LEGAL SERVICES CORPORATION

45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") has as its principal national goal the provision of basic day-to-day legal services to eligible poor individuals. As part of the implementation of this goal, this final rule prohibits any recipient involvement in redistricting activities, as defined in the rule, because basic day-to-day legal services to the poor are not advanced by redistricting activities and redistricting is intertwined with impermissible political activity. The rule is intended to ensure that recipients refrain from becoming involved in any redistricting activity, including anything intended to influence the timing or manner of the taking of a census, since such activity is not consistent with the Corporation's principal national goal for the provision of legal assistance.

EFFECTIVE DATE: September 5, 1989.

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SUPPLEMENTARY INFORMATION: On March 14, 1989, LSC published a proposed new rule prohibiting any redistricting activity by the Corporation or any LSC recipient with a deadline for comments of April 13, 1989. In response, a total of 75 comments were received. After considering written comments and hearing public comment on the proposed regulation at its meeting in Alexandria, Virginia, on April 13, 1989, the LSC Board of Directors' Committee on Operations and Regulations voted to recommend the proposed rule with clarifying amendments to the full Board. On April 14, 1989, the LSC Board adopted the Committee recommendations with clarifying amendments.

Briefly, the rule prohibits Corporation, recipient, or subrecipient involvement in any redistricting activities. "Involvement" means the use or contribution of LSC or private funds, personnel, or equipment in redistricting activities, and "redistricting" means any direct or indirect effort to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including the timing or manner of the taking of a census. Amendments to the proposed rule adopted by the Board clarify that: (1) Voting Rights Act litigation is permissible as long as it does not involve redistricting; (2) the restrictions in the rule do not prevent recipients from using public or tribal funds for the purposes for which they were provided; (3) employees of recipients may be involved in redistricting activities as long as such involvement does not make use of program resources or time, does not involve identification with the program, and is outside the context of advice and representation; and (4) the rule does not prohibit activities permitted by 45 CFR Part 1604, LSC's regulation on outside practice of law.

The rule is intended to ensure that recipients refrain from becoming involved in rendering any legal services affecting redistricting, since such services are not consistent with the Corporation's principal national goal of the provision of basic day-to-day legal services to eligible poor individuals. Redistricting matters are not peculiar to the interests of the poor, nor have they been identified as a priority by LSC recipients. In addition, recipient funds can be better used elsewhere, since

alternative organizations are available to handle redistricting matters. Further, recipients would likely be competing with members of the private bar who handle matters such as these, since redistricting cases usually generate attorneys' fees. Finally, redistricting risks entanglement with political activities, which LSC recipients should assiduously avoid.

Generally, commenters opposed the new rule on the grounds that LSC lacks authority to restrict redistricting activities by its grantees, especially with regard to the use of private funds; that the proposed rule conflicts with other statutory authority that permits legal representation in such cases; that the definition of "redistricting" is too broad; that the Corporation's justifications for the need to restrict redistricting activities are faulty; and that the effect of the rule will be to deny poor persons access to legal assistance necessary to protect some of their most fundamental legal rights.

Authority to establish goals. Section 1007(a)(2)(C) of the Legal Services Corporation Act, Pub. L. 93-355, as amended, 42 U.S.C. 2996, *et seq.*, gives the Corporation authority not only to establish national goals, but also to determine that a specific activity may not be undertaken by LSC recipients where the activity does not advance Corporation goals. Under section 1007(a)(2)(C), 42 U.S.C. 2996f(a)(2)(C), the Corporation must ensure that recipients, "consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such [legal] assistance." This statutory language gives the Corporation authority to establish goals that constrain the freedom of local programs to set service priorities, because it requires that recipients' priorities be in accord with the Corporation's goals. The fact that this rule is cast as a prohibition, therefore, does not detract from its effect of advancing a Corporation goal.

