

Mass Dissent

SEPTEMBER 2019

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Last Term of the Supreme Court

This is our annual Supreme Court issue of *Mass Dissent*, where we look at the term just completed and write about cases we think may be of particular interest to our members. We are pleased to say

that this year our substantive articles focusing on the last term's most important cases are written by our two summer interns, law students Madison Levin (Columbia) and Jonathan Lutts (Suffolk). We will introduce their articles below, but first a few general observations of the term that just passed.

This year's new member of the Court was Justice Kavanaugh, who replaced the justice he earlier clerked for, Justice Kennedy. Many of us thought that Kavanaugh's appointment would signal a significant shift to the right by the Court. But this has not happened. First, there were relatively few "blockbuster" cases this year where a conservative majority could in fact make a profound impact. Second, Justice Kavanaugh, the Chief Justice, and sometimes Justice Gorsuch and the more liberal

Justice Breyer and Justice Kagan voted in ways that seemed generally to vindicate Chief Justice Roberts' widely quoted statement that there are not "Obama judges or Bush judges," but just justices (all hardworking and admirable, he obviously thinks). Of what the *New York Times* described as the last term's eight most important decisions, one was unanimous (Timbs v. Indiana). Three were 7-2 – Flowers v. Mississippi, with Thomas and Gorsuch dissenting; American Legion v. American Humanist Association, with Justices Ginsberg and Sotomayor dissenting; and Gamble v. U.S., with Ginsburg joining Gorsuch in dissent. One was 6-3 (Iancu v. Brunetti, about vulgar trademarks, with Justices Ginsburg and Kagan joining four conservative justices), and the remaining three

Continued on page 6

IN THIS ISSUE

Guild Calendar
page 3

Guild News
page 4-5

The Citizenship Question
page 7

Rucho v. Common Cause:
Partisan Gerrymandering
page 8

Flowers v. All White Juries
page 9

Some Other Cases From
Last Term
page 10

**NATIONAL LAWYERS GUILD
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Established in 2011, the Committee brings civil lawsuits against large institutions (such as government agencies, law enforcement, banks, financial institutions, and/or large corporations) which engage in repressive or predatory actions that affect large numbers of people and perpetuate social, racial and/or economic injustice or inequality. To get involved, please contact the NLG office at 617-227-7335 or nlgmass-director@igc.org.

Mass Defense Committee:

The Committee consists of two sub-committees: (1) "Legal Observers" who are trained to serve as NLG Legal Observers at political demonstrations and (2) "Mass Defense Team" (criminal defense attorneys) who represent activists arrested for political activism. To get involved, please contact the NLG office.

Street Law Clinic Project:

The Street Law Clinic project was established in 1989. It provides workshops in Massachusetts to address legal needs of various communities. Legal education workshops on 4th Amendment Rights (Stop & Search), Housing Law, Workers' Rights, Direct Action, Bankruptcy Law, and Immigration Law are held at community organizations, youth centers, labor unions, and shelters. If you are an NLG member and would like to lead a workshop, please contact the NLG office.

NLG NATIONAL PROJECTS & COMMITTEES

(FULL LIST AT [HTTPS://NLG.ORG/COMMITTEES/](https://nlg.org/committees/))

NLG National Immigration Project (NIP):

NIP works to defend and extend the human and civil rights of all immigrants, documented and undocumented. Located in Boston, NIP works in coalition with community groups to organize support for immigrants' rights in the face of right-wing political attacks. For more information contact NIP at 617-227-9727.

NLG International Committee (IC):

IC supports legal work around the world "to the end that human rights shall be regarded as more sacred than propoerty interests." It plays an active role in international conferences, delegations and on-going projects that examine and seek to remedy conditions caused by illegal U.S. or corporate practices. IC has done work in Cuba, the Middle East, Korea, Haiti, and other countries. For more info go to <https://nlginternational.org>.

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GUILD CALENDAR

NLG HAPPY HOUR

The topic and speakers of the September NLG Happy Hour have not yet been determined. The information about the event will be sent to you at the beginning of September.

Please reserve the date and time!

NLG HAPPY HOUR
Wednesday, September 11, 2019
6:00 am - 8:00 pm
Red Hat Café
9 Bowdoin St., Boston

NATIONAL CONVENTION

NLG National “Law 4 the People” Convention returns to the South! This year the Convention will be hosted by the North Carolina NLG Chapter in Durham.

