# Rigid Justice Is the Greatest Injustice: The Fifth Circuit Disregards Political and Economic Realities in *Southern Christian Leadership Conference v. Supreme Court*

Shintech, a chemical manufacturer, proposed the construction of a plant in the small town of Convent in St. James Parish, Louisiana in 1996.[1] A group of residents formed St. James Citizens for Jobs and the Environment (St. James Citizens) to oppose the proposed project on the grounds that the low-income and predominately African-American community already accommodated an inordinate amount of industry.[2] St. James Citizens enlisted the services of the Tulane Environmental Law Clinic (TELC) in November 1996, as permitted by Louisiana Supreme Court Rule XX allowing for limited legal representation by law students.[3] Continued resistance to the construction of the proposed plant eventually led Shintech to abandon the St. James location and provoked significant criticism of the TELC from political and business interests.[4] Allegedly in response to pressure from these business and political leaders, the Louisiana Supreme Court initiated an official investigation of the TELC and other Louisiana law school clinics in 1997.[5] The Supreme Court

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1. S. Christian Leadership Conference (SCLC) v. Supreme Court, 252 F.3d 781, 784 (5th Cir.), *cert. denied*, 122 S. Ct. 464 (2001).

2. *See* S. Christian Leadership Conference v. Supreme Court, 61 F. Supp. 2d 499, 501 (E.D. La. 1999), *aff'd*, 252 F.3d 781 (5th Cir.), *cert. denied*, 122 S. Ct. 464 (2001); Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 243 (1999) ("The location for the proposed plant was an area with eleven existing chemical plants and over 130 other industrial plants known as 'Cancer Alley,' a predominately African-American, lower-income community.").

3. *SCLC*, 252 F.3d at 784.

4. *Id.* at 784-85. Louisiana business and political leaders allegedly tried to persuade Tulane University to silence the TELC. *Id.* at 784. When Tulane University did not comply, these political and business leaders allegedly refocused their efforts on the Louisiana Supreme Court. *Id.* The political pressures alleged by the plaintiffs included

> phone calls from Governor Foster to the President of Tulane University, statements of Governor Foster at a meeting of the New Orleans Business Council requesting assistance in curtailing the efforts of TELC, various public criticisms of TELC by Governor Foster, a letter from a chamber of commerce organization urging the [Supreme Court] to eliminate the TELC because the faculty and students involved were "in direct conflict with business positions," and letters from various business organizations, including the Business Council, the Louisiana Association of Business and Industry, and The Chamber/Southwest Louisiana, urging the [Supreme Court] to eliminate TELC.

*Id.* at 784-85.

5. *Id.* at 785.

subsequently amended Rule XX, effective April 15, 1999, to tighten the indigence requirements for both individuals and community organizations and to prohibit student-attorneys from representing clients if any person associated with the clinic initiated the client contact.[6] In response to these amendments, a group of community organizations, student associations, law professors, and law students filed suit pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Louisiana.[7] The plaintiffs alleged that Rule XX, as amended, "impermissibly suppresse[d] Plaintiffs' freedoms of speech and association as protected under the First and Fourteenth Amendments."[8] The district court granted the Supreme Court's motions for dismissal on July 27, 1999, ruling that "the complaint failed to establish the deprivation of any cognizable federal right."[9] The court further asserted that the motivation of the Supreme Court, even if inappropriate, "could not transform an otherwise permissible action into a constitutional violation."[10] On appeal, the United States Court of Appeals for the Fifth Circuit *held* that the new indigence requirements and solicitation restrictions of Rule XX did not implicate free speech interests or violate the Equal Protection Clause, and that amendments to the Rule did not constitute impermissible viewpoint discrimination in violation of the First Amendment. *Southern Christian Leadership Conference (SCLC) v. Supreme Court*, 252 F.3d 781, 788-95 (5th Cir.), *cert. denied*, 122 S. Ct. 464 (2001).

