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## RECENT DEVELOPMENTS

IN CIVIL RIGHTS LAW

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### Supreme Court Upholds School Voucher Program

Last term, the United States Supreme Court upheld the constitutionality of an Ohio school voucher program, holding that the government may give financial aid to parents so they can send their children to private schools, including those with religious affiliations. The Court ruled in *Zelman v. Simmons-Harris* that the program is “entirely neutral with respect to religion” and simply provides low-income families freedom of educational choice. Chief Justice William H. Rehnquist authored the opinion for the Court. He was joined by Justices Sandra Day O’Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas. Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer dissented.

### Supreme Court Limits Disabilities Act on Safety Issue

In an important decision interpreting the Americans with Disabilities Act, the Supreme Court last term ruled that employers may refuse to hire a disabled worker when the company determines the job would threaten the worker’s life or health. The case, *Chevron v. Echazabal*, involved the employer’s refusal to hire a job applicant with hepatitis C, a chronic liver disease, for a position in one of its oil refineries. The company argued that airborne toxins in the plant would make the individual’s liver worse and could kill him. The rejected applicant insisted that he was the best judge of the risk to himself, and he sued Chevron for job discrimination under the ADA. The Supreme Court voted 9 to 0 to side with the company. Justice David H. Souter wrote in the opinion for the Court that the employer’s position was reasonable. “Moral concerns aside, [Chevron] wishes to avoid time lost to sickness, excessive turnover from medical retirement or death, litigation under state tort law, and the risk of violating” federal occupational-safety laws.

### ADA Does Not Trump Seniority Policies

In *USAirways v. Barnett*, another ADA case decided last term, the Supreme Court ruled that the law does not ordinarily require companies to bend their seniority rules so disabled employees can have particular jobs. The case involved a claim by an employee of USAirways that the ADA required the airline to provide him with a less physically demanding mailroom job when he developed back problems. USAirways argued that they were precluded from placing the plaintiff in the requested position because, under the terms of the governing collective bargaining agreement, another USAirways worker was entitled to the job. A five-member majority of the Court held that such an exception would be too disruptive for other employees who had built their own career expectations around a company seniority plan, and thus would not constitute a “reasonable accommodation.” “In our view, the seniority system will prevail in

the run of cases,” Justice Stephen G. Breyer wrote in the opinion for the court, which was joined by Chief Justice William H. Rehnquist and Justices John Paul Stevens, Sandra Day O’Connor and Anthony M. Kennedy. Breyer added, “We can find nothing in the [ADA] that suggests Congress intended to undermine seniority systems.”

### Bush Administration Establishes Panel to Study Title IX

In June, the Bush administration announced the creation of a Blue Ribbon Panel to study implementation of Title IX, the federal law that prohibits sex discrimination in education. The panel was created to study concerns that the law has resulted in the elimination of a disproportionate number of male college athletic teams. U.S. Education Secretary Rod Paige said the 15-member committee will be charged with making recommendations by January 31, 2003 on ways the law can be strengthened while ensuring “fairness for all college athletes.”

### CIR Sues HUD and the EEOC Over Racial and Gender Preferences

On August 8, Washington-based Center for Individual Rights (CIR) filed a class action lawsuit challenging preferential hiring and promotion goals for women and minorities at the U.S. Department of Housing and Urban Development. The case, *Worth v. Martinez*, charges HUD and the Equal Employment Opportunity Commission — which encouraged and approved HUD’s affirmative action plan — with intentional race and sex discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs, HUD employee Dennis Worth and a class of similarly situated federal employees, are asking the court to end the discriminatory preferences at HUD, as well as the EEOC’s encouragement and approval of such preferences throughout the federal government.

### Feminist Group Asks Department of Education to Review Whether Voc-Ed Programs Violate Title IX

On June 6, 2002 the National Women’s Law Center (NWLC) filed a complaint with the Office of Civil Rights at the U.S. Department of Education, asking the office to investigate vocational-technology programs for violations of Title IX, the federal law that prohibits sex discrimination in federally assisted programs. NWLC alleges that sex segregation is widespread in the nation’s vocational and technical programs, and that female students are unlawfully steered toward cosmetology and clerical courses and away from higher-paying courses of study, such as plumbing and auto mechanics. Targeted states are Massachusetts, New York, New Jersey, Maryland, Florida, Mississippi, North Carolina, Illinois, Michigan, Missouri, Arizona, California and Washington.