No. 99-30895

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, LOUISIANA CHAPTER; ST. JAMES CITIZENS FOR JOBS AND THE ENVIRONMENT; CALCASIEU LEAGUE FOR ENVIRONMENTAL ACTION NOW; HOLY CROSS NEIGHBORHOOD ASSOCIATION; FISHERMEN'S AND CONCERNED CITIZENS' ASSOCIATION OF PLAQUEMINES PARISH; ST. THOMAS RESIDENTS COUNCIL; LOUISIANA ENVIRONMENTAL ACTION NETWORK; LOUISIANA ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW; NORTH BATON ROUGE ENVIRONMENTAL ASSOCIATION; ROBERT KUEHN; CHRISTOPHER GOBERT; ELIZABETH E. TEEL; JANE JOHNSON; WILLIAM P. QUIGLEY; TULANE ENVIRONMENTAL LAW SOCIETY; TULANE UNIVERSITY GRADUATE AND PROFESSIONAL STUDENT ASSOCIATION; INGA HAAGENSON CAUSEY, CAROLYN DELIZIA, AND DANA HANAMAN

Plaintiff-Appellants,

versus

THE SUPREME COURT OF THE STATE OF LOUISIANA

Defendant-Appellee

On Appeal from the United States District Court
for the Eastern District of Louisiana
Civ. A. 99-1205, Section L

BRIEF OF LOUISIANA SUPREME COURT, APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to 5th Cir. Local Rule 28.2.1, the undersigned counsel of record certifies that the following entities or persons have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

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CALCASIEU LEAGUE FOR ENVIRONMENTAL ACTION NOW

HOLY CROSS NEIGHBORHOOD ASSOCIATION

FISHERMEN'S AND CONCERNED CITIZENS' ASSOCIATION OF PLAQUEMINES PARISH

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American Association of University Professors

Clinical Legal Education Association

American Civil Liberties Union of Louisiana

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The Supreme Court of The State of Louisiana

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STATEMENT REGARDING ORAL ARGUMENT

This case involves a challenge of the right of any court, be it state or federal, to create and alter rules of practice allowing non-lawyer students to represent third parties in civil cases.

Under the plaintiffs' theory, once any Court has established any rules allowing law students to serve in a representative capacity, no matter how narrow or broad, any change or alteration of those rules has constitutional dimensions. Further, under the plaintiffs' theory, any alteration of student practice rules allows students, their professors, and others to mount a legal challenge to any court's inherent power to authorize non-lawyers to represent litigants. Under the plaintiffs' rationale, no court would be able to limit non-lawyer representation of litigants once a "high water" mark has been established.

It is submitted that oral argument would be of aid to the Court.

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STATEMENT OF JURISDICTION

This Court has jurisdiction over an appeal from the final order of the district court under 28 U.S.C. §1291.

ISSUES PRESENTED FOR REVIEW

The Louisiana Supreme Court believes that, despite the plaintiffs' assertion that there are five issues presented for review, there is actually only one issue:

Did the district court properly dismiss the plaintiffs' suit for failure to state a claim upon which relief can be granted when:

a. There is no right of non-lawyers to represent third parties in court;

b. There is no right to counsel of any individual or organization in a civil case; and

c. None of the four groups of plaintiffs has standing because none has suffered any judicially cognizable injury.

STATEMENT OF THE CASE

PROCEEDINGS BELOW

Suit was brought by the plaintiffs who filed this appeal, plus one party who did not join in the appeal.[1]

The Louisiana Supreme Court filed a motion to dismiss the plaintiffs' complaint for failure to state a claim as to which relief can be granted. After a hearing, with extensive briefing and oral argument, the district court granted the motion to dismiss on July 29, 1999. R.552.

STATEMENT OF FACTS

The only "facts" on a motion to dismiss are those alleged in the plaintiffs' complaint. There is not, as the plaintiffs assert, "no real dispute"[2] as to the underlying facts; there is a substantial dispute. Nonetheless, the only thing pertinent at this point are the allegations in the complaint and whether they state a claim. The determination of the legal issues before the Court flow from the following allegations in the plaintiffs' complaint:

1. The plaintiffs are composed of four separate groups, each asserting various causes of actions. The groups are:

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[1]C. Russell H. Shearer, a plaintiff below, did not join in this appeal. *See*, Complaint, R. 164, where he is listed and Appellants' brief where he is no longer listed as a party.

[2]Appellants' Brief, p. 30.

- *Plaintiff Client Organizations*, nine different organizations[3] and one organization composed of twenty separate groups;[4]
- *Law Professors*, five law school professors or clinical law instructors from two different Louisiana law schools;[5]
- *Law Students*, consisting of three law students (two "third year" law students enrolled in a law school clinic in 1998-1999 and one law student who has been accepted to a legal clinic for 1999-2000);[6] and
- *Two Student Organizations Which Do Not Represent Litigants In Court*, the Tulane Environmental Law Society (an organization of students, including but not limited to "student practitioners" at the Tulane Environmental Law Clinic),[7] and the Tulane Graduate and Professional

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[3] Those nine organizations are: Southern Christian Leadership Conference, Louisiana Chapter; St. James Citizens for Jobs and the Environment; Calcasieu League for Environmental Action Now; Holy Cross Neighborhood Association; Fishermen's and Concerned Citizens' Association of Plaquemines Parish; St. Thomas Residents Council; Louisiana Environmental Action Network; Louisiana Association of Community Organizations for Reform Now; and North Baton Rouge Environmental Association. Complaint ¶ 13.

[4] Louisiana Communities United is described as a "coalition of 20 community, church and union groups in the Mississippi River Parishes of Ascension, Iberville, St. James, East Baton Rouge, and St. Charles." Complaint ¶ 13(j).

[5] Complaint ¶ 15.

[6] Complaint ¶ 16.

[7] Complaint ¶ 16(a).

Student Association (the governing entity for graduate and professional students).[8]

2. The essence of the pleading is that the Louisiana Supreme Court previously had established a rule (Rule XX) that the Tulane Environmental Law Clinic had read as allowing its non-lawyer students to represent organizations of any type in any capacity in any legal proceeding, but that in light of that Clinic's success in certain litigation, the Supreme Court altered the rule under political pressure.

3. Noticeably absent as a party is the Tulane Environmental Law Clinic, the organization that plaintiffs alleged was the object of the changes to Rule XX. Also noticeably absent as a party is any law clinic program associated with any of the other law schools in the state.

4. Each of the groups of plaintiffs alleged separate and distinct causes of action below.

5. The *Plaintiff Client Organizations* alleged an impingement on their freedom of association and speech and upon their right to petition the government (Complaint¶133).

6. The *Law Professors* alleged an impingement upon their academic freedom and speech (Complaint¶134).

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[8] Complaint ¶ 16(b).

7. The *Law Students* alleged an impingement upon their academic freedom and speech (Complaint¶115-122) .

8. The *Two Student Organizations Which Do Not Represent Litigants In Court* alleged an impingement upon their (the organizations') academic freedom (Complaint ¶110) and the "educational experience" of their members (Complaint ¶110-112).

9. All the plaintiffs also made broad-ranging claims that the amendments to Rule XX amounted to "viewpoint discrimination" and discrimination based upon political views (Complaint ¶130,131), and that constitutional rights were affected.

10. On appeal, a number of these claims have been abandoned.[9]

11. The complaint does not allege that the Louisiana Supreme Court lacks the right to promulgate a rule controlling the actions of non-lawyers who seek to serve in a representative capacity in litigation; rather, it is the plaintiffs' position that once a rule is established, it cannot be altered without triggering a constitutional

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[9]Abandoned are claims concerning: 42 U.S.C. § 1983 and 1988; plaintiffs' claims concerning their right to petition the government for redress of grievances; plaintiffs' claims of a denial of equal protection and due process; any and all claims of vagueness and overbreadth; all claims under the Louisiana State Constitution; and all claims of plaintiffs C. Russell H. Shearer, Tulane Environmental Law Society and Tulane Graduate and Professional Student Association. An issue not briefed on appeal is considered abandoned. *United States v. Gipson,* 46 F.3d 472, 475 (5th Cir. 1995); *Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir.), *cert. denied*, 513 U.S. 868, 115 S.Ct. 189, 130 L.Ed.2d 122 (1994); *Hobbs v. Blackburn*, 752 F.2d 1079, 1083 (5th Cir.), *cert. denied*, 474 U.S. 838, 106 S.Ct. 117, 88 L.Ed.2d 95 (1985).

inquiry (Br. p.26). The plaintiffs concede here (Br. pp. 21, 37) that without a rule, no student could represent others in litigation.

SUMMARY OF ARGUMENT

The Louisiana Supreme Court's Rule XX governing law student practice is more expansive than the federal regulations governing the legal aid by lawyers to indigents and organizations. The Rule is also more expansive than student practice rules promulgated by many federal and state courts. There are no constitutional dimensions to the claim that Rule XX, which is broader than the federal regulations, impinges on "rights" of those who (because they fit within the income guidelines of Rule XX but outside of the federal guidelines) would not be entitled to a *lawyer* under the federal legal services regulations.

There is no right of non-lawyers to represent others in litigation, and there is no right of persons or organizations to demand that counsel be appointed to represent them in civil litigation. There can be no claim that any "speech" rights are impinged by court rules regulating when students may file pleadings on behalf of third parties or argue cases on behalf of third parties, for there is no "free speech" right for lay persons to act as counsel for others.

Because none of the plaintiffs (or those whose interest they purport to assert) has suffered a judicially cognizable injury, none has standing to bring any claim.