Clinical legal education is a long-standing teaching method dating back to an era when lawyers were schooled in the law through apprenticeships with practicing attorneys.[11] Most modern law school clinics were developed during the 1960s and 1970s in response to increasing demands for social justice and more effective legal education through skills training.[12] During this period the American Bar Association (ABA) established the ABA Model Rules on Student Practice on which many jurisdictions, including Louisiana, modeled their student practice rules.[13] Since then, all fifty states, the District of

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6. *Id.*
7. *Id.* at 783 n.1.
8. *Id.* at 783.
9. *Id.* at 785.
10. *Id.* at 786.
11. *See* Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1100-01 (1997).
12. *See id.* at 1114-16.
13. Sam A. LeBlanc III, *Debate over the Law Clinic Practice Rule: Redux*, 74 TUL. L. REV. 219, 220-21 (1999) (citing ABA MODEL RULES ON STUDENT PRACTICE (1969),

objective of equality of treatment.[31] The Supreme Court rejected Virginia's counterargument that the state had a subordinating interest in regulating the legal profession that justified limitation of First Amendment rights.[32] The Court held that the purpose of regulating professional standards was not sufficiently compelling to justify limiting First Amendment freedoms.[33]

The United States Supreme Court interpreted the holding in *Button* several years later in *In re Primus*, in which a South Carolina attorney associated with the American Civil Liberties Union (ACLU) was publicly reprimanded by the South Carolina Supreme Court for soliciting a client in violation of disciplinary rules.[34] The attorney had met with a group of women sterilized as a precondition to receiving public medical assistance and subsequently informed one of these women by letter of free legal assistance available through the ACLU.[35]

The United States Supreme Court in *Primus* noted that *Button* and subsequent decisions had established the principle that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."[36] Furthermore, it reasoned that *Button* indicates that the effectiveness of civil liberties litigation may depend on the ability of organizations to make information available to potential plaintiffs.[37] The Supreme Court ultimately held that the attorney's letter advising an individual that her legal rights had been infringed and informing her of available legal services fell within the protections of the First Amendment, thus requiring a measure of protection for "advocating lawful means of vindicating legal rights."[38]

The United States Supreme Court evaluated the issue of viewpoint discrimination in the 1991 case *Rust v. Sullivan*.[39] *Rust* concerned a congressional program for providing subsidies to family planning clinics with the stipulation that the doctors employed in the program could not discuss abortion as a family planning option with their patients.[40] Recipients of the funds brought suit asserting that the

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31. *Id.*
32. *Id.* at 438-39.
33. *Id.*
34. *In re* Primus, 436 U.S. 412, 414-21 (1978).
35. *Id.* at 415-16.
36. *Id.* at 426 (quoting United Transp. Union v. State Bar, 401 U.S. 576, 585 (1971)).
37. *Id.* at 431.
38. *Id.* at 432 (quoting *Button*, 371 U.S. at 437).
39. *See* 500 U.S. 173, 177-78 (1991).
40. *See id.* at 178.

regulations violated their First Amendment freedoms by restricting the expression of a pro-choice viewpoint.[41] The Supreme Court ruled that funding decisions that discriminate against certain viewpoints may be permitted in cases where the government itself is the speaker, or in situations like *Rust*, where the government uses private speakers to transmit information pertaining to its own program.[42]

Limitations on the types of cases in which attorneys may participate were most recently evaluated by the United States Supreme Court in *Legal Services Corp. v. Velazquez*, in which the Court invalidated a congressional funding restriction that prohibited Legal Services Corporation attorneys from engaging in cases attempting to reform or to challenge a state or federal welfare system.[43] The decision in *Velazquez* required the Court to utilize its prior ruling in *Rust*.[44] In *Velazquez*, the Supreme Court distinguished *Rust*, holding that "the [Legal Services Corporation] program was designed to facilitate private speech, not to promote a governmental message."[45] In addition to the holding that such restrictions obstructed First Amendment rights of free speech for some indigent individuals, the Court also noted that the restrictions in *Velazquez* would interfere with traditional attorney advocacy by limiting the kinds of arguments that could be presented in court.[46] The Court explained: "By seeking to prohibit the analysis of certain legal issues and to truncate presentation to the courts, the enactment under review prohibits speech and expression upon which courts must depend for the proper exercise of the judicial power."[47] The Court noted that while the government is not required to fund litigation of an entire range of legal matters for indigent individuals, it may not "define the scope of the litigation it funds" in order to protect the government from constitutional challenges.[48]

