

# *Civil Rights Monitor*

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# *Acknowledgements*

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## *Turning Out for 2016 and the Policy Fights Beyond*

### **Wade Henderson Commentary**

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Last year was an important year for civil and human rights.

Historic Supreme Court decisions made marriage equality a reality, upheld the Affordable Care Act, and reaffirmed the use of disparate impact analysis in civil rights claims. Congress passed, and President Obama signed, a bill to reauthorize The Elementary and Secondary Education Act, the nation's primary federal education law. A two-year budget deal ended the sequester and took budget fights off the table until the next administration. The Obama administration capped exorbitant in-state rates and fees for phone calls to and from prisons. Loretta Lynch was finally confirmed as U.S. Attorney General, becoming the first Black woman to lead the Department of Justice.

All of this came at a time when political polarization, hyperpartisanship, and obstruction continue to remain a stubborn feature of our national politics, slowing to a trickle the routine business of nominating and confirming judges for our federal courts and knocking comprehensive immigration reform off the legislative agenda despite widespread public support.

We certainly live in interesting times!

To have had the year we had in 2015 is an important reminder of what is achievable against even the worst odds. We should strive to continue the momentum that 2015's successes provide us as we head into 2016 and a very important national election.

As concerns about the treatment of communities of color in the criminal justice system continue to grab headlines, we must continue our work to turn public outrage into policy wins. While deployment of body worn cameras (with appropriate civil rights safeguards) is an important down payment on the systemic reforms needed to ad-

dress this national crisis, advocates believe it will take a much greater investment in community policing and an outright ban on profiling to drive the significant changes necessary to reform law enforcement. At the other end of the justice spectrum we have seen movement on an important bipartisan piece of criminal justice reform. In 2016, Congress will likely vote on major sentencing reform legislation. Sentencing reform bills passed both the House and Senate Judiciary Committees in 2015 with bipartisan support.

Efforts to address some of our biggest challenges—on job creation and on immigration, to name a few—are likely to remain long-term organizing efforts that will require the coalition's most creative, strategic, and visionary thinking to build the public and political will needed to prompt federal action.

In particular, this year will be an important year for voting rights. Unless Congress acts, 2016 will see the first presidential election in 50 years without the full protection of the Voting Rights Act. So the work that we will do to register and engage voters, to protect the vote at polling places across the country, and to document any and all mischief that is sure to occur in 2016 will be more important than ever. In order to make the case for a restored Voting Rights Act and legislation to modernize and reform our election systems, advocates must continue to tell the story of how voting in this country is more burdensome, discriminatory, and unfair than it should be.

And, most importantly, our civic engagement work must be intricately tied to the goals that we have for policy advancement in 2017 and beyond. It is our job to ensure that voters—both new and old—understand that casting a ballot in November is just the beginning of our collective journey toward justice. We must help them to

understand how they can help to meaningfully engage in the fights that will come with the next administration and new policymakers at the local and state level.

If we've learned anything in the seven years of the Obama administration, it's that the engagement of our communities is vital to our success in Washington. From rallies in the streets to Twitter storms on social media; from the Black Lives Matter movement to the campaign for a living wage; from immigration reform activists advocating on behalf of aspiring Americans to LGBT Americans and Muslims, Arabs, and Southeast Asians engaged in a fierce fight against bigotry, discrimination, and exclusion—we see this advocacy all around us.

As we embark upon the last year of President Obama's term, let us take up the challenge that the great icon, Hubert H. Humphrey, put before us: "This, then, is the test we must set for ourselves; not to march alone but to march in such a way that others will wish to join us."

*Wade Henderson is the president and CEO of The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

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# *Ensuring Civil Rights in Education: The Long Road to Reauthorizing the Elementary and Secondary Education Act*

**Josh Porter**

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Civil rights advocates have long fought to ensure a high-quality education for all students, particularly students of color, low-income students, English learners, and students with disabilities. The role of federal policy has been critical to that fight, especially since the passage in 1965 of the Elementary and Secondary Education Act (ESEA).

In 2015, parents, teachers, advocates, and members of Congress on both sides of the aisle agreed the time had come to reauthorize ESEA, which had gone for years without a substantial update. But in that time, the debate over the degree to which the federal government could intervene when states or school districts were failing to comply with federal civil rights laws had intensified, complicating efforts to rewrite the law so that it would continue to hold states, school districts, and schools accountable for protecting the rights and interests of vulnerable and disadvantaged students.

In 1965, President Lyndon B. Johnson envisioned the original ESEA as a step in fighting the “War on Poverty.” ESEA was developed in response to the demands of communities during the civil rights movement that the federal government do more to address poverty and limited educational opportunity for people of color. ESEA served as a landmark moment for the civil rights movement, representing a federal recognition of the need to give every student the tools necessary to become college- and career-ready, equipped with the ability to compete in a global economy.

ESEA was last reauthorized in 2002 and signed into law by President George W. Bush as the No Child Left Behind Act (NCLB). The law was centered on the belief that without a way to hold systems accountable for student outcomes, the same systems that have long denied equal opportunity to low-income children, children with disabilities, children of color, and children learning

English as a second language would continue to operate in that way.

NCLB’s accountability requirements forced states, school districts, and schools to do the right thing and educate every student, producing some positive outcomes. According to The Education Trust:

- In 1996, 73 percent of African-American students were considered below proficient in fourth-grade math. In 2013, that number dropped to 34 percent.
- In 1996, 61 percent of Latino students were considered below proficient in fourth grade math. In 2013, that number dropped to 27 percent.

However, much work remained to be done. For instance:

- According to the U.S. Department of Education, only 20 percent of Latino 4<sup>th</sup> graders were reading on grade level in 2013.
- African-American students are three times more likely to be suspended than their White counterparts, according to the department.
- African-American and Latino students with disabilities experience among the highest rates of school disciplinary actions and lowest rates of high school graduation, according to the National Center for Learning Disabilities.
- Districts that serve predominately minority students receive approximately \$1,100 less per student than districts that serve predominately White students, according to The Education Trust.

Given the stakes involved with reauthorizing ESEA, the civil rights community recognized the need to act quickly to collaborate and develop field, policy, and communications strategies aimed at creating the best bill possible to protect vulnerable students.

### Strength in Coalitions

Shortly after Sen. Lamar Alexander, R. Tenn., chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee, and Rep. John Kline, R. Minn., chairman of the House Education and Workforce Committee, announced plans in early 2015 to reauthorize ESEA, The Leadership Conference on Civil and Human Rights convened dozens of civil rights and education groups to ensure that Congress would maintain ESEA's legacy as a civil rights law by ensuring key provisions protecting the rights of vulnerable students would be included. Throughout the year, the coalition grew to 47 diverse organizations including traditional civil rights groups, education reform organizations, disability rights groups, and many others. The core principles of the coalition centered around equity in student outcomes, equity in student opportunity, improved data collection and reporting about all groups of students, and sufficient authority for the U.S. Secretary of Education to enforce the law and hold states and districts accountable for requirements in the law.

In addition to the civil rights coalition, a smaller coalition came together to include civil rights groups, the Business Roundtable, and U.S. Chamber of Commerce. The agenda of the Business/Civil Rights coalition was based on a narrower—but overlapping—policy agenda, including preserving statewide annual assessments and holding schools and school districts accountable.

### Rewrites Reach the House and Senate

Working through these coalitions, organizations fought to include the civil rights priorities into the reauthorization. In the House, Rep. Kline's bill, the Student Success Act, represented a partisan bill that was largely divergent from the requests of civil rights groups. Most notably, the bill did not have requirements for aligning standards to college and/or career readiness, requirements for states to take action to address disparities, or caps on alternative assessments for students with disabilities, among several other important areas for ensuring equitable access to education. With civil rights groups opposing the bill and supporting a substitute offered by Rep. Bobby Scott, D. Va., the ranking member of the Education and Workforce Committee, the Student Success Act passed by only five votes with only Republicans voting in support.

In the Senate, Sen. Alexander and Sen. Patty Murray, D. Wash., ranking member of the HELP Committee, took a different route, compromising on language intended to represent a bipartisan approach. The compromise bill represented a stronger version of ESEA that was more aligned with the principles of the coalitions. The Senate version, called the Every Child Achieves Act, included protections for English learners and students with dis-

abilities that were lacking in the House bill. However, the civil rights coalition had four major concerns with the Senate bill:

- Weak provisions for holding states accountable for student outcomes;
- No provisions requiring schools to report disaggregated data about Asian American students or about groups of students that could be cross-tabulated;
- No provisions for how states should address resource equity between and among schools; and
- Restrictions on secretarial oversight and enforcement power.