STANDARD OF REVIEW

While motions to dismiss for failure to state a claim are reviewed *de novo,* the review is limited to the language of the plaintiffs' complaint. *Morin v. Caire,* 77 F.3d 116, 120 (5th Cir. 1996). When plaintiffs challenge a regulation as facially unconstitutional, they face "a heavy burden" and must show "that no set of circumstances exists" under which the regulation would be valid. *Rust v. Sullivan*, 500 U.S. 173, 183, 111 S.Ct. 1759, 1767, 114 L.Ed.2d 233 (1990). This is true with even more force when plaintiffs challenge actions of a state supreme court in regulating who may appear before it, for in such an instance the state supreme court occupies the same position as that of the state legislature. *Lewis v. Louisiana State Bar Association*, 792 F.2d 493 (5th Cir. 1986), citing *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977).[10]

Standing requirements are jurisdictional and not subject to waiver. *Lewis v. Casey*, 518 U.S. 343, 349, 116 S.Ct. 2174, 2178-79 n.1, 135 L.Ed.2d 606 (1996); *National Organization of Women v. Scheidler*, 510 U.S. 249, 255, 114 S.Ct. 798, 802, 127 L.Ed.2d 99 (1994); *Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 529 (5th Cir. 1996). The issue may be raised on appeal even though lack of standing

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[10] *See also Scariano v. Justices of the Supreme Court of Indiana*, 852 F.Supp. 708, 713 (S.D. Ind.), *aff'd*, 38 F.3d 920 (7th Cir. 1994), *cert. denied*, 515 U.S. 1144, 115 S.Ct. 2582, 132 L.Ed.2d 831 (1995).

was not the basis of the dismissal below. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 540-41, 106 S.Ct. 1326, 1331, 89 L.Ed.2d 501 (1986).

While the plaintiffs have contended that a party may add "essential facts" even on appeal,[11] the rule in this Circuit is that the Court "'is barred from considering filings outside the record on appeal.'" *Galvin v. Occupational Safety & Health Admin.*, 860 F.2d 181, 185 (5th Cir. 1988) (quoting *In re GHR Energy Corp.*, 791 F.2d 1200, 1201-02 (5th Cir. 1986)). A court may not consider "new factual material included in the brief of the amicus." *Smith v. United States*, 343 F.2d 539, 541 (5th Cir.), *cert. denied*, 382 U.S. 86, S.Ct. 122, 15 L.Ed.2d 99 (1965).

[11]Appellants' Br. at 24, citing *Hrubec v. National R.R. Passenger Corp.*, 981 F.2d 962, 963-64 (7th Cir. 1992).

ARGUMENT

2. INTRODUCTION

The plaintiffs' brief implicitly assumes two remarkable propositions for which there is absolutely no legal basis. First, it assumes that non-lawyers have a "right" to represent others in litigation. Second, it assumes that individuals and organizations have a "right" to insist upon free legal representation by non-lawyers. Neither proposition can be sustained.

It is only by ignoring these two unassailable rules (no non-lawyer has a right to represent others, and no individual or organization has a right to be represented by a non-lawyer or to have a free lawyer in civil litigation) do the plaintiffs leap into their claims that somehow the rights of law professors who are lawyers are harmed by Rule XX, or that students or plaintiff organizations or non-law-student-organizations have any legal claim upon which relief can be granted.

It is important initially to note four facts that are not in dispute.

- First, no law professor is limited in any way by Rule XX in acting as counsel for anyone, regardless of the activities of his students.

- Second, no truly indigent individual who seeks legal representation from any law student clinic or law professor is affected by Rule XX's indigency standards, for Rule XX's criterion of indigency is almost twice that of the federal definition. Since

the inception of the Louisiana Supreme Court's student practice rule in 1971, there always has been a requirement of indigency of the potential client.[12]

o Third, Rule XX closely tracks the standards of the federal Legal Services Corporation, although Rule XX's indigency standard for individuals is much more liberal and expansive than that of the Legal Services Corporation. The Legal Services Corporation has an indigency standard for individuals who seek free legal counsel; so does Rule XX in regulating whom law students may represent. The Legal Services Corporation regulations provide, as does Rule XX, that if a group or organization seeks legal assistance, the group must meet two standards: it must be "primarily composed of persons eligible for legal assistance under the Act" and must provide information "showing that it lacks, and has no practical means of obtaining, funds to retain private counsel." 45 C.F.R. 1611.5. Compare: Rule XX(5).

o Fourth, the Tulane Environmental Law Clinic (which the plaintiffs allege was the focus of Rule XX's amendment) is not a party, although the plaintiffs' brief to this court consistently makes references to the clinic as if it were a party. There is nothing in Rule XX, as it currently exists, that applies differently to this law clinic than to any other law clinic at Tulane Law School or at the law schools at LSU, Loyola, or Southern.

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[12]The rule originally permitted representation of only "indigent persons." The history of the rule is discussed later in this brief.

Because of the unusual nature of the plaintiffs' claims, it is necessary to discuss two matters initially: first, the relationship between Rule XX and the federal Legal Services regulations; and, second, the underlying fallacy of the plaintiffs' assumptions about student representation of others in court.

3. RULE XX IS MORE EXPANSIVE THAN THE REGULATIONS OF THE LEGAL SERVICES CORPORATION

The plaintiffs' brief would have a reader believe that Rule XX is restrictive and unique and that the amendment of Rule XX has constitutional dimensions. The next section of this brief demonstrates that Rule XX is neither unique in terms of court-promulgated rules nor as restrictive as other rules created by other courts. Most telling, however, is the omission in the plaintiffs' brief to any mention of the regulations governing the providing of legal assistance by the federal Legal Services Corporation.

Rule XX, as amended, is closely modeled on these regulations, (45 C.F.R. §1611.1 *et seq.*), but is more expansive. The federal standard for assistance under the program requires that individuals seeking legal aid from the Corporation's lawyers cannot earn an income that exceeds 125% of the current federal income poverty guidelines. 45 C.F.R. §1611.3(b). That standard can be lower in individual localities;[13]

[13]45 C.F.R. §1611.3(c).

it also, in certain instances, can be expanded up to 187.5%.[14] By contrast, Louisiana Rule XX(4) allows individual recipients to earn an income up to 200% of the federal poverty guidelines; that standard is state-wide and "need not be applied when the client is court-appointed or court-referred." *Id.* The poverty standards used by Rule XX are the national standards promulgated by the federal Department of Health and Human Services. *Id.*

The federal regulations allow for representation of groups or organizations under limited circumstances. As has been noted earlier in this brief, services may be provided "to a group, corporation, or association *if it is primarily composed of persons* eligible for legal assistance under the Act *and* if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel" 45 C.F.R. §1611.5(c) (emphasis supplied) . Those same two tests — the group must be primarily composed of eligible individuals and must lack and have "no practical means of obtaining funds to retain private counsel" — are the same ones contained in Rule XX(5).

Rule XX, on its face, is equivalent to (and, in many instances, is identical to or more liberal than) the federal regulations. Moreover, the federal regulations are concerned with providing lawyers to indigents; Rule XX is more expansive, and it concerns allowing non-lawyers to serve indigents as legal counsel. The plaintiffs'

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[14]45 C.F.R. §1611.4.

claim that Rule XX's requirements are unconstitutional in any way has no merit. To hold otherwise would be to hold that the federal regulations contained in 45 U.S.C. §1611 are themselves unconstitutional.

4. THERE IS NO RIGHT OF NON-LAWYERS TO REPRESENT OTHERS IN LITIGATION

Despite the frequent use of the term "student lawyers" in the plaintiffs' brief, these students are not lawyers. They are legally no different from any other lay person. While individuals may appear *pro se* in civil litigation,[15] Louisiana statutes are clear that only lawyers may represent third parties in court. Unless and until licensed to practice law by the Louisiana Supreme Court, neither an individual nor an entity may practice law, give legal advice, or grant legal counsel. La. R.S. 37:213.[16] "Practicing

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[15]28 U.S.C. §1654; *Andrews v. Bechtel Power Corp.*, 780 F.2d 124 (1st Cir. 1985), *cert. denied*, 476 U.S. 1172, 106 S.Ct. 2896, 90 L.Ed.2d 983.

[16]This statute provides:

> "No natural person, who has not first been duly and regularly licensed and admitted to practice law by the supreme court of this state, no corporation or voluntary association except a professional law corporation organized pursuant to Chapter 8 of Title 12 of the Revised Statutes, and no partnership or limited liability company except one formed for the practice of law and composed of such natural persons, corporations, voluntary associations, and/or limited liability companies, all of whom are duly and regularly licensed and admitted to the practice of law, shall:
>
> (1) Practice law;
> (2) Furnish attorneys or counsel or an attorney and counsel to render legal services;
> (3) Hold himself or itself out to the public as being entitled to practice;

(continued...)

law" is statutorily defined to include appearing in court or filing pleadings for another, even if done for free or with an eleemosynary intent. La. R.S. 37:212.[17]

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[16](...continued)
(4) Render or furnish legal services or advice;
(5) Assume to be an attorney at law or counselor at law;
(6) Assume, use or advertise the title of lawyer, attorney, counselor, advocate or equivalent terms in any language, or any phrase containing any of these titles, in such manner as to convey the impression that he is a practitioner of law; or
(7) In any manner advertise that he, either alone or together with any other person, has, owns, conducts or maintains an office of any kind for the practice of law.

