

# 05-0340

05-0360-cv (Con), 05-0787-cv (Con), 05-0792-cv (Con),  
05-0925-cv (XAP)

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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BROOKLYN LEGAL SERVICES CORP. B and LEGAL SERVICES FOR NEW YORK CITY,  
on their own behalf and on behalf of their clients,

Plaintiff-Appellee-Cross-Appellants,

(continued)

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

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**BRIEF OF AMICI CURIAE**

**THE NATIONAL LEGAL AID & DEFENDER ASSOCIATION; THE NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS, UAW LOCAL 2320, AFL-CIO; THE ATLANTA LEGAL AID SOCIETY, INC.; THE ASSOCIATION OF VIRGINIA LEGAL AID PROGRAM; CALIFORNIA RURAL LEGAL ASSISTANCE, INC.; THE EMPIRE JUSTICE CENTER; FRIENDS OF FARMWORKERS, INC.; INLAND COUNTIES LEGAL SERVICES; THE LEGAL AID FOUNDATION OF LOS ANGELES; LEGAL AID OF NORTH CAROLINA, INC.; THE LEGAL ASSISTANCE FOUNDATION OF METROPOLITAN CHICAGO; LEGAL SERVICES CORPORATION OF VIRGINIA; LEGAL SERVICES OF GREATER MIAMI, INC.; LEGAL SERVICES OF NORTHERN CALIFORNIA, INC.; LEGAL SERVICES OF SOUTHERN PIEDMONT; THE NASSAU SUFFOLK LAW SERVICES COMMITTEE; NEIGHBORHOOD LEGAL SERVICES OF EASTERN NEW YORK; NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY; NEW MEXICO LEGAL AID, INC.; NORTHWEST JUSTICE PROJECT**

DAVIS POLK & WARDWELL  
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New York, New York 10017  
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(caption continued)

FARMWORKERS LEGAL SERVICE OF NEW YORK, INC., on behalf of itself, and on behalf of all similarly situated not-for-profit legal services entities; namely, organizations who wish to be eligible to receive funds from the Legal Services Corporation, and who wish to be free to engage in legal advocacy activities that are proscribed by Pub. L. 104-208,

Plaintiff-Appellee-Cross-Appellants,

COMMUNITY SERVICE SOCIETY OF NEW YORK, INC., and CENTRO INDEPENDIENTE DE TRABAJADORES AGRICOLAS, on behalf of all similarly situated individuals, organizations and their members, namely, individuals and organizations who are, or wish to be, represented by lawyers employed by entities receiving funds from the Legal Services Corporation, and who wish to assert legal claims as members of a class, or to benefit from some other legal advocacy activity proscribed by Pub. L. 104-208,

PEGGY EARISMAN and LAUREN SHAPIRO, on behalf of each, and on behalf of all similarly situated individuals, namely, attorneys employed or formerly employed by entities receiving funds from the Legal Services Corporation who wish to be free to represent indigent individuals in class actions, and to engage in other attorney-client activities that are proscribed by Pub. L. 104-208,

ANDREW J. CONNICK, on behalf of himself and all similarly situated individuals, namely, individuals who have provided public or private non-federal funding to entities that also receive funds from the Legal Services Corporation, and who wish these funds to be used for legal advocacy activities that are proscribed by Pub. L. 104-208,

THE NEW YORK FOUNDATION,

Plaintiff-Cross-Appellants,

CARMEN VELAZQUEZ, WEP WORKERS TOGETHER, NEW YORK CITY COALITION TO END LEAD POISONING, GREATER N.Y. LABOR-RELIGION COALITION, on behalf of all similarly situated individuals, organizations and their members, namely, individuals and organizations who are, or wish to be, represented by lawyers employed by entities receiving funds from the Legal Services Corporation, and who wish to assert legal claims as members of a class, or to benefit from some other legal advocacy by Pub. L. 104-208,

(continued)

(caption continued)

LUCY A. BILLINGS, OLIVE KAREN STAMM, JEANETTE ZELHOF, ELISABETH BENJAMIN, JILL ANN BOSKEY, on behalf of each, and on behalf of all similarly situated individuals, namely, attorneys employed or formerly employed entities receiving funds from the Legal Services Corporation who wish to be free to represent indigent individuals in class actions, and to engage in other attorney-client activities that are proscribed by Pub. L. 104-208,

C. VIRGINIA FIELDS, COUNCIL MEMBER, GUILLERMO LINARES, COUNCIL MEMBER, STANLEY MICHELS, COUNCIL MEMBER, ADAM CLAYTON POWELL IV, COUNCIL MEMBER, LAWRENCE SEABROOK, SENATOR, SCOTT M. STRINGER, ASSEMBLYMAN, on behalf of themselves and all similarly situated individuals, namely, individuals who have provided public or private non-federal funding to entities that also receive funds from the Legal Services Corporation, and who wish these funds to be used for legal advocacy activities that are proscribed by Pub. L. 104-208,

DAVID F. DOBBINS, LISA E. CLEARY, DAVID W. ICHEL, DAVID G. KEYKO,

MFY LEGAL SERVICES, BRONX LEGAL SERVICES, INC., on their own behalf and on behalf of their clients,

Plaintiffs,

v.

LEGAL SERVICES CORPORATION,

Defendant-Appellant,

UNITED STATES OF AMERICA,

Intervenor-Defendant-Cross-Appellant.

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**STATEMENT PURSUANT TO RULE 26.1 OF THE  
FEDERAL RULES OF APPELLATE PROCEDURE**

Amici Curiae The National Legal Aid & Defender Association, et al., are non-profit and not-for-profit corporations, have no parent corporations, and are not owned, in whole or part, by any publicly-held corporations. The National Organization of Legal Services Workers, UAW Local 2320, AFL-CIO, is affiliated with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

**STATEMENT PURSUANT TO RULE 29(a) OF THE  
FEDERAL RULES OF APPELLATE PROCEDURE**

Counsel for Amici Curiae The National Legal Aid & Defender Association, et al., has consulted with and obtained consent from counsel for all parties in this case to the filing of this brief.

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## STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae (“amici”) are organizations from across the country that provide legal representation to low income individuals, families, and communities, and that support the Plaintiffs in the Dobbins action – Legal Services for New York City (“LSNY”) and South Brooklyn Legal Services (“SBLs”) (collectively “Plaintiffs”).<sup>1</sup> Amici submit this brief to urge the Court to affirm the conclusion of the District Court that the Legal Services Corporation’s (“LSC’s”) program integrity regulation, 45 C.F.R. § 1610.8, as applied by LSC to the Dobbins Plaintiffs, is unconstitutional.<sup>2</sup>

As is the case with Plaintiffs, many amici are LSC grantees and operate under LSC’s program integrity regulation. Other amici do not receive LSC funds. However, all amici are knowledgeable about the regulation, its requirement of physical separation between LSC-funded and non-LSC funded programs, and its consequent creation of obstacles to the efficient delivery of legal services to low income communities. Accordingly, amici have special knowledge and insight into

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<sup>1</sup> A description of each of the amici is provided in the appendix to this brief.