Certainly, this prohibition can hardly be called unduly intrusive, since it otherwise leaves programs free to determine which cases they will take. This new rule is simply a modest step in the direction of establishing the primacy of basic day-to-day service, and as such it advances the overall effective use of recipients' resources.

The legislative history supports the proposition that, while recipients may establish substantive law priorities, such priorities must comport with any goals established by the Corporation. When recipients were given the role of establishing local priorities by the 1977 amendments to the LSC Act, the House and Senate committee reports discussed the recipients' obligation in the context that such priorities must be consistent with LSC national goals. H. Rep. 310, 95th Cong., 1st Sess. 10-11 (1977); S. Rep. 172, 95th Cong., 1st Sess. 13 (1977). Thus, contrary to the tenor of certain comments, nothing in the legislative history undercuts the Act's clear grant of authority to the Corporation to determine that certain activities so marginally contribute to effective use of program resources that they fall outside the Corporation's goals. The restriction on redistricting activity sets out one perimeter limiting the provision of legal assistance on the grounds that such activity falls outside the goals of the Corporation.

Authority to promulgate legislative rules. To the extent this part constitutes a legislative rule,[1] the Corporation has ample authority to promulgate it. Review of the LSC Act as an integrated whole and consideration of its language, logic, and legislative history confirm that Congress delegated broad general legislative rulemaking authority to the Corporation. A legislative rule creates new law, rights, or duties, while an interpretive rule simply states what an agency thinks the statute means and reminds affected parties of existing duties, *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979); *General Motors Corp.* v. *Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984). Because the legislative power of the United States is vested in Congress, the exercise of quasi-legislative power by governmental entities must be rooted in a grant of such power by Congress, *Chrysler Corp.*, 441 U.S. at 302; *American Postal Workers Union, AFL-CIO* v. *United States Postal Service*, 707 F.2d 548, 558 (D.C. Cir. 1983); *Joseph* v. *United States Civil Service Commission*, 554 F.2d 1140, 1153 & n. 24 (D.C. Cir. 1977). In order to decide whether legislative rulemaking authority has been delegated by Congress, the language, logic, and legislative history of the enabling act should be probed, *Chrysler Corp.* 441 U.S. at 308, and the act should be read as an integrated whole, *National Petroleum Refiners Association* v. *F.T.C.*, 482 F.2d 672, 677-78 (D.C. Cir. 1973). Finally, the fact that Congress includes specific grants of legislative rulemaking authority does not eviscerate a grant of general legislative rulemaking authority. *In re Permanent Surface Mining Regulation Litigation* v. *Peabody Coal Company*, 653 F.2d 514, 523 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 822 (1981).

LSC's general authority to promulgate legislative rules and its specific authority to legislate in regard to redistricting activities are rooted in sections 1006(a), 1006(b)(1)(A), and 1007(a)(2)(C) of the LSC Act. Section 1006(a) delegates to the Corporation to the extent consistent with the provisions of the Act all "the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act" except the power to dissolve itself. 42 U.S.C. 2996e(a). The Act intended the Corporation to be structured and financed in a way that would assure its substantial independence and freedom from both executive and legislative political interference. S. Rep. 495, 93d Cong., 1st Sess. 2-7 (1973). As a nonprofit corporation, LSC has broad discretion to make substantive, interpretive, and procedural policy and legal decisions that are legislative in nature, as long as they are reasonably related to the purposes of the enabling act. *See, e.g., National Clearinghouse* v. *Legal Services Corporation*, 674 F.Supp. 37, 41 (D.D.C. 1987); *aff'd*, 861 F.2d 303 (D.C. Cir. 1988) (one of the LSC Board's principal functions is to set funding policy).

