

Alan Morrison

SUPREME COURT

ASSISTANCE PROJECT | 2018 – 2019

PUBLIC CITIZEN LITIGATION GROUP

“I LOVE this brief. It is so well written and covers everything perfectly.”

Email from Dianna Knox, thanking us for assistance at the petition stage in
Marcus & Millichap Real Estate Investment Services v. Weiler

Alan Morrison

SUPREME COURT ASSISTANCE PROJECT | 2018 – 2019

This report reviews the work of the Alan Morrison Supreme Court Assistance Project and its fellowship program from July 1, 2018, to June 30, 2019. The Project offers pro bono legal assistance at the petition stage, helping to oppose petitions for certiorari to protect public interest victories in lower courts, and at the merits stage, helping to draft briefs and conducting moot courts in public interest cases. Your support ensures that the Project can continue to offer this assistance.

The Project fellow identifies the cases in which we offer assistance. The fellow reviews paid petitions for certiorari filed in the Supreme Court and selects those concerning issues of public interest that are possibly cert-worthy. For these cases, the fellow prepares a memo analyzing the strength of the

petition. Working under the supervision of Public Citizen Litigation Group’s director, the fellow then offers assistance to counsel in appropriate cases. When a lawyer accepts the fellow’s offer, a Public Citizen attorney assumes principal responsibility, often with the fellow’s substantial input. We also consider offering assistance or a moot court for all petitions granted by the Court for full review.

Rylee Sommers-Flanagan served as the 2018–2019 Supreme Court Assistance Project fellow. Last year, donations significantly defrayed the cost of her fellowship. When Rylee completes her fellowship in August, Kaitlin Leary, a University of Maryland Law School graduate who is currently completing a fellowship with the National Education Association, will succeed her.

www.citizen.org/supreme-court-assistance-project

THE PROJECT AND THE SUPREME COURT

Public Citizen's Supreme Court Assistance Project began in 1990, when Public Citizen Litigation Group's founder Alan Morrison envisioned a public interest group that could serve as an equalizer in Supreme Court cases, a counterweight to the expertise of the elite private and government lawyers who specialize in Supreme Court practice and often represent clients who oppose consumer and public interests before the Court. Alan's idea was to mobilize the Litigation Group's Supreme Court experience and expertise in a systematic way to assist lawyers in preventing the Court from taking cases that it should not take and in winning cases that the Court does take. The Supreme Court Assistance Project is the result of his vision.

In recent years, the Court has become increasingly politicized, pulled by the Senate into the fray and generally perceived as falling into two ideological camps. This development is reflected in the acrimonious confirmation process of Justice Brett Kavanaugh, who replaced Justice Anthony Kennedy on the Court last October. As *FiveThirtyEight's* Amelia Thomson-DeVeaux has observed, despite Justice Kennedy's moniker as the "swing justice," he voted with the conservative wing of the Court about 57 percent of the time in the 2016 term, and he voted with conservatives in more than 71 percent of the cases decided by a 5–4 vote. Justice Kavanaugh, however, is expected to be significantly more conservative, making Chief Justice John Roberts the new "moderate" center of the Court.

Anxiety over this shifting ideological balance has led politicians to propose changes to the Court's structure and commentators to sift through the tea leaves of merits opinions and decisions on whether to grant petitions to decipher how extreme the shift will prove to be. No matter the answer, the project of protecting public interests at the Supreme Court remains as crucial as ever.

Meanwhile, the Court continues to issue decisions on issues important to individuals' access to the civil justice system—including decisions on forced arbitration, class actions, and preemption—and central to our democratic process—including three cases challenging the constitutionality of partisan and racial gerrymandering. This term, the Court took its time in deciding whether to grant petitions related to other controversial topics, relisting and rescheduling cases on abortion, sexual orientation and gender identity discrimination, and religious freedom, among others. Several of these issues, however, will be considered by the Court next term.

Public Citizen's ability to offer expert assistance at the certiorari stage is essential because convincing the Court to grant or deny review often requires specialized expertise. Practitioners and Justices alike agree that experience is an advantage when appearing before the Court. As Justice Kagan explained to University of Wisconsin law students in 2017, arguing before the Court can be "pretty much a nightmare," but not for the Supreme Court Bar's "repeat players." Perhaps unsurprisingly, members of the influential repeat-players club are heavily corporate. Thus, as Yale Law Lecturer Jeremy Pilaar wrote in the *Michigan Law Review* last December, the bar "overwhelmingly favors big business." In fact, "[o]f the past decade's sixty-six most prominent advocates, 51 worked for firms that mainly represent corporations."

