

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

DAVID F. DOBBINS, NEW YORK FOUNDATION, LISA
E. CLEARY, DAVID W. ICHEL and DAVID G. KEYKO;
and MFY LEGAL SERVICES, INC., BROOKLYN LEGAL
SERVICES CORP. B, LEGAL SERVICES FOR NEW
YORK CITY and BRONX LEGAL SERVICES, INC., on
their own behalf and on behalf of their clients,

Plaintiffs,

against

COMPLAINT

LEGAL SERVICES CORPORATION,

Civil Action No.

Defendant.

I. INTRODUCTORY STATEMENT

1. This is a civil action arising under Article III of the United States Constitution, and the First and Tenth Amendments thereto, seeking redress against the Legal Services Corporation (hereafter “LSC”), an instrumentality of the United States, on behalf of persons and entities whose constitutional rights are violated by Congressional acts and statutes, and by regulations issued by LSC, restricting the professional activities of lawyers for the poor employed by local programs receiving funds from LSC (hereafter “LSC grantees”).

2. Plaintiffs, consisting of LSC grantees and private donors to LSC grantees, challenge, inter alia: (a) Congressional restrictions and LSC regulations imposing unconstitutional conditions that unduly burden the use by LSC grantees of contributions from state, local and private sources designed to fund a full spectrum of legal services for the poor; (b) Congressional restrictions on the use of LSC

and non-LSC funds to notify prospective clients of their legal rights and then offer to represent them; and (c) Congressional restrictions on the use of LSC and non-LSC funds to participate in class action litigation; and/or to claim, or collect and retain, court-ordered attorneys' fee awards.

II. JURISDICTION AND VENUE

3. Subject matter jurisdiction is conferred upon the Court by 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b), (e).

III. THE PARTIES

The Plaintiffs

4. Plaintiff DAVID F. DOBBINS is a private attorney, now “of counsel” to Patterson, Belknap, Webb & Tyler LLP, a private law firm in New York City. He wishes to donate his substantial litigation experience on a pro bono basis to MFY LEGAL SERVICES, INC. on behalf of certain indigent mentally ill subway riders in New York City against whom the Metropolitan Transportation Authority (hereafter “MTA”) has discriminated, contrary to state and federal law, in its issuance of half-fare MetroCards.

5. Plaintiff MFY LEGAL SERVICES, INC. (hereafter “MFY”) is a not-for-profit legal advocacy organization that provides legal assistance and representation to indigent clients in civil matters primarily in the Borough of Manhattan. In addition to providing legal representation in core areas including housing, disability, government benefits and family law, MFY has established a national reputation providing legal assistance to persons with mental disabilities. Plaintiff MFY, established in 1968, has received funding from LSC since LSC’s inception in 1974. Funding from LSC is allocated to MFY through LEGAL SERVICES FOR NEW YORK CITY and currently accounts for approximately 30% of MFY’s 2001 budget of approximately \$4,700,000, while the remaining 70% of

MFY's budget derives from sources that include New York State, New York City, charitable foundations and individual private donors, including plaintiffs LISA E. CLEARY, DAVID W. ICHEL and DAVID G. KEYKO. MFY brings this action on its own behalf and on behalf of its clients.

6. Plaintiff BROOKLYN LEGAL SERVICES CORP. B, known as SOUTH BROOKLYN LEGAL SERVICES, is a not-for-profit legal advocacy organization that provides legal assistance and representation to indigent clients in civil matters in the Borough of Brooklyn. It provides legal assistance in, among other things, housing, family law, government benefits, consumer, employment, health, education, disability, and tax related matters. SOUTH BROOKLYN LEGAL SERVICES, established in 1968, has received funding from LSC since LSC's inception in 1974. Funding from LSC is allocated to SOUTH BROOKLYN LEGAL SERVICES through LEGAL SERVICES FOR NEW YORK CITY. LSC funds accounted for approximately 33% of SOUTH BROOKLYN LEGAL SERVICES's audited income of \$4,301,372 in calendar year 2000, while the remaining 67% derived from private and other non-federal donors, including plaintiff NEW YORK FOUNDATION, New York City and New York State. SOUTH BROOKLYN LEGAL SERVICES brings this action on its own behalf and on behalf of its clients.

