

**REPLY MEMORANDUM OF LAW IN SUPPORT OF
LEGAL SERVICES CORPORATION'S MOTION TO DISMISS**

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Preliminary Statement

After originally promising to submit a brief explaining why the *Velazquez* plaintiffs have standing to assert “as applied” challenges, and then filing papers on behalf of the new *Dobbins* plaintiffs with virtually no explanation as to who is actually asserting the claims, the plaintiffs’ reply papers now put forth two new theories of standing altogether.

Plaintiffs’ first new theory is that LSC has created a standardless licensing system which makes it impossible for them to affiliate with unrestricted legal services providers within the program integrity regulations. Plaintiffs claim they have standing to challenge this system without submitting to it.

In fact, LSC does not claim that grantees must obtain a “license” before affiliating; LSC has simply offered its grantees the *opportunity* to propose different forms of affiliate relationships, and to work with LSC to assure that the relationship will comply with LSC regulations. Thus, LSC’s arguments are not predicated on plaintiffs’ failure to get a “license.”

LSC’s argument is that the plaintiffs have not done *anything* to present this court with a ripe case or controversy. No plaintiff has entered into an affiliation with an unrestricted legal services provider and been notified of a possible violation of the program integrity regulations. No plaintiff is faced with the prospect of withdrawing from an ongoing representation as a result of a specific application of the congressional restrictions. And no plaintiff has presented LSC with a meaningful proposal for affiliation. These failings mandate dismissal whether considered under the rubric of standing (because no plaintiff has suffered a specific injury in a specific factual context), ripeness (because plaintiffs have brought their case before any restrictions could actually be applied to them), or exhaustion.

Plaintiffs’ second new theory of standing is suddenly to embrace two “proposals” for affiliation submitted in 1997, one from Legal Services of New York (“LSNY”) on behalf of

Queens Legal Services Corporation (“QLSC”) (“the Queens Proposal”), and another from Farmworker Legal Services of New York, Inc. (“FLSNY”). Plaintiffs argue that LSC’s rejection of these proposals gives standing not only to LSNY and FLSNY, but also to the other three grantee plaintiffs, who claim it would have been futile for them to try to establish a comparable relationship with an unrestricted legal services provider.

But these proposals were so patently insufficient that they could not possibly form the basis for an “as applied” challenge. Neither proposal made any attempt to establish any “physical separation,” any “separation of personnel,” or any financial separation beyond the “mere bookkeeping separation” that is expressly disallowed by the regulations. In rejecting these proposals, therefore, LSC did not actually have the opportunity to *apply* the program integrity regulations; LSC rejected the proposals because they did not satisfy the regulations *on their face*.

Plaintiffs’ reliance on these meaningless proposals again reveals that they have not asserted genuine “as applied” challenges seeking the reversal of specific decisions by LSC under the regulations; they are re-asserting facial challenges seeking a blanket invalidation of the program integrity regulations. While plaintiffs offer various reasons why the doctrines of collateral estoppel and law of the case should not bar these recycled claims, the claims cannot survive under these doctrines or *stare decisis*. The complaints should be dismissed.

Argument

A. Plaintiffs Misconstrue LSC’s Standing And Ripeness Arguments As Predicated Solely On A Failure To Exhaust An Imaginary Licensing System

Plaintiffs’ primary argument in reply is that LSC has required them to exhaust a “non-mandatory, standardless, informal advisory procedure.” Plaintiffs’ Memorandum of Law in Reply to the Government’s Opposition to Motion For a Preliminary Injunction and in Opposition to the Government’s Motion to Dismiss (“Reply Br.”) at 8. Thus, plaintiffs try to

collapse LSC's standing, ripeness, and exhaustion arguments into a single point: that according to LSC, "exhaustion of the LSC advisory process is a pre-condition to judicial review." *Id.*

LSC has never contended, however, that plaintiffs were *required as an administrative matter* to submit an affiliation proposal to LSC before forming a relationship with an unrestricted legal services provider. LSC has not created a "licensing scheme." Rather, LSC's contention is that submitting a proposal to LSC, and having that proposal rejected, could be one way for a grantee to obtain standing to bring a justiciable claim. Other possible ways include forming an affiliate relationship that LSC determines is in violation of the regulations, or engaging in a specific representation that was permissible at the outset of the matter, but later involved restricted activities requiring the grantee's withdrawal.

