Questions Presented for Review
Cases Granted on 9/26/06

- 05-1345, *United Haulers Associationi v. Oneida-Herkimer Solid Waste Management Authority*:

This Court held in *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 386 (1994), that "a so-called flow control ordinance, which require[d] all solid waste to be processed at a designated transfer station before leaving the municipality," discriminated against interstate commerce and was invalid under the Commerce Clause because it "de-priv[ed] competitors, including out-of-state firms, of access to a local market." This case presents two questions, the first of which is the subject of an acknowledged circuit conflict:

1. Whether the virtually *per se* prohibition against "hoard[ing] solid waste" (*id*. at 392) recognized in *Carbone* is inapplicable when the "preferred processing facility" (*ibid*.) is owned by a public entity.

2. Whether a flow-control ordinance that requires deliv-ery of all solid waste to a publicly owned local facility and thus prohibits its exportation imposes so "insubstantial" a burden on interstate commerce that the provision satisfies the Commerce Clause if it serves even a "minimal" local benefit.

- 05-1508, *Zuni Public School District* v. *U.S. Department of Education*:

The Federal Impact Aid Program, 20 U.S.C. § 7709, was enacted to subsidize local State school districts which have a federal presence within the district such as military bases or, as in the present case, Indian Reservations. These local districts are not able to tax such federally impacted lands. The Impact Aid Program prohibits the State from counting these federal subsidies as part of an impacted district's budget when the State allocates operational funds to the local districts, unless the State's operational funding to districts throughout the State is "equalized" under an equalization formula under the Impact Aid Program. If the State's operational funding is determined to be "equalized," the State can reduce operational funding to an impacted district by the amount of the Impact Aid subsidy.
In 1994, the equalization formula was statutorily created and effectively repealed the equalization formula previously created by the Secretary of the United States Department of Education by regulation. However, in 1996, the Secretary, by regulation, reinstated his repealed and conflicting equalization formula and refuses to follow Congress' equalization formula. Under Congress' formula, New Mexico is not "equalized" and the intended beneficiaries receive the Impact Aid. Under the Secretary's formula, New Mexico is deemed "equalized" and the Impact Aid is taken from the impacted districts. The impacted districts are losing approximately $50,000,000 per year in Impact Aid. The Tenth Circuit was split 6 to 6 on the question, leaving the Secretary's formula in effect.

The question presented is:

1. Whether the Secretary has the authority to create and impose his formula over the one

prescribed by Congress and through this process certify New Mexico's operational funding for fiscal year 1999-2000 as "equalized," thereby diverting the Impact Aid subsidies to the State and whether this is one of the rare cases where this Court should exercise its supervisory jurisdiction to correct a plain error that affects all State school districts that educate federally connected children.

- 05-1575, *Schriro v. Landrigan*:

Respondent Jeffrey Landrigan actively thwarted his attorney's efforts to develop and present mitigation evidence in his capital sentencing proceeding. Landrigan told the trial judge that he did not want his attomey to present any mitigation evidence, including proposed testimony from witnesses whom his attorney had subpoenaed to testify. On post-conviction review, the state court rejected as frivolous an ineffective assistance of counsel claim in which Landrigan asserted that if counsel had raised the issue of Landrigan's alleged
genetic predisposition to violence, he would have cooperated in presenting that type of mitigating evidence.

In light of the highly deferential standard of review required in this case pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), did the Ninth Circuit err by holding that the state court unreasonably determined the facts when it found that Landrigan "instructed his attorney not to present any mitigating evidence at the sentencing hearing"?

2. Did the Ninth Circuit err by finding that the state court's analysis of Landrigan's ineffective assistance of counsel claim was objectively unreasonable under *Strickland* v. *Washington*, 466 U.S. 668 (1984) notwithstanding the absence of any contrary authority from this Court in cases in which (a) the defendant waives presentation of mitigation and impedes counsels attempts to do so, or (b) the evidence the defendant subsequently claims should have been presented is not mitigating?