7. Plaintiff LEGAL SERVICES FOR NEW YORK CITY (hereafter "LSNY") has been providing free legal assistance to low-income people throughout New York City for more than 30 years. LSNY receives funding from LSC and other sources. In 2001, LSNY's total budget of approximately \$32 million included \$12 million from LSC (approximately 38% of its budget), and approximately \$20 million from non-LSC sources (approximately 62% of its budget). LSNY provides direct legal services in core practice areas including family, housing, government benefits, consumer and education law. It provides training and support for legal services lawyers in New York City. It also

functions as the umbrella organization that receives the annual LSC grant for New York City and redistributes the grant to community-based legal services programs in four of New York City's five boroughs. These programs include plaintiffs MFY and SOUTH BROOKLYN LEGAL SERVICES, as well as Bedford-Stuyvesant Community Legal Services; Bronx Legal Services; Brooklyn Legal Services Corp. A; Harlem Legal Services; and Queens Legal Services Corporation. In addition, LSNY operates the following units which also receive distributions of LSC funds: LSNY Brooklyn; Legal Services for the Elderly; and the LSNY Legal Support Unit. LSNY brings this action on its own behalf and on behalf of its clients.

8. Plaintiff BRONX LEGAL SERVICES, INC. (hereafter "BLS"), provides an array of free legal services to low-income individuals and families in the Bronx, New York, in such matters as eviction and other housing court cases, public benefits disputes, family court proceedings (frequently representing parents in abuse and neglect cases), education law cases, consumer cases, and wage and employment cases. BLS receives funding from many sources, including LSC. Funding from LSC is allocated to BLS through LEGAL SERVICES FOR NEW YORK CITY. BLS anticipates that LSC funds will account for approximately 42% of its \$4,568,231 in revenues for its fiscal year 2001, while the remaining 58% of its funds will derive from New York State, New York City and other public and private sources. BLS brings this action on its own behalf and on behalf of its clients.

9. Plaintiff NEW YORK FOUNDATION is a private charitable foundation established in 1909 that provides funding to legal services programs, including plaintiff SOUTH BROOKLYN LEGAL SERVICES, which offer legal representation to residents of disadvantaged communities in New York State. New York Foundation also provides funding to Farmworker Legal Services of New York, a former LSC grantee and a plaintiff in Velazquez v. Legal Services

Corporation, 97 Civ. 00182 (FB) (E.D.N.Y. filed Jan. 14, 1997).

10. Plaintiffs LISA E. CLEARY, a past Chair and current member of the Board of Directors of MFY; DAVID W. ICHEL, the current Chair of the MFY Board; and DAVID G. KEYKO, the current First Vice Chairperson of the MFY Board, have each contributed substantial funds to MFY over the past decade, and they intend to continue contributing substantial funds to MFY in the future, in order to permit MFY to offer a full spectrum of excellent legal services to the poor. LISA E. CLEARY is a member of the firm Patterson, Belknap, Webb & Tyler LLP; DAVID W. ICHEL is a member of the firm Simpson Thacher & Bartlett; and DAVID G. KEYKO is a member of the firm Pillsbury Winthrop LLP.

The Defendants

11. Defendant LEGAL SERVICES CORPORATION (“LSC”) is a nonprofit corporation established by Congress in 1974. Its directors are nominated by the President and confirmed by the Senate. LSC is charged with the responsibility of “providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.” 42 U.S.C. § 2996b(a). Congress appropriated \$329,330,000 to LSC for its 2001 grant year. As part of its statutory mandate, LSC is responsible for distributing funds appropriated by Congress “to qualified programs furnishing legal assistance to eligible clients.” 42 U.S.C. § 2996e(a)(1)(A). LSC disbursed \$20,102,198 for its grant year 2001 to programs furnishing legal assistance to indigent clients in New York State. LSC is also responsible for interpreting and enforcing any restrictions attached by Congress to those funds, including the restrictions challenged in this case. LSC’s grant funds for distribution to legal services programs in New York City are received by LSNY for distribution to LSNY subgrantees, including plaintiffs MFY, SOUTH BROOKLYN LEGAL SERVICES and BLS.

12. Plaintiffs anticipate that the United States will intervene as a defendant herein to defend the constitutionality of the Congressional acts and statutes and/or LSC regulations at issue.