In some cases, the motivation behind a state action or statute can be a primary factor in the constitutional analysis of a First Amendment claim.[49] The United States Supreme Court examined the issue of

41. *Id.* at 181-83.
42. *Id.* at 192-95.
43. 531 U.S. 533, 536-49 (2001).
44. *Id.* at 541 (citing Rust v. Sullivan, 500 U.S. 173 (1991)).
45. *Id.* at 542.
46. *Id.* at 544-46.
47. *Id.* at 545.
48. *Id.* at 548-49.
49. *See, e.g.*, Edwards v. Aguillard, 482 U.S. 578, 578-79 (1987) (striking down a state statute requiring equal time for "creation science" based on the motivation of the legislature as indicted in the statute's legislative history); Perry v. Sindermann, 408 U.S. 593, 595-98 (1972) (finding that a suit by a junior college professor whose contract had not been

Columbia, and Puerto Rico, have established student practice rules to make possible the representation of clinic clients by students.[14]

The Louisiana student practice rule was originally adopted on March 3, 1971.[15] The dual purpose of the rule was to provide legal representation to those who could not afford it and to enable the clinical instruction of law students.[16] Under the original provisions of the rule, law students were authorized to represent in court "any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance."[17] Rule XX remained substantively unchanged until 1988 when the Louisiana Supreme Court revised the Rule to permit representation of indigent organizations, thus broadening the type of clients that law school clinics could represent.[18]

Rule XX was not amended again until June 17, 1998, following the Supreme Court's review of the TELC and other state law school clinics.[19] The amendments initially made several changes to client eligibility requirements, including imposing mandatory income restrictions, prohibiting clinic representation of groups affiliated with national organizations, instituting organizational indigence restrictions, and requiring the organization to certify its inability to pay for legal services.[20] Additionally, the amended rule prohibited student

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*reprinted in* BAR ADMISSION RULES AND STUDENT PRACTICE RULES 993-95 (Fannie J. Klein ed., 1978)).

14. Joy, *supra* note 2, at 267 (citing Joan Wallman Kuruc & Rachel A. Brown, *Student Practice Rules in the United States*, B. EXAMINER, Aug. 1994, at 40, 40-41).

15. LA. SUP. CT. R. XX advisory comm. notes (as amended Mar. 22, 1999).

16. *See id.* § 1. The rule states:

> The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted.

*Id.*

17. LeBlanc, *supra* note 13, at 221 (quoting LA. SUP. CT. R. XIV-A (renumbered as Rule XX in 1974) (subsequently amended Nov. 21, 1988; June 17, 1998; June 30, 1998; and Mar. 22, 1999)).

18. LA. SUP. CT. R. XX § 3 (as amended Nov. 21, 1988) (subsequently amended June 17, 1998; June 30, 1998; and Mar. 22, 1999).

19. *See* Sup. Ct. Res. to Amend and Reenact Rule XX (La. Mar. 22, 1999), *reprinted in* 74 TUL. L. REV. 285, 285 (1999); LeBlanc, *supra* note 13, at 223-29.

