Nos. 81-1 and 81-3

IN THE

Supreme Court of the United States

[redacted]

On Writ Of Certiorari To the United States
Court Of Appeals For The Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF THE INTERNATIONAL HUMAN RIGHTS LAW GROUP

[redacted]

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

Nos. 81-1 and 81-3

GOLDSBORO CHRISTIAN SCHOOLS, INC.,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

BOB JONES UNIVERSITY,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

MOTION TO FILE
BRIEF AMICUS CURIAE OF THE
INTERNATIONAL HUMAN RIGHTS LAW GROUP
IN SUPPORT OF THE JUDGMENTS BELOW

The International Human Rights Law Group moves this Court, pursuant to Rule 36.3 for leave to file the attached brief amicus curiae.

Amicus seeks to argue in support of the judgment below in these cases, the position of the respondent before the Court of Appeals for the Fourth Circuit and before this Court on the petitions for certiorari. Upon receipt of respondent's brief arguing that the decisions below were wrongly decided, this Court invited William T. Coleman, Jr., Esquire, of Washington, D.C. to brief and argue these cases, as amicus curiae, in support of the judgments below. Amicus has been informed by the Clerk of this Court that briefs of

amici urging affirmance of the judgments below will be considered timely until Mr. Coleman files his brief with this Court. Amicus believes Mr. Coleman has not filed as of the date of this motion and therefore asks this Court to deem this motion and the accompanying brief to have been timely submitted to the Court within Rule 36.

Amicus, a non-profit public interest law office, established in Washington, D.C. in 1978 by the Procedural Aspects of International Law Institute and supported by foundation grants, seeks to promote respect for and adherence to human rights norms in all nations, including the United States.

Amicus wishes to submit to this Court argument that Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code

should not be interpreted to violate a peremptory norm of international law: the prohibition against state supported racial discrimination. This norm has sources in international agreements, customary law, and practice common to the world's major legal systems. An interpretation of Sections 501(c)(3) and 170(c)(2) which would require that tax exempt status be granted to schools which practice racial discrimination would be in violation of this norm, a conflict which should be avoided if possible.

Amicus further argues that the international prohibition against state support for racial discrimination informs the public policy of the United States. As Congress intended that tax exempt status not be provided organizations which

frustrate this public policy such status was properly refused Petitioners.

Amicus is not aware of any presentation of these arguments to this Court in this case and thus respectfully moves this Court, pursuant to Rule 36.3, for leave to file the accompanying brief amicus curiae. The Solicitor General, counsel to the respondent, has consented to the filing of this brief. Amicus sought the consent of counsel for each petitioner, Bob Jones University and

Goldsboro Christian Schools, and they declined to provide their consent.

Respectfully submitted,

Amy Young-Anawaty*
Grant Hanessian

International Human Rights Law
Group of the
Procedural Aspects of International
Law Institute
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202-659-5023)

*Counsel of Record

Dated: 25 August 1982

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Page

Page

Page

Other Authorites:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

Nos. 81-1 and 81-3

GOLDSBORO CHRISTIAN SCHOOLS, INC.,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

BOB JONES UNIVERSITY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF AMICUS CURIAE OF THE INTERNATIONAL HUMAN RIGHTS LAW GROUP IN SUPPORT OF THE JUDGMENTS BELOW

INTEREST OF AMICUS

The International Human Rights Law Group is a nonprofit legal organization which seeks to promote the observance of international human rights norms. Founded in 1978 by the Procedural Aspects of International Law Institute, a nongovernmental organization of international lawyers and scholars which has consultative status with the United Nations (ECOSOC), the Law Group provides legal assistance and information in the field of international human rights law. With the assistance of attorneys who contribute their services to the Law Group, this expertise is offered on a pro bono basis

to individuals and groups concerned with respect for human rights.