Join hundreds of attorneys, legal workers, law students, scholars and activists for five days of movement CLEs, workshops, panels, and discussions by members of the oldest and most progressive public interest bar association in the country!

All information about the event can be found at the NLG National website: www.nlg.org.

NLG LAW 4 THE PEOPLE CONVENTION
Wednesday - Sunday, October 16 - 20, 2019
21c Museum Hotel
111 Corcoran St., Durham, NC

NLG HAPPY HOUR

NLG “Think & Drink” Happy Hour is held quarterly on the **2nd Wednesday of January, April, September, and November**. The event brings together legal professionals and activists to discuss current political and legal topics. If you have ideas for a presentation or would like to be a speaker, please call the NLG office at 617-227-7335.

NLG BOARD MEETING

NLG-Mass Chapter members are invited to participate in monthly meetings of the Chapter’s Board of Directors. The meetings are held on the **3rd Wednesday of a month** (except July and August), from **6:00 to 8:00 pm**, at the NLG Office (41 West St., Suite 700, Boston). Please notify the office if you plan to attend.

ARTICLES FOR MASS DISSENT

The October issue of *Mass Dissent* will focus on prisoners’ rights and life in prison.

If you are interested in submitting an article, essay, analysis, or art work (cartoons, pictures) related to the topic, please e-mail your work to nlgmass-director@igc.org.

The deadline for articles is September 10.

SUMMER RETREAT

On Saturday, July 13, NLG-Mass Chapter members gathered at the Old Oak Dojo in Jamaica Plain, a beautiful spacious place, to discuss the present state and future trajectory of the Chapter. In addition to NLG members, several community organizers also came and presented their goals and hopes in continuing to work with the Guild. Those included: Kayla Degala Paraiso of Matahari Women Workers Center, Heide Solbrig of BIJAN (Boston Immigrant Justice Network), Mallory Hanora of Families for Justice as Healing, Olivia Dubois of MassPower, and Mario Paredes of Centro Presente.



with organizations fighting for reform was important for progress as well as establishing connections with lawyers beyond the confines of the Guild's membership.

On the subject of rebuilding and expanding membership amongst college students, a multi-faceted effort was proposed, including a private Facebook group for NLG members to organize and publicize NLG-related meetings and events, member-lead talks at law schools and universities to drive interest, and making efforts to engage with pre-law students, especially students of color.

Finally, the plan to bolster the continued struggle against ICE was proposed. There was an emphasis placed on establishing a rapid response network that immigrants could turn to in times of need. Additionally, it was proposed that the Chapter regain a constant presence in the immigration courtroom via Chapter trained Court Observers, as well as reach out to lawyers who would be willing to take part in the intake process at immigration detention centers.

By the end of the meeting, there was a sense of focus and determination that will, without doubt, carry forth into the Chapter's ongoing fight for the rights of the people.

- Roberto Patterson -



(Photos by Urszula Masny-Latos & Roberto Patterson)

Over the course of the discussion, three main issues were brought to the table: (1) criminal law reform, (2) the fight against ICE and for the rights of immigrants, and (3) the need for increased communication with student NLG chapters and membership building therein. Ultimately, plans for action were drawn up and presented for consideration.

In addressing criminal law reform, it was concluded that a need for more direct involvement

GUILD NEWS

Hepatitis C in the Department of Correction

We want to hear from you if you are (or were) a prisoner in the Department of Correction and have concerns about Hepatitis C, including if:

- You have asked to be tested for Hepatitis C but have been denied testing;
- You have Hepatitis C but have not been evaluated recently, or told whether and when you will be treated for it;
- You have Hepatitis C and have not been assigned priority level for treatment; and/or
- You have other questions or concerns about Hepatitis C treatment.

Prisoners' Legal Services and the National Lawyers Guild are monitoring the settlement in *Fowler v. Tureo*, a class action concerning the testing, evaluation, and treatment of Hepatitis C in the DOC. The Settlement calls for universal testing for Hepatitis C (the prisoner can decline testing,) regular assessments of those who have Hepatitis C to determine their priority level for treatment, and treatment to be given within certain time frames to those who qualify. The settlement also limits the reasons why the DOC can deny treatment to prisoners who otherwise qualify for it.