Despite the coalition's misgivings about the Every Child Achieves Act, the bill passed the Senate with overwhelming bipartisan support. But with strong votes on amendments involving accountability, resource equity, and data, the civil rights community and the business community were able to influence the bill so that it was ultimately stronger.

### Final Passage

Months after ESEA reauthorization bills passed out of both chambers of Congress, a conference committee was announced, providing renewed opportunity for The Leadership Conference to influence the final bill. Through policy, research, communications, and field support, The Leadership Conference continued to inform and educate its partners in the field and the civil and human rights coalition on the educational issues that should be addressed in the final bill. At the forefront of the policy agenda were the four concerns that were identified in the Senate bill. At the end, while the four priorities were not included completely, the final bill, the Every Student Succeeds Act (ESSA), was generally considered to be better than not reauthorizing ESEA and leaving the Department of Education's waivers in place.

On December 10, President Obama signed ESSA into law. As advocates look toward the future implementation of this law, and engage in renewed education advocacy efforts, the process since January 2015 will serve as a prime example of what can be achieved through diverse, inclusive, and community-connected coalitions.

*Josh Porter is a policy analyst for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

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# *Criminal Justice Reform Efforts Pick Up Steam*

**Paul-Winston Cange**

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Though police abuse has long existed as part of life in marginalized communities, issues of policing—from racial profiling, excessive use of force and police shootings, civil asset forfeiture, and police-worn body cameras—received considerable attention in 2015. So, too, did the issue of harsh sentencing laws and mass incarceration. In fact, throughout the year – including at the NAACP’s annual convention in July, during one of his weekly addresses in October, and at a speech in Newark, N.J., in November – President Obama repeated one statistic: The United States has 5 percent of the world’s population, but 25 percent of its prison population.

While there was some movement on criminal justice legislation in Congress, including a bill that would ease the re-entry process by implementing fair chance hiring policies and a bipartisan sentencing and prison reform bill, the administration was the source of much of the year’s reform.

## **Administrative Action**

Obama made history by granting 46 commutations in July to nonviolent drug offenders and 95 more in December (and two pardons), the latter marking the highest number of commutations he has granted at one time and more than doubling his total. Obama has now granted 184 commutations, which is more than the last five presidents combined. Wade Henderson, president and CEO of The Leadership Conference, said that the July commutations send “an unmistakable message to the nation that we desperately need reforms to our inhumane, discriminatory, and costly criminal justice system.”

A day later, Obama supported one of those desperately needed reforms when he endorsed “ban the box” policies during his NAACP convention speech. It was also the week he became the first sitting president to visit a federal prison. Obama’s leadership in commuting the

overly harsh and outdated sentences of these individuals was important, but senseless obstacles to re-entry remain, including barriers to securing housing, financial aid for college, voting, and employment.

Throughout the year, advocates across the country pushed Obama to issue an executive order and presidential memorandum that ensures that both federal agencies and federal contractors implement fair hiring practices, by removing the question of criminal history from employment applications, delaying the background check until a conditional offer has been made, and ensuring compliance with the Equal Employment Opportunity Commission guidance for handling background checks in employment. More than 200 organizations and individuals, including activist Van Jones and actor Danny Glover, sent Obama a letter urging the executive action. Obama also received letters from 27 senators and more than 70 members of the House with the same ask.

In November, during an event in Newark, N.J., Obama announced a series of measures designed to help the re-entry process for formerly incarcerated people, including one that will open up federal employment opportunities. Obama directed the Office of Personnel Management to explore modifying its rules to delay criminal history inquiries until later in the hiring process, and he also called on Congress to pass the Fair Chance Act, a bipartisan bill to help people with records obtain employment that passed unanimously out of the Senate Homeland Security and Governmental Affairs Committee in October. While Obama’s action was a good first step, it fell short of the executive order for which advocates had pushed.

## **Some Progress in Congress**

Throughout 2014, lawmakers expressed interest in addressing the discrimination that persists at every stage of the justice system, from policing, to trial, to sen-

tencing and re-entry, as well as reducing rising federal prison costs, which led to several promising developments in 2015.

In April, Sen. Ben Cardin, D. Md., and Rep. John Conyers, D. Mich., reintroduced the End Racial Profiling Act (ERPA) to prohibit profiling by federal, state, local, and Indian tribal law enforcement authorities on the basis of race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation. On the day of ERPA's introduction, Henderson said that "Racial profiling robs people of their dignity, undermines the integrity of our criminal justice system, and instills fear and distrust among members of targeted communities." The inclusion of gender, gender identity, and sexual orientation was new in the 2015 version of ERPA and mirrored the Department of Justice guidance released in December 2014.

In July, Sen. Rand Paul, R. Ky., and Rep. Tim Walberg, R. Mich., introduced the Fifth Amendment Integrity Restoration (FAIR) Act, which would protect the rights of property owners in asset forfeiture proceedings by ending the federal equitable sharing program, establishing reporting requirements for Department of Justice asset seizures, and ensuring that owners have the opportunity to receive representation in asset forfeiture proceedings. It would also restore the principle of "innocent until proven guilty" by placing the burden of proof on the government to show that a property owner consented to his or her property being used in a crime.

By the end of the year, the bipartisan FAIR Act had gained only five cosponsors in the Senate and 90 in the House. ERPA had 23 cosponsors in the Senate and 99 in the House. Neither received a hearing in either chamber despite strong public support for addressing both issues. According to polling released in October 2015 by The Leadership Conference Education Fund and Anzalone Liszt Grove Research, more than 60 percent of Americans oppose communities of color being disproportionately targeted by police surveillance, and a strong majority support banning racial profiling by local and federal law enforcement. And after Americans hear a description of civil asset forfeiture laws, 74 percent support legislation that would reform them.

But the legislation that Congress spent the better part of the year working on came later in the year. On October 1, a bipartisan group of senators—including Sens. Chuck Grassley, R. Iowa; Dick Durbin, D. Ill.; Patrick Leahy, D. Vt.; Sheldon Whitehouse, D. R.I.; John Cornyn, R. Texas; Mike Lee, R. Utah; Chuck Schumer, D. N.Y.; Cory Booker, D. N.J.; Lindsay Graham, R. S.C.; and Tim Scott, R. S.C.—introduced the Sentencing Reform and Corrections Act of 2015, a major criminal justice reform package aimed at reducing some manda-

tory minimum sentences for nonviolent people who were convicted of drug offenses and curbing recidivism. In addition to applying the Fair Sentencing Act of 2010 retroactively—a law that decreased the sentencing disparity between powder and crack cocaine offenses—the bill also provides for prison reform based on the CORRECTIONS Act, a Cornyn-Whitehouse proposal that allows some currently incarcerated people to qualify for early release through participation in recidivism reduction programs.

On October 22, the Senate Judiciary Committee advanced the bill by a 15-5 vote. In a letter to the committee in advance of the vote, The Leadership Conference called the legislation "an important first step toward addressing some of the causes of the unsustainable and unnecessary growth in the federal system as well as the racial disparities that have persisted."

In the House, another bipartisan group of lawmakers—including Reps. Bob Goodlatte, R. Va.; John Conyers, D. Mich.; Sheila Jackson Lee, D. Texas; Raul Labrador, R. Idaho; Mike Bishop, R. Mich.; and Judy Chu, D. Calif.—introduced the Sentencing Reform Act of 2015 to reform federal sentencing. The House version of the bill did not include the Cornyn-Whitehouse CORRECTIONS Act piece, and passed out of the House Judiciary Committee on November 18.

Neither bill made it to the floor in 2015 and, with a limited congressional schedule in 2016 due to the presidential election, advocates are highlighting the urgency for swift movement on sentencing reform.

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## *In Historic Year, Congress Fails to Act on the Voting Rights Act*

### **Patrick McNeil Commentary**

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When Congress failed to act in 2014 to restore the protections of the Voting Rights Act (VRA) in the wake of 2013's *Shelby County v. Holder* Supreme Court decision, advocates were understandably irritated. When Congress arguably took even less action in 2015, 50 years after it was initially signed into law, irritation turned to outrage—and with the 2016 elections looming, this outrage took on increased urgency.

