

February 15, 2000

## SUPREME COURT URGED TO OVERTURN STATE SANCTIONS LAW

*(Natsios v. National Foreign Trade Council)*

The Washington Legal Foundation (WLF) filed a brief with the U.S. Supreme Court this week, urging the Court to affirm an appellate court decision declaring the so-called Massachusetts Burma Law unconstitutional.

In its brief WLF argued that the law, which all but forbids Massachusetts to procure goods or services from companies doing business in or with the country of Myanmar (formerly known as Burma), unconstitutionally encroaches on the federal government's predominant authority over foreign affairs. To support that conclusion WLF argued three main points. First, the Constitution delegates predominant authority over foreign affairs to the federal government and denies such authority to state and local governments. The Constitution was written, in part, to ensure that the United States would have a national government strong enough to bind all the states to a uniform foreign policy. Moreover, the Supreme Court's own decisions have long held that foreign affairs is a matter for the federal government, not the states. Second, although states may exercise their reserved powers in a manner that happens to create an effect abroad, they may not conduct foreign affairs; the Massachusetts Burma Law qualifies as an instrument of foreign affairs. Third, the Court can and should exercise judicial review to strike down this unlawful encroachment on the federal government's authority over the nation's foreign affairs.

Last June the U.S. Court of Appeals for the First Circuit in Boston ruled in a thoroughly reasoned and unanimous opinion that the law unconstitutionally "interferes with the foreign affairs power of the federal government," "violates the Foreign Commerce Clause," and "is preempted by federal sanctions against Burma." Earlier, in November 1998, the U.S. District Court for the District of Massachusetts also decided that the law is unconstitutional. WLF filed briefs before both courts arguing that the law should be overturned.

"The Constitution gives predominant authority over foreign affairs to the federal government—not to the states," said WLF's Senior Counsel for Litigation Affairs, Shawn Gunnarson. "States encroach on that authority when they impose trade sanctions on foreign

countries. We expect that the Supreme Court will agree with the two courts that have already evaluated the Massachusetts Burma Law and conclude that it is unconstitutional."

The Washington Legal Foundation is a nonprofit public interest law and policy center with supporters nationwide. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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