<sup>2</sup> Amici submit this brief only as to the Dobbins claims to ensure, in an abundance of caution, that their participation does not run afoul of the statutory prohibition against LSC grantees participating in class action cases. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, § 504(a)(7) (1996). Dobbins is not a class action and was not filed as such. Velazquez, its companion case, is also not a class action (no motion for certification of a class was ever made), although the complaint did contain allegations on behalf of a putative class.

the burdens imposed upon legal services organizations by LSC's program integrity regulation. Contrary to LSC's characterization of these burdens as "speculative," they are substantial and real. Indeed, the program integrity regulation, as actually applied by LSC, makes it unduly burdensome for LSC grantees to engage in certain constitutionally protected activities that the federal government disfavors but cannot directly prohibit.

Amici believe that the record below conclusively demonstrates that the District Court correctly ruled that LSC's implementation of the program integrity regulation unduly burdens each of the Plaintiffs in the exercise of activities protected by the First Amendment. Although the issues before this Court are "as applied" with respect to the particular Plaintiffs, amici believe that the negative impact of LSC's practices on Plaintiffs is corroborated by the experiences of legal services organizations across the United States.

Amici submit that the District Court's entry of a preliminary injunction in favor of Plaintiffs is justified by the detailed findings set out in its opinion, Velazquez v. Legal Servs. Corp., 349 F. Supp. 2d 566 (E.D.N.Y. 2004), modified, 356 F. Supp. 2d 267 (E.D.N.Y. 2005), and amici endorse the arguments in Plaintiffs' brief supporting that conclusion. Amici also agree with Plaintiffs that they cannot be required to maintain dual and separate public areas for the conduct

of restricted and non-restricted activities pursuant to the program integrity regulation. See Pl. Br. at 48-54.

Amici respectfully submit this brief to highlight two other facets of Plaintiffs' as-applied claims. First, in response to LSC's contention that Plaintiffs did not have standing and did not present ripe controversies, amici demonstrate that Plaintiffs' as-applied challenges were properly before the District Court (Point I). Second, amici discuss categories of undisputed facts that are in the record but were not relied upon by the District Court, and demonstrate that these facts further support the conclusion that the District Court's entry of a preliminary injunction should be affirmed (Point II).

### **BACKGROUND**

There are more than one hundred local organizations throughout the United States that, like Plaintiffs, receive funding from LSC to provide legal services to the poor. In addition to the funds they receive from LSC, many local legal services organizations also rely on funding they are able to secure from private donors and state and local governments.

The regulations at issue effectively prohibit Plaintiffs and many other legal services organizations, including many of the amici, from engaging in certain constitutionally protected activities. These regulations do not merely preclude LSC grantees from using LSC funding for the restricted activities; they prohibit

LSC grantees from engaging in the restricted activities, regardless of the source of the funds available to finance those activities, unless the organizations satisfy LSC's program integrity regulation. The regulation requires LSC grantees to maintain "objective integrity and independence from any organization that engages in restricted activities." 45 C.F.R. § 1610.8(a). LSC interprets "objective integrity and independence" as compelling stringent legal, physical, and financial separation from such restricted activities. Thus, an LSC grantee must have largely separate personnel and entirely separate accounting and timekeeping records from any entity that engages in restricted activities and, in addition, must have a high degree of physical separation from any facility in which restricted activities occur. Compliance with the requirements of physical and financial separation is also determined, in part, based on the extent to which signs and directions distinguish the grantee from the organization that engages in restricted activities and the extent to which that organization engages in those restricted activities. See 45 C.F.R. § 1610.8(a)(3).

The program integrity regulation states that these separation requirements will be treated as "factors" to be weighed in each case. See 45 C.F.R. § 1610.8(a)(3) ("Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative.").

The record makes it clear that in Plaintiffs' cases, the program integrity regulation, as actually applied by LSC, imposes enormous burdens that are entirely out of proportion to the stated governmental objectives of the regulation, and violates Plaintiffs' rights to engage in constitutionally protected advocacy.

The program integrity regulation has forced upon Plaintiffs (and many amici) a classic Hobson's choice: they can forego LSC funding and continue to provide full advocacy services (with reduced funding) or, in order to remain eligible for LSC funds, they must choose between one of two options, both unconstitutional: they must either abandon many constitutionally protected activities on behalf of the poor or submit to the unconstitutional burden of engaging in those activities through essentially walled off entities.

In light of the physical separation requirements, many legal services organizations, including some of the amici, have had no means of walling off the restricted activities, despite their constitutionally protected nature, and thus are foregoing constitutional rights in order to remain eligible for LSC funds. A very few legal services organizations have undertaken the onerous efforts necessary to meet the stringent separation requirements of the program integrity regulation in order to continue engaging in constitutionally protected activities through affiliates. Each of these organizations provided a statement in the record

describing the financial, programmatic, and administrative hurdles that make the physical separation requirements unduly burdensome. (JA-577 to -630).

The record demonstrates that the program integrity regulation, as applied, imposes undue burdens on Plaintiffs. First, the considerable financial costs associated with establishing and operating separate programs are potentially prohibitive in light of the limited resources available to the Plaintiffs. See Parties' Stipulated Facts, dated July 6, 2004, ("Stip. Facts") ¶¶ 25, 28-30 (JA-903) (estimated cost of compliance for Queens Legal Services ("QLSC"), a unit of Plaintiff LSNY and an LSC sub-grantee, which has not established an affiliate, would be at least \$200,000 per year); id. ¶¶ 41-42 (JA-904) (estimated cost of compliance for SBLS, which has not established an affiliate, would be at least \$380,000); see also id. ¶¶ 63, 66 (JA-906) (estimated cost of compliance for Farmworkers Legal Services ("FWLS"), which has not established an affiliate, would be approximately \$130,000 in first year and \$80,000 per year thereafter).

The program integrity regulation, as applied by LSC, also imposes substantial burdens on Plaintiffs' ability to administer their programs. Particularly burdensome are LSC's prohibition on the sharing of an executive director between an LSC grantee and an affiliate engaging in restricted activities, see "Guidance in Applying the Program Integrity Standards" (Declaration of Laura K. Abel, dated December 14, 2001, ("Abel Decl.") Ex. 34 (JA-398)), and LSC's strict limitation

on the sharing of attorneys and other staff. See 45 C.F.R. § 1610.8(a)(1)(i); see also Declaration of Andrew Scherer, dated December 7, 2001, (“Scherer Decl.”) ¶ 19 (JA-450). By forcing organizations to operate under separate leaders and by segregating legal and other staff that handle cases, LSC introduces logistical hurdles that impair the efficiency of their work by interfering with basic communication and collaboration among such staff.

In addition to financial and administrative burdens, the substantial separation required by the program integrity regulation imposes burdens that impair Plaintiffs from effectively delivering legal services to the poor (so-called “programmatic burdens”). Clients who need the services that Plaintiffs are prohibited from providing must be referred to different organizations, which, for multiple reasons, may not be as effective in providing those services. See, e.g., Scherer Decl. ¶¶ 21-22 (JA-450 to -51) (“The programs to which clients may be referred are themselves underfunded and understaffed, are committed to their own substantive agendas, and cannot guarantee that they will accept referred clients.”); Declaration of John C. Gray, dated November 29, 2001, (“Gray Decl.”) ¶ 14 (JA-416) (“Even when a referral is possible, not all clients are able to use a referral effectively”); id. ¶¶ 14, 16 (JA-416) (stating that “non-LSC-funded organizations have not met all the needs of clients of [SBLIS] for restricted services”).

