NATIONAL CAMPAIGN TO **RESTORE CIVIL RIGHTS**

THE SUPREME COURT: FALL 2006

When the Supreme Court returns from its summer break and begins its next session, it will begin its first full year with Justice Samuel Alito, confirmed to a lifetime appointment in January 2006. In his short time on the bench, Justice Alito has already developed a record that places him firmly on the right of the Court. In an opinion in a sexual harassment case, and in his vote on an environmental issue, Justice Alito demonstrated his willingness to accept limits on civil rights and his skepticism of federal power to protect the environment. Justice Alito's presence, combined with the still recent confirmation of Chief Justice John Roberts in September 2005, means the current Court is markedly different from those that have decided many civil rights issues in the past.

Though the Court has yet to announce all the cases it will hear next year, it's already shaping up to be an important one for those interested in civil rights across several issue areas. The Court's decisions in the following cases will have long-lasting impacts on all of us for years to come.

SHOULD OUR KIDS HAVE DIVERSE SCHOOLS?

Some American schools offer high-quality education, but our children receive unequal educational opportunities. Many disparities fall along racial and ethnic lines. Across the country children of color are more likely to go to poorer schools with fewer resources. Every student should have a fair chance to reach his or her full educational potential. Opportunity and equality are not just core American values, they are core legal principles that have been upheld by courts across the land.

Even though racial segregation in the schools was outlawed more than 50 years ago, in the past two decades schools nationwide have in fact become more racially segregated than ever. Our public schools are as segregated as they were in the 1950s and our children are being denied access to opportunity and diversity. We are still feeling the effects of a long legacy of segregation and racial discrimination in this country, especially in public education. Programs that try to make sure student bodies are diverse, and that all children have an equal opportunity to succeed, even young children, can only benefit us all in the long run.

Two cases involving programs that address racial isolation and try to provide equal educational opportunities to all children, regardless of race, are now before the Supreme Court. The Court will hear arguments from Seattle and Louisville, Kentucky, and the outcome of these cases could affect millions of children nationwide. The Supreme Court has said as recently as 2003 that affirmative action programs are constitutional and that racial diversity is a valid, important goal for institutions of higher education. But until now the Court has never addressed the issue of race-conscious assignment in public schools for lower grades. The two cases now in the Court could affect the ability of local school

districts to take needed steps to prevent re-segregation and address racial inequality in their schools.

The public schools in Louisville, Kentucky, were found to be "officially" segregated by a federal judge in 1973. The court ordered the school system to desegregate in 1975 and monitored student assignment to make sure the schools were complying until 2000. At that point, the Board of Education adopted a policy to try to ensure that schools didn't become re-segregated, setting goals for most schools to achieve some diversity generally to reflect the population of the district as a whole. This policy is only a small part of an overall effort that still has a long way to go to ensure equal educational opportunities for all kids.

The challenge to the policy is by white parents who believe that their children were denied voluntary transfers to schools. In this case, the school district is trying to maintain a policy that it had previously been ordered to adopt.

In Seattle, though the schools were never deemed segregated by a court, the city has struggled with widespread school segregation throughout the past fifty years. Seattle's children of color face numerous obstacles in accessing equal educational opportunities. The city acknowledged these issues and has tried many remedies in the past, including a magnet-school program, with little success.

Seattle's "open choice" plan lets students choose their favorite high school. If demand exceeds the number of seats available at any school, various ''tiebreakers'' are used to slot students. Tiebreakers include geographic proximity and whether a student has a sibling at the desired school. If a school is more than 65 percent white or 75 percent students of color, then race can be considered. The school district has not been able to enforce these policies because of law suits.

The parents in these two cases are represented by national, ideological groups that argue that neither race nor racial diversity should be used at all in determining what schools children attend. They claim that public schools in the lower grades don't have the same need for diversity that universities have. It is clear, though, that many parents do, in fact, want their kids to be exposed to different cultures and languages in the classroom.

Our children should be allowed to learn in an environment made up of different races, ethnicities, and cultures. If there are no policies in place to help keep schools representative of their larger home communities, the battles for desegregation would have to be fought in court again and again as schools fall in and out of a segregation/desegregation cycle.

Programs like the ones in Seattle and Louisville help ensure that children are continually educated in integrated settings. Although it's been more than fifty years since the Supreme Court first ruled that systems of racial segregation in the schools violated the United States Constitution, segregation and racist attitudes are not a thing of the past. One of our nation's goals of educational opportunity for all children remains more relevant than ever.

For more information:
Meredith v. Jefferson County Board of Education
Parents Involved in Community Schools v. Seattle School District No. 1
Brown v. Board of Education

CAN CONGRESS CONTROL WHAT WE DO WITH OUR BODIES?

The Court will hear two very closely-watched cases about reproductive rights in the coming term. These will be the first cases involving this issue since either Chief Justice Roberts or Justice Alito has taken the bench. These cases are also important because they could determine whether Congress can ignore past Supreme Court rulings.

Just six years ago, a closely-divided Court struck down a Nebraska ban on so-called partial-birth abortion because the ban failed to provide an exception for a mother's health, and because the law's definition of the procedure was so wide that it effectively made it impossible for a woman to exercise her reproductive rights.

In 2003, the U.S. Congress ignored this ruling and passed by a large majority the federal Partial-Birth Abortion Ban Act. Although the law included an exception for a mother's life, it did not include an exception for her health. Congress justified the law on the grounds that it had "found" that such abortions are never medically necessary to protect a woman's health, and that it wasn't bound to the same fact-finding process as the Supreme Court. Women's health providers and experts disagree with Congress' findings and since the federal act was passed, it has been struck down by every lower court across the country that has ever considered it.