The outrage started early. On January 14, House Judiciary Committee Chairman Bob Goodlatte, R. Va., who decides which issues the committee considers, said that restoring the VRA wasn't "necessary" and that the law still had "very, very strong protections." Nevertheless, Rep. James Sensenbrenner, R. Wisc., re-introduced the Voting Rights Amendment Act (VRAA) the following month. Despite bipartisan support for the bill, which was first introduced in January 2014, the House has never held a hearing on it. Thirteen Republicans have signed on to the bill so far in the 114<sup>th</sup> Congress. In the 113<sup>th</sup> Congress, there were 11.

Less than a month after the VRAA's reintroduction, the nation commemorated the 50<sup>th</sup> anniversary of Bloody Sunday, when voting rights foot soldiers were beaten on the Edmund Pettus Bridge in Selma, Ala., during a 1965 march that would lead to the passage of the VRA later that year. For the 15<sup>th</sup> year, Rep. John Lewis, D. Ga., who nearly died on Bloody Sunday, led a congressional delegation on a pilgrimage to Selma. During President Obama's remarks that day, he acknowledged that delegation.

"One hundred members of Congress have come here today to honor people who were willing to die for the right to protect it. If we want to honor this day, let that hundred go back to Washington and gather four hundred more, and together, pledge to make it their mission to restore that law this year," Obama said. "That's how we honor

those on this bridge." Sitting next to First Lady Michelle Obama on stage was President George W. Bush, who signed the VRA's last reauthorization in 2006.

More than three months later, congressional Democrats began answering Obama's call. On June 24, Sen. Patrick Leahy, D. Vt., and Rep. Terri Sewell, D. Ala., who represents Selma, introduced the Voting Rights Advancement Act of 2015—which recognizes that changing demographics require tools to protect voters nationwide, especially voters of color, voters who rely on languages other than English, and voters with disabilities. It also requires that jurisdictions make voting changes public and transparent.

The following day marked two years since the *Shelby* decision. It also marked one year since Leahy, then chairman of the Senate Judiciary Committee, held a hearing on voting discrimination.

Hundreds of activists in Roanoke, Va., in addition to advocates from surrounding areas, rallied near Goodlatte's local office to demand he take action in the House on voting rights. With broad coverage of the event, Goodlatte knew advocates were watching. Two and a half months later, in an interview with *The Hill*, he said that on voting rights, "We're trying to move forward, to move ahead, and make sure there is not discrimination." It was a nice sentiment, but in 2015 he's made no efforts to do that.

Meanwhile, voting rights advocates continued to use the remaining provisions of the VRA to challenge discrimination in states around the country. In July, a North Carolina voting law—signed in 2013 within weeks of the *Shelby* decision—was on trial for two weeks in federal court. The law, challenged under Section 2 of the VRA, contains a strict photo ID provision, ends same-day voter registration, cuts early voting, ends preregistration for 16- and 17-year-olds, and ends the practice

of counting votes out of precinct. The case could end up before the U.S. Supreme Court, and would have sweeping consequences for voting rights nationwide.

Just five days after closing arguments in the North Carolina case, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit unanimously ruled that Texas's strict photo ID law had a "discriminatory effect," in violation of the VRA, and sent it back to a lower court to fix. The law, which had been blocked under the preclearance process, was revived the very same day in 2013 the Court struck down preclearance in *Shelby*. A few weeks after the panel's decision, Texas appealed the decision to the full Fifth Circuit in New Orleans.

On August 6, the nation commemorated the 50<sup>th</sup> anniversary of President Johnson signing the VRA. Activists made #VRA50 trend nationally on Twitter throughout the day. Towns across the country held special events to honor the day. And in Washington, D.C., Obama, Lewis, and U.S. Attorney General Loretta Lynch—joined by civil rights and voting rights advocates—gathered in the White House to reflect on what the United States has accomplished since 1965. Obama's remarks were also forward-looking.

"One order of business is for our Congress to pass an updated version of the Voting Rights Act that would correct some of the problems that have arisen," he said. "John Lewis is ready to do it. There's legislation pending. There are people of goodwill on both sides of the aisle who are prepared to move it. But it keeps on slipping as a priority. Part of the reason we're here is to reaffirm to members of Congress, this has to be a priority. If this isn't working then nothing is working. We've got to get it done."

On the same day, The Leadership Conference sent separate letters to Goodlatte, then-House Speaker John Boehner, and House Majority Whip Steve Scalise, calling their failure to act on voting rights "a disappointing abdication of your responsibility to the Congress and to the nation."

In September, Leahy's Voting Rights Advancement Act gained its first Republican cosponsor: Alaska's Lisa Murkowski. Like many of her Republican colleagues who were in the Senate at the time, Murkowski had voted to reauthorize the VRA in 2006 for 25 years.

"The Voting Rights Act of 1965 brought an end to the ugly Jim Crow period in American history," Murkowski said in a statement announcing her co-sponsorship. "It is fundamentally important in our system of government that every American be given the opportunity to vote, regardless of who they are, where they live, and

what their race or national origin may be." Murkowski's co-sponsorship brought welcome bipartisan support to a bill that—in both chambers of Congress—had until then been supported only by Democrats.

By the end of 2015, the House had new leadership. After Boehner's departure from his Speaker role—and from Congress entirely—Rep. Paul Ryan, R. Wisc., became Speaker on October 29. Ryan had traveled to Selma in 2003 as part of Lewis's congressional pilgrimage, saying at the time he was "excited about learning more about the civil rights movement's history and reflecting on its immense significance." In his new position to date, he's shown no interest in the VRA's restoration.

When Congress adjourned for the year, the Voting Rights Advancement Act had 41 cosponsors in the Senate and 157 in the House. Murkowski remained the lone Republican supporter. And despite North Carolina's high-profile case and the ruling in Texas, neither chamber of Congress, both controlled by Republicans, held a hearing to investigate voting discrimination in the VRA's 50<sup>th</sup> year. If Congress fails to restore the VRA before November's election, it will be the first presidential election in 50 years without the law's full protections.

*Patrick McNeil is the digital communications associate at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*



Citizens marching in Roanoke, Virginia, in support of restoring the Voting Rights Act.



Leadership Conference President and CEO Wade Henderson fires up the crowd in Roanoke, Virginia.

## *A Step Forward on the Road to Transportation Equity*

**Julie Faust**

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After years of stop-gap measures and short-term funding extensions that hindered long-term planning and frustrated local governments, businesses, and transportation advocates alike, Congress finally passed a long-term national transportation spending bill in 2015. On December 4, President Obama signed into law the Fixing America's Surface Transportation (FAST) Act, a five-year, \$305 billion transportation bill to address the nation's lagging infrastructure and deficient transit systems.

The first long-term federal transportation spending package in a decade, the bipartisan FAST Act provides much-needed stability to America's surface transportation system. The law ends the pattern of uncertainty and last-minute funding fixes that kept the Highway Trust Fund teetering on the edge of insolvency in recent years, and advocates believe the new law will help put Americans to work on long-term infrastructure projects.

Access to transportation is a civil rights issue because it provides a crucial link to opportunity, connecting us to jobs, affordable housing, health care, schools, and child care. As part of a national, long-term study, researchers at Harvard found that commute times were a crucial predictor of upward social mobility: families living in areas with shorter commute times had a better chance of moving up the economic ladder than those living in areas with longer average commute times. In short, transportation can be a powerful tool in fighting poverty. However, many of the most vulnerable Americans—people of color, low-income communities, and people with disabilities—face significant barriers to accessing reliable transportation. For low-income communities, a lack of efficient transportation can be an insurmountable barrier to accessing jobs and building better lives for themselves and their children.

For these communities—especially those that are transit-dependent—the FAST Act's increased funding for transit

is absolutely crucial. Also welcomed by the civil and human rights coalition is the FAST Act's reauthorization of the Disadvantaged Business Enterprises program, and its \$7.5 million in annual grant funding for states to collect data on racial profiling.

Advocates note that the FAST Act is, however, far from perfect. Funded by piecemeal sources, the law fails to include a long-term, sustainable transportation funding solution. By not including any new performance measures, the law also freezes in place for five years a transportation system that does not measure connectivity or how transportation decisions and investments actually play out in access to jobs for low-income people.

Equitable implementation of transportation investments can transform communities, unleash untapped human potential, and promote local economic development to allow all people to thrive. When transportation funding decisions are driven by equity, the nation can build a transportation system that works for everyone, regardless of income, race, or ZIP code. Thus, while securing a long-term transportation funding law is great progress, for advocates, the work is far from over.

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# *A Busy Year for Federal Economic Security Policy*

**Emily Chatterjee**

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While budget and appropriations battles that threaten the well-being of low-income families may reoccur in 2016, 2015 was a year of many advances in ensuring the economic security of the most vulnerable Americans.