While LSC derides the overwhelming and undisputed record of significant burdens as speculative and hypothetical, see, e.g., LSC Br. at 37, this contention is belied by the existence of these concrete financial, programmatic, and administrative burdens. In addition, LSC's contention is undercut by the existence of similar burdens that are incurred by legal services organizations other than Plaintiffs. See e.g., Declaration of Kenneth J. Barnes, Litigation Director of New Hampshire Legal Assistance ("NHLA"), dated June 19, 2002, ¶ 5 (JA-551) ("Faced with a terrible choice between turning away funding that was NHLA's lifeblood or accepting outrageous limitations on NHLA's ability to be effective lawyers for their clients, NHLA declined further LSC funds. These funds totaled ... approximately half of NHLA's budget."); Declaration of Alex R. Gulotta, Executive Director of the Legal Aid Justice Center of Charlottesville, Virginia, dated June 19, 2002, ¶ 5 (JA-592) ("[T]he affiliate configuration that LSC requires is, as demonstrated by my experience in Virginia, associated with substantial costs that are inherent in the requirement of physical separation. ... [P]rograms need not approach LSC through any sort of administrative procedure in order to know full well that these costs are unavoidable and substantial."); Declaration of David Thornburgh, Executive Director of the Oregon Law Center, dated June 12, 2002, ¶ 21 (JA-641) ("Maintaining two separate non-profit corporations and separate offices, as required by the program integrity regulation, reduces the quantity of

legal services available to low income Oregonians because of the costs associated with such duplication.”).<sup>3</sup>

The record contains concrete examples of the stringency with which LSC has applied the program integrity regulation. In 1997, LSC rejected a proposal submitted by Plaintiff LSNY on behalf of QLSC, an entity that receives LSC funding through LSNY. QLSC sought to establish a separate affiliate that would be financed by non-LSC funds and would engage in restricted activities foreclosed to QLSC itself as an LSC sub-grantee. See Abel Decl. ¶¶ 46-49, Ex. 28 (JA-179 to -80, JA-379 to -84). The QLSC proposal contemplated that the two entities would be legally separate, would employ careful accounting procedures to ensure that funds received by QLSC would not subsidize any restricted activities, and would distinguish themselves through the use of signs in a shared reception area and statements to clients and court personnel that would ensure against any misperception that QLSC was engaging in restricted activities. See id. The QLSC

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<sup>3</sup> LSC itself has recognized – as demonstrated by LSC’s own statements contained in the record – that fragmentation of legal services programs – the ultimate effect of the program integrity regulation – can lead to significant financial, programmatic, and administrative burdens on LSC grantees. Indeed, LSC has sought consolidation of programs, contending that having several small legal services programs in the same geographic area causes significant negative effects, e.g., grantees will have difficulty recruiting qualified personnel, see Abel Decl. ¶ 26 (JA-170), grantees will have difficulty in assisting attorneys to develop the necessary skills and expertise, see id. ¶¶ 27-29 (JA-170 to -71), and the ability of clients to obtain legal services will be adversely affected, see id. ¶ 30 (JA-171).

proposal would have allowed the two entities to share office space, library facilities, office equipment and supplies, and office support services and personnel, including project directors, attorneys, and paralegals – with the costs of those shared resources to be allocated between the two entities in proportion to their use to ensure strict financial separation. See id. LSC rejected the proposal on the ground that, despite its complete economic and programmatic independence, QLSC would not have “objective integrity and independence” from the new entity. See Abel Decl. ¶ 48, Ex. 27 (JA-180, JA-376 to -78).<sup>4</sup>

Likewise, in 2003 LSC rejected Plaintiffs’ “Clarified Proposal” to establish separate, non-LSC grantee affiliates for each of the Plaintiffs. The Proposal was intended to satisfy the government’s asserted interests underpinning the program integrity regulation, but without imposing undue burdens on the exercise of the Plaintiffs’ First Amendment rights. The Clarified Proposal contemplated the following features for the respective LSC grantee and non-LSC grantee affiliates:

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<sup>4</sup> In 1998, LSC also rejected a proposal made by Velazquez Plaintiff FWLS to establish a separate affiliate. FWLS concluded that, as a practical matter, it could not do more than adopt certain practices, such as maintaining separate financial records, to ensure that LSC funds would not be used for restricted purposes. See Declaration of James F. Schmidt, dated November 15, 2001, (“Schmidt Decl.”) ¶¶ 14-16 (JA-457 to -58). Those practices were rejected by LSC as insufficient to ensure FWLS’s “program integrity.” See id. ¶ 16 (JA-458). Because it was unable to take on additional burdens, FWLS elected to forego LSC funding altogether rather than desist from constitutionally protected activities. See id. ¶ 18 (JA-458).

- Legally separate corporations
- Easily distinguishable names
- Separate boards of directors
- Rigorous bookkeeping and accounting methods that ensured that no subsidization of non-LSC grantee affiliates with LSC funds took place
- Detailed employee timekeeping measures that complied with LSC requirements
- Extensive signage and disclaimers distinguishing the LSC grantee affiliate from the non-LSC-grantee affiliate
- Sharing of office equipment and physical resources
- Sharing of physical premises
- Sharing of employee time, except that no legal or non-legal personnel would have engaged in any LSC-funded activities while working as an employee of a non-LSC grantee affiliate
- Sharing of a common intake and referral mechanism

See 349 F. Supp. 2d at 574-77.

LSC concluded that, although the Proposal satisfied the first two program integrity rules (legally separate entities and no subsidization), it failed to meet the third requirement – physical and financial separation – because “the proposed 100% sharing of physical space, equipment, and staffs, demonstrate[s] that the proposal as a whole fails to provide physical and financial separation.” Id. at 577-78 (internal quotation marks omitted). In rejecting the Proposal, LSC acknowledged that it viewed the physical and financial separation requirement as “the most nuanced and complex of the three factors required by the program

integrity rules.” Id. at 578 (internal quotation marks omitted). However, it provided no guidance as to what configurations or classes of configurations – short of complete separation – would satisfy its interpretation of the program integrity regulation.

## **ARGUMENT**

### **POINT I.**

#### **THE DISTRICT COURT PROPERLY CONSIDERED PLAINTIFFS' AS-APPLIED CLAIMS.**

LSC contends that the District Court should not have reached the merits of Plaintiffs' as-applied claims because (1) Plaintiffs lacked standing, and (2) their claims were not ripe. See generally LSC Br. at 31-39. These arguments are without merit.