The importance of expertise at the petition stage is especially pronounced. As *Empirical SCOTUS's* Adam Feldman and others have concluded, "[e]xpert Supreme Court counsel are much more successful in persuading the justices to hear their cases than lawyers with less experience." Because an effective brief in opposition will address the factors most salient in deterring the Court from granting a petition, familiarity with petition-stage briefing is a significant advantage.

Accordingly, Public Citizen has worked diligently to realize the Project's aim of providing experienced Supreme Court representation in public interest cases. Since the Project's founding, our attorneys have drafted hundreds of oppositions to petitions for certiorari and have advised attorneys on hundreds of additional oppositions, scoring quiet victories by helping attorneys who prevailed below keep their cases out of the Supreme Court. The certiorari process can be daunting even to experienced appellate lawyers. From drafting a brief to providing feedback or answering questions about procedure, we help trial lawyers, public interest attorneys, and others with little Supreme Court experience navigate the cert-stage process.

Public Citizen attorneys have argued 64 cases before the Supreme Court and served as lead or co-counsel in scores more. Bringing decades of Supreme Court experience, the Project often provides assistance in cases concerning access to the civil justice system or claims of government misconduct, and in cases in which employees, civil rights claimants, or tort plaintiffs have won significant awards or established important precedents.

OUR DOCKET: THE 2018 – 2019 TERM

In the 2018 Supreme Court Term, which ran from October 2018 through June 2019, Public Citizen Litigation Group provided substantial petition-stage assistance in more than 30 cases and served as the principal drafter of the brief in opposition in ten cases. At the merits stage, Public Citizen held moot courts in 27 cases and served as co-counsel in one. Already, we are working on two briefs in opposition for cases to be considered by the Court at the start of the 2019 Term and on one merits-stage brief for a case to be argued in the fall.

Over the course of the 2018 Term, we assisted in cases involving a broad array of issues. At the petition stage, we helped to defend lower court decisions holding that firing an individual for her speech associated with her candidacy for political office violated clearly established law, that a venture capital fund had waived its right to invoke an arbitration clause, that it was proper to certify and award damages to a class of workers employed by an armored-car company who were denied meal and rest periods required under state law, and that the Fair Debt Collection Practices

Act applies to judicial foreclosure activity that includes the potential for a deficiency judgment. At the merits stage, we served as co-counsel and had principal responsibility for drafting the brief in a case related to forced arbitration.

We held moot courts for lawyers arguing a wide range of issues, including cases considering whether a criminal alien becomes exempt from mandatory detention under 8 U.S.C. § 1226(c) after being released from criminal custody, if the Department of Homeland Security does not immediately take him into immigration custody; whether probable cause defeats a First Amendment retaliatory arrest claim under § 1983; whether Title VII's administrative exhaustion requirement is a jurisdictional prerequisite to suit or a waivable claim-processing rule; and whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt.

Below are more detailed examples of our work during the 2018 Term.

“This is amazing. I seriously love all the red ink! Many thanks to you!”

Email from Mike Strauss, thanking us for assistance at the petition stage in *Parker Drilling v. Newton*

BRIEFS IN OPPOSITION

Behr Dayton Thermal Products v. Martin

Homeowners in a lower-income neighborhood of Dayton, Ohio, sued corporations responsible for severe groundwater contamination by toxic chemicals that harm their homes and endanger their health. The homeowners moved to certify the case as a class action for resolving a set of common issues concerning the scope of the contamination and the companies' responsibility for it. The district court certified the class, and the Sixth Circuit affirmed, finding that certification of the issue class would materially advance resolution of the case and enable the homeowners' claims to be asserted in a practicable manner serving the interest in judicial economy. The companies filed a petition for certiorari asking the Supreme Court to hold that an issue class cannot be certified unless the class's claims would satisfy the requirements of predominance and superiority.

Scott Nelson of Public Citizen served as co-counsel in the Supreme Court, working with Ned Miltenberg of National Legal Scholars Law Firm, PC, Patrick Thronson of Janey, Janet & Suggs, LLC, and other trial counsel, to prepare the

brief in opposition. The brief explained that the conflict asserted by the companies is illusory, and that the federal courts' rulemaking committees have already considered and rejected the argument that amendment of the rules is necessary to resolve the supposed conflict. The Court denied the petition.

