

CASES HANDLED BY MAYER, BROWN & PLATT DURING THE 2000 SUPREME COURT TERM

GRANTED CASES

No.	Caption and Status	Attorneys	Description
99-1426	<i>American Trucking Assns. v. Whitman</i> Affirmed in relevant part 2/27/01	K. Geller E. Jones T. Bishop A. Sloane	We represented the American Farm Bureau Federation in this case, which raised the question whether the Clean Air Act requires EPA in setting air quality standards to ignore all factors other than health effects relating to pollutants in the air.
98-1768	<i>Buckman Co. v. Plaintiffs' Legal Committee</i> Reversed 2/21/01	K. Geller S. Swingle	We filed a petition raising the questions whether common-law tort claims based on a "fraud on the agency" theory are preempted by the Medical Device Amendments to the Food, Drug & Cosmetic Act and whether the Amendments preempt any state requirements imposed through tort laws of general applicability. The Court granted the petition and rephrased the question as "whether federal law preempts state law tort claims alleging fraud on the Food and Drug Administration during the regulatory process for marketing clearance applicable to certain medical devices." It then unanimously held that federal law does preempt such claims. Ken Geller argued the case.
99-1680	<i>City News and Novelty, Inc. v. City of Waukesha</i> Dismissed as moot 1/17/01	C. Rothfeld J. Bailey (S.A.)	When municipalities have licensing requirements for adult bookstores and similar operations, the First Amendment requires that judicial review be available to challenge the denial of a license. The question here was whether that judicial review is inadequate unless a prompt judicial decision is guaranteed. We filed an amicus brief on behalf of the State and Local Legal Center arguing that the First Amendment does not require a firm deadline for the judicial decision.

No.	Caption and Status	Attorneys	Description
99-2035	<p><i>Cooper Industries, Inc. v. Leatherman Tool Group, Inc.</i></p> <p>Vacated and remanded 5/14/01</p>	<p>A. Frey E. Tager</p>	<p>We filed an amicus brief for the U. S. Chamber of Commerce in this case in which the issue was the standard for reviewing a district court's determination that a punitive damages award is not unconstitutionally excessive. We argued for de novo review. By a vote of 8-1, the Court agreed.</p>
99-2036	<p><i>The Good News Club v. Milford Central School</i></p> <p>Reversed and remanded 6/11/01</p>	<p>M. McConnell S. Johnson</p>	<p>We filed an amicus brief on behalf of petitioners. This case involved a free speech challenge to a school district's exclusion of an after-school club from meeting on school property. The Second Circuit held that groups addressing "moral issues from a religious perspective" (including the Boy Scouts, the Girl Scouts, and 4H) have a right to meet on school property, but that groups engaged in "religious instruction" may be excluded, and that such a distinction is "not difficult" to make. The amicus brief argued that this distinction is not coherent within many religious traditions, is beyond the capacity of governmental officials and courts, and is injurious to the values of the First Amendment. The Court held that the exclusion of the Good News Club violated the Club's First Amendment rights and that the Establishment Clause did not justify the restrictions.</p>
99-1996	<p><i>J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc.</i></p> <p><i>Cert. granted 2/20/01</i></p> <p><i>Amicus brief filed 6/15/01</i></p>	<p>T. Bishop</p>	<p>We filed an amicus brief for Cargill, Inc., supporting respondent. The issue is whether a sexually producing plant is patentable.</p>
00-957	<p><i>Kansas v. Crane</i></p> <p><i>Cert. granted 4/2/01</i></p> <p><i>Amicus brief filed 6/14/01</i></p>	<p>J. Sullivan M. Lackey M. Koltonyuk (S.A.)</p>	<p>We filed an amicus brief on behalf of the Association of the Treatment of Sexual Abusers in support of Kansas. The issue presented is whether substantive due process requires a state to prove that an individual "cannot control" his dangerous conduct for him to be civilly committed as a sexually violent predator. We argue that the "cannot control" standard is meaningless as a matter of science and medicine, and is unworkable.</p>

No.	Caption and Status	Attorneys	Description
00-596	<p><i>Lorillard Tobacco Company v. Reilly</i></p> <p>Affirmed in part, reversed in part, and remanded 6/28/01</p>	<p>K. Geller A. Frey</p>	<p>We challenged, on preemption and First Amendment grounds, Massachusetts regulations that essentially prohibit virtually any public display of truthful and nonmisleading advertising of tobacco products in the Commonwealth of Massachusetts. The Court agreed with us that the regulations are preempted by the Federal Cigarette Labeling and Advertising Act and violate the First Amendment. The Court upheld regulations limiting the means by which tobacco products may be displayed.</p>
00-878	<p><i>Mathias v. WorldCom Technologies, Inc.</i></p> <p>Cert. granted 3/5/01</p> <p>Respondents' briefs due 7/12/01</p>	<p>S. Shapiro T. Livingston J. Muench R. Dow</p>	<p>The Supreme Court granted cert. in this case to consider three questions: (1) whether a state commission's action relating to the enforcement of a previously approved section 252 interconnection agreement is a "determination under section 252" and thus is reviewable in federal court under 47 U.S.C. § 252(3)(6); (2) whether a state commission's acceptance of Congress's invitation to participate in implementing a federal regulatory scheme that provides that state commission determinations are reviewable in federal court constitutes a waiver of Eleventh Amendment immunity; and (3) whether an official capacity action seeking prospective relief against state public utility commissioners for alleged ongoing violations of federal law in performing federal regulatory functions under the federal Telecommunications Act of 1996 can be maintained under the <i>Ex parte Young</i> doctrine. We represent Ameritech Illinois, one of the respondents. Steve Shapiro will argue the case for Ameritech.</p>