20. *See* LA. SUP. CT. R. XX §§ 3-6, 11 (as amended June 17, 1998) (subsequently amended June 30, 1998; and Mar. 22, 1999); LeBlanc, *supra* note 13, at 228-29.

representation of organizations that the clinic helped to create or clients contacted by clinic members for purposes of representation.[21]

The amendments to Rule XX were subsequently amended on two occasions. On June 30, 1998, the Supreme Court lowered the organizational indigence requirements from seventy-five percent to fifty-one percent of the organization.[22] Then, in 1999, the court repealed the ban against representing community organizations affiliated with national organizations and eliminated the provision excluding those organizations formed or created by the clinic.[23] Following these amendments, the most significant remaining alterations to Rule XX were stricter indigence requirements for individuals and organizations[24] and stricter solicitation restrictions.[25]

The United States Supreme Court evaluated the constitutionality of attorney solicitation restrictions in 1963 in *NAACP v. Button*.[26] The NAACP brought suit to prevent enforcement of chapter 33 of the Virginia Acts of Assembly, which forbade the solicitation of legal business, on the grounds that it abridged First Amendment freedoms protected through the Fourteenth Amendment because it involved state action.[27] Specifically, the NAACP claimed that chapter 33 abridged its members' and lawyers' freedom to associate in their search for legal remedies for violations of constitutionally protected rights.[28]

The United States Supreme Court reversed the Virginia Supreme Court of Appeals, holding that the actions of the NAACP are forms of "expression and association protected by the First and Fourteenth Amendments."[29] In its analysis, the Supreme Court first clarified that client solicitation falls within the protective sphere of the First Amendment.[30] Furthermore, in the context of the NAACP, litigation was not only a method for resolving private differences, but it was also a form of political expression used to pursue the broader public

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21. LA. SUP. CT. R. XX § 10 (as amended June 17, 1998) (subsequently amended June 30, 1998; and Mar. 22, 1999).

22. Order to Amend and Reenact Rule XX, at 1 (La. June 30, 1998) (on file with the *Tulane Law Review*).

23. LA. SUP. CT. R. XX § 3 commentary (as amended Mar. 22, 1999); *id.* § 10 commentary.

24. *Id.* § 4 commentary (stating that law school clinics "may now represent any person whose annual income does not exceed 200% of the federal poverty guidelines"). The indigence requirements for organizations are based on those for individuals. *Id.* § 5.

25. *See id.* § 10 commentary.

26. 371 U.S. 415, 418-19 (1963).

27. *Id.* at 428.

28. *Id.*

29. *Id.* at 428-29.

30. *Id.* at 429.

improper motivation in the context of infringement of First Amendment free speech protection in *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*.[50] In *Cornelius*, several legal defense and advocacy organizations brought suit challenging a law which excluded them from participation in a federally sponsored charity drive.[51] The Supreme Court held that the rule was facially permissible, but remanded the case for consideration of whether the rule represented unconstitutional viewpoint discrimination.[52] The Court noted that the government's "purported concern to avoid controversy excited by particular groups may conceal a bias against the viewpoint advanced by the excluded speakers"[53] and indicated that the plaintiffs were free to pursue such impermissible bias claims on remand.[54]

In the noted case, the Fifth Circuit distinguished much of the United States Supreme Court jurisprudence concerning First Amendment protections and affirmed the ruling of the district court.[55] The court began by addressing the facial validity of Rule XX, holding that the indigence requirements of the Rule did not violate free speech interests of potential clients and did not violate the Equal Protection Clause.[56] Furthermore, the court found that the solicitation restrictions of the Rule did not violate the First Amendment.[57] Finally, the court held that the amendment of the Rule did not constitute impermissible viewpoint discrimination in violation of the First Amendment.[58]

The Fifth Circuit first addressed the threshold issue of standing, overruling the district court's dismissal on this basis.[59] In making this determination, the court utilized the three-part test for standing enumerated by the United States Supreme Court in *Lujan v. Defenders of Wildlife*.[60] Evaluating the pleadings broadly, the court held that the

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renewed, allegedly because of the professor's public criticism of the Board of Regents, presented a bona fide constitutional claim).

50. *See* 473 U.S. 788, 790 (1985).

51. *Id.*

52. *Id.* at 812-13.

53. *Id.* at 812.

54. *Id.* at 813.