Choctaw County v. Jauch

Following her indictment by a grand jury, Jessica Jauch was arrested, put in jail, and held for ninety-six days before being brought before a judge or having counsel appointed or bail set. Although she repeatedly asserted her innocence and asked to be brought to court to arrange bail, the Sheriff refused to bring Ms. Jauch before a judge. Shortly after finally being brought to court, she was released, and the prosecutor dismissed the case. Ms. Jauch brought a 42 U.S.C. § 1983 action against the County and Sheriff. The Fifth Circuit held that the prolonged pretrial detention without access to a court violated the Due Process Clause of the Fourteenth Amendment, that Choctaw County was liable because it had a policy of holding pretrial detainees

BRIEFS IN OPPOSITION (CONTINUED)

for prolonged periods without access to the judicial system, and that the Sheriff was not entitled to qualified immunity.

After the County and the Sheriff filed a petition for certiorari, Michael Kirkpatrick of Public Citizen joined as co-counsel with Tupelo, Mississippi attorney Victor I. Fleitas to draft the brief in opposition. The brief argued that the issue whether prolonged pretrial detention without access to the justice system violates a liberty interest arising from the Due Process Clause would have been decided in the same way by any court of appeals. The brief also pointed out that petitioners had failed to squarely address the first question they asked the Court to consider. The Court denied the petition.

Kimberly-Clark v. Davidson

Kimberly-Clark Corporation sells several brands of moistened wipes that it advertises and labels as “flushable” and “sewer and septic safe”—although they are not. In this case, Jennifer Davidson filed a class-action suit under California’s consumer protection laws, seeking to recover the premium that she and others paid for wipes falsely marketed as flushable and to obtain injunctive relief against Kimberly-Clark’s ongoing false advertising of its wipes. The court of appeals held that Ms. Davidson had standing to pursue damages for the economic injury she suffered by paying a premium for a product that did not live up to its billing. It further held that she adequately alleged standing to seek injunctive relief because, absent an injunction preventing Kimberly-Clark from marketing its wipes as “flushable” unless they are actually flushable, she would continue to suffer injury: denial of accurate information to inform her decision whether to purchase Kimberly-Clark’s or others’ wipes. Kimberly-Clark then petitioned for Supreme Court review, challenging the holding that she had adequately alleged standing.

Allison Zieve served as co-counsel in the Supreme Court, working with Adam J. Gutride, Seth Safier, and Matthew McCrary of Gutride Safier LLP in San Francisco, California. The brief in opposition explained that the question presented by the case—whether a consumer duped by a company’s false advertising into purchasing a product has properly alleged standing to seek injunctive relief against the company’s continued false advertising, where she alleges an ongoing desire to purchase the same type of product

and an impending risk of being injured by the company’s ongoing false advertising—did not warrant review. The Court denied the petition.

Marcus & Millichap Real Estate Investment Services v. Weiler

In 2006, Rae Weiler and her husband hired Marcus & Millichap Real Estate Investment Services and Marcus & Millichap Capital Corp. to represent them in a real estate transaction. As a result of that transaction, the couple lost a significant portion of their investment. Ms. Weiler later brought several claims against the companies, which she pursued in arbitration for nearly three years. Then, on the verge of insolvency, she asked the arbitration panel to order the company to advance her share of the arbitration costs or waive its right to arbitration and allow her to proceed in court. The arbitration panel ordered the parties back to court for a determination whether a California law regarding inability to pay arbitration fees applied. The California Court of Appeal ruled that, under California law, if Ms. Weiler could prove that she was unable to afford continuing arbitration fees, the companies must be given a choice between either advancing her fees and continuing in arbitration, or proceeding in court. The companies petitioned the Supreme Court for review, arguing that the Federal Arbitration Act preempted the California law.

Rylee Sommers-Flanagan and Scott Nelson of Public Citizen, acting as Supreme Court co-counsel for respondent with attorney Cornelius P. Bahan of San Clemente, California, prepared and filed a brief opposing the petition. The brief explained that the Supreme Court lacked jurisdiction to grant review because the decision below was not final and, in any event, that the companies had waived the federal preemption issue. In addition, the brief explained that the case does not present a question of federal law over which there is disagreement among courts of appeals. The Court denied the petition.

Pennsylvania Higher Education Assistance Agency v. Silver

Neil Silver sued Pennsylvania Higher Education Assistance Agency (PHEAA), alleging that the defendant had violated the Telephone Consumer Protection Act (TCPA) by calling his cell phone using an automatic telephone dialing system

“Woo hoo! Thank you so much for your help and excellent opposition.”