No.	Caption and Status	Attorneys	Description
00-8727	<p><i>McCarver v. North Carolina</i></p> <p>Cert. granted 3/26/01</p> <p>Amicus brief filed 6/6/01</p>	<p>A. Schapiro D. Gossett</p>	<p>The Supreme Court granted cert. to consider whether, since its 1989 decision in <i>Penry v. Lynaugh</i>, evolving standards of decency under the Eighth Amendment have developed such that the Constitution now bars the execution of individuals with mental retardation. Representing the American Bar Association <i>pro bono</i>, we filed an amicus brief arguing that it does. We focused on the myriad ways in which mental retardation interferes with the defense process, leading innocent defendants with mental retardation to be convicted and sentenced to death and preventing juries from appropriately understanding or weighing the mitigating effects of mental retardation.</p>
99-2047	<p><i>Palazzolo v. Rhode Island</i></p> <p>Affirmed in part, reversed in part, and remanded 6/28/01</p>	<p>T. Bishop J. Sarles S. Johnson</p>	<p>Petitioner in this case owns waterfront property that he desires to develop. Doing so, however, would necessitate filling wetlands. Pursuant to a state wetlands protection regulation that became effective before he acquired the property, the State of Rhode Island rejected his plans. He then brought an inverse condemnation action, which was rejected by the state courts. We filed an amicus brief in the Supreme Court arguing that (1) the case was ripe; (2) the fact that the petitioner acquired his property after the effective date of the regulation did not preclude him from pursuing a takings claim; and (3) there can be a taking even when the land retains some value. The Supreme Court agreed with us that the case was ripe and that the timing of petitioner's acquisition of his property was not an outright bar to pursuing a takings claim. On the merits, the Court held that, because the property retained substantial economic value, petitioner could not base a takings claim on the theory that the state had deprived him of "all economically beneficial use." However, because the state courts had not applied the Supreme Court's multi-part <i>Penn Central</i> test for regulatory takings, the Court remanded to the Rhode Island Supreme Court for further proceedings.</p>

No.	Caption and Status	Attorneys	Description
00-24	<i>PGA Tour, Inc. v. Casey Martin</i> Affirmed 5/29/01	L. Abrams J. Schroeder R. Dow	We filed an amicus brief on behalf of the U.S. Golf Association supporting the PGA Tour's position that the Americans with Disabilities Act does not require the Tour to allow Casey Martin to use a golf cart. The Court disagreed with our arguments, holding that, under the ADA, Martin is entitled to the "reasonable modification" of a golf cart.
99-1178	<i>Solid Waste Agency of Cook County v. U.S. Army Corps of Engineers</i> Reversed 1/9/01	T. Bishop K. Stoffelmayr S. Swingle S. Olson (S.A.)	This case involved the Army Corps of Engineers' assertion of jurisdiction over isolated wetlands based solely on their use by migratory birds. The Court granted our petition to consider whether the Corps' "migratory bird rule" violated the Commerce Clause and was inconsistent with the Clean Water Act. By a vote of 5-4, the Court ruled in our favor, striking down the migratory bird rule and the underlying regulation. Tim Bishop argued the case.
00-1089	<i>Toyota Motor Manufacturing, Kentucky, Inc. v. Williams</i> Cert. granted 4/16/01 Amicus brief filed 6/29/01	E. Tager M. Nemetz	We filed an amicus brief in this case on behalf of the American Trucking Associations, Inc., the Association of International Automobile Manufacturers, and the Chamber of Commerce of the United States. The issue is whether inability to perform assembly-line work constitutes a substantial limitation of a major life activity and hence triggers the protections of the Americans with Disabilities Act.

No.	Caption and Status	Attorneys	Description
00-276	<p><i>United States v. United Foods, Inc.</i></p> <p>Affirmed 6/25/01</p>	<p>M. McConnell C. Canetti</p>	<p>We filed an amicus brief in support of respondents in this case on behalf of producers of various agricultural products who oppose compulsory collective advertising programs. This litigation was a continuation of our efforts in <i>Glickman v. Wileman Bros. & Elliott, Inc.</i>, 521 U.S. 457 (1997), and <i>Gerawan Farming v. Veneman</i>, 12 P.3d 720 (Cal. 2000). In <i>Wileman</i>, the Supreme Court divided 5-4 in upholding against First Amendment challenge Department of Agriculture regulations that compelled California tree fruit growers to contribute financially to joint generic product advertising. The Court reasoned, in part, that those regulations were part of a “broader collective enterprise in which [the growers’] freedom to act independently is already [heavily] constrained by [a] regulatory scheme.” 521 U.S. at 469. The Supreme Court granted certiorari in <i>United Foods</i> to decide whether similar mandatory assessments imposed by the Department of Agriculture on the mushroom industry – which is <i>not</i> heavily regulated – violate the First Amendment. Agreeing with our amicus brief, the Supreme Court held in <i>United Foods</i> that the mandatory assessments imposed by the Department of Agriculture on the mushroom industry to support generic advertising violated the First Amendment rights of respondent – who objected to the generic message – because, unlike the assessments in <i>Glickman</i>, those imposed on mushroom producers were not ancillary to a comprehensive program restricting marketing anatomy.</p>
99-1257	<p><i>Whitman v. American Trucking Associations, Inc.</i></p> <p>Reversed 2/27/01</p>	<p>K. Geller E. Jones T. Bishop A. Sloane</p>	<p>We represented the American Farm Bureau Federation in this case, which raised the question whether Section 109 of the Clean Air Act effects an unconstitutional delegation of legislative power.</p>