The Act gives ample authority to the Corporation to express and implement its legislative decisions through the regulatory process. In conjunction with the authority delegated to LSC in section 1006(a), section 1006(b)(1)(A) gives the Corporation broad general oversight and rulemaking authority.[2] The legislative history of this provision evidences grant of legislative authority to the Corporation. When explaining the independent structure of the Corporation as envisioned in Senate bill, S. 2686, Senator Javits explained that the

[1] Comments have not identified those portions of the rule that are legislative. Generally, LSC considers the rule to be interpretive as it simply states LSC's interpretation of what the LSC Act means. LSC's goal is based on its policy to give primacy to the provision of basic day-to-day legal assistance to eligible poor persons. Section 1007(a)(2)(C) requires the Corporation to establish goals to ensure that recipients' priorities are in accordance with its policy goals. Although extension of this rule to private funds may arguably be legislative in nature, the Corporation reads section 1007(a)(2)(C), which mandates establishment of priorities by recipients, as extending priorities to private resources as well as LSC funds. See discussion *infra*.

[2] Section 1006(b)(1)(A) provides that:

The Corporation shall have the authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title, and to terminate, after a hearing . . . financial support to a recipient which fails to comply.

42 U.S.C. 2996e(b)(1)(A).

Corporation was given "very strong authority" to enforce the provisions of the Act by promulgating regulations and ensuring the maintenance of the highest quality of service and professional standards. 119 Cong. Rec. S22413 (Dec. 10, 1973). He considered that Congress should not watch over or interfere with decisions made by the Corporation except in extreme cases. *Id.* at S22413-22414. A logical reading of the scope of authority and discretion envisioned in sections 1006(a) and 1006(b)(1)(A) requires the conclusion that LSC was intended to be more than an entity with only interpretive authority; it was expected to make substantive legal and policy decisions that would then be implemented through legislative rules.

One type of substantive decisionmaking authority given to LSC is the authority in section 1007(a)(2)(C) to establish national goals. If the Corporation has authority to establish such goals, then it necessarily must have authority to issue rules to implement these goals and to ensure that recipients' priorities are in accord with them, as contemplated by section 1006(b)(1)(A).

In summary, Congress clearly intended to create an independent organization with broad authority to make and implement legislative policy and legal decisions.

Relevant provisions in the LSC Act. There are no provisions in the LSC Act that expressly give LSC recipients authority to engage in redistricting activities. Contrary to assertions made by some commenters, the fact that Congress contemplated that some litigation could be brought under the Voting Rights Act pursuant to section 1007(a)(6) of the LSC Act does not support the contention that redistricting litigation was necessarily contemplated. Likewise, exceptions to prohibitions on types of legal assistance activities in the Act do not provide authority, as asserted by comments, for recipients to engage in certain types of redistricting activities.

A. Authority pursuant to section 1007(a)(6). LSC's authority to prohibit all redistricting activities does not conflict with activities allowed under exceptions to the prohibitions on political activity in section 1007(a)(6) of the LSC Act.[3] Rather than granting recipients affirmative authority to engage in redistricting activities, the exceptions merely allow a narrow area of activity, *i.e.*, legal advice and representation for individuals seeking information on and access to the polls and to voter registration.

Commenters asserted that this provision, supported by its legislative history, contemplates legal assistance for eligible clients brought under the Voting Rights Act, 42 U.S.C. 1973, including redistricting litigation. This contention is not supported by the plain language of the statute or its legislative history.

The plain language of the section makes no reference to redistricting. Section 1007(a)(6) first establishes in clause (A) a blanket prohibition on involvement in political activities. In clauses (B) and (C), however, two narrow exceptions permit legal advice and representation for complaints relating to access to polls (*e.g.*, transportation to the polls or a similar activity) or any voter registration activity. Nothing in this language expressly contemplates involvement in redistricting litigation.