Over the past several years, the International Human Rights Law Group has developed a special interest in states compliance with international norms prohibiting discrimination against ethnic and racial groups. The Law Group has represented before international forums Haitians seeking asylum in the United States, Hungarians in Rumania, Koreans in Japan and Tamils in Sri Lanka, whose rights, articulated in international agreements, have been abridged by government policy or practice. In many instances, governments have modified their treatment of minority groups to conform to international standards. In United States courts as well, the Law Group has participated as amicus in recent cases urging

U.S. compliance with international human rights norms. These cases have held that human rights standards may guide the interpretation of our Constitution to comply with international norms.

The International Human Rights Law Group, interested in securing United States compliance with international human rights norms, believes the image of the United States, as a nation committed to human rights, would be severely damaged in the eyes of the international community if the decisions below were reversed.

SUMMARY OF ARGUMENT

The International Human Rights Law Group, as amicus curiae, supports the judgments of the Fourth Circuit Court of Appeals in these cases. An interpretation of Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code, which would require that tax-exempt status be granted to schools with racially discriminatory practices, would violate a peremptory norm of international law, the prohibition against state sponsored racial discrimination, affirmed in international agreements, customary law, and common to the world's major legal systems. As international law and federal law are afforded parity in our courts under the Supremacy Clause, Art. VI of the U.S. Constitution, this Court should construe the statutes at issue to be consonant with

international law, if it is possible to do so. Additionally, the international prohibition against state support for racial discrimination informs the public policy of the United States; as Congress intended that tax exemptions not be granted to organizations which frustrate this public policy, such exemptions were properly refused petitioners.

ARGUMENT

I. STATE SUPPORT FOR SCHOOLS WHICH DISCRIMINATE ON THE BASIS OF RACE IS IN VIOLATION OF INTERNATIONAL LAW

An interpretation of Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code requiring that tax-exempt status and eligibility for receipt of tax deductable contributions be granted to schools which practice racial discrimination would provide these schools with tangible and necessary support,*/

---

*/ Bob Jones admits that "as a result" of the withdrawing of its exemption the school "experienced a decrease in the giving." Joint Appendix in No. 81-3, at 250. Deductibility has been shown to play a "significant role" in the decision of many wealthy persons to contribute. Note, The Judicial Role in Attacking Racial Discrimination in Tax-Exempt Private Schools, 93 Harv. L. Rev. 378, 387 n. 50 (1979) (citing

(Continued)

encouraging their growth and proliferation, and the resulting drain of white children from the nation's public schools.*/ Employment of limited societal resources to support and sponsor such

---

studies). Clearly money that is donated to tax-exempt schools is used to operate these schools. See Tax-Exempt Status of Private Schools: Hearings before the Subcommittee on Oversight of the House Committee on Ways and Means, 96th Cong, 1st Sess. 400 (1979) (hereinafter "Hearings") (statement of John Esty, Jr., President, National Association of Independent Schools) (tax-exemption and deductibility of donations account for "23% of the operating budgets of our boarding schools and 11% in our day schools.").

*/ The United States Commission on Civil Rights estimates that 3500 private schools were created or significantly expanded as a result of desegregation of the public schools. See, Hearings, supra, 479 (statement of E. Richard Larson, on behalf of the American Civil Liberities Union).

schools would violate a peremptory norm of international law--the prohibition against state sponsored racial discrimination. See part II, infra.

A. THE INTERNAL REVENUE CODE MUST BE INTERPRETED TO BE CONSISTENT WITH INTERNATIONAL LAW

"[A] Act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains ..." Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 118 (1804) (Marshall, C.J.). (quoted in Lauritzen v. Larsen, 354 U.S. 571, 578 [1953].) See also Cook v. United States, 288 U.S. 102 (1933) (construing statute to avoid violation of international obligation). This principle of interpretation is influenced by the parity given federal and international law in U.S. courts under

the Supremacy Clause, U.S. Const., Art. VI. Head Money Cases, 112 U.S. 580 (1884). The peremptory norm of international law prohibiting state sponsored racial discrimination must inform this Court's interpretation of the federal statutes at issue here as it is "fairly possible" to do so. Cf. Ashwander v. TVA, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring).