55. *See* S. Christian Leadership Conference (SCLC) v. Supreme Court, 252 F.3d 781, 789-95 (5th Cir.), *cert. denied*, 122 S. Ct. 464 (2001).

56. *Id.* at 788-89.

57. *See id.* at 789-92.

58. *See id.* at 793-95.

59. *Id.* at 787-88.

60. *Id.* at 788; *see also* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (stating that the three elements of standing include: an injury in fact, a "causal connection between the injury and the conduct complained of," and a redressible injury).

amendments to Rule XX have sufficient impact on at least some of the plaintiffs to establish the requisite injury-in-fact, causation, and redressibility required for standing.[61]

The court next addressed challenges to the facial validity of Rule XX, beginning with consideration of whether the amended poverty guidelines of Rule XX constituted an impermissible restriction on First Amendment free speech rights.[62] The court reasoned that despite plaintiffs' concerns, the Rule did not require disclosure of detailed financial information in order to employ clinic services.[63] Moreover, the court dismissed the argument that stricter poverty requirements would subject clinic clients to invasive and embarrassing discovery.[64] The court reasoned that Rule XX has always required clinic clients be indigent and that any problems with invasive discovery could be dealt with adequately on an individual basis.[65]

Having determined that the indigence requirements do not constitute a violation of free speech rights, the court focused its analysis on equal protection requirements.[66] The court noted that the Supreme Court has never subjected classifications based on wealth to a strict scrutiny standard of review, and therefore, the Louisiana Supreme Court need only show that the indigence requirements are rationally related to the stated purposes of Rule XX.[67] Because the indigence requirements are rationally related to the purpose of "providing representation to those who cannot afford it for themselves" and the Rule does not facially "implicate any [free] speech interests," the Fifth Circuit ruled that "the district court was correct to dismiss this part of the Plaintiffs' challenge."[68]

The Fifth Circuit next examined the facial validity of the new solicitation restrictions of Rule XX in view of the effects on the First Amendment freedoms of speech and association.[69] The Fifth Circuit used United States Supreme Court jurisprudence on government-solicitation restrictions for attorneys offering pro bono services as a guide to its own analysis of the plaintiffs' claims.[70] The court

61. *SCLC*, 252 F.3d at 788.
62. *Id.* at 788-89.
63. *Id.* at 788.
64. *Id.*
65. *Id.*
66. *Id.* at 789.
67. *Id.* (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 29 (1973)).
68. *Id.*
69. *Id.* at 789-92.
70. *Id.*

recognized that the Supreme Court decisions in *Button* and *Primus*, taken together, present a strong presumption that such restrictions on speech are impermissible obstructions of First Amendment rights.[71] However, the court distinguished these cases on several bases.[72]

First, the court pointed out that in both *Primus* and *Button*, the solicitous speech itself was prohibited by law, subjecting the speaker to disciplinary or criminal sanctions.[73] In contrast, the Fifth Circuit stated that Rule XX does not prohibit speech at all.[74] The court reasoned that the Rule did not prevent clinic members from performing outreach, organizing groups, or advising clients of their rights.[75] Instead, the only limitation created by the amended Rule is that these solicited clients may not be represented by students acting as attorneys.[76] Furthermore, the court reasoned that any chilling effect on legal education the Rule might have is not severe because students remained free to represent solicited clients in many capacities.[77] Moreover, the clinic's supervising attorney could continue to represent fully any client, including those otherwise limited by the solicitation restrictions.[78]

The second way in which the court distinguished the noted case from *Button* and *Primus* was that the student members of the clinics simply were not licensed attorneys.[79] The court asserted that the Louisiana Supreme Court has a special interest in monitoring the representation of individuals by nonattorneys, and the privilege of students to do so exists entirely at the discretion of the Louisiana Supreme Court.[80] As such, Rule XX's "solicitation restrictions do not prohibit or punish speech, they merely limit one aspect of the participation of unlicensed *students* in clinical education programs."[81] Thus, the court reasoned that the limitations of Rule XX were very different from the criminal implications of the rules invalidated in *Button* and *Primus*, concluding that the rational basis review employed by the district court was appropriate.[82] Because the solicitation