No person, partnership or corporation shall solicit employment for a legal practitioner.

This Section does not prevent any corporation or voluntary association formed for benevolent or charitable purposes and recognized by law, from furnishing an attorney at law to give free assistance to persons without means.

Any natural person who violates any provisions of this Section shall be fined not more than one thousand dollars or imprisoned for not more than two years, or both."

[17] R.S. 37:212 provides:

A. The practice of law means and includes:

(1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or

(2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;

(a) The advising or counseling of another as to secular law;
(b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;
(c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
(d) Certifying or giving opinions as to title to immovable property or any interest therein or as to rank or priority of validity of a lien, privilege or

(continued...)

Those who violate these provisions commit a criminal act and "shall be fined not more than one thousand dollars or imprisoned for not more than two years, or both." *Id.*

Thus, only lawyers may represent others in court or file pleadings on behalf of others with tribunals. Only licensed attorneys may practice law, and to do so they must be members in good standing with the Louisiana State Bar Association.[18]

4.01 State and Federal Courts Uniformly Have Rejected The Notion That Non-Lawyers Have A Right To Appear In A Representative Capacity

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[17](...continued)

mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.

B. Nothing in this Section prohibits any person from attending to and caring for his own business, claims, or demands; or from preparing abstracts of title; or from insuring titles to property, movable or immovable, or an interest therein, or a privilege and encumbrance thereon, but every title insurance contract relating to immovable property must be based upon the certification or opinion of a licensed Louisiana attorney authorized to engage in the practice of law. Nothing in this section prohibits any person from performing, as a notary public, any act necessary or incidental to the exercise of the powers and functions of the office of notary public, as those powers are delineated in Louisiana Revised Statutes of 1950, Title 35, Section 1, et seq.

[18]The Louisiana State Bar Association is created by the Louisiana Supreme Court under its rule-making powers. La. R.S. 37:211. Its articles of incorporation provide "[N]o person shall practice law in this State unless he/she is an active member, in good standing, of this Association." Article IV, Section 4.

Louisiana state courts that have examined the issue have had no difficulty in determining when someone has engaged in the unlawful practice of law.[19] Thus, even in cases permitting non-lawyers to assist others in *pro se* litigation, Louisiana courts have carefully noted that the practice of law is regulated by the Louisiana Supreme Court and that one who attempts to practice law without a license engages in a "species of fraud." *State v. Kaltenbach*, 587 So.2d 779, 784 (La.App. 3 Cir. 1991), *writ denied*, 592 So.2d 1332 (1992).[20]

This Circuit has rejected a claim that there is a constitutional "right" to have non-lawyers represent others, and if permission is to be granted at all for lay "representation," it is strictly subject to court rules. *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978); *Weber v. Garza*, 570 F.2d 511, 514 (5th Cir.1978).

Even in the criminal context, the consistent holdings are that a person's Sixth Amendment right to counsel of choice does not allow him to choose, as his representative with the court, a person not licensed to practice law. *Gille v. State of*

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[19] *See*: *Alco Collections v. Poirier*, 952582 (La.App. 1 Cir. 9/27/96), 680 So.2d 735, 741, *writ denied*, 96-2628 (La.12/13/96), 692 So.2d 1067 (stating that the filing of a suit by a collection agency to collect a debt constituted the unauthorized practice of law); *Duncan v. Gordon*, 476 So.2d 896, 897 (La.App. 2d 1985) (holding that by representing plaintiff in the negotiation and the settlement of a personal injury claim for consideration pursuant to a contingency fee contract, defendant engaged in the unlawful practice of law).

[20]The Court stated: "The right to practice law in the state courts is not a privilege or immunity of a citizen of the United States. It is limited to those who are licensed for that purpose, and it follows that for an unlicensed person to hold himself out as entitled to practice is a species of fraud which the state may punish. *State v. Rosborough*, 152 La. 945, 94 So. 858 (1922). The supreme court possesses the power, irrespective of the legislature, to determine the qualifications of those who apply for admission to practice law." *Id.*

Oklahoma, 743 P.2d 654 (Okla. Crim. App. 1987). In *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978), this Court held that defendants in a criminal trial were not entitled to representation by an individual who possessed some legal training but who was not a member of the bar admitted to practice before the federal district court: "[L]aw school attendance does not convert an individual into an attorney. There is no Sixth Amendment right to be represented by a non-attorney, as this court has consistently held in cases similar to this one. [citations omitted]. A defendant may either represent himself or he may have an attorney. That is all the Sixth Amendment requires."

By federal statute, non-lawyers cannot represent individuals. Access to federal court may be *pro se*, but if representation is sought, that representative must be a licensed attorney. The statute also notes that courts may proscribe, by rule, who can appear for others and press their cause. 28 U.S.C. §1654.[21]

In *Gonzales v. Wyatt*, 157 F.3d 1016, 1021 (5th Cir. 1998), a prisoner brought a §1983 *in forma pauperis* action against a corrections officer for use of excessive force. The prisoner's untimely complaint was signed not by the prisoner but rather by a non-lawyer acting on behalf of the prisoner. The Court noted that only lawyers may represent others in court: "[A]s Judge Garza stated in *Turner v. American Bar Ass'n*,

[21]The statute provides: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

407 F.Supp. 451, 477 (N.D.Tex.1975), 28 U.S.C. §1654 . . . only allows for two types of representation: that by an attorney admitted to the practice of law by a governmental body and that by a person representing himself." *Id.*

4.02 **All Courts Have Inherent Authority To Regulate Those Who Wish To Represent Litigants**

All courts, in addition to constitutional and statutory grants of authority, have inherent powers to regulate those who appear before them. In *Chambers v. NASCO*, 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991), the U.S. Supreme Court noted that courts have the inherent power to sanction both attorneys and parties, even if the conduct does not violate statutes or court rules.

The inherent powers of courts to regulate the practice of law are illustrated by the rules extant in federal and state courts around the nation.

4.02a **Many State and Federal Courts Strictly Limit Student Appearance**

All courts are careful in limiting lay individuals, even though these individuals may be law students, from cavalierly "representing" whomever they choose. All courts have explicit or implicit rules on such activities.

In federal district courts in Louisiana, law students have no right to appear on behalf of others; their appearances are strictly subject to the stringent requirements of Louisiana Federal District Court Uniform Local Rule 83.2.13 and are limited to civil matters in which a fee is not provided for or could not reasonably be anticipated and to criminal matters on behalf of indigent defendants.[22] In the absence of this rule, students could not appear at all.

A quick overview of the other state court rules around the nation confirms this point.[23] For example, in Mississippi a law student may not directly represent clients but "may only assist the supervising attorney or clinical teacher in representing their clients."[24] Delaware strictly and narrowly limits the courts or tribunals before which law students may practice and likewise limits the types of cases in which law students

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[22]The Local Rules also provide that a student may appear in any criminal matter on behalf of the United States with the written approval of both the prosecuting attorney and the supervising attorney.

[23]At the end of this brief, in alphabetical order by state, is a complete citation list of every rule referred to in this section of the brief.

[24] Volume 15, section 73-3-207, Mississippi Code.

may appear.[25] Other states require the presence of a supervising attorney at all hearings in which the law student participates,[26] and still others require the consent of the judge presiding over the particular matter.[27] When a Colorado trial court would not allow student representation in a criminal proceeding, the Colorado Supreme Court upheld that exclusion.[28]

Not only do courts limit the nature of cases in which law students may appear and place detailed restrictions or conditions on their appearances, but more than half of the nation's state courts have special rules on when law students must cease

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[25] Delaware Rule 56, Part V.

[26] See Rule 983.2(d)(3)(ii), California; Rule 16(a)(2), Maryland; Section 73-3-207, Volume 15, Mississippi; Rule 49.5, section 6, Nevada; Rule 1-094, New Mexico; Rule IV A(1); Texas; and Volume 11(6)§IV¶15, Virginia.

[27] Rule 44§5,Alaska; Rule 983.2(d)(3), California; Rule 95, Georgia; Rule 8.120(C)(3), Michigan; Rule 49§6, Nevada; Rule 1-094, New Mexico; §10.03(a), Tennessee; §13(a)(4),Vermont.

[28] *People v. Coria*, 937 P.2d 386, 390-91 (Colo. 1997).

representing others. Twenty-five states[29] and the District of Columbia[30] allow the termination of representation by a law student without cause and without a hearing.

4.02b **Many State and Federal Courts Require Proof of the Litigant's Indigency As A Pre-Requisite for Student Appearances**

The Louisiana Supreme Court's Rule XX is not unique in making a client's indigency a criteria for law student "representation." Numerous state[31] and federal courts[32] limit representation by law students to indigent persons and make no provision for the representation of "indigent associations" by law students. These states include: Florida, Georgia, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Missouri,

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[29] Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Illinois, Kansas, Maine, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Washington, Wisconsin, and Wyoming allow termination of law student practice without cause and without a hearing. Those rules are in the record excerpts: Rule VC,Alabama ; Rule 38(f)23B Arizona; Rule XVD(2), Arkansas; §12-5-116.3,Colorado; Rule 56(g) Delaware; Rule 11-1.4(c), Florida; Rule 221(q), Idaho; Rule 711(e)(4), Illinois; Rule 709 (c)(3), Kansas; Rule 90(d)(3), Maine; Rule13.03c),Missouri; Rule IV(C), Montana; Rule; Section V, Nebraska; Rule 49.5.3.(d)(1), Nevada; Section C.0204(a)(3), North Carolina State Bar; Section IVC, North Dakota; Rule II§ 4(B)(1),Ohio; Rule 13.25(3), Oregon; Rule 321(b)(3), Pennsylvania; Rule 401(d)(3),South Carolina; §16-18-2.3, South Dakota; Rule III, Texas; Rule 9(e)(2); Washington Court Rules; Rule 50.04(3), Wisconsin; Rule 18, Wyoming .