B. INTERNATIONAL LAW INFORMS THE PUBLIC POLICY OF THE UNITED STATES WHICH PROHIBITS TAX EXEMPTIONS TO SCHOOLS WHICH DISCRIMINATE ON THE BASIS OF RACE

It is a "general and well-established principle that the Congressional intent in providing tax deductions and exemptions is not construed to be applicable to activities that are either illegal or contrary to public policy."

Green v. Connally, 330 F. Supp. 1150, 1161 (D.D.C. 1971), aff'd per curiam sub nom. Coit v. Green, 404 U.S. 997 (1971). "The legislative history of Section 501(c)(3) verifies the exemption's foundation in public policy." Bob Jones University v. United States, 639 F.2d 147, 151 (4th Cir. 1980) (citing leg. history). See Tank Truck Rentals v. Commissioner, 356 U.S. 30, 33 (1958). Judge Leventhal, in Green v. Connally, supra, noted that "[t]he sources and evidences of [the] . . . Federal public policy [against government support for racial discrimination] are various." Id., at 1163.

These sources must now include international human rights law and its peremptory prohibition against state support for racial discrimination. The United States is party to the Charters of

the United Nations and the Organization of American States, and is bound by the human rights provisions in both those instruments (see part II. A. infra). It was an active participant in the drafting of, is signatory to all, and is a party to some principal human rights instruments (see part II. B. infra). Its legislation conditions foreign assistance on compliance with "internationally recognized human rights" (see U.S. Legislation Relating Human Rights to U.S. Foreign Policy [2d ed. Lillich 1980]; Cohen, Conditioning U.S. Security Assistance on Human Rights Practices 76 Am. J. Int'l L. 246 [1982]). It has argued to the International Court of Justice:

> [T]he existence of such fundamental rights for all human beings... and the existence of a corresponding duty on the part of

> every State to respect and observe them.

Memorial of the United States, Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), I.C.J. Pleadings 71 (1980). Its most authoritative spokesmen have recognized international human rights norms as binding upon the United States; President Carter told the General Assembly of the United Nations, "All the signatories of the U.N. Charter have pledged themselves to observe and to respect basic human rights." Boyd, Digest of U.S. Practice in International Law 162 (1977). U.S. courts have employed international human rights law to inform the commands of the U.S. Constitution. Rodriguez-Fernandez v. Wilkenson, 654 F.2d 1382, 1388 (10th Cir. 1981).

Certainly this particular norm-the dominant single command of the international law of human rights, to minimize racial discrimination in all its manifestations-must be considered a "source and evidence" of the "public policy" of the United States, here forbiding granting tax-exempt status to schools which discriminate on the basis of race.

II. NON-DISCRIMINATION ON THE BASIS OF RACE IS A PEREMPTORY NORM OF INTERNATIONAL LAW

The United States is bound, as are all states, by the peremptory norm*/ of

---

*/ A peremptory norm of international law is a "norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention on the Law of adopted May 22, 1969, entered

(Continued)

international law*/, affirmed in international agreements, customary law, and general principles of law common to the world's major legal systems, which prohibits state support of racial discrimination.

A. INTERNATIONAL AGREEMENTS PROHIBIT STATE SUPPORTED RACIAL DISCRIMINATION

The U.S. is a state party to the Charter of the United Nations (signed June 26, 1945, entered into force Oct. 24, 1945, 59 Stat. 1031, T.S.N. 993, 3 Bevans 1153) which proclaims as among its

---

*/ See Statute of the International Court of Justice, Article 38(1) (defining "sources" of international law) Cf. Filartiga v. Pena, 630 F.2d 876 882-85 (2d Cir. 1980), Restatement of Foreign Affairs Law § 701, Reporters' Note (with special regard to sources of international human rights law) (Tent. Draft No. 3, 1982).

purposes promoting and encouraging respect for human rights "without distinction as to race . . .." Art. 1(3); the Charter further expresses this proscription in Articles 13(1)(b) (functions of the General Assembly); 55(c) (creation of conditions for stability and well-being); and 76(c) (objectives of trusteeship system). The Universal Declaration of Human Rights (signed Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 [1948]), articulating the human rights obligations of member states, extends its protections "without distinction of any kind, such as race, color ...", Art. 2; See also Articles 7 (equal protection before the law); 16 (right to marry and have a family); and 26(2) (education to foster racial tolerance).

