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COURT STRIKES DOWN RESTRICTION ON LEGAL SERVICES CORPORATION

(Legal Services Corporation v. Velasquez)

Yesterday the U.S. Supreme Court, in a narrowly divided 5-4 decision, struck down a restriction on the activities of groups that receive funding from the Legal Services Corporation (LSC), a federal organization created to assist poor Americans by providing them with subsidized legal representation.

The decision in *Legal Services Corp. v. Velasquez* came as a disappointment to the Washington Legal Foundation (WLF), which had filed a brief asking the Court to sustain the restriction. In its brief WLF had 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.

"We are disappointed that the Supreme Court would prevent Congress from setting reasonable constraints on the use of federal tax dollars," WLF Senior Counsel for Litigation Affairs Shawn Gunnarson said. "As four dissenting Members of the Court made abundantly clear, the First Amendment had not been previously considered a bar on Congress's power to set reasonable limits on the use of federal monies. Thankfully, the decision is written narrowly enough not to threaten spending curbs outside the area of federally subsidized litigation."

A narrow five-Member majority of the Court, led by Justice Kennedy, ruled that the restriction preventing LSC fund recipients from challenging current welfare laws posed a violation of the recipients' First Amendment speech rights. In addition, the majority emphasized that it viewed the restriction as an indirect threat to its own independence. "By seeking to prohibit the analysis of certain legal issues and to truncate presentation to the courts, the enactment under review prohibits speech and expression upon which courts must depend for the proper exercise of the judicial power."

Four Members of the Court dissented. Led by Justice Scalia, they challenged the majority's holding as a novel interpretation of the First Amendment. In addition,

they concluded that the provision that the majority struck down was severable from other restrictions on the use of LSC funds.

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, invalidating a provision that prohibited LSC fund recipients from transforming individual suits-for-benefits into an attack on current welfare laws.

In its brief, WLF had 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 the Second Circuit's decision threatened 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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