IV. THE INCIDENTS AT ISSUE

The Legal Context

13. On April 26, 1996, President Clinton signed Pub. L. No. 104-134, an omnibus continuing budget resolution providing funds for the 1996 fiscal year. Pub. L. No. 104-134 imposed substantial restrictions on the ability of attorneys employed by LSC grantees to provide legal representation to indigent clients, including but not limited to the abilities: (a) to participate in class actions on behalf of their indigent clients; (b) to claim, or collect and retain, court-ordered attorneys' fee awards; (c) to inform potential clients of their legal rights and then offer to represent them, unless the potential client has affirmatively sought advice; (d) to provide information to state legislatures or to state administrative agencies, except under extremely limited circumstances; (e) to provide legal services to certain categories of indigent aliens; and (f) to represent incarcerated persons in any litigation. Pub. L. No. 104-134 proscribed the foregoing activities even if they are wholly funded by non-federal public and/or private sources.

14. The relevant provisions of Pub. L. No. 104-134 state:

None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity . . . that attempts to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency; that attempts to influence any part of any adjudicatory proceeding of any Federal, State, or local agency . . . designed for the formulation or modification of any agency policy of general applicability and future effect; that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar [legislative] procedure; that attempts to influence . . . oversight

proceedings of the [LSC] . . . ; that initiates or participates in a class action suit . . . ; that provides legal assistance for or on behalf of [certain categories of] alien[s] . . . ; that supports or conducts a training program for the purpose of advocating a particular public policy or encouraging a political activity . . . ; that claims . . . , or collects and retains, attorneys' fees pursuant to any Federal or State law . . . ; that participates in any litigation on behalf of a person incarcerated in a Federal, State or local prison; . . . that defends a person in a proceeding to evict the person from a public housing project if . . . the eviction proceeding is brought [because of charges of illegal drug activity]; [or that] accept[s] employment resulting from in-person unsolicited advice to . . . obtain counsel or take legal action

Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-53 to -56.

15. Section 504(d)(1) of Pub. L. No. 104-134 reinforces the ban on the ability of LSC grantees to use non-federal funds to engage in any of the proscribed activities listed above in ¶ 14 on behalf of their clients. This section states:

The Legal Services Corporation shall not accept any non-Federal funds, and no recipient shall accept funds from any source other than the Corporation, unless the corporation or the recipient, as the case may be, notifies in writing the source of the funds that the funds may not be expended for any purpose prohibited by the Legal Services Corporation Act or this title.

Pub. L. No. 104-134, § 504(d)(1), 110 Stat. 1321, 1321-56.

16. Congress has reenacted all relevant aspects of Pub. L. No. 104-134 annually since 1996. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-53 to -56; Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, § 502, 110 Stat. 3009, 3009-59 to -60 (1996); Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 502(a)(2), 111 Stat. 2440, 2510-11 (1997); Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, Title V, 112 Stat. 2681, 2681-107

(1998); Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, Title V, 113 Stat 1501, 1501A-49 (1999); D.C. Appropriations – FY 2001, Pub. L. No. 106-553, Title V, 114 Stat. 2762, 2762A-101 (2000); Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 107-77, Title V, 115 Stat. 748, 794-95 (2001) (hereafter collectively “LSC appropriations acts since 1996” or “the 1996 restrictions”). These 1996 restrictions are in addition to restrictions contained in the Legal Services Corporation Act, 42 U.S.C. §§ 2996 et seq. (hereafter “LSC Act”). The 1996 restrictions and the restrictions in the LSC Act are also effectuated through regulations promulgated by LSC, 45 C.F.R. §§ 1600 et seq. See, e.g., § 1610.8 (hereafter sometimes referred to as the “program integrity” regulation), § 1617 (prohibiting participating in class actions), § 1638 (prohibiting notifying prospective clients of their legal rights and then offering to represent them), and § 1642 (prohibiting claiming, or collecting and retaining, court-ordered attorneys’ fee awards).

17. LSC’s regulation 45 C.F.R. § 1610, including the so-called “program integrity” regulation, 45 C.F.R. § 1610.8, provides that the 1996 restrictions apply to the use by LSC grantees of all non-federal donations unless an LSC grantee spends such donations through a physically, financially and legally separate entity that does not receive any funding from LSC.

18. The regulations implementing the 1996 restrictions also make clear that the ban on "participation" in class actions is interpreted broadly to include acting as co-counsel, amicus curiae or otherwise providing representation relating to a class action. 45 C.F.R. § 1617.2(b)(1).

