

June 6, 2001

COURT UNANIMOUSLY APPROVES RESTRICTIONS ON LAW CLINIC ACTIVISM

(Southern Christian Leadership Conference v. Supreme Court of Louisiana)

The U.S. Court of Appeals for the Fifth Circuit in New Orleans handed the Washington Legal Foundation (WLF) and WLF's Economic Freedom Law Clinic at the George Mason University School of Law a long-awaited victory last week when it unanimously upheld restrictions placed by the Supreme Court of Louisiana on the filing of disruptive lawsuits by activist law school clinics in Louisiana.

In a thorough 31-page opinion the Court of Appeals held that the restrictions do not impermissibly abridge law students' freedom of speech. To be exact, the court determined that the state court's rule governing the authority of law students to represent clients in litigation was a viewpoint neutral rule that posed no violation of the First Amendment. The court's reasoning was succinctly expressed in the following passage:

The fundamental purpose behind the First Amendment is to promote and protect the free expression of ideas, unfettered by government intrusion. We are convinced, however, that Rule XX [the state court's rule governing legal practice by law students] will produce no legally significant chilling effect on the expressive speech of any of the Plaintiffs in this case.

"Activists have no business using law school clinics to disrupt the free enterprise system," WLF Senior Counsel for Litigation Affairs Shawn Gunnarson said soon after reviewing the court's decision. "The Louisiana Supreme Court was right to rein in the abusive litigation brought against legitimate businesses by law school clinics and their activist supporters, and we are grateful that the Fifth Circuit has decided to uphold that effort against constitutional attack."

This case originated with a controversy stirred up with the announcement that the Shintech Corporation was planning to build a plastics plant in St. James Parish, Louisiana. The Tulane Environmental Law Clinic led a coalition of environmental activists in an effort to block construction. The clinic did this despite an NAACP poll showing that 73% of local residents wanted the scores of jobs represented by the

Shintech plant. In the end, the Law Clinic and its allies managed to keep Shintech—and its jobs—out of St. James Parish.

Soon afterward the Supreme Court of Louisiana amended Rule XX of its rules of court, which permitted law students to practice law in certain circumstances. The amendments impose four new requirements on law students or law school clinics practicing law in Louisiana state courts. First, law students and law school clinic staff members may not represent a person or family whose annual income is more than twice the federal poverty level. Second, any community organization seeking legal representation by a law clinic must certify in writing that it is unable to pay for legal services. Third, the supreme court may terminate the certification of any law student to practice law without notice or hearing or a showing of cause. And fourth, law school clinic staff attorneys and law students certified to practice must avoid soliciting cases or clients.

Led by the Southern Christian Leadership Conference, more than a dozen activist organizations, including the Louisiana Environmental Action Network and the Louisiana Association of Community Organizations for Reform Now, filed a complaint in federal district court against the Louisiana Supreme Court. They alleged that the amendments to Rule XX violated various provisions of the federal and Louisiana constitutions. The supreme court filed a motion to dismiss for failure to state a claim, which the federal district court granted. The plaintiffs then appealed to the Fifth Circuit, which affirmed the district court's dismissal.

In its brief WLF urged the Fifth Circuit to affirm the district court's dismissal of the plaintiffs' claims for three reasons. First, under our federal system a federal court must give great deference to a state supreme court's rules regulating the practice of law in that state. Second, such deference is particularly fitting where the plaintiffs can claim no legal right to practice law. Third, the Fifth Circuit should follow the well-established rule that state courts are entitled to legislative immunity regarding the validity of disciplinary and practice rules.

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 business civil liberties.

* * *

For further information, contact WLF Senior Counsel for Litigation Affairs, R. Shawn Gunnarson, at (202) 588-0302.