The United States is also a member of the Organization of American States, the Charter of which "proclaim[s] the fundamental rights of the individual without distinction as to race..." (entered into force Dec. 13, 1951, 2 U.S.T. 2394, T.I.A.S. No. 2361, as amended by the Protocol of Buenos Aires, Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847) Art. 3(j); also specifically guaranteeing non-discrimination on grounds of race are Articles 43(a) (assuring "dignity" and "equality of opportunity") and 112 (establishing the Inter-American Commission on Human Rights)*/; see also American

---

*/ Other international agreements specifically prohibiting discrimination on grounds of race, to which the U.S. is party, are:

Slavery Convention, signed Sept. 25, 1928, entered into force Mar. 9, 1927, 46 Stat. 2183, T.S. No. 778,

(Continued)

Declaration of the Rights and Duties of Man (signed May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L/V/II. 23, doc. 21, rev. 6 [English 1979]), Article 2.

B. CUSTOMARY LAW PROHIBITS STATE SUPPORTED RACIAL DISCRIMINATION

International agreements to which the U.S. is not party may create equally authoritative customary law. See North Sea Continental Shelf Cases [1969] I.C.J. 37; Filartiga v. Pena, supra. As racial discrimination is prohibited by numerous

---

60 L. N.T.S. 253 (entered into force for U.S. Mar. 21, 1929);

Protocol Relating to the Status of Refugees, signed Jan. 21, 1967, entered into force Oct. 4, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (entered into force for U.S. Nov. 1, 1968);

Convention Relating to the Status of Refugees, opened for signature July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137.

international human rights instruments and is in each afforded the most prominent place in the enunication of impermissible grounds of distinction, it has become a customary norm of international law. See Restatement of Foreign Relations Law § 702(k), Comment j; (Tent. Draft No. 3, 1982) ("systematic racial discrimination" a peremptory norm of international law).

The International Covenants on Human Rights,*/ which codify the principles of

---

*/ The U.S. is a signatory to the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic, and Cultural Rights, the American Convention on Human Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. As a signatory the U.S. is obliged to refrain from acts which would defeat the object and purpose of these agreements until such time as it clearly renounces its intention to become party to them. See Vienna Convention on the Law of Treaties, supra at 4, Art. 18. (Continued)

the Universal Declaration in treaty form, explicitly and preeminently prohibit discrimination on grounds of race. The International Covenant on Civil and Political Rights (adopted Dec. 16, 1966, entered into force Mar. 23, 1976, G.A. Res. 2200 (XXI), 21 U.S. GAOR, Supp. (No, 16) 52, U.S. Doc. A/6316 [1966]) commands

---

Other treaties with non-discrimination clauses which the U.S. has signed include:

Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature Dec. 9, 1948, entered into force Jan. 12, 1951, 78 U.N.T.S. 277, Art. 1;

Convention Concerning the Abolition of Forced Labor (ILO No. 105), adopted June 25, 1957, entered into force Jan. 17, 1959, 320 U.N.T.S. 291, Art. 1(e);

Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, opened for signature Dec. 10, 1962, entered into force Dec. 9, 1964, 521 U.N.T.S. 231, Art. 3.

each state party to "ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, color. . .." Art. 2(1); (See also Article 26 guaranteeing equal protection.) The International Covenant on Economic, Social and Cultural Rights (adopted Dec. 16, 1966, entered into force Jan. 3, 1976, G.A. Res. 2200 (XXI), 21 U.S. GAOR, Supp. (No. 16) 49, U.S. Doc. A/6316 [1966]), similarily prohibits discrimination in the rights which it enunciates, Art.2(2), as does the American Convention on Human Rights, (signed Nov. 22, 1969, entered into force July 18, 1978, O.A.S.T.S. No. 36, at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II. 23, Doc. 21, rev. 6 [English 1979]), Article 1(1).

