

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA-----

SOUTHERN CHRISTIAN LEADERSHIP CIVIL ACTION
CONFERENCE, LOUISIANA CHAPTER;
ST. JAMES CITIZENS FOR JOBS AND THE NO. _____
ENVIRONMENT; CALCASIEU LEAGUE
FOR ENVIRONMENTAL ACTION NOW; SECTION _____ (____) HOLY CROSS NEIGHBORHOOD
ASSOCIATION;
FISHERMEN'S AND CONCERNED CITIZENS' HON. _____
ASSOCIATION OF PLAQUEMINES PARISH;
ST. THOMAS RESIDENTS COUNCIL; LOUISIANA
ENVIRONMENTAL ACTION NETWORK;
LOUISIANA ASSOCIATION OF COMMUNITY **COMPLAINT**
ORGANIZATIONS FOR REFORM NOW;
NORTH BATON ROUGE ENVIRONMENTAL
ASSOCIATION; LOUISIANA COMMUNITIES
UNITED; ROBERT KUEHN; CHRISTOPHER GOBERT;
ELIZABETH E. TEEL; JANE JOHNSON; WILLIAM P.
QUIGLEY; TULANE ENVIRONMENTAL LAW
SOCIETY; TULANE UNIVERSITY GRADUATE
AND PROFESSIONAL STUDENT ASSOCIATION;
INGA HAAGENSON CAUSEY; CAROLYN DELIZIA;
DANA HANAMAN; and C. RUSSELL H. SHEARER,

Plaintiffs,

VERSUS

THE SUPREME COURT OF THE
STATE OF LOUISIANA,

Defendant-----

Plaintiffs, through their undersigned counsel, as and for their Complaint against defendant the SUPREME COURT OF THE STATE OF LOUISIANA ("LOUISIANA SUPREME COURT"), allege as follows:

NATURE OF THE ACTION

1. This is an action to preserve access to legal representation for individuals and community organizations in Louisiana who seek to enforce public laws and advance the public good, but who cannot afford to retain private counsel. This is also an action to preserve First Amendment rights of free expression and association. The plaintiffs, community organizations in Louisiana, clinical faculty at Tulane and Loyola law schools, law school clinic students and student associations, and a financial supporter of clinical legal education and representation, sue the sole defendant, the LOUISIANA SUPREME COURT, to enjoin as unconstitutional the enforcement of its March 22, 1999 Amendments to Rule XX of the Rules of the Supreme Court of Louisiana ("Rule XX Amendments") which govern law school-sponsored clinical legal instruction and representation in the Louisiana state courts.

1. The Rule XX Amendments bar student practitioners from representing (a) any individual, unless the income of the potential client is low enough to meet a rigid standard of indigency set by the LOUISIANA SUPREME COURT; (b) any organization, unless the potential client organization (i) obtains evidence of the incomes of its members, (ii) demonstrates that the incomes of 51 percent of its members meet the same standard of indigency applicable to individuals, (iii) formally certifies, subject to inspection by the LOUISIANA SUPREME COURT and potentially by others, that the standard of indigency is met, and (iv) demonstrates that the organization cannot afford to hire private counsel; and (c) any individual or organization that has been contacted by law school clinic faculty, lawyers, students, or staff for the purpose of providing law school clinic representation.

1. As set forth in greater detail below, the Rule XX Amendments are unconstitutional for multiple reasons, including the following:

(a) The Rule XX Amendments result from the effort of the LOUISIANA SUPREME COURT to effectuate the will of the Governor of Louisiana and certain organized business interests in Louisiana, and suppress the views of Louisiana residents seeking to protect the public health and environment, by curtailing the availability of high quality legal representation as provided by the Tulane Environmental Law Clinic ("TELC") to clients who are unable to afford private counsel;

(b) Although the LOUISIANA SUPREME COURT has asserted that the Rule XX Amendments are intended to benefit indigent persons and community organizations, their actual impact has been the opposite. In violation of speech and associational rights protected by the First Amendment of the United States Constitution and parallel provisions in the Louisiana State Constitution, the Rule XX Amendments have drastically curtailed access to state courts for individuals and community organizations who lack the resources to retain private counsel, harmed TELC and other law school clinics in Louisiana, prevented individuals and community organizations from obtaining the representation they need, and interfered with donors' efforts to support clinical legal education;

(c) The Rule XX Amendments impermissibly burden plaintiff organizations' First Amendment guarantees of freedom of speech and freedom of association, freedom to petition the government for redress, and the guarantees of equal protection and due process of law, because the LOUISIANA SUPREME COURT lacks a sufficient interest to justify the extremely rigid income guidelines and intrusive income verification procedures that it has imposed. The Rule XX Amendments fail to take into account whether organizations, as opposed to their members, can afford private counsel. They also fail to consider the extensive costs of complex litigation as well as whether potential law school clinic clients have financial obligations that make it impossible for them to afford private counsel. They force community organizations that have a genuine need for counsel but are unable to afford it to segregate their members based on income levels, and to exclude members whose incomes are above the threshold for law school clinic representation. They further fail to account for the stifling effects on membership and association suffered by client groups in attempting to meet and verify compliance.

(d) The Rule XX Amendments unconstitutionally restrict the freedom of people in Louisiana to learn about their legal rights. The Rule XX Amendments restrict the freedom of law school clinics to associate with individuals and community organizations in order to educate them about their rights, and, if necessary, provide them with legal representation. By barring law school clinic staff from contacting individuals and organizations for the purposes of offering the free legal services of law student practitioners, the Rule XX Amendments prevent public interest lawyers from exercising the constitutionally protected right to go into communities to help people understand and defend their rights.

(e) Although the plaintiffs believe that clinical legal representation should be reserved for clients unable to afford private counsel, and although the law school clinics at Tulane and Loyola have provided their services only to individuals and organizations that their faculty believe are unable to afford private counsel, the LOUISIANA SUPREME COURT has violated the plaintiffs' freedoms of speech and association by attempting to dictate how private law schools should use non-state resources. The Rule XX Amendments also directly violate the First Amendment rights of financial supporters of law clinics who contribute funds for this work because of their belief in the importance of ensuring access to justice for all people, not just those with extensive financial resources.

1. This lawsuit is brought under 42 U.S.C. §§ 1983 and 1988(b), the First and Fourteenth Amendments of the Constitution of the United States, and Article I, Sections 2, 3, 5, 7, 9, and 22 of the Constitution of the State of Louisiana of 1974.

BACKGROUND

1. In the summer of 1997, defendant, the LOUISIANA SUPREME COURT, began an investigation into clinical legal education programs at Tulane, Loyola, and Southern University Law Schools as a result of intense political pressure applied by the Governor of Louisiana and powerful business interests (the "Complainants"). The Complainants urged the LOUISIANA SUPREME COURT to prohibit or drastically curtail TELC's representation of indigent clients who sought to enforce public laws that would protect, preserve, and restore the environment and public health in Louisiana. Since its founding, TELC has represented dozens of clients in hundreds of matters related to the environment.

1. At the time the Complainants began lobbying the LOUISIANA SUPREME COURT to stop TELC's representation of indigent clients, the Complainants represented business interests involved in legal proceedings against those same TELC clients. For example, business interests representing the Complainants were involved in a hard-fought legal dispute with clients of TELC relating to environmental permits required for the construction of a polyvinyl chloride plant by Shintech Inc. and its affiliates ("Shintech") in the predominantly African-American, lower-income community

of Convent in St. James Parish, Louisiana. As a result of TELC's successful representation of indigent groups in the Shintech case, the Complainants sought to compel a retaliatory "investigation" of TELC and to prevent TELC from providing free legal representation to its clients who otherwise are unable to obtain counsel to vindicate their rights.

1. The LOUISIANA SUPREME COURT has publicly admitted that its investigation of the three law school clinics, which was instigated by the Complainants, did not uncover a single legal or ethical violation by TELC or any other law school clinic. The public statements and representations of the LOUISIANA SUPREME COURT indicate that the investigation did not uncover a single case in which TELC or any other law school clinic provided legal services to any group or individual that was able to afford private counsel or where the law school clinic, its staff, or its student practitioners engaged in any sort of professional misconduct. The LOUISIANA SUPREME COURT has refused to release its final report and other materials concerning the results of its investigation to plaintiffs or the public.

1. Nevertheless, in direct response to the unsubstantiated charges by the Complainants, the LOUISIANA SUPREME COURT drastically curtailed the law school clinics' ability to represent indigent clients through the promulgation of the Rule XX Amendments (effective as of April 15, 1999). The Rule XX Amendments challenged herein by plaintiffs would:

- (1) prohibit clinics from representing any individual client, unless the income of the client is low enough to meet a rigid standard of indigency set by the LOUISIANA SUPREME COURT;
- (2) prohibit clinics from representing any community organization unless the organization can prove that at least 51 percent of its members meet the same restrictive indigency standard the LOUISIANA SUPREME COURT set for individuals;
- (3) compel the members of community organizations seeking representation by the clinics to disclose sensitive private financial and other information, and compel the organizations themselves to produce written certification of their inability to afford private counsel, subject to inspection by the LOUISIANA SUPREME COURT and potentially by others; and
- (4) prohibit student practitioners from representing any indigent individual or community organization if any clinical supervising lawyer, staff person, or student practitioner initiated any contact or communication with the client for the purpose of representing that client.

1. Upon information and belief, the unlawful Rule XX Amendments have transformed Rule XX into the most restrictive student practice rule of any state in the country, and have effectively blocked TELC and other law school clinics from representing any community organizations in new matters. (A very limited grandfather clause exception allows law school clinics to represent current clients in existing matters.)

1. As set forth below, plaintiffs allege that the restrictions imposed by defendant, the LOUISIANA SUPREME COURT, abridge their freedom of speech, freedom of association, and right to petition the government for redress of grievances in violation of the First and Fourteenth Amendments to the United States Constitution, and Article I, Sections 5, 7, 9, and 22 of the Louisiana State Constitution, and deny plaintiffs the equal protection and due process of the laws in violation of the Fourteenth Amendment to the United States Constitution and Article I, Sections 2 and 3 of the Louisiana State Constitution.

