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Facing A New Congress: Keeping Civil Rights Priorities at the Fore

Wade Henderson Commentary

“Where do we go from here—chaos or community?”

The Rev. Martin Luther King, Jr., posed that question in 1967 at a challenging moment in America’s journey towards justice. After the enactment of landmark legislation for civil rights and voting rights, President Lyndon B. Johnson’s domestic policies had seemingly suffered repudiation in the midterm elections of 1966. The nation’s attention was turning towards a foreign war. Pundits and political practitioners agreed that a “white backlash” would dominate American politics for years to come.

Now, some 50 years later, we are facing yet another challenging moment taking place against a time of great trial, turmoil, and change in the United States. We just held the first major national election without the full force of the Voting Rights Act in effect. We had a humanitarian crisis in the arrival over the summer of thousands of unaccompanied minors, many of whom were fleeing some of the most violent neighborhoods in the most violent countries in Central America. And a rash of police killings of Black boys and men—Michael Brown, Eric Garner, John Crawford, Ezell Ford, Dante Parker, Akai Gurley, twelve-year-old Tamir Rice, among others – shocked the conscience of the nation and reignited greater interest in fixing the justice system.

So now, many of us in the civil and human rights community are asking the same question: “Where do we go from here?”

Our answer, drawing on the lessons of the past: We will work, harder and smarter than ever, to preserve the progress that we have made, to move forward on the challenges that we face, and to build our capacity to make a difference for decades to come.

If 2014 taught us anything, it’s that the work of civil and human rights advocates is more vital than ever. We

have major national problems to solve. On nearly every indicator that we use in the United States to measure progress, people of color, low-income people, and other marginalized groups are falling further behind and, in many ways, doing worse than they were in 1960. Our schools are more segregated, our levels of unemployment are at an all-time high, we face continued discrimination in voting, and our incarceration rates have increased exponentially.

This was a year when we needed our national policymakers to be the statesmen and women we elected them to be. Instead, we got more political grandstanding, obstruction, and hyper-partisan gridlock.

History teaches us that there are times when progress can be measured by milestones, times when we struggle to move forward inch-by-inch, and times when we consider it a victory to hold the ground that we have gained. We never know for sure what the future holds—only that we must fight for our principles and build for the future.

Even in times of gridlock, America is constantly evolving. Opportunities to advance civil and human rights continue to emerge, if only we have the wisdom and courage to see them and seize them.

President Obama is one of many two-term presidents whose parties suffered losses in midterm elections but still presided over progress in civil rights. Today’s civil rights coalition follows generations of giants who made a way out of no way. The Civil Rights Act of 1960 (a small step towards voting rights), the Fair Housing Act of 1968, and the Civil Liberties Act of 1988 (granting reparations to Japanese-Americans who had been interned in World War II) were all enacted during the final years of two-term presidents whose parties had suffered setbacks in midterm elections.

While gridlock in Washington makes legislative progress more difficult, much work can—and must—be done every day. It is our responsibility and our great honor to help build the public will that makes it possible for Congress to make the right choices on our issues. Our communities have to be more vocal, more organized, and a more passionate part of the process throughout the year so that both parties feel pressure to act accordingly.

We cannot deny that the midterm elections have significantly changed the political dynamic in Washington, but we have to find creative ways to exert pressure on both parties at the important moments of the legislative process to demonstrate just how serious we are about the issues facing all of our communities.

So, for example, with the nation's attention focused on criminal justice issues, and bipartisan support for a number of reforms, success on this front is ours for the taking. We need only organize effectively and strategically.

Congress will reauthorize the surface transportation bill this year. This is a bill that not only provides valuable service—making sure our roads are maintained and our bridges are structurally sound—but also provides millions of jobs to people who need them most. With a still sluggish economy for middle- and low-income people, many of whom are minorities and people with disabilities, passing this bill is vital. And Congress will likely attempt to reauthorize the Elementary and Secondary Education Act, and we'll need to work hard together to preserve the vital role that the federal government has historically played in protecting the civil rights of students of color, low-income students, students with disabilities and English learners.

But the gridlock in Washington is real. So we must turn to the growing numbers of opportunities and challenges that will undoubtedly emerge on the state and local levels. We will need to continue to build and grow statewide coalitions, with the capacity for quick response to support good ideas and thwart bad ones.

If it is less likely that there will be new legislation on vital issues, then it is more important for the civil rights coalition to educate the public about how our country's changing demographics demand new initiatives to improve our common destiny.

As we conduct our daily work, we look toward the future. We will engage our supporters and stakeholders in an open-ended conversation about where we will go and how we can get there.

Dr. King used to say: "Time is neutral. It can be used either constructively or destructively." In the months and years ahead, The Leadership Conference and The

Education Fund will strive to use our time constructively by learning the lessons of the past, fighting the battles of the present, and building our capacity for the future.

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

Administrative Action Fills Void Created by Congressional Gridlock

Patrick McNeil

The 113th Congress adjourned at the end of 2014 leaving voting rights unrestored, the criminal justice system unreformed, and critical international human rights treaties—ones that would have reinforced U.S. leadership on women’s and disability rights—unratified. If there was one thing Congress could agree on in 2014, it was to accomplish very little and to become regarded as the least productive session in modern history.

Without legislative activity, the civil and human rights community looked to President Obama and the administration for action on a number of important issues—a charge which the administration took up. In fact, in his State of the Union address, Obama foreshadowed what he suspected would need to be “a year of action.”

In February, Obama signed an executive order raising the minimum wage for workers on federal construction and service contracts to \$10.10 an hour, as he indicated he would do in his State of the Union address—an address that, beyond calling for action, emphasized expanding shared prosperity and providing ladders of opportunity for all Americans.

Legislation that would have raised the federal minimum wage to the same level by 2016—in addition to raising wages for tipped workers and adjusting the minimum wage each year to keep pace with the rising cost of living—failed to move forward to an up-or-down vote in the Senate in April, when only one Republican, Sen. Bob Corker of Tennessee, voted to consider the bill.

Earlier in April on Equal Pay Day, Obama signed two executive orders on equal pay: one that bans retaliation against employees of federal contractors for discussing their wages and another that instructs the U.S. Department of Labor to create new regulations requiring federal contractors to submit data on employee compensation.

The following day, the Senate voted to block consideration of the Paycheck Fairness Act, a bill that would have helped close the gender wage gap by protecting women against gender-based pay discrimination the same way the United States already protects people based on race or ethnicity. In September, the Senate blocked the bill again.

The White House signaled in June that it was drafting another executive order, which Obama signed in July barring discrimination against transgender federal employees and LGBT employees of federal contractors. Importantly, the order did not include a broad religious exemption that The Leadership Conference on Civil and Human Rights and nearly 70 other groups opposed.

That exemption, however, was included in a federal LGBT workplace protection bill—the Employment Non-Discrimination Act (ENDA)—passed by the Senate in November 2013. In 2014, the House failed to bring ENDA up for a vote, leaving 29 states without workplace protections for gay employees, and 32 states without protections for transgender workers.

In July, Obama also signed the Fair Pay and Safe Workplaces executive order, requiring federal contractors—before they can receive new federal contracts—to disclose labor law violations that have occurred in the last three years. The order also allows certain civil rights and employment complaints to be heard by a judge instead of an arbitrator. Previously, employers had the freedom to bypass civil rights laws through forced arbitration, making dozens of anti-discrimination laws meaningless.

The president’s final executive action of the year was delayed until after the midterm elections, but in late November, Obama finally announced administrative reforms to our nation’s broken immigration system—

bringing millions of immigrants out of the shadows of society and into the bright sunshine of human rights.

Much like Obama's order on LGBT workplace protections, his immigration action came in the absence of federal legislation. Obama waited more than 500 days after the Senate passed its comprehensive immigration reform bill, which the House failed to bring up for a vote during that time.

The president's actions were productive steps forward in advancing civil and human rights in the United States—by raising wages, ensuring equal pay, protecting LGBT workers, allowing for safe workplaces, and changing the lives of millions of immigrants for the better—but only Congress can enact federal laws that make broader, more lasting change to national problems affecting all Americans. It is critical that the 114th Congress pass sensible, bipartisan laws to move civil and human rights forward—and to help build an America as good as its ideals.

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

Federal Progress on Education: The Power of the Administration to Act

Tyler Lewis

Despite the failure of the 113th Congress to complete long overdue reauthorizations of the largest federal education programs—the Elementary and Secondary Education Act (last reauthorized in 2002 as No Child Left Behind) and the Higher Education Act—some progress on education at the federal level did occur by way of a number of Obama administration actions that have the potential to expand educational opportunity and protect the civil rights of millions of American children.