Of the many treaties prohibiting discrimination on grounds of race,*/ the

---

*/ See, inter alia, Convention Relating to the Status of Stateless Persons, signed Sept. 28, 1954, entered into force June 6, 1960, 360 U.N.T.S. 130, Art. 3;

Convention Concerning Discrimination in Respect of Employment and Occupation (ILO No. 111), adopted June 25, 1958, entered into force June 15, 1960, 362 U.N.T.S. 32, Preamble, Art. 1;

Convention on the Reduction or Statelessness, adopted Aug. 30, 1961, entered into force Dec. 13, 1975, U.N. Doc. A/CONF. 9/15 (1961), Art. 9;

Convention Against Discrimination in Education, adopted Dec. 14, 1961, entered into force May 22, 1962, 429 U.N.T.S. 93, passim (see infra);

Convention Concerning Employment Policy (ILO No. 122), adopted July 9, 1964, entered into force July 15, 1966, 569 U.N.T.S. 65, Preamble, Art. 1(2)(c);

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted Nov. 26, 1968, entered into

(Continued)

International Convention on the Elimination of All Forms of Racial Discrimination (adopted Dec. 21, 1965, entered into force Jan. 4, 1969, 660 U.N.T.S. 195) represents "the most comprehensive and unambiguous codification in treaty form of the idea of the equality of races." E. Schwelb and N. Nathanson, The United States and the United Nations Treaty on Racial Discrimination (American

---

force (No. 11, 1970 G.A. Res. 2391 (XXIII), 23 U.N. GAOR, Supp. (No. 18) 40, U.N. Doc. A/7218 (1968), passim;

International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted Nov. 30, 1973, entered into force July 18, 1976, G.A. Res. 3068 (XXVIII), 28 U.N. GAOR, Supp. (No. 30) 166 U.N. Doc. A/9030 (1974), passim;

Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (1980), 19 International Legal Materials 33 (1980), Preamble.

Society of International Law Studies in Transnational Legal Policy No. 9, 1975), at 5. As the Convention has been ratified by more nations than any other human rights instrument (111 as of January 1, 1982) it is "considered today as declaratory of generally accepted principles of international law . . .." N. Lerner, The U.N. Convention on the Elimination of All Forms of Racial Discrimination, p. VII (2d ed. 1980). Generally, the Convention defines racial discrimination, catalogs those areas in which distinctions based on race are impermissible, and affirmatively requires States to take measures to eradicate such distinctions. The Convention extends its ban on official discriminatory actions to all acts of government; contracting states undertake to:

> engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation..., not to sponsor defend, or support racial discrimination by any persons or organizations..., [and finally] to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Art. 2(1)(d-e). States are further obligated not to "permit public authorities or public institutions, national or local, to promote or incite racial discrimination." Article 4(c).*/

---

*/ The Convention on Racial Discrimination specifically (Continued)

The customary law forbidding state

prohibits discrimination in education at Article 5(d)(v). The right to education enunciated in the International Covenant on Economic, Social and Cultural Rights and the OAS Charter and the American Convention on Human Rights are subject to the general nondiscrimination clauses of those documents.

Additionally, the Convention Against Discrimination in Education, adopted by the United Nations Educational, Scientific and Cultural Organization, ratified by 69 countries(as of January 1, 1982) requires States Parties to "eliminate and present" . . . . "any distinction, exclusion, limitation, or preference, which, being based on race, color...or birth, has the purpose or effect of nullifying or impairing equality of treatment in education." Arts. 1,3. Specifically States Parties are required:

> To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
>
> To ensure, by legislation where necessary that there

(Continued)

supported racial discrimination is further evidenced by strong and frequent expressions of various United Nations bodies on the topic.*/ The numerous General

---

is no discrimination in the admission of pupils to educational institutions: [and],