If you have questions or concerns about Hepatitis C, please contact PLS or NLG with as much detail as you can give about your specific issue:

PLS: 617-482-2773

NLG: 617-227-7335

Street Law Clinic Report

The following clinics and trainings were conducted for members of Boston area organizations and agencies:

June 11: *Legal Observing* for Extinction Rebellion protesting Natural Gas Company in Boston, by **Jacqueline Baum, Patricia Cantor, and Noah Meister.**

June 26: *Legal Observing* at a rally in Boston organized by Muslim Justice League against Fidelity and its funding of hate groups, by **Sarah Block.**

June 30: *Direct Action* training for IfNotNow, by **Josh Raisler Cohn.**

July 1: *Direct Action* training for Cosecha, by **Jeff Feuer.**

July 2: *Legal Observing* at a protest in Boston organized by Cosecha against ICE and detention centers, by **Jacqueline Baum, Melissa McWhinney, and Josh Raisler Cohn.**

August 1: *Legal Observing* at a demonstration organized by DeeperThanWater against American Correctional Association's conference at Hynes Center in Boston, by **Sarah Block.**

August 4: *Legal Observing* at protest organized by DeeperThanWater against American Correctional Association's conference, by **Jacqueline Baum & Debra Wilmer.**

New NLG-Mass Chapter On-line Store

Please visit our new on-line store where we offer items to commemorate our 50th Anniversary: a copy of a new 30-min. documentary about our Chapter's beginnings (on a pen with USB drive and on a USB drive) and a business card holder (https://nlgmass.org/featured_news/nlg-mass-chapter-store/).



The Supreme Court's Last Term

Continued from page 1

cases were 5–4 votes, and Kavanaugh joined the liberal bloc in one of these. In sum, this was an unpredictable Court, with the liberals doing well compared to recent years, and, unpredictably, Justices Kagan and Kavanaugh voting with the majority in seven of the eight cases.¹

Now to our main articles.

In a case raising fundamental issues for democracy, our student, **Madison Levin**, writes about Dept. of Commerce v. New York, where the Supreme Court, in a 5-4 decision, blocked, at least for now, a question on the census that could significantly have changed the counting of the population every ten years. The new census question was “Is this person a citizen of the United States?” for each member of each household. Again, the Chief Justice wrote the opinion, but this time for a liberal majority – Sotomayor, Ginsburg, Breyer, and Kagan. When the case was argued in April, the commentators almost uniformly believed that the conservative majority would again defer to the

Trump administration, as it did in the infamous Muslim ban case of last year. But the Chief Justice surprised us this time, joining the more liberal bloc to reject the Administration’s bizarre claim that it wanted to ask the question to help enforce the Voting Rights Act.

Joshua Lutts writes about Rucho v. Common Cause, a long-awaited and deeply disappointing decision where the Supreme Court (the Chief Justice and Justices Thomas, Gorsuch, Kavanaugh, Alito) decided that partisan gerrymandering presents a political question that federal courts cannot reach. But the struggle for fair and equal voting rights is far from over, with the battles shifting to state legislatures and state courts, where about a quarter of states have already created independent commissions to re-draw districts after each census, including Colorado and Michigan, where voters approved ballot measures in recent years. Efforts are underway now in Arkansas, Nebraska, and Oklahoma to put similar initiatives on the ballot next year. And state courts’ authority to

challenge partisan gerrymandering is unaffected by the Supreme Court’s decision.

Finally, in her second piece, **Madison** writes about another case from this term that turned out right, Flowers v. Mississippi, an extraordinary case of courtroom racism, where the same Mississippi prosecutor had used his pre-emptory challenges to strike nearly all black jurors in the same capital case in six separate trials over two decades, finally surviving the Mississippi Supreme Court’s scrutiny in the sixth trial where the prosecutor allowed one black juror to be seated out of six. Showing that the Supreme Court can still sometimes undo striking injustice, the Chief Justice, and Justice Alito writing in concurrence, joined the liberal bloc, with Justice Kavanaugh assigned the opinion by the Chief Justice, to reverse the conviction. Justice Kavanaugh showed some common sense (“One can slice and dice the statistics,” he wrote, but the unconstitutional conduct was clear.) But note, as Madison so accurately points out, the undertone to this case is that the injustice must indeed be shocking to be reversed.