[30] Rule 48(c)(3), District of Columbia Court of Appeals.

[31] See Rules 10.0 and 48 of the District of Columbia; Rule 11-1.2,Florida; Section 15-20-2, Georgia Code; Rule 709, Kansas; Rule 2.540, Kentucky; Rule 90, Maine; Rule 3.03, Massachusetts; Rule 1.01, Minnesota; Rule 13.01,Missouri; Rule 36, New Hampshire; Rule C.0206, North Carolina; Rle Section 5(A), Ohio; Rule 322(a), Pennsylvania; Article 2, Rule 9(a)(b), Rhode Island; Rule 401, South Carolina ; Rule 7, Section 10.03Tennessee; and Rule 10.0, West Virginia.

[32] *See, e.g.*: See Rule 83.2(c) of the Local Rules of the United States District Court for the District of New Hampshire; Rule 6 F, Local Rules of the United States District Court for the Southern District of Florida, Rule 83.4(d) of the Rules of the United States District Court for the District of Maine, and LR GEN P 2.04 of the Local Rules of the United States District Court for the Northern and Southern Districts of West Virginia.

New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, West Virginia, South Carolina, and Tennessee, as well as the District of Columbia.

For example, one court in Missouri requires that a law student file, at the time of entering an appearance, a notarized property and financial statement executed by the party to be represented and a verified statement of indigence signed by the party and the supervising attorney.[33] The State of Wyoming requires that an indigent person meet the income and asset criteria within the poverty guidelines of a legal services corporation in Wyoming before student representation is allowed.[34] Both Florida and Georgia do not have state-wide universal standards of indigency but rather allow local determinations of who is indigent for the purposes of whom law students may represent. Georgia's determination is made county-by-county by local judges,[35] and Florida's state court rule is applied in its federal courts.[36]

Thus, Louisiana Supreme Court Rule XX is not unique and is in line with numerous court rules mandating that the indigency of the party be a primary and initial criteria before a law student can seek to represent another before a tribunal.

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[33] Rule 21.9 B., Thirteenth Judicial Circuit, Volume II, Missouri.

[34] Rule 18, Wyoming Bar Association of Wyoming.

[35] Vol.13 §15-20-4, 5, Georgia.

[36] Rule 11-1.2(f), Florida; Rule 6 F, Local Rules of the United States District Court for the Southern District of Florida.

In Louisiana, the Supreme Court's authority to promulgate such rules is both explicit and inherent and has been held by this Court to be the equivalent of legislative action.[37] Whether the student participation rules are promulgated by constitutional, statutory or inherent authority, however, the ultimate result is that each court has the power and authority to regulate student practitioners. There is no "uniform" national standard applicable to students as a whole, and there is no universal right of students to appear unilaterally and represent clients in civil cases. The assertion by the students that they must "forgo representing client groups"[38] fails to state a claim upon which relief can be granted, for they have to "right" to represent anyone absent explicit court rules.

5. THERE IS NO STATUTORY OR CONSTITUTIONAL RIGHT OF ANY PERSON OR ENTITY TO HAVE LEGAL COUNSEL IN CIVIL MATTERS

Just as there is no right of lay-students to represent third parties in litigation, there is no right of individuals or organizations to insist upon lay representation in civil cases, and certainly there is no right for any person or entity to insist upon free counsel in civil litigation.

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[37]*Lewis v. Louisiana State Bar Association*, 792 F.2d 493 (5th Cir. 1986).

[38]Appellants' Brief, P.2.

The right to counsel in criminal litigation exists only in limited circumstances,[39] and this Court has ruled that there is no right to counsel in civil cases. *Salmon v. Corpus Christi Indep. School Dist.*, 911 F.2d 1165, 1166 (5th Cir. 1990); compare *Sanchez v. United States Postal Service*, 785 F.2d 1236, 1237 (5th Cir. 1986) (claim of ineffective assistance of counsel does not apply in civil cases). The Ninth and Eleventh Circuits have also held that there is no "right" to counsel in civil cases.[40]

Thus, any claim of the plaintiff client groups that they require or are entitled to free student representation (or even free law professor representation) in civil matters is not cognizable.

6. RULE XX DOES NOT IMPOSE EITHER VIEWPOINT DISCRIMINATION OR A LIMITATION ON THE RIGHT OF FREE SPEECH

[39]In *Lassiter v. Department of Social Services of Durham County, North Carolina*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981), *reh. denied* 453 U.S. 927, 102 S.Ct. 889, 69 L.Ed.2d 640 (1981), the Supreme Court found that an indigent's right to appointed counsel exists only where the litigant may lose his personal liberty if he loses the litigation; this test is clearly not met in civil litigation.

[40]See: *Bass v. Perrin*, 170 F.3d 1312 (11th 1999) (it was not an abuse of discretion for the district court to refuse to appoint counsel in a §1983 action because a plaintiff in a civil action does not have a constitutional right to counsel); *United States v. Sardone,* 94 F.3d 1233 (9th Cir. 1996) (a defendant indicted on drug charges had no right to counsel in civil forfeiture proceeding); *Hedges v. Resolution Trust Corp.,* 32 F.3d 1360, 1363 (9th Cir. 1994), *cert. denied by* 514 U.S. 1012, 115 S.Ct. 1792, 131 L.Ed.2d 721 (1995) (debtor in bankruptcy proceeding was not entitled to counsel because there is "no absolute right to counsel in civil proceedings).

The "free speech" that the plaintiffs assert is at issue because of alleged "viewpoint discrimination" rests entirely upon their unusual theory that there is a right to have lay persons act as lawyers for others in litigation. The law professors claim that their "free speech" is impinged because they cannot, acting unilaterally, decide when and how to use their students as advocates for others in the courtroom.[41] The students claim that their right of speech is impaired because they cannot act as lawyers.[42] The plaintiff-client-organizations claim that their speech is impaired because they cannot utilize lay students as attorneys.[43]

Rule XX does not implicate the free speech or associational rights of the client-plaintiffs. These groups are, and always have been, free to present their claims in Louisiana courts through licensed attorneys, including clinic lawyers. Rule XX impacts only the groups' ability to present their claims through non-lawyer students. This limitation affects the groups' preferred *method* of presenting their claims in court, not their right to present those claims, a limitation that is no more burdensome on the groups' speech or associational rights than the federal court rule requiring

[41]Appellants Br. p. 39.

[42]Appellants Br., p. 51.

[43]Appellants Br., p. 34.

corporations, partnerships and other groups to be represented by counsel and prohibiting their appearance in proper person.[44]

Both the plaintiffs and the amicus American Civil Liberties Union of Louisiana cite *Button*,[45] *Primus*[46] and a series of labor union cases[47] as creating a right of "association for litigation." As is discussed in more detail in Section 5.02 of this brief, *infra*, neither *Button* nor *Primus* supports the proposition that Rule XX's limitation of legal representation by non-lawyers to indigent groups violates the associational or speech rights of non-indigent groups, and nothing in the labor union cases suggests there is an unfettered right of groups to be represented by non-lawyers.

The restrictions imposed by the states of Virginia, Illinois and Michigan in the labor union cases prohibited the unions from advising their members of their legal rights, referring their members to designated *attorneys*, and hiring *attorneys* to advise and represent their members. These prohibitions directly impinged on the right of the unions and their members to act collectively to secure legal representation and to employ counsel to represent it members.

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[44]*Southwest Express Co., Inc. v. I.C.C.*, 670 F.2d 53 (5th Cir. 1982).

[45]*NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

[46]*In re Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978).

[47]*Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 84 S.Ct. 1113, 12 L.Ed.2d 89 (1964); *United Mine Workers of America v. Illinois State Bar Ass'n*, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967), and *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971).

Unlike the groups in the labor union cases, the client-plaintiffs are free to advise their members and others of their legal rights, to refer them to designated legal counsel or retain legal counsel on their behalf. These groups may even refer their members to the legal clinics to be represented by law students, provided the members meet the income criteria of Rule XX and were not solicited for representation by the students.

Further, the plaintiffs must concede that Rule XX, on its face, is viewpoint neutral; thus anyone attacking it for alleged unconstitutionality bears a "heavy burden." *Rust v. Sullivan*, 500 U.S. 173, 183, 111 S.Ct. 1759, 1767, 114 L.Ed.2d 233 (1990). It is a burden the plaintiffs have not and cannot meet on the face of their complaint.

The plaintiffs' theory of viewpoint discrimination finds no support in any jurisprudence, and the key fallacy in the theory is the plaintiffs' failure to comprehend that while courts may be a forum for many things, they are not a forum for the "speech" of lay persons who attempt to act as attorneys for others.

6.01 A Courtroom And Courthouse Pleadings Are Not "Free Speech" Locations for Lay Persons Who Wish to Act As Attorneys For Others.

