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COURT URGED TO SUSTAIN RESTRICTION ON LEGAL SERVICES CORPORATION

(Legal Services Corporation v. Velasquez)

The Washington Legal Foundation (WLF) last week filed a brief asking the U.S. Supreme Court to sustain a restriction on the activities of groups that receive federal funding from the Legal Services Corporation (LSC), a federal organization created to assist poor Americans by providing them with subsidized legal representation.

In a brief filed with the Supreme Court, WLF argued that Congress did not violate the First Amendment when it decided to allow LSC fund recipients to represent poor Americans seeking welfare benefits but not to transform such suits into an attack on current welfare laws.

"Congress, not the courts, ought to decide how best to spend our tax dollars," WLF Senior Counsel for Litigation Affairs Shawn Gunnarson said after filing WLF's brief. "Nothing in the First Amendment requires Congress to subsidize challenges to the welfare laws, simply because it has generously decided to subsidize legal representation for individual Americans seeking to obtain welfare benefits."

This case stems from a series of restrictions imposed by Congress on the activities of LSC fund recipients. Forbidden activities included, among others, bringing class action suits, representing illegal aliens, lobbying, and challenging current welfare laws. In 1997, certain lawyers employed by LSC fund recipients, their clients, and contributors to LSC fund recipients challenged these and other restrictions in the U.S. District Court for the Eastern District of New York. The plaintiffs sought a preliminary injunction, which the district court denied. The U.S. Court of Appeals for the Second Circuit affirmed the district court's decision in all but one regard, concluding that a single provision violated the First Amendment.

In particular, the Second Circuit struck down a provision that prohibited LSC fund recipients from transforming individual suits-for-benefits into an attack on current welfare laws. The court reasoned that such a prohibition discriminated on the basis of viewpoint, in that it allowed funding for suits that accepted the legal status quo

while denying funding for suits that challenged it. Both the LSC and the United States, which had intervened in the case, filed petitions requesting Supreme Court review and the Court agreed to review the case.

In its brief, WLF urged the Supreme Court to reverse the Second Circuit's decision for three reasons. First, it argued that the suit-for-benefits exception, which allows individual suits to assist persons seeking welfare benefits but not suits to challenge current welfare laws, falls comfortably within the Court's own decisions affirming the government's broad power to fix limits on its subsidies. Second, WLF pointed out that, unless reversed, the Second Circuit's decision threatens to shift the power to define government subsidies from legislatures to courts, as constitutional doctrine becomes a means of second-guessing legislative decisions regarding the wisdom of selectively funding certain activities and not others. Third, WLF also argued that the suit-for-benefits exception does not consist of a viewpoint that deserves First Amendment protection, since "opposition to current welfare laws" is too broad and indistinct an idea to form an identifiable viewpoint.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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