19. Plaintiff DAVID F. DOBBINS wishes to associate with lawyers employed by MFY in connection with a proposed lawsuit to be brought on behalf of certain indigent persons with mental disabilities against the MTA. These persons are eligible for half-fare MetroCards pursuant to a recently enacted state law requiring the MTA to establish a reduced fare rate program for persons with serious mental illness who are eligible for federal supplemental security income benefits. The lawsuit will allege that the MTA has adopted a policy and set of practices, in violation of state and federal law, that discriminate against eligible mentally disabled subway and bus riders and deter from benefitting from the program.

20. Past efforts by lawyers employed by MFY to secure half-fare MetroCards on behalf of mentally disabled individuals have resulted in favorable administrative action for the individual applicants (thus mooted any possible judicial review of MTA policy), but have not resulted in a change of policy by the MTA.

21. Accordingly, DAVID F. DOBBINS has determined that it is necessary to utilize a class action to challenge MTA policy, to provide efficient and effective representation to the client population, and to prevent repeated mooted of the legal challenge.

22. Plaintiff DAVID F. DOBBINS has been informed, however, that he may not utilize a class action because he is serving as co-counsel with lawyers employed by MFY's Mental Health Law Project.

23. DAVID F. DOBBINS has considered terminating his co-counsel relationship with lawyers employed by MFY's Mental Health Law Project in order to be free to utilize a class action. He has determined, however, that it would be inappropriate for him to act as sole counsel for a class of persons with mental disabilities with whom he has had no relationship, and about whom he has little

direct knowledge.

24. Plaintiff MFY has considered establishing and maintaining a separate entity, in accordance with 45 C.F.R. § 1610.8, that receives no funding from LSC and that operates an “objectively” separate legal program housed in a physically separate facility, in order to engage in restricted professional activities. MFY’s leadership has determined, however, that the programmatic, administrative and financial burdens associated with seeking to comply with 45 C.F.R. § 1610.8 are enormous and would result in a detriment to their clients.

25. Accordingly, as a direct result of the restrictions at issue herein, plaintiff DAVID F. DOBBINS may not associate with MFY in order to prosecute a class action on behalf of indigent clients for whom a class action is needed to provide adequate legal representation.

The Impact of the Restrictions on the Relationship
Between New York Foundation and South Brooklyn Legal Services

26. Plaintiff NEW YORK FOUNDATION donates private funds to SOUTH BROOKLYN LEGAL SERVICES to provide legal and technical assistance to family-based child care provider networks in Brooklyn, thus helping to create both high quality child care and employment opportunities for low-income parents. One goal of the project is to help individual women, many of whom are in welfare-to-work programs, establish their own not-for-profit child care businesses. When SOUTH BROOKLYN LEGAL SERVICES discovered that New York City had adopted a reimbursement formula for day care providers that mistakenly assumed that a month has 4 weeks rather than 4.3 weeks, SOUTH BROOKLYN LEGAL SERVICES requested that the City correct its erroneous formula. New York City refused to do so, and lawyers employed by SOUTH BROOKLYN LEGAL SERVICES then commenced litigation in New York State Supreme Court on

behalf of Jasmine Pabon and secured a payment of \$12,000 in retroactive child care costs for the client, as well as a promise from the City to correct all reimbursement calculations in the future.

27. Unfortunately, New York City has declined to provide retroactive reimbursement payments to the hundreds of other low-income women who are clearly entitled to retroactive payments. NEW YORK FOUNDATION has been advised that, under the existing LSC restrictions, lawyers employed by SOUTH BROOKLYN LEGAL SERVICES may not participate in a class action on behalf of similarly situated low-income women injured by the City's illegal policy, even though the lawyers' activities would be funded solely by a private grant from NEW YORK FOUNDATION.

28. Efforts by SOUTH BROOKLYN LEGAL SERVICES to secure alternative counsel to undertake this representation have been unsuccessful.

29. Plaintiff SOUTH BROOKLYN LEGAL SERVICES has considered establishing and maintaining a separate entity, in accordance with 45 C.F.R. § 1610.8, that receives no funding from LSC and that operates an "objectively" separate legal program housed in a physically separate facility, in order to engage in restricted professional activities. The leadership of SOUTH BROOKLYN LEGAL SERVICES has determined, however, that the programmatic, administrative and financial burdens associated with seeking to comply with 45 C.F.R. § 1610.8 are overwhelming and would result in a detriment to their clients.