Civil Rights Data Collection

In March 2014, the U.S. Department of Education's Office for Civil Rights (OCR) released data from the 2011-2012 school year as part of its Civil Rights Data Collection (CRDC). While the CRDC in past years surveyed only a sample of U.S. schools, the 2011-12 survey was universal. Thus, for the first time in the history of the United States, we have a comprehensive look at how all 97,000 public schools in the United States are educating the nation's children.

Importantly, OCR requires that the data be disaggregated by race, disability status, gender, ethnicity, and eligibility for the school lunch program (a proxy for poverty), which creates a full picture of educational disparities across the nation. The CRDC data reveal tremendous disparities between students of color and White students' access to high-quality teachers, gifted and talented programs, and college-preparatory classes like algebra, chemistry, and physics, as well as more challenging college-level Advance Placement (AP) and International Baccalaureate (IB) classes. For example, among high schools with the highest enrollments of minority students, one-third do not teach chemistry and one-fourth do not teach algebra II. In addition, the data reveal that racial disparities in school discipline start early. Black students account for 18 percent of preschool enrollment, but they represent 42 percent of preschool students who

have been suspended once—and 48 percent of those suspended more than once.

Department of Education Policy Guidance

As if making up for lost time, in 2014 OCR made good on its commitments to issue much-needed policy guidance on a host of important compliance issues.

In early January 2014, OCR and the U.S. Department of Justice (DOJ) released guidance on recipients' obligations not to discriminate on the bases of race, national origin, sex or disability in their student discipline policies and practices. In May, OCR released long-overdue guidance on the civil rights obligations of public charter schools.

Perhaps the most significant policy action in 2014 was OCR's October release of landmark guidance to states, school districts, and schools explaining how federal law mandates equitable distribution of resources to students under Title VI of the Civil Rights Act of 1964. In early December, OCR announced it would open an investigation into a complaint challenging the New York state school funding system. The complaint was filed by two low-wealth, high-minority, high-English Language Learner (ELL) districts arguing that the state's formula shortchanges their students in violation of Title VI.

Other important guidance issued in 2014 focused on sexual assault, application of *Plyler v. Doe* to public school enrollment processes, juvenile detention facilities, accessibility under Section 504, and single-sex classes and extracurricular activities.

Elementary and Secondary Education Act

The administration's stewardship of the more than \$14 billion Title I program was a good news-bad news story in 2014. Civil rights groups continued to express grave concerns about the Elementary and Secondary Educa-

tion Act (ESEA) waiver process, which gives states leeway from some parts of the federal law. The original waivers were for two years, so states were due in 2014 to apply for renewals.

In the wake of reports that the Department of Education would accede to states' requests to weaken federal accountability for educating all students, especially students of color, low-income students, English-language learners and students with disabilities, civil rights groups urged the department to hold firm and reject any state's waiver application that failed to explicitly explain how the state would maintain statewide accountability for educating all students.

On the positive side, Secretary Arne Duncan is pushing states to improve the distribution of teachers so that low-income and minority students have equal access to the best teachers. He has required all states to use data, including from the CRDC, to update and improve their plans for teacher equity, and to submit them to the department in the spring of 2015.

Gainful Employment

On October 30, the department released a new "gainful employment" regulation, which is designed to hold career training programs and for-profit colleges accountable to students and taxpayers. The new rule replaces a 2010 rule that was struck down by a federal judge.

Civil rights groups called the new regulations a good first step. While the new rules will help hold career education programs accountable for their students' futures, they still lack important protections for those who do not complete these substandard programs but are still billed the maximum amount that federal financial aid allows. The rules also fail to protect students whose schools, like Corinthian Colleges, Inc., are suddenly closed down.

On the eve of the release of the new regulations, The Leadership Conference on Civil and Human Rights and seven other civil rights organizations released a report, "Gainful Employment: A Civil Rights Perspective," which describes many of these abuses of the for-profit industry, and includes recommendations for much stronger measures to prohibit the for-profit industry's ongoing exploitation of communities of color, veterans, women, and low-income individuals.

E-Rate

In December 2014, the Federal Communications Commission voted to adopt a draft plan that would increase funding for broadband services in schools and libraries in a federal program known as "E-Rate." The FCC's vote, which would increase funding for the program by \$1.5 billion, represents an important step toward

bridging the still acute digital divide. In 2013, the Pew Research Center conducted a comprehensive survey of more than 2,400 Advanced Placement and National Writing Project teachers, which found severe disparities in the use of technology at schools in wealthier versus poorer districts and urban versus rural schools. Civil rights, education and business communities, along with states and localities, have all supported expanding and modernizing the E-Rate program, pointing to it as an essential step in addressing student poverty and in increasing low-income students' educational achievement.

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Judicial and Executive Nominations

Sakira Cook

In the second half of the 113th Congress and in the wake of the Senate rules change in November 2013, the pace of judicial confirmations sped up considerably. By the time the 113th Congress adjourned in December, the Senate had successfully confirmed 134 judicial nominees, leaving 18 nominees pending in the Senate Judiciary Committee. This number was slightly more than the 111 successful confirmations made in the 112th Congress.

President Obama has continued to prioritize diversity on the federal bench. Of the confirmed nominations since the beginning of his presidency, women made up more than 42 percent of the nominees—an unprecedented number. Additionally, African Americans comprised approximately 18 percent of the nominees, Hispanics 11 percent, and Asian Americans nearly 7 percent, which demonstrates the administration's continued commitment to racial diversity. Ten nominees were also openly LGBT.

As Congress moved into the “lame duck” session after the midterm elections in November, and with Republicans poised to control the Senate at the start of the 114th Congress, advocates focused their attention on ensuring that the Senate confirmed key judicial and executive branch nominees. However, there were 27 critical judicial nominations, and several key executive branch nominations—for positions in the State Department, the Equal Employment Opportunity Commission, the U.S. Department of Homeland Security, the U.S. Department of Housing and Urban Development, the Election Assistance Commission, and the U.S. Department of Education—still languishing in the Senate when it recessed in late December.

In 2014, 89 judicial nominees and more than 200 executive nominees were confirmed. This brought the total number of confirmed judicial nominees to 307, or 92 percent, of Obama's nominations, which is more than the 298 (89 percent) that had been confirmed at this

point during Bill Clinton's presidency, and the 253 (84 percent) that had been confirmed at this point during George W. Bush's presidency.

The confirmation of executive and judicial branch nominees in the 114th Congress will remain a priority for the advocacy community and for the White House. Currently, there are 66 announced vacancies, 44 of which are current and 22 that will occur in the future, following the departure of judges who have notified the president of their intent to leave active service on a later date. Of these vacancies, none have nominees. This leaves 44 vacancies without nominees, 12 of which have been designated as “judicial emergencies,” meaning that the caseload is overwhelming without the support of these additional judges.

With two years left in Obama's second term, there is still significant opportunity for the president to continue to build diverse, fair courts that will serve our nation for years to come. Advocates hope that the Senate's new majority leader will continue to make headway in confirming executive and judicial branch nominees, allowing federal agencies to run efficiently and reducing the backlog of judicial vacancies.

Sakira Cook is counsel for The Leadership Conference Education Fund and The Leadership Conference Civil and Human Rights and specializes in criminal justice system issues and human rights.

Congress Fails to Move Legislation to Restore the Voting Rights Act

Hannah Cornfield

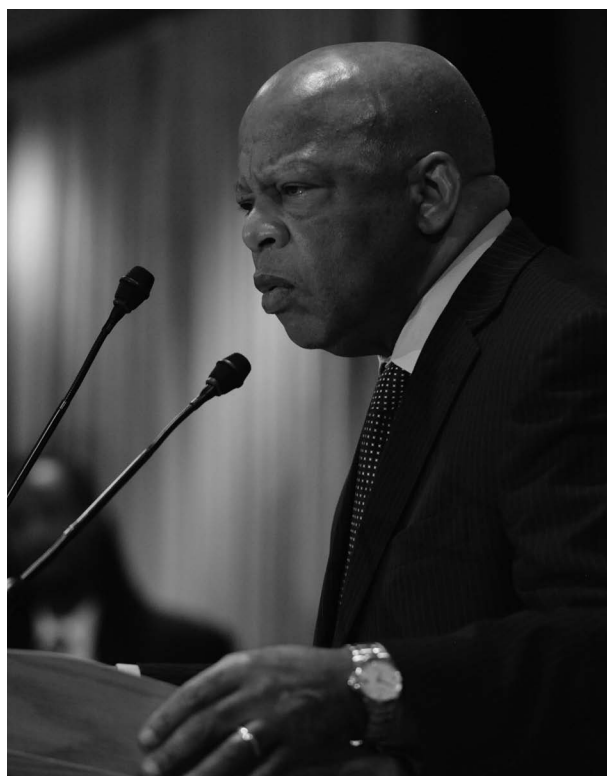
Following the Supreme Court's disastrous decision in *Shelby County v. Holder* in June 2013, civil and human rights groups around the nation organized quickly to push Congress to pass new legislation that would restore the Voting Rights Act (VRA) to its full power and create new, modern, and flexible protections for racial discrimination in voting.