Not to allow, in any form of assistance granted by the public authorities in educational institutions, any restrictions or preference based solely on the grounds that pupils belong to a particular group . . . Art. 3 (a,b,d)

*/ For example, the Program for the Decade for Action of Combat Racism and Racial Discrimination launched by the General Assembly in 1979 declared that:

discrimination between human beings on the ground of race, colour or ethnic origin is an affront to humanity and shall be condemned as a violation of the principles of the Charter of the United Nations . . . as an

(Continued)

Assembly and Security Council resolutions condemning apartheid are marked by "a recurrent, emphatic, and equally general condemnation of racial discrimination as unlawful under international law" McDougal, Lasswell, and Chen, Human Rights and World Public Order 598 (1980).

Customary law is also found in the commitments of states members of regional intergovernmental organizations to guarantee racial equality. See Organization of American States Charter, American Convention on Human Rights supra; Banjul Charter on Human and Peoples' Rights (adopted June 20, 1981 by the Organization of African Unity Council of Ministers Thirty-Seventh Ordinary Session, held at

---

obstacle to friendly and peaceful relations among nations and as a factor capable of disturbing peace and security among

(Continued)

Nairobi, O.A.U. Doc. CAB/LEG/67/3, rev. 5), Preamble, Art. 2, Art. 12(5); the European Convention for the Protection of Human Rights and Fundamental Freedom (signed Nov. 4, 1950, entered into force Sept. 3, 1953, 212 U.N.T.S. 222), Art. 14.

Recognizing this practice of nations, the International Court of Justice has determined that discrimination on grounds of race violates international law, concluding that "the principles and rules concerning the basic rights of the human person, including protection from... racial discrimination," constitute an international obligation of all states. Case Concerning The Barcelona Traction Light and Power Co., Ltd., [1970] I.C.J.

---

peoples.

E.S.C. Res. 3057, 20 U.N. ESCOR, Supp. (No. 30) 70, Annex at 1, U.N. Doc. A/9030 (1973).

32; "[T]o establish... and to enforce distinctions, exclusion, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin.... constitutes a denial of fundamental human rights" and "is a flagrant violation of the purposes and principles of the Charter." Advisory Opinion, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, [1971], I.C.J. 57.

C. THE WORLD'S MAJOR LEGAL SYSTEMS PROHIBIT RACIAL DISCRIMINATION

Non-discrimination on the basis of race is now common to the world's major legal systems as well. The Special Rapporteur on Racial Discrimination of the U.N. Sub-Commission on Prevention of

Discrimination and Protection of Minorities observes

> There is a clear trend to include in constitutional provisions not only guaranteeing equality before the law but specifically providing against racial discrimination...a great majority of States have enacted legislation or taken other measures aimed at preventing or combatting racial discrimination and achieving equal rights for all without distinction H. Santa Cruz, Racial Discrimination 28 (1978) (citing municipal constitutions).

State practice in the United States has been especially influential and international law scholars have noted with pride the influence decisions of this Court have had on the development of international human rights law. See, McDougal, Lasswell, and Chen, at 602 ("the tremendous changes propelled by the Supreme Court in the law

of the United States have carried a message to many parts of the world.") See also, H. Santa Cruz, at 35 (Brown v. Board of Education, 347 U.S. 483 (1954) and Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) described as "key precedents" in defining the role of the municipal judiciary in combatting racial discrimination).

CONCLUSION

For the foregoing reasons, the decisions below should be affirmed.

Respectfully submitted,

Grant Hanessian

Amy Young-Anawaty*
Executive Director

International Human Rights
Law Group of the
Procedural Aspects of
International Law
Institute
1346 Conn. Ave., N.W.
Suite 502
Washington, D.C. 20036
(202) 659-5023

*Counsel
of Record

Of Counsel:

David Carliner
Chairman

Board of Advisors
Hurst Hannum
Richard B. Lillich
Burt Neuborne

Harry A. Inman
Steven M. Schneebaum
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000