Plaintiffs have standing to challenge LSC's regulation because it restricts them from engaging in constitutionally protected activities on behalf of their clients as a condition for receiving federal funds, an actionable injury in fact. Indeed, Plaintiffs who currently receive LSC funding must forego representing their clients on certain matters unless they can create an affiliate in compliance with the program integrity regulation. Plaintiffs unable to satisfy the program integrity regulation have either completely foregone federal funding or foregone representing their clients on certain prohibited matters. Plaintiffs' claims are ripe because the regulation is applicable to them *now*, and requires no further action by LSC in order to deprive Plaintiffs of their constitutional rights.

In addition, LSC's rejection of Plaintiffs' Clarified Proposal makes it even clearer that Plaintiffs have standing to assert their as-applied claims and that such claims are ripe.

Finally, as the District Court recognized, to delay review of Plaintiffs' as-applied challenges would impose a current hardship on Plaintiffs because it would require them to continue to refrain from engaging in restricted activities, so as not to jeopardize their LSC funding.

**A. Because Plaintiffs are Presently Affected by the LSC Restrictions, They Have Standing and Their As-Applied Claims are Ripe.**

To establish standing, a plaintiff must allege that it has suffered an “injury in fact,” which must be concrete and particularized, and either actual or imminent. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Ripeness is closely related to standing, and requires a court to evaluate whether the timing of an action is proper. A court must balance “the fitness of issues for review and the hardship to the parties of withholding review.” Gary D. Peake Excavating, Inc. v. Town Bd., 93 F.3d 68, 72 (2d Cir. 1996). Where an agency regulation is involved, the court looks at whether the impact of the regulation at issue is “sufficiently direct and immediate as to render the issue appropriate for judicial review.” Abbott Labs. v. Gardner, 387 U.S. 136, 152 (1967); accord United States v. Fell, 360 F.3d 135, 139-40 (2d Cir. 2004).

Plaintiffs' injury here is plainly concrete, particularized, and actual. Their ability to engage in certain constitutionally protected activities has been unduly burdened – a burden that is no less concrete because it is tied to or results from the receipt of federal funds. Plaintiffs, by virtue of their status as LSC grantees, are

injured *now* by the program integrity regulation. They are unable to provide restricted legal services *now* because of the burdens that the regulation imposes on them.

Plaintiffs are not challenging a statute or regulation that would become applicable to them only upon the happening of a specific event, such as their application for a permit. Plaintiffs are *currently* recipients of LSC funds and are *currently* subject to the program integrity regulation as a condition of their use and continued access to those funds. LSC acknowledges that there are no real procedures for seeking LSC approval of proposals to establish an affiliate and that a grantee need not obtain LSC's approval or comment to enter into such a relationship. See LSC Br. at 34-35 n.7. Accordingly, Plaintiffs have standing to bring their as-applied challenges to the program integrity regulation, and such challenges are ripe.

LSC argues that Plaintiffs lack standing “because they have not done anything that would allow LSC to apply the program integrity rule to them. They have not formed an affiliate, tried to form an affiliate, or even submitted a genuine proposal to form an affiliate.” Id. at 35. LSC also argues that “for an as-applied challenge to [LSC's] rule to be ripe, [LSC] must have had the opportunity actually to apply the rule to [Plaintiffs].” Id. at 34. LSC's argument that Plaintiffs must

form, or seek to form, an affiliate to have standing and demonstrate ripeness is contrary to controlling case law.

It is well-settled that “for purposes of standing, plaintiffs need not actually apply for funding and be denied in order to challenge a restrictive funding policy; instead, they need only demonstrate that but for the . . . restrictions, they would qualify to receive . . . funding.” Gay Men’s Health Crisis v. Sullivan, 733 F. Supp. 619, 629 (S.D.N.Y. 1989);<sup>5</sup> see also DKT Mem’l Fund, Ltd. v. Agency for Int’l Dev., 810 F.2d 1236, 1238 (D.C. Cir. 1987) (holding that “otherwise qualified non-applicants may have standing to challenge a disqualifying statute or regulation” if they can show that, absent the challenged policy, they would be qualified).<sup>6</sup>

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<sup>5</sup> The plaintiffs in Gay Men’s Health Crisis sought to challenge certain restrictions on the use of federal funds distributed for purposes of AIDS education. 733 F. Supp. 619, 623 (S.D.N.Y. 1989). The Government argued that plaintiffs lacked standing because none of them had actually been denied funding or instructed to alter their educational materials. See id. at 627. The court properly rejected that argument, holding that plaintiffs, to establish standing, did not need to show that they had been denied funding – only that they would be eligible for funding *but for* the challenged restrictions. See id. at 628. The court also rejected the Government’s argument that the plaintiffs would not have standing until they exhausted numerous steps, including submitting proposed materials. See id. at 629-30 (“[P]laintiffs only need to show that they would otherwise be eligible for funding, and that they need not actually apply for funding and be denied before they can attain standing to challenge the regulations. The number of steps involved in the process of reviewing proposals is of no consequence.”) (discussing ruling in DKT).

<sup>6</sup> Throughout its standing and ripeness arguments, LSC invokes a series of zoning and land use cases to suggest that Plaintiffs do not have standing. See LSC Br. at 37 (citing Kittay v. Giuliani, 112 F. Supp. 2d 342, 350 (S.D.N.Y. 2000));

With respect to LSC's argument that Plaintiffs' challenges are not ripe, the gravamen of Plaintiffs' claims is not only that they have been denied approval of an affiliate proposal, but also that the requirement that they establish separate affiliates is unduly burdensome for them. See Commodity Trend Serv., Inc. v. Commodity Futures Trading Comm'n, 149 F.3d 679, 690 (7th Cir. 1998) (review would not be premature where speech plaintiff's wishes to publish would not qualify for exception to challenged act's coverage). Simply put, as a result of the program integrity regulation, Plaintiffs are forced *now* either to abstain from providing restricted legal services, to cease receiving LSC funds, or to submit, if they can bear it, to unconstitutional burdens on their exercise of protected rights. See Employers Assoc., Inc. v. United Steelworkers of America, 32 F.3d 1297, 1299 (8th Cir. 1994) ("Ripeness is demonstrated by a showing that a live controversy exists such that the plaintiffs will sustain immediate injury from the

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RKO Del., Inc. v. City of New York, No. CV002592 (DGT), 2001 WL 1329060, \*4 (E.D.N.Y. Aug. 30, 2001); Goldfine v. Kelly, 80 F. Supp. 2d 153, 159 (S.D.N.Y. 2000)). These cases are inapposite because standing and ripeness requirements are applied with particular strictness to the permitting procedures applicable in land use cases. See, e.g., Goldfine, 80 F. Supp. 2d at 159 (stating that the recognized futility exception for standing is interpreted narrowly in land use cases). In contrast, Plaintiffs bring a First Amendment challenge to the program integrity regulation because it jeopardizes their rights to free expression and association. See 349 F. Supp. 2d at 613. An infringement on speech poses a high likelihood of irretrievable loss. See id. To avoid such harms, courts are particularly apt to find such claims are ripe for immediate adjudication. See Dougherty v. Town of North Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 90 (2d Cir. 2002).

operation of the challenged provisions, and that the injury would be redressed by the relief requested.”); see also Williams v. Lambert, 46 F.3d 1275, 1280 (2d Cir. 1995) (reconciling Supreme Court holdings and suggesting that a pre-bid challenge to a statutory contracting restriction was ripe because plaintiffs established based on their historical actions that, absent the restriction, they would have submitted bids). No further elaboration is necessary at the administrative level for the Court to consider Plaintiffs’ as-applied claims.<sup>7</sup>