- 05-1657, *Washington v. Washington Education Association*:

Where state law does not prohibit the practice, collective bargaining agreements may contain a union security provision, which requires employees, who are not members of the union, to pay an agency shop fee to the union as a condition of employment. Abood v. Detroit Board of Education, 431 U.S. 209 (1986), held that, to protect these nonmembers' First Amendment rights, the union is prohibited from using these fees to support its political agenda if the nonmember objects (opt-out). Wash. Rev. Code § 42.17.760 provides additional protection for nonmembers by requiring them to affirmatively consent (otp-in) before their fees may be used for political purposes.
Does the requirement in Wash. Rev. Code § 42.17.760 that nonmembers must affirmatively consent (opt-in) before their fees may be used to support the union's political agenda violate the union's First Amendment rights?

- 05-1589, *Davenport v. Washington Education Association*:

1. Do labor union officials have a First Amendment right to seize and use for politics the wages of employees who have chosen not to become union members?

2. Does a state campaign finance law that prohibits labor unions and their officials from seizing and using the wages of nonmembers for partisan political campaigns without obtaining the nonmembers' affirmative consent violate the First Amendment rights of labor unions?

- 05-1629, *Gonzales v. Duenas-Alvarez*:

Whether a "theft offense," which is an "aggravated felony" under the Immigration and Nationality Act, 8 U.S.C. 1101(a)(43)(G), includes aiding and abetting.

- 06-84, *Safeco Insurance v. Burr*:

Whether the Ninth Circuit erred in holding that a defendant can be found liable for a "willful" violation of the Fair Credit Reporting Act ("FCRA") upon a finding of "reckless disregard" for FCRA's requirements, in conflict with the unanimous holdings of other circuits that "willfulness" requires actual knowledge that the defendant's conduct violates FCRA.

- 06-100, *General Insurance v. Edo*:

A conflict exists between the Fourth, Fifth, Sixth, Seventh, and Eighth Circuits, and the Third and (now) Ninth Circuits over the mens rea required for a "willful" violation of FCRA. Separating itself from any other circuit to have decided the issue and compounding the circuit split, the Ninth Circuit held that a company may be deemed to have acted recklessly—and thereby willfully under the Act—if the company relied, even in good faith, upon an interpretation of the Act that a court later determines to be unreasonable[]," "implausible," "creative," or "untenable," even if that interpretation was derived from a
legal opinion that the company sought for the very purpose of ensuring compliance with the law.

Two questions are presented:

1. Whether the Ninth Circuit's construction of "willfully" under § 1681n of FCRA impermissibly permits
a finding of willfulness to be based upon nothing more than negligence, gross negligence, or a completely good-faith but incorrect interpretation of the law, and upon conduct that is objectively reasonable as a matter of law, rather than requiring proof of a defendant's knowledge that its conduct violated FCRA or, at a minimum, recklessness in its subjective form?

2. Whether the Ninth Circuit improperly expanded 1681m of FCRA by holding that an "adverse action" has occurred and notice is required thereunder, even when a consumer's credit information has had either no impact or favorable impact on the rates and terms of the insurance that would otherwise have been offered or provided?

- 06-102, *Sinochem International v. Malaysia International Shipping Corp.*:

A divided panel of the Court of Appeals for the Third Circuit held that a district court must first conclusively determine if it has personal jurisdiction over the defendant before it may dismiss the suit on the ground of *forum non conveniens*. The court acknowledged that its holding was inconsistent with the interests of judicial economy, recognized that its decision in the case deepened an already existing 2-4 split among the circuits, and invited this Court's review.

The question presented is:

Whether a district court must first conclusively establish jurisdiction before dismissing a suit on the ground of *forum non conveniens*?

- 06-116, *Moylan v. Camacho*:

Whether the Supreme Court of Guam erred in interpreting the phrase "aggregate *tax* valuation" in the Guam Organic Act's debt-limitation provision, 48 USC Sec. 1423a (emphasis added), as tying the limit on borrowing by the Guam territorial government to the full value of property on Guam rather than to assessed value for the purposes of taxation.

- 05-1272, *Rockwell International v. U.S. ex rel. Stone*

1. Whether the Tenth Circuit erred by affirming the entry of judgment in favor of a *qui tam* relator under the False Claims Act, based on a misinterpretation of the statutory definition of an "original source" set forth in 31 U.S.C. § 3730(e)(4)? (Grant limited to this question)