LSC's moving papers expressly stated that a grantee could have a justiciable dispute under any of these circumstances, and not simply as a result of a failure to get LSC's "approval" for a given affiliation. *See, e.g.*, Memorandum of Law in Opposition to Plaintiffs' Motion For a Preliminary Injunction and in Support of Legal Services Corp.'s Motion to Dismiss ("LSC Br.") at 21 ("Since none of the grantee plaintiffs has attempted to comply with the regulations *either* by affiliating with a legal services organization that does not accept funds from LSC, *or even* by submitting an affiliation proposal for the LSC's consideration") (emphasis supplied); *id.* at 23 (same); *id.* at 35 ("plaintiffs are not requesting permission to bring a specifically identified class action or collect a specifically identified attorneys' fee award").

Since plaintiffs have not presented the Court with any such dispute, they have not satisfied the standing requirements of alleging a specific injury for which they are seeking specific relief. (LSC Br. at 23 ("these allegations . . . do not represent a sufficiently concrete or particularized injury to confer standing") & 26 (plaintiffs are seeking "the relief the Velazquez

plaintiffs sought in their prior facial challenge, and that would be granted only if plaintiffs could bring a successful facial challenge”). In plaintiffs’ reply papers, they do not respond to this standing argument by particularizing their injury, nor do they circumscribe the extraordinarily broad relief they are seeking.¹

Similarly, plaintiffs have not asserted ripe “as applied” claims because they have not taken any action to cause either the program integrity regulations or a specific congressional restriction actually to be “applied” to them. LSC Br. at 24 (“The constitutionality of the program integrity regulations ‘as applied’ to a particular grantee can be determined only in the context of a specific factual dispute that demonstrates the agency’s specific interpretation and application of the regulations to that particular plaintiff.”). Plaintiffs’ reply papers still do not illustrate any specific factual dispute that they seek to litigate.

Thus, plaintiffs’ failure to seek LSC review is simply one of several related -- but independent -- deficiencies in their claims.²

B. LSC’s Rejection of The QLSC And FLSNY Proposals Does Not Give Plaintiffs Standing

After tilting at the windmill of LSC’s licensing system, plaintiffs suddenly switch their argument, and invoke two 1997 proposals to establish affiliates under the program integrity regulations. Specifically, plaintiffs claim in their reply papers that LSNY and FLSNY have standing to challenge LSC’s rejection of the Queens and FLSNY proposals, and that the program

¹ Instead of narrowing the relief sought, plaintiffs contend that their *ad damnum* clause was appropriate because an “as applied” challenge can yield relief for “similarly situated people as well as plaintiffs.” Reply Br. at 23. There is a world of difference, however, between ordering specific relief for a plaintiff and those similarly situated to the plaintiff, and invalidating a statute or regulation as to anyone.

² Since LSC has not actually imposed an administrative licensing scheme of the type posited by plaintiffs, plaintiffs’ legal arguments concerning the evils of such schemes are inapposite. *See* Reply Br. at 8-10. And while plaintiffs make bizarre accusations concerning the “procedural inadequacies” of that system, including LSC’s purported “fetish . . . of secrecy and unfettered discretion,” *id.* at 9, plaintiffs do not substantiate their accusations, nor do they explain why an advisory procedure should be anything other than informal.

plaintiffs other than LSNY and FLSNY have always wanted to create an affiliate exactly like the one proposed by LSNY on behalf of QLSC, but that it would have been futile for them to do so. Declaration of John C. Gray, executed on June 19, 2002 (“Gray Decl.”), ¶ 3; Declaration of Lynn M. Kelly, executed on June 19, 2002 (“Kelly Decl.”), ¶ 3; Declaration of Walker T. Thompson, executed June 19, 2002 (“Thompson Decl.”), ¶ 3.³

Plaintiffs begin by castigating LSC for ignoring these proposals and arguing in its prior papers that “none of the grantee plaintiffs has attempted to comply with the regulations ... even by submitting an affiliation proposal for the LSC’s consideration.” Reply Br. at 10. But the Queens Proposal was submitted in 1997 on behalf of a non-party, and was not mentioned in the complaints or in plaintiffs’ opening brief. *See* Memorandum of Law in Support of Plaintiffs’ Motion For a Preliminary Injunction (“P. Mem.”) at 9-18 & n. 19. When LSC submitted its answering brief, therefore, LSC did not know that the Queens Proposal was at issue. Only now, in their reply papers, do plaintiffs make the proposal the touchstone of their standing argument, offering to join QLSC party as a co-plaintiff and to amend the substance of the proposal. *See* Reply Br. at 12.

