

[US Supreme Court: Rust v. Sullivan](#)

500 U.S. 173 (1991), argued 30 Oct. 1990, decided 23 May 1991 by vote of 5 to 4; Rehnquist for the Court, Blackmun, Marshall, Stevens, and O'Connor in dissent. In 1970 Congress passed a statute providing federal funds to support family-planning services. The statute said that no appropriated funds could be used in programs where abortion was a method of family planning. From 1971 to 1986 the government's regulations barred family-planning clinics that received federal assistance from providing abortions. In 1986 it changed the regulations to ensure a stricter separation between abortion providers and family-planning clinics. In 1988, at the end of the Reagan administration, the regulations were tightened even more to impose the so-called gag rule at issue in this case. Under the rule, clinics receiving federal funds may not counsel pregnant women about the availability of abortions; if they refer pregnant women for other services, they may not mention abortion, and if a pregnant woman asks about abortion, the services are directed to say something like, "We do not consider abortion an appropriate method of family planning."

Family-planning services argued that the rule was not authorized by Congress and that it violated their rights under the First Amendment and their clients' rights under *Roe v Wade* (1973). The Court rejected both arguments and found that the statute was ambiguous. By funding family-planning services but prohibiting assistance for abortion, Congress left the precise definition of family-planning services open. The 1988 regulation was, the Court said, a permissible interpretation of the statute by the agency charged with administering it, to which the courts should defer. The four dissenters emphasized that the 1988 regulations were a sharp departure from those originally in force. They also argued that the gag rule raised serious constitutional questions, which the Court could avoid by finding that the rule was unauthorized.

The Court rejected the free speech challenge to the gag rule. In an important discussion of the doctrine of unconstitutional conditions, sometimes known as the doctrine of conditional spending, the Court held that the government could impose conditions on fund recipients designed to assure that the funds were used for the program's purposes. The Court held that this condition did not force clinic doctors to give up their free speech rights; the doctors could continue to advise women about the availability of abortions outside the confines of the program receiving federal funds. The Court suggested that conditions limiting what professionals receiving government money could say to their clients might be unconstitutional, but said that the relationship between a doctor in a family-planning clinic and the clinic's clients was so narrow that limiting the advice the doctor could give did not impair the doctor's free speech rights.

The Court also found that the rules did not impermissibly burden the right to choose to have an abortion. Acknowledging that it would be easier for women to obtain abortions if they could receive information about them from family-planning services, the Court concluded that the right to choose guaranteed by the Constitution did not require the government to "distort the scope of its mandated program" of providing family-planning services (p. 1777).

Justice Harry Blackmun, joined by Justices Thurgood Marshall and John Paul

Stevens, argued in dissent that the government could not impose spending conditions that discriminated against a particular viewpoint and that the gag rule distorted the professional relation between doctor and client. Finally, he argued that because many poor pregnant women receive their only information about family planning from federally funded clinics, restricting the information those clinics can provide does significantly impair their ability to choose to have an abortion.

*Rust* is important as an indicator of the Court's shifting views on abortion; it was the first abortion-related case in which Justice David Souter cast a vote. In addition, it provided some shape to the doctrine of unconstitutional conditions, which is likely to become increasingly important as government funding of controversial activities expands.