**B. LSC’s Rejection of Plaintiffs’ Clarified Proposal Makes It Even Clearer That Plaintiffs Have Standing and That Their Claims are Ripe.**

Even if, as LSC claims, an opportunity to apply the program integrity regulation to Plaintiffs is a pre-requisite to Plaintiffs’ as-applied challenges, that pre-requisite was satisfied. As described above, Plaintiffs submitted their Clarified Proposal to LSC in 2003, in which they sought to establish separate, non-LSC grantee affiliates that would satisfy the government’s interests underlying the program integrity rules, but at the same time would not unduly burden the exercise

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<sup>7</sup> Plaintiffs rely on a record far more developed than was before the court in Digital Props., Inc. v. City of Plantation, 121 F.3d 586 (11th Cir. 1997), cited by LSC. See LSC Br. at 34. In that case, the Eleventh Circuit held that the plaintiff’s First Amendment challenge to a zoning ordinance was not ripe because it filed the action immediately after receiving a non-supervisory employee’s “initial reaction” to its development proposal, and the plaintiff had not followed that employee’s advice to seek a decision from her supervisor. See id. at 590. Plaintiffs here have not engaged in a race to the courthouse, but rather base their as-applied challenges on an extensive record of LSC’s position regarding affiliate separation.

of their First Amendment rights. LSC rejected the Clarified Proposal, concluding that while it satisfied the first two program integrity rules (legally separate entities and no subsidization), it failed to meet the third requirement – physical and financial separation. See 349 F. Supp. 2d at 577-78. As the District Court recognized, LSC’s consideration and rejection of the Plaintiffs’ Clarified Proposal makes it clear that Plaintiffs have standing to bring their as-applied claims and that such claims are ripe for adjudication. See id. at 598.

LSC argues that the Plaintiffs’ Clarified Proposal did not represent a “*meaningful* application to the agency” that would allow LSC to apply its program integrity rules to Plaintiffs. LSC Br. at 36-37. This argument is contradicted by the record, as the District Court properly concluded.

The Clarified Proposal included numerous concrete features for each of the proposed LSC grantee/non-LSC grantee affiliate arrangements which would have accommodated the government’s interests underlying the program integrity rules. These features included legally separate corporations, distinguishable names, separate boards of directors, prohibition against subsidization of non-LSC grantee affiliates with LSC funds, detailed timekeeping and bookkeeping measures, explicit signage and disclaimers, and detailed provisions pertaining to the sharing of office equipment, physical facilities and premises, employee time, and intake. See 349 F. Supp. 2d at 574-77. The specificity of the Clarified Proposal

demonstrates that it was a genuine and meaningful application made by Plaintiffs to LSC.

Moreover, in rejecting the Clarified Proposal, LSC acknowledged that the physical and financial separation factor was “the most nuanced and complex of the three factors required by the [program integrity rules].” Id. at 578. Indeed, to date LSC has provided little if any guidance as to the degree of physical and financial separation that may be acceptable under the program integrity regulation. Consequently, it is not tenable for LSC to argue that the Clarified Proposal is not “meaningful” when it is so difficult to determine what level of physical and financial separation might actually satisfy LSC’s standards and when any additional action by Plaintiffs to accept greater financial, programmatic, and administrative burdens would cause a greater sacrifice of their constitutional rights.

Also, in rejecting the Clarified Proposal, LSC conceded that the Proposal satisfied two of the three program integrity criteria – the creation of legally separate entities and the prohibition of subsidization of non-LSC grantees with LSC funds. See id. at 577. These elements of the Clarified Proposal were sufficiently meaningful as to warrant written comment and approval by LSC. Given this, LSC cannot credibly label the entire Clarified Proposal as “meaningless,” solely because one aspect of the proposal did not meet LSC’s own amorphous standard of physical and financial separation.

LSC also asserts that “a facially invalid application cannot be considered meaningful; otherwise, the distinction between a facial challenge and an as-applied challenge would be illusory.” LSC Br. at 37. This, however, mistakenly conflates an allegedly “facially invalid application” with the concept of a “facial challenge” to a statute. LSC apparently posits that a party can never bring an as-applied challenge to the rejection of an application if that application does not facially comply with the rule in question. Such a position is not supported by case law. See, e.g., Gerritsen v. City of Los Angeles, 994 F.2d 570, 578 (9th Cir. 1993) (appellant’s failure to facially comply with the permit application process required to hang a message-bearing banner across a city street did not invalidate his standing to challenge the regulation as-applied).

Finally, LSC argues that the District Court was incorrect in deciding Plaintiffs’ as-applied claims because the Court did not have before it a sufficiently developed factual record on which to base its decision. See LSC Br. at 37. LSC concedes, however, that Plaintiffs were not required formally to apply to LSC for permission to engage in constitutionally protected activities through the establishment of separate non-LSC grantee affiliates. See id. at 34 n.7, 38. More significantly, LSC suggests that to satisfy the ripeness requirement, Plaintiffs should have been required first to implement their plans for separate affiliates, as described in the Clarified Proposal. See id. at 38. According to LSC, if it had then

notified Plaintiffs that they were in violation of the program integrity regulation, Plaintiffs would have had a ripe as-applied challenge to the regulation; “[t]his scenario would present the Court with the factual information necessary to determine how LSC has actually applied the rule.” Id. However, under the scenario blessed by LSC, the Court would have had the same factual record as it did here – no more or no less information. This confirms that Plaintiffs have standing and that their as-applied claims are ripe.

**C. Delay in Reviewing Plaintiffs’ As-Applied Claims Would Impose a Current Hardship on Plaintiffs.**

As the District Court recognized, to delay review of Plaintiffs’ claims would impose real hardship on the Plaintiffs because it would require them to continue to refrain from engaging in restricted activities, so as not to jeopardize their LSC funding. See 349 F. Supp. 2d at 598; see also Whitney v. Heckler, 780 F.2d 963, 968 n.6 (11th Cir. 1986) (“It is well established that an issue is ripe for judicial review when the challenging party is placed in the dilemma of incurring the disadvantages of complying or risking penalties for noncompliance.”). Where, as here, a regulation has a “direct effect on the day-to-day business” of the plaintiffs, hardship to the parties is established, counseling in favor of ripeness. See Abbott Labs., 387 U.S. at 152-53; see also Thomas v. City of New York, 143 F.3d 31, 36 (2d Cir. 1998) (finding that plaintiffs’ challenges to livery car regulations were ripe for review because the plaintiffs, who were subject to the regulations, faced “a

present hardship that results directly from the regulations themselves”); Commodity Trend Serv., Inc., 149 F.3d at 689 (finding as-applied challenge to registration requirement ripe where plaintiff was forced, *inter alia*, to dilute contents of its publications, limit its advertising, and suspend development of new publications). Plaintiffs’ as-applied claims are ripe for review because the program integrity regulation, by affecting Plaintiffs’ day-to-day operations, imposes a current hardship on them.