By the same token, what plaintiffs describe as a “proposal” by FLSNY was at most a question in a telephone call, with no follow-up at all by FLSNY. *See* Declaration of James F. Schmidt, executed on Nov. 15, 2001 (“Schmidt Decl.”), at ¶ 16. This phone call also

³ These declarations do little more than demonstrate plaintiffs’ fundamental misunderstanding of the program integrity regulations. For example, one grantee appears to be operating under the mistaken premise that the program integrity regulations do not permit any sharing of personnel or office equipment whatsoever (Gray June 19 Decl. ¶ 6), even though the regulations clearly state that LSC will consider “the existence of separate personnel” as a “factor [which] will not be determinative,” and “the degree of separation from facilities in which restricted activities occur” as another non-determinative factor. 45 C.F.R. § 1610.8(a) (3) (i), (iii).

was not included in the complaint, or in plaintiffs' original standing argument.⁴ If anything, plaintiffs' belated reliance on these two proposals shows how little thought plaintiffs gave to bringing a genuine "as applied" challenge.

More importantly, LSC's rejection of the Queens and FLSNY proposals does not give plaintiffs standing to bring "as applied" challenges. Both proposals contemplated two legal services organizations that would share an office, an unspecified proportion of their personnel (including, apparently, the possibility of sharing all personnel), and virtually every office supply except stationery. The only distinctions between the two organizations would be their names (*e.g.*, "QLSC" compared to "QLSC-II") and separate accounting for their costs. *See* Declaration of Laura K. Abel, executed on Dec. 14, 2001 ("Abel Decl."), at Ex. 28; Schmidt Nov. 15 Decl. ¶ 16. Thus, these proposals violated the facial requirements of the program integrity regulations, including the existence of some physical separation, as well as financial separation beyond "mere bookkeeping separation." 45 C.F.R. § 1610.8(a), attached hereto as Appendix A.

These proposals so obviously violated the program integrity regulations that LSC's rejection of them cannot fairly be considered a justiciable *application* of the regulations; LSC simply determined that the proposals violated the program integrity regulations *on their face*. LSC's rejection of the Queens Proposal tells us absolutely nothing about whether it would have been futile for LSNY, FLSNY, or any other program plaintiff to formulate a meaningful proposal for affiliation with an unrestricted program. Thus, plaintiffs are still asking the Court to decide this case in a factual vacuum and hold that requiring any physical or financial separation beyond "mere bookkeeping separation" is invalid. *See* P. Mem. at 26; Reply Br. at 12.

⁴ This kind of informal submission is not enough to create standing. *See Digital Prop., Inc. v. City of Plantation*, 121 F. 3d 586, 590 (11th Cir. 1997) (plaintiffs had no standing to sue when their only action was to approach an employee of the city about an ordinance; "at a minimum, [plaintiff] had the obligation to obtain a conclusive response from someone with the knowledge and authority to speak for the city.")

Nor can the submission of these proposals be considered a “meaningful” application to LSC for purposes of establishing futility. Futility is a very narrow exception which can be asserted only in extraordinary circumstances. *See New York Petroleum Corp. v. Ashland Oil, Inc.*, 757 F.2d 288, 292 (Temp. Emer. Ct. App. 1985). Even the cases cited by plaintiffs acknowledge the difficulty of establishing futility. *See Prayze FM v. F.C.C.*, 214 F.3d 245, 251 (2d Cir. 2000) (holding that plaintiff had not proven futility because “[t]his threshold requirement for standing may be excused only where a plaintiff makes a *substantial showing* that application for the benefit . . . would have been futile”) (emphasis added), *citing Jackson-Bey v. Hanslmaier*, 115 F.3d 1091, 1096 (2d Cir. 1997). *See also Sierra Club v. Fed. Election Comm’n*, 593 F. Supp. 166, 168 (D.C. Cir. 1984) (holding that plaintiffs had not shown futility because it was “not a case ‘where it is clear beyond doubt that the relevant administrative agency will not grant the relief in question.’”) (*quoting American Federation of Gov’t Employees v. Acree*, 475 F.2d 1289, 1292 (D.C. Cir. 1973)).