1. Plaintiffs seek a declaratory judgment and preliminary and permanent injunctive relief enjoining defendant, the LOUISIANA SUPREME COURT, from enforcing or otherwise implementing the Rule XX Amendments, and a declaration that the Rule XX Amendments violate plaintiffs' constitutional rights under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 2, 3, 5, 7, 9, and 22 of the Louisiana State Constitution.

JURISDICTION AND VENUE

1. This court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983. The court has supplemental jurisdiction over the plaintiffs' claims arising under state law under 28 U.S.C. § 1367. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this district and defendant, the LOUISIANA SUPREME COURT, may be found in this district.

PARTIES

The Client-Plaintiffs

1. Plaintiffs SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, LOUISIANA CHAPTER ("SCLC"), ST. JAMES CITIZENS FOR JOBS AND THE ENVIRONMENT ("ST. JAMES CITIZENS"), CALCASIEU LEAGUE FOR ENVIRONMENTAL ACTION NOW ("CLEAN"), HOLY CROSS NEIGHBORHOOD ASSOCIATION

("HOLY CROSS"), FISHERMEN'S AND CONCERNED CITIZENS' ASSOCIATION OF PLAQUEMINES PARISH ("FISHERMEN'S ASSOCIATION"), ST. THOMAS RESIDENTS COUNCIL ("RESIDENTS COUNCIL"), LOUISIANA ENVIRONMENTAL ACTION NETWORK ("LEAN"), LOUISIANA ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ("LOUISIANA ACORN"), NORTH BATON ROUGE ENVIRONMENTAL ASSOCIATION ("NBREA"), and LOUISIANA COMMUNITIES UNITED ("LCU") (collectively, the "client-plaintiffs") are membership organizations and nonprofit corporations that are, have been, and/or wish to be represented by law school clinics and student practitioners who are subject to the Rule XX Amendments, and/or whose members are, have been, and/or wish to be represented by law school clinics and student practitioners who are subject to the Rule XX Amendments, and who, along with their members, are and have been injured by the Rule XX Amendments. The client-plaintiffs have sought or need to obtain the services of the law school clinics, but are barred from obtaining the services of the law clinics by some or all of the unlawful and restrictive eligibility requirements imposed by the Rule XX Amendments.

- Plaintiff SCLC is affiliated with the Southern Christian Leadership Conference, a not-for-profit organization that advocates fundamental human and civil rights for all people. SCLC has litigated on behalf of its members and others, through the law school clinics, in opposition to the toxic hazards posed by certain industrial development in communities throughout Louisiana, and especially those where poor people and people of color reside. SCLC does not have sufficient resources to retain private counsel.
- Plaintiff ST. JAMES CITIZENS is an unincorporated community organization with membership consisting of over one hundred residents of St. James Parish, a rural, predominantly poor and working-class parish. ST. JAMES CITIZENS was formed in August, 1996 by residents of St. James Parish who were concerned about the proliferation of hazardous waste, chemical, and other industrial facilities in their communities, and the effects that those facilities have on their health and welfare. ST. JAMES CITIZENS does not have sufficient resources to retain private counsel.

(c) Plaintiff CLEAN was founded in 1982 by residents of the Lake Charles area of Southwestern Louisiana who are concerned about the health and safety of community residents due to dangers posed by the high concentration of polluting facilities in their community and throughout Louisiana. CLEAN does not have sufficient resources to retain private counsel.

(d) Plaintiff HOLY CROSS was founded in 1981 by residents and business owners of the Holy Cross neighborhood of New Orleans, Louisiana to make the neighborhood a safer, cleaner, and more enjoyable place to live and rear a family. HOLY CROSS does not have sufficient resources to retain private counsel.

(e) Plaintiff FISHERMEN'S ASSOCIATION is a twenty-year old, non-partisan, interracial organization with over one hundred members. It fosters political participation, fair representation, and equal rights for all citizens of Plaquemines Parish. FISHERMEN'S ASSOCIATION does not have sufficient resources to retain private counsel.

(f) Plaintiff RESIDENTS COUNCIL was founded in 1976 to represent the interests of the residents of the St. Thomas Housing Development, a federal public housing complex in New Orleans, Louisiana. RESIDENTS COUNCIL promotes the interests of the tenants in matters affecting them both individually and collectively. All residents of the St. Thomas Housing Development who are at least 18 years old and appear on a St. Thomas Housing Development lease are eligible to vote for the twelve member Residents Council Board. RESIDENTS COUNCIL does not have sufficient resources to retain private counsel.

(g) Plaintiff LEAN, formed in 1986 by several environmental groups, is a coalition of 87 member organizations and over 1,000 individuals in Louisiana concerned about the state of the environment and its effects on the health and well-being of Louisiana citizens. LEAN seeks to create, maintain, and preserve a clean and healthy environment, and it achieves its goals through education, outreach, advocacy, and litigation. LEAN does not have sufficient resources to retain private counsel.

(h) Plaintiff LOUISIANA ACORN is a 23-year-old community organization comprised of thousands of families, and most of its members have low or moderate incomes. LOUISIANA ACORN engages in advocacy and education and is particularly concerned with protecting its members and their families from environmental hazards. LOUISIANA ACORN does not have sufficient resources to retain private counsel.

(i) Plaintiff NBREA is an unincorporated community organization based in northern East Baton Rouge Parish, a

predominantly poor to middle-class African-American community which has been overwhelmed by toxic industrial emissions that have negatively affected public health. NBREA was founded in 1989 to fight pollution and environmental racism. NBREA supports responsible industrial development -- development that is safe, does not pollute the environment, provides jobs for community residents, and is responsive to the needs and concerns of the communities where development takes place. NBREA does not have sufficient resources to retain private counsel. (j) Plaintiff LCU, founded in 1997, is a coalition of 20 community, church, and union groups in the Mississippi River Parishes of Ascension, Iberville, St. James, East Baton Rouge, and St. Charles. LCU and its member organizations work on community issues including education, recreation, economic development, and environmental quality through research, organizing, public education, and mutual cooperation and support. Neither LCU nor its member organizations has sufficient resources to retain private counsel.

1. In addition to having standing in their own right, the client plaintiffs have standing in this action because their members would otherwise have standing to sue in their own right, neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit, and the interests that the client-plaintiffs seek to protect are germane to the organizations' purposes.

The Law Professor-Plaintiffs

1. Plaintiffs ROBERT KUEHN ("KUEHN"), CHRISTOPHER GOBERT ("GOBERT"), ELIZABETH E. TEEL ("TEEL"), JANE JOHNSON ("JOHNSON"), and WILLIAM P. QUIGLEY ("QUIGLEY") (collectively, the "law professor-plaintiffs") are attorneys licensed to practice law in Louisiana who are employed as law professors or clinical law instructors, who administer, supervise, teach, and practice law in the clinical education programs operated by Tulane and Loyola law schools, and who are and have been injured by the Rule XX Amendments. They are "supervising lawyers" and "clinical program supervising lawyers" within the meaning of the Rule XX Amendments. The law professor-plaintiffs want to exercise their right to academic freedom, but are inhibited from doing so because their preferred methods of teaching are prohibited by the Rule XX Amendments. The law professor-plaintiffs also want to exercise their freedom to associate with students and potential clients for purposes of advocating and litigating to enforce the rights and remedies of the law school clinics' clients in the Louisiana state courts, but are inhibited from doing so under the Rule XX Amendments.

(a) Plaintiff KUEHN is a co-director of TELC and a Professor of Clinical Law at Tulane University Law School. Tulane is a private university and KUEHN's salary and the activities of TELC are paid for with non-state funds.

(b) Plaintiff GOBERT is a Visiting Professor of Clinical Law at Tulane University Law School and a co-director of TELC. GOBERT's salary and the activities of TELC are paid for with non-state funds.

(c) Plaintiff TEEL is a Clinical Instructor with TELC. TEEL's salary and the activities of TELC are paid for with non-state funds.

(d) Plaintiff JOHNSON is a Professor of Clinical Law at Tulane University Law School and the director of the Tulane Civil Litigation Clinic ("CLC"). JOHNSON's salary and the activities of CLC are paid for with non-state funds.

(e) Plaintiff QUIGLEY is an Associate Professor of Law at the Loyola University School of Law and the director of the Loyola Law Clinic ("LLC"). Loyola University is a private, religious university, and QUIGLEY's salary and the activities of LLC are paid for with non-state funds.

The Student-Plaintiffs

1. Plaintiffs TULANE ENVIRONMENTAL LAW SOCIETY ("ELS"), TULANE UNIVERSITY GRADUATE AND PROFESSIONAL STUDENT ASSOCIATION ("GAPSA"), INGA HAAGENSEN CAUSEY ("CAUSEY"), CAROLYN DELIZIA ("DELIZIA"), and DANA HANAMAN ("HANAMAN") (collectively, the "student-plaintiffs") are student associations representing law student practitioners and eligible law students who are and have been injured, or whose members are or have been injured, by the Rule XX Amendments and individual "student practitioners" and "eligible law students" within the meaning of Rule XX Amendments. The student plaintiffs are harmed because the Rule XX Amendments have eviscerated TELC, thereby infringing upon their academic freedom, interfering with their efforts to learn, interfering with their efforts to associate with others for purposes of legal advocacy under the auspices of the law school clinics, and undermining their post-graduate vocational opportunities.

(a) Plaintiff ELS is an organization of students at Tulane University Law School who share academic, legal, recreational, and general interest in the environment. ELS's membership has included TELC "student practitioners" and "eligible law students," as well as first- and second-year Tulane law students who have applied or intend to apply to participate in TELC as third-year law students. ELS seeks to promote educational opportunities at Tulane Law School and environmental consciousness on the Tulane campus and in the greater Louisiana community, as well as to promote an environmentally responsible agenda through education, outreach, scholarship, organizing, community service, and action.

(b) Plaintiff GAPSA is the elected organization representing Tulane University's graduate and professional students in the schools of Law, Medicine, Public Health, Engineering, Social Work, and Graduate Liberal Arts. GAPSA, as the governing entity for all graduate and professional students at Tulane, represents student voices on all matters of University and public policy affecting student interests. GAPSA promotes an open and free university where professors and students are encouraged to pursue the free exchange of ideas without government interference.