A crucial aspect of any "viewpoint discrimination" claim under the First Amendment must be that the viewpoints are being aired in an appropriate forum by one entitled to speak in that forum. While even certain kinds of non-public fora can be locations of viewpoint discrimination if there has been an attempt to discriminate based upon point of view,[48] the test of viewpoint discrimination requires not merely a limitation of a forum equally open to others similarly situated, but also that the speaker be a member of the class for whose benefit the forum was created.[49]

A courtroom is not the equivalent, as plaintiffs' citations of cases in its brief would suppose, of public campaigning and fundraising in political elections,[50] ballot initiatives,[51] a student newspaper,[52] commercial advertisements in newspapers,[53] or a

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[48] *Professional Ass'n of College Educators v. El Paso County Community College Dist.*, 730 F.2d 258, 263 (5th Cir. 1984).

[49] *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 806, 105 S.Ct. 3439, 3451, 87 L.Ed.2d 567 (1985).

[50] *Brown v. Socialist Workers*, 459 U.S. 87, 103 S.Ct. 416, 74 L.Ed.2d 250 (1982).

[51] *Meyer v. Grant,* 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988).

[52] *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995).

[53] *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996).

school library.[54] While these latter activities and venues are entirely appropriate for public speech of *any* person who uses these facilities, a courtroom is not forum for the unfettered "speech" of non-lawyers who seek to represent others. Because a courthouse lobby is not a public forum,[55] and because picketing or parading can be banned in or near a courthouse, *Cox v. Louisiana*, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965), there can be no real argument that filing suits in the courthouse records or speaking in court on behalf of "clients" is an appropriate forum for the "speech" of a non-lawyer seeking to represent others. Lay persons cannot reasonably expect that they have the "right" to speak for others in court, and the distinctions drawn between licensed attorneys in a courtroom and students who seek to represent others are eminently reasonable and well within the boundaries of permissible court regulation.

Law review writers, summarizing statutes and jurisprudence, have noted that licensed lawyers, "as professionals, are subject to speech restrictions that would not ordinarily apply to lay persons."[56] "Rules of evidence and procedure, bans on revealing grand jury testimony, page limits in briefs, and sanctions for frivolous

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[54] *Board of Education v. Pico*, 457 U.S. 853, 102 S.Ct. 2799, 73 L.Ed.2d 435 (1982), *Campbell v. St. Tammany Parish School Board,* 64 F.3d 184 (5th Cir. 1995).

[55] *Sefick v. Gardner*, 164 F.3d 370 (7th Cir. 1998), *cert. den.* __ U.S. ___, 119 S.Ct. 2393, 144 L.Ed.2d 794 (1999).

[56] *The Intersection of Free Speech and the Legal Profession: Constraints on Lawyers' First Amendment Rights*, Kathleen M. Sullivan, 67 Fordham L. Rev. 569 (1998).

pleadings, to name a few, are examples of speech limitations that are widely accepted as functional necessities in the administration of justice."[57]

No court has ever held that lay persons have a "free speech" right to act as an attorney in a representative capacity in court. In fact, courts have explicitly rejected such a challenge.

In *Drew v. Unauthorized Practice of Law Committee*, 970 S.W.2d 152 (Tx.App.-Austin 1998), the Court rejected a non-lawyer's claim that his First Amendment rights were violated by unauthorized practice of law rules. As president of a corporation, Drew investigated alleged deprivations of civil and constitutional rights of criminal defendants. He filed applications for writs of habeas corpus on behalf of persons who believed they had been denied their rights.

Texas prohibits (as does Louisiana) unlicensed persons from practicing law. Drew attacked the statute as violating his First Amendment rights, but the Court firmly disagreed, finding that the statute "does not prohibit him from speaking out against perceived injustices and therefore does not impermissibly infringe on his First Amendment rights." *Id.* at 155. If a third party wanted to present a habeas petition, said the court, "he would need the aid of *an attorney* to draft the documents and appear in court on behalf of another." *Id.* at 156. (emphasis supplied).

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[57] *Id.*

Law students are not attorneys, and nothing in Rule XX transforms them into attorneys.

The plaintiffs' argument that *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985), is controlling in the area of viewpoint discrimination is without merit. *Cornelius* involved "whether the Federal Government violates the First Amendment when it excludes legal defense and political advocacy organizations from participation in . . . a charity drive aimed at federal employees." *Id.* at 791. The critical issue upon which the case turned was the Court's determination that charitable fund solicitation is "a form of protected speech." *Id.* at 797. The Court was careful to note that the "the First Amendment does not guarantee access to property simply because it is owned or controlled by the government,"[58] and that a speaker may be excluded "if he is not a member of the class of speakers for whose especial benefit the forum was created." *Id.* at 806. While charity drives may be an appropriate forum for certain kinds of speech, a courtroom and court pleadings are not fora for the "speech" of a lay person who wishes to represent another.

Likewise, the plaintiffs' reliance on *Speiser v. Randall,* 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958), is similarly misplaced. *Speiser* held that a state could not prohibit an individual from gaining a property tax exemption by requiring the

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[58] *Id.* at 803, quoting with approval from *United States Postal Service v. Council of Greenburgh Civic Assns.*, 453 U.S. 114, 129, 101 S.Ct. 2676, 2685, 69 L.Ed.2d 517 (1981).

completion of a form stating that he did not and would not advocate the overthrow of the government by unlawful means. The tax exemption was open to all, and there was a special burden placed upon only those who refused to sign the form. There is no equivalent "right" for lay persons to appear in court on behalf of others, and thus no unlawful "burden" placed upon lay persons who seek to act as legal advocates for others before tribunals.

Indeed, to take the plaintiffs' argument to its logical conclusion, under their theory, any restriction on the unlawful practice of law, and any restriction on any lay person to represent others in court, imposes an unconstitutional burden on free speech. Such a contention cannot stand.

6.02 **Rule XX Contains No Prohibitions On An Organization Informing Its Members of Their Legal Rights or of Retaining A Licensed Lawyer**

Rule XX does not prohibit any licensed lawyer from taking any case in which the Law Professors or the Student Plaintiffs have informed the Client Plaintiffs or their members of their legal rights. Rule XX does not prohibit the Client Plaintiffs from encouraging their members to exercise all legal rights, either individually or as a part of an organization. As the Louisiana Supreme Court's official "Commentary" to Rule XX makes clear, the Rule "does not in any way restrict or prohibit law school clinical

activities which are intended to provide education or information to Louisiana citizens."[59]

Thus, the plaintiffs' reliance on cases such as *In re Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978), *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963) and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958) and their progeny is misplaced. *Primus* held that a lawyer cannot be disciplined for informing members of the public of their legal rights and offering free legal service by a licensed lawyer through an organization. Nothing in Rule XX prohibits any such activities by licensed lawyers, whether they are part of a law clinic or not. One cannot read into *Primus* a requirement that non-lawyers are allowed to represent third parties. In fact, *Primus* noted that "a state may insist that lawyers not solicit on behalf of lay organizations that exert control over the actual conduct of any ensuing litigation." 436 U.S. at 438, 98 S.Ct. at 1908. The converse, however, is also true. To paraphrase *Primus*, a state may insist that *non-lawyers* not solicit on behalf of other *non-lawyers* who exert control over the actual conduct of any ensuing litigation by acting as legal counsel in the courtroom and on pleadings.

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[59]The Supreme Court's commentary and the Rule are reprinted in Volume 8, Section 13:4431 et seq. of West's Louisiana Revised Statutes, 2000 pocket part at p. 127.

Likewise, while *Button* held that it is neither improper nor criminal for an organization to refer its members to lawyers, nothing in *Button* intimates that an organization may refer its members to non-lawyers for legal representation.[60]

Patterson involved the compelled production of the NAACP's membership list as a precondition to conducting activities in the state. Rule XX does not compel disclosure of members' identities at all, nor, as the next section of this brief demonstrates, does it compel disclosure of financial information as a precondition to informing the organizations' members of their legal rights, or to encouraging them to exercise those rights, or to bringing actions in the individual's own name.

The official Louisiana Supreme Court commentary to Rule XX explicitly states it "places no restrictions on the pro bono representation of solicited clients by attorneys employed or retained by law schools or law clinics."[61] Nothing in Rule XX prohibits any organization, any law professor, or any student from encouraging *pro bono* legal outreach, and the official commentary clearly permits activities "intended to provide education or information to Louisiana citizens." *Id.* Nothing prohibits a licensed lawyer from freely assisting any organization or individual in any action,

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[60]The plaintiffs also cite *In Re New Hampshire Disabilities Law Clinic,* 130 N.H. 328, 336, 339, 541 A.2d 208, 213, 215 (1988); that case relies directly on *Button* and only holds that corporations may use their "staff lawyers" (not lay-persons) to represent clients.

[61]Commentary following Rule XX(10).

whether *pro bono* or not. All Rule XX does is to create rules for non-lawyers who wish to act as attorneys for third parties in court.

6.03 Rule XX's Indigency Requirements Do Not Invoke Heightened Scrutiny

The claim that "viewpoint" discrimination or other heightened scrutiny is triggered because of the indigency standards in Rule XX is without any basis. Classifications based on wealth alone are not subject to strict scrutiny. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28-29, 93 S.Ct. 1278, 1294, (1973). Louisiana has a high proportion of those below the poverty level; 25.8% of the entire state's population is below 125% of the federal poverty level.[62] Rule XX sets the indigency level for law clinic representation at a higher number than even that used by the Legal Services Corporation;[63] under Rule XX, the indigency standard is set at 200% of the federal poverty income guidelines, and the number automatically

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[62] 1991 STAT. ABST. OF THE U.S. (tbl. 61). One of the plaintiffs/appellants, William P. Quigley, published a law review article entitled *The Unmet Civil Legal Needs of the Poor in Louisiana*, found at 19 S.U. L. REV. 273 (1992). The article claims that large numbers of indigent persons must go without legal representation each year in Louisiana and asserts that steps must be taken to provide greater access to those in need of legal services. The Supreme Court's amendments to Rule XX do just that. By expanding the indigency threshold to 200% of the poverty line, the Rule provides access to the judicial system for a vastly larger number of individuals.