- David Kelston-

¹ Hopeful this year was that the Court, in cases in which it did not hear argument, blocked a highly restrictive Alabama abortion statute from going into effect and sustained a lower court’s ruling blocking a Trump asylum policy, both with the Chief Justice joining the four more liberal justices.

The Citizenship Question

by *Madison Levin*

The Enumeration Clause of the Constitution specifies that the population is calculated by “adding to the whole Number of free Persons... three-fifths of all other Persons.” Racism was embedded in the United States Constitution and remains a part of our democracy and our legal system today, long after the offensive three-fifths language was amended. At the center of the current census controversy is the fundamental question: Who has the right to be counted? Census data determine the apportionment of representatives, the allocation of billions of dollars of federal funds, and the drawing of electoral districts. Undercounting a group of people decreases their political power and their access to resources. The consequences are severe and long lasting.

In March 2018, Secretary of Commerce Wilber Ross announced that, at the request of the Department of Justice (DOJ), he would include a citizenship question in the 2020 census. He stated that the DOJ requested the question because the citizenship data collected would help enforce the Voting Rights Act, particularly the ban on denying minority voters single-member districts so they can elect their preferred candidates.

The Census Bureau and other organizations predicted that including a citizenship question would lead to a decreased response rate from non-citizen families because they would fear the legal consequences if they disclosed their immigration status.

The issue before the Supreme Court was whether Secretary Ross’ stated reason for including a citizenship question on the census was pretextual. While the Court made it clear that it is not problematic for an agency head to enter office with policy ideas and create a legal basis for the preconceived policy, in this case the evidence illustrated not only that Secretary Ross wanted to incorporate a citizenship question on the 2020 census from the time he entered office, but also that he asked other agencies that had nothing to do with enforcing the Voting Rights Act to request census-based citizenship data. It was evident to the Court that Secretary Ross intended to include a citizenship question well before the DOJ requested it, and that he wanted to include it for some reason unrelated to the Voting Rights Act.

After finding Secretary Ross’ stated reason for including a citizenship question pretextual, the Court sent the issue back to

the Department of Commerce. With the deadline quickly approaching before the census has to be printed, it is unclear if there will be another attempt to justify a citizenship question.

Discussion as to what Secretary Ross’ true reason was for including a citizenship question was not included in the Court opinion. The blatant racism of intentionally undercounting Latinx communities was omitted. The blatant attempt to increase the power of one political party at the expense of an accurate census was omitted. However, a report that a Republican strategist wrote in 2015 came to light. It concluded that adding a citizenship question to the census would benefit Republicans. The strategist concluded that excluding non-citizens from the census “would be advantageous to Republicans and non-Hispanic whites,” and by design, disadvantageous to Democrats and the Latinx community. This same strategist drafted a portion of the letter to the DOJ claiming a citizenship question was needed in order to better enforce the Voting Rights Act.

Madison Levin is a 2nd year student at Columbia Law School; this summer she worked as Litigation Committee intern.

Rucho v. Common Cause: Partisan Gerrymandering

by *Joshua Lutts*

On June 27, 2019, the U.S. Supreme Court vacated two district court judgments that ruled partisan gerrymandering, one by Republicans in N. Carolina and the other by Democrats in Maryland, violated the Constitution. In Rucho, the 5-4 conservative majority held that partisan gerrymandering presented political questions that federal courts cannot reach.

In the consolidated case, Chief Justice Roberts wrote the opinion for the majority, and found that the role of the Court is to apply legal principles, leaving political questions for the other branches. He concluded that, while the courts will decide gerrymandering matters on issues of race, political gerrymandering can be found constitutional by analyzing the intent of the framers, citing the Elections Clause and several writings by the founders. Essentially, since partisan gerrymandering was something considered by the founders, said the majority, and because the Elections Clause is framed in a way that Congress has the power to adjust and interfere in the practice of the state legislatures, then it should be left to Congress and the state legislatures.