Can Congress ignore past Supreme Court decisions, by "finding" facts because it disagrees with the Court's decision? Can Congress make determinations about what is or what isn't medically necessary for a woman, or does the decision remain with a woman and her doctor? This Supreme Court's ruling on these cases could make it substantially more difficult for a woman to exercise her reproductive rights.

For more information:
Stenberg v. Carhart, 530 U.S. 914 (2000)
Gonzales v. Carhart, 413 F.3d 791 (8th Cir. 2005), *cert. granted*, 74 U.S.L.W. 3457 (U.S. Feb. 21, 2006) (No. 05-380).
Gonzales v. Planned Parenthood Fed'n of Am., 435 F.3d 1163 (9th Cir. 2006), *cert. granted* (U.S. June 19, 2006) (No. 05-1382)

IS OUR CLEAN AIR IN DANGER?

One of the key issues the courts are deciding is whether the federal government as the power to protect the environment. Last year, the Court decided two cases involving the Clean Water Act, and four justices clearly expressed their belief that the national government has only a very limited role in this area. Like the Clean Water Act, the Clean Air Act represents one of the greatest achievements in the quest for a healthier environment in America of the past fifty years. The clean air standards and enforcement mechanisms it has created have helped reduce emissions, reducing pollution and making the air cleaner and easier to breathe for all Americans.

In the fall, the Court will hear *Environmental Defense v. Duke Energy*, which may determine how much the federal government can regulate some 17,000 industrial plants and force improvements in unhealthy air breathed by millions of Americans.

The Clean Air Act requires power plants to install pollution-reducing equipment whenever they upgrade plants and the upgrade leads to increased emissions. Duke Energy upgraded

eight of its power plants across the Carolinas over a twelve-year period without getting permits and in violation of federal environmental regulations. When an environmental group sued, it might have seemed a clear-cut case. But in a strange interpretation of the clear language of the Clean Air Act, a North Carolina District Court and the Fourth Circuit held that the word "increase" in the law only means an increase in the *rate* of emissions. Since Duke's upgrade only allowed the plants to pollute for more hours of the day instead of more pollution each hour, the courts decided this wasn't technically an increase, and the rules didn't apply. This flabbergasting decision was made even stranger by the fact that the D.C. Circuit had already decided that "increase" means "increase," and if your total pollution is higher one year than it was the last, the law applies.

If the Supreme Court rules in favor of Duke Energy, it would greatly lower environmental standards and raise concerns for the public's health. The 600 generating plants at issue are major sources of nitrogen oxides and sulfur dioxide, which contribute to smog, acid rain, soot and other fine particles that lodge in people's lungs and cause asthma and other respiratory ailments. But even more, a finding for Duke Energy would make landmark, hard-earned laws that protect us all, such as the Clean Air Act, virtually worthless.

U.S. v. Duke Energy Corp. 411 F.3d 539 (4th Cir. 2005), *cert. granted nom. Environmental Defense v. Duke Energy Corp*, 74 U.S.L.W. 3639 (U.S. May 15, 2006) (No. 05-848).

SHOULD THE CONSTITUTION PROTECT EVERYONE?

The Court will consider three important cases, *Jones v. Bock*, *Williams v. Overton,* and *Walton v. Bouchard*, that will determine whether prisoners can fight for their civil rights when their constitutional rights have been violated. At stake is the authority of Congress to limit the ability of all individuals, not just prisoners, to use the courts to right wrongs.

- While Lorenzo Jones was being transported by prison authorities, he was seriously injured in a car accident. Despite these injuries, prison authorities made him do jobs that worsened his injuries. Jones sued, saying the Constitution (8th Amendment) prohibits this cruel and unusual punishment.

- Timothy Williams has a medical disorder that leads to the growth of tumors throughout his arm and hand and severely distorts his wrist. Prison officials denied authorization for surgery, despite a doctor's recommendation, saying the surgery was only cosmetic and not worth the risk. Although he was temporarily placed in a single room that was accessible to people with disabilities, he was later moved and denied special assistance due to "inadequate" medical documentation.

- After assaulting a corrections officer, John Walton, an African-American prisoner, was placed on indefinite "upper slot restriction," which limited his contact with the outside world to just a slot in his cell door. Walton claims that no white prisoners received this punishment (for similar crimes), and instead receive a standard sentence of a 60-day suspension. Walton claimed racial discrimination.

The people who brought these cases were not treated with respect, and their rights were violated. But the district court dismissed all three cases because of technicalities. Under the Prison Litigation Reform Act of 1995, prisoners are required to exhaust all administrative remedies before filing a complaint in court. Even though Jones had filed grievances, he failed to attach them to his complaint or explain them. Williams and Walton

had also filed grievances, but their cases were dismissed because they added defendants to the court complaint that they hadn't specifically named in the grievances.

As the lower-court decision stands, the prisoners face extreme barriers, which denies them the chance to have their day in court and have their constitutional claims heard by a judge. No matter what crimes Jones, Williams, and Walton were convicted of, their constitutional rights should be protected.

Jones v. Bock, 135 Fed.Appx. 837 (6th Cir. 2005), *cert. granted,* 74 U.S.L.W. 3503 (U.S. Mar. 6, 2006) (No. 05-7058).
Walton v. Bouchard, 136 Fed. Appx. 846(6th Cir. 2005), *cert. granted*, 74 U.S.L.W. 3499 (U.S. Mar. 6, 2006) (No. 05-7142)
Williams v. Overton, 136 Fed.Appx. 859 (6th Cir. 2005), *cert. granted*, 74 U.S.L.W. 3499 (U.S. Mar. 6, 2006) (No. 05-7142)