In *Shelby*, the Court invalidated the coverage formula in Section 4(b) of the VRA, which had determined the states and political subdivisions subject to Section 5 preclearance. Therefore, while the Court did not invalidate the preclearance mechanism in the VRA, it effectively gutted the Voting Rights Act and invited Congress to create a new coverage formula. As Representative John Lewis, D. Ga., stated, the Court “put a dagger in the heart” of the law, crippling minorities’ right to vote.

After the Court's decision, many state and local politicians started to manipulate voting laws for their own gain, essentially picking and choosing who would be able to vote. Across the country, new voting changes were enacted that were no longer subject to preclearance, resulting in discrimination against communities of color and leaving eligible voters without a voice. Since *Shelby*, 10 voting changes in seven states have raised concerns about voting discrimination among voting rights advocates.

Responding to *Shelby*, Congress introduced a bipartisan bill on January 16, 2014, called the Voting Rights Amendment Act (VRAA). This modern, flexible, and forward-looking bill, introduced by Rep. Jim Sensenbrenner, R. Wis., Rep. John Conyers, D. Mich., and Sen. Patrick Leahy, D. Vt., would:

- Enhance a federal court's ability to apply preclearance review for voting rights changes when needed in order to remedy current discrimination;
- Provide greater transparency of voting changes by requiring nationwide public notification;
- Expand the effective federal observer program;
- Stop discriminatory voting changes before they take effect by enhancing the ability of voters to obtain preliminary injunctive relief; and



Congressman John Lewis, D. Ga., gives the keynote speech at the February 6 reception for The Leadership Conference Education Fund's "Moving Voting Rights Forward" conference.

- Create a nationwide, annual assessment to determine which states and localities would be subject to Section 5.

While civil and human rights groups and voting rights advocates were troubled by the way the VRAA treats violations arising from voter ID laws and the failure to include the “known practices” provision, which would subject certain voting changes that have historically had a discriminatory effect to preclearance automatically, they generally applauded the bill.

Sherrilyn Ifill, president and director-counsel of the NAACP Legal Defense and Educational Fund—the organization that argued *Shelby* before the Court, called the bill “an excellent starting point for public engagement in this process.” Thomas A. Saenz, president and general counsel of the Mexican American Legal Defense and Educational Fund (MALDEF), said that the VRAA “would again ensure that potential violations of voting rights in jurisdictions with egregious histories of discrimination may be resolved quickly and efficiently through a pre-clearance review process.”

With the November midterm elections looming, groups urged Congress to begin work on the bill quickly so that the Voting Rights Act could be strengthened before the elections. Knowing this would be a daunting goal to meet, the community quickly organized around the country to put pressure on Congress, particularly House Speaker John Boehner, R. Ohio, House Judiciary Chairman Bob Goodlatte, R. Va., and the House Republican leadership.

In February, The Leadership Conference Education Fund held a voting rights conference in Washington, D.C., where voting rights advocates from around the country gathered to discuss ways to build public will for restoring the VRA. A number of groups also released reports documenting the ongoing problem of racial discrimination in voting, including a joint report on discrimination against Latino voters by MALDEF, the National Association of Latino Elected and Appointed Officials, and the National Hispanic Leadership Agenda, and a report by the Brennan Center on the slew of discriminatory voting changes enacted in the year since *Shelby*.

The Lawyers’ Committee on Civil Rights Under Law and more than a dozen partners created the National Commission on Voting Rights to evaluate the state of voting rights in America. The commission held 25 regional and state-based hearings around the country between June 2013 and May 2014. The commission released its report documenting persistent racial discrimination in voting, “Protecting Minority Voters:

Our Work is Not Done,” on August 6, 2014, the 49th anniversary of the VRA’s signing.

Despite voting changes in the wake of *Shelby* targeting minority voters and all the pressure from the civil and human rights community, Congress failed to advance the bill. The Senate held a hearing on the bill in June on the anniversary of *Shelby*, but the House refused to take any steps toward moving the legislation forward. The inaction was incredibly frustrating for civil and human rights groups who expected Goodlatte to make good on his promise to “carefully consider legislative proposals addressing the issue” and move the bill quickly through the House Judiciary Committee, and hoped Boehner would put pressure on his caucus to get behind the bill.

The consequences of that inaction were seen during November’s midterm elections, where a number of previously covered states had new voting restrictions in place. Even before the election, a number of last-minute rulings created confusion about the status of certain restrictions, deterring some voters from even trying to vote and disenfranchising others.

It is unclear whether the 114th Congress, which will be in Republican control, will move legislation to restore the VRA, but ensuring that there are strong federal protections for all voters will remain a top priority for the civil and human rights community.

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Immigration Reform: With Gridlock in Congress, All Eyes Turn to President Obama

Rob Randhava

Throughout 2014, proponents of comprehensive immigration reform faced growing doubts that Congress would reach the finish line on a long-promised overhaul of the nation's immigration system. Despite President Obama's aggressive enforcement of immigration laws that led one prominent advocate to refer to him as the "Deporter in Chief," congressional opposition continued to harden, especially as the looming midterm elections and a surge in undocumented children arriving at the southern border dominated news headlines. After his party faced heavy losses in the November election, and with growing pressure to act, President Obama ultimately took matters into his own hands and announced a slew of administrative reforms that did not require approval from Congress. Although immigration reform supporters celebrated, by the end of the year, the prospects for additional legislative reforms remained as unclear as ever.

Congress Dithers, Then Abandons, Immigration Reform Legislation

By the beginning of 2014, nearly half a year after the Senate passed a bipartisan comprehensive immigration reform package, the House of Representatives had failed to lift a finger on the issue. Despite months of intense lobbying and vote-counting by immigrant rights and business advocates, and even though a majority of House members seemed willing to vote for the legislation, no hearings had been held on the bill and no votes had been scheduled.

There were a few glimmers of hope in the first half of the year, but they quickly faded in the face of opposition from many House Republicans who did not want to enact anything that might be perceived as a political victory for Obama. In late January, House Speaker John Boehner, R. Ohio, circulated a document laying out principles for a comprehensive bill. While it was sold as a more hard-edged alternative to the Senate bill, focusing

more on immigration enforcement, most of Boehner's party refused to buy it, seeing it as little different from the Senate-passed bill. Only a week later, Boehner abandoned the plan, declaring—due to the controversy over the implementation of the Affordable Care Act, among other things—that House Republicans did not believe they could trust Obama to carry out the law as the House intended.

The Democratic leadership, believing the votes were there to pass a bill, responded by filing a "discharge petition," which would require action on a bill if it were signed by a majority of House members (218 members). Because signing such a petition would be seen as a betrayal of their party's leadership, however, no House Republicans joined in the effort. Meanwhile, several House Republicans, realizing the issue would not go away and could ultimately hurt their party in the long term if they failed to do anything, continued to push for more narrow compromise approaches.

Those efforts also failed to gain traction. As spring rolled around, most House Republicans were concerned that they would face primary challenges if they voiced any support for a bill that could garner bipartisan support—or even a partisan bill, in case it would open the door to a House-Senate conference committee that would produce a bill that looked like the Senate-passed measure.

The threat of electoral consequences became especially clear in June, when House Majority Leader Eric Cantor, R. Va., lost his seat in a primary election to a relatively unknown, poorly funded opponent. While Cantor's support for immigration reform was only one of many factors cited in his defeat, the surprising outcome led most House Republicans to declare the issue dead for the rest of the year—and most immigration reform supporters took the hint as well.

To add to the obstacles, by early summer there were growing news reports about a large influx of undocumented immigrant children showing up at the southern U.S. border. While the overwhelming majority of these children, nearly half of whom could have qualified for asylum in the United States due to the conditions in their home countries, were voluntarily turning themselves in upon arriving at the border, the surge caused many additional House Republicans to suggest that the borders were not secure and that Obama was not adequately enforcing the law.

Instead of taking up a comprehensive bill to address the overall problems with the immigration system, the House passed a bill at the end of July to make it harder for unaccompanied immigrant children to enter the United States while their cases were being heard – along with another bill to overturn Obama’s 2012 policy to spare young undocumented immigrants from deportation if they were brought into the country as children. While the bills stood no chance of being taken up in the Senate, they sent a clear signal of where the House majority stood on the issue.