71. *Id.* at 789.
72. *Id.* at 789-91.
73. *Id.* at 789 (citing NAACP v. Button, 371 U.S. 415, 426 n.7 (1963)); *see In re* Primus, 436 U.S. 412, 418-21 (1978).
74. *SCLC*, 252 F.3d at 789.
75. *Id.*
76. *Id.*
77. *Id.* at 790.
78. *Id.* at 790 n.7.
79. *Id.* at 790.
80. *Id.* (citing State v. Kaltenbach, 587 So. 2d 779, 784 (La. Ct. App. 3d Cir. 1991)).
81. *Id.* (emphasis added).
82. *Id.* at 791.

restrictions were rationally related to the purpose of discouraging solicitation of legal clients generally, the court concluded that Rule XX was facially constitutional.[83]

In concluding its analysis of the solicitation restrictions, the Fifth Circuit examined *Legal Services Corp. v. Velazquez*, which concerned the special problem of restricting both the type of argument and the type of case in which an attorney may engage.[84] The court distinguished *Velazquez*, noting that Rule XX imposes no restrictions on the kind of representation offered by the clinics or on the arguments that can be made on behalf of a client.[85] The court concluded that none of the special concerns for protecting traditional attorney advocacy addressed in *Velazquez* were pertinent in the noted case; therefore, Rule XX is facially neutral.[86]

The Fifth Circuit next addressed the plaintiffs' claims that regardless of facial validity, the Rule was an unconstitutional attempt by the Louisiana Supreme Court to suppress an undesirable viewpoint, focusing primarily on the motivation of the Supreme Court in its amendment of the Rule.[87] The court acknowledged that some United States Supreme Court decisions have suggested that otherwise viewpoint-neutral statutes or state actions may be transformed into unconstitutional violations of the First Amendment by virtue of the motivation of the actor.[88] The court noted that the Supreme Court's language in *Cornelius v. NAACP* provided some support for the plaintiffs' claim of viewpoint discrimination.[89] The court distinguished this case, however, noting that Rule XX "does not create a forum for speech, does not exclude any speaker from any opportunity to speak, and does not in any way prohibit or punish speech."[90] Furthermore, the court reasoned that Rule XX does not distinguish between speakers based on their viewpoint.[91]

The Fifth Circuit concluded that the decision in *Rust*, while different in many ways from the facts of the noted case, provided a better guide for analysis of the plaintiffs' viewpoint discrimination

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83. *Id.*
84. *Id.* (citing Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 546-49 (2001)).
85. *Id.* at 791-92.
86. *Id.* at 792.
87. *See id.* at 792-95.
88. *Id.* at 792 (citing Edwards v. Aguillard, 482 U.S. 578, 578 (1987); Perry v. Sindermann, 408 U.S. 593, 593 (1972)).
89. *Id.* at 793.
90. *Id.* (footnote omitted).
91. *Id.*

claims, because "the [Supreme Court] must be able to define the scope of the law practice that unlicensed students undertake as part of the clinical programs."[92] The court asserted that most of the improper political pressure alleged by the plaintiffs was not actually directed at the Supreme Court and that the possibility of political motivation by the court could not transform the amendment of Rule XX into an unconstitutional action.[93] The court concluded that "a refusal to promote private speech is not on par with a regulation that prohibits or punishes speech, or which excludes a speaker from a public or nonpublic forum."[94] Therefore, the amendment of Rule XX does not constitute impermissible viewpoint discrimination in violation of the First Amendment.[95]

In making this decision, the Fifth Circuit used a narrow legal analysis that applied precedent accordingly, but failed to evaluate the eventual constitutional implications of Rule XX's amendment. In short, the legal precedent allowed the Fifth Circuit to take into account the political and economic realities underlying this decision, but the court declined to do so.

