

The regulations simply ensure that appropriate funds are not used for activities, including speech, that are outside the Federal program scope.

That ruling gives me enormous concern. It has given many, many people in this country enormous concern in light of the very extensive Federal rule on funding. So that if you have a Federal program which is funding a given activity and you say that no one can speak in opposition to that program, there is an enormous latitude for restricting freedom of speech. And my question to you is: Do you think that it is appropriate when there is Federal funding involved to limit speech when that speech is outside the Federal program scope?

Judge THOMAS. Senator, I think that in this case, with respect to the question, the underlying question in *Rust v. Sullivan*, I think it would be, from my standpoint, moving too far to comment on the underlying issues.

Senator SIMON. Why?

Judge THOMAS. As I have indicated in other instances, Senator, in these difficult cases, it is important to me that I not compromise my impartiality should cases of this nature, similar cases be considered by the Supreme Court in the future, if I am, of course, fortunate to be confirmed.

Senator SPECTER. But, Judge Thomas, I am not asking you about any specific issue, let alone any specific case. I am asking you about a very broad—a broad, broad philosophical question. It is as broad as the areas of Federal funding, which are gigantic, and it is as broad as the first amendment freedom of speech, which we hope even exceeds the breadth of Federal funding. And the issue is, just because the Federal Government gets into funding and establishes a scope of a program—and I am not talking about any specific issue—doesn't that give you at least some concern about limitations on speech, if you could curtail speech where Federal funding is involved?

Judge THOMAS. I think as I suggested last week, Senator, I was very concerned in instances in which it appears or in instances in which regulations by the Government curtail our fundamental freedoms, and in this case freedom of speech. I share that concern.

What I am attempting to avoid is offering a judgment on an agreement with a point of view on a very hotly contested and difficult case that could certainly come before the Court again.

Senator SPECTER. Well, Judge, I am really beyond the case, but I will not press it further. Let me move on with my question to you about the revisionist court and, if you join, whether you will be on the Scalia branch or the O'Connor branch, and go back to *Johnson v. Santa Clara*. Justice O'Connor takes Justice Scalia to task for his dissent which he says is an academic discussion, and then I think in a very important doctrinal view says that:

Justice Scalia's dissent rejects the Court's precedents and addresses the question of how title VII should be interpreted as if the Court were writing on a clean slate.

You have already stated that you believe the constitutional interpretation is a moving body, depending on the tradition and customs of our society, without being rigidly controlled by original intent. And here you have Justice Scalia taking title VII, as Justice O'Connor says, writing on a clean slate. And Justice O'Connor rejects