Thus, to have standing to challenge an agency policy, the plaintiff must have made at least one *meaningful* application to the agency. *See Kittay v. Giuliani*, 112 F. Supp. 2d 342, 350 (S.D.N.Y. 2000). *See also RKO Del., Inc. v. City of N.Y.*, No. CV002592 (DGT), 2001 WL 1329060, *4 (E.D.N.Y. 2001) (plaintiff failed to allege sufficient non-conclusory facts to show that it made a meaningful application); *Goldfine v. Kelly*, 80 F. Supp. 2d 153, 159-60 (S.D.N.Y. 2000) (informal efforts to gain approval from agency did not satisfy ripeness requirement of a meaningful application).

Where, as here, some of the plaintiffs have not made any effort whatsoever to enter into a compliant affiliation, and the other plaintiffs’ attempts were not meaningful, none of the plaintiffs can avail themselves of the narrow futility exception.

C. The Plaintiffs Do Not Have Standing To Claim They Are Unable To Enter Into A Genuine Affiliation

The program plaintiffs also argue that they are unable to create an unrestricted affiliate with separate offices and separate personnel, *i.e.*, to enter into a relationship that, unlike the relationships set forth in the Queens and FLSNY proposals, actually complies with the facial requirements of the regulations. In this vein, plaintiffs claim that it would be prohibitively expensive for them to create an unrestricted affiliate, and that the experiences of other non-party grantees demonstrate that futility.

The first flaw in plaintiff's argument is their assumption that they would have to *establish* a new entity with which to affiliate; it is obviously possible for plaintiffs to affiliate with an *already existing* unrestricted legal services provider, as several non-party grantees appear to have done. This very practical possibility would virtually eliminate both the financial and administrative burdens posited by plaintiffs. And while such affiliation may not be possible for LSC grantees who operate in geographic areas which are served by very few legal services providers, it is almost certainly possible for the grantees who are before the Court, most of whom operate in the New York metropolitan area. Indeed, the Brennan Center for Justice, co-counsel in this matter, is an unrestricted legal services provider that already has a close working relationship with numerous grantees.

By focusing instead on the costs of creating new entities, plaintiffs are making precisely the same arguments they made as part of their previous facial challenge, (*see* Brief For Plaintiffs-Appellants, *Velazquez II*, at 25), and that the Court of Appeals rejected. *Velazquez II*, 164 F.3d 757, 767 (2d Cir. 1999), *cert. denied*, 532 U.S. 903 (2001). While plaintiffs' reply papers try to create the impression that there is now additional evidence why each of the program plaintiffs could not have created an unrestricted affiliate (Reply Mem. at 24-27), in fact the

information before the Court is purely hypothetical. None of the program plaintiffs has actually attempted to create an unrestricted affiliate. And, therefore, no plaintiff has actually suffered an injury from an application of the program integrity regulations. The standing requirement precludes a court from deciding such theoretical disputes. *Free Speech v. Reno*, 200 F.3d 63, 65 (2d Cir. 1999) (dismissing case for lack of standing when plaintiffs “did not allege that [agency’s] exercise of . . . authority caused them any actual injury.”); *Gaillot v. U.S. Dept. of Health*, 464 F. 2d 598, 598 (5th Cir. 1972) (Article III controversy involves considerably more than mere abstract philosophical disagreement with the wisdom, propriety, or desirability of specific governmental activities, necessitating a judicial opinion advising what the law would be upon a hypothetical state of facts.”) (citation omitted).⁵

It is also worth noting that several of the program plaintiffs are among the best funded legal services providers in the country, with annual budgets of millions (and even tens of millions) of dollars.⁶ Even accepting plaintiffs’ hypothetical estimates of how much it would cost to form an unrestricted affiliate, those costs are a very small percentage of their total budgets.⁷ If the program integrity regulations are facially valid, as the Court of Appeals has already ruled, then surely these well-funded grantees cannot be so burdened that they cannot even try to enter into affiliate relationships.

⁵ Moreover, plaintiffs’ hypotheses are obviously tainted by their inclusion of many one-time expenses in the ongoing cost of affiliation. *See* Gray June 19 Decl. ¶ 21-25 (BLS provides estimates for equipment such as computers and furniture); (Kelly June 19 Decl. ¶ 24); Callender Decl. ¶ 21 (estimating the annual cost for QLSC to affiliate at \$200,000, but failing to account for fact that most of enumerated costs are one time expenses).