## **The Federal Budget**

Perhaps the most prominent issue in economic security last year was the battle over the federal budget. The budget resolution offered by Congress in 2015 proposed cutting \$5 trillion from Medicaid, SNAP/food stamps, child care, Head Start, transportation, housing, and other programs relied on by low-income people. Advocates for low-income communities strongly opposed the budget, as did the White House.

Congress previously had passed the Budget Control Act of 2011 (BCA), which required dramatic cuts in federal spending for both defense and non-defense discretionary spending (“the sequester”) to help reduce the federal deficit, and which the government is still bound to follow. However, in 2015, many members of Congress expressed opposition to continued cuts to discretionary spending for defense programs, citing the need for military readiness. They instead proposed a legislative workaround to continuing cuts on the military side using the Overseas Contingency Operations (OCO) fund. Advocates for non-defense discretionary spending, which includes funding for programs like the National Institutes of Health, Head Start, and law enforcement initiatives, were alarmed by the prospect of relief for spending caps on the defense side without similar relief for domestic programs, including for programs on which low-income families depend.

After a standoff on the budget for many months, ultimately congressional leadership and the administration came together in October to pass the Bipartisan Budget Act of 2015 (BBA), which eliminated the sequester and averted dramatic cuts to spending that would have

disproportionately hurt low-income people. In December, President Obama signed a \$1.15 trillion omnibus appropriations bill into law.

## **Social Security Disability Insurance**

The BBA also included a resolution to provide funding for the Social Security Disability Insurance (SSDI) program. SSDI is an integral part of the Social Security system and is an economic lifeline that protects working people and their families from dire financial hardship in the event that a family breadwinner becomes disabled. Today, more than 150 million Americans are covered by the program, and poverty rates are about twice as high for SSDI recipients—even after taking their SSDI benefits into account—as for others. Overall, about one-fifth of all working families with disabilities are poor, and without SSDI nearly half would be poor, according to the Center on Budget and Policy Priorities.

Prior to enactment of the BBA, it was projected that the SSDI fund reserves would be depleted at the end of 2016. At that point, revenue coming into the system would cover only about 80 percent of benefits owed to current and future SSDI beneficiaries. Today, as a result of federal action, the SSDI program remains solvent and full benefits continue to be paid to recipients. The BBA reallocated funding for SSDI benefits so that full disability benefits will be paid until late 2022, at which point the SSDI trust will again confront an inability to pay full benefits.

## **EITC and CTC**

The Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) are federal tax credits that supplement the incomes of low- and moderate-income families, including military families. Both tax credits are eligible only to people who are working. In 2009, Congress passed several expansions to the EITC and the CTC that increased eligibility for the credit. These expansions, however,

were set to expire at the end of 2017 unless extended or made permanent.

At the end of 2015, Congress passed, and President Obama signed into law, a \$622 billion series of tax breaks, which included a permanent extension of the expansions to the EITC and the CTC. The new law prevented approximately 50 million Americans (half of whom are children) from losing all or part of their access to these tax credits. Without the extensions, 2 million African-American families would have lost an average of about \$1,000 each, about 5 million Latino working families would have lost an average of about \$1,000 each, and 800,000 Asian American working families would have lost an average of about \$800 each.

Even with the new law, the EITC has only limited coverage for low-wage working people without children and non-custodial parents. This cohort of almost 8 million working people does not receive significant tax relief through the EITC. A childless adult working full time at the minimum wage (and earning \$14,500) faces a substantial tax burden, yet receives an EITC of just \$23. Advocates for low-income working people continue to push for expansion of the EITC to childless adults.

### **Federal Minimum Wage**

In April 2015, Sen. Patty Murray, D. Wash., and Rep. Bobby Scott, D. Va., introduced the bicameral Raise the Wage Act, which would:

- raise the federal minimum wage to \$12.00 by 2020 (by \$0.75 to \$8.00 an hour the first year, then in annual increments of a dollar each year for the next four years);
- set automatic increases to the federal minimum wage beginning in 2021 to keep pace with rising wages overall; and
- gradually phase out the subminimum wage for tipped workers.

The federal minimum wage was last raised to \$7.25 an hour in 2009, while the tipped minimum wage has been frozen at \$2.13 per hour for more than 20 years.

In October 2015, The Leadership Conference Education Fund and The Georgetown Center on Poverty and Inequality published “Raising Wages, Reducing Inequality, Sustaining Families: Why raising the minimum wage is a civil and human rights issue,” a report that explains why raising the minimum wage remains essential for advancing civil and human rights today. With African Americans, Hispanics, women, LGBT individuals, and other disadvantaged groups disproportionately represented among low-wage working people, these indi-

viduals would disproportionately benefit from a higher minimum wage.

Despite widespread support for raising the minimum wage and action in a number of states and localities to raise their local minimum wages, the Raise the Wage Act did not get a floor vote in either the Senate or House of Representatives last year.

*Emily Chatterjee is senior counsel at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights and focuses on economic security and transportation equity.*

## *Senate's Obstruction of Executive and Judicial Nominees Reaches New Levels*

**Patrick McNeil**

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When Senate Republicans in the 113<sup>th</sup> Congress, then in the minority, filibustered President Obama's three nominees to fill vacancies on the D.C. Circuit Court, it was hard for advocates to imagine that the obstruction of his nominees could get any worse. But after the midterm elections in November 2014 gave Republicans control of the chamber, their efforts to block highly qualified executive and judicial nominees reached historic levels.

### **The Fight to Get Loretta Lynch Confirmed**

In November 2014, four days after Republicans captured control of the U.S. Senate, Obama nominated U.S. Attorney Loretta Lynch to serve as Attorney General. Lynch's nomination was significant: While outgoing Attorney General Eric Holder made history by becoming the first African American to hold the position, Lynch would become the first African-American woman to serve as the nation's top law enforcement official.

The Senate held a two-day confirmation hearing on Lynch's nomination in late January 2015. The first day lasted nearly eight hours, and Lynch was the sole witness.

In a letter to the Senate Judiciary Committee ahead of the hearing, The Leadership Conference urged Lynch's swift confirmation. "Support for Ms. Lynch's nomination is bipartisan, broad, and far reaching. Former New York City Mayor Rudy Giuliani, New York Police Commissioner William Bratton, Former FBI Director Louis Freeh, and countless others support Ms. Lynch's nomination," the letter stated. "In addition, the Senate unanimously confirmed her on two occasions to be the U.S. Attorney for the Eastern District of New York, a district that handles a wide variety of some of the most complex, diverse, and important cases in our country."

Nearly one month later, Lynch advanced out of committee with the support of every Democrat and three Repub-

licans: Senators Orrin Hatch of Utah, Lindsey Graham of South Carolina, and Jeff Flake of Arizona. Sen. Thom Tillis, R. N.C., voted against Lynch, and Sen. Richard Burr, R. N.C., released a statement later in the day saying he would oppose her nomination when the full Senate considered it. The Leadership Conference condemned their opposition, saying Tillis and Burr, Lynch's home state senators, should be ashamed of themselves and that they "have failed an important test of statesmanship and their constituents should be outraged."

After more delays to her vote in March, Wade Henderson, president and CEO of The Leadership Conference, released a statement saying that "The Senate Republican leadership has mishandled the Lynch nomination in every way conceivable. Thanks to Mitch McConnell, this trial by ordeal has moved from the ridiculous to the absurd." The delays were unrelated, and had nothing to do with Lynch's qualifications: McConnell, the Senate majority leader, was refusing to bring Lynch's nomination to the floor until the Senate passed an unrelated human trafficking bill.

In April, on the five-month anniversary of her nomination, The Leadership Conference urged an immediate vote. While Obama's nomination of Lynch was history in the making, by the five-month mark, Senate Republicans, not to be outdone, made history of their own. By that time, Lynch had waited longer than the last seven attorney general nominees combined. Henderson's message was clear: "Lynch, and our country, deserve better than this."

When Lynch was finally confirmed later that month, every Democrat and 10 Republicans voted to confirm her—including McConnell, who had delayed the vote for months. Holder, who almost seven months to the day had announced he would be stepping down, finally had a successor.

### **The Obstruction Continues on Judges**

Four days after Obama nominated Lynch, he nominated a U.S. District Judge in the Eastern District of Pennsylvania named Luis Felipe Restrepo to serve on the U.S. Court of Appeals for the Third Circuit. Restrepo had been unanimously confirmed by the Senate in 2013 and had the support of both his home state senators.

