WLF Washington Legal Foundation
effective advocate of free enterprise®
2009 Massachusetts Ave., NW
Washington, DC 20036
202.588.0302

FOR IMMEDIATE RELEASE **August 2, 2000**

COURT URGED TO REJECT "DISPARATE IMPACT" STANDARD IN CIVIL RIGHTS CASES

(Alexander v. Sandoval, No. 99-1908)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to review a case in which the State of Alabama was found to have violated federal civil rights laws even though it never intended to discriminate against any protected class of citizens. The lower court held that a plaintiff can make out a violation of Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funding) merely by showing that the defendant's policy has a more severe impact on a protected class than on the general population -- even if the defendant did not intend to discriminate against anyone.

In a brief filed in *Alexander v. Sandoval,* WLF argued that the lower court erred in permitting Title VI plaintiffs to proceed without evidence of discriminatory intent. WLF urged the Court to grant review and then reverse the lower-court decision.

"Our civil rights laws were enacted to prevent intentional discrimination against minority groups, not to ensure equal outcomes," said WLF Chief Counsel Richard Samp after filing WLF's brief. "The lower-court decision threatens a broad range of business and educational practices that have stood the test of time but which could be shown not to affect all racial and ethnic groups equally," Samp said.

Among those placed at risk by the lower-court decision are companies seeking discharge permits from the Environmental Protection Agency. EPA has recently announced an "environmental justice" policy under which permits may be denied for locations with nearby minority populations, if local residents can demonstrate that discharges from the permit applicant's facility would have a disparate impact on their community. Also at risk are colleges and universities that rely heavily on standardized tests (such as the SAT) in their admissions process, since test takers from some racial minority groups on average score lower on standardized tests than do test takers from other racial groups.

The case before the Supreme Court is a challenge to Alabama's policy of giving its driver's license tests in English only. Alabama reasoned that drivers ought to be able to read traffic signs, which primarily are written in English. The U.S. Court of Appeals for the Eleventh Circuit held that that policy had a disparate impact on those born outside the United States, because such residents are less likely than the native-born to read and comprehend English. The Eleventh Circuit held that policy violated Title VI because Alabama failed to produce sufficient evidence to justify its policy. The appeals court relied on regulations issued by the U.S. Department of Transportation (DOT), which state that Title VI discrimination claims do not require proof of discriminatory intent.

WLF made two principal arguments in its Supreme Court brief. First, WLF argued that the DOT regulations are invalid because a federal agency has no authority to expand the scope of a law drawn up by Congress. Second, WLF argued that even if Congress did intend to adopt a disparate impact standard for Title VI, it did not extend a private right of action to enforce that standard; i.e., Title VI regulations can be enforced only by the federal agency that wrote the regulations, not by those allegedly injured by violation of the regulations.

The Supreme Court is likely to decide in October whether to review the case. If it agrees to do so, the case likely would be argued orally in January, with a decision expected by June 2001.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to combatting unwarranted expansion of federal civil rights laws. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.