Additionally, Roberts found that, in partisan gerrymandering, there is no judicial standard that can be applied in all instances, as the concept of “fairness” in this context, he concluded, is illusive. He concluded that how one defines fairness will vary and that making every district competitive so every district has a fair shot of going either way is different than ensuring the delegates are proportional to the preferences of the people in the state. Roberts further concluded that the Constitution does not guarantee proportional representation at all, as that is not enshrined in the Constitution, and that the founders, for 50 years after ratification, used “general ticket” elections, which is essentially a winner-take-all method.

Justice Kagan, in her dissent, showed the failings of the majority’s logic. Kagan pointed out how partisan gerrymandering is essentially rigging elections, and, importantly, that the majority opinion does not disagree with this point. Kagan pointed out that the gerrymandering of today is unlike anything the founding fathers could have foreseen; what was once a mere hunch, models and

statistical data can now design maps that maximize the gerrymandering potential. Kagan also showed that it is possible to apply a “politically neutral” test through looking at each state’s own standards and determining whether the new districts violate them.

This majority’s holding essentially enshrines the ability to conduct partisan gerrymandering as a feature of American democracy, not a deficiency. For democracy to work, the majority must assume that the people in power will voluntarily relinquish their majority control. The Court also pointed to two other methods: direct ballot initiatives and utilizing the state courts. The former is only available in fewer than half of all states, but admittedly has shown some promise; the latter, while it has also shown some success, leads to an interesting question that Kagan addressed in the dissent: what do the state courts know that the Supreme Court doesn’t? If they can implement a neutral standard, why can’t the Supreme Court? Perhaps the majority just does not want to put in the work that would entail.

Josh Lutts is a 2nd year law student at Suffolk Law School.

Flowers v. All White Juries

by Madison Levin

When selecting a jury, the attorneys for both sides have the opportunity to peremptorily challenge prospective jurors, striking them from the jury without needing to provide an explanation. These challenges, however, are not without limits. In 1986, in the seminal case Batson v. Kentucky, the Supreme Court ruled that a State may not discriminate on the basis of race when exercising peremptory challenges. Batson set the rule that once a defendant has sufficiently alleged discrimination, the State must provide race-neutral reasons for each peremptory strike. Then the judge decides whether the reasons given are legitimate or pretextual. This is not a difficult standard for an attorney to meet: As the Supreme Court stated in Purkett v. Elem, the Batson rule “does not demand an explanation that is persuasive, or even plausible.”

In 1996, four people were murdered in Winona, Mississippi. Curtis Flowers, a black man, was accused of the crime and tried six times over two decades by the same white prosecutor. In a recent decision, Flowers v. Mississippi, the Supreme Court reversed Mr. Flowers’ most recent conviction due to overwhelming evidence that the prosecutor excluded black jurors because of their race.

Over the six trials, the prosecutor used 41 of his 42 peremptory challenges to strike black jurors. The

first three trials ended in convictions reversed on appeal. The fourth and fifth were mistrials, and the sixth, where the prosecution used five of its six peremptory challenges to exclude black jurors, ended in a conviction. A jury with one black juror convicted Mr. Flowers and unlike the previous cases, the Mississippi Supreme Court affirmed the decision. The U.S. Supreme Court, however, found a Batson violation and reversed the lower court decision.

The majority in Flowers listed several reasons that they found the prosecutor had discriminatory intent. There was the prosecutor’s using his peremptory challenges to strike 41 out of 42 prospective black jurors, while the prosecutor chose not to challenge a black juror in the sixth case. However, the Court suspected that he allowed this juror to be seated in order to obfuscate his racially discriminatory intent. In the sixth trial, the prosecutor disparately questioned prospective black jurors. He asked the five black jurors he struck a total of 145 questions. In contrast, he asked the 11 white jurors that sat on the jury a total of 12 questions. The increased investigation of prospective black jurors allowed the prosecutor to collect extensive data from which he could choose something to use as a pretext for excluding them. Finally, the prosecutor struck a prospective black juror for stated reasons that also applied to white jurors he did not strike.