Restrepo's nomination languished for more than a year until he was confirmed (82-6) on January 11, which was part of a deal made by senators in December. But the slow-walking of his nomination became symbolic of a year that saw the fewest judicial confirmations—just 11—since 1960. Only one circuit court judge was confirmed the entire year, the lowest total since none were confirmed in 1953. And throughout 2015, the number of vacancies kept climbing higher. By January 1, 2016, there were 70 vacancies. Judicial emergencies shot up from 12 to 31—an increase of nearly 160 percent. When George W. Bush was in the seventh year of his presidency and Democrats controlled the Senate, the number of vacancies actually decreased from 56 to 43. Obama has not been as lucky.

By the end of 2015, 14 nominees were left pending on the Senate's executive calendar. All 14 had been advanced out of the Senate Judiciary Committee unopposed, and they represented a diverse set of nominees, for which Obama has become known. They include four women and six people of color—four African Americans and two Latinos. Nine of them would fill judicial emergencies.

In early October, after the Senate confirmed just its seventh nominee of the year, Nancy Zirkin, executive vice president of The Leadership Conference, said the Senate's pace was "nothing short of pathetic." In the final three months of the year, only four more were confirmed. "As thousands of Americans who continue to wait for their day in court know," Zirkin said, "justice delayed is justice denied."

With the Senate likely out on more and longer recesses in 2016 due to the elections, advocates believe that it is critical that senators work to fill vacancies—and especially judicial emergencies—early in the year. As Zirkin noted, obstructing judicial nominations has real-world consequences, and Americans are the ones paying the price.

*Patrick McNeil is the digital communications associate at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *The 39<sup>th</sup> Annual Hubert H. Humphrey Civil and Human Rights Award Dinner*

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The 39<sup>th</sup> annual Hubert H. Humphrey Civil and Human Rights Award Dinner was held on May 13, 2015, at the Washington Hilton in Washington, D.C.

The Hubert H. Humphrey Civil and Human Rights Award is presented to those who best exemplify “selfless and devoted service in the cause of equality.” The award was established by The Leadership Conference in 1977 to honor Hubert Humphrey and those who emulate his dedication to and passion for civil rights.

Three impressive individuals received the award in 2015: Former U.S. Attorney General Eric H. Holder, Jr., long-time civil rights activist Laura Murphy, and former Senator Bob Dole.

Historian Taylor Branch, Asian Americans Advancing Justice | AAJC President and Executive Director Mee Moua, and former Federal Deposit Insurance Corporation Chair Sheila C. Bair introduced the honorees.

Prior to the dinner, a who’s who in social justice, including members of the Executive Branch, both houses of Congress, business leaders, educators, civil and human rights leaders, and the next generation of social justice advocates, had the opportunity to attend The Leadership Conference Education Fund Reception. The reception was sponsored by UPS.

The 2016 Hubert H. Humphrey Civil and Human Rights Award Dinner will be held May 11, 2016.



Top row (l to r): Microsoft VP U.S. Government Affairs Frederick S. Humphries Jr.; historian Taylor Branch; Leadership Conference EVP for Policy Nancy Zirkin; National Association of Neighborhoods Executive Director and Humphrey Award Dinner Chair Ricardo Byrd; UPS Foundation President Ed Martinez. Center row (l to r): dinner emcee Maria Echaveste; Leadership Conference Chair Judith Lichtman; Leadership Conference COO and EVP Karen McGill Lawson; Asian Americans Advancing Justice | AAJC President Mee Moua; former FDIC Chair Sheila Bair; Hubert H. Humphrey family representative Anne Tristani; Leadership Conference President and CEO Wade Henderson. Bottom row (l to r): Humphrey Award honorees, the Honorable Eric H. Holder, Jr.; civil rights advocate Laura Murphy; and Senator Bob Dole.



Civil rights leaders Heather Booth, Pamela Horowitz and Julian Bond share a laugh with the Education Fund reception.



Education Fund Executive Vice President and Chief Operating Office Karen McGill Lawson (third from left) poses for a photo with Education Fund reception guests, including Dr. Paulette Walker, National President (second from left), and Rose McKinney, Executive Director (right), Delta Sigma Theta Sorority, Inc.



Leadership Conference President and CEO Wade Henderson on the dais as Humphrey Dinner emcee Maria Echaveste looks on.



Humphrey Award honoree Sen. Bob Dole on the dais.



Humphrey Award honoree Laura Murphy on the dais.



The Hon. Eric H. Holder, Jr. gives his acceptance speech for the Humphrey Award.



Becky Dansky of the Marijuana Policy Project, Lisa Rice of the National Fair Housing Alliance and Licy Do Canto of the Decanto Group pose with Education Fund Senior Counsel Rob Randhava (second from left) at the Education Fund reception.



Guests, including Vanita Gupta, acting Assistant Attorney General for Civil Rights, applauding and enjoying the dinner.

## *Efforts to Modernize Lifeline Program Gain Momentum*

**Patrick McNeil**

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The Lifeline program, created by the Federal Communications Commission (FCC) in 1984 under President Ronald Reagan, allows the nation's most vulnerable and chronically underserved communities to maintain telephone service that would otherwise be unaffordable. In 2005, partially in response to the devastation wrought by Hurricane Katrina, the Bush administration expanded the program to support wireless telephone service.

Lifeline is a successful program that enables 12 million of the most vulnerable Americans to call 911, contact prospective and current employers, and connect with essential health, social, and educational services. However, despite the program's success, Lifeline remains trapped in outdated technology. In 2015, efforts to modernize the program to include access to broadband—a long term priority of The Leadership Conference on Civil and Human Rights—intensified.

On May 28, FCC Chairman Tom Wheeler announced he would be circulating a proposal to modernize Lifeline to include broadband, and would also accept comments on how to encourage more participation from providers. As Wheeler's announcement noted, "Nearly 30 percent of Americans still haven't adopted broadband at home, and low-income consumers disproportionately lack access. While more than 95 percent of households with incomes over \$150,000 have broadband, only 48 percent of those making less than \$25,000 have service at home."

The Leadership Conference applauded that proposal and, days later, welcomed the introduction of the Broadband Adoption Act by Rep. Doris Matsui, D. Calif., and Sens. Cory Booker, D. N.J., and Chris Murphy, D. Conn., to modernize the program.

In June, a broad coalition of more than 60 civil rights, media, public interest, and labor groups issued a public letter to Wheeler urging the FCC to rapidly update the Lifeline program to support broadband access for

low-income people. The letter detailed a set of principles the groups believe should guide the FCC's work to modernize the program. "Broadband has become an essential service in modern life," the groups wrote. "It is as important now as electricity was during the last century." They urged the commission to adopt an order on Lifeline modernization by the end of the year.

A week later, the FCC approved Wheeler's proposal by a 3-2 vote. In a joint statement issued by The Leadership Conference and the National Council of La Raza, the groups said that "By voting to bring the Lifeline program into the 21<sup>st</sup> century, the FCC took an important step in narrowing our country's digital divide and ensuring all Americans have access to the essential communications services they need to live, learn, and work in today's digital age."

The necessity of broadband services in modern life was acknowledged in July when President Obama and Housing and Urban Development Secretary Julian Castro announced a new initiative, called ConnectHome, to expand broadband access to residents in assisted housing. The pilot program provides more than 275,000 families and nearly 200,000 children with the support needed to access high-speed Internet at home—an important step toward closing the homework gap that exists for far too many low-income children.

In late August, The Leadership Conference submitted comments to the FCC in support of its proposal to modernize the program. The comments, which built upon the Lifeline modernization principles released in June, recommended incentivizing providers to offer the best services to consumers, adopting a goal of significant participation in the Lifeline program, the creation of Lifeline implementation incentive grants to fund state efforts that enhance program implementation, and the centralization of a Lifeline applicant eligibility verifier.

One month later, a broad coalition of more than 140 religious, civil rights, seniors, disability, technology, and veterans groups, including groups that work directly with low-income communities, submitted a letter to Wheeler in support of his modernization proposal. “Seven in 10 teachers assign homework that requires the Internet and yet 5 million households with children don’t have home access, leading to a ‘homework gap,’” the coalition wrote. “Obtaining a job without access to the kinds of training programs or education available online that can help jobseekers upgrade skills in the modern economy is a daunting proposition. And more than 80 percent of Fortune 500 companies, including companies like Wal-Mart and Target, only accept job applications online.” In other words, as the groups emphasized, access to broadband isn’t just useful—it’s essential.