[63] 45 C.F.R. § 1611.3

changes annually with the national promulgation of new federal poverty guidelines.[64] As has been noted earlier, Rule XX closely tracks the federal regulations on Legal Services Corporations, although Rule XX is more expansive. Therefore, the provisions of Rule XX that limit student representation to indigent individuals and groups need only bear a rational relation to a legitimate government purpose; that purpose is discernable on the face of the Rule and in its close tracking of the Legal Services Corporation's regulations. As the district court noted, the income guidelines are appropriate "to ensure that the poorest of the poor have their needs met before permitting those in less dire circumstances to receive free [legal] aid" (Op. p.22). The plaintiffs' complaint does not and cannot claim that the restrictions on income are not rationally related a legitimate purpose of providing legal services to the poorest of the poor.

The concern of the plaintiffs about "financial disclosure" has no constitutional base, any more than the Legal Services Corporation's requirement that organizations which wish to use Legal Services lawyers must demonstrate that they are "primarily composed of persons eligible for legal assistance under the Act." 45 C.F.R.1611.5(c).

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[64]A detailed explanation of this is found in the Supreme Court's official comments to Rule XX(4).

Under Rule XX, unlike the Legal Services regulation, no financial disclosure is required at all if a licensed lawyer represents the organization, whether or not those lawyers are law professors or associated with a law clinic.

It needs to be emphasized that law student representation of others has been limited to "indigent persons and community groups" for more than ten years — since 1988[65] — and that the Rule XX's addressing of indigency did not spring into existence in 1998 and 1999 when the Rule was amended. Under Rule XX as it currently exists, disclosure of financial information is required only when a group seeks to avail itself of representation by non-lawyer students.

For an organization to obtain student representation, the first step, even before ascertaining its membership composition, is to "provide information to the clinic staff which shows that the organization lacks, and has no practical means of obtaining funds to retain private counsel." Rule XX(5). This is the same test — in identical wording[66] — to 45 C.F.R. §1611.5(c). If an organization cannot meet that test, it is not entitled to seek student representation, regardless of its membership. Just as it is

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[65]In 1971, the Louisiana Supreme Court first adopted the rule allowing law students to have limited participation in trials. The rule originally permitted representation of only "indigent persons." In 1988, the Louisiana Supreme Court amended Rule XX to allow for law student representation of "any indigent person or community organization." La. Sup. Ct. R. XX(3) (1988). The nub of the plaintiffs' argument is that (under the version of Rule XX in existence from 1988 to 1998), the word "indigent" should not modify "community organization," and that any amendment of Rule XX to clarify that it does raises a constitutional issue. As has been shown, this contention is without merit.

[66]The phrasing is identical beginning with the word "lacks" and continuing on through the end of the sentence.

permissible to require criminal defendants to demonstrate their inability to afford counsel[67] and to require criminal defendants and civil litigants to prove their right to proceed in *forma pauperis*,[68] it is permissible to require those organizations which wish to use lay persons as attorneys to demonstrate their eligibility to proceed under Rule XX.

The Supreme Court has held that the failure to subsidize an activity is not always a First Amendment violation: *Rust v. Sullivan*, 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991). Likewise, there is no constitutional violation when those who seek to utilize lay persons as their counsel must prove some minimum indigency requirement. There is no "protected activity" of organizations to have free counsel in civil cases or to have non-lawyers act as their attorneys in litigation, and thus no "unconstitutional conditions" are imposed.[69]

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[67] See *United States v. Foster*, 867 F.2d 838, 841 (5th Cir. 1989) (burden rests with the defendant to establish insufficient financial means); *U.S. v. Sarsoun*, 838 F.2d 1358, 1361 (7th Cir. 1987) (burden of proving inadequate financial means lies with defendant).

[68] FRAP 24 requires a party who desires to appear *in forma pauperis* to file an affidavit that "shows . . . the party's inability to pay or give security for fees and costs." *See*, also *United States v. Castano*, 659 F.Supp. 577 (E.D. Texas 1987) (criminal defendant with court-appointed counsel required to prove pauper status by preponderance of the evidence). *Holmes v. Hardy,* 852 F.2d 151 (5th Cir. 1988) (federal court should redetermine *in forma pauperis* status each time a new petition is filed).

[69]The importance of protected conduct was emphasized in *Rust*: "In contrast, our 'unconstitutional conditions' cases involve situations in which the Government has placed a condition on the recipient of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program." 500 U.S. at 197, 111 S.Ct. At 1774.

The "viewpoint" and "speech" impingements that are claimed here are nothing more than a guise to argue that organizations can demand to have non-lawyers represent them in Court and that non-lawyers can demand the right to represent third parties in court. This diaphanous argument is without any merit.

6.04 **The Plaintiffs Have No Actionable Claim of "Free Speech" Being Impinged**

The law professors here enjoy unlimited free speech rights in and out of their classrooms, unhindered by Rule XX. The students here enjoy unlimited free speech rights unaffected by Rule XX, as do the plaintiff-client-organizations. Rule XX does not restrict speech, but only activities of those lay persons who wish to act as counsel for others in legal proceedings. This is not an actionable limitation on "speech," for there is no right of non-lawyers to "speak" in a courtroom or in pleadings on behalf of others.

The plaintiffs' reliance on highly selective quotations from *Brady v. Houston Independent School District*, 113 F.3d 1419 (5th Cir. 1997),[70] and *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972),[71] are inapposite. *Brady* involved

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[70] At page 31 of their brief, plaintiffs' make it appear that *Brady* is a general reference to either viewpoint discrimination or retaliation claims. *Brady's* tests were concerned solely with "an employer's retaliatory conduct." *Id.* at 1423.

[71] The plaintiffs quote *Perry* (br. at 37) about a "denial of benefits," but the benefit being denied there was an expectation of employment of a non-tenured faculty member. No Law

(continued...)

retaliatory restrictions on an employee's duties leading ultimately to the loss of a job, and *Perry* involved a failure to continue an employment contract; while both employees claimed that the actions against them were linked to purported violations of their First Amendment rights, the crux of these opinions involve employer actions in light of an employee's reasonable expectation of continued employment. Here, there can be no expectation by lay persons of the right (or even the privilege) to represent others in court.

Likewise, the plaintiffs' selective reference to *Colson v. Grohman*, 174 F.3d 498 (5th Cir. 1999),[72] provides them no solace. *Colson* involved the failed attempt of a former city council member to claim a violation of her free speech rights; as this Court noted in rejecting the plaintiff's claim there, "it does not follow that all disadvantages imposed for the exercise of First Amendment freedoms constitute actionable retaliation." *Id.* at 510. Just as the plaintiff in *Colson* had no assertable First Amendment claim, the plaintiffs here lack any discernable First Amendment claim,

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[71](...continued)
Professor plaintiff here can claim that he has a protected interest in seeing that his non-lawyer students represent third parties in court.

[72]The quotation at page 20 of appellants' brief omits the important introductory phrase of this Court's sentence in *Colson*, which read "As a general rule . . ." (174 F.3d 508). The citation in their brief was made in support of their misplaced argument (on the same page of that brief) that all restrictions are supposedly "flatly prohibited." The plaintiffs' quotation is misleading, for *Colson's* statement was in the context of setting for the "general rule," not the absolute rule, and this Court took pains in *Colson* to point out that the general rule is not always determinative; this fact is illustrated by *Colson's* result, which ruled against the party asserting the constitutional violation.

for, as *Colson* held, even allegations of being the victim of "criticism, investigation, and accusation" (*Id.* at 513) are insufficient to trigger a First Amendment violation.

Thus, to the extent that it can be argued at all that Rule XX has any impact on "speech," the limitation has no constitutional dimension, for even if students did not engage in permitted activities under Rule XX to "provide education or information to Louisiana citizens,"[73] but rather "solicited" clients in ways that would be prohibited under Rule XX, and even if students gathered potential clients who wished to file legal claims, those clients are not prohibited from filing a suit through a lawyer and the law professors are not prohibited from taking their cases. If the "rational relationship" test[74] is applicable at all (which is denied), it is clearly met here.

7. RULE XX DOES NOT RESTRICT THE RIGHT OF ACADEMIC FREEDOM OF THE LAW PROFESSORS OR THE STUDENTS

7.01 Rule XX Does Not Treat Law Professors Differently Than Any Other Louisiana Lawyer

[73]Official Louisiana Supreme Court comments to Rule XX(10).

[74]Cf. *Lawline v. Amercian Bar Ass'n,*, 956 F.2d 1378, 1386 (7th Cir. 1992) (court found no unconstitutional abridgement of free speech because any infringement of speech was incidental effect of otherwise legitimate regulation – the restriction of the practice of law to qualified individuals), *cert. denied,* 510 U.S. 992, 114 S.Ct. 551, 126 L.Ed.2d 452 (1993).

Contrary to the assertions of the Law Professors, Rule XX contains absolutely no restriction on them that is not applicable to all other lawyers in the State of Louisiana. Under Rule XX, all lawyers (whether they are law professors associated with a law clinic or not) may handle any case, speak to any group, and engage in informational activities as long as those actions do not violate the other rules applicable to all lawyers.[75] Law Professors may use students in the capacity that any lawyer may use law students — as research assistants and as law clerks.