(c) Plaintiffs CAUSEY and DELIZIA are third-year students at Tulane University Law School. During the 1998-99 school year, they have been "student practitioners" and "eligible law students" in TELC. Both CAUSEY and DELIZIA enrolled in TELC because of their desire to gain practical experience as lawyers by working for actual clients engaged in real-world disputes and because of their academic interest in environmental law.

(d) Plaintiff HANAMAN, a second-year student at Tulane University Law School during the 1998-99 school year, has applied to and been accepted as a "student practitioner" and "eligible law student" in TELC for the 1999-2000 school year. HANAMAN applied to TELC because of her desire to gain practical experience as a lawyer by working for actual clients engaged in real-world disputes and to further develop her academic interest in environmental law.

1. In addition to having standing in their own right, student-plaintiffs ELS and GAPSA have standing in this action because their members would otherwise have standing to sue in their own right, neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit, and the interests of that these student-plaintiffs seek to protect are germane to the organizations' purposes.

The Donor-Plaintiff

1. Plaintiff C. RUSSELL H. SHEARER ("SHEARER" or the "donor plaintiff") has provided and wishes to continue to provide private funds to TELC. Plaintiff SHEARER earned an LLM degree in environmental law from the Tulane University Law School. SHEARER has financially contributed, and wishes to continue to financially contribute to TELC because TELC provides excellent and important training, teaches young lawyers to be sensitive to the concerns of people and organizations unable to afford private counsel, and offers high quality advocacy enabling individuals and organizations to participate in the decisions affecting their lives in Louisiana, from which they otherwise would be excluded. SHEARER objects to the Rule XX Amendments because they prevent the funds he donates or would donate from being used for the purposes and to the full extent for which they were intended.

Defendant LOUISIANA SUPREME COURT

1. Defendant LOUISIANA SUPREME COURT is the highest court in the State of Louisiana. It consists of eight justices, seven of whom are elected pursuant to the Louisiana State Constitution, and an eighth justice who is currently sitting pursuant to a federal voting rights consent decree. Under its inherent powers and Articles II and V of the Constitution of the State of Louisiana of 1974, defendant has the authority to issue and enforce rules that are not unconstitutional and do not violate other federal and state laws.

FACTUAL ALLEGATIONS

1. In 1971, the LOUISIANA SUPREME COURT adopted Supreme Court Rule XX, entitled "Limited Participation of Law Students in Trial Work," in order to provide competent legal services "to clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds." La. S. Ct. R. XX, § 1 (1971). Rule XX originally authorized eligible law students to "appear in any court or before any administrative tribunal in this state on behalf of the state, any political subdivision thereof, or 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." *Id.* § 3.

1. In 1988, the LOUISIANA SUPREME COURT amended Supreme Court Rule XX to clarify that eligible law students may also represent "community organizations."

1. Since 1971, TELC and the other law school clinics subject to Supreme Court Rule XX have provided competent and necessary legal advice to clients who otherwise would not have obtained representation.

1. In or about November, 1996, plaintiff ST. JAMES CITIZENS requested assistance from TELC in opposing construction of a polyvinyl chloride and ethylene dichloride production facility by Shintech, with the assistance of state and local government, in the town of Convent in St. James Parish. St. James Parish is located in the corridor between Baton Rouge and New Orleans along the Mississippi River, sometimes referred to as the "Chemical Corridor" or "Cancer Alley" because of the over 100 toxic facilities that populate the communities along this stretch of the River. Styrene, polyvinyl chloride, ethylene dichloride, and the other chemicals produced by these facilities have been linked to cancer, immune system disorders, and other illnesses. St. James Parish is one of the most polluted counties in the United States: the Parish is ranked third in the state and seventeenth in the nation for the amount of toxic chemical releases into the air, land, and water.

1. Convent, Louisiana is a small, predominantly African-American, lower-income town located in St. James Parish.

The area surrounding the proposed site for the Shintech plant is over 80% African-American with a median family income of just over \$19,000. The proposed site is ringed by eleven major industrial sites and is in close proximity to three schools and hundreds of individual residences. The proposed facility would have released 1.5 tons of pollutants each year into the environment, including more than 100,000 pounds of vinyl chloride (a Class A human carcinogen), ethylene dichloride, caustic soda, and other pollutants. The greater Convent community lies within the "kill zone" for three of the four chemical facilities in St. James Parish (a facility's "kill zone" is the area with the greatest risk of harm in the event of an accident at the facility), and is also where 95% of the total reported toxic emissions for St. James Parish occurs.

1. Plaintiff ST. JAMES CITIZENS found it impossible to secure non law school clinic counsel to represent it in its opposition to the Shintech facility. The Sierra Club Legal Defense Fund, the Natural Resources Defense Council, and the NAACP Legal Defense Fund, Inc., among others, all declined to represent ST. JAMES CITIZENS and other concerned groups (including plaintiffs LEAN, SCLC, NBREA, and LCU) who were also opposed to the Shintech facility. In October 1996, ST. JAMES CITIZENS asked TELC to represent them because they could not afford to retain private counsel and were unable to obtain free representation from other sources. The case was approved by TELC's Advisory Board and in November, 1996, TELC agreed to represent ST. JAMES CITIZENS and other groups in opposing certain permit applications related to the Shintech facility.

1. Specifically, in December, 1996, and January, 1997, TELC appeared at public hearings on Shintech's environmental permits convened by the Louisiana Department of Environmental Quality ("LDEQ") and represented plaintiff ST. JAMES CITIZENS along with LEAN, SCLC, NBREA, LCU, and other groups in opposing the permits. In March and April, 1997, TELC filed objections to the LDEQ's proposed air pollution permits for Shintech with the United States Environmental Protection Agency ("EPA"), including objections that the State's permitting of Shintech would constitute environmental discrimination because St. James Parish housed a disproportionate amount of Louisiana's hazardous environmental facilities. On or about April 3, 1997, the EPA instructed the LDEQ to address the environmental justice objections raised in the comments prepared by TELC.

1. In April and May 1997, TELC filed a petition requesting that the EPA veto the air permits granted to Shintech by the State, arguing, *inter alia*, that the State's permits violated a Presidential Executive Order on environmental justice. Subsequently, TELC filed a petition with the EPA alleging that the State's permitting of the Shintech facility violated Title VI of the Civil Rights Act of 1964. Meanwhile, on or about May 22, 1997, TELC filed a motion on behalf of certain community group clients alleging bias in the State's handling of the Shintech air permits and requested that the LDEQ be recused from making final permitting decisions.

1. TELC's advocacy in the Shintech case provoked intense criticism and retribution from political and business supporters of Shintech. Upon information and belief, on April 4, 1997, immediately after learning that the EPA had instructed the LDEQ to investigate environmental discrimination claims with respect to the Shintech permits, the Governor of Louisiana, Murphy J. "Mike" Foster, called the President of Tulane University, Eamon Kelly, to complain about TELC's involvement in the Shintech case and stated that TELC was acting as an anti-economic development force.

1. Upon information and belief, in May 1997, Governor Foster told business leaders at a meeting of the New Orleans Business Council ("Business Council") that they could assist him by exerting their economic and political influence to control the activities of TELC. Upon information and belief, Foster advised the business leaders to reconsider and withhold their financial support for Tulane University unless TELC was "brought under control." Upon information and belief, at that same meeting business leaders with ties to Shintech advised the Business Council to send a letter to the LOUISIANA SUPREME COURT demanding that it restrict the legal advocacy activities of TELC.

1. Beginning in July, 1997, the Complainants demanded that the LOUISIANA SUPREME COURT investigate the practices of TELC and amend Supreme Court Rule XX to suppress TELC's ability to advocate the views of groups such as ST. JAMES CITIZENS and the other client-plaintiffs. The Complainants urged the LOUISIANA SUPREME COURT to subject TELC to stricter regulation because TELC's environmental advocacy was allegedly having a negative impact on business in Louisiana and was contrary to business positions.

1. On or about July 8, 1997, the LOUISIANA SUPREME COURT received a letter from The Chamber/New Orleans and the River Region ("The Chamber"), a chamber of commerce organization dedicated to the growth and development of business in the New Orleans region. The Chamber alleged that Supreme Court Rule XX was "being interpreted and used by TELC to legally empower young individuals not member [sic] of the Bar to push and impose the social views of the faculty and students in the courts of the State of Louisiana as well as before Administrative Bureaus." The Chamber further alleged that "the individual faculty and students' legal views are in direct conflict with business positions," and asked the LOUISIANA SUPREME COURT "to investigate the cases, positions and stands taken by the

Tulane Law Clinic under the authority of [Supreme Court Rule XX]."

1. On July 11, 1997, in an interview on a statewide Louisiana Public Broadcasting program, Governor Foster criticized TELC as "a law unto themselves. They have decided that they will decide who comes to Louisiana and decide under what rules. . . . This group decides they're going to be the law themselves. It's almost like they're the vigilantes out there doing this on their own. And I don't think it's right. And I'm gonna tell you, I'm going to encourage anybody from Tulane to do what they can to put a stop to it."

1. On or about July 16, 1997, the Business Council wrote to the LOUISIANA SUPREME COURT, proclaiming that it represents "the largest business entities in [the] region" and demanding that defendant investigate the use of the student practice rule by TELC. The Business Council advised the court that "[w]e gather that the court rule gives the faculty and students of Tulane an unrestricted right to use the court rules to fight, harass and interfere with Louisiana's interest to attract new business. . . . We are confident the court never intended for these rules to be a source of anti-business clinics under the auspices of a university. We would appreciate your investigating [the] current status of the [TELC], and respectfully request the rules be corrected to cease these practices."

1. On July 23, 1997, Kim Sport, a Deputy Judicial Administrator for the LOUISIANA SUPREME COURT, contacted Governor Foster's office to obtain information regarding TELC. Since June, 1995, Ms. Sport also held a position with The Chamber, one of the Complainants, as the Chair of its West Bank Council. Ms. Sport has acknowledged that she was referred by the Governor's office to the Louisiana Department of Economic Development ("LDED"), which then sent her by email a listing containing "promised" phone numbers that identified individuals who had been involved in litigation against TELC.