By the end of 2015, the Broadband Adoption Act garnered just 12 supporters in the House and Senate combined, and the FCC hadn’t yet taken further action on its proposal. Advocates will continue working in 2016 to ensure that access to broadband is a reality for all Americans.

*Patrick McNeil is the digital communications associate at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *Civil Rights and the 2014-15 SCOTUS Term*

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Last term, the U.S. Supreme Court upheld the use of disparate impact in Fair Housing Act claims; recognized that the Constitution protected the right to marriage for same-sex couples; upheld a key component of the Affordable Care Act; and created a new framework for workers to prove pregnancy discrimination in employment. Though these outcomes came as a relief to civil rights advocates, as the Alliance for Justice noted, rather than signaling a shift to a more balanced Court, these cases merely upheld the status quo: “The Court’s supposed shift to the left was a product of its docket more than the substance of its decisions, and reflects how the Court has invited conservative litigants to bring increasingly aggressive legal claims.”

### ***Texas Department of Housing v. Inclusive Communities Project***

On June 25, 2015, in a 5-4 decision written by Justice Anthony Kennedy, the Supreme Court upheld the ability of the Department of Housing and Urban Development and other agencies to enforce laws under “disparate impact” theories that are vital to the enforcement of the Fair Housing Act and other key civil rights laws because they allow the administration to address longstanding issues of discrimination even where intentional discrimination cannot be directly proved.

The Fair Housing Act, passed by Congress following the assassination of Martin Luther King Jr. in 1968, makes it illegal to refuse to rent, sell, or otherwise make unavailable a property to anyone because of race, color, religion, or national origin.

The question before the Court was whether the Act allowed claims based on “disparate impact.” Under this analysis, discriminatory housing policies and practices that harm protected classes are illegal, regardless of whether or not the policy has a discriminatory intent. Over the past 40 years, every one of the federal ap-

peals courts to consider the question has ruled that the Fair Housing Act covers disparate impact claims, a point that the Court considered to be important. Also convincing was the fact that Congress had a chance to bar such claims in 1988 when it amended the Act, and chose not to do so.

Acknowledging that “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation,” Kennedy went on to say, “the Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.”

Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan joined in the majority opinion. Justice Clarence Thomas wrote a dissenting opinion. Justice Samuel Alito also wrote a dissenting opinion, in which Chief Justice John Roberts and Justices Antonin Scalia and Thomas joined.

### ***Obergefell v. Hodges***

On June 26, 2015, two years after striking down the federal prohibition on same-sex marriage, the Supreme Court, in a 5-4 decision, struck down all state laws prohibiting same-sex marriage, granting all Americans the fundamental right to marry whomever they choose.

Writing for the majority, Justice Anthony Kennedy explained that the Court has long recognized that the right to marry is fundamental. But while past cases regarding the right to marry have presumed the context of opposite-sex couples, Kennedy concluded in *Obergefell* that while “[t]he limitation of marriage to opposite-sex couples may long have seemed natural and just, ... its inconsistency with the central meaning of the fundamental right to marry is now manifest.”

Kennedy also relied on the interaction between the Due Process and the Equal Protection Clauses to hold that the

14<sup>th</sup> Amendment of the Constitution requires all states to grant marriage licenses to same-sex couples, stating, “It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality... the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry.”

In addition, Kennedy addressed the rationale, relied on by the Sixth Circuit and Chief Justice Roberts in his dissenting opinion, that the same-sex marriage debate should be decided through the political process, stating, “The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right.... An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act.”

The majority opinion also rejected the “counterintuitive” argument that allowing same-sex couples to marry would harm the institution of marriage and assured religious objectors that they are protected under the First Amendment.

All four justices in the minority—Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito—wrote dissenting opinions. Justices Scalia and Thomas joined all of the dissents.

### ***King v. Burwell***

On June 25, 2015, the Supreme Court handed down its decision in *King v. Burwell*, confirming the legality of the Affordable Care Act (ACA). The ACA is a landmark law that was enacted in 2010 to reform the health care system in the United States and provide more Americans with affordable quality health insurance. The law requires the creation of an “Exchange” meant to provide health care services, giving each state the opportunity to establish its own, but providing that the federal government will establish one if the state does not.

Plaintiffs were four individuals living in Virginia, a state that has not established its own Exchange. Because the federal exchange operating in Virginia was not “an Exchange established by the State” under the Act, petitioners argued they should not receive any tax credits. Without tax credits, the cost of purchasing insurance would be more than eight percent of their income, exempting them from the Act’s requirement to purchase insurance. However, under the IRS rule, the Virginia Exchange *would* qualify as an Exchange established by the State. These mixed signals caused petitioners to challenge the IRS’s interpretation of the ACA, claiming that under the Act, tax credits can *only* be issued to state-run Exchanges.

In a 6-3 decision written by Chief Justice Roberts, the Supreme Court authorized tax credits for health insurance purchased from federally established Exchanges. Although the language “an Exchange established by the State” seems to have a plain meaning, the Court concluded that “the context and structure of the act compel us to depart from what would otherwise be the most natural reading of the pertinent statutory phrase.” A legal victory for plaintiffs in this case would have eliminated all tax credits afforded to those in states with federal exchanges, creating havoc in insurance markets, breaking the law’s ability to function correctly, and likely destroying it altogether.

The legislative language of the ACA notwithstanding, the Court recognized that Congress’ intent was to improve health insurance markets, not destroy them, stating, “If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter.”

Joining Chief Justice Roberts were Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Justice Antonin Scalia wrote a dissent, in which Justices Clarence Thomas and Samuel Alito joined.

### ***Young v. UPS***

On March 25, 2015, the Supreme Court decided *Young v. UPS*, a case that clarified the scope of the requirement under the Pregnancy Discrimination Act (PDA) that pregnant employees be treated equally to other employees who are similar in their inability to work. In a 6-3 decision written by Justice Stephen Breyer, the Court ruled in favor of pregnant worker Peggy Young, and created a framework for pregnant workers to prove pregnancy discrimination in employment.

The PDA was passed nearly 40 years ago to fix a Supreme Court ruling that allowed employers to discriminate against their female workers who become pregnant. In determining the scope of the PDA, the Court in *Young v. UPS* first considered and rejected both Young and UPS’s proposed interpretations. The Court rejected Young’s argument that all pregnant workers must be provided the same accommodations that are provided to any other worker with a condition that similarly impairs their ability to work, without regard to any other criteria. The Court also rejected UPS’s contention that an employer need only have a neutral policy, which only accommodates employees with work-related injuries, as pregnant and non-pregnant workers are treated the same.

In what appears to be a compromise decision, the Court held that while the PDA does not require employers to provide the same accommodations as those provided for other workers with comparable physical limitations, a

pregnant worker can prove a disparate treatment claim for pregnancy discrimination if she can show that her employer accommodates a large percentage of employees who are not pregnant, while denying those accommodations to pregnant employees.

Justice Samuel Alito concurred only in judgment, and wrote separately to provide his interpretation on the scope of the PDA. Justice Antonin Scalia wrote a dissenting opinion and was joined by Justices Anthony Kennedy and Clarence Thomas. Justice Kennedy also wrote a separate dissenting opinion.

Immediately prior to the Supreme Court challenge, UPS voluntarily updated its pregnancy policy to provide temporary light duty assignments to pregnant workers similar to those available to workers injured on the job.

The case is not over for Peggy Young, however. Though UPS announced a settlement with Young in October 2015 and the Supreme Court ruled in Young's favor, Young's case was remanded for a determination on the merits of her claims and she may still potentially lose.

Following the decision in *Young*, civil rights advocates argue that Congress must still clarify an employer's requirements for providing accommodations to pregnant workers. The Pregnant Workers Fairness Act is a bipartisan bill that would require employers to make reasonable accommodations for pregnant workers affected by a known limitation related to pregnancy, based on the Americans with Disabilities Act's interactive process between employers and workers with disabilities.

*Leadership Conference Education Fund legal fellows Megan Bench, Katie Stephenson, and Thereza Osias contributed to this article.*

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# *Civil Rights Principles Important to Use of Body-Worn Cameras by Law Enforcement*

**Wade Henderson**

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Over the last year we've seen a growing movement to address policing practices that have a disproportionate impact on low-income communities, communities of color, and African Americans in particular. These practices, which include "racial profiling," excessive use of force, and implicit racial bias by law enforcement, have framed the national debate around police reform and prompted a vitally important national conversation on the use of technology—specifically body-worn cameras—as one possible means to enhance accountability and transparency in policing.

