In *Rust v. Sullivan*, however, Chief Justice Rehnquist asserted for the Court that restrictions on abortion counseling and referral imposed on recipients of family planning funding under the Public Health Service Act did not constitute discrimination on the basis of viewpoint, but instead represented the government's decision "to fund one activity to the exclusion of the other." [1011] In addition, the Court noted, the "regulations do not force the Title X grantee to give up abortion-related speech; they merely require that the grantee keep such activities separate and distinct from Title X activities. Title X expressly distinguishes between a Title X *grantee* and a Title X *project*. . . . The regulations govern the scope of the Title X *project's* activities, and leave the grantee unfettered in its other activities." [1012] The Court did allow that the application of this decision might be limited outside of the particular facts of the case.[1013]

The Court has also suggested that there are limits to what selection criteria the government can use to ensure that a recipient of federal funds has views consistent with the purposes of the program. In *National Endowment for the Arts v. Finley*, the Supreme Court upheld the constitutionality of a federal statute requiring the NEA, in awarding grants, to "tak[e] into consideration general standards of decency and respect for the diverse beliefs and values of the American public." [1014] In *Finley*, grant applicants for federal arts funding were denied art funding, allegedly based on the controversial nature of their art. The Court acknowledged that, if the stat-

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[1011] 500 U.S. 173, 193 (1991). Dissenting Justice Blackmun contended that *Taxation With Representation* was easily distinguishable because its restriction was on all lobbying activity regardless of content or viewpoint. Id. at 208–09.

[1012] 500 U.S. at 196 (emphasis in original). Dissenting Justice Blackmun wrote: "Under the majority's reasoning, the First Amendment could be read to tolerate *any* governmental restriction is limited to the funded workplace. This is a dangerous proposition, and one the Court has rightly rejected in the past." Id. at 213 (emphasis in original).

[1013] The Court attempted to minimize the potential sweep of its ruling in *Rust*. "This is not to suggest that funding by the Government, even when coupled with the freedom of the fund recipient to speak outside the scope of the Government-funded project, is invariably sufficient to justify government control over the content of expression." 500 U.S. at 199. The Court noted several possible exceptions to the general principle: government ownership of a public forum does not justify restrictions on speech; the university setting requires heightened protections through application of vagueness and overbreadth principles; and the doctor-patient relationship may also be subject to special First Amendment protection. (The Court denied, however, that the doctor-patient relationship was significantly impaired by the regulatory restrictions at issue.) Lower courts were quick to pick up on these suggestions. *See*, *e.g.*, *Stanford Univ. v Sullivan*, 773 F. Supp. 472, 476–78 (D.D.C. 1991) (confidentiality clause in federal grant research contract is invalid because, *inter alia*, of application of vagueness principles in a university setting); Gay Men's Health Crisis v. Sullivan, 792 F. Supp. 278 (S.D.N.Y. 1992) ("offensiveness" guidelines restricting Center for Disease Control grants for preparation of AIDS-related educational materials are unconstitutionally vague).

[1014] 524 U.S. 569, 572 (1998).