What the Law Professors seek, however, is a brand new right, one drawn out of whole cloth and not found in any jurisprudence — they want the unilateral right to determine when their students can represent others in court, and they claim that any restriction on that "right" is constitutionally impermissible. Such a contention is without merit. As this Court noted in *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978), "[L]aw school attendance does not convert an individual into an attorney."

The plaintiffs' theory is particularly pernicious in two respects. First under their concept of academic freedom, any lawyer who is a teacher could apply this same rationale to undergraduates or even high school students. Under their concept, if they unilaterally decide that it is important to teach these non-law-students about how to

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[75]The first sentence of Rule XX(10) merely restates the general rule that all licensed lawyers must follow. The remaining portion of Rule XX(10) applies only to students and has no applicability to licensed attorneys.

be lawyers, a court could not stop them from using these students in the courtroom as advocates on behalf of clients.

Second, if the plaintiffs' theory is to be accepted, it will have the impact of limiting rather than expanding potential access to the courtroom for law students. Courts would be naturally reluctant to approve any law-student practice rule if, once promulgated, the rule could not be altered without threat of a federal lawsuit. Thus, rather than letting law students appear under guidelines as advocates, courts may restrict their use solely to law clerks. This would not serve the indigent population whose rights the plaintiffs purport to champion.

7.02 **"Academic Freedom" Is Not Impinged by Rule XX**

The plaintiffs misstate the rule of "academic freedom." Academic freedom is not an enumerated constitutional right, rather, it is a "special concern" of the First Amendment.[76] This "special concern" of the First Amendment in no way resembles the sword the plaintiffs are wielding to allow them unfettered freedom under the First Amendment to disregard the right of all courts, including the Louisiana Supreme Court, to regulate the practice of law.

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[76] *Regents of University of California v. Bakke*, 438 U.S. 265, 312, 980 S.Ct. 2733, 57 L.Ed.2d 750 (1978).

Sweezy v. New Hampshire, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957), *rehearing denied by* 355 U.S. 852, 78 S.Ct. 7, 2 L.Ed.2d 61, relied upon by the plaintiffs, is in no way applicable; it involved the questioning of a professor based upon his lecture. Nothing in Rule XX prohibits any lectures or even addresses the contents of lectures. There is no justification for a broad-based reading of *Sweezy* as creating a "constitutional right" of academic freedom to allow law professors and students to determine when and how students may "represent clients" in litigation.[77] The Supreme Court itself has departed from any broad reading of *Sweezy*; after 1967, *Sweezy* appears primarily as a reference in dissenting opinions,[78] and in those cases in which it appears in a majority opinion, the decision limits *Sweezy*.[79]

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[77]The Supreme Court itself has noted that teachers get no special immunity merely because of their status. *Barenblatt v United States*, 360 U.S. 109, 112, 79 S.Ct. 1081, 1085, 3 L.Ed.2d 1115, 1118 (1959), *rehearing denied by* 361 U.S. 854, 80 S.Ct. 40, 4 L.Ed.2d 93 (1959), held that Congress is not precluded from interrogating a witness merely because he is a teacher."

[78] *See, e.g.: Jones v. State Board of Education,* 397 U.S. 31, 90 S.Ct. 779, 25 L.Ed. 2d 27 (1970), *rehearing denied* by 397 U.S. 1018, 90 S.Ct. 1230, 25 L.Ed.2d 432 (1970); *Branzburg v. Hayes,* 408 U.S. 632, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972); *Board of Regents v. Roth,* 408 U.S. 601, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), *rehearing denied* 411 U.S. 959, 93 S.Ct. 1919, 36 L.Ed.2d 418 (1973); *United States Civil Service Commission v. National Association of Letter Carriers,* 413 U.S. 754, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973); *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979); *Morse v. Republican Party of Virginia,* 517 U.S. 186, 116 S.Ct. 1186, 134 L.Ed.2d 347 (1996); *Nixon v. Shrink Missouri Government Pac,* 120 S.Ct. 897 (2000).

[79] *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 11, 91 S.Ct. 720, 27 L.Ed.2d 749 (1971) (upholding requirement that applicant for bar admission prove belief in form of U.S. government and loyalty to U.S. government); *Kleindienst v. Mandel*, 408 U.S. 810, 92 S.Ct. 2576, 33 L.Ed.2d 683 (1972) (upholding refusal of visa to alien whom American plaintiffs had invited to participate in academic conferences and discussions in United States); *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 104 S.Ct. 1058, 79

(continued...)

None of the cases the plaintiffs rely upon go so far as to even intimate that "academic freedom" is an absolute, unlimited right such that a teacher or student has a right, outside of the classroom, to go to court and represent third parties as part of "teaching" or "learning."[80]

There simply is no actionable "academic freedom" claim present in this case.

8. NONE OF THE FOUR GROUPS OF PLAINTIFFS HAS STANDING

8.01 Standing is Jurisdictional

As the district court's opinion noted, the Louisiana Supreme Court raised the issue of standing below, although the lower court did not rule directly on it (Slip. Op. p.7, 17, 20). Because standing requirements are jurisdictional and not subject to

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[79](...continued)
L.Ed.2d 299 (1984) (upholding Minnesota statute requiring public employers to engage in official exchanges of views only with their professional employee's representatives); *University of Pennsylvania v. Equal Employment Opportunity Commission*, 493 U.S. 182, 110 S.Ct. 577, 107 L.Ed.2d 571 (1990) (upholding subpoena of university peer review materials).

[80] The other cases cited by the plaintiffs on this point are simply inapposite, such as *Meyer v. Nebraska*, 292 U.S. 390, 67 L.Ed. 1042, 43 S.Ct. 625 (1923) (invalidating on due process grounds a law prohibiting teaching of foreign language to children); *Epperson v. Arkansas*, 393 U.S. 97, 21 L.Ed.2d 228, 89 S.Ct. 266 (1968) (establishment clause invalidation of a law prohibiting teaching evolution); *Kingsville Ind. Sch. Dist. v. Cooper*, 611 F.2d. 1109 (5th Cir. 1980) (classroom discussions protected by First Amendment); *Sterzing v. Fort Bend Ind. Sch. Dist.*, 376 F. Supp. 657 (S.D. Tex. 1972), *vacated by*, 496 F.2d. 92 (5th Cir. 1974)(teacher's termination based on his statements in class).

waiver,[81] the issue may be raised on appeal even though lack of standing was not the basis of the dismissal below.[82]

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992), set forth the minimum constitutional requirements for standing: the three touchstones are allegations of injury, causal connection, and redressibility. Here, the standing of all parties fall because of the inability to meet the "judicially cognizable injury" prong.[83]

It should be noted that the plaintiffs' claim of injury because of the purported overbreadth or vagueness of Rule XX has been abandoned on appeal; thus, the more expansionary view of standing sometimes applied in First Amendment overbreadth or vagueness challenges[84] is not applicable.

In addition to the three *Lujan* constitutional requirements, there are also other criteria that can limit standing; these are sometimes referred to as "prudential concerns" and fall into three areas:(1) does the plaintiffs' alleged injury falls within

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[81]*Lewis v. Casey*, 518 U.S. 343, 349, 116 S.Ct. 2174, 2178-79 n.1, 135 L.Ed.2d 606 (1996).

[82]*Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 540-41, 106 S.Ct. 1326, 1331, 89 L.Ed.2d 501 (1986).

[83]*Allen v. Wright*, 468 U.S. 737, 754, 104 S.Ct. 3315, 3326, 82 L.Ed.2d 556 (1984).

[84]*Internat'l Soc'y for Krishna Consciousness v. City of Baton Rouge*, 876 F.2d 494, 499 (5th Cir. 1989) (where there is an overbreadth challenge to statute, there may be an exception to the usual requirements of standing); *Hill v. City of Houston*, 764 F.2d 1156, 1160 (5th Cir. 1985).

the "zone of interests" protected by the statute or constitutional provision at issue;[85] (2) does the plaintiffs' complaint reflect merely a generalized grievance more appropriately resolved by the other branches of government;[86] and (3) are the plaintiffs attempting to assert a third party's legal rights or interests.[87] As the U.S. Supreme Court has written, the "prudential limitations add to the constitutional minima a healthy concern that if the claim is brought by someone other than one at whom the constitutional protection is aimed, the claim not be an abstract, generalized grievance that the courts are neither well equipped nor well advised to adjudicate."[88]

The lack of a cognizable injury precludes standing of the plaintiffs here. The real thrust of the plaintiffs' case is that law clinics are prohibited from taking on organizational clients except under the conditions of Rule XX; yet, as has been noted, there is no "right" of lay persons to represent others or of organizations to be represented by non-lawyers in court. For all of the various remaining claims — "viewpoint discrimination", freedom of association, academic freedom, and having to

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[85] *Air Courier Conference of Am. v. American Postal Workers Union*, 498 U.S. 517, 523-24, 111 S.Ct. 913, 918, 112 L.Ed.2d 695 (1991) (citing *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 883, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)).

[86] *Apache Bend Apartments, Ltd. v. United States*, 987 F.2d 1174, 1178 (5th Cir. 1993).

[87] *United States v. Raines,* 362 U.S. 17, 22, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960); *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1384 (5th Cir. 1986).

[88] *Secretary of State v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 955, 104 S.Ct.2839, 2846, n.5 (1984)(citations omitted).

forego pro bono outreach — there can be no cognizable injury. The standing of each type of the remaining plaintiffs will be considered below.