Mobile video cameras are an increasingly ubiquitous tool with the potential to help protect civil rights and build trust between police and the communities they serve. Video footage that documents law enforcement interactions with the public—whether gathered through body-worn cameras, weapon-mounted cameras, dashboard cameras, or citizen video of police activities—have a valuable role to play in policing. But without the right safeguards, there is a real risk that these new devices could become instruments of injustice.

The arrival of new video equipment does not guarantee that a police agency will better protect the civil rights of the community it serves. Department policy will play a critical role in determining whether and how video footage may be used to hold police accountable. This new technology could also be used to intensify disproportionate surveillance and disproportionate enforcement in heavily policed communities of color.

The Leadership Conference on Civil and Human Rights, joined by a broad coalition of civil rights, privacy, and media rights organizations, produced shared civil rights principles for the use of body-worn cameras by law enforcement. These principles outline policy and program guidance to provide actual accountability, protect civil rights, and begin to build a relationship of

collaboration and trust between police and the communities they serve.

To help ensure that police-operated cameras are used to enhance civil rights, we believe departments must:

**Develop their camera policies in public.** Police executives and civil rights groups both agree that public input and transparency in this process is critical. Civil rights advocates and the local community as a whole should be engaged while developing policies on body-worn cameras. Current policies must always be made publicly available and changes to policy must be made in consultation with the community.

**Commit to a set of narrow and well-defined purposes for which the cameras and their footage can be used.** The research institute Data & Society warned of the danger body-worn cameras can pose to privacy when combined with facial recognition and other biometric technologies. The combination would give officers far greater visibility into heavily policed communities—where cameras will be abundant—than into other communities where cameras will be rare.

**Specify clear operational policies for recording, retention, and access, and enforce strict disciplinary protocols for policy violations.** While some types of law enforcement interactions (e.g., when attending to victims of domestic violence) may happen off camera, the vast majority of interactions with the public—including all that involve the use of force—should be captured on video. Departments must also adopt systems to monitor and audit access to recorded footage and secure footage against unauthorized access and tampering.

**Make footage available to promote accountability with appropriate privacy safeguards in place.** At minimum, video of police use of force should be available

upon request and made available to any filmed subject seeking to file a complaint, to criminal defendants, and to the next-of-kin of anyone whose death is related to the events captured on video.

**Preserve the independent evidentiary value of officer reports by prohibiting officers from viewing footage before filing their reports.** Pre-report viewing could cause an officer to conform the report to what the video appears to show, rather than what the officer actually saw.

Though the focus of the principles is on cameras worn and operated by law enforcement, we must also acknowledge the vital role played by members of the community who choose to record the police. From Staten Island to Cleveland to North Charleston, we have been transfixed by a series of video clips, recorded by bystanders, which capture tragic encounters between police and the people they serve.

We believe there is an important lesson in the fact that bystanders, and not police, held the cameras that let us see those tragic events. Cameras point away from the people who operate them. Body-worn cameras will be trained not on the officers, but on the members of the community that they meet. And this footage will not come equally from all over town. Heavily policed communities of color, where there are more police, will be more heavily recorded.

Thus, while body-worn cameras are an exciting new tool for police accountability, without the appropriate safeguards, we are at risk of compounding the very problems in policing we seek to fix. As we continue this national conversation, we must not forget that body-worn cameras are not a substitute for broader reforms that can address issues of profiling, excessive use of force, and implicit and explicit racial bias.

*Wade Henderson is president and CEO of The Leadership Conference on Civil and Human Rights. Charlotte Resing, a Leadership Conference Education Fund legal intern, contributed to this article. This article was written for the "Spotlight on Poverty and Opportunity" and is reprinted with permission.*

## *Ensuring Equitable Implementation of Common Core State Standards*

**Tyler Lewis**

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As attacks on Common Core State Standards (CCSS) and annual statewide testing continued in 2015, civil rights groups around the country focused their efforts on ensuring that states not only maintained high and consistent academic standards, but that they provided the resources and supports that would ensure that all children—particularly students of color, children from low-income families, students with disabilities, and students learning English as a second language—could meet them.

To this end, The Leadership Conference Education Fund has undertaken a major project to help stakeholders, both nationally and local, understand why these high and consistent standards must be implemented equitably to help improve the education that students of color, Native students, low-income students, students with disabilities, and English learners are currently receiving.

The academic standards spell out what students should know and be able to do by the end of each grade. They were created through a bipartisan, state-led initiative made up of governors and state superintendents dedicated to supporting consistent standards-based education reform efforts across the states. Most states began adopting the academic standards in 2010 and 2011 and, despite fierce opposition to the standards, they remain in place in 42 states and the District of Columbia.

For civil rights groups and local community-based organizations around the country, the fight over the standards was about the degree to which states and school districts were going to make the smart investments and provide the right supports that would eliminate inequities in both inputs (funding, teacher quality, books, science labs) and outputs (academic achievement and graduation).

A number of polls found that Blacks and Latinos were more likely to be supportive of high and consistent stan-

dards than the general public, but they were also more likely to have never heard anything about the CCSS. So many groups, including the National Council of La Raza and the National Urban League, worked with their local affiliates to educate and inform parents of color about what to expect with the new academic standards.

The Tennessee State Conference of the NAACP, led by Gloria Sweet-Love, held 10 community forums around the state as far west as Memphis and as far east as Johnson City. At each forum, teachers, advocates, and members of the Tennessee NAACP units helped parents to understand what the academic standards are and what they mean for their children. Sweet-Love said in an October 3, 2015, op-ed in *The Tennessean* that she found parents were “overwhelmingly supportive” because “they know that a good education is key to their children’s success.”

Not surprisingly, issues of implementation came up during the conversations. “Parents want more information about how their children are doing academically that they can actually use and understand so that they can play their part in helping their children succeed. They also expect the state and the schools to help them understand how best to help their children,” said Sweet-Love. “Too many parents told us that they are not always sure what supports and interventions are available for their children.”

In Georgia, a broad-based coalition, the Georgia Education Equity Coalition, has been working to push the state to invest more money in education, particularly in low-income and majority-minority schools and schools with large numbers of immigrants and refugees who are still learning English.

The coalition developed principles for implementing the state’s new, high academic standards, the Geor-

gia Standards of Excellence, which were released in November 2015 on the heels of the state's release of the results from the new statewide assessment aligned to the new, higher academic standards. The results showed significant achievement gaps for schools serving students of color.

"These tests have set a baseline for improvement that requires greater investment in all our students, particularly students who are struggling the most," said Helen Butler, executive director of The People's Agenda, in a Morris News Service story on the coalition's call for greater funding. "Now that we know where our students stand, it's time to give them everything they need to succeed. We have raised the academic standards. Now we must raise the funding."

States are still underinvesting in public education, even though they've made this massive change in standards and assessments. State funding of public education dropped dramatically after the recession in 2007-2008, but despite the economic recovery of the past few years states have still failed to reinvest in a way that would offset the post-recession cuts. According to the Center on Budget and Policy Priorities, 35 states are spending less than they did in 2007-2008.

New, high academic standards are the first step toward providing a high-quality education to all children, but without increased funding, particularly in schools that have seen decades of underinvestment, the promise of the standards will remain out of reach for far too many children.

For the civil and human rights community, this is where the fight truly is.

*Tyler Lewis is the director of messaging and project management at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*



Tennessee NAACP State Conference President Gloria Sweet-Love speaking at the TN State Convention.

## *Cities for CEDAW Fights to End Gender Discrimination at the Local Level*

**Tara Yarlagadda**

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Across the country, a movement—known as “Cities for CEDAW”—has been steadily building over the past year to promote the human rights of women and girls at the local level.

CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, is the most comprehensive women’s human rights treaty and has been ratified by 187 nations around the world. The United States is shamefully one of only six countries—along with Iran, Sudan, Somalia, Palau and Tonga—that has not ratified CEDAW.

Since 2010, The Leadership Conference on Civil and Human Rights has convened a national coalition of 190 organizations seeking U.S. ratification of CEDAW. Members of the CEDAW coalition believe that ratification of the treaty can improve the lives of women and girls not only globally, but also here at home.

However, with CEDAW ratification efforts stalled in the Senate, local activists and public officials around the country are joining together in the Cities for CEDAW campaign as a way to address barriers to full equality for women and girls. This work has led to city governments and local leaders becoming more active in underscoring the need to ratify the treaty.