## POINT II.

### **THE PROGRAM INTEGRITY REGULATION IMPOSES UNDUE “PROGRAMMATIC” AND “ADMINISTRATIVE” BURDENS ON PLAINTIFFS.**

#### **A. The Undisputed Facts in the Record Demonstrate Severe Programmatic and Administrative Burdens on Plaintiffs and Provide Additional Support for Affirming the Grant of a Preliminary Injunction.**

The District Court relied on the Stipulated Facts to conclude that the program integrity regulation unduly burdens Plaintiffs’ exercise of their First Amendment rights. See 349 F. Supp. 2d at 605. The Stipulated Facts describe the substantial financial burdens Plaintiffs would bear in establishing and operating separate affiliates pursuant to the program integrity regulation. But amici submit this brief, in part, to highlight the undisputed facts in the record that demonstrate that there are two additional types of burdens imposed upon Plaintiffs by LSC’s application of its program integrity regulation: (1) “programmatic” burdens –

impediments on Plaintiffs’ ability to effectively represent their clients, and (2) “administrative” burdens – burdens on the Plaintiffs’ capacity to administer their programs. As discussed in Plaintiffs’ brief, Pl. Br. at 55, LSC and the Government did not and could not contest the substantial evidence establishing the existence and effect of the programmatic and administrative burdens.

Although amici submit that the record concerning financial burdens justifies affirmance of the preliminary injunction, the facts demonstrating programmatic and administrative burdens provide additional support for affirming the District Court. It is well established that this Court “may affirm the judgment of the district court on any ground appearing in the record,” Shumway v. United Parcel Serv., 118 F.3d 60, 63 (2d Cir. 1997); accord Acequip Ltd. v. Am. Eng’g Corp., 315 F.3d 151, 155 (2d Cir. 2003), even where the appeal involves a preliminary injunction. See Prayze FM v. FCC, 214 F.3d 245, 249 (2d Cir. 2000).

**B. The Record Demonstrates That the Program Integrity Regulation Imposes Substantial Programmatic Burdens on Plaintiffs.**

The program integrity regulation imposes substantial burdens on the core activity of the Plaintiffs – representation of clients. The facts demonstrating programmatic burdens were before the District Court in numerous uncontested affidavits submitted by Plaintiffs, and this Court can consider these facts and rely on them in affirming the preliminary injunction. See Prayze FM, 214 F.3d at 249

(“We are, however, free to affirm an appealed decision on any ground that finds support in the record.” (internal quotation marks and alteration omitted)).

The program integrity regulation requires LSC grantees to ensure that any entity undertaking restricted activities is almost entirely walled off from the LSC grantee engaged in delivering other legal services. The record shows that this forced separation significantly reduces the quality of legal representation provided to clients. As Andrew Scherer, the Executive Director and President of LSNY, concluded: “Physical and objective separation of the two classes of lawyers presents genuine obstacles to effective client representation.” Scherer Decl. ¶ 15 (JA-448).

These obstacles include limiting lawyers’ effectiveness by limiting their range of activities. Precluding lawyers from engaging in certain kinds of representation impairs their effectiveness in representing their clients in the capacities left open to them. As Mr. Scherer stated with respect to LSNY: “The forced separation of LSC grantee lawyers able to offer direct service from those non-LSC-funded lawyers able to offer only restricted forms of advocacy undercuts efforts of LSNY programs to ensure that clients who enter their offices will be able to obtain the services they genuinely need.” Id. ¶ 18 (JA-449 to -50). Mr. Scherer further explained that “[t]he programs to which clients may be referred are themselves underfunded and understaffed, are committed to their own substantive

agendas, and cannot guarantee that they will accept referred clients.” Id. ¶¶ 21-22 (JA-450 to -51).

The programmatic burdens imposed on Plaintiffs by the program integrity regulation also include the weakening of client confidence in legal services programs. John C. Gray, the Project Director of Plaintiff SBLs, described the programmatic effects on SBLs, a situation that is also true for other Plaintiffs:

A great achievement of SBLs has been to forge close links between SBLs’s lawyers and the communities we serve. These links have helped SBLs lawyers both earn the confidence of community residents and gain a better understanding of the reality of the lives of their clients. In my experience, such confidence and understanding are crucial to a programmatically effective legal services program. Separation of the lawyers operating with LSC funds and those operating with non-LSC funds would diminish the effectiveness of all lawyers.

Gray Decl. ¶ 13 (JA-415 to -16); see also Declaration of James F. Schmidt, dated November 15, 2001, ¶ 19 (JA-458) (“A dual program structure would discourage the farm workers with whom [FWLS] work[s] from turning to us. Because farm workers often lack experience and trust in the judicial system, a key to providing services to them is developing a trusting relationship with them.”).

Mr. Gray identified yet another programmatic burden on SBLs – the loss to clients of the benefit associated with attorney collaboration: “Separation [of SBLs from an affiliate] would also interfere with the dynamic ongoing communication

that allows all staff to benefit from the unique experience of others.” Gray Decl.

¶ 13 (JA-415 to -16).

**C. The Program Integrity Regulation Imposes Undue Administrative Burdens on Plaintiffs.**

The program integrity regulation also imposes substantial administrative burdens on Plaintiffs. These logistical burdens are qualitatively different than the financial and programmatic burdens resulting from the regulation, but they also adversely affect Plaintiffs’ exercise of their First Amendment rights.

John C. Gray explained the administrative burdens faced by SBLS:

Separate entities would make effective communication and coordination among staff more difficult in every aspect of our work from referrals of clients between programs to applications for foundations and other private support. For example, casehandlers in the two programs would have to figure out how to discuss different matters being handled for the same client. Project directors would have to answer constant practical questions about allocation of staff. Separate boards would have to make decisions concerning allocation of resources and fundraising efforts.

Gray Decl. ¶ 12 (JA-415). Mr. Gray explained that these burdens severely decrease the ability of SBLS to effectively represent clients: “Compliance with the program integrity [regulation] would require continuing attention by all staff to compliance instead of serving clients, especially since an incorrect decision on a compliance issue could have serious consequences for the entire program.” Id.

Similarly, Mr. Scherer described the effects of these administrative burdens on LSNY:

The forced creation and maintenance of affiliated restricted and unrestricted programs raises additional administrative problems, including crossed lines of communication on client referrals, on funding applications, and on questions of legal strategy. The requirement of physical separation causes morale problems for lawyers operating under the restrictions, interferes with efforts of those programs to hire and retain quality staff, and undermines the managerial authority of respective sets of restricted and unrestricted managers who must coordinate their respective efforts while not running afoul of the LSC restrictions and program integrity requirements.

Scherer Decl. ¶ 23 (JA-451).