The Supreme Court emphasized that they did not decide if any of these factors alone would substantiate a Batson violation. For example, the exclusion of the black juror who was similar to white jurors who were not challenged might be permissible in a different context, but in this case, with the overwhelming history of excluding black jurors, the Supreme Court was skeptical. As Justice Alito stated in his concurring opinion, this was a highly unusual case, likely the only case of its kind. If another prosecutor, in another case, in a larger jurisdiction, gave the same reasons for challenging black jurors, a court would not find discriminatory intent. Alito contended that this was true even if there were other discriminatory factors such as a disproportionate number of questions asked to that black juror. If it weren’t for the unusual case that provided six trials’ worth of blatant racism on the part of the prosecutor, Alito would not have ruled with the majority in this case.

In a system that depends too heavily on prosecutorial discretion and does not have any reasonable prosecutorial accountability, the Supreme Court set an almost impossible standard for proving racial discrimination in jury selection.

To see full version of Madison Levin’s two articles, go to NLG-Mass blog at www.nlgmass.org.

SOME OTHER CASES FROM LAST TERM OF INTEREST - BRIEF COMMENTS

CIVIL FORFEITURE

In Timbs v. Indiana, a unanimous Court, Ginsburg for the majority, Thomas concurring, limited police seizure of private property under the Eighth Amendment's excessive fines clause, which it applied to the states. Timbs had used a Land Rover to transport drugs, and the car's value was greatly in excess of what Timbs could have been fined.

DOUBLE JEOPARTY

Justices Ginsburg and Gorsuch dissented from Justice Alito's decision in Gamble v. U.S., which relied on the sovereignty exception to the Double Jeopardy Clause of the Fifth Amendment. While the exception had been questioned by Justices Ginsburg and Thomas in 2016 in Puerto Rico v. Sanchez Valle, in Gamble the Court affirmed the United States prosecution of Gamble on gun charges that resulted in a 46-month sentence, after Gamble was convicted of the same offense in state court where he was given a one-year sentence. While Justice Alito found the old English case laws "a muddle" – and they were the sole support for this exception to the Double Jeopardy clause – the majority still affirmed. Ginsburg and Gorsuch, in separate dissents, noted the inapplicability of cases brought by two separate nations (Ginsburg) and the fundamental unfairness of the majority's holding (Gorsuch).

SEX OFFENDER REGISTRATIONS

In Gordy v. U.S., the Court ruled against a sex offender convicted of failing to register with local authorities after his release. The case was argued before Justice Kavanaugh joined the Court, and it appeared the Court was split 4 to 4 before Justice Alito changed his vote, while he stated he would be willing to change his vote again if the matter came before the full 9-member Court. The issue was how much

authority Congress can delegate to the executive branch, specifically that portion of the 2006 Sex Offender Registration and Notification Act allowing the Attorney General to decide how broadly to apply it to persons who committed offenses before its enactment. Justice Kagan, joined by Justices Ginsburg, Breyer, and Sotomayor, affirmed the delegation of authority on the grounds that Congress must frequently give wide discretion to the executive branch. Justice Gorsuch challenged a law which he said gave vast discretion to the Attorney General to impose on some 50,000 all, some, or none of the statute's requirements. In a second sex offender case involving Andre Hammond, an Oklahoma man sentenced to thirty years in prison on child pornography charges, a judge found him guilty of violating his release and added five years to his sentence. Justice Gorsuch joined the liberal justices – and was assigned the opinion – holding that a jury, and not a judge, must find every fact beyond a reasonable doubt to determine criminal conduct.

1st AMENDMENT - SEPARATION OF STATE & CHURCH

In American Legion v. American Humanist Association, the Court, with only Ginsburg and Sotomayor dissenting, allowed a 40-foot cross honoring WWII soldiers to remain on government land. Justice Alito wrote that while the cross was "undoubtedly a Christian symbol," it had become in this case much more, a monument for "ancestors who never returned home" a "place in the community to gather." Maryland officials, in a particularly disingenuous piece of logic, argued the cross had a secular purpose and meaning.