CERT. PETITIONS AND APPEALS

No.	Caption and Status	Attorneys	Description
00-1826	<i>American Bankers Insurance Company of Florida v. Alexander</i> Cert. petition filed 6/7/01	E. Tager	We are co-counsel in this case in which the issue is whether Mississippi's joinder of hundreds of individual cases without providing any of the protections of the class action device violates due process.
00-1934	<i>American General Finance v. Branch</i> Cert. petition filed 6/27/01	K. Geller	We assisted Alabama counsel in preparing the cert. petition in this case. The issue is whether a court or an arbitrator should decide whether an arbitration clause is unconscionable.
00-1926	<i>American Insurance Association v. Low</i> Cert. petition filed 6/27/01	K. Geller S. Shapiro N. Soltman J. Sullivan L. Swenson R. Bronston	On behalf of our clients, American Insurance Association and American Reinsurance Company, we filed a cert. petition challenging the California Holocaust Victim Insurance Relief Act as a violation of the federal government's foreign affairs power and the Foreign Commerce Clause.
00-452	<i>Boyajian v. Gatzunis</i> Cert. denied 1/8/01	M. McConnell S. Johnson	We filed a brief in opposition for the respondents in this Establishment Clause challenge to various provisions of Massachusetts law.
00-1406	<i>Chevron USA, Inc. v. Echazabel</i> Cert. petition filed 3/9/01 Order inviting Solicitor General to express views of United States 6/18/01	S. Shapiro J. Holzhauer R. Davis E. Tager	We were retained to file a cert. petition seeking review of a decision of the Ninth Circuit that the Americans with Disabilities Act (ADA) requires Chevron to employ a person with serious liver damage in a position where he could be exposed to potentially fatal liver toxins.
00-914	<i>Children's Healthcare Is A Legal Duty, Inc. v. De Parle</i> Cert. denied 4/2/01	S. Shapiro K. Geller M. McConnell S. Johnson	This case involved a Constitutional challenge to provisions of Medicare and Medicaid that accommodate those who object on religious grounds to receiving the medical component of federal health care benefits by permitting them to receive the nonmedical component of such benefits in circumstances when they would otherwise be eligible for the programs. The Eighth Circuit upheld the challenged provision. We successfully opposed certiorari.

No.	Caption and Status	Attorneys	Description
00-864	<p><i>Communications Workers of America, AFL-CIO</i></p> <p>Cert. denied 1/22/01</p>	<p>J. Holzhauer R. Bloom J. Sarles J. Lindahl-Garcia</p>	<p>We represented respondents, Ameritech Corporation, and related entities. This case raised the question whether Title VII, The Equal Pay Act, or ERISA required employers and benefit plans to re-calculate seniority or service credit of female employees who took pregnancy-related leaves of absence prior to the 1979 effective date of the Pregnancy Discrimination Act. The district court granted respondents summary judgment, and the Seventh Circuit affirmed. Because the circuits are in conflict on these issues, Ameritech had received additional administrative claims for service credit for pre-1979 pregnancy leaves, and the EEOC is pursuing an enforcement action against Ameritech in Ohio based on the same Title VII and Equal Pay Act claims rejected by the Seventh Circuit, our response did not oppose review of the Seventh Circuit's decision. The Court nonetheless denied certiorari.</p>
00-379	<p><i>Concord Boat Corp. v. Brunswick Corp.</i></p> <p>Cert. denied 11/6/00</p>	<p>S. Shapiro R. Finke T. Bishop J. Sarles</p>	<p>We successfully opposed plaintiffs' cert. petition, which challenged the Eighth Circuit's decision overturning a treble-damage antitrust judgment of more than \$140 million against Brunswick. Plaintiffs contested the Eighth Circuit's conclusions that the statute of limitations had run on plaintiffs' complaint, filed in 1995, against some 1986 acquisitions, that plaintiffs' expert testimony was inadmissible, and that Brunswick's above-cost market share discounts for certain boat engines were lawful. Curiously, plaintiffs also challenged the conclusion – which the Eighth Circuit did not reach – that Brunswick lacked market power. We represented Brunswick in the trial court and before the Eighth Circuit.</p>
99-1663	<p><i>District Intown Properties Limited Partnership v. District of Columbia</i></p> <p>Cert. denied 10/02/00</p>	<p>T. Bishop J. Sarles S. Johnson</p>	<p>We filed, on behalf of the National Association of Home Builders, an amicus brief in support of certiorari in this takings case presenting the question whether the effect of a regulation is measured against the parcel as a whole, the regulated part of the parcel, or in some other way.</p>