1. On or about August, 8, 1997, Kevin Reilly, the Secretary of LDED, and Governor Foster's liaison on the Shintech project, sent a letter under LDED letterhead to Tulane University President Eamon Kelly, with copies to the Tulane University Board of Trustees and to all the deans of Tulane University, accusing TELC of conducting "environmental-related barratry" and "legalistic guerrilla attacks against environmentally-responsible industry and the Department of Environmental Quality" to the purported detriment of the State's economic development. Reilly wrote that TELC was "irresponsible," "reckless," and "corrupting the legal system," and urged that "Tulane request the Louisiana Supreme Court to review the activities of TELC to determine if the Clinic has overstepped the charter the Court originally gave it."

1. On this and other occasions, Secretary Reilly used his State office to wage a campaign of political pressure and public criticism against TELC because of its representation of environmental groups generally, and its representation of concerned citizens opposed to the Shintech plant in particular. Upon information and belief, Reilly publicly attacked TELC for providing representation to the indigent community groups opposed to Shintech, and complained that TELC's actions were "corrupting the legal system" and having a "chilling effect" on Louisiana's economy. Reilly publicly vilified TELC as "environmental fascists" who used "brown-shirt tactics."

1. On or about September 9, 1997, the President of the Louisiana Association of Business and Industry ("LABI") sent a letter to the LOUISIANA SUPREME COURT and a Proposal to Amend and Enforce Rule XX ("LABI Proposal"). LABI alleged that "Louisiana business concerns have borne the heavy burden of often misguided challenges to their environmental permits or other actions" through the actions of TELC, and "suggested that the student practice of environmental law be regulated more closely and that the students, supervisors, clinics, and law schools be held accountable for their actions."

1. LABI alleged, *inter alia*, that TELC's "obstructionist practices continue to be unnecessarily expensive and burdensome to state and federal regulators, the courts, and permit applicants" and that TELC's "abuse of the courts and the media to pursue its agenda has likewise been damaging to the state. Because it acts freely to discredit industry in Louisiana, propagates technical misinformation, and attacks governmental decisions within the state (usually on procedure, not merit), it has negatively impacted the state."

1. None of LABI's allegations concerning ethical violations or abuses of Supreme Court Rule XX by TELC had any basis in fact. Nevertheless, asserting that TELC "has been bad for business in Louisiana" and that "abuses of Rule XX have cost Louisiana industry millions of dollars," LABI advised defendant that "[a] substantial portion of these problems can be addressed simply by amending and enforcing Rule XX to subject student attorneys and law school clinics to the same standards to which other practicing attorneys are held." LABI then proposed a series of restrictive amendments to Supreme Court Rule XX intended to curtail the practices of TELC, including a prohibition "on client solicitation and/or the use of so-called outreach coordinators" by clinics. LABI's proposed restrictions formed the basis of the restrictive Rule XX Amendments adopted by defendant even though defendant's own investigation of TELC and the other law school clinics uncovered no evidence whatsoever to substantiate any of the ethical violations or breaches of Supreme Court Rule XX alleged by LABI, and even though student attorneys and law school clinics already were

subject to the same ethics standards to which practicing attorneys in Louisiana are held.

1. On or about November 6, 1997, the President of The Chamber/ Southwest Louisiana ("The SWLA Chamber") wrote to Chief Justice Calogero, noting that the LOUISIANA SUPREME COURT's review of Rule XX had been "prompted in part by letters sent by the New Orleans Chamber of Commerce, the New Orleans Business Council and the Louisiana Association of Business and Industry to Chief Justice Calogero complaining about the Tulane Environmental Law Clinic's" activities. Seeking "to add its voice" to those of the other business interests demanding an investigation into TELC's activities, the SWLA Chamber alleged that TELC's "activities have had an adverse effect on economic growth and development not only in the Baton Rouge and New Orleans areas but also in Southwest Louisiana."

1. In reaction to political pressure and the demands from the Complainants, the LOUISIANA SUPREME COURT began an official "investigation" of TELC and the other Louisiana law school clinics. On September 25, 1997, Chief Justice Calogero sent a letter to the deans of Louisiana's law schools, informing them that the LOUISIANA SUPREME COURT had received complaints about TELC, and that Tim Averill and Kim Sport, both of whom were Deputy Judicial Administrators for the LOUISIANA SUPREME COURT, would be conducting a review of the State's law school clinics. The Chief Justice's letter was followed by a letter from Mr. Averill, dated October 8, 1997, further advising the deans that he and Ms. Sport would be visiting the law schools to question them about the operation of the clinical programs. As noted above, Ms. Sport at the time had already initiated an inquiry into the law school clinics, and also held an official position with The Chamber, one of the Complainants.

1. Before visiting the law schools, Mr. Averill requested written information about the clinics. The deans of Tulane, Loyola, and Southern supplied the LOUISIANA SUPREME COURT with the requested information and provided a detailed factual refutation of all of the allegations of ethical misconduct and abuses asserted by the Complainants.

1. In November, 1997, LOUISIANA SUPREME COURT "investigators," Deputy Averill and Sandra Vujnovich, visited the three law schools' clinics. The investigators spent less than a day at Loyola and Southern, but devoted two exhaustive days at Tulane. The investigators conducted separate and lengthy meetings with TELC students and staff, but met for a comparatively short period of time with the directors of Tulane's other law school clinics.

1. In April, 1998, the librarian of the LOUISIANA SUPREME COURT surveyed law schools around the country seeking information concerning the scope of their clinics' practices. She inquired as to whether the schools' environmental or other clinics ever represent community organizations, various interest groups, or nonprofit corporations, whether they represent national organizations or local affiliates thereof, and the authority pursuant to which students in their states are permitted to practice. Upon information and belief, the survey revealed that TELC's practices in representing nonprofit community organizations that could not afford private counsel were entirely consistent with the practices of law school clinics around the country.

1. The LOUISIANA SUPREME COURT has never made public either the results of its investigation of the Louisiana law school clinics or its librarian's national survey. Upon information and belief, the LOUISIANA SUPREME COURT has prepared a report compiling the results of its investigation. Although plaintiffs have never seen the report and have never been informed of its contents, Justice Johnson's published dissent to the March 22, 1999 version of the Rule XX Amendments confirmed that the investigation uncovered absolutely no wrongdoing on the part of the clinics: "Even though the complaints from business interests were directed specifically at Tulane Environmental Law Clinic, we decided to do a survey of law clinics at Tulane, Loyola, and Southern University law schools. An exhaustive review of all Louisiana law clinics failed to uncover any violations of the Law Student Practice Rule." (Emphasis added.)

1. Moreover, in a public debate at Tulane University during his 1998 campaign for reelection, Chief Justice Calogero admitted that the LOUISIANA SUPREME COURT had found no evidence of any ethical violation by any law school clinic and admitted that defendant had not identified a single client represented by the law school clinics that was capable of affording private legal counsel.

1. Despite the fact that the investigation had uncovered no evidence of wrongdoing nor any indication that the clinic had ever represented any client able to afford private counsel, the LOUISIANA SUPREME COURT amended Rule XX on June 17, 1998 (the "June 17, 1998 Amendments"). In relevant part, the June 17, 1998 Amendments: (i) prevented the law school clinics from representing any individual unless the individual was sufficiently poor to meet the poverty level established by the federal Legal Services Corporation (LSC); (ii) prevented the law school clinics from representing community organizations unless the organization could certify that 75 percent of its members' incomes were below the poverty level established by the LSC; (iii) prevented the law school clinics from representing community organizations that were affiliated with national organizations; and (iv) prohibited students from representing any individual or community group if any person associated with the law school clinic had initiated in-person contact with the client or if the law school clinic had provided assistance in forming, creating, or incorporating the community group that desired representation. The June 17, 1998 Amendments became effective on July 1, 1998,

and except for the grandfather clause, had an immediate and profound chilling effect on the ability of the clinics to operate and on the ability of former and potential new clients to obtain free representation from the clinics.

1. Shortly thereafter, on June 26, 1998, the deans of Tulane and Loyola law schools sent a joint letter to the LOUISIANA SUPREME COURT requesting reconsideration and stay of the 1998 Amendments. On June 30, 1998, the LOUISIANA SUPREME COURT amended the June 17, 1998 Amendments, reducing from 75 to 51 the percentage of a community organization's membership whose income must fall below the LSC poverty guidelines, and suspending the prohibition against client "solicitation."

1. On March 22, 1999, the LOUISIANA SUPREME COURT again amended Rule XX (the "Rule XX Amendments"). These final amendments, which become effective as of April 15, 1999, provide in relevant part:

Section 4:Standard for Determining Eligibility for Representation. 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 whose annual income does not exceed 200% of the federal poverty guidelines established by the Department of Health and Human Services. These guidelines need not be applied when the client is court appointed or court-referred and the appointing or referring court has reviewed the economic condition of the client and has determined that the client is indigent.

Section 5:Representation of Indigent Community Organizations. 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 provided at least 51 percent 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.

Section 10:Lawyer staffpersons of law school clinical programs and certified student practitioners shall adhere to the rules prohibiting solicitation of cases or clients. In addition, no student practitioner shall appear in a representative capacity pursuant to this rule if any clinical program supervising lawyer, staffperson, or student practitioner initiated in-person contact, or contact by mail, telephone or other communications medium, with an indigent person or other indigent community organization for the purpose of representing the contacted person or organization.

1. Ms. Sport, who participated in the investigation of the clinics in her role as LOUISIANA SUPREME COURT employee and who also held an official position with Complainant The Chamber, is currently still employed by defendant and has been the defendant's spokesperson on the Rule XX Amendments. As recently as January 29, 1999, Ms. Sport was identified in The Times-Picayune as continuing to hold a position with The Chamber as its Regional Council Leader for Community Development. The article explained that the job of "Regional Council Leaders" is to "help [The Chamber] in its push to unify business in the metro area."

Impact of the Rule XX Amendments

1. Upon information and belief, the Rule XX Amendments are the most restrictive rules governing student clinical legal education in the nation. Upon information and belief, no other state requires individual law school clinic clients to prove eligibility based on federal poverty standards. In the small minority of states that limit student practice to "indigent clients," the determination of indigency is left to the law schools. Upon information and belief, no other state requires that at least 51 percent of an organization's individual members meet a predetermined indigency standard in order to qualify for law school clinic representation. No other state bars student practitioners from representing clients simply because the student or other law school clinical staff member initiated contact with the client.

