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Malhotra, students help win decision in Ninth Circuit



The legal team, led by Dean Erwin Chemerinsky, University of California, Irvine School of Law (fifth from left), included Associate Professor Anjana Malhotra (third from left).

Student research was a key in court victory

Dogged work by a small group of SUNY Buffalo Law students played a crucial role in what their professor calls a “historic” decision in the Ninth Circuit Court of Appeals.

The decision by the San Francisco-based federal court, handed down in July, remands to the lower district court the case of *Arce v. Douglas*, which challenged the constitutionality of an Arizona law banning ethnic studies in primary and secondary schools. Associate Professor **Anjana Malhotra** served as a lead appellate litigator in the case, and it became grist for the students in her spring 2014 seminar on appellate litigation practice and theory. Professor Malhotra became involved with the case when she was a clinical teaching fellow at Seattle University School of Law’s Korematsu Center, the lead clinic for the case.

The appellate brief filed by Malhotra and her colleagues argued that the Arizona statute violates First Amendment rights

and the right to equal protection and is unconstitutionally overbroad and vague.

The law, enacted in 2010, prohibited courses that promote resentment toward a race or a class of people, are designed primarily for people of a particular ethnic group or advocate ethnic solidarity instead of the treatment of people as individuals. It has been selectively enforced by Arizona, Malhotra says, to eliminate the Mexican-American studies program in the Tucson Unified School District. The move was particularly controversial because the program had brought significant gains in academic achievement for Latino students in Tucson.

The majority of students in that district are Hispanic. The program taught them about historic events relating to the Mexican-American experience such as their indigenous roots and the Mexican Revolution.

A group of teachers and students challenged the law’s constitutionality in federal court. Though the teachers were dismissed from the lawsuit for lack of standing, the students

continued their challenge. The district court declared one section of the law unconstitutionally overbroad, but granted summary judgment to the defendants on the students’ other claims. The students appealed to the Ninth Circuit court, with help from SUNY Buffalo Law students, the Seattle clinical program and other partners.

“We had to show the Ninth Circuit that there was all this information that the plaintiffs weren’t able to access, information that showed there was evidence of discriminatory intent in the legislation,” Malhotra says. “It was almost like we had to try the case on the appellate level.”

The task was an uphill climb, she says, because the law sets a high bar for establishing that lawmakers intended to discriminate against a particular ethnic group. But the SUNY Buffalo Law students’ research proved decisive.

“We had a group of eight students who dug through thousands of documents that weren’t in the record to identify evidence of discriminatory intent,” Malhotra says. “The opinion is based heavily on the brief they wrote. They helped gather the facts that were critical in proving our point, and the students were really in charge of extensive and novel legal research. They were critical to this victory, and they did a tremendous job.”

Malhotra says their 107-page brief benefited from discussions with her SUNY Buffalo Law colleagues, in particular **Professors George Kannar** and **James Gardner**. “We had 13 constitutional claims in this case, trying to apply Supreme Court precedent to a new situation that hits a lot of areas in law,” she says. “I got helpful and invaluable ideas from my colleagues – brilliant perspectives and suggestions about strategy, legal arguments, how to talk about the specific kind of animus and inequality that was going on in this case. It’s incredibly beneficial to be able to reach out to these folks.”



Associate Professor Anjana Malhotra