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00-1615	<p><i>Dixie Distributing Company and Harry C. Denune v. Carter-Jones Lumber Company</i></p> <p>Cert. denied 6/11/01</p>	<p>K. Geller T. Colby</p>	<p>We filed a cert. petition arguing (1) that the Sixth Circuit's decision holding a corporate shareholder indirectly liable under CERCLA based on the shareholder's control over the illegal transaction, rather than his control over the company as a whole, was inconsistent with the Supreme Court's decision in <i>United States v. Bestfoods</i>, 524 U.S. 51 (1998); and (2) that the Sixth Circuit had created a circuit split and had violated fundamental principles of federalism and comity by refusing to certify a dispositive issue of state law to the state supreme court in circumstances in which there is some persuasive authority from the state intermediate appellate courts, but the only authority from the state supreme court seems at least implicitly to contradict the appellate court opinions.</p>
00-1178	<p><i>Fine v. America Online, Inc.</i></p> <p>Cert. denied 3/26/01</p>	<p>M. Odorizzi R. Kriss A. Erbsen</p>	<p>We filed a brief in opposition for AOL, which had successfully defended a class action settlement from collateral attack in the Ohio courts. Petitioners challenged the Ohio Court of Appeals' holding that the scope of collateral review is limited, and that the settlement notice in this case survived such review.</p>
99-1501	<p><i>Ford v. United States</i></p> <p>Cert. denied 10/02/00</p>	<p>C. Canetti</p>	<p>We filed a petition for writ of certiorari in this civil forfeiture case asking the Court to hold that the allocation of the burden of proof under 18 U.S.C. § 1615 denied a claimant due process under the Fifth Amendment.</p>

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00-497	<p><i>Ford Motor Company v. Clay</i></p> <p>Cert. denied 12/04/00</p>	<p>K. Geller M. Nemetz C. Isenberg</p>	<p>We filed a cert. petition on behalf of Ford Motor Company, seeking review of a decision of the Fourth Circuit which affirmed the district court's admission of expert testimony despite the lower court's failure to determine on the record that the expert's testimony was reliable, and hence admissible, under <i>Daubert v. Merrell Dow Pharmaceuticals</i>. The petition pointed out that the Sixth Circuit's decision conflicted with decisions of the Tenth Circuit holding that <i>Daubert</i> required the trial court to provide a reasoned explanation on the record of its decision to admit or exclude expert testimony. The petition also asked the Court to clarify the scope of the district court's discretion, in making its reliability determination, to disregard an applicable <i>Daubert</i> factor that pointed toward the unreliability of the expert's methodology on the ground that the jury could always consider the factor in evaluating the weight of the expert's testimony.</p>

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00-387	<p><i>Gerber Products Co. v. Tylka</i></p> <p>Cert. denied 11/13/00</p>	P. Lacovara	<p>Several individuals filed class actions against <i>Gerber</i> in Illinois state court, alleging common law fraud and violations of Illinois' Consumer Fraud Act. <i>Gerber</i> removed the actions to federal court on the basis of diversity, and the district court subsequently entered summary judgment for <i>Gerber</i> on the merits. On appeal, the plaintiffs attacked the district court's subject matter jurisdiction, arguing that the suit did not satisfy the amount-in-controversy requirement. (The district court had concluded that the jurisdictional amount could be satisfied by looking at the cost of the injunctive relief sought by the plaintiffs.) The Seventh Circuit reversed the judgment, concluding that <i>Gerber</i>'s notice of removal, which had alleged that the plaintiffs were residents of Illinois and were, therefore, citizens of Illinois, was defective because it is the domicile and not the residence of the individuals that matters. We filed a petition for certiorari that raised two questions: (1) whether the Seventh Circuit's heightened pleading requirement for removal petitions violates 28 U.S.C. 1446 and the notice pleading requirements of Fed.R.Civ.P. 8; and (2) whether, in a class action, the jurisdictional amount requirement of 28 U.S.C. 1332 can be satisfied by looking to the cost of the injunctive relief sought on behalf of the class.</p>
00-844	<p><i>Gibbs v. Norton</i></p> <p>Cert. denied 2/20/01</p>	T. Bishop A. Hiegel	<p>We were asked by the National Home Builders Association to file an amicus brief asking the Court to grant certiorari to review a Fourth Circuit decision holding that the Endangered Species Act does not violate the Commerce Clause insofar as it prohibits private land owners from killing or harming endangered species (here, introduced red wolves) on their own land.</p>