1. Indeed, upon information and belief, in law schools in the other 49 states and the District of Columbia, students are taught that it is lawful and proper for public interest lawyers to reach out to potential clients in need of free legal representation where the lawyer's primary motivation is not pecuniary. Louisiana's Rule of Professional Conduct 7.2(a) only prohibits attorneys from contacting a potential client when "a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." Law school clinic faculty, supervising attorneys, and student practitioners do not have any motive of pecuniary gain in connection with client outreach activities or client representation.

1. Defendant intentionally promulgated the Rule XX Amendments for the impermissible purpose of penalizing, suppressing, and discriminating against the advocacy of TELC and the views of its clients in seeking to enforce public

laws and vindicate public rights to protect, restore, and preserve the environment and public health in Louisiana. Defendant cannot disguise the fact that the Rule XX Amendments are a mere facade for viewpoint discrimination. As Justice Johnson properly stated in her dissent to the Rule XX Amendments, the LOUISIANA SUPREME COURT "should not curtail a program that teaches advocacy while giving previously unrepresented groups and individuals access to the judicial system in order to satisfy critics who are discomforted by successful advocacy."

Impact on Client-Plaintiffs

1. The Rule XX Amendments deliver the Complainants intended effect. They make it exceedingly difficult for working families and community organizations to obtain legal representation. In November, 1998, Chief Justice Calogero admitted he was unaware of any community organization able to qualify for law clinic assistance under the June 17, and June 30, 1998 Rule XX Amendments.

1. Client-plaintiffs SCLC, ST. JAMES CITIZENS, CLEAN, HOLY CROSS, LEAN, LOUISIANA ACORN, NBREA, and LCU are represented and/or have been represented by TELC in several matters of crucial importance to those organizations and their members. Client-plaintiffs FISHERMEN'S ASSOCIATION and RESIDENTS COUNCIL are represented and/or have been represented by LLC in several matters of crucial importance to those organizations and their members. Several of the member organizations comprising client-plaintiff LCU are represented and/or have been represented by TELC on matters of critical importance to LCU and its members. The expert advocacy of the law school clinics has enabled the client-plaintiffs to focus their efforts to advance their interests and those of their members, and to achieve crucial goals in areas such as environmental protection, civil rights, public health, and economic justice.

1. However, the Rule XX Amendments prevent the client-plaintiffs from obtaining legal representation from law school clinics in new matters, thus undermining the ability of the client-plaintiffs and their members to advance their interests, protect their rights, and participate in regulatory and judicial processes.

I. The Compelled Disclosure Provisions

1. By focusing on the income of individual members of a community organization rather than on the income of the organization, the Rule XX Amendments prevent needy nonprofit community organizations from obtaining the services of law clinics, and also severely chill participation in such organizations. Under the Rule XX Amendments, those who wish to join client-plaintiffs and other organizations in order to share ideas, to collaborate with others from diverse backgrounds in addressing community concerns, to defend the civil and political rights of members, or to protect the environment and public health, are suddenly required to disclose their personal finances as a condition of membership in order for the organization to even be considered for law school clinic representation. The Rule XX Amendments harm organizations because members will resign, and new members will be reluctant to join, if membership requires such disclosure.

1. In addition to basic concerns about disclosing private information, members of organizations are concerned that through such compelled disclosure, private information could become available to government agencies or others, rendering members vulnerable to economic and other forms of retaliation. The threat of disclosure has a chilling effect on members' willingness to join organizations and remain as members. Additionally, for the client-plaintiffs that have substantial numbers of African American members (e.g., SCLC, RESIDENTS COUNCIL, FISHERMEN'S ASSOCIATION, NBREA, ST. JAMES CITIZENS), the chilling effect on participation is especially strong, in light of the history of harassment of people engaged in advocacy efforts during the civil rights movement.

1. It is no answer to suggest that individual members who could meet the Rule XX Amendments' standard of indigency should pursue the organization's agenda by qualifying individually for law school clinic representation. The loss of privacy inherent in proceeding as an individual, rather than as a member of an organization, exposes the individual to tremendous risk, including economic and other forms of retaliation. For example, many members of client-plaintiff ST. JAMES CITIZENS have friends or relatives who work for government or local industry. If an individual member served as a plaintiff in an environmental matter, he or she would be acutely vulnerable to economic retaliation. Thus, client-plaintiffs' individual members are reluctant to serve in such a role. A major reason to join community organizations is to gain the strength of the group and the opportunity to engage in organized advocacy without the risks of individual advocacy. And, as noted above, the opportunity to participate within organizations is very important for African-Americans in particular, due to fears of harassment, intimidation, or other hostility stemming from experiences of similar harassment during the civil rights movement.

1. Even if individual indigent members of client-plaintiffs were willing and otherwise able to proceed with law school clinic representation, such individuals would also confront filing fees and other costs that, for a person who is genuinely indigent, present a substantial additional barrier to acting individually.

II. The "51 Percent Rule"

1. The "51 percent rule" has another pernicious effect. It creates an incentive for organizations to separate into two

subgroups -- those who are truly desperately poor, and all others. While the group comprised of the desperately poor could then qualify for clinic representation under the Rule XX Amendments, the harm to the individuals and the organization is plain. The Rule XX Amendments isolate the poorest Louisianans, and deny them the opportunities to associate with others who are less poor; the Rule XX Amendments thus also deny all members the opportunity to mix freely with others from diverse backgrounds in the pursuit of common goals.

1. The Rule XX Amendments also harm the client-plaintiffs because, by encouraging groups to divide into "poor" and "less poor" subgroups, they stigmatize certain members of client-plaintiffs, making group action more difficult.

1. Similarly, the Rule XX Amendments harm the client-plaintiffs insofar as they force organizations to rely on a single indigent individual to establish eligibility for law school clinic representation and advance the needs of the organization. The organization is ill-served by entrusting to a single indigent individual complete responsibility and authority to carry litigation forward alone.

1. The Rule XX Amendments further harm the client-plaintiffs by imposing the excessive burden of verifying, on an ongoing basis, their members' incomes. The client-plaintiffs lack the administrative resources to comply with Section 5 of the Rule XX Amendments. Because the "51 percent rule" requires ongoing compliance with the indigency standard, organizations must also require ongoing disclosure from their members. The client-plaintiffs are not able to track the inevitable changes in members' incomes that result from employment promotions, raises, inheritances, loss of employment, absence from employment due to illness, and other common occurrences affecting income. The difficulty of verifying members' incomes on an ongoing basis exposes the law professor-plaintiffs and student-plaintiffs to the risk of sanctions, regardless of their good-faith efforts to comply with the Rule XX Amendments, and has and will continue to discourage law school clinics from representing client-plaintiffs.

1. For some plaintiffs, the burden is particularly acute. Most client plaintiffs, including SCLC, ST. JAMES CITIZENS, HOLY CROSS, FISHERMEN'S ASSOCIATION, and NBREA do not have any staff persons at all, and thus would be unable to track members' incomes.

1. Client-plaintiff LEAN has over 1,000 individual members and 87 organization members. Tracking the individual members' incomes on an on-going basis is an administrative impossibility for LEAN, and insofar as the Rule XX Amendments may require LEAN to canvass all of the unincorporated community organizations or nonprofit corporations which comprise part of its membership and to verify the income of their individual members, the task becomes even more administratively burdensome.

1. It would be impossible, too, for RESIDENTS COUNCIL to keep current records of all of its members' incomes. At present, the St. Thomas Housing Development has approximately 750 occupied family units. Every resident in every unit who appears on the lease and is over 18 years old is considered a member of the organization. There are no dues or other membership requirements. In addition, the St. Thomas Housing Development experiences frequent tenant turnover. Thus, at any given time, RESIDENTS COUNCIL has well over 1,000 members; yet RESIDENTS COUNCIL cannot determine with certainty its complete membership roster. It would be impossible for RESIDENTS COUNCIL, which has no permanent staff and no budget, to devote the resources necessary to catalogue and verify the incomes for each member of the organization on an ongoing basis.

1. By conditioning the client-plaintiffs' eligibility for law school clinic representation on a rigid standard of member indigency, Section 5 of the Rule XX Amendments denies law school clinic representation to client-plaintiffs solely because some of their members may have incomes slightly exceeding the cap, even though their limited funds may be dedicated to such matters as medical bills, educational expenses, or repayment of debts. Furthermore, by conditioning the client-plaintiffs' eligibility on the incomes of their members, rather than on the resources of the client-plaintiff organizations, Section 5 of the Rule XX Amendments denies law school clinic representation to organizations that actually lack the funds to retain and pay for private attorneys.

1. The "51 percent rule" is also unconstitutionally vague and overbroad. The Rule XX Amendments do not specify what proof of income must be submitted to certify eligibility for law clinic representation. In addition, the Rule XX Amendments do not specify how frequently client-plaintiffs must verify their members' incomes in order to satisfy the "51 percent rule." The client-plaintiffs are therefore unable to assure themselves that they qualify for law school clinic representation under Section 5 of the Rule XX Amendments.

1. For example, the "51 percent rule" is nonsensical and contrary to law when applied to client-plaintiffs LEAN and LCU, nonprofit organizations whose members include nonprofit corporations, unincorporated membership organizations, as well as individual members. Under Section 5 of the Rule XX Amendments, 51 percent of an organization's "members" must have incomes that meet the standard of indigency contained in Section 4. However, there are no "federal poverty guidelines" for nonprofit corporations or unincorporated membership organizations. Therefore, LEAN and LCU are unable to comply with the certification and income verification requirements of Section

5 of the Rule XX Amendments because the Rule XX Amendments do not contain appropriate income measures by which LEAN and LCU may determine their eligibility for law school clinic representation.

1. Plaintiffs' adversaries are able to exploit the ambiguity of Section 5 of the Rule XX Amendments not merely to disqualify law school clinical representation in particular cases, but to chill law school clinics and clients into silence prospectively. The vague and overbroad nature of the Rule XX Amendments exposes plaintiffs to the threat of sanctions. If a law school clinic client is found ineligible under the Rule XX Amendments, the law professor-plaintiffs could be charged with misconduct, and the student-plaintiffs could be charged with engaging in the unauthorized practice of law.