Within several weeks, it became clear that the numbers of unaccompanied children arrivals at the border had fallen drastically. But the damage to the prospects of immigration reform—especially as House members turned their attention to winning re-election—had been done.

As the House continued to distance itself from comprehensive immigration reform, immigration and civil rights advocates stepped up their pressure on Obama to use his own authority, under existing law, to spare undocumented immigrants from the threat of deportation. As in the criminal law context, the government has always been able to exercise what is known as prosecutorial discretion. In short, the government need not prosecute every violation of the law; indeed, with limited resources, it is common for prosecutors to ignore certain offenses and to focus their efforts on higher priority cases. Obama had used this authority to implement his 2012 policy aimed at young undocumented immigrants, with only token resistance, and advocates urged him to apply the same policy prescription to other groups of undocumented immigrants.

When it became clear that the House would not act on immigration reform, Obama—who had resisted sweeping administrative changes in the hope of working out a compromise on legislation—ultimately relented. By late summer, he announced that he was consulting with his advisors on steps he could take under existing law to expand the use of administrative relief.

Even this administrative relief, however, was stalled over political considerations. Some members of Con-

gress in Obama’s party, facing difficult re-election prospects in their own districts and states, persuaded him to hold off on any sweeping announcements to avoid dealing with a feared backlash from voters. In September, he announced that he would temporarily shelve any further policy announcements until after the election.

This delay did not help Democrats in tough races. Indeed, it may have even depressed turnout among Democratic voters, who felt little incentive to support candidates who spoke favorably of reform but did little to push for it. Following the election in November, Republicans expanded their majority in the House and took control of the Senate, defeating many incumbent Democrats who might have held on to their seats if they had generated adequate turnout from their base.

Delayed but Not Denied: President Obama Moves Forward with Administrative Action

For congressional Republicans, the result of the election represented a mandate by voters on the issue of immigration reform: they had rejected any kind of “amnesty” for undocumented immigrants, either through legislation or administrative action. Obama, however, disagreed. Just several weeks after the stinging election loss, he made a prime-time address that immigration and civil rights advocates had wanted him to make for months: He announced that, given the failure of Congress to reset immigration enforcement priorities and make other badly needed reforms, he would use the flexibility he had under existing law.

Most notably, in a move similar to his 2012 policy to help young undocumented immigrants, he announced a “deferred action” policy to delay the deportation of the parents of U.S. citizen or legal resident children. To qualify for relief, parents would have to register, pay a fine, show that they had resided in the country for five years, and pass a criminal background check. In return, any action on their cases would be delayed for three years, and they would be granted work authorization in the meantime. An estimated four million parents could be eligible for this relief alone.

In addition, Obama announced he would expand his 2012 policy to cover an estimated 300,000 additional young immigrants, order the U.S. Department of Homeland Security to focus its deportation efforts on criminal offenders, shift some enforcement resources to the border, and streamline immigrant visa and court procedures. In all, an estimated five million immigrants could be spared as a result of his new policies.

Civil and human rights advocates were quick to applaud the move. Wade Henderson, president and CEO of The Leadership Conference on Civil and Human

Rights, called it “a tremendous victory for all Americans who support human rights, basic fairness, and simple common sense,” adding that it “makes no sense to tear parents away from their children when they are willing to work hard, contribute to their families, and strengthen our communities.” Frank Sharry, head of America’s Voice, characterized it as “the biggest victory for immigrants and their allies in the past 25 years.”

The reactions from Obama’s opponents were equally strong. Boehner argued that the president “has chosen to deliberately sabotage any chance of enacting bipartisan reforms that he claims to seek” (an odd statement, given the refusal of the House to take up bipartisan reform prior to the announcement). Other opponents on Capitol Hill pledged to block the reforms through the appropriations process, even through the specter of a government shutdown if necessary. Some House Republicans even floated the idea of impeachment.

Bluster aside, there may be little that opponents can do to overturn Obama’s actions. Because key agencies in the Department of Homeland Security are funded through fees, the deferred action policies may be immune to legislative efforts to cut off funding. Even most congressional Republicans have ruled out impeachment. And when push comes to shove, Boehner and new Senate Majority Leader Mitch McConnell, R. Ky., are unlikely to risk a fiscally and politically costly government shutdown in the 114th Congress. Obama appeared to have anticipated as much, and instead challenged Congress to pass a substantive bill to deal with the underlying immigration issues, in which case he would gladly support a repeal of his administrative actions.

What All This Means for the Long Term

The odds that House Republicans will take up Obama on his challenge, however, appear to be low. Some in the party, such as Sen. Lindsey Graham, R. S.C., have long insisted that as the Latino population continues to grow in the United States, Republicans must do more to welcome them as any part of a long-term political strategy—a view that had been strongly shared by former President George W. Bush when he was in office. With congressional Republicans further solidifying a conservative majority, however, Graham may find himself even more isolated on the issue in the coming two years. As the 2016 presidential election approaches, there may be more pressure on Republicans to take up the issue, but it is far from certain that they will be willing or able to respond.

In the meantime, immigration advocates can be expected to continue urging Obama to make additional administrative reforms. Priorities will likely include a further expansion of “deferred action” policies to cover other

undocumented immigrants, human rights improvements in detention and border enforcement practices, and reductions in backlogs for immigrant visa applications. The Leadership Conference will continue to closely monitor these efforts, and continue educating decision-makers and the public about their importance, throughout the coming year.

Rob Randhava is senior counsel for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund and specializes in immigration and housing/finance issues.

Justice System Reforms Gain Traction

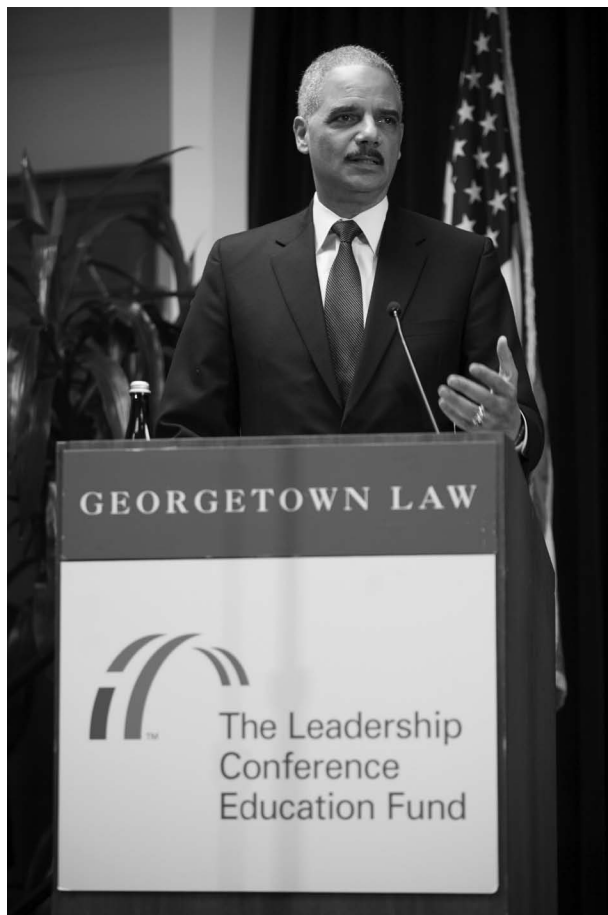
Sakira Cook
Commentary

Reforming the American justice system is a defining moral challenge of the 21st century, just as dismantling *de jure* segregation in the American South was a moral imperative during the Jim Crow era. Our system of mass incarceration is, at its very core, deeply unjust and inhumane. It relegates an astonishing number of people to permanent second-class citizenship and makes a mockery of America's professed commitment to democracy, opportunity, and basic human rights. With a correctional population of over 1.5 million individuals, the United States currently incarcerates more people than any other country in the world. And that's just people who are physically in jail or prison. If we count people on parole or probation, that number jumps to almost seven million—a nearly 300 percent increase since 1980. Most of these people are Black, Brown, poor, and undereducated.

Fortunately, in the midst of one of the most divisive and partisan political atmospheres in our nation's history, the conversation over criminal justice policy took a rather surprising turn at the end of the 112th Congress that continued into the 113th Congress.

In 2014, there was a marked shift in congressional attitudes toward working in a bipartisan manner to transform the justice system. In a welcome development, lawmakers expressed interest in addressing the discrimination that persists at every stage, from trial and policing to sentencing and re-entry, as well as reducing rising federal prison costs. Although there were still differences, in general there was agreement from all sides that we should use our resources to more adequately address public safety and invest in alternatives to incarceration, where appropriate.