Email from Adam Berger, thanking us for assistance at the petition stage in *Garda CL Northwest v. Hill*

or pre-recorded voice. Congress prohibited making automated or pre-recorded calls to cell phones without the prior express consent of the called party, based on the recognition that people find automated or prerecorded calls to be a nuisance and an invasion of privacy. While the case was pending, Congress amended the TCPA to exclude from the statute's bar on making automated or pre-recorded calls to a cell phone calls made solely to collect a debt owed to or guaranteed by the United States. The amendment instructed the Federal Communications Commission to issue implementing regulations, and it provided that the regulations could place limits on calls made to cell phones to collect a debt owed to or guaranteed by the United States. PHEAA then argued that the amendment barred Mr. Silver's claims.

The Ninth Circuit, however, applying the test set forth in *Landgraf v. USI Film Products* (1994) for determining whether a statute applies to conduct that occurred before the statute was enacted, held that the amendment does not apply retroactively. PHEAA filed a petition for certiorari.

Adina Rosenbaum of Public Citizen, serving as co-counsel with Abbas Kazerounian and Matthew M. Loker of Kazerouni Law Group and Joshua Swigart of Hyde & Swigart, prepared the brief in opposition. The brief argued that there was no circuit split on the question presented and that the court below correctly held that applying the TCPA amendment would have an impermissible retroactive effect. The Supreme Court denied the petition.

“Your help was invaluable, and I truly appreciated and enjoyed the experience.”

Email from Michele Vercoski, thanking us for co-counseling in *Lamps Plus v. Varela*

MERITS BRIEFS

Lamps Plus v. Varela

Lamps Plus is a California business that exposed its employees' personal information to hackers, who in turn stole the identity of and filed a tax return in the name of employee Frank Varela. Mr. Varela sued Lamps Plus on behalf of a class of those harmed by the data breach, and Lamps Plus moved to compel arbitration under a provision in his employment agreement, arguing that the agreement authorized only individual arbitration, and not class proceedings. The district court granted the motion to compel arbitration, and also held that the broad terms of the arbitration allowed class proceedings. Lamps Plus appealed, and the U.S. Court of Appeals for the Ninth Circuit affirmed the district court in a short, unpublished opinion based on the unique language of the arbitration agreement. Lamps Plus then filed a petition for certiorari, arguing that the Ninth Circuit's decision violated the Federal Arbitration Act.

Scott Nelson of Public Citizen assisted Mr. Varela's counsel in preparing a brief in opposition to the petition. After the Court granted the petition, Scott continued as co-counsel for Mr. Varela, drafting the brief on the merits.

On April 24, 2019, in a 5–4 decision, the Supreme Court held that it had jurisdiction because an order that both compels arbitration and dismisses the underlying claims qualifies as a “final decision with respect to arbitration.” The Court also held that, under the Federal Arbitration Act, an ambiguous

agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration. Once again applying a strong preference for arbitration, the Court thus reversed the court of appeals' decision.

County of Maui, Hawaii v. Hawaii Wildlife Fund

The Clean Water Act (CWA) regulates pollution added to navigable waters from point sources by requiring National Pollutant Discharge Elimination System (NPDES) permits for discharges. In violation of this requirement, Maui County discharges millions of gallons of treated sewage per day into the Pacific Ocean from injection wells at its Lahaina Wastewater Reclamation Facility. These unpermitted discharges are directly injected into groundwater that is directly connected to the ocean. The Ninth Circuit held that disposing of these pollutants directly into the ocean without an NPDES permit would clearly violate the CWA and that the County could not avoid CWA liability by doing so indirectly, noting that “[t]o hold otherwise would make a mockery of the CWA's prohibitions.” The County then filed a petition for certiorari, arguing that it had not discharged pollutants into navigable waters through a point source because runoff and groundwater are “nonpoint sources.”

The Court granted the petition, and the case will be argued in the fall. Public Citizen's Scott Nelson is assisting David Henkin of Earthjustice in writing the brief on the merits.

MOOT COURTS

Moot courts give counsel a valuable opportunity to sharpen their arguments and identify potential vulnerabilities so that they can effectively address any concerns the Justices may have. This Term, we hosted moot courts for attorneys arguing in 27 cases before the Court—almost forty percent of the 72 arguments heard this Term. We mooted both attorneys preparing for their first Supreme Court arguments and attorneys with significant Supreme Court experience.