⁶ LSNY, the umbrella organization for QSNY, has a \$32 million annual budget, 40% of which is public funding. (Declaration of Andrew Scherer, executed on Dec. 7 2001, ¶¶ 6, 12).

⁷ Plaintiffs cite, for example, \$135,000 in recurring expenses out of MFY’s \$4.7 million budget (Kelly June 19 Decl. ¶¶ 22-23; Kelly Dec. 11 Decl. ¶¶ 10-11); and \$330,000 in recurring expenses out of SBL’s \$4.3 million annual budget (Gray June 19 Decl. ¶ 23; Gray Nov. 29 Decl. ¶ 5).

Finally, plaintiffs take issue with the evidence adduced by LSC that grantees all over the country are entering into effective and compliant relationships. *See* LSC Br. at 17-18. Plaintiffs' primary argument seems to be that the non-party grantees are suffering the same "undue burdens" posited by the plaintiffs in this case. Reply Br. at 15-16.⁸ Plaintiffs offer very little support for this contention, however, aside from the same types of vague declarations made by the program plaintiffs.

In any event, LSC has never contended that entering into an affiliate relationship with an unrestricted provider will be easy or costless. To have standing to bring an "as applied" challenge, however, plaintiffs must show much more; they must show that the program integrity regulations, despite their facial validity, work a hardship which is so great that it amounts to a violation of their constitutional rights.⁹ The sketchy and hypothetical information before the Court is far from sufficient for this showing.

D. Plaintiffs Cannot Relitigate Their Preliminary Injunction Motion Or Their Facial Claims

In response to the preclusion doctrines raised by LSC, plaintiffs claim that law of the case and collateral estoppel are inapplicable when the original decision was rendered at the preliminary injunction stage, rather than in a final judgment. While plaintiffs are correct that "findings of fact and conclusions of law made by a court [at the preliminary injunction stage] are not binding at a trial on the merits," *Fortunoff v. Triad Land Assoc.*, 906 F. Supp. 107, 113

⁸ Plaintiffs also claim that some of the grantees no longer operate in the way they originally proposed to the LSC, Reply Br. at 14-16, ignoring the larger point, which is that LSC approved the various methods of affiliation.

⁹ Plaintiffs also claim that since LSC does not keep track of all affiliations nationwide, the Court should infer the absence of additional affiliate relationships, because the absence of such data is akin to a "missing witness" at trial. Reply Br. at 16. This inference would be completely inappropriate: The burden of proof to establish standing is on plaintiffs, not on LSC, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), and while a party is obliged to produce a witness under its control, the data desired by plaintiffs is equally available to them; indeed, plaintiffs have collected declarations from many of the legal services programs involved.

(E.D.N.Y. 1995), citing *University of Texas v. Camenisch*, 101 S.Ct. 1830, 1834 (1981) (emphasis supplied), the plaintiffs in this case are seeking a second preliminary injunction, which is indistinguishable from the first. Under these circumstances, law of the case and collateral estoppel are both applicable. See *Mayweathers v. Terhune*, 136 F. Supp. 2d 1152, 1153 (E.D. Cal. 2001) (When plaintiffs sought successive preliminary injunctions, court applied law of the case doctrine, neither the facts nor the law changed enough in the interim to overcome the presumption that “when a court [makes a decision] it should ordinarily follow [it] during the pendency of the matter.”); *Lyon Ford, Inc. v. Ford Marketing Corp.*, 337 F.Supp. 691, 695 (E.D.N.Y. 1971) (“in considering the right to a preliminary injunction, the plaintiffs would have the court disregard all the proceedings . . . where a preliminary injunction was denied. [But] collateral estoppel . . . forbids a party from litigating an issue a second time if it has been decided in a prior action where there was a full and fair opportunity to contest the matter.)