With broad agreement that the federal mandatory minimum sentencing regime was both racially discriminatory and the primary cause of the ballooning federal prison



U.S. Attorney General Holder giving the opening address at The Leadership Conference Education Fund/Vera Institute for Justice February 11, 2014, event on the need to address mass incarceration and reform the U.S. justice system. The event was held at Georgetown University Law Center's Gerwirz Student Center. Photo: Dakota Fine

population and its current overcrowding, at the top of the year, there was significant movement to address “front end” drivers of mass incarceration. This led to the introduction of the Smarter Sentencing Act by Sens. Dick Durbin, D. Ill., and Mike Lee, R. Utah, and Reps. Raul Labrador, R. Idaho, and Bobby Scott, D. Va., legislation that garnered broad support from both conservatives and progressives to reduce federal mandatory minimums for certain drug offenses, allow judges to exercise more discretion, and right a wrong that was maintained after the passage of the Fair Sentencing Act of 2010.

Other proposed reforms included the introduction of the Democracy Restoration Act by Sen. Ben Cardin, D. Md., and Rep. John Conyers, D. Mich., which would address the restoration of voting rights for people returning home from prison; the introduction of the REDEEM Act by Sens. Cory Booker, D. N.J., and Rand Paul, R. Ky., which would address records expungement for youth offenders; and the introduction of the Second Chance Reauthorization Act by a bipartisan group of legislators, which would create pathways to successful re-entry.

Unfortunately, there wasn’t enough political will in the 113th Congress to push these commonsense reforms over the finish line. The Smarter Sentencing Act was favorably reported out of the Senate Judiciary Committee by a bipartisan vote of 13-5 and seemed poised for a successful floor vote. However, competing interests in advance of the midterm elections took precedent and the bill stalled in the Senate.

Toward the end of the 113th Congress, the debate over justice reform turned to an examination of law enforcement practices that discriminate against communities of color. The killings of unarmed Black boys and men by police officers across the country fueled a growing, passionate, and increasingly organized movement for justice across racial lines that could not be ignored.

In particular, the non-indictments of the police officers who killed Michael Brown in Ferguson, Mo., Eric Garner in Staten Island, N.Y., 12-year-old Tamir Rice in Cleveland, Ohio, and countless others throughout the country reminded us that, though we live in a country founded on the principles of equality and opportunity, for African Americans and other communities of color the promise of equality and opportunity has yet to be fully realized.

Advocates began pushing for commonsense reforms that would prohibit discriminatory profiling, demilitarize local law enforcement, redefine the standards for use of force by police, establish greater accountability for police abuse and misconduct, and increase data collection on police shootings and excessive use of force.

Toward the end of the “lame duck” session, there was significant movement toward addressing some of these issues. Congress passed the Death in Custody Reporting Act, which requires federal, state, and local prisons, detention centers, jails, and police departments to collect data on the deaths of individuals in custody. The administration also committed itself to addressing issues of police misconduct with the announcement of a package of reforms, including a review of agency programs that equip state and local law enforcement with military equipment, funding for training and body worn cameras, and a task force on 21st century policing to improve community-police relations.

And in mid-December, DOJ finally issued its long-awaited revisions to its profiling guidance for federal law enforcement. The guidance expanded protected categories and limited some of the existing loopholes. However, civil and human rights groups were disappointed that it fell short in fully protecting individuals from profiling by law enforcement in the areas of national security and border integrity, and that it did not apply to state and local enforcement.

These efforts in Congress and within the administration represent important steps and opportunity for our country to achieve lasting and meaningful change in our justice system. While the catalyst for much of the national conversation around law enforcement accountability was the wrongful killing of unarmed, African-American men and boys, law enforcement abuse affects everyone. In the 114th Congress, we must sustain the momentum begun in the 113th Congress to push for greater accountability for law enforcement, and, specifically, an end to discriminatory profiling, police militarization, and excessive use of force; front end sentencing reform, which is essential to combating disparities and reducing overcrowding; and resources and access necessary for people returning home from prison to fully reintegrate back into society.

We are at a pivotal time in our nation and our collective future and success will be defined by how we address systemic issues of inequality that continue to plague not only the justice system, but our democracy.

Sakira Cook is counsel for The Leadership Conference Education Fund and The Leadership Conference Civil and Human Rights and specializes in criminal justice system issues and human rights.

Congress Takes Detour on Transportation Policies and Investments

Lexer Quamie

Decisions about transportation policy and investment have a significant effect on access to economic opportunities, health care, affordable housing, and other essential elements of daily living. But for too long, transportation investments have failed to address the needs of low-income people, communities of color, people with disabilities, seniors, and rural residents.

In April, the Obama administration, under the leadership of Transportation Secretary Anthony Foxx, offered a long-term proposal to reauthorize the nation's surface transportation law. The proposal would make transformative investments in public transportation and other critical infrastructure needs to create jobs and provide more transportation options to people and communities in need.

Due to partisan acrimony, however, Congress failed to take up the measure or meet its own September deadline to reauthorize the current surface transportation law. It also came perilously close to allowing the depletion of the Highway Trust Fund, forcing states to halt or delay thousands of road and bridge projects, jeopardizing hundreds of thousands of construction jobs across the country and dealing a blow to the fragile economic recovery.

While Congress dithered, advocates for greater equity in transportation worked to educate policymakers to pay more attention to the needs of communities often left out of crucial transportation decisions.

To help raise awareness of the problems and potential solutions, the Transportation Equity Caucus, a diverse coalition of more than 100 organizations co-chaired by The Leadership Conference Education Fund and PolicyLink, ramped up its public education campaign, including unveiling a new website in 2014. EquityCaucus.org is designed to be a hub for transportation equity news

and policy discussions that will impact the future of the nation's transportation policy.

The administration's proposal was an encouraging sign that at least some policymakers see equity as a key to building a stronger, more inclusive future for the nation.

The Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act (or GROW AMERICA Act) is a \$302 billion, four-year surface transportation reauthorization proposal. The administration submitted it to Congress in April 2014. The administration's proposal helps lay the foundation for significant improvements to the nation's transportation policy, one that ensures that the civil and human rights of all individuals can be protected through robust investments in transit, increased safety protections, and the creation of job opportunities in the transportation industry.

Specifically, the GROW AMERICA Act would provide formula and discretionary funding for construction and maintenance of highways, roads, bridges, transit, as well as bicycle and pedestrian infrastructure. The bill would increase total investment in these projects by nearly 40 percent over current spending levels. For public transportation investment, the bill features an increase of nearly 70 percent above current spending.

Investing in public transportation is an essential ingredient for continued economic growth. By one estimate, 36,000 jobs are created or supported for every \$1 billion invested in public transportation, and every \$1 invested in public transportation generates almost \$4 in economic benefits.

Finally, the GROW AMERICA Act focuses on increasing access to "ladders of opportunity" by providing more

reliable and affordable transportation options to allow people greater access to education and job opportunities, including jobs in the transportation industry.

With the Highway Trust Fund—supported by a gas tax that has not been increased since 1993—on the brink of insolvency, the GROW AMERICA Act was an important step in attempting to meet our nation’s long-term transportation needs.

By contrast, the short-term patch for the Highway Trust Fund that Congress passed at the end of July fails to provide the long-term investment needed to repair and rebuild our nation’s 66,000-plus structurally deficient bridges or help transit systems cope with layoffs and service cuts while demand is increasing.

Unfortunately, further delay of a long-term reauthorization keeps workers off the job, undercuts long-term planning, and hinders the nation’s ability to advance to a transportation system that provides for the needs of all users. With the current surface transportation law set to expire in May 2015, the question for the 114th Congress is whether lawmakers will take strides toward creating the transportation system the nation needs in the 21st century, or continue to make short-term emergency cash transfers and fixes to sustain our infrastructure programs—a myopic and dangerous approach.

Lexer Quamie is a senior counsel of The Leadership Conference Education Fund and The Leadership Conference Education Fund and specializes in employment, labor, racial profiling and transportation issues.

The 38th Annual Hubert H. Humphrey Civil and Human Rights Award Dinner

The 38th annual Hubert H. Humphrey Civil and Human Rights Award Dinner was held on May 15, 2014, at the Hilton Washington 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 2014: Senator Tom Harkin, American Federation of Teachers President Randi Weingarten, and leading labor organizer and immigration reform advocate Eliseo Medina. Rhonda Neuhaus, policy analyst for government affairs at the Disability Rights Education and Policy Fund; disability rights icon Yoshiko Dart; Lee Saunders, president of the American Federation of State, County and Municipal Employees (AFL-CIO); student activist Asean Johnson; and Dae Joong “DJ” Yoon, executive director of the National Korean American Service & Education Consortium (NAKASEC), 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 all had the opportunity to attend The Leadership Conference Education Fund Reception. The reception was sponsored by UPS.