No.	Caption and Status	Attorneys	Description
00-375	<i>Greenville County (S.C.) v. Harkins</i> Cert. denied 1/22/01	C. Rothfeld	We assisted in preparing a cert. petition for the County of Greenville, South Carolina, arguing that the County's regime for the licensing of sexually oriented businesses satisfied the First Amendment because it provides for judicial review of the licensing decision, even though it does not guarantee a prompt judicial decision if the license is denied. The issue was very similar to the one presented in <i>City News and Novelty, Inc. v. City of Waukesha</i> , No. 99-1680, in which the Court granted review but subsequently dismissed as moot.
00-938	<i>Grumhaus v. Comerica Securities, Inc.</i> Cert. denied 4/16/01	W. Deitrick J. Schroeder J. Sarles	The petitioners in this case argued that the circuits are split on whether a court may find that a party waived its right to arbitrate a dispute when the other side has not been prejudiced by the failure to arbitrate. The petitioners also presented an appellate jurisdiction question that was just resolved in <i>Green Tree Financial Corp. v. Randolph</i> , 121 S. Ct. 513 (2000). We successfully opposed certiorari.
99-1844	<i>Hahnaman Albrecht, Inc. v. Potash Corporation of Saskatchewan</i> Cert. denied 10/02/00	R. Favretto C. Rothfeld K. Edwards G. Winter	After the <i>en banc</i> Eighth Circuit, by a vote of 6-5, affirmed the award of summary judgment to our client in a massive antitrust case, the plaintiffs sought certiorari, arguing that the court of appeals misunderstood the antitrust summary judgment standard. We drafted the brief in opposition on behalf of all defendants, maintaining that the court properly applied the standard and that there was no disagreement in the circuits on the controlling rule.
00-231	<i>Handicomp Inc. v. United States Golf Association</i> Cert. denied 10/10/00	L. Abrams M. Raup	We successfully opposed this cert. petition challenging an unpublished Third Circuit decision that upheld the grant of summary judgment to the U.S. Golf Association on Handicomp's antitrust claims.
99-1957	<i>Havana Club Holding, S.A. v. Bacardi & Company Limited</i> Cert. denied 10/02/00	K. Geller D. Gossett	The issue in this case was whether a rum producer partially owned by the Cuban government, Havana Club Holding, is allowed to enforce statutory and treaty rights in the U.S. to protect its trademark and trade name and to challenge false advertising in connection with Cuban rum. We filed an amicus brief in support of the petition for certiorari on behalf of the French National Committee of the International Chamber of Commerce.

No.	Caption and Status	Attorneys	Description
00-921	<p><i>Illinois Bell Telephone Co. v. WorldCom Technologies, Inc.</i></p> <p>Cert. petition filed 11/28/00</p>	<p>T. Livingston J. Muench R. Dow</p>	<p>We filed a cert. petition on behalf of Ameritech Illinois in this matter, which arises out of the Telecommunications Act of 1996. The Seventh Circuit adopted a bifurcated review scheme for reviewing state commission determinations concerning the interpretation and enforcement of interconnection agreements under the Act. Under the Seventh Circuit's approach, certain determinations are reviewable in federal court, while other determinations relating to the same agreement must be brought in state court. The Fifth and Eighth Circuits and the FCC have disagreed with the Seventh Circuit's approach. The question presented is whether a claim that a state commission determination concerning the rights and obligations of the parties to a section 252 interconnection agreement deviated from the plain terms of that agreement lies within the scope of federal jurisdiction under section 252(e)(6) of the Act. It appears that the Court is holding this case pending its resolution of <i>Mathias v. WorldCom Technologies, Inc.</i>, No. 00-878.</p>
00-744	<p>Illinois Commerce Commission v. MCI Telecommunications Corp.</p> <p>Cert. denied 1/22/01</p>	<p>J. Muench T. Livingston R. Dow</p>	<p>We represented Ameritech Illinois in this matter, which was consolidated in the Seventh Circuit with related Wisconsin cases that were the subject of the petition in 00-653. The Illinois state commissioners' petition presented two questions that overlapped substantially with the waiver and <i>Ex parte Young</i> questions presented by the Wisconsin commission and commissioners.</p>

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00-1304	<i>Kroger Co. v. Central States, Southeast and Southwest Areas Pension Fund</i> Cert. denied 4/16/01	R. Davis A. Nicely	We filed a cert. petition arguing that the Seventh Circuit erred and created a circuit conflict by holding that ERISA § 515 required the court to disregard all extrinsic evidence in construing a collective bargaining agreement creating obligations to pay pension benefits. The pension fund plaintiff and the union that negotiated the CBA both knowingly acquiesced in the employer's construction of the agreement for some 14 years. The employer's construction was upheld in a grievance proceeding under the CBA. The Seventh Circuit disregarded both of those facts on the ground that they were extrinsic evidence and held that the employer had been misinterpreting an "unambiguous" provision of the contract all along.
00-596	<i>Lorillard Tobacco Company v. Reilly</i> Affirmed in part, reversed in part, and remanded 6/28/01	K. Geller A. Frey	We challenged, on preemption and First Amendment grounds, Massachusetts regulations that essentially prohibit virtually any public display of truthful and nonmisleading advertising of tobacco products in the Commonwealth of Massachusetts. The Court granted certiorari and struck down the regulations on both grounds.
99-1998	<i>Lowery v. Circuit City Stores, Inc.</i> Cert. denied 10/02/00	A. Frey K. Geller D. Falk	We filed a brief in opposition on behalf of Circuit City in this employee discrimination case. Plaintiffs presented the class certification and injunctive relief questions in a prior petition which was GVR'd last year solely to determine a punitive damages issue.