Continued on page 11

NLG-Mass Chapter Sustainers

In the spring of 2003, the Massachusetts Chapter of the NLG initiated the Chapter Sustainer Program. Since its inception, the Program has been very successful and has been enthusiastically joined by the following NLG members & friends:

Anonymous • Patricia Cantor & Jeff Petrucelly • J.W. Carney • Howard Cooper • Melinda Drew & Jeff Feuer • Roger Geller & Marjorie Suisman • Lee Goldstein & Mark Stern • Benjie Hiller • Andrei Joseph & Bonnie Tenneriello • Martin Kantrovitz • Nancy Kelly & John Willshire-Carrera • David Kelston • John Mannheim • Jonthan Messinger • Hank Phillippi Ryan & Jonathan Shapiro • Allan Rodgers • Martin Rosenthal • Anne Sills & Howard Silverman • Judy Somberg

The Sustainer Program is one of the most important Chapter initiatives to secure its future existence. Please consider joining the Program.

NLG-Mass Chapter Sustainers are NLG members and friends who make a commitment to support the NLG Massachusetts Chapter with an annual contribution of \$500 or more (not including the NLG membership dues).

The NLG Sustainers receive:

- special listing in the Dinner Program;
- 1/8 page ad in the Dinner Program;
- acknowledgement in *Mass Dissent*;
- two (2) free raffle tickets for a Holiday Party raffle;
- invitation to special events.

There are three ways to become a sustainer:

- contribute \$500 or more a year (in addition to dues)
- pair up with another person and pay \$250 each, or
- join the "Guild Circle" and pay \$50/month or more.

If you are interested in learning more about the NLG-Mass Chapter Sustainer Program or if you would like to become a Sustainer, please contact our office at

617-227-7335 or nlgmass-director@igc.org.

SOME OTHER CASES FROM LAST TERM OF INTEREST - BRIEF COMMENTS

Continued from page 10

1st AMENDMENT - FREE EXPRESSION

In Iancu v. Brunetti, the six-member majority (Ginsburg, Gorsuch, Kagan, Kavanaugh, Alito, and Thomas) struck down a federal law barring registration of "immoral" or "scandalous" trademarks. Justice Kagan wrote the opinion for the majority, which concerned a clothing brand name "Fuct," holding that the law was unconstitutional because it favored "certain ideas." Justice Alito, in a concurring opinion, wrote "viewpoint discrimination is poison to a free society." Note: all nine justices agreed that the ban on "immoral trademarks" was unconstitutional, but Justices Roberts, Breyer, and

Sotomayor thought the ban on scandalous trademarks could survive if narrowly interpreted.

A FINAL THOUGHT

Shifting alliances and shifting coalitions made this a difficult term to predict. Considering the current make-up of the Court, that may be the most we can hope for.

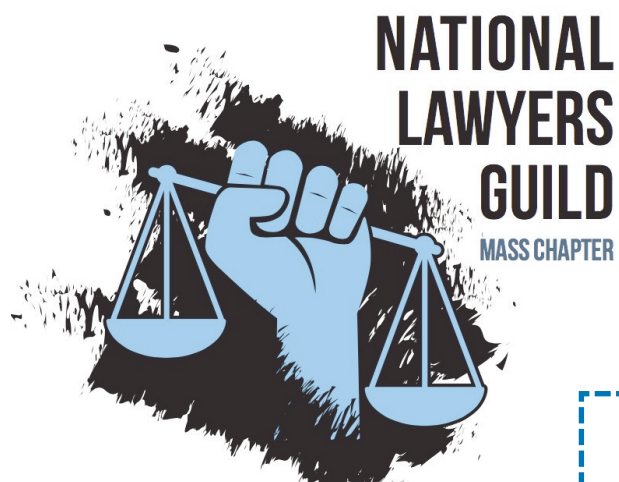
David Kelston is a law partner at Adkins Kelston & Zavez in Boston. He is the NLG-Mass Chapter Treasurer and also serves of the Chapter Board of Directors.

Mass Dissent

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Preamble to the Constitution of the National Lawyers Guild

WE NEED YOUR SUPPORT!

The NLG-Mass Chapter provides legal representation and assistance to the **radical and progressive** movements.

Please help by donating to the Mass Chapter by sending this form and a check to
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I, _____ (name), am donating \$ _____ to the
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over \$80,000 to \$90,000	\$400
over \$100,000	\$500

* Any **new** member who joins after September 1 will be carried over to the following year. Dues may be paid in full or in quarterly installments. Dues of \$80 cover the basic membership costs, which include publication and mailing of *Mass Dissent* (the Chapter's bi-monthly newsletter), national and regional dues, and the office and staff.

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