Mark your calendars for the 2015 Hubert H. Humphrey Award Dinner: Wednesday, May 13, 2015.



The Leadership Conference Education Fund reception



Attendees enjoy the dinner.



Humphrey Award honoree Eliseo Medina



Leadership Conference Chair Judith Lichtman congratulates Humphrey Award honoree Senator Tom Harkin.



Presenters Yoshiko Dart and Rhonda Neuhaus, policy analyst for government affairs at the Disability Rights Education and Policy Fund, share a moment with Humphrey Award honoree Senator Tom Harkin.



Presenter Asean Johnson and AFSCME President Lee Saunders pose for a photo after presenting the Humphrey Award to Randi Weingarten, president of the American Federation of Teachers.



Leadership Conference and Education Fund President and CEO Wade Henderson acknowledges emcee Maureen Bunyan following her introduction of the dais.



Top row, from left to right: Leadership Conference President and CEO Wade Henderson, labor organizer and immigration reform advocate Eliseo Medina, Senator Tom Harkin, AFSCME President Lee Saunders, Leadership Conference Executive Vice President Nancy Zirkin, Leadership Conference Executive Vice President and COO Karen McGill Lawson, Leadership Conference Chair Judith Lichtman
Front row, from left to right: DREDF Policy Analyst for Government Affairs Rhonda Neuhaus, AFT President Randi Weingarten, presenter Asean Johnson, NAKASEC Executive Director Dae Joong "DJ" Yoon



Leadership Conference and Education Fund President and CEO Wade Henderson poses for a photo with attendees at the Education Fund reception.



Microsoft Corporation Vice President, US Government Affairs Frederick Humphries Jr, DREDF Policy Analyst for Government Affairs Rhonda Neuhaus, and Senator Tom Harkin on the dais.

Economic Rights as Civil Rights

Richard Cordray Commentary

Across the country, this year has marked significant anniversaries for civil rights milestones. It is the 60th anniversary of the Supreme Court's decision in *Brown v. Board of Education*, which held that segregated schools in America are unconstitutional and struck down the previously accepted doctrine of "separate but equal." And it is the 50th anniversary of the Civil Rights Act of 1964, which banned discrimination in public accommodations, employment, and other areas.

Notably for our work at the U.S. Consumer Financial Protection Bureau, this year also marks a further related anniversary: the 40th anniversary of the Equal Credit Opportunity Act, otherwise known as ECOA. This statute expressly prohibits discrimination in all manner of financial credit transactions, thus affirming that economic rights are civil rights. So in my mind, this is really a celebration of 60/50/40, particularly for those of us who work in consumer finance.

What do we make of the *Brown* decision and the Civil Rights Act? With each of these landmark actions, the United States continued a forward arc of prolonged evolution toward a more fair and equitable society. The problems of how to create and ensure diversity and inclusion among all people have been and remain hard problems around the globe. They are intellectual problems; they are moral problems; and they are most distinctly human problems. In American life, these two events laid cornerstones of fundamental change. At the ballot box, in the legislative chambers, in our courts, in our neighborhoods, and in the marketplace as well, we wrestle to this day with the dilemma of how to reach a better and fuller understanding of what it truly means to be "created equal."

Abraham Lincoln, for example, stoutly resisted the crude notion that equality meant a kind of sameness, and argued instead that it denoted a conceptual notion of intrinsic worth. As he explained in his first speech oppos-

ing the *Dred Scott* decision: the authors of "that notable instrument," the Declaration of Independence, "did not mean to say all were equal in all respects," but said instead that all were created equal "in 'certain inalienable rights, among which are life, liberty, and the pursuit of happiness.'" And in so doing, he concluded: "They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere."

All too often, however, this is a maxim that we have failed to live by as a nation. More than a century later, Dr. Martin Luther King, Jr. noted that despite the Declaration's guarantee of equality, in many places he could not stop at a motel, could not get a hamburger or a cup of coffee at a lunch counter, could not get a seat on the bus, and could not enable his children to attend an integrated school. Even now, more than 150 years after President Lincoln restored the luster to the Declaration's "standard maxim for free society," we cannot claim that America has yet realized the fundamental promise of equality and freedom that will indeed augment "the happiness and value of life to all people of all colors everywhere."

At the outset, I suggested that the Equal Credit Opportunity Act should be added as a further landmark to *Brown* and the Civil Rights Act. The addition of the "40" to the "60/50" theme is important to my thesis today. For the principle of "fair lending" that underlies this statute is crucial to upholding and enforcing the kinds of economic rights that ensure freedom and equality to the people who constitute our society. One of those rights is the right to access credit on fair and equal terms—to borrow

money now for repayment at a future date, so as to have the use of it for purposes of one's own choosing. Our pursuit of happiness is enhanced when the government helps to ensure that the opportunities that free markets and fair lending make possible are available to us all.

The time-shifting nature of credit is that it enables us to transform the circumstances of the present into our aspirations for the future. With it, we have opportunities; without it, most of us would be locked into narrowed and constrained pathways for our lives. So together with the related rights to obtain money, to hold money, and to deploy money on fair and equal terms, the right to credit or fair lending becomes a basic pillar of the economic rights that are intertwined with civil rights in this particular society.

At this point, it is worth taking a broader look at how we understand the concept of civil rights. The manner of defining our notions of freedom and equality in American law and society has taken two central forms: first, to define those characteristics in which our differences do not denote our inequality as human beings; and second, to define those rights that we are judged to possess on an equal footing simply because we are human beings. The first task has been fertile ground for civil rights advocates throughout our history, yielding by now an established consensus on certain attributes and an emerging consensus on others. Which characteristics matter and do not matter to our intrinsic humanity is a defining idea for our society and our nation. But it is the other task that draws my attention today, which concerns an understanding of the nature of the rights that our intrinsic notions of equality and liberty should safeguard for us insofar as we are quintessentially human beings.

I would propose that we focus here on at least three distinct categories of the most fundamental rights that American law affords us: political, legal, and economic. Human rights, grounded in moral claims that transcend national boundaries, are also basic to these inquiries by informing the criteria we use to gauge the intrinsic worth of our claims to humanity; for as William Seward famously proclaimed, "there is a higher law than the Constitution." But our horizon is more limited here. Suppose we accept, as we all do in principle, the language of the Declaration of Independence that all are "created equal," and suppose we embrace some societal consensus around our conception about what characteristics are and are not germane to that equality. The further question presented is this: Just what difference does this equality make? What does it guarantee us the right to do or not to do as individuals in American society? And what role should our gov-

ernment play in either letting us alone to enjoy those rights or assisting us to attain them more fully?

When we look to models like *Brown v. Board of Education* and the Civil Rights Act of 1964 (and the Voting Rights Act that followed the next year), we find that we tend to answer these questions most naturally in terms of our political and legal rights. If we hearken back to the Civil War amendments to the Constitution—the Thirteenth, Fourteenth, and Fifteenth—we find that they were addressed most prominently to political and legal attributes and recognition: the right to citizenship, the right to vote, the right to "due process of law," and the right to "equal protection of the laws."

But it was always the case, also, that the movement and aspiration toward equality in American life was almost as fundamentally economic as it was political and legal. This was well understood in the African-American community, as reflected in Dr. King's 1963 March on Washington for Jobs and Freedom and his later involvement in the "Poor People's Campaign" for economic justice. In the end, it seems to me that these three categories of rights—political, legal, and economic—are inextricably intertwined in our society. Because we chose to build our political structure around a free market economy, we inevitably found it necessary to supplement our bare political and legal equality with some more robust measures of economic equality and economic rights as well.

The right to pursue an education to build one's own human capital, the rights to public accommodations to make productive use of transport and lodging, and ultimately, the rights relating to the terms and conditions of employment as guaranteed by Title VII of the Civil Rights Act of 1964—all of these are economic rights essential to our notions of what it must mean to be free and equal in an evolving America. All of these economic rights are now believed to be necessary as we strive to attain that "standard maxim for free society" in the Declaration of Independence of which Lincoln so eloquently spoke.

But the Civil Rights movement continued to refine our notions of freedom and equality by pushing for further legislation designed to remove barriers to equality of economic opportunity. The Fair Housing Act of 1968 was enacted to address enforced segregation in residential housing, which curtailed access to improved education, job opportunities, and the accumulation of wealth through the purchase, ownership, and sale of real property. And the Equal Credit Opportunity Act of 1974 (again, the "40" of our 60/50/40 motif) was written into law to recognize that people need to have access to credit on fair and equal terms. If they cannot

get credit at all, or if they can get it only on overpriced or unfavorable terms, then they will be hindered from pursuing the opportunities that sometimes can only be facilitated by borrowing money on credit.