1. Already, the environmental defense bar has asserted that attorneys in Louisiana have an ethical obligation to police law school clinic students and faculty and to report violations of the Rule XX Amendments to the bar. (See Anne J. Crochet, Supreme Court Changes Rule Governing Law School Clinics, 46 La. Bar J. 239, 239-41 (1998)). The fear of such attacks, arising out of the vague and overbroad nature of the Rule XX Amendments, has deterred the law professor-plaintiffs and student-plaintiffs from representing new clients as well as representing former or current clients on new matters. This has deprived client-plaintiffs of access to the free, experienced legal representation provided by the law school clinics.

III. The Gag Rule

1. Section 10 of the Rule XX Amendments, barring law student practitioners from representing any client contacted by law school clinic faculty, lawyers, students, or staff for the purpose of providing clinic representation, prevents client-plaintiffs from learning about threats to their rights and the availability of remedies. Section 10 of the Rule XX Amendments further prevents client-plaintiffs from securing free law school clinic representation, in order to take action to defend those rights. Section 10 of the Rule XX Amendments denies client-plaintiffs similar information in the future, because law professor-plaintiffs, student-plaintiffs, and law school clinics as a whole are chilled from notifying client-plaintiffs about current threats to their rights.

1. Under the vague and overbroad Rule XX Amendments, even the simple actions of distributing leaflets or posting signs that educate the public about the law or that mention the opportunity to obtain law school clinic representation, expose clinic lawyers and students to the threat of sanctions if they are involved in such educational efforts.

1. The ban on "solicitation" contained in the Rule XX Amendments applies to every communications medium, and applies even if the purpose of the leaflet or poster is nothing more than to inform potential clients who are desperately in need of counsel that the law-school clinics can respond to that need.

IV. The Ongoing Harm to the Client-Plaintiffs

1. The Rule XX Amendments have thus deprived client-plaintiffs of law school clinic representation, and no alternatives are available to client-plaintiffs.

1. Those client-plaintiffs for whom environmental advocacy is a pressing concern do not have adequate resources to retain private counsel to handle complicated and expensive environmental litigation.

1. Even if they could afford to retain private counsel, the client plaintiffs are not aware of available counsel capable of handling such complicated matters, especially in the environmental area. Indeed, due to conflicts arising out of the representation of other clients, attorney members of the private bar would be unable to handle such matters for the client-plaintiffs even if the organization possessed the substantial funds needed to retain such counsel.

1. In addition, the client-plaintiffs are not aware of available counsel capable of handling such complicated matters, especially in the area of environmental litigation, who are willing to work pro bono.

1. As associations, the client-plaintiffs are unable to represent themselves in court pro se. Rather, they must appear by licensed attorneys.

1. The client-plaintiffs regularly encounter threats to their environment, public health, civil rights, and economic well-being, for which they require ongoing legal assistance, ranging from full-scale litigation on major matters, to many smaller instances of representation. They will certainly face such threats in the future. The client-plaintiffs require legal assistance and representation in order to assess their members' concerns and determine appropriate remedies. The client-plaintiffs have relied on TELC or LLC to resolve problems, often without resort to litigation.

1. The client-plaintiffs currently find themselves without representation on several matters. For example, ST. JAMES CITIZENS is opposed to CS Metals, Inc.'s plan to build a metal recovery facility in St. James Parish on the ground that the Parish is already overburdened by pollution from industrial projects. ST. JAMES CITIZENS asked TELC to represent it in this matter, and TELC has declined to provide representation because ST. JAMES CITIZENS has been unable to demonstrate that 51 percent of its members satisfy the income guidelines contained in the Rule XX Amendments.

1. ST. JAMES CITIZENS also needs legal representation in connection with its opposition to Kaiser Aluminum and

Chemical Co.'s petition to the LDEQ to increase the level of its polyvinyl chloride emissions by 150 percent. TELC cannot represent ST. JAMES CITIZENS in this matter because the organization cannot certify that 51 percent of its members satisfy the income guidelines for representation of individuals.

1. CLEAN requires legal representation in connection with high air pollution levels in the residential neighborhood of Carlyss in Calcasieu Parish. Air tests in that neighborhood have revealed benzene levels over two-hundred times the State ambient air quality limit. The high levels of benzene, a known human carcinogen, are a real and immediate threat to the health and safety of the Lake Charles community. Yet none of the local chemical facilities has reported a release that could explain such high levels in this residential neighborhood. CLEAN needs legal counsel to represent it in this matter, both to educate CLEAN about its rights and to pursue whatever legal recourse is available. However, as a result of the Rule XX Amendments, CLEAN finds itself without legal counsel.

1. LEAN, SCLC, and other client-plaintiffs oppose plans to ship 3.4 million gallons of napalm from the Fallbrook Naval Weapons Station in California to Louisiana. Upon arrival in Louisiana, the napalm is to be burned at the Rhodia, Inc. plant near Southern University. LEAN has asked TELC to represent it and the other groups in this matter, but TELC has indicated to LEAN that it could not undertake representation for the sole reason that LEAN could not certify that it satisfied the requirements of Section 5 of the Rule XX Amendments. Absent the impediment established by the Rule XX Amendments, TELC would have presented this case to its Legal Advisory Board for approval.

1. In another matter, LEAN opposes plans to reopen a long dormant electrical generating facility in Monroe, Louisiana. TELC has informed LEAN member group, Citizens for Clean Air and Water, that TELC cannot represent them in this matter because of the group's inability to certify that it satisfies the requirements of Section 5 of the Rule XX Amendments. LEAN has not asked TELC to represent it in this matter because TELC has already indicated that the Rule XX Amendments prevent TELC from representing LEAN in new matters because of LEAN's inability to certify that it satisfies the "51 percent rule."

1. LOUISIANA ACORN requires legal assistance to redress its members' legal rights in connection with plans to build a concrete crushing plant on Dakin Street in a residential neighborhood in Jefferson Parish. LOUISIANA ACORN also requires legal support in its efforts to petition for better regulations governing lead pollution. However, LOUISIANA ACORN is unable to qualify for representation by a law school clinic because of its inability to comply with the 51 percent rule.

1. NBREA would like East Baton Rouge Parish to reconsider the current zoning status of certain predominantly African-American communities in the Parish for heavy industrial development. However, as a result of the Rule XX Amendments, NBREA finds itself without access to legal representation of the clinics.

1. These are just some examples of how the Rule XX Amendments have impermissibly infringed the constitutional rights of the client-plaintiffs since they were first promulgated in June, 1998.

Impact on Law Professor-Plaintiffs

I. Plaintiffs KUEHN, GOBERT, and TEEL

1. The Rule XX Amendments impermissibly restrict the academic freedom of plaintiffs KUEHN, GOBERT, and TEEL and also violate their associational and speech rights. As supervising lawyers and clinical program supervising lawyers at Tulane University Law School, KUEHN, GOBERT, and TEEL are responsible for overseeing and coordinating the work of TELC, including selecting cases and clients and supervising student attorneys in representing community organizations and individuals before state courts and agencies. In connection with TELC, plaintiffs KUEHN, GOBERT, and TEEL have only represented clients who cannot afford to retain private attorneys.

1. Prior to the enactment of the Rule XX Amendments, KUEHN, GOBERT, and TEEL determined whether TELC should accept a particular client and case based on several factors, including the pedagogic value of the case and its value to the public interest.

1. The Rule XX Amendments have impermissibly restricted the academic freedom of KUEHN, GOBERT, and TEEL by preventing them from utilizing non-state funds to provide representation to clients whose cases afford the best teaching and learning opportunities. Organizations have been unable to certify to TELC that they meet the income restrictions imposed by the Rule XX Amendments. Thus, TELC can no longer represent community organizations in new matters. Because the Rule XX Amendments effectively bar TELC from representing community organizations and obtaining new clients, the Rule XX Amendments have harmed KUEHN, GOBERT, and TEEL by preventing them from teaching clinical law students how to develop and handle clients' cases.

1. The Rule XX Amendments require KUEHN, GOBERT, and TEEL to deny TELC representation to potential clients even though the activities of TELC, as well as the salaries of KUEHN, GOBERT, and TEEL, are not funded by the State of Louisiana and even though those potential clients have no opportunity to obtain other private counsel.

1. Because the Rule XX Amendments are vague and overbroad, KUEHN, GOBERT, and TEEL have been reluctant to

determine that any potential client qualifies for representation. KUEHN, GOBERT, and TEEL fear that they, their students, and the rest of the TELC staff may become the targets of retaliatory sanctions, motions, and other claims of professional misconduct -- regardless of their good-faith efforts to comply with the new restrictions -- because the Rule XX Amendments are so ambiguous and can be construed in different ways. This fear of retaliation by the defense bar has chilled the speech of KUEHN, GOBERT, and TEEL, infringing their First Amendment rights of expression and association.

1. Section 10 of the Rule XX Amendments impedes plaintiffs KUEHN, GOBERT, and TEEL in their efforts to initiate contact with organizations for the purpose of informing them of issues affecting their health and welfare and offering TELC's free legal services. Prior to the enactment of Section 10, TELC staff had from time to time engaged in such outreach as a means of informing citizens of their rights and the legal advocacy services provided by TELC. Because of the Rule XX Amendments, they can no longer offer TELC's legal assistance, thus penalizing the TELC supervising attorneys, staff, students, and their community organization clients for engaging in protected First Amendment activity. Section 10 thus intrudes upon the academic freedom of KUEHN, GOBERT, and TEEL by further limiting their selection of cases and activities for TELC's curriculum, and impairs their rights of speech and association by chilling them from associating with, advising, and representing community organizations.

II. Plaintiff JOHNSON

1. The Rule XX Amendments impermissibly restrict the academic freedom of plaintiff JOHNSON and also infringe her rights of free speech and association. As Director of CLC and a Professor of Clinical Law at Tulane University, JOHNSON is responsible for overseeing CLC, including selecting cases and clients and supervising student practitioners before state courts and agencies. In connection with CLC, JOHNSON has only represented clients who cannot afford to retain private counsel.