First, in its analysis of the solicitation restrictions, the court relied heavily on the fact that students were not actually attorneys, which means that the state has a special interest in limiting their solicitation.[96] However, the traditional reasons for discouraging solicitation enumerated by the Supreme Court in *Button* are not pertinent in the context of student clinics.[97] Clinical education serves as a learning mechanism from which students garner no pay or power, therefore the conventional incentives for abusive solicitation are absent. Without this basis for creating solicitation restrictions, the rational relationship between the amendments of Rule XX and the purpose of the Rule are questionable. It was suggested by members of the Louisiana Supreme Court that such restrictions prevent students and clinic attorneys from forcing their own political agendas into the legal system.[98] However, no proof of such manipulation of clients by clinic members was presented.[99] Nor was any explanation given as to how such restrictions

92. *Id.* at 794.
93. *Id.* at 794-95.
94. *Id.* at 795.
95. *Id.*
96. *Id.* at 790.
97. 371 U.S. 415, 439 (1963).
98. Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33, 88 (2000).
99. *Id.*

might address this concern.[100] The result is an unexplained restriction on solicitation that is the strictest student practice rule in the United States.[101]

Second, the court persistently points out that the amended Rule XX does not prohibit any form of speech, but rather it simply makes free representation harder to obtain. In concentrating on this distinction, the court failed to consider the legal and economic realities of representation in Louisiana. The number of public interest law firms in Louisiana is extremely low and there is only one public interest firm specializing in the area of environmental law.[102] Under the amended Rule, a family of four with an income of $24,000 a year, would not be eligible for clinic assistance.[103] Such a family would be forced to hire a lawyer, which they most likely could not afford to do, or to appeal to very limited free legal resources. By placing such obstacles on public access to clinic representation, the court effectively shut an entire segment of Louisiana residents out of the legal arena.

Third, in its analysis of viewpoint discrimination, the court fails to take into account peripheral limitations on expression created by the amended Rule.[104] Technically, the advocacy itself may not be silenced; however, in its amendment of Rule XX, the Louisiana Supreme Court has provided those who oppose TELC clients with a litigation tool. Rule XX will now serve as a silencing mechanism through which defendants may simply attack the economic standing of those who dare challenge them, instead of having to justify the legality of their own actions.

Furthermore, in making this determination, the court relies primarily on the nonattorney status of clinic students, rather than on the possible improper political motivation of the court. The Fifth Circuit fails to delve into the reasons why, after over thirty years, the Louisiana Supreme Court felt compelled to initiate a narrower construction of the indigence requirements for individuals and organizations. Pronouncing the Supreme Court's motivation as irrelevant, the Fifth Circuit sidestepped the most troubling aspect of the entire case: the undermining of judicial independence. The many

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100. *Id.*

101. Jennifer L. Jung, Comment, *Federal Legislative and State Judicial Restrictions on the Representation of Indigent Communities in Public Interest and Law School Clinic Practice in Louisiana*, 28 CAP. U. L. REV. 873, 881 (2000).

102. *Id.*; *see* Kuehn, *supra* note 98, at 96-97.

103. Kuehn, *supra* note 98, at 87.

104. *See* S. Christian Leadership Conference (SCLC) v. Supreme Court, 252 F.3d 781, 792-93 (5th Cir.), *cert. denied*, 122 S. Ct. 464 (2001).

ways in which Louisiana business interests attempted to undermine the work of the TELC prior to their successful appeal to the Louisiana Supreme Court are well documented.[105] In fact, this was not the first time Louisiana business interests attempted to convince the court to constrict the student practice rules.[106] However, in this instance, two of the justices were seeking reelection and the Louisiana Association of Business and Industry is a principal donor to a number of judicial campaigns.[107] By neglecting to address the motivation of the Supreme Court, the Fifth Circuit has, in effect, endorsed a judicial system subordinated by the political interests of a privileged few.

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105. *See, e.g.*, Joy, *supra* note 2, at 243-47.
106. *See* Jung, *supra* note 101, at 895.
107. *Id.*

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