Plaintiffs also claim that collateral estoppel is inapplicable because “they are not in privity with the Velazquez plaintiffs.” Reply Br. at 40. This argument should be rejected. A realistic appraisal of who controlled each litigation shows that the same lawyers, representing the same interests, are trying to rehash the same issues that they lost in prior proceedings. Under these circumstances, collateral estoppel applies even if the second group of plaintiffs is not identical to the first. See *In re “Apollo” Air Passenger Computer Reservation System (CRS)*, 720 F.Supp. 1068, 1071, 1075 (S.D.N.Y. 1989); *Monahan v. New York City Dep’t of Corr.*, 214 F.3d 275, 291 (2d Cir. 2000), cert. denied, 121 S.Ct. 623 (2000) (finding union president and union members in privity, and holding that the president’s failed facial challenge to regulations barred the union members’ facial and as applied claims, because those “[a]s-applied” claims were sufficiently general or sufficiently inherent in a neutral application of [regulations] that they

reasonably could have been raised, or, in some cases, were in fact raised in [prior litigation]”) (citations omitted); *see also Wilder v. Thomas*, 854 F. 2d 605, 620 (2d Cir. 1988) (applying collateral estoppel when some, but not all, plaintiffs were party to prior suit because the interests of the nonparties were adequately represented in prior proceedings.)

In sum, to the extent plaintiffs are bringing a second preliminary injunction motion based on the same facial challenges as before – and LSC contends this is the entirety of the matter currently before the Court – collateral estoppel and law of the case do mandate denial of the motion. If these doctrines do not bar plaintiffs’ claims conclusively, however, plaintiffs’ claims are still barred by the Court of Appeals’ decision in *Velazquez II*.

E. The Program Integrity Regulations Should Be Tested Only Under A Rational Basis Standard

After originally arguing for a strict scrutiny standard that is generally inapplicable to subsidy cases, plaintiffs now argue for an “undue burden” standard that is apparently used primarily in voting rights cases and commercial speech cases. *See* Reply Br. at 18-23. Plaintiffs do not offer any reason, however, why the Court should use a legal standard applicable to those types of cases when the standard for reviewing restrictions in a subsidy program is clearly established. *See* LSC Br. at 27-29.

Plaintiffs also contend that the program integrity regulations cannot pass any applicable test because the government has virtually no legitimate interest in requiring physical and financial separation of restricted and unrestricted legal services programs. The crux of this argument is plaintiffs’ mistaken claim that preventing cross-subsidization is not an actual or valid goal of the program integrity regulations. In fact, preventing cross-subsidization has been part of this framework from the beginning. As Senator Nancy Kassebaum, sponsor of the Legal

Services Reform Act of 1996, wrote for the Senate's Committee on Labor and Human

Resources:

The committee believes that if LSC is to survive, then it must not continue with business as usual. It must remain focused on its primary mission, which is to provide basic legal assistance to low-income Americans. The committee envisions LSC attorneys representing clients mainly in landlord-tenant disputes, consumer finance and family law issues. . . . Section 1221 also bans LSC attorneys from using nonfederal funds for any purpose prohibited by the LSC Act, as amended. There are two important justifications for this restriction. First, many legal services grantees currently receive funds from both public and private sources. *Since the money is basically fungible, it would be difficult if not impossible to place restrictions only on the Federal funds.* Second, the public cannot differentiate between LSC advocacy subsidized with public versus private funds. As a result, the public grows weary of watching LSC attorneys lobby legislators - even if that dismay might sometimes be displaced.

Sen Rep. No. 104-392 at 7 (1996) (emphasis supplied).

In their effort to eliminate the issue of cross-subsidization from this case, plaintiffs contend that LSC has conceded, in two letters to this Court, that preventing cross-subsidization is not one of the rationales for the program integrity regulations. Plaintiffs misrepresent the substance of those letters. In a May 22, 1997 letter, counsel for LSC noted that the LSC regulations were being revised merely to remove the term “directly or indirectly” from a provision requiring that LSC funds “do not subsidize restricted activities.” Then, on September 26, 1997, counsel for LSC wrote that in *Rust v. Sullivan*, 500 U.S. 171, 188 (1991), the Court held that avoiding the “appearance of endorsement” was a valid governmental interest. Neither letter stated that avoiding cross-subsidization was not a purpose of the program integrity regulations.

Because avoiding cross-subsidization is an actual and valid goal of the regulations (*see Rust*, 500 U.S. at 198, n. 5), and the regulations also avoid the appearance of governmental endorsement, the regulations have a rational basis.

Conclusion

For the reasons stated here and in our moving papers, the Court should dismiss the complaints in their entirety.

Dated: July 17, 2002
New York, New York

Respectfully Submitted,

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