Air & Liquid Systems Corp. v. Devries (whether a manufacturer has a duty to warn when its product requires incorporation of a dangerous part)

Apple, Inc. v. Pepper (whether consumers may sue Apple for antitrust damages based on prices set by app developers)

Biestek v. Berryhill (whether a vocational expert's testimony that fails to provide underlying supporting data can constitute substantial evidence of "other work" available to a social security benefits applicant)

Cochise Consultancy v. United States ex rel. Hunt (whether a relator in a False Claims Act action may rely on the statute of limitations in 31 U.S.C. § 3731(b)(2) when the United States has not intervened)

Culbertson v. Berryhill (whether the Social Security Act's 25-percent cap on fees for representation of individuals claiming benefits includes fees for representation before the agency)

Dutra Group v. Batterton (whether punitive damages are available to a seaman in a personal-injury suit alleging breach of the maritime duty to provide a seaworthy vessel)

Emulex Corp. v. Varjabedian (whether Securities Exchange Act section 14(e) supports an inferred private right of action based on a negligent misstatement or omission made in connection with a tender offer)

Flowers v. Mississippi (whether the Mississippi Supreme Court erred in how it applied *Batson v. Kentucky* (1986))

Food Marketing Institute v. Argus Leader Media (on the meaning of "confidential" in FOIA exemption 4)

Fort Bend County v. Davis (whether Title VII's administrative exhaustion requirement is a jurisdictional prerequisite to suit or a waivable claim-processing rule)

Frank v. Gaos (whether a fair, reasonable, and adequate class settlement may include a cy pres award)

Henry Schein, Inc. v. Archer & White Sales, Inc. (whether a court must compel arbitration when the assertion that the dispute is subject to arbitration is groundless)

Home Depot U.S.A. v. Jackson (whether the Class Action Fairness Act allows a counter-claim party to remove class counterclaims asserted by the defendant)

Knick v. Township of Scott (whether a property owner must exhaust state-court remedies to ripen federal takings claims)

Lamone v. Benisek (whether a Maryland congressional district was gerrymandered to retaliate against certain voters for their political views)

Lamps Plus v. Varela (whether the appellate court erred in construing an agreement to authorize class arbitration)

Manhattan Community Access Corp. v. Halleck (whether a per se rule that private operators of public access channels are "state actors" for constitutional purposes is appropriate)

Maryland-National Capital Park & Planning Commission v. American Humanist Ass'n and *The American Legion v. American Humanist Ass'n* (whether a cross-shaped memorial violates the Establishment Clause)

Merck Sharp & Dohme Corp. v. Albrecht (whether a judge or a jury decides whether the Food and Drug Administration would have rejected a revised warning for a prescription drug, such that a state-law damages claim is preempted)

New Prime Inc. v. Oliveira (whether an exemption from the Federal Arbitration Act that applies to "contracts of employment" extends to independent contractor agreements)

Nielsen v. Preap (whether a criminal alien is exempt from mandatory detention under 8 U.S.C. § 1226(c) if, after release from criminal custody, he is not immediately taken into immigration custody)

Nieves v. Bartlett (whether probable cause defeats a First Amendment retaliatory arrest claim under § 1983)

Nutraceutical Corp. v. Lambert (whether equitable exceptions apply under Federal Rule 23(f))

Obduskey v. McCarthy & Holthus LLP (whether the Fair Debt Collection Practices Act applies to non-judicial foreclosure proceedings)

Parker Drilling Management Services v. Newton (whether the Outer Continental Shelf Act borrows state law whenever state law pertains and is not inconsistent with federal law)

Smith v. Berryhill (whether a Social Security Administration Appeals Council decision rejecting a disability claim as untimely is a "final decision" subject to judicial review)

Taggart v. Lorenzen (whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt)

LOOKING BACK, LOOKING AHEAD

The conclusion of the first Supreme Court term featuring both of President Trump's appointees to the Court—Justices Neil Gorsuch and Brett Kavanaugh—provides a good opportunity to consider how practitioners, going forward, should think about advocacy before the Court. The addition of the two new Justices, and in particular the exchange of Justice Anthony Kennedy for Justice Kavanaugh, has been expected to mark a significant change in the balance of the Court: Justice Kennedy, often perceived or portrayed as a “swing” vote holding the balance of power on the Court, has been replaced by a Justice perceived as a more consistent conservative.

The reality is more complicated. To be sure, this Court has a strong conservative majority. But that observation, by itself, fails to account for differences in the way the Justices approach cases involving different subject-matters—including some in which Justice Kennedy was typically in the conservative camp and where other Justices, old and new, may shift outcomes of cases in the direction of consumers, workers, or public interest litigants. Thus, over the past few months, the conservative bloc has been on the losing side of a number of significant 5–4 and 6–3 decisions, with different conservative Justices joining the four more moderate Justices to swing the result.