1. Although CLC has represented community organizations, CLC's state court docket consists primarily of the representation of individuals in family law matters. Prior to the enactment of the Rule XX Amendments, JOHNSON, together with her colleagues at CLC, determined whether CLC should accept a particular client based on several factors, including the pedagogical value of the case, its value to the public interest, and the client's inability to afford private counsel. The Rule XX Amendments infringe JOHNSON's academic freedom by preventing JOHNSON and CLC from utilizing non-state funds to provide representation to clients whose cases afford the best teaching opportunities but who do not meet the income requirements of Sections 4 and 5 of the Rule XX Amendments.

1. JOHNSON and her colleagues at CLC currently intend to expand the CLC's legal work into other substantive areas of the law. In particular, they want CLC to begin representing communities that are suffering from blighted housing. JOHNSON and her colleagues at CLC believe this casework will provide an excellent educational opportunity for student practitioners, and Tulane clinical law students have expressed an interest in learning how to represent community organizations that seek to improve housing conditions.

1. In pursuing this work, CLC will need to represent increased numbers of community organizations. However, because the Rule XX Amendments make it impossible to provide representation to community organizations, Johnson and her colleagues at CLC are unable to engage in this housing work.

1. The Rule XX Amendments thereby infringe JOHNSON's academic freedom by preventing JOHNSON and other CLC instructors from teaching clinical law students how to develop and handle those cases that CLC deems to be most pedagogically appropriate.

1. Section 10 of the Rule XX Amendments violates JOHNSON's right to free speech and association because it impedes JOHNSON's efforts to initiate contact with individuals and organizations for the purpose of educating them about their legal rights and remedies and informing them about the legal services offered by CLC. CLC does not regularly conduct such client outreach, but from time to time, and prior to the enactment of Section 10, JOHNSON had engaged in client outreach as an effective and important means for obtaining clinical clients and as a vehicle for associating with community groups. Because of the Rule XX Amendments, however, she can no longer offer them CLC's legal assistance, thus penalizing JOHNSON, as well as the individual and community organization clients, for engaging in protected First Amendment activity. Section 10 intrudes upon JOHNSON's right to academic freedom by further limiting her selection of cases and activities for CLC's curriculum, and impairs her right of free association and speech by chilling her from associating with, and providing legal advice to, individuals and community organizations.

III. Plaintiff QUIGLEY

1. The Rule XX Amendments impermissibly restrict the academic freedom of plaintiff QUIGLEY. As Director of LLC and as an Associate Professor of Law at Loyola University, QUIGLEY is responsible for overseeing all aspects of LLC, including selecting cases and clients and supervising student attorneys in representing community organizations and individuals before state courts and agencies. In connection with LLC, QUIGLEY has only represented clients who

cannot afford to retain private attorneys.

1. Prior to the enactment of the Rule XX Amendments, QUIGLEY, in concert with other Loyola clinic professors, determined whether LLC should accept a particular client and case based on a number of pedagogically relevant factors, including where the case might be brought, the substantive issues in the case, the interests of the students, the interests of the faculty, and most importantly, the educational opportunity offered by the factual and legal situation.

1. Now, in order to comply with the Rule XX Amendments, QUIGLEY may not permit LLC to use its resources to represent individuals and community organizations whose cases afford the best teaching opportunities because clients now must be selected based on Sections 4, 5, and 10 of the Rule XX Amendments rather than the pedagogic value of the case as determined by QUIGLEY. Therefore, QUIGLEY's freedom to use clinic resources in the manner he deems pedagogically appropriate has been restricted, impermissibly burdening QUIGLEY's academic freedom.

1. Additionally, QUIGLEY's freedom to use clinic resources to associate with clients for the sake of advocating shared beliefs and views has been burdened because the Rule XX Amendments prohibit students from handling any case in which the client was solicited, and also prevent QUIGLEY from involving students in the representation of clients who fail to meet the income and disclosure requirements in the Rule XX amendments.

1. QUIGLEY is also harmed by Section 4 -- requiring individuals to meet a stringent standard establishing their indigency -- because its rigidity interferes with his academic freedom and also prevents LLC from representing individuals who are genuinely unable to afford other counsel. While LLC has referred to poverty thresholds and legal service criteria as guidelines to help select cases, as a program in a private university LLC has always had the flexibility to choose to represent for free some people who do not fall into the government categories but who obviously also cannot afford private counsel. LLC has done this because it offers a pedagogical opportunity for clinical teaching and advances the public interest. The Rule XX Amendments are too rigid and inflexible to allow QUIGLEY the freedom to teach his students how to represent people who cannot otherwise afford legal representation in the way he determines is best. The Rule XX Amendments infringe academic freedom and the right to speech and association by imposing an inflexible and inappropriate standard of indigency on representation of individuals by LLC.

1. Section 10 of the Rule XX Amendments violates QUIGLEY's right to free speech and association because it impedes his efforts to initiate contact with individuals and organizations for the purpose of educating them about their legal rights and remedies and informing them about the legal services offered by LLC. Although LLC does not regularly conduct such client outreach, from time to time, and prior to the enactment of Section 10, QUIGLEY has engaged in client outreach as an effective and important means for obtaining clinical clients and as a vehicle for associating with community groups. Because of the Rule XX Amendments he can no longer offer LLC's legal assistance, thus penalizing QUIGLEY as well as the individual and community organization clients, for engaging in protected First Amendment activity. Section 10 intrudes upon QUIGLEY's right to academic freedom by further limiting his selection of cases and activities for LLC's curriculum, and impairs his First Amendment right of association and speech by chilling him from associating with, and providing legal advice to, individuals and community organizations.

1. Moreover, because the Rule XX Amendments are vague and overbroad, QUIGLEY has been reluctant to determine that any organizational client qualifies for representation. QUIGLEY fears that he, his students, and his staff may be the targets of retaliatory sanctions motions and other claims of professional misconduct - regardless of their good-faith efforts to comply with the new restrictions -- because the Rule XX Amendments are so ambiguous and can be construed in different ways.

1. This fear of retaliation by the defense bar has harmed LLC and has further infringed on QUIGLEY's First Amendment rights of expression and association.

Impact on Law Student-Plaintiffs

I. Plaintiff ELS

1. The constitutional rights of plaintiff ELS and its members are impaired by the Rule XX Amendments. ELS engages in various activities designed to promote educational opportunities at Tulane Law School and to further environmental protection. For example, ELS has worked together with community groups and assisted them in their efforts to resist pollution and harm to the environment. ELS also promotes environmental education at Tulane, both informally and as part of the curriculum. The Rule XX Amendments have a direct negative impact on the quality of clinical legal education provided by TELC, thereby impairing ELS and its members' academic freedom.

1. As a campus student organization, ELS is harmed because the Rule XX Amendments undermine the academic freedom of members of the Tulane University community. The members of ELS chose to attend Tulane in order to receive a high quality education and to learn from one another and from the Tulane faculty in an atmosphere characterized by the free exchange of ideas. For some, the public service advocacy of TELC was the determining factor in deciding to matriculate at Tulane University Law School. The Rule XX Amendments chill Tulane students and

faculty from exercising important First Amendment rights because the rule inhibits students and faculty members from engaging in speech, association, and petitioning of government which certain business and governmental interests find distasteful. The Rule XX Amendments thus represent a direct assault on the ability of the Tulane University community to learn together and from one another.

1. Members of ELS are deeply interested in the environmental law program at the Tulane University Law School, of which TELC is a central component. The Tulane University Law School's environmental program has earned its reputation as among the most prestigious in the country, and the program's reputation was central to the decision of ELS's members to attend Tulane. Indeed, many second-year law student members of ELS have applied for admission to TELC, and many first-year students will apply for admission to TELC when they are eligible to do so. The Rule XX Amendments have limited the quantity and diversity of clients which TELC can represent, and have prevented TELC from choosing those cases which are most appropriate to the training of TELC student practitioners. As a result, the Rule XX Amendments have, and will continue to have, a negative impact on the quality of the educational experience available to and enjoyed by the members of ELS.

II. Plaintiff GAPSA

1. The Rule XX Amendments violate the constitutional rights of GAPSA by restricting the subject matter of their education in a manner that directly harms law students and threatens the academic freedom of all graduate and professional students.

1. The Rule XX Amendments harm members of GAPSA in their post graduate efforts to obtain employment and in their professional lives. The educational opportunity provided by TELC is diminished because students can no longer learn about the law by representing community organizations. Upon information and belief, law firms and other potential employers are aware that the Rule XX Amendments have diminished the quality of the legal education offered by TELC and are therefore less likely to hire Tulane graduates. As a direct result of the impairment of their substantive legal education, students' careers have been and will be adversely affected.

III. Plaintiffs CAUSEY and DELIZIA

1. The Rule XX Amendments impermissibly restrict the academic freedom of plaintiffs CAUSEY and DELIZIA.

1. CAUSEY and DELIZIA, currently third-year students, decided to attend Tulane University Law School because of the strength of its academic reputation and clinical legal education program in general, and because of the environmental law program and TELC in particular. In their first two years at Tulane, both worked diligently to secure very desirable, limited spots in TELC. In addition to studying hard, earning good grades, and distinguishing themselves as intelligent, analytical, industrious, and ethical law students, CAUSEY and DELIZIA took additional environmental law classes that significantly increased their workload but supplied the necessary foundation to support anticipated participation in TELC. Both met TELC's selective criteria and were accepted to participate in TELC for the academic year 1998-99. CAUSEY and DELIZIA declined other interesting opportunities so that they could participate in TELC.

1. By limiting TELC's ability to represent community organizations, the Rule XX Amendments have impaired CAUSEY and DELIZIA's educational experience and the quality of their legal training. Because TELC has severely reduced its intake of cases as a result of the Rule XX Amendments, neither has been able to work on a case from its genesis, depriving both of a critical aspect of clinical legal training. They have not experienced the rich variety of cases that they and their professors believe is pedagogically sound. In sum, CAUSEY and DELIZIA have not received the educational experience and legal training they would have had the LOUISIANA SUPREME COURT not impermissibly restricted Supreme Court Rule XX.