But what recourse is open to borrowers who are charged more to finance an auto purchase than their creditworthiness would have justified? The initial “buy rate” that lenders quote to the dealers is not disclosed to consumers, and so when that initial rate is marked up by the dealers to a higher rate of interest, many consumers do not even realize they are paying more, let alone why. Where statistical or other evidence indicates that this higher pricing of credit is occurring based on the consumer’s race or national origin or other prohibited characteristics under the Equal Credit Opportunity Act, then there are legal remedies available. Whether or not consumers avail themselves of those remedies, it is also within the Consumer Bureau’s power to take direct action to enforce the law as well.

Under established law, the statute operates according to either of two prongs, and the Consumer Bureau has the authority to pursue lenders whose policies and practices either create disparate treatment or have an illegal disparate impact on communities of color. Although these are two distinct theories by which to prove discrimination, in many ways the cases are very similar. A disparate-treatment claim often will be grounded on evidence that presents some overt indication that the consumer was targeted for differential treatment based on prohibited characteristics. A disparate-impact claim, by contrast, may not present any such evidence, but will be based instead on statistical evidence of differential treatment among a larger universe of consumers. The second prong, which has been settled law for over two decades, is under some pressure right now.

But the distinction between the two prongs is not as clear as it may sound. The statistical evidence that plays a central role in disparate-impact cases is also probative evidence that is quite relevant in disparate-treatment cases as well. So it is not clear how much difference there is in practice between cases brought under either prong. Barring some more overt evidence of discrimination, which is now rarely found in lender files, the same kind of statistical evidence would tend to bear strongly on discrimination claims framed under either approach.

Moreover, it is not clear how much the distinction between treatment and impact would necessarily matter to a consumer. Certainly any more overt indicator of discrimination would likely add “insult to injury,” to borrow a common phrase. But if instead an auto lender simply set up its lending program in such a way as to

systematically overcharge both this consumer and other members of the same minority group, then essentially the same injury would have occurred. Accordingly, the same legal relief would appear to be justified in both instances if the consumer’s access to credit on fair and equal terms is to be protected under the law.

We have a duty to enforce the law, and the Equal Credit Opportunity Act has been the law of the land for forty years. So where we have seen problems, we have taken action. Last December, we worked with the Department of Justice to resolve the largest set of auto loan discrimination claims in history. Ally Bank was required to pay \$98 million to address their discriminatory pricing practices (including an \$18 million penalty), which had caused more than 235,000 minority consumers to pay more for their auto loans than white consumers who were similarly situated. The bank also was required to implement a robust compliance management system to prevent such problems from recurring.

We have since announced that \$56 million of consumer relief will be distributed to approximately 190,000 more consumers for discriminatory practices by other major auto lenders since the Ally matter was resolved. This relief has come about as a result of work we do in our supervisory role over the larger banks, where Congress has authorized us to send in teams of examiners to monitor their operations for compliance with fair lending laws, including the Equal Credit Opportunity Act. All of this enforcement and supervision work in auto lending is important and it remains ongoing.

At the Consumer Bureau, we are keenly aware of our responsibility to do whatever we can, within our authority, to combat the persistent evil of discrimination, and we understand the importance of doing this work steadily and tenaciously.

So as we look back over our country’s history, we can observe a prolonged struggle to give meaning to the central principle that all are created equal and all should be treated fairly. We continue to hold to that principle today. As the numbers show us, life still is harder and more expensive for many people of color. Despite the pivotal legal changes adopted over the past 60 years, these communities still face tremendous social and economic challenges. In the face of difficulties, they are entitled to count on the essential principle of fairness in all of their ordinary economic dealings.

As a nation, we need to join in more open dialogue along the lines of Project 60/50/40. By doing so, we can deepen our commitment to diversity and inclusion and come to a fuller understanding of how action ac-

according to these principles can improve our life together. It has always served us well to face hard truths and think as carefully as we can about how best to address them. And one thing we have learned is that every time we manage to expand opportunity to a broader group of Americans, we make this country better and stronger in an admirable and enduring way.

Richard Cordray, is the director of the Consumer Financial Protection Bureau. This piece is an abridged version of a lecture Cordray delivered at Michigan State University on October 10, 2014. The full lecture can be found here: <http://www.consumerfinance.gov/newsroom/cfpb-director-richard-cordrays-prepared-lecture-on-economic-rights-as-civil-rights-at-michigan-state-university/>

State and Local Governments Move Ahead of Congress on Minimum Wage Increase

Patrick McNeil

As he did in 2013, President Barack Obama in his 2014 State of the Union address called on Congress to follow the example of states across the country and raise the federal minimum wage. He also announced that—in the coming weeks—he would issue an executive order to raise the minimum wage for federal contractors to \$10.10 an hour.

The Minimum Wage Fairness Act (S. 2223), introduced by Sen. Tom Harkin, D. Iowa, would raise the minimum wage to \$10.10 by 2016, in three increments of 95 cents each, and adjust it for inflation each year thereafter to keep pace with the rising cost of living. The bill would also raise wages for tipped workers, whose meager \$2.13 an hour subminimum wage hasn't seen an increase in nearly a quarter century.

Unfortunately, the Senate in April blocked consideration of the bill, which failed to pass a procedural hurdle and gained only one Republican supporter. Rep. George Miller, D. Calif., introduced companion legislation in the House, but that bill made even less progress.

In contrast to stagnation at the federal level, states and localities across the country have been passing their own increases. In June, for example, the Seattle City Council unanimously agreed to a gradual wage hike to \$15 an hour in the city, making it the nation's highest. And it's evident that Americans are ready for a raise. Poll after poll shows strong public support, and voters in Alaska, Arkansas, Nebraska, and South Dakota voted to raise their minimum wage rate in the November elections.

But the push for higher wages isn't new. An increased minimum wage was one of just 10 demands of the August 1963 March on Washington for Jobs and Freedom. Now, more than a half century later, the federal minimum wage continues to fall short, even as studies show that states increasing their minimum wages

see faster job growth and declining unemployment rates. Last raised in 2009 to \$7.25 an hour, the current federal minimum wage is low by historical standards and inadequate for meeting the basic expenses faced by working families today.

In October, The Leadership Conference Education Fund and the Georgetown Center on Poverty and Inequality released a report, "Improving Wages, Improving Lives: Why Raising the Minimum Wage is a Civil and Human Rights Issue," to explain why raising both the hourly minimum wage and the subminimum wage for tipped workers are core civil rights priorities.

Proposals to raise the minimum wage—like the Minimum Wage Fairness Act—would raise wages for a large share of low-paid workers, including a disproportionate share of African Americans, Latinos, women, LGBT individuals, and other disadvantaged workers. These proposals would also help narrow the gender wage gap, especially for women of color.

The minimum wage has also become increasingly relevant for the well-being of low-wage workers' families, as those likely to be affected by a minimum wage increase are now significantly older and more educated than ever before, and more often the primary or even sole breadwinners for their families. Without federal legislation passed by Congress and signed by the president, American families continue to be left behind.

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

Protecting Civil Rights in an Era of Big Data

Kate Wikelius

Technological progress should bring greater safety, economic opportunity, and convenience to everyone. As the collection of new types of data remains essential to documenting persistent inequality and discrimination, new technologies are allowing companies and the government to gain greater insight into our lives. It is vitally important that these emerging technologies be designed and used in ways that respect the values of equal opportunity and equal justice.

In February 2014, The Leadership Conference on Civil and Human Rights joined other civil rights and media reform organizations in endorsing the [Civil Rights Principles for the Era of Big Data](#). These principles represent the first time that national civil and human rights organizations have spoken publicly about the importance of privacy and big data for communities of color, women, and other historically disadvantaged groups. These principles were then highlighted in the White House report “[Big Data: Seizing Opportunities, Preserving Values](#)” released in May 2014.

As the White House defined it in its report, big data “is data so large in volume, so diverse in variety or moving with such velocity, that traditional modes of data capture and analysis are insufficient—characteristics colloquially referred to as the ‘3 Vs.’ The declining cost of collection, storage, and processing of data, combined with new sources of data-like sensors, cameras, and geospatial and other observational technologies, means that we live in a world of near-ubiquitous data collection. The volume of data collected and processed is unprecedented.”

The principles highlight the growing need to protect and strengthen key civil rights protections in the face of this technological change. They call for an end to high-tech profiling; urge greater scrutiny of the computerized decision-making that shapes opportunities for employment, health, education, and credit; underline

the continued importance of constitutional principles of privacy and free association, especially for communities of color; call for greater individual control over personal information; and emphasize the need to protect people, especially disadvantaged groups, from the documented real-world harms that follow from inaccurate data.

