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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**LEGAL SERVICES CORPORATION v. VELAZQUEZ
ET AL.**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 99–603. Argued October 4, 2000– Decided February 28, 2001*

The Legal Services Corporation Act authorizes petitioner Legal Services Corporation (LSC) to distribute funds appropriated by Congress to local grantee organizations providing free legal assistance to indigent clients in, *inter alia*, welfare benefits claims. In every annual appropriations Act since 1996, Congress has prohibited LSC funding of any organization that represented clients in an effort to amend or otherwise challenge existing welfare law. Grantees cannot continue representation in a welfare matter even where a constitutional or statutory validity challenge becomes apparent after representation is well under way. Respondents—lawyers employed by LSC grantees, together with others—filed suit to declare, *inter alia*, the restriction invalid. The District Court denied them a preliminary injunction, but the Second Circuit invalidated the restriction, finding it impermissible viewpoint discrimination that violated the First Amendment.

Held: The funding restriction violates the First Amendment. Pp. 5–15.

(a) LSC and the Government, also a petitioner, claim that *Rust v. Sullivan*, 500 U. S. 173, in which this Court upheld a restriction prohibiting doctors employed by federally funded family planning clinics from discussing abortion with their patients, supports the restriction here. However, the Court has since explained that the *Rust* counseling activities amounted to governmental speech, sustaining view-

* Together with No. 99–960, *United States v. Velazquez et al.*, also on certiorari to the same court.

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point-based funding decisions in instances in which the government is itself the speaker, see *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U. S. 217, 229, 235, or instances, like *Rust*, in which the government uses private speakers to transmit information pertaining to its own program, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833. Although the government has the latitude to ensure that its own message is being delivered, neither that latitude nor its rationale applies to subsidies for private speech in every instance. Like the *Rosenberger* program, the LSC program was designed to facilitate private speech, not to promote a governmental message. An LSC attorney speaks on behalf of a private, indigent client in a welfare benefits claim, while the Government's message is delivered by the attorney defending the benefits decision. The attorney's advice to the client and advocacy to the courts cannot be classified as governmental speech even under a generous understanding of that concept. In this vital respect this suit is distinguishable from *Rust*. Pp. 5–8.

(b) The private nature of the instant speech, and the extent of LSC's regulation of private expression, are indicated further by the circumstance that the Government seeks to control an existing medium of expression in ways which distort its usual functioning. Cases involving a limited forum, though not controlling, provide instruction for evaluating restrictions in governmental subsidies. Here the program presumes that private, nongovernmental speech is necessary, and a substantial restriction is placed upon that speech. By providing subsidies to LSC, the Government seeks to facilitate suits for benefits by using the State and Federal Judiciaries and the independent bar on which they depend for the proper performance of their duties and responsibilities. Restricting LSC attorneys in advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the attorneys' traditional role in much the same way broadcast systems or student publication networks were changed in the limited forum cases of *Arkansas Ed. Television Comm'n v. Forbes*, 523 U. S. 666, and *Rosenberger v. Rector and Visitors of Univ. of Va.*, *supra*. The Government may not design a subsidy to effect such a serious and fundamental restriction on the advocacy of attorneys and the functioning of the judiciary. An informed, independent judiciary presumes an informed, independent bar. However, the instant restriction prevents LSC attorneys from advising the courts of serious statutory validity questions. It also threatens severe impairment of the judicial function by sifting out cases presenting constitutional challenges in order to insulate the Government's laws from judicial inquiry. The result of this restriction would be two tiers of cases. There would be lingering doubt

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whether an LSC attorney's truncated representation had resulted in complete analysis of the case, full advice to the client, and proper presentation to the court; and the courts and the public would come to question the adequacy and fairness of professional representations when the attorney avoided all reference to statutory validity and constitutional authority questions. A scheme so inconsistent with accepted separation-of-powers principles is an insufficient basis to sustain or uphold the restriction on speech. Pp. 8–12.

(c) That LSC attorneys can withdraw does not make the restriction harmless, for the statute is an attempt to draw lines around the LSC program to exclude from litigation arguments and theories Congress finds unacceptable but which by their nature are within the courts' province to consider. The restriction is even more problematic because in cases where the attorney withdraws, the indigent client is unlikely to find other counsel. There may be no alternative source of vital information on the client's constitutional or statutory rights, in stark contrast to *Rust*, where a patient could receive both governmentally subsidized counseling and consultation with independent or affiliate organizations. Finally, notwithstanding Congress' purpose to confine and limit its program, the restriction insulates current welfare laws from constitutional scrutiny and certain other legal challenges, a condition implicating central First Amendment concerns. There can be little doubt that the LSC Act funds constitutionally protected expression; and there is no programmatic message of the kind recognized in *Rust* and which sufficed there to allow the Government to specify the advice deemed necessary for its legitimate objectives. Pp. 12–14.

(d) The Court of Appeals concluded that the funding restriction could be severed from the statute, leaving the remaining portions operative. Because that determination was not contested here, the Court in the exercise of its discretion and prudential judgment declines to address it. Pp. 14–15.

164 F. 3d 757, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion in which REHNQUIST, C. J., and O'CONNOR and THOMAS, JJ., joined.