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COURT REJECTS "DISPARATE IMPACT" CHALLENGES IN CIVIL RIGHTS CASES

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

The U.S. Supreme Court yesterday overturned a decision 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 decision was a victory for the Washington Legal Foundation (WLF), which had filed briefs urging the Court to hear the case and to rule that such civil rights claims by private parties are untenable in the absence of evidence that the defendant *intended* to discriminate.

The decision in this case will have a dramatic impact in a wide range of civil rights cases, particularly those brought in the fields of education and environmental regulation. In particular, private citizens will no longer be permitted to sue based on "environmental justice" claims -- suits in which the plaintiffs allege that allowing a particular industrial project to go forward would violate their civil rights because there are already many industrial facilities in the plaintiffs' community.

The U.S. Court of Appeals for the Eleventh Circuit held in this case, *Alexander v. Sandoval*, 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 overturning that decision, the Supreme Court agreed with WLF's argument that the appeals court erred in permitting Title VI plaintiffs to proceed without evidence of discriminatory intent. While leaving open the possibility that the federal government itself might be permitted to file Title VI suits based solely on evidence of disparate impact, the Court held that Congress did not intend to grant that same right to private citizens.

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

Among those that had been placed at risk by the lower-court decision were companies seeking discharge permits from the Environmental Protection Agency. In the final year of the Clinton Administration, EPA announced an "environmental justice" policy under which permits could be denied for locations with nearby minority populations, if local residents could demonstrate that discharges from the permit applicant's facility would have a disparate impact on their community. Also at risk were 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 Supreme Court's decision should eliminate the danger posed by such suits.

The case before the Supreme Court was 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 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 court held that the 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.

While assuming for the sake of argument that the DOT regulations were valid, the Supreme Court's decision included language suggesting that the regulations were actually invalid because a federal agency has no authority to expand the scope of a law drawn up by Congress. (The Court noted that it had held in previous decisions that Title VI does not apply to actions taken in the absence of discriminatory intent.) The Court agreed with WLF that even if Congress did intend to permit agencies to adopt a disparate impact standard in their Title VI regulations, it did not create 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.

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; the Allied Educational Foundation; and U.S. Representatives Robert Aderholt, Spencer Bachus, Sonny Callahan, Terry Everett, and Bob Riley of Alabama.

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