How and where, exactly, does big data become a civil rights issue? A new report, “[Civil Rights, Big Data, and Our Algorithmic Future](#),” begins to answer that question, highlighting key instances where big data and civil rights intersect. In recent months, big data issues have come to the forefront of civil rights debates. In Ferguson, Missouri, for example, federal and local investigations are underway to determine what happened during the lethal encounter between Darren Wilson, a White police officer, and Michael Brown, an unarmed African-American teenager. Advocates have asked if the situation might have unfolded differently had Officer Wilson used a body-worn video camera to record his interaction with Brown.

With strict measures to ensure proper protocols are in place, such cameras can be a powerful tool for police oversight and accountability, as well as to address longstanding deficiencies in police practice that disproportionately impact communities of color. The police in Ferguson have now rolled out such cameras, and a growing number of departments around the country are doing the same. These changes come too late for Brown, but they will help to make police more accountable for their conduct going forward.

Another example involves the role big data will play in the future of lending, which may help more Americans join the financial mainstream. For example, a history of paying cable bills on time might help show that an unbanked consumer is creditworthy. New “fair lending analytics” software which relies on advanced statistical

modeling, can alert lenders about potential discrimination or disparate impact in their marketing activities, during the loan application process, or after credit is extended. Here, cutting-edge data practices can help identify where individuals in protected status groups aren't enjoying the same access to credit as similarly qualified non-minority borrowers.

However, there is also a more exotic world of “fringe” alternative data: Some startups provide credit decisions that hinge on everything from the technology a person uses, to social networking or location data, or even the speed at which a user scrolls through a website, raising critical questions about privacy and discrimination.

Hopefully, over time, the thoughtful and careful integration of new data and new technologies will help improve access to credit. Many responsible borrowers have damaged credit scores because of hard times, rather than poor judgment—and it is vitally important that they have access to credit at fair rates.

The report describes other real-life examples of where big data intersect with civil rights in the areas of financial inclusion, jobs, criminal justice, and government data collection and use. These include:

- Data-driven insurance pricing that may subject low-income drivers to higher rates;
- Commercial “data brokers” who target vulnerable communities by selling lists of people who have a particular illness or whose finances are in crisis;
- Errors in the federal E-Verify that disproportionately harm foreign-born workers;
- Hiring algorithms that put jobs out of reach for applicants who face longer commutes to work;
- Police surveillance tools whose use guidelines are shrouded in secrecy;
- Dragnet surveillance methods, introduced for counter-terrorism purposes, that are now being used to target suspects in drug cases;
- The important role of the Census in promoting civic welfare and civil rights.

These are just a few examples of how, in the coming years, the use of data will have an increasingly greater impact on the lives of all people in the United States (the report's authors also publish a free weekly newsletter on big data and civil rights, which is available at <http://EqualFuture.us>). To ensure that big data serve the best interests of each of us, civil rights must be a key part of any public policy framework.

Kate Wikeli is the policy associate for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.

Responding to Anti-Semitism with Diversity

Scott Simpson Commentary

In November, The Leadership Conference on Civil and Human Rights brought a membership delegation to the Organization for Security and Co-operation in Europe's (OSCE) Berlin conference on anti-Semitism and xenophobia.

The conference marked the 10th anniversary of the Berlin Declaration, which obligated all 57 member states of the OSCE to combat anti-Semitism and to monitor, prevent, and report hate crimes. To commemorate the occasion, the OSCE convened a conference for participating states to reflect on the progress made since 2004.

In 2004, and again in 2014, The Leadership Conference brought a delegation of diverse groups of American non-governmental organizations that included African Americans, Arab Americans, Asian Americans, Latinos, LGBT people, Muslims, Sikhs, and Jews. At both conferences, The Leadership Conference delegation was the only one that reflected the diversity of the nation it represented.

Unfortunately, progress on combating anti-Semitism has been elusive. After 10 years, anti-Semitism is on the rise. Jews from across Europe now live in greater fear of persecution, hate crimes, and displacement. Jewish communities in France, Belgium, and Eastern Europe have become targets of bigotry, far-right parties have embraced anti-Semitism as a political strategy, and protests over Middle East conflict have too often morphed into hateful anti-Jewish sentiment.

Today, 40 of the 57 OSCE nations have some sort of hate crime law. But only 27 comply with the Berlin Declaration's obligation to submit official hate crimes statistics to the OSCE. Moreover, implementation of hate crime laws is often weak or inadequate to meaningfully protect vulnerable communities.

Thanks to the passage of the 2009 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), the United States has a model hate crimes law that answers the call of the Berlin Declaration. The HCPA expanded federal hate crime protections to include LGBT people, women, and people with disabilities and enhanced our monitoring and prevention of bias-motivated crimes. The United States was able to pass this law because the diverse civil and human rights coalition came together and chose to measure equality by a single yardstick.

As Jean Freedberg of the Human Rights Campaign and a delegate with The Leadership Conference group wrote, "Anti-Semitism is not a 'Jewish problem'—rather, like most other forms of hate, it is a sign, or a symptom, of much deeper societal problems. ... The victims of those hatreds should not have to bear the responsibility alone for eradicating them—that should be a shared responsibility among us."

Our diverse coalition is the outgrowth of a longstanding partnership led by Jews, African Americans, and labor unions that came together more than 60 years ago to fight Jim Crow segregation in the American South. Over the years, this partnership has grown to mirror the diversity of our nation. This is a model for combating anti-Semitism that can and should be replicated in nations across the globe.

As Richard Cohen of the Southern Poverty Law Center wrote [in a blog post](#) when he returned from the trip, "The battle against European anti-Semitism is everyone's fight, not simply a Jewish one. It is also a battle that we, as Americans, cannot ignore."

The landscape of bigotry and prejudice is different from nation to nation, and anti-Semitism, xenophobia, racism, nationalism, and homophobia still run rampant throughout the world and the OSCE nations. But there

are opportunities for Jews across Europe to partner with Muslims, the LGBT community, the Roma, people with disabilities, and Europeans of African descent to call on their governments to protect them from aggression and bigotry.

At the conference, The Leadership Conference called on the OSCE to renew its commitment to encouraging inter-group coalition work to battle anti-Semitism, and on December 5, it adopted a new declaration that included our recommendations.

The United States still has a very long way to go to ensuring equal protection under the law for all. Our criminal justice system has become a warehouse for poor, Black, and Latino men. Our educational system continues to deny opportunities to students with disabilities, and minority and low-income students. And African Americans, Latinos, Muslims, and Sikhs continue to be victim to state-sanctioned aggression and profiling.

But the diverse communities of the U.S. have been able to transcend deep-seated differences to push our nation to better protect all Americans. If that can happen in the U.S. with our history of violence, bigotry, and oppression, it can certainly happen in any nation.

Scott Simpson is the press secretary for The Leadership Conference Education Fund and The Leadership Conference Civil and Human Rights.

Supreme Court Upholds Michigan Ban on Considering Race in College Admissions

Tyler Lewis

On April 22, the U.S. Supreme Court, reversing a ruling of the U.S. Court of Appeals for the Sixth Circuit, upheld the constitutionality of Proposal 2, a 2006 Michigan voter initiative. Proposal 2 amended the state's constitution to, among other things, prohibit state universities from considering race as part of its admissions process. In a 6-2 vote, the Court ruled that this ban on the consideration of race did not violate the Constitution's Equal Protection Clause.

The *Schuette* case combined two lawsuits that were brought separately. The Court joined the *Schuette v. Coalition to Defend Affirmative Action* case, which was initially brought against the state by the Coalition to Defend Affirmative Action By Any Means Necessary (BAMN), with *Cantrell v. Granholm*, a case brought against the state by the ACLU of Michigan, Detroit Branch of the NAACP, ACLU of Southern California, ACLU, and the NAACP Legal Defense and Educational Fund, Inc., on behalf of students, faculty and prospective applicants to the University of Michigan.

The ACLU, NAACP LDF, and others argued that Proposal 2 violated the Constitution because it created a two-tiered political process that effectively banned minorities from engaging in precisely the same civic activities that other constituencies have unfettered ability to use. For instance, in Michigan, donors, athletic officials, church groups, and alumni can each lobby universities to have their constituents' particular affiliations or experiences considered in admissions decisions, but minority students (and others who support a broadly diverse student body) would have to overturn a state constitutional amendment simply to have their voices heard in the admissions process.

In her dissent, Justice Sonia Sotomayor—who was joined by Justice Ruth Bader Ginsburg—expressed concern with the ruling and underscored the case's focus

on the political process and the necessity to protect all voters involved in that process.

“Contrary to today’s decision, protecting the right to meaningful participation in the political process must mean more than simply removing