The New York Times ON THE WEB

EDITORIAL DESK

# Separate and Inequitable

**(NYT) 303 words**
Published: December 6, 2005

When the Republicans won control over both houses of Congress in 1994, they declared war on the federally financed program that assists poor people with civil legal problems. While they stopped short of abolishing the program, they imposed deep budget cuts and pernicious restrictions designed to handcuff and muzzle lawyers for the poor.

In 2001, a 5-to-4 Supreme Court majority struck down one of those restrictions, an attempt to bar lawyers for the poor from challenging welfare laws. Now there is hope that another far-reaching limitation, the ''separate facilities'' rule, may be headed for extinction. This rule applies to poverty-law programs that receive federal money and wish to use funds from private charities and local and state governments to pursue class-action lawsuits and other types of cases barred by Congress. To do so, they must maintain a physically separate office, a prohibitively expensive undertaking.

But a federal district court has ruled, correctly, that there is ''no legitimate justification'' for the duplication of costs and has declared the separate-facilities rule an unconstitutional restriction of free speech. The federal Legal Services Corporation appealed that ruling, which is before a three-judge federal appeals panel in Manhattan. In arguments last month, **Burt Neuborne** of the **Brennan Center for Justice at the New York University School of Law** said the rule hobbled the representation of poor clients. He noted that the Bush administration did not require religious groups that receive federal funds to offer secular services, like counseling, to maintain a costly separate operation for that work.

The fact that Washington provides money for legal representation does not give it unlimited authority to control what lawyers say or do, or to restrict the use of private money so severely. The appellate court needs to make that crystal clear.