has occurred; and, at least one court has agreed.

Although the LSC restrictions, unlike the Student Practice Rule, do not prohibit LSC attorneys from representing community organizations, if either side moves for a class action certification, LSC funded programs can no longer be involved.[198]

All of the new restrictions in the student practice rule restrict the ability of law schools and legal aid clinics to represent groups of low-income individuals. Not only is group representation often the most efficient way to challenge legal problems, but often an avenue for these individuals to empower themselves against an often intimidating adversary.[199]

V. CONCLUSION

The LSC restriction on the ability of LSC attorneys to engage in class-action representation has resulted in the disposal of more than 600 class-action suits.[200] Due to the fact that Congressional funding was cut in the same year as the restrictions, 400,000 fewer individuals received legal assistance in 1996. Although it is too early to tell what the result will be from the revisions to the Louisiana Student Practice Rule, the restrictions will significantly restrict the type of cases which law school clinics may accept. The purpose of the creation of the Legal Services Corporation is to provide equal access to the justice system for indigent people. The United States Code states that "to preserve its strength, the legal service program must be kept free from influence of or use by it of political pressures."[201] Law school clinics are not only intended to help students get practical skills, but in the words of Justice Brennan, "I think it plain that law students can be expected to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many areas. . . ."[202] Unfortunately, both of these restrictions exemplify how politics have influenced legislators and judges to undermine the very purpose of these two programs. Many indigent individuals will pay the price for these political battles by having avenues to the courts closed to them or severely limited.

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198 *See* Holden, *supra* note 16.

199 *See id.*

200 *See Legal Services Corporation 1996 Annual Report: A Message from the Board Chair and President*, *supra* note 15.

201 42 U.S.C. §2996(f)(5) (1994).

202 Argersinger v. Hamlin, 407 U.S. 25, 44 (1972) (Burger, J., concurring).