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00-496	<i>Mesa Airlines, Inc. v. United Airlines, Inc.</i> Cert. denied 12/4/00	M. Odorizzi P. Weaver	This case involved a contract dispute between two affiliated regional carriers (Mesa and WestAir) and United over United's decisions to alter (and, in Mesa's case, terminate) their right to fly certain routes under the United Express logo. In addition to their breach of contract claims, Mesa and WestAir brought tort claims against United for fraud and breach of an alleged fiduciary duty and a third-party claim against Sky-West (which replaced them on certain routes) for tortious interference. The trial court dismissed all of the tort claims on the ground that they were preempted under the Airline Deregulation Act of 1978, which prohibited the states from enacting or enforcing any law relating to an airline's rates, routes or services. The Seventh Circuit affirmed on an interlocutory appeal. Mesa sought cert., claiming that the Circuits were divided as to the breadth of the term "relating to" in the ADA's preemption provision.
00-139	<i>Microsoft v. United States</i> Direct Appeal denied 9/26/00	S. Shapiro K. Geller D. Falk D. Kahan	This case was certified for direct appeal under 15 U.S.C. Section 29(b). We submitted an amicus brief on behalf of the Software and Information Industry Association and the Computer and Communications Industry Association supporting the Court's retention of jurisdiction of the direct appeal. The Court denied the direct appeal and remanded the case to the D.C. District Court.
00-434	<i>Olinger v. United States Golf Association</i> Granted, vacated, and remanded 6/4/01	L. Abrams J. Schroeder R. Dow	The Seventh Circuit ruled that the USGA is not required by the Americans with Disabilities Act to allow a disabled golfer to ride a golf cart in the U.S. Open because to do so would "fundamentally alter" the nature of championship-level golf competition. The Ninth Circuit reached a contrary result in the more highly publicized case between Casey Martin and the PGA Tour. Olinger's cert. petition asked the Court to resolve the conflict. The Court held the petition pending its resolution of PGA Tour, Inc. v. Martin. After deciding <i>Martin</i> , it vacated and remanded <i>Olinger</i> .

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00-653	<p><i>Public Service Commission of Wisconsin v. Wisconsin Bell, Inc.</i></p> <p>Cert. denied 1/22/01</p>	<p>J. Muench T. Livingston R. Dow</p>	<p>We represented Ameritech Wisconsin in this matter, which arose under the Telecommunications Act of 1996. Ameritech and others sued state public utility commissions and their commissioners in federal court alleging violations of federal law in connection with the state commissions' approval and interpretation/enforcement of interconnection agreements that are required under the Act. The commissions and their commissioners asserted Eleventh Amendment immunity. The district court dismissed the case on Eleventh Amendment grounds. The Seventh Circuit reversed, agreeing with our position that the Wisconsin Commission waived its immunity by voluntarily participating in a federal regulatory scheme and that the commissioners could be sued in their official capacities under <i>Ex parte Young</i>. The questions presented related to (i) waiver after <i>College Savings Bank</i>; (ii) <i>Ex parte Young</i> after <i>Seminole Tribe</i>; (iii) the Tenth Amendment; and (iv) an issue of statutory construction under the Act.</p>
99-1178	<p><i>Solid Waste Agency of Cook County v. U.S. Army Corps of Engineers</i></p> <p>Reversed 1/9/01</p>	<p>T. Bishop</p>	<p>This case involved the Army Corps of Engineers' assertion of jurisdiction over isolated wetlands based solely on their use by migratory birds. The Court granted our petition to consider whether the Corps' "migratory bird rule" violates the Commerce Clause and is inconsistent with the Clean Water Act. By a 5-4 vote, the Court ruled in our favor, striking down the migratory bird rule and underlying regulation. Tim Bishop argued the case.</p>
00-1273	<p><i>South Dakota v. SDDS, Inc.</i></p> <p>Cert. denied 4/30/01</p>	<p>C. Rothfeld D. Gossett</p>	<p>We were asked by the State of South Dakota to assist in the preparation of a cert. petition raising two issues: (1) whether a state should be deemed to have waived its Eleventh Amendment immunity by litigating the merits of the claim against it in federal court, even when state law prohibits state officials from waiving that immunity; and (2) whether a party is barred from seeking relief from a void judgment under Rule 60(b)(4) because the party did not seek to challenge that judgment by petitioning for a writ of certiorari in the Supreme Court.</p>

No.	Caption and Status	Attorneys	Description
00-969	<p><i>Squillacote v. United States</i></p> <p>Cert. denied 4/16/01</p>	L. Rubin	<p>We represented petitioner, Theresa Squillacote, who, along with her husband, Kurt Stand, was convicted of conspiracy to commit espionage. The Fourth Circuit affirmed the convictions in August 2000. We asked the Court to grant review on three questions: (1) whether the government is permitted to make derivative use of communications protected by a common law testimonial privilege such as the psychotherapist-patient privilege; (2) whether, for purposes of the espionage statutes, information that is in the public domain nevertheless “relates to the national defense” because the government did not itself release the information to the public; and (3) whether the court of appeals erred in sustaining the government’s electronic surveillance and secret searches under the Foreign Intelligence Surveillance Act (FISA) without affording petitioners an opportunity to see the government’s FISA applications.</p>
99-1878	<p><i>Strand v. Michigan Bell Telephone Company</i></p> <p>Cert. denied 10/02/00</p>	<p>J. Muench T. Livingston R. Dow</p>	<p>We filed on behalf of Ameritech a brief in opposition to a cert. petition filed by the Commissioners of the Michigan Public Service Commission in a case arising under the Telecommunications Act of 1996. The question presented was whether a telecommunications carrier can maintain an action against state public utility commissioners under the judicial review provisions of the Act under <i>Ex parte Young</i>. The Commissioners argued that no such action is available under the Act’s remedial scheme in light of <i>Seminole Tribe v. Florida</i>. The Sixth Circuit held that our suit was “a straightforward <i>Ex parte Young</i> case.”</p>