30. Accordingly, under the restrictions at issue herein, SOUTH BROOKLYN LEGAL SERVICES may not utilize private donations from NEW YORK FOUNDATION to provide adequate legal representation to hundreds of low-income women that are entitled to retroactive reimbursements from New York City.

The Effect of the Restrictions on the Operation of MFY.

South Brooklyn Legal Services, LSNY and BLS

31. Prior to the imposition of the restrictions at issue herein, lawyers employed by plaintiffs MFY, SOUTH BROOKLYN LEGAL SERVICES, LSNY and BLS represented indigent clients by invoking all of the procedural tools generally available to privately funded lawyers. Since the imposition of the 1996 restrictions, however, lawyers employed by MFY, SOUTH BROOKLYN LEGAL SERVICES, LSNY and BLS have been required – on pain of losing LSC funding – to cease efforts: (a) to participate in class actions on behalf of their indigent clients; (b) to claim, or collect and retain, court-ordered attorneys' fee awards; (c) to inform potential clients of their legal rights and then offer to represent them, unless the potential client has affirmatively sought advice; (d) to provide information to state legislatures or to state administrative agencies, except under extremely limited circumstances; (e) to provide legal services to certain categories of indigent aliens; (f) to represent incarcerated persons in any litigation; and (g) to engage in all other LSC-restricted activities. Each plaintiff in this case, including the private donors who contribute funds and pro bono assistance to LSC grantees, wishes the LSC grantee plaintiffs and their employees to be able to provide a full spectrum of legal services to indigent clients.

32. The leadership of MFY, SOUTH BROOKLYN LEGAL SERVICES, LSNY and BLS have determined that the burden of establishing and operating a redundant objectively separate legal program housed in a separate physical facility – a burden which includes: (a) programmatic drawbacks, including drawbacks resulting from segregating lawyers who deliver day-to-day legal services from lawyers involved in more complex litigation requiring the use of restricted procedural options; (b) administrative difficulties of governance, supervision, staffing, resource allocation, and case management associated with operating redundant legal programs serving the same client community;

and (c) financial costs – is so overwhelming and significant as to not justify wasting scarce resources on the operation of such a program, especially when those resources could be devoted to the delivery of greater legal assistance to the poor.

33. Since the enactment of the 1996 restrictions, even when lawyers employed by plaintiffs MFY, SOUTH BROOKLYN LEGAL SERVICES, LSNY and BLS are funded wholly by non-federal sources, the lawyers have been unable to offer their clients the full range of representation that other lawyers offer their clients. For example, MFY lawyers have been unable to file class actions on behalf of mentally ill residents of adult homes, rendering it difficult for those clients to file suits asserting their legal rights because they often fear that if they bring suits as individuals they will suffer retaliation.

The Effect of the Restrictions on the Rights of Private Donors

34. Plaintiff NEW YORK FOUNDATION wishes to fund representation for poor persons that is of the same comprehensive nature and high quality required to be provided by all attorneys who practice law in New York State. The LSC restrictions on professional services funded wholly from private sources at issue herein substantially impair NEW YORK FOUNDATION's mission of enabling disadvantaged communities to obtain excellent legal representation. Specifically, NEW YORK FOUNDATION's effort to enable SOUTH BROOKLYN LEGAL SERVICES to provide legal representation to persons seeking to establish and operate qualified day care centers in economically disadvantaged communities has been adversely affected by the ban on participating in class actions and the ban on claiming, or collecting and retaining, court-ordered attorneys' fee awards.

35. As longtime private donors to MFY, plaintiffs LISA E. CLEARY, DAVID W. ICHEL, and DAVID G. KEYKO have developed an intense proprietary interest in MFY's legal program,

including a relationship with its legal staff and client population, and an identification with the organization, that is fully as intense as any interest in MFY asserted by LSC. Each of these individual donor-plaintiffs wishes their contributions to be used by MFY to provide a full range of legal services to poor clients. They object to any effort by LSC to banish lawyers funded by their contributions from the physical premises of the MFY legal program and to an isolated and physically separate legal program staffed by separate personnel. Moreover, they object to being forced to use their funds to establish and maintain a financially costly, administratively difficult and programmatically limited and redundant legal program in order to permit the delivery of a full range of legal services. In addition, DAVID F. DOBBINS wishes to contribute his pro bono resources and considerable expertise in complex litigation to MFY. He has developed an intense interest in associating with MFY's lawyers and clients to pursue the aforementioned proposed class action against the MTA, and he objects to being barred from associating with them to prosecute this proposed case.

