PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

PROGRAM REPORT

June, 1998

This month the news has been full of developments in our work that have significant implications, both locally and nationwide.

The United States Supreme Court will review the Chester Environmental Justice case

The Supreme Court announced that it will review the civil rights lawsuit filed by the Chester Residents Concerned for Quality Living (CRCQL) against the Pennsylvania Department of Environmental Protection charging the DEP with discriminating because it permits more solid waste disposal facilities in Chester than in the rest of Delaware County.

The Supreme Court's action threatens to disturb the Third Circuit's landmark decision in this case back in December, which determined that private citizens could sue for discriminatory environmental policies under Title VI of the Civil Rights Act of 1964 without proving that the discrimination was intentional.

The Supreme Court's decision may have been influenced by an *amicus* brief submitted by the Washington Legal Foundation, which argued that the regulations developed by the EPA to implement Title VI are invalid because administrative agencies cannot prohibit conduct which only has a discriminatory effect.

An adverse decision in this case would have an enormous impact on civil rights cases in general. For instance, the Law Center has filed a Title VI case challenging Pennsylvania's system of funding public schools as having a discriminatory impact.

Title VI was passed to ensure that federal dollars were not used to support discriminatory programs. If Title VI applies only to programs that intentionally discriminate, and not also to programs that have disparate effects on minorities, it would exempt the principal form of discrimination affecting minorities today.

Consider the Chester case: we are charging the DEP with violating Title VI because in the past ten years it has permitted 5 trash processing facilities with a combined capacity of 2 million tons in Chester, which is 67 percent African American, as compared to only 2 facilities with a combined capacity of 1500 tons in the rest of Delaware County, which is 92 percent white. While the Chester residents may be unable to prove that this was the result of a discriminatory intent on the part of the DEP, it has certainly had an unfair impact on that community.

The Supreme Court will also consider whether the Chester residents should have filed their complaint with the EPA for investigation instead of going to court. In light of the fact that the EPA has not resolved a single environmental complaint in favor of the community complaining, it is critical that we ensure that private citizens have direct access to the courts to air their grievances.

Briefs will be due to the Supreme Court over the summer, and oral argument will likely be heard late in the fall.

City Council votes to send Philadelphia's trash to Chester

In the meantime, Chester residents are faced with yet another serious threat to the environment. Philadelphia City Council has voted to send 12 percent, or 100,000 tons, of the City's trash to Chester for incineration, despite a report from the EPA warning of the adverse health effects of any increased air pollution in that city. At a recent City Council hearing, Zulene Mayfield, President of the CRCQL, unsuccessfully pleaded with Council not to subject Chester to this pollution. Council's decision also ignored the recent recommendation from the Solid Waste Advisory Committee that the trash be sent to one of the many alternative landfill sites.

Bottom line: In 1988, City Council refused to allow a trash incinerator to be built in predominantly white South Philadelphia. Ten years later, it refused to act to help the minority residents of Chester, even though

125 South Ninth Street • Suite 700 • Philadelphia, PA 19107 • Phone: 215-627-7100 • Fax: 215-627-3183

it clearly understands the impact of these facilities on the surrounding community.

Federal judge finds that the NCAA is subject to the ADA

In a landmark ruling, the judge in the *Bowers v. NCAA* case has determined that the NCAA, the national organization which determines scholastic eligibility requirements for college athletes, is subject to the Americans with Disabilities Act (ADA). This means that the NCAA is required to make any reasonable modifications needed to enable students taking special education classes to qualify.

Michael Bowers, who has a learning disability, was recruited heavily by several Division I and II schools. These schools considered him to be qualified scholastically and were prepared to offer Bowers athletic scholarships. However, once the NCAA refused to credit his special education courses, his scholarship offers dried up. Bowers then enrolled at Temple University, where he has maintained a 2.5 grade point average in a standard college curriculum.

One of the goals of the ADA is to ensure that people with disabilities have equal access to public places. The NCAA argued that it does not lease, own or operate any public place and is therefore not subject to the ADA. The judge rejected the NCAA's argument, finding that it essentially operates a public place and is thus subject to the ADA because of the high degree of control the NCAA exercises over athletic programs at its member schools.

The judge's decision comes on the heels of an agreement reached between the NCAA and the Justice Department on the NCAA's policies. Shortly after Bowers filed suit, the Justice Department began an extensive investigation of complaints by Bowers and other students who, like Bowers, were denied the opportunity to participate in intercollegiate athletics or receive athletic scholarships solely because of their learning disabilities. Under the agreement, the NCAA will voluntarily change some of its policies. The court's decision will allow Bowers to seek more extensive changes to NCAA's policies, as well as monetary damages for the loss of an athletic scholarship.

The NCAA is coming under increasing attack for its eligibility requirements, which bear no direct relation to a student's ability to succeed in college. For instance, a class action suit has been filed on behalf of African American students in Philadelphia, who challenge the NCAA's practice of basing eligibility on a cutoff score on standardized tests.

The NCAA contends that the academic eligibility requirements are necessary to assure proper emphasis on educational objectives, promote competitive equity among institutions and prevent exploitation of student athletes. At the heart of the *Bowers* case is the issue of whether student athletes who have learning disabilities but are able to complete regular college coursework will be denied scholarship and athletic opportunities simply because they learn in a different manner than other students. This case, and others, challenges the NCAA's criteria as unnecessarily rigid and arbitrary and having nothing to do with the actual ingredients necessary for academic and athletic success.

Bowers will still need to prove that the NCAA's denial of eligibility on the basis of his special education classes actually violated the ADA. Trial is expected to begin shortly after the completion of discovery in November of 1998.

Law Center Updates

We have begun to plan the celebration of our 25th Anniversary in 1999. We are begin assisted in this planning effort by the Marketing Advisory Group, a committee of volunteer marketing professionals from the legal and corporate community. Their talent, expertise and enthusiasm has been a much needed resource.

The planning process is being underwritten by the generous support of the **Dolfinger-McMahon Foundation** and **The Philadelphia Foundation.**

We would also like to thank all of the individuals who responded generously to our spring solicitation. We appreciate your continued support of our work.