8.02 Rule XX Has No Impact on the Plaintiff Student Organizations and These Organizations Have No Standing to Bring a Claim; The Appellants' Brief Has Abandoned Claims As To These Plaintiffs

Although two student organizations are plaintiffs/appellants, they are not law clinics, and one of them is not even comprised solely of law students. These entities are:

- The Tulane Environmental Law Society, an organization of students, including but not limited to "student practitioners" at the Tulane Environmental Law Clinic,[89] and
- The Tulane Graduate and Professional Student Association (the governing entity for graduate and professional students; it is not alleged to be comprised solely of law students).[90]

The Tulane Environmental Law Society is not impacted by Rule XX, for it is not a law clinic; the Tulane Graduate and Professional Student Organization has not sought any relief in and of itself in this Court. Neither of these groups has alleged any recognizable injury on behalf of itself or its members. Neither group has ever (or

[89] Complaint ¶ 16(a).

[90] Complaint ¶ 16(b).

indeed, could ever) represent "clients" in court, before or after the amendments to Rule XX. Moreover, all of their claims have been abandoned on appeal; nothing in the plaintiffs' brief to this court addresses any issues as to either of these two groups.

8.03 **The Law Professors Have No Standing**

As the district court noted, the standing of the Law Professors was challenged because they alleged no "particularized injury or invasion of any legally protected interest, since nothing in Rule XX controls their actions inside or outside of the classroom. They remain free to speak or associate in any way they see fit and in any forum they desire." Slip Op. 17. While the district court did not dismiss the Law Professor's claims on the standing issue, it could have done so, and this Court should not hesitate to dismiss them from this suit. They simply have no judicially cognizable injury. See *Allen*, 468 U.S. at 754, 108 S.Ct. At 2142.

8.04 **The Individual Plaintiff Law Students Have No Cognizable Injury**

As has been noted above, there is no "right" of non-lawyers to represent others in Court; therefore the three individual plaintiff law students have asserted no cognizable injury and have no standing. To hold otherwise would mean that, even in those state and federals courts with *no* rule allowing law students to represent others in court, law students would always have standing to attack any restriction on their

"right" to act as attorneys for others in any kind of civil litigation. This demonstrates the fallacy of the students' claims, as well as proving a lack of an injury in fact required for standing.

8.05 **The Client Organizations Have No Standing**

The plaintiff client organizations have no standing here because there is no right of an organization to have counsel in a civil case, much less the right to free non-lawyer counsel.

Reliance by these groups on generalized allegations of "viewpoint discrimination"[91] or purported limitations on their right of association does not clear the standing hurdle, for as has been shown, these organizations remain free to inform their members in any way they see fit, to encourage their members to see licensed lawyers, or even to hire licensed lawyers as members of their staff and to provide these lawyers' services free to their members. These organizations also lack standing to bring claims on behalf of their members.

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[91]Because the plaintiffs' "viewpoint discrimination" argument hinges on the alleged nexus between the TELC's representation of a few groups in the Shintech matter and the recent changes to Rule XX, only those plaintiffs who were represented by the TELC in the Shintech matter – St. James, LEAN, SCLC, NBREA, and LCU – could even have alleged a "viewpoint discrimination" claim. *See* Appellants' Brief at 58.

9. THIS COURT MAY NOT CONSIDER ANY MATTERS OUTSIDE OF THE PLAINTIFFS' COMPLAINT AND MAY NOT CONSIDER THE AMICI BRIEFS TO BOLSTER THE PLAINTIFFS' COMPLAINT

This Court already has denied the *amici's* attempt to file attachments with their briefs. Order of February 15, 2000.[92]

It is nonetheless the plaintiffs' contention that they need not put all of the essential facts in the complaint but may add essential facts even on appeal. Brief at 24 (citing *Hrubec v. National R.R. Passenger Corp.*, 981 F.2d 962, 963-64 (7th Cir. 1992). The rule in the Fifth Circuit, however, is that "'it is barred from considering filings outside the record on appeal, and attachments to the brief do not suffice.'" *Galvin v. Occupational Safety & Health Admin.*, 860 F.2d 181, 185 (5th Cir. 1988) (quoting *In re GHR Energy Corp.*, 791 F.2d 1200, 1201-02 (5th Cir. 1986)).

Thus, the question is whether, on the four corners of the pleadings, read in a light favorable to the plaintiffs, they have stated a cause of action as to which relief can be granted. *Morin v. Caire,* 77 F.3d 116, 120 (5th Cir. 1996). As has been shown, they have not done so.

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[92]The order is in line with this Court's rules and precedents in refusing to consider issues based on new evidence furnished for the first time on appeal in attachments to an amicus brief. *Smith v. United States*, 343 F.2d 539, 541 (5th Cir.), *cert. denied*, 382 U.S. 86, S.Ct. 122, 15 L.Ed.2d 99 (1965).

10. CONCLUSION

Not a single case supports the plaintiffs' remarkable theory that law students are *entitled* to represent others in court, and that this entitlement is so strong that any regulation of it is invalid on constitutional grounds. Not a single case holds that court rules, which are more expansive for law students than federal regulations governing whom lawyers at the Legal Services Corporation can represent, fail to pass constitutional muster. Not a single case concludes that free speech rights exist for lay persons to file pleadings on behalf of others in courts.

The plaintiffs' complaint was without merit on its face. The district court was correct in ruling that it failed to state a claim upon which relief can be granted. The district court's ruling should be affirmed.

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ALPHABETICAL CITATIONS APPENDIX
OF STATE COURT RULES
REFERRED TO IN
SECTION 3 OF THIS BRIEF

Alabama

AL R. Jud. Admin. Rule V(C).

Alaska

AK R. Bar Rule 44.

Arkansas

AR St. Admis. Rule XV(D)(2).

Arizona

AZ St. S. Ct. Rule 38(f).

California

CA St. Misc. Rule 983.2(d)(3).

Colorado

CO R.S.A. Section 12-5-116.3.

Delaware

DE St. S. Ct. Rule 56.

District of Columbia

DC St. A. Ct. Rule 48.

Florida

FL St. Bar Rule 11-1.2.
FL St. Bar Rule 11-1.4.
FL R. USDCTSD Admis. Rule 6(F).

Georgia

GA St. S. Ct. Rule 95.
GA St. Section 15-20.

Idaho

ID R. Bar Comm Rule 221(q).

Illinois

IL St. S. Ct. Rule 711(e)(4).

Kansas

KS R. Admis. Rule 709.

Kentucky

KY St. S. Ct. Rule 2.540.

Louisiana

Article IV, Section 4 of the La. State Bar Association Articles of Incorporation.
Article XIV of the Articles of Incorporation of the La State Bar Association.
LA St. S. Ct. Rule XX.
LA St. S. Ct. Rule XVII.

Maine

ME R. USDCT Rule 83.4.
ME R. RCP Rule 90.

Maryland

MD St. Admis. Rule 16.

Massachusetts

MA R.S. Ct. Rule 3.03.

Michigan

MI R. MRCP 8.120.

Minnesota

MN St. Stdt Prac Rule 1.01.

Mississippi

MS St. Section 73-3-207.

Missouri

MO R. Bar Rule 4 RPC Rule 13.
MO R. 13 Cir. Rule 21.9.

Montana

MT St. Stdt Prac Rule 1.03.

Nebraska

NE R. Stdt Prac Section V.

Nevada

NV St. S. Ct. Admis. Rule 49.5.

New Hampshire

NH St. USDCT Gen Rule 83.2(c).
NH St. S. Ct. Rule 36.

New Mexico

NM St. Dist. Ct. RCP Rule 1-094.

North Carolina

NC R. Bar Ch. 1, Subch. C, Section 0204.
NC R. Bar Ch. 1, Subch. C, Section 0206.

North Dakota

ND St. Ltd Prac Rule IV(C).

Ohio

OH St. Govt Bar Rule II.
OH St. Ltd Prac Rule 5(A).

Oregon

OR R. Admis. Rule 13.25.

Pennsylvania

PA R. Admis. Rule 321.
PA R. Admis. Rule 322.

Rhode Island

RI St. S. Ct. Article II, Rule 9.

South Carolina

SC St. A. Ct. Rule 401.

South Dakota

SD St. Section 16-18-2.3(3).

Tennessee

TN R. S. Ct. Rule 7; Section 10.03.

Texas

TX R. Stdt Prac Rule III.
TX R. Stdt Prac Rule IV(a).

Vermont

VT R. Admis. Section 13.

Virginia

VA St. S. Ct. Pt. 6 Section IV Par. 15.

Washington

WA R. Admis. Apr 9.

West Virginia

WV R. Admis. Rule 10.
WV R. USDCTSDLR Gen P.2.04.

Wisconsin

WI St. RCP SCR 50.04(3).

Wyoming

WY R. Bar Rule 18.

CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.2.7(c), the undersigned certifies this brief complies with the type-volume limitations of 5th Cir. R. 32.2.7(b).

1. Exclusive of the exempted portions in 5th Cir. R. 32.2.7(b)(3), the brief contains 13,519 words, *including* the citations appendix.

2. The brief has been prepared in proportionally spaced typeface using WordPerfect 8.0 in Times New Roman 14-point type for text and 12-point type for footnotes.

3. If the Court so requests, the undersigned will provide an electronic version of the brief and/or a copy of the word or line printout.

4. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5th Cir. R. 32.2.7, may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

_____
Michael H. Rubin

CERTIFICATE

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THUS DONE on this 22nd day of FEBRUARY, 2000

MICHAEL H. RUBIN