The Effect of the Restrictions on State and Local Governments

36. The City and State of New York have determined that institutions of state and local government, such as courts, administrative agencies, and legislative bodies, function in a more efficient and just manner if the interests of poor persons are represented and articulated by lawyers employed by local institutions, many of which are LSC grantees. Accordingly, in 2001, the New York State and New York City governments made substantial grants to MFY, SOUTH BROOKLYN LEGAL SERVICES, LSNY and BLS, and to many other local institutions, to enable lawyers for the poor to participate fully in the processes of state and local government on behalf of indigent clients.

37. Since the restrictions at issue herein apply fully to activities funded solely by state and local government grants, the restrictions act to frustrate the purposes for which the grants

were made, and they constitute an unlawful interference in the operation of state and local governmental institutions by barring lawyers for the poor from engaging in crucial activities supportive of those institutions.

38. Since it is fiscally, administratively and programmatically onerous for state and local governments to establish “objectively” separate institutions that would satisfy LSC’s “program integrity” regulation, LSC’s restrictions impose an undue burden on the ability of state and local governments to direct and control the administration of their own funds.

The Effect of the Regulations on LSC Lawyers and Their Clients

39. Since the 1996 restrictions have been in effect, they have seriously impaired the First Amendment rights of lawyers employed by LSC grantees and of clients of LSC grantees, many of whom are indigent persons with no source of legal representation other than their local LSC grantee. For example:

(a) clients of legal services lawyers have not been able to claim, or collect and retain, court-ordered attorneys' fee awards, thus making their settlement negotiating position with adversaries weaker and reducing the deterrent effect of their lawsuits;

(b) clients and potential clients of legal services offices have been unable to bring class actions to enforce statutory and constitutional rights, subjecting their claims to repeated mooting and rendering it impossible to secure full relief in many settings;

(c) many aliens, including certain categories of aliens lawfully present in the United States, have been unable to secure legal representation to enforce basic labor, health, occupational safety, and housing laws intended to protect them, and to advocate their interests before legislative and regulatory bodies considering laws and regulations directly affecting them;

(d) many indigent persons have been unable to bring actions to enforce their legal rights, and to protect their health and welfare, because legal services lawyers whose employers receive any LSC funding are forbidden to inform such indigent persons of their legal rights and then offer to represent them, unless the potential client has affirmatively sought advice; and

(e) hundreds of millions of dollars in state, local and private money donated to legal services offices that receive any LSC funding have been subjected to the 1996 restrictions, eliminating alternative means of providing legal services to the poor.

V. CAUSES OF ACTION ARISING FROM THE RESTRICTIONS ON THE USE OF NON-FEDERAL FUNDS

40. The LSC appropriations acts since 1996, the LSC Act, and the regulations implementing them, by forbidding legal services lawyers employed by an LSC grantee from using non-federal funds to represent clients in activities proscribed by those appropriations acts and the LSC Act, unless the LSC grantee establishes and maintains programmatically flawed, administratively burdensome, and fiscally wasteful physically separate legal programs that receive no funding from LSC, impose an undue burden on the use of private, state and local funds by LSC grantees to advance First Amendment objectives and, thus, violate the First Amendment.

41. The LSC appropriations acts since 1996, the LSC Act, and the regulations implementing them, by imposing burdensome restrictions on the substantive purposes for which funds contributed by private donors, such as NEW YORK FOUNDATION, LISA E. CLEARY, DAVID W. ICHEL, and DAVID G. KEYKO, may be used, and on the geographical settings in which they may be used, and by imposing burdensome restrictions on the services contributed by pro bono lawyers, such as DAVID F. DOBBINS, violate the First Amendment rights of private donors to

contribute funds and pro bono assistance for the advancement of First Amendment objectives free from undue government restriction.