No.	Caption and Status	Attorneys	Description
00-1587	<p><i>Terry v. United States</i></p> <p>Cert. denied 5/14/01</p>	<p>G. Feinerman A. Erbsen</p>	<p>Our client was convicted of drug offenses carrying a statutory maximum sentence of 20 years, but was sentenced to 27 years based on post-trial findings about his prior convictions and the amount of drugs he distributed. We argued that the sentence violated his right to a jury trial and due process under the principles announced in <i>Apprendi v. New Jersey</i>, 120 S. Ct. 2348 (2000). Relying on <i>Apprendi</i>, we asked the Court to overrule its 5-4 decision in <i>Almendarez-Torres v. United States</i>, 523 U.S. 224 (1998). We also asked the Court to extend <i>Apprendi</i>'s holding to sentence enhancements under the Sentencing Guidelines.</p>
00-1240	<p><i>Tri-State Coach Lines, Inc. v. Metropolitan Pier & Exposition Authority</i></p> <p>Cert. denied 4/23/01</p>	<p>R. McCombs M. Odorizzi P. Reed J. Sarles</p>	<p>Petitioners, ground transportation companies that transport passengers from the Chicago airports to surrounding areas in Illinois, Wisconsin, and Indiana, contended that a provision in the 1995 Interstate Commerce Commission Termination Act preempted a local tax on commercial vehicle departures from the airports. The Illinois legislature designated the departure tax revenues to help finance the expansion of McCormick Place, which is operated by our client, respondent Metropolitan Pier and Exposition Authority. The Illinois Appellate Court ruled that the tax was not preempted, no matter whether the trips have Illinois or out-of-state destinations. Respondent challenged that ruling. We successfully opposed certiorari.</p>

No.	Caption and Status	Attorneys	Description
00-1397	<p><i>UAL Corporation dba United Airlines v. Fielder</i></p> <p>Cert. petition filed 3/7/01</p>	A. Nicely	<p>We filed a petition challenging the Ninth Circuit's determination that Ms. Fielder could use a "continuing violation" theory to bring a hostile environment sexual harassment suit based on events occurring several years before she filed her EEOC charge. The divided Ninth Circuit panel held that, as long as at least one event within the 300-day limitations period "is related closely enough" to acts outside the limitations period, the plaintiff may bring suit based on the entire course of conduct. Other circuits, whose decisions the Ninth Circuit majority explicitly rejected, have held that a plaintiff may sue on events outside the limitations period only if those events would not have placed a reasonable person on notice that her rights had been violated. The Court appears to be holding this petition pending its resolution of the same issue in <i>National Railroad Passenger Corp. v. Morgan</i>, No. 1614 (cert. granted June 25, 2001).</p>
00-209	<p><i>Volkswagen of America, Inc. v. Sperling</i></p> <p>Cert. denied 10/10/00</p>	<p>K. Geller C. Rothfeld D. Kahan J. Bailey (S.A.) A. Goldberg (S.A.)</p>	<p>We filed a petition for certiorari challenging a unique feature of Texas law that prohibits an appeal from a trial court's grant of a new trial even after a final judgment in the re-trial.</p>
00-682	<p><i>Walker v. United States</i></p> <p>Cert. denied 11/27/00</p>	<p>M. Kadish D. Fuller</p>	<p>We were appointed to represent Jacoby Walker in the Seventh Circuit in his direct appeal from his conviction and sentence for violating federal drug and firearm statutes. We filed a cert. petition asking the Court to review the Seventh Circuit's holdings (1) that Mr. Walker could be found to have participated in one drug conspiracy solely on the basis of his participation in a different conspiracy that itself had certain dealings with the conspiracy in question and (2) that the district court could properly impose a sentence enhancement for obstruction of justice solely on the basis of a finding that Mr. Walker "lied under oath."</p>

No.	Caption and Status	Attorneys	Description
00-289	<i>Yarnell v. Mickes</i> Cert. denied 3/5/01	C. Rothfeld S. Swingle E. Cheng (S.A.)	<p>The State of Missouri has an Adopt-A-Highway program that allows organizations to maintain portions of public highways; the state erects a sign naming that portion of the highway after the organization. This case concerned an attempt by the Ku Klux Klan to participate in the program and obtain designation of a “Ku Klux Klan Highway.” When Missouri excluded the Klan from the program, the Klan sued, invoking the First Amendment. The Klan prevailed in the district court and the Eighth Circuit. We filed a petition challenging that decision on behalf of the Missouri Department of Transportation. The Supreme Court invited the Solicitor General to express the views of the United States as to whether certiorari should be granted. The Solicitor General supported review, but the Supreme Court nonetheless denied certiorari.</p>