Moreover, should any LSC grantee inadvertently violate the regulation, the consequences are potentially devastating. LSC is authorized to find a grantee in noncompliance if an affiliated or wholly separate, non-LSC grantee engages in too much unrestricted advocacy, *as perceived by LSC*.<sup>8</sup> See 45 C.F.R. § 1610.8. Mr. Scherer explained LSNY's assessment of the possibility of such a sanction:

[A] program can, at any time, be found in violation of the regulation based not only on the amount of unrestricted advocacy conducted by another entity, but based on the particular configuration of any relationship between an LSC grantee and another program that shares board members, managerial staff, administrative staff, office space, office equipment, or other people, physical space and equipment or functions. The risk of possible sanction – including the high stakes concern that LSC could suspend payment of millions of dollars in LSC funds and effectively halt civil legal representation of thousands of New York City residents – inevitably chills any relationship,

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<sup>8</sup> LSC concedes that if it rejects an affiliation proposal from a grantee that is seeking to comply with the program integrity regulation, it will not offer any concrete guidance about how that grantee can revise its proposal to meet the program integrity requirements. See Stip. Facts ¶ 8 (JA-900).

including any formal affiliation, between an LSC grantee and a non-LSC grantee.

Scherer Decl. ¶ 24 (JA-451 to -52).

While amici submit that the District Court was correct in concluding that the financial burdens imposed by the program integrity regulation unduly burden Plaintiffs' exercise of their First Amendment rights, the evidence in the record of programmatic and administrative burdens, when viewed together with the financial burdens, buttress the conclusion that the District Court's grant of a preliminary injunction should be affirmed.

## CONCLUSION

For the reasons set forth above, amici curiae respectfully submit that the Plaintiffs' as-applied challenges to the program integrity regulation were properly before the District Court, were ripe for adjudication, and were properly decided on the merits. In addition, amici curiae submit that the programmatic and administrative burdens imposed on Plaintiffs by LSC's program integrity regulation provide additional support for affirming the District Court's granting of the preliminary injunction.

Dated:       New York, New York  
              July 6, 2005

Respectfully submitted,

Of Counsel:  
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James J. Duffy

By: \_\_\_\_\_  
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## **CERTIFICATION**

James D. Liss hereby declares under penalty of perjury that the following is true and correct:

I am the attorney for Amici Curiae The National Legal Aid & Defender Association, et al., herein. I hereby certify, pursuant to Federal Rules of Appellate Procedure 29(d) and 32(a)(7), that the brief of amici curiae complies with the type volume limitation applicable to amici curiae in that it contains 5,908 words. The number of words has been determined by using the word count function of Microsoft Word.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed on July 6, 2005.

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James D. Liss (JDL-7448)

## **APPENDIX**

## DESCRIPTION OF AMICI CURIAE

a. The National Legal Aid & Defender Association (“NLADA”) is the national organization dedicated to ensuring access to justice for the poor through the nation’s civil and criminal legal aid system. NLADA has more than 2,000 member organizations, many of which are LSC-funded, including Plaintiffs LSNY and SBL. Most of NLADA’s members also receive funding from non-LSC sources. NLADA works with LSC-funded programs to assist them in understanding and complying with the LSC funding restrictions, to ensure that they do not violate LSC’s program integrity regulation, and to assist them in collaborating with non-LSC funded programs. Through its work, NLADA has determined that, in many instances, compliance with the program integrity regulation imposes substantial administrative and financial burdens and that, in many other cases, it is not economically feasible for LSC-funded organizations to establish affiliate programs in accordance with the LSC program integrity requirements. The absence of meaningful guidance from LSC as to the interpretation of the program integrity regulation has complicated the decision of many organizations concerning whether to establish an affiliated program or to develop a relationship with a separate non-LSC funded entity.

b. The National Organization of Legal Services Workers, UAW Local 2320, AFL-CIO (“NOLSW”) represents legal services workers in 28 states, including New York and specifically the attorneys, paralegals and support staff who work for LSNY, which is funded in part by LSC. NOLSW’s members, and the clients they serve, are affected by the program integrity regulation in two ways. First, they cannot provide the full range of representation that they otherwise might without the establishment of a separate affiliate organization. Second, separate organizations are a waste of funds that could be used to represent additional clients and to improve the working conditions of the attorneys, paralegals, and support staff who have dedicated their careers to representing low income individuals.

c. The Atlanta Legal Aid Society, Inc. (“ALAS”) provides civil legal services to the poor in central metropolitan Atlanta. Because ALAS receives LSC funding, it is precluded from using otherwise unrestricted funds to benefit clients by undertaking prohibited activities. ALAS has not established a separate affiliate corporation to engage in prohibited activities because of the financial and programmatic hurdles, including the erosion of

staff morale, and the expected resulting deterioration in the quality of services provided to clients.

d. The Association of Virginia Legal Aid Program (“AVLAP”) is a conglomeration of 12 law firms whose paramount purpose is to provide free legal services to low income individuals in Virginia. The 12 member organizations include six LSC-funded programs that are directly affected by LSC’s physical separation requirements. Three of the LSC-funded programs share an office building with non-LSC funded programs, but must avoid the sharing of staff, equipment, and facilities due to LSC’s program integrity requirements. The other three LSC-funded programs do not share office space or cooperate with a non-LSC funded programs due to the onerous nature of LSC’s requirements. Maintaining separation between LSC-funded AVLAP members and non-LSC funded organizations results in wasteful duplication and inefficiencies.

e. California Rural Legal Assistance, Inc. (“CRLA”) provides free legal representation primarily to rural low income, immigrant low income, and farm worker families throughout rural California. CRLA is active in all areas of litigation, including in particular, public benefit assistance, tenant evictions, assistance to victims of domestic violence, labor defense (e.g., unpaid wages), civil rights (e.g., hate crimes and sexual harassment), and housing discrimination. CRLA currently receives approximately \$6 million of its roughly \$9 million operating budget from LSC. Prior to the enactment of the 1996 Act and the adoption of LSC’s regulations, CRLA pursued numerous class actions on behalf of its clients (35 such cases were pending in 1996), collected substantial attorney’s fee awards (approximately \$3 million from 1991 to 1997), and represented significant numbers of undocumented immigrants – all activities that it has discontinued as a result of the 1996 Act and LSC’s regulations.

f. The Empire Justice Center (“EJC”), focuses on providing legal assistance to New Yorkers in need and undertakes impact litigation in a wide range of legal areas. EJC receives no LSC funding. Because of the restrictions imposed on LSC funding in 1996, the two organizations that merged in 2004 to become EJC – Greater Upstate Law Project (“GULP”) and the Public Interest Law Office of Rochester (“LOR”) – separated from the Monroe Co. Legal Assistance Corp. (“MCLAC”). As a result, EJC has had to incur substantial additional expenses. These additional expenses include not only administrative costs and overhead, but also the costs of

duplicate attorneys and files for clients who must retain both EJC and MCLAC to obtain the full range of legal services. As a result of LSC's program integrity regulation, many clients with meritorious cases are turned away by the EJC and MCLAC because these organizations do not have sufficient funding to assist these clients.

g. Friends of Farmworkers, Inc. provides legal assistance and education to farmworkers, and to a limited extent other immigrant workers, in Pennsylvania. In 1996, Friends of Farmworkers gave up LSC funding because of the burdens imposed by the program integrity restrictions. Losing LSC funding has forced Friends of Farmworkers to lay off half of its staff and close all but one of its offices.