The overall goal of Cities for CEDAW is to protect the rights of women and girls through local ordinances establishing the principles of CEDAW in cities and towns across the United States. These ordinances work to “make the global local” and protect women and girls by requiring three key components: a gender analysis of city departments and operations; an oversight body to monitor the implementation of the ordinance; and funding to support the implementation of the principles of CEDAW.

The Leadership Conference, in conjunction with the Women’s Intercultural Network (WIN) and many other organizations, is working to build capacity and provide educational resources to inform and mobilize individuals to take action for the Cities for CEDAW campaign.

In 1998, San Francisco became the first city in the United States to adopt an ordinance reflecting the principles of CEDAW to improve the lives of women and girls. Since then, San Francisco has developed new initiatives on domestic violence homicide and human trafficking.

More than 10 cities have either already passed an ordinance or are making serious progress towards doing so. More than two dozen other cities have expressed interest in organizing a coalition to have their cities establish the principles of CEDAW locally, and the number continues to grow.

The campaign has seen other exciting developments in the past year. In honor of Women’s Equality Day on August 26, Los Angeles Mayor Eric Garcetti announced an executive directive calling on city departments to implement CEDAW, which the city adopted in 2004.

Advocates believe that Cities for CEDAW has the potential to positively impact women and girls in municipalities throughout the United States. Visit [citiesforcedaw.org](http://citiesforcedaw.org) to learn more about the campaign.

*Tara Yarlagadda is a field associate at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *Freedom Institute for Social Change*

### **Tyler Lewis**

The Freedom Institute for Social Change is a project The Leadership Conference Education Fund developed in 2011 to help build strategic relationships between and among low-income communities of color, young people, and new immigrant communities in states where these communities are committed to advancing a shared agenda. The Freedom Institute leverages the expertise of community-based, state, and national organizations to train fellows in strategic communications, field organizing, and policy development. In 2015, as part of this project, The Education Fund partnered with VAYLA (Vietnamese American Young Leaders) New Orleans (VAYLA-NO) for activists and advocates working in New Orleans.

New Orleans Workers' Center for Racial Justice VAYLA-NO is a progressive multiracial community-based organization in New Orleans that empowers youth and families through supportive services and organizing for cultural enrichment and positive social change. NOWCRJ is dedicated to organizing workers across race and industry to build the power and participation of workers and communities.

VAYLA-NO staff and volunteers and activists from NOWCRJ committed to participating in a series of three trainings held once a month over three months in March, April, and May where they learned strategies to build, advocate through, and sustain a multiethnic, multiracial coalition in New Orleans.

The trainings were designed to build on what the participants already know about campaigns and help them think through how to reach out to potential partners outside of their communities, how to adapt their messages to communities other than their own, and how to develop ways to utilize the media more effectively. In addition, the trainings were developed around real campaigns that VAYLA-NO and NOWCRJ are currently running, which enabled the participants to use the skills they learned in real time.

*Tyler Lewis is the director of messaging and project management at The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*



Education Fund Field Manager Eduardo Garcia conducting an advocacy training.



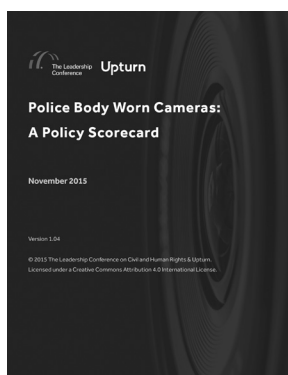
Media Trainer Joel Silberman conducting a spokesperson training.

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## Reports

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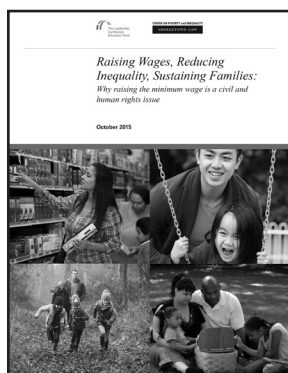
This year, The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights released a number of reports that explore important civil rights issues. The full reports can be found here: [www.leadershipconferenceeducationfund.org/reports/](http://www.leadershipconferenceeducationfund.org/reports/).



### **Body-Worn Cameras Scorecard – November 2015**

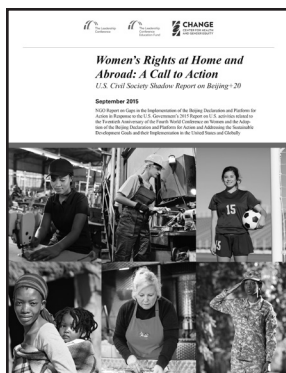
The Leadership Conference and Upturn partnered in the development of a scorecard that evaluates the civil rights safeguards of body-worn camera policies being used by the country's largest police departments with camera programs. The scorecard uses eight criteria derived from the Civil Rights Principles on Body-Worn Cameras signed by a broad coalition of civil rights, privacy, and media rights groups in May 2015. The scorecard examines the nation's largest police departments with body-worn camera programs; departments that have made news for police violence, including Ferguson, MO and Cleveland; departments that have received a significant amount of federal funding for programs like Seattle, New Orleans, and Albuquerque; or have one or more policies that show particular promise, like Oakland and Parker, CO.

<https://www.bwcscorecard.org/>



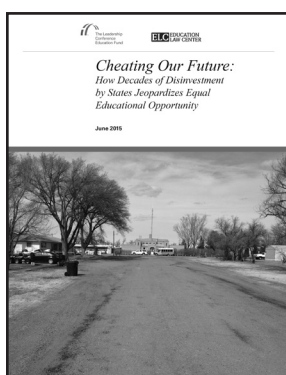
### **Raising Wages, Reducing Inequality, Sustaining Families: Why Raising the Minimum Wage is a Civil and Human Rights Issue – October 2015**

This report, a collaboration between The Leadership Conference Education Fund and Georgetown Center on Poverty and Inequality, is an update of our 2014 joint report, "Improving Wages, Improving Lives: Why raising the minimum wage is a civil and human rights issue." It is part of our continuing efforts to raise awareness among the civil rights and other communities about the need for stronger minimum wage policy to advance equity and fair pay for individuals and families struggling in low-paying jobs. We hope our allies and partners throughout the country benefit from the report's narrative and associated resources to advance their respective work.



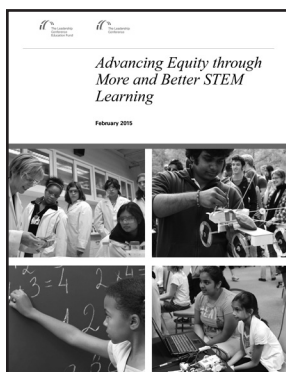
### **Women's Rights at Home and Abroad - A Call to Action: U.S. Civil Society Shadow Report on Beijing+20 – September 2015**

“Women’s Rights at Home and Abroad - A Call to Action: U.S. Civil Society Shadow Report on Beijing+20” outlines gaps in the U.S. government’s report to the United Nations on the work the government has done to implement recommendations made 20 years ago at the Fourth World Conference on Women held in Beijing, China. The report, by The Leadership Conference Education Fund, The Leadership Conference, and the Center for Health and Gender Equity (CHANGE) with input from an additional 20 organizations, identifies actions that the U.S. government could and should take to further advance women’s rights here at home and around the world.



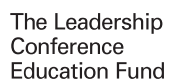
### **Cheating Our Future: How Decades of Disinvestment by States Jeopardizes Equal Educational Opportunity – June 2015**

Public education in America is increasingly about educating our poorest, most disadvantaged, children. But our policies and funding formulas ignore this simple fact, leading to a massive failure to meet the challenge before us. “Cheating Our Future: How Decades of Disinvestment by States Jeopardizes Equal Educational Opportunity,” a joint report by The Leadership Conference Education Fund and Education Law Center, shows that, in far too many states, our nation’s schools are in dire straits. The evidence from across the country is clear and compelling: our nation must dramatically increase the resources available for public education and, simultaneously, change the way those resources are distributed so that there is true equity in America’s classrooms.



### **Advancing Equity through More and Better STEM Learning – February 2015**

“Advancing Equity through More and Better STEM Learning,” a report of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund, examines the vast and pervasive inequality in opportunity for low-income students, women, and students of color to study and earn degrees in the fields of science, technology, engineering and math. The report also makes a series of recommendations to make STEM education more accessible to provide these students with proven pathways for obtaining good jobs and a higher standard of living. Failing to improve STEM opportunities will leave the United States unable to prepare enough young people with the skills necessary for these important jobs.

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