MOOT COURTS

No.	Caption and Status	Attorneys	Description
99-1238	<i>Artuz v. Bennett</i> Affirmed 11/7/00	D. Falk	Don Falk participated in a moot court for the petitioner, a Queens County D.A., and counsel for several amicus states who received oral argument time. The petitioner contended that a state habeas petition that was barred as second and successive was not “properly filed,” and therefore did not toll the statute of limitations, under the Antiterrorism and Effective Death Penalty Act. The Supreme Court applied a more mechanical interpretation of “filed.”
00-6374	<i>Becker v. Montgomery</i> Reversed and remanded 5/29/01	C. Rothfeld	This case presented the question whether a timely but unsigned certificate of appealability satisfied the requirements of FRAP (a). Charles Rothfeld participated in a moot court for petitioner, who argued successfully that an unsigned certificate satisfied the rule.
00-836	<i>Bush v. Palm Beach County Canvassing Board</i> Vacated and remanded 12/4/00	C. Rothfeld	This case involved the question whether the Florida Supreme Court’s interpretation of state election law violated Article II the Constitution. Charles Rothfeld participated in a moot court for the state attorney general, arguing in support of respondents.
00-292	<i>C & L Enters v. Citizen Bank Potawatomi Indian Tribe</i> Reversed 4/30/01	C. Rothfeld	This case raised the question whether an arbitration agreement with an Indian tribe waived the tribes’ sovereign immunity. Charles Rothfeld participated in a moot court for petitioner and for the Texas attorney general, arguing in support of petitioner, who contended that immunity was waived. The Court unanimously agreed with petitioner and reversed the judgment below.
99-859	<i>Central Green Co. v. United States</i> Reversed 2/21/01	D. Falk	Don Falk participated in a moot court on behalf of the petitioner, who argued that a statute immunizing the United States from liability for damages caused by “flood waters” provided no immunity from liability for releases of water for irrigation purposes into a canal that was also part of a federal flood control project. The Supreme Court agreed.

No.	Caption and Status	Attorneys	Description
99-1030	<i>City of Indianapolis v. Edmond</i> Affirmed 11/28/00	C. Rothfeld D. Falk	Charles Rothfeld participated in a moot court for counsel for the City. The City argued that its suspicionless roadblocks to detect drugs comported with the Fourth Amendment. The Supreme Court disagreed. Don Falk also participated in a (different) moot court for counsel for the City.
99-2035	<i>Cooper Industries, Inc. v. Leatherman Tool Group, Inc.</i> Vacated and remanded 5/14/01	A. Frey E. Tager	Andy Frey and Evan Tager participated in a moot court for petitioner's counsel, who successfully argued that the determination whether a punitive award is unconstitutionally excessive is a legal one that appellate courts must review <i>de novo</i> .
00-121	<i>Duncan v. Walker</i> Reversed and remanded 6/18/01	E. Penner	Eileen Penner mooted Preeta Bansal, Solicitor General of New York, for her successful argument on behalf of petitioner. The question was whether the filing of a prior federal habeas corpus petition tolled the time for filing a subsequent habeas corpus petition — <i>i.e.</i> , whether it counted as an application for State post-conviction or other collateral review within the meaning of 28 U.S.C. § 2244(d)(2).
99-1884	<i>Lackawanna County District Attorney v. Coss</i> Reversed 4/25/01	E. Tager	Evan Tager served on an NAAG moot court panel for petitioner's counsel in this case. The issue was whether an individual was "in custody" for purposes of 28 U.S.C. § 2254 when he claimed that a former conviction, for which he no longer was in custody but which had been used to enhance the sentence for a conviction for which he was in custody, was the product of ineffective assistance of counsel. The Supreme Court reversed.
99-2047	<i>Palazzolo v. Rhode Island</i> Affirmed in part, reversed in part, and remanded 6/28/01	T. Bishop	Tim Bishop mooted counsel for the petitioner twice, in moot courts sponsored by the National Association of Home Builders and by the Pacific Legal Foundation.
00-24	<i>PGA Tour, Inc. v. Casey Martin</i> Affirmed 5/24/01	L. Abrams	Lee Abrams participated in a moot court for petitioner's counsel, at the behest of our client, the U.S. Golf Association. The PGA argued that the Americans with Disabilities Act does not require the Tour to allow Casey Martin to use a golf cart. The Supreme Court disagreed.

No.	Caption and Status	Attorneys	Description
99-1185	<i>Seling v. Young</i> Reversed 1/17/01	M. Lackey	Michael Lackey sat on an NAAG moot court panel for petitioner who argued that a Washington statute providing for the civil commitment of sexually violent predators could not be divested of its civil nature, and thus violate the double jeopardy and ex post facto clauses, merely because the agency operating the facility failed to provide services mandated by statute for some time during the defendant's commitment. The Supreme Court agreed.
99-1687 & 99-1726	<i>United States v. Vopper</i> <i>Barnicki v. Vopper</i> Affirmed 5/21/01	D. Falk	Don Falk participated in a moot court for one of the respondents who argued that the criminal and civil liability provisions of the Federal and Pennsylvania wiretap statutes violated the First Amendment to the extent that they forbade disclosure of illegally intercepted communications by persons who did not encourage or participate in the illegal interception. The Court agreed with that argument.