h. Inland Counties Legal Services ("ICLS") serves a growing low income Latino population in California's Riverside and San Bernardino Counties, and receives a portion of its funding from LSC. ICLS currently has formal agreements with the courts in these two counties to operate informational projects for court access to monolingual Spanish speaking individuals. ICLS is in its sixth year of operating these types of projects. ICLS is precluded from offering the full range of legal services to its clients because it has determined that the financial costs of establishing and operating a separate affiliate in compliance with LSC's program integrity rules are too high.

i. The Legal Aid Foundation of Los Angeles ("LAFLA") is the oldest law firm for the poor in California, serving low-income persons and organizations in Los Angeles and its surrounding communities since 1929. LAFLA currently receives approximately 60% of its operating budget from LSC. Since the passage of the 1996 Act and the adoption of LSC's regulations, LAFLA has been unable to represent indigent clients in class actions, to collect attorney's fee awards, or to provide services to ineligible immigrants. LAFLA has not established a separate affiliate program to engage in these activities because of the substantial problems of governance, culture, and efficiency presented by the prospect of establishing such a program.

j. Legal Aid of North Carolina, Inc. ("LANC") officially began operations on July 1, 2002. LANC came into existence through the consolidation of 16 previously independent legal services organizations from across the State of North Carolina. LANC, funded in part by LSC, provides

a wide range of civil legal services to low-income residents of North Carolina. One of the difficulties faced in establishing LANC was determining how to provide the full range of legal services to indigent clients while still complying with the 1996 Act and LSC's regulations. Attempts by legal services organizations in North Carolina to comply with LSC's regulations, in particular the program integrity regulation, have been costly and wasteful, due in part to the duplication of management and support staff and office equipment.

k. The Legal Assistance Foundation of Metropolitan Chicago ("LAF") provides civil legal services to low-income individuals, families, and communities in the Chicago area. LSC funds account for approximately 55% of LAF's \$12 million operating budget. Before 1996, LAF regularly engaged in class action litigation (typically having over 40 class actions pending at a time), obtained substantial statutory attorney's fee awards (averaging more than \$1 million a year), and represented undocumented immigrants. LAF has been forced to discontinue all of these activities as a result of the 1996 Act and the program integrity regulation.

l. Legal Services Corporation of Virginia ("LSCV") provides legal services to low income individuals in Virginia through legal aid programs licensed by the Virginia State Bar. As such, LSCV funds both LSC-funded programs and non-LSC-funded programs. LSCV must expend significant resources to maintain the separation required by LSC's program integrity regulation. This results in a duplication of administrative and client services that is unnecessary, onerous, and inefficient.

m. Legal Services of Greater Miami, Inc. ("LSGMI") provides a broad range of free civil legal services to low income persons in southern Florida, an area that includes a large number of poor immigrants. LSGMI receives funds from LSC. Prior to 1996, LSGMI provided a variety of legal services including representation in suits to recover welfare, Medicaid, and Social Security benefits to poor immigrants. These individuals are now ineligible to receive legal services from LSC-funded organizations, such as LSGMI, as a result of the 1996 Act and LSC's regulations. To maintain its eligibility to receive LSC funds, LSGMI no longer provides legal services to such persons.

n. Legal Services of Northern California, Inc. ("LSNC") provides civil legal services to low income individuals, families, and communities in

northern California. Prior to the adoption of the 1996 Act and the program integrity regulation, LSCN engaged in class action lawsuits on behalf of its clients, sought and obtained recovery of attorney's fee awards, and engaged in extensive legislative and administrative advocacy on behalf of its clients at the local, state, and federal levels. Since 1996, LSNC has been forced to discontinue all of these activities. LSNC has not established an affiliate program because of the prohibitive nature of the administrative burdens, programmatic drawbacks, and financial costs that it would face in establishing an affiliate under the LSC program integrity regulation.

o. Legal Services of Southern Piedmont ("LSSP") provides a full range of legal services to people in the Charlotte metropolitan area and west-central North Carolina. LSSP received LSC funds through June 30, 2002, but declined LSC funding at that point in time in order to be able to provide LSC-prohibited legal services. Since July 1, 2002, LSSP has operated as a cooperative partner with the LSC-funded entity Legal Aid of North Carolina ("LANC"). Compliance with the LSC regulations imposes substantial additional costs on both LSSP and LANC.

p. The Nassau Suffolk Law Services Committee ("NSLSC") provides free civil legal representation to low income and disabled residents of Nassau and Suffolk Counties, New York. NSLSC receives roughly 20% of its funding from LSC. As a result of the 1996 Act and LSC's regulations, it is prohibited from using any of the remaining 80% of its funds that are obtained from other sources for purposes of representing undocumented immigrants, pursuing class action lawsuits, and collecting attorney's fee awards. Creating and operating a separate affiliate program in order to provide such restricted legal services would impose tremendous financial burdens on NSLSC.

q. Neighborhood Legal Services of Eastern New York ("NLS") serves low income and disabled individuals in western New York, providing legal representation in housing, family, disability, public benefits, and related matters. NLS receives part of its funding from LSC. NLS cannot afford to forego LSC funding or to establish a separate affiliate organization that complies with LSC's program integrity regulation. As a result, NLS has been unable to deliver a full range of legal services to its low income and disabled clients.

r. Neighborhood Legal Services of Los Angeles County (“NLS”) provides civil legal services to low income individuals in Los Angeles County. NLS receives funds from LSC, but the majority of its funding comes from non-LSC sources. As a result of the 1996 Act and LSC’s regulations, NLS is prohibited from using any of its funds to support restricted activities, including the funds it received from non-LSC sources. NLS has not established an affiliate program because it has determined that the LSC’s program integrity regulation creates too many barriers to establishing an affiliate program that would effectively serve its clients.

s. New Mexico Legal Aid, Inc. (“NMLA”), the successor organization to the Legal Aid Society of Albuquerque (“LASA”), is an LSC-funded non-profit organization that provides free civil legal services to indigent persons throughout New Mexico. NMLA opens approximately 6,000 cases annually covering priority areas such as public benefits, fair housing, domestic violence, migrant employment, Native American issues, and land and water rights. As a result of the 1996 Act and LSC’s regulations, the support center affiliated with LASA spun off into an independent non-profit organization – the New Mexico Center on Law and Poverty (“NMCLP”) – in an attempt to create an entity that could perform work restricted by LSC. NMCLP has a completely independent board and a separate physical location. Because of the complete separation of NMCLP from NMLA, NMLA does not have a true partner organization committed to the same goals as NMLA and with the capacity to perform complementary work in restricted areas.

t. Northwest Justice Project (“NJP”) provides legal services to low income individuals in the State of Washington. NJP receives LSC funds, and, thus, is unable to engage in restricted activities. NJP’s operations complement those of a legally separate, unaffiliated non-LSC funded statewide legal services program that engages in the restricted activities. NJP estimates that the costs associated with the duplication of effort inherent in operating a dual legal services system exceed \$500,000 annually, including costs associated with the duplication of staff, libraries, offices, equipment, service contracts, computer systems, insurance costs, auditing costs, and various monitoring/oversight activities. Moreover, NJP believes that the potential costs associated with inadvertent violations of the vague and complex program integrity regulation are very high.