1. Moreover, both CAUSEY and DELIZIA are concerned that they could be the target of retaliatory sanctions motions, charges of professional misconduct, or even accusations that they have engaged in the unauthorized practice of law by adversaries seeking to exploit the vagueness and overbreadth of the Rule XX Amendments. Both are particularly concerned because any such ethics complaint, no matter how groundless, would have to be reported to the state and federal bars in which they will seek admission. This fear of retaliation by the defense bar has silenced CAUSEY and DELIZIA and further infringed on their rights of free expression and association.

IV. Plaintiff HANAMAN

1. HANAMAN, currently a second-year student at Tulane University Law School, has been selected for a position as a student attorney in TELC for the 1999-2000 academic year. Like other successful applicants to TELC, HANAMAN has worked diligently in order to improve her candidacy. In addition to studying hard, earning good grades, and distinguishing herself as an intelligent, analytical, industrious, and ethical law student, HANAMAN has taken environmental law classes and is currently vice-president of ELS. These activities have appreciably increased her workload, but have helped to prepare her for the intensive academic and clinical experience she expects to receive as a student practitioner in TELC. HANAMAN declined other interesting academic opportunities so that she could

participate in TELC.

1. The Rule XX Amendments will interfere with HANAMAN's academic freedom rights by severely restricting TELC's client base, case load, and range of cases. As a result of the Rule XX Amendments, HANAMAN will not be able to participate in the rich variety and quantity of cases that TELC would ordinarily offer. Thus, the Rule XX Amendments will impair her educational experience and the quality of her legal training.

1. Moreover, by enrolling in TELC in the 1999-2000 academic year, HANAMAN risks being the target of retaliatory sanctions, charges of professional misconduct, or even accusations that she has engaged in the unauthorized practice of law by adversaries seeking to exploit the vagueness and overbreadth of the Rule XX Amendments. Any such ethics complaint, no matter how groundless, would be reported to the state and federal bars in which she will seek admission after her graduation. This fear of retaliation infringes HANAMAN's First Amendment rights of expression and association.

1. HANAMAN hopes to pursue a career in environmental law after she graduates from law school. The environmental law program at Tulane University Law School is currently one of the most well-regarded programs of its kind in the country, and the program's reputation among employers played a central role in HANAMAN's decision to attend Tulane. By limiting TELC's ability to represent community organizations, however, the Rule XX Amendments will affect HANAMAN's educational experience and the quality of her legal training. Upon information and belief, potential legal employers are aware of the effects of the Rule XX Amendments, and therefore will be less likely to hire Tulane graduates. Thus, the Rule XX Amendments will have a direct adverse effect on HANAMAN's career.

Impact on Donor-Plaintiff

1. The Rule XX Amendments impermissibly interfere with donor plaintiff SHEARER's rights of free speech and association. SHEARER has contributed, and will continue to contribute, funds to support TELC because he strongly believes in the importance of the education provided by TELC and the value of its work on behalf of individuals and organizations who are unable to afford private counsel. The Rule XX Amendments harm SHEARER by preventing his donations from being used to the full extent he seeks.

1. SHEARER is harmed because the LOUISIANA SUPREME COURT has directed how TELC should spend the money he has donated, even though the LOUISIANA SUPREME COURT lacks sufficient authority to control the use of private funds. SHEARER believes that TELC, like other entities that mediate between citizens and government, plays an essential role in American society in stabilizing and strengthening democratic government. SHEARER donates to TELC because he believes it effectuates this goal. He is harmed by the Rule XX Amendments because they weaken the capacity of law clinics to perform this vital mediating function that SHEARER seeks to strengthen through his donations.

1. The Rule XX Amendments also violate SHEARER's rights under the First Amendment because they interfere with the efforts of TELC faculty in teaching students. SHEARER has funded TELC because he believes that the faculty will exercise its pedagogic discretion independently by identifying matters for study that promote legal education and democratic values. SHEARER's right to freedom of speech is violated because the Rule XX Amendments prevent TELC faculty from exercising their independent pedagogic judgment about what and how to teach in their classes, and undercut SHEARER's wish that such judgment be exercised to enforce laws and advance the public interest.

Necessity for Relief

1. Unless defendant LOUISIANA SUPREME COURT is preliminarily and permanently enjoined from implementing and enforcing the Rule XX Amendments, plaintiffs will, as set forth above, continue to suffer irreparable and continuing harm and injury through the deprivation of their constitutional rights.

1. The substantial threat of irreparable harm to plaintiffs from the deprivation of their constitutional rights outweighs any negligible damage the relief sought might cause to the LOUISIANA SUPREME COURT.

1. The relief sought by plaintiffs will not disserve the public interest, because the Rule XX Amendments infringe plaintiffs' constitutional rights, and the preservation of such constitutional rights in fact will further the public interest.

1. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

1. The Rule XX Amendments constitute viewpoint discrimination in violation of the First Amendment to the United States Constitution and Article I, Section 7 of the Constitution of the State of Louisiana, because they were intended to, and do, discriminate against the TELC law professor-plaintiffs, student-plaintiffs, their client plaintiffs, and the donor-plaintiff on the basis of their political views while favoring the views of certain business entities adverse to those plaintiffs.

SECOND CLAIM FOR RELIEF

1. The Rule XX Amendments violate the equal protection clause of the Fourteenth Amendment to the United States Constitution, and Article I, Section 3 of the Constitution of the State of Louisiana, because they were intended to, and do, discriminate against the TELC law professor-plaintiffs, student-plaintiffs, and their client plaintiffs on the basis of their political views while favoring the views of certain business entities adverse to those plaintiffs.

THIRD CLAIM FOR RELIEF

1. Section 10 of the Rule XX Amendments, forbidding student plaintiffs in law school clinics that neither receive state funds nor operate for commercial gain from representing any indigent individual or community group if any clinical supervising lawyer, staff person, or student practitioner initiated any contact or communication with the client for purposes of representing that client, violates the plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Sections 7, 9, and 22 of the Constitution of the State of Louisiana because it infringes the plaintiffs' rights of freedom of speech, freedom of association, and to petition the government for redress of grievances.

FOURTH CLAIM FOR RELIEF

1. Section 4 of the Rule XX Amendments, forbidding law professor plaintiffs and student-plaintiffs in law school clinics that neither receive state funds nor operate for commercial gain from representing any indigent individual or family unless the client can document that its income is less than the particular indigency standard set by the LOUISIANA SUPREME COURT, violates the rights of the law professor plaintiffs and student-plaintiffs under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 9, and 23 of the Constitution of the State of Louisiana because it improperly infringes upon their academic freedom.

1. Section 5 of the Rule XX Amendments, forbidding law professor plaintiffs and student-plaintiffs in law clinics that neither receive state funds nor operate for commercial gain from representing any indigent community organization client plaintiff unless the client can document that at least 51 percent of its members meet the particular indigency standard for individuals set by the LOUISIANA SUPREME COURT, violates the rights of the law professor-plaintiffs and student-plaintiffs under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 9, and 23 of the Constitution of the State of Louisiana because it improperly infringes upon their academic freedom.

FIFTH CLAIM FOR RELIEF

1. Section 5 of the Rule XX Amendments, compelling any client plaintiff seeking representation from law professor-plaintiffs and student-plaintiffs in law school clinics that neither receive state funds nor operate for commercial gain to (a) obtain private financial and other information from its members, (b) disclose such information as a condition for obtaining clinical legal representation, and (c) make written certification of the organization's inability to afford private counsel subject to inspection by the LOUISIANA SUPREME COURT, and potentially others, violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 9, and 22 of the Constitution of the State of Louisiana, because Section 5's rigid income guidelines and intrusive income verification procedures pose a substantial risk of suppressing plaintiffs' freedom of speech, freedom of association, and right to petition the government for redress of grievances, and, in fact, improperly burden those rights.

SIXTH CLAIM FOR RELIEF

1. Section 5 of the Rule XX Amendments, compelling any client plaintiff seeking representation from law professor-plaintiffs and student-plaintiffs in law school clinics that neither receive state funds nor operate for commercial gain to (a) obtain private financial and other information from its members, (b) disclose such information as a condition for obtaining clinical legal representation, and (c) make written certification of the organization's inability to afford private counsel subject to inspection by the LOUISIANA SUPREME COURT violates the rights of the law professor plaintiffs, student-plaintiffs, and client-plaintiffs under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the Constitution of the State of Louisiana, because it provides insufficient guidance on how to comply with Rule XX and is therefore vague and overbroad.

SEVENTH CLAIM FOR RELIEF

1. The Rule XX Amendments violate the donor-plaintiff's rights to freedom of speech and association under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 9, and 22 of the Constitution of the State of Louisiana because they improperly interfere with his ability to advance his beliefs by contributing funds to law school clinics.

EIGHTH CLAIM FOR RELIEF 1. The Rule XX Amendments violate the due process clause of the Fourteenth Amendment to the United States Constitution, and Article I, Section 2 of the Constitution of the State of Louisiana, because the process by which the SUPREME COURT OF LOUISIANA adopted the Rule XX Amendments was arbitrary, capricious, biased, and lacking in fundamental fairness; deprived the client-plaintiffs of their protected liberty interests and fundamental constitutional rights without fair notice, explanation of defendant's evidence, or any

opportunity to be heard; and deprived the law professor-plaintiffs and student-plaintiffs of their protected liberty interests and fundamental constitutional rights without a fair explanation of defendant's evidence against them or a full and fair opportunity to be heard on that evidence.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court enter judgment in their favor and issue an order:

- (1) declaring that the Rule XX Amendments are unconstitutional;
- (2) granting preliminary and permanent injunctive relief enjoining defendant from implementing and enforcing the Rule XX Amendments, in whole or in part, against plaintiffs or any other persons or entities;
- (3) granting preliminary and permanent injunctive relief enjoining defendant from disciplining plaintiffs or any attorney or student practitioner, including but not limited to disqualification or removal from any case, disbarment, denial of admission to the Bar of the State of Louisiana, or prosecution for the unauthorized practice of law, in connection with a purported violation of the unconstitutional provisions of the Rule XX Amendments, in whole or in part;
- (4) granting preliminary and permanent injunctive relief directing defendant to continue in effect the provisions of Rule XX as they existed prior to the amendments in 1998 and 1999 and enjoining defendant from adopting unconstitutional student practice rules in the future;
- (5) awarding plaintiffs their costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (6) awarding such other equitable and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

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**motion to be filed for pro hac vice admission

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