For example, in *Air & Liquid Systems Corp. v. DeVries*, Justice Kavanaugh wrote for a six-Justice majority (also including Chief Justice Roberts) to allow plaintiffs to bring lawsuits against shipbuilders for their failure to warn of the dangers of asbestos components supplied by other manufacturers, over a dissent by Justice Gorsuch. In *Apple Inc. v. Pepper*, Justice Kavanaugh supported antitrust plaintiffs, with the other conservatives dissenting. In *Herrera v. Wyoming*, the tables were turned, with Justice Gorsuch joining a 5–4 majority upholding Native American treaty rights, and Justice Kavanaugh joining the other conservatives in dissenting. In *Home Depot U.S.A. v. Jackson*, Justice Thomas swung the outcome and wrote the majority opinion in favor of class-action plaintiffs contesting removal of their case to federal court under the Class Action Fairness Act. Both Justices Kavanaugh and Gorsuch, as well as the Chief Justice, joined Justice Alito's dissent. And in *Merck Sharp & Dohme Corp. v. Albrecht*, Justices Thomas and Gorsuch joined a largely pro-plaintiff opinion in a case involving claims against a prescription drug manufacturer, with Justice Alito, joined by the Chief Justice and Justice Kavanaugh, again serving as the spokesman for the conservatives on the short end of the most significant issues resolved by the decision.

These cases do not by any means suggest that the new majority is not conservative, and that bent is likely to have a particular impact on cases involving major constitutional issues and controversies that attract broad public attention. The outcomes in these cases show, however, that the majority is not monolithic, and that different conservative Justices may, depending on the particular issue, be willing to vote with the moderates on issues of concern to public-interest litigants, including consumer and class-action plaintiffs. Although it is too early to develop a clear typology of cases in which particular conservative Justices may be willing to cast a fifth vote to swing an outcome in an ideologically divided case, the potential for such results cannot be disregarded.

The lesson for practitioners is that “pitching” cases at particular members of the Court who are potential swing voters may not be a successful strategy, at least until they acquire more of a track record. But crafting the strongest possible legal arguments, with careful attention to statutory language and precedents that the conservative Justices have not identified as targets for overruling or cutting back, may yield successful results that conventional wisdom would see as unlikely.

If, as such results indicate, it is possible to speak convincingly to Justices across the ideological spectrum in at least some merits-stage cases, it is even more likely that members of the Court will continue to be receptive to sound arguments for denial of certiorari presented in a brief in opposition at the petition stage. There is little indication that any of the Justices are inclined to disregard the traditional considerations governing whether the Court should grant certiorari or to reverse the trend of the last 30 years of accepting substantially fewer cases than the Court did in the 1970s and 1980s.

Thus, well-crafted briefs in opposition remain the most likely way to preserve a public-interest victory in the lower courts. In such cases, the possibility that one or more of the Court's conservatives may be willing to break ranks when the Court decides the merits of an issue does not diminish the importance of presenting every legitimate reason why the Court should not accept a case. Rather, the indications that the Justices may be convinced by good arguments make all the more important a strong presentation of those arguments where they are most likely to be effective: in the brief in opposition.

Your contribution is vital to our continued success.

In its twenty-nine years, the Supreme Court Assistance Project has assisted hundreds of lawyers opposing (and in some cases filing) petitions for certiorari, briefing the merits of cases after the Supreme Court grants review, and preparing for Supreme Court arguments. The Project provides pro bono support and counsel from lawyers who have knowledge of Supreme Court practice equal to that of the high-priced experts often aligned against public interest attorneys.

We look forward to continuing our efforts for many years, but we need your help. Although we operate on a shoestring, providing the assistance that we offer requires financial support.

Please support our Project by sending a check in the enclosed envelope, or donate online via credit card at <https://publiccitizen.salsalabs.org/supreme-court-assistance-project/index.html>.

Thank you for supporting the Alan Morrison Supreme Court Assistance Project.

“I really can’t thank Public Citizen enough for the incredible support over the past Term. It’s not easy to organize a truly outstanding moot, but Public Citizen pulls it off every time. The team’s insight is always superb and invaluable. And I can say with confidence that your work makes a difference.”

Email from Daniel Geysler, thanking us for holding moots in his three cases in the 2018 Term

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