42. The LSC appropriations acts since 1996 and the regulations implementing them, by imposing burdensome restrictions on the substantive purposes for which funds contributed by state and local governments may be used, and the geographical settings in which they may be used, violate the Tenth Amendment and fundamental principles of federalism by interfering with the ability of state and local governments to exercise autonomous judgment concerning the allocation of state and local funds, and to ensure the just and efficient operation of state and local governmental institutions.

VI. CAUSES OF ACTION ARISING FROM THE RESTRICTIONS ON THE USE OF BOTH FEDERAL AND NON-FEDERAL FUNDS

43. The LSC appropriations acts since 1996 and the regulations implementing them, by forbidding lawyers employed by an LSC grantee from informing prospective clients of their legal rights and then offering to represent them, violate the First Amendment rights of LSC grantees, lawyers and clients.

44. The LSC appropriations acts since 1996 and the regulations implementing them, by requiring legal services lawyers employed by LSC grantees to refrain from claiming, or collecting and retaining, court-ordered attorneys' fee awards, and to refrain from participating in class action cases, violate the First Amendment rights of LSC grantees, lawyers and clients, and violate principles of separation of powers and federalism protected by Article III, the Tenth Amendment, and the Constitution generally.

45. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs respectfully request the Court to:

(a) declare that the provisions of the LSC appropriations acts since 1996, the LSC Act, and the regulations implementing them, which forbid legal services lawyers employed by an LSC grantee from using non-federal funds to represent clients in connection with activities proscribed by those provisions, unless the LSC grantee establishes and maintains programmatically flawed, administratively burdensome, and fiscally wasteful physically separate legal programs that receive no funding from LSC, impose an undue burden on the use of private, state and local funds by LSC grantees to advance First Amendment objectives and, thus, violate the First Amendment rights of LSC grantees MFY, SOUTH BROOKLYN LEGAL SERVICES, LSNY and BLS; and

(b) declare that the LSC appropriations acts since 1996, the LSC Act, and the regulations implementing them, by imposing burdensome restrictions on the substantive purposes for which funds contributed by private donors, such as NEW YORK FOUNDATION, LISA E. CLEARY, DAVID W. ICHEL and DAVID G. KEYKO, may be used, and on the geographical settings in which they may be used, and by imposing burdensome restrictions on the services donated by pro bono lawyers, such as DAVID F. DOBBINS, violate the First Amendment right of private donors to contribute funds and pro bono assistance for the advancement of First Amendment objectives free from undue government restriction;

(c) declare that the LSC appropriations acts since 1996 and the regulations implementing them, by imposing burdensome restrictions on the substantive purposes for which funds contributed by state and local governments may be used, and the geographical settings in which they may be used, violate the Tenth Amendment and fundamental principles of federalism by interfering with the ability of state and local governments to exercise autonomous judgment concerning the allocation of state and local funds, and to ensure the just and efficient operation of state and local governmental institutions; and

(d) declare that the LSC appropriations acts since 1996 and the regulations implementing them, by forbidding lawyers employed by an LSC grantee from informing prospective clients of their legal rights and then offering to represent them, violate the First Amendment rights of LSC grantees, lawyers and clients; and

(e) declare that the LSC appropriations acts since 1996 and the regulations implementing them, by requiring legal services lawyers employed by LSC grantees to refrain from claiming, or collecting and retaining, court-ordered attorneys' fee awards, and to refrain from participating in class action cases, violate the First Amendment rights of LSC grantees, lawyers and clients and violate principles of separation of powers and federalism protected by Article III, the Tenth Amendment and the Constitution generally; and

(f) grant appropriate preliminary, and final, equitable relief enjoining defendant LSC from disciplining any person or entity, including but not limited to dismissal, debarment, termination or suspension of funding, for using non-federal funds to engage in any of the acts prohibited by the 1996 restrictions, the LSC Act, and the regulations implementing them; and

(g) grant appropriate preliminary, and final, equitable relief enjoining defendant LSC from disciplining any person or entity, including but not limited to dismissal, debarment, termination or suspension of funding, for using federal or non-federal funds to claim, or collect and retain, court-ordered attorneys' fee awards; to participate in class action cases; and/or to inform potential clients of their legal rights and then offer to represent them; and

(h) grant such other and further relief as the Court shall deem proper, including the award of reasonable attorneys' fees and costs.

Dated: New York, New York
December ____, 2001

THE BRENNAN CENTER FOR JUSTICE

By: _____

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