Nor is there any reference to redistricting in the legislative history of this provision. The extent of permissible and impermissible activities contemplated by section 1007(a)(6) was addressed in a colloquy on the Senate floor during consideration of amendments to delete the exceptions permitting legal advice and representation for voter access or registration activities. 120 Cong. Rec. S918-921 (January 31, 1974). Activities described as prohibited by the section included soliciting individuals or clients for a particular political cause and organizing carpools to take voters to the polls. *Id.* The types of activities intended to be permitted under the exceptions were legal advice and representation for eligible clients seeking access to the polls and voter registration and information on their right to participate in the electoral process. *Id.* at S918-S921. While Senator Taft made one reference to the fact that individuals should be able to get legal advice as to their rights under the Voting Rights Act, he made no mention of redistricting activities. *Id.*

This rule will not prevent advice and representation with respect to the types of voter access issues contemplated in the language of section 1007(a)(6), including most cases brought under the Voting Rights Act. However, although redistricting cases are often brought under the Voting Rights Act, the rule identifies redistricting as being so entangled with political considerations that it is more akin to the matters outside the scope of the exceptions than to issues of simple access.

B. Exceptions to prohibitions. The LSC enabling and appropriations acts provide ample authority for a blanket prohibition of all redistricting activities, even though certain exceptions in the acts would allow certain types of legal assistance activities that are prohibited in this part. For example, the LSC enabling and funding acts contain general prohibitions on lobbying activities but provide certain exceptions, such as one for legislative lobbying when such lobbying is carried out on behalf of an eligible client or upon the request of a legislator. *See* 42 U.S.C. 2996f(a)(5); and Pub. L. 100-459, 102 Stat. 2223-2224 (1988). Commenters assert that these exceptions provide authority to lobby on redistricting matters when the lobbying activity is done on behalf of an eligible client.

First, these provisions are cast as exceptions to prohibitions. Such exceptions, by their terms, do not constitute affirmative mandates to engage in the excepted activities; rather, they merely define those activities that are not prohibited as lobbying per se. Thus, these exceptions do not give affirmative authority for recipients to lobby in any substantive area, such as redistricting matters, when the lobbying is done on behalf of an eligible client.

Second, the LSC Act clearly differentiates between prohibitions on program involvement in certain substantive areas of law, such as criminal law, desertion from the military, and procurement of non-therapeutic abortions, and prohibitions on the types of legal assistance activities that can be carried out, *i.e.*, lobbying, training, community education, and organizing. As a general rule, if the LSC Act contains a prohibition against involvement in an area of law, then *all*[4] types of legal assistance in that area are prohibited. For example, the prohibition on representation in criminal cases precludes a recipient from using LSC funds to train attorneys in this area of law or to conduct community education. Accordingly, prohibitions on involvement in substantive areas of the law apply even where the eligible client

[3] Section 1007(a)(6) obligates the Corporation to insure that all recipient attorneys engaged in legal assistance activities refrain from:

(A) Any political activity, or (B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice or representation), or (C) any voter registration activity (other than legal advice and representation).

42 U.S.C. 2996f(a)(6).

[4] "Legal assistance" refers to all legal services provided by recipients under the Act, including training, community education, direct representation, and research.

exceptions might otherwise permit representation.

Finally, however, 45 CFR 1612.1(h) includes activity intended to influence the structure of government itself, such as reapportionment, within the meaning of legislative lobbying. Such lobbying is prohibited, and no exception is provided for eligible clients or requests of legislators. See 45 CFR 1612.4(b).

Thus, the determination to prohibit any redistricting even with an eligible client or a request of a legislator is well within existing precedent.

Private Funds. The Corporation has ample authority to apply this rule's prohibition to private funds. First, LSC's authority to restrict redistricting activities is rooted in a statutory mandate that is not dependent on what funds are used, or even whether or not any funds are used for the activity. The statutory requirement in section 1007(a)(2)(C) that the Corporation ensure that recipients establish priorities in accord with the Corporation's goals is not tied to the use of LSC funds. Rather, it is an affirmative requirement that attaches to the program regardless of whether LSC or private funds are used. For this reason, Part 1620, LSC's regulation implementing section 1007(a)(2) of the Act, applies to all of a recipient's resources. *See* 45 CFR 1620.2(a) and (b)(3) and 1620.5(b).

Likewise, the prohibitions on political activities in section 1007(a)(6) apply to the activities and are not limited by consideration of what funds are used. Of course, section 1007(a)(6) activities are already listed as being within the scope of section 1010(c) of the LSC Act, which prohibits the use of private funds for such activities. *See* 45 CFR Part 1610. However, a violation of this provision could occur regardless of whether any specific funds are used, since the prohibition is directed against the activity, not against the use of funds for such activity.

In summary, the prohibition of any redistricting activity regardless of the source of funds used is consistent with other prohibitions in the Act.

Policy Considerations Bearing on the Regulation of Redistricting. Substantial policy considerations warranted LSC's determination that redistricting activities are not consistent with the Corporation's principal national goal of providing basic day-to-day legal services to eligible poor individuals. Basic services include those that provide an immediate and discrete benefit to eligible clients with specific complaints such as child support, adoption, child abuse, and other family law matters; consumer complaints; and landlord tenant disputes, rather than services aimed at broad social and legal reform. The more esoteric cases, aimed at changing political and social structures with the hope that such changes will eventually benefit the poor, have evoked much public and Congressional criticism, because the benefits to the poor are often attenuated and entangled with social or political issues. Redistricting activity falls outside day-to-day legal services for the reasons set out below.

First, redistricting cases are not peculiar to the interests of the poor, since the relief sought would affect entire communities, which are composed of poor and non-poor individuals. Since the poor represent a minority, approximately 10 to 15 percent of the United States population, the group of eligible poor in most communities is relatively small. While it is possible to find localities in which a majority of citizens are eligible clients, as pointed out in some comments, in most localities less than 15 percent of the population is denominated as poor. In addition, since most redistricting cases are class actions and certainly affect large blocks of residents, the putative plaintiff class often may consist of a majority of non-eligible individuals. Similarly, the relief sought in redistricting cases often would go to the non-poor. Even in redistricting cases involving discrimination issues, the relief sought would not always go primarily to eligible poor individuals, as only part of the protected minority may be eligible. Consequently, the expenditure of recipients' funds on redistricting activities commonly would result in an allocation of resources for the benefit of non-eligible persons.

Second, redistricting cases generally have not been identified as a priority by LSC recipients. A compilation of the types of cases handled by LSC recipients in 1987 reveals that approximately 27 percent of the cases involved family matters, 21 percent involved housing matters, 16 percent involved income maintenance issues, and 12 percent were consumer-related cases. *See* Legal Services Corporation 1987/1988 Fact Book at 65. However, the need for this rule is supported by the fact that, regardless of redistricting's non-priority status in the past, LSC recipients have committed substantial resources to redistricting issues. Specifically, the Corporation estimates that at least 28,000 hours were devoted to handling redistricting cases from 1978 to 1984, years surrounding the 1980 census. Suggestions that redistricting might be included in a recipient's "other issues" category of priorities simply underlines this area as one lacking special concern to clients. Of the 73 comments submitted on the proposed rule, only two stated that their programs are presently involved in redistricting cases and only 10 cited previous involvement in such cases. Three recipients—Legal Aid Society of Central Texas, California Rural Legal Assistance, and Mississippi Legal Services Coalition—said that voting rights or redistricting cases are a priority for their programs.

Third, LSC has determined that recipient funds can be better used elsewhere, since alternative organizations and private attorneys are available to handle redistricting matters. Redistricting cases usually offer incentives to members of the private bar, since under the Voting Rights Act, 42 U.S.C. 1973, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1981 and 1988, the right to recover attorneys' fees is specifically given to prevailing parties. Redistricting matters are also undertaken by numerous organizations, including the Mexican American Legal Defense Fund, the Southwest Voters Registration Project, Common Cause, the American Civil Liberties Union, the Native American Rights Fund, the NAACP, the Lawyers Committee for Civil Rights, the League of Women Voters, the Democratic National Committee, and the Republican National Committee. In comments to LSC's proposed rule, several of these organizations conceded that they are heavily involved in redistricting issues, but they claim, without evidence, that there is still a substantial unmet need for which alternative representation is unavailable. Referring to the upcoming 1990 census, one such commenter stated that massive efforts will be required to scrutinize "all of the plans" resulting from redistricting in thousands of jurisdictions nationwide. While it may be true that representation may be unavailable for all cases or in some geographic areas, such comments confirm LSC's assertion that many civil rights organizations already handle redistricting matters both on a national and local level. Comments that massive efforts will be required in the next decade for redistricting activities, including litigation that requires inordinate amounts of resources and time, reinforce the need to regulate in this area, since these activities would most certainly draw resources away from the provision of basic day-to-day legal services. It is simply not effective and economical to channel legal services funds into a massive effort that does not primarily affect the poor and that is already the object of

considerable attention from private attorneys and interest groups.

Fourth, in the past, involvement in redistricting activities by legal services recipients has been subject to abuse, because legal services recipients have linked redistricting activities to obtaining favorable Congressional support for their own parochial objectives. One LSC recipient's grant proposal addressed the need to become involved in State and local redistricting matters in order to develop powerful allies for its clients in what the recipient viewed as a battle over the direction of legal services programs. Influencing redistricting in State and local legislative bodies clearly affects the political character of those legislative bodies.

In response to requests made on April 11 and May 10, 1988, by the Senate Committee on Labor and Human Resources, LSC conducted a study of its grantees to determine their involvement in legislative redistricting activities arising out of the 1980 census. As a result of 2 separate monitorings and 34 responses to an LSC questionnaire that was mailed to all LSC programs, LSC estimates that at least 28,182 hours were spent handling legislative redistricting cases. Specifically, the LSC study found that LSC recipients, in spite of one recipient's assertion that clients rarely come to the office contending they have been "malapportioned," had sought resources for specialized computer equipment and a computer specialist to draw new election district boundaries to the recipients' satisfaction. In addition, recipients hired lobbyists to work on reapportionment issues, yet (in contravention of section 1007(a)(5) of the LSC Act, 42 U.S.C. 2996f(a)(5)) had no documented request from an eligible client or elected official to undertake this activity. Further, recipients also sought to orchestrate a State-wide effort of legal services programs to ensure elections of specific persons, who would in turn be used as powerful allies in anticipated battles over funding for legal services programs.

The LSC study also revealed that certain LSC recipients requested and received Federal funds from the Corporation to establish a Voting Rights Project center in connection with the 1980 census for the purpose of strengthening Mexican-American political power, yet had no request from an eligible client to do so. These recipients prepared a voting rights litigation manual that outlined how to solicit clients for a redistricting battle and how to locate such a client. Since these redistricting activities were obviously conducted by legal services attorneys in pursuit of general policy goals (or even in their own self-interest), rather than in the vindication of individual clients' rights, it is clear that involvement in redistricting activity is subject to abuse. Comments asserting that the reports of past abuse have been overstated were non-specific. Evidence of past abuse already before the Corporation, wherein legal services grantees have been linked to redistricting activities designed to obtain favorable Congressional support for the recipient's objectives, may legitimately be considered by the Corporation in deciding how best to ration legal services resources.

Finally, redistricting risks entanglement with political activities, *see Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) ("Politics and political considerations are inseparable from redistricting and apportionment"), which should be avoided assiduously by LSC recipients. As noted in the discussion of the LSC study above, recipient involvement in redistricting too often was linked to obtaining Congressional support for recipients' political or self-interest objectives. The LSC Act declares that "to preserve its strength, the legal services program must be kept from the influence of or use by it of political pressures." 42 U.S.C. 2996. The LSC Act also specifically prohibits involvement in "any political activity." 42 U.S.C. 2996f(a)(5)(A).

In separate instances, LSC recipients were involved in reapportionment cases with counsel for the Democratic and Republican parties. *Upham v. Seamon*, 456 U.S. 37 (1982); *Thornburg v. Gingles*, 478 U.S. 30 (1986). Comments from attorneys involved in *Gingles* asserted that LSC recipient involvement was limited to filing *amicus* briefs and that actions taken by the Republican Party lawyers were totally separate and independent. While the Corporation makes no finding as to whether LSC recipients have aligned themselves with a particular political party, it believes that any such activity risks an impermissible political alignment under the Act.

Many of these same considerations warrant inclusion of "the timing or manner of taking of a census" in the definition of redistricting. Comments challenged the inclusion on the grounds that such activities are not intertwined with political activity, because the census is used for a wide variety of purposes other than drawing election districts. The United States Constitution mandates that a census be taken every ten years for purposes of reapportionment. U.S. Const. Art. 1, Sec. 2, Cl. 3. In essence, any participation by LSC recipients to influence the timing or manner of taking a census would affect the first step in the redistricting process. As such, involvement in census-taking properly may be prohibited, as it is a necessary antecedent to redistricting.

Additionally, ample alternative public and private entities are available to pursue census cases. Overwhelmingly, the cases challenging the census have been brought by State and local governments because they have a strong interest in the outcome of the census. *See generally, City of New York v. United States Dept. of Commerce*, No. 88 CV 3474 (E.D.N.Y. 1989); *Cuoma v. Baldrige*, 674 F.Supp. 1089 (S.D.N.Y. 1987); *City of Willacoochee, Ga. v. Baldrige*, 556 F.Supp. 551 (S.D.Ga. 1983); *Young v. Klutznick*, 497 F.Supp. 1318 (E.D. Mich. 1980), *rev'd on other grounds*, 652 F.2d 617 (6th Cir. 1981), *cert. denied*, 455 U.S. 939 (1982); *Carey v. Klutznick*, 637 F.2d 834 (2d Cir. 1980); *City of Philadelphia v. Klutznick*, 503 F.Supp. 663 (E.D. Pa. 1980). A review of this sampling of cases reveals the following named plaintiffs: States of New York and California; Cities of New York, Los Angeles, Chicago, Houston, Philadelphia and Detroit; Dade County, Florida; the United States Conference of Mayors; the National League of Cities; the League of United Latin American Citizens; the NAACP; and various mayors, governors and State and national legislators. This wide range of available representation would make any representation by LSC recipients unnecessary. Any undercount reduces the share of Federal revenue to which states and localities may be entitled—particularly for assistance programs for the poor—thus affecting their interest in the quality and quantity of social services they can offer their indigent citizens and their own financial status as governments. Local governments are also in a better financial position to make census challenges. Thus, any use of LSC funds for such purposes would clearly not be an economical or effective utilization of resource. *See* 42 U.S.C. 2996f(a)(3).

In summary, the Corporation has ample authority and policy grounds to prohibit redistricting activity by LSC recipients with LSC or private funds.

Clarifying amendments. Several clarifying amendments were adopted by the Board to delineate certain permissible activities that fall outside the scope of the rule's prohibition. Paragraph (a) of § 1632.4 provides that redistricting activity is the only type of Voting Rights Act litigation prohibited

by this rule. Other suits brought under the act, such as the right to vote itself and physical access cases, are permitted.

Paragraph (b) makes clear that the public and tribal funds are not governed by this part. Thus, the prohibition in this part shall not prevent the use of public or tribal funds for redistricting as long as it is in accord with the purposes for which the funds were provided.

Paragraph (c) provides that employees of recipients may be involved in redistricting activities as long as their involvement does not make use of the program's resources or time, does not involve identification with the program, and is outside the context of advice and representation. This provision is intended to ensure that the prohibition in this part does not infringe upon the First Amendment rights of recipient employees.

Finally, paragraph (d) provides that this part does not prohibit any activities otherwise permitted by 45 CFR Part 1604, LSC's regulation on the outside practice of law. Generally, Part 1604 prohibits outside practice of law, except that newly employed attorneys may close cases from previous law practices, and uncompensated representation pursuant to a court order, for a close friend or family member, or for a religious, community, or charitable group may be permitted.[5]

Under Pub. L. 100-459, 102 Stat. 2226 (1988), the Corporation is required to give 15 days' notice to the appropriations committees of both Houses of Congress prior to promulgating new regulations. Notice letters duly were sent to the House and Senate Committees on Appropriations. No objection was voiced by the Senate committee. The Chairman of the House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies responded on July 28, 1989, and his letter appears in Appendix A to this notice.

List of Subjects in 45 CFR Part 1632

Legal services.

For the reasons set out in the preamble, 45 CFR Chapter XVI is amended by adding Part 1632 as follows:

[5] The breadth of the exception in section 1604.4 with regard to legal services program attorneys being compensated in connection with an "outside" law practice has been criticized as going beyond the terms of the section of the LSC Act on which it is based, 42 U.S.C. 2996f(a)(4). *See Dobose v. Pierce*, 579 F. Supp. 937, 963 (D. Conn. 1984), *rev'd on other grounds*, 761 F.2d 913 (2d Cir. 1985); *Jordan v. City of Greenwood*, 808 F.2d 1114, 1118 (5th Cir. 1987), *cert. denied sub nom. Jordan v. North Mississippi Rural Legal Services, Inc.*, 108 S. Ct. 89 (1987).

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.
1632.4 Permissible activity.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

§ 1632.1 Purpose.

This part is intended to ensure that funds available to recipients will be utilized to the maximum extent for the delivery of basic day-to-day legal services to eligible poor individuals. Involvement in redistricting activities does not constitute the provision of basic day-to-day legal services and is prohibited by this part.

§ 1632.2 Definitions.

As used in this part:

"Advocating or opposing any plan" means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

"Recipient" means any grantee or contractor receiving funds made available by the Corporation under section 1006(a)(1) or 1006(a)(3) of the act. The term "recipient" includes subrecipient and employees of recipients and subrecipients.

"Redistricting" means any effort, directly or indirectly, to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

Neither the Corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, or equipment for use in advocating or opposing any plan, proposal, or litigation intended to or having the effect of altering any redistricting at any level of government.

§ 1632.4 Permissible activity.

Nothing in this part shall prohibit:

(a) Any litigation brought by a recipient of the Legal Services Corporation under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting;

(b) The expenditure of public or tribal funds that are used in accordance with the purposes for which they were provided;

(c) Activities undertaken by employees of recipients without the use of program resources, including time, and without identification with the recipient and outside the context of advice and representation; or

(d) Activities otherwise permitted by 45 CFR Part 1604.

Timothy B. Shea,

General Counsel.

Editorial Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A—Response From Chairman Neal Smith of House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies

July 28, 1989.

Honorable Terrance J. Wear,
President, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751

Dear Mr. Wear: This is in response to your letter of July 11, 1989 notifying the Committee of the Corporation's intent to promulgate 45 CFR Part 1632, the Corporation's new regulation on redistricting activity.

I note that the prohibition in this regulation is similar to that contained in section 6 of S. 2409, a bill to reauthorize the Legal Services Corporation, which was introduced by Senators Hatch and Rudman in 1986 and is not in conflict with the provisions further restricting the Corporation from adopting new regulations relating to fee generating cases and use of private funds which were included in the recent appropriations Supplemental (Pub. L. 101-45). I also have specifically noted your statement in the cover letter that the regulation was amended to make clear that "employees of legal services programs can be involved in redistricting activities, as long as the involvement does not make use of program resources or time, does not involve identification with the program, and is outside the context of advice and representation."

Conditioned upon the understanding that you agree with the above statements, the Committee has no objection to this regulation. We appreciate your keeping the Committee informed of changes within the Legal Services Corporation.

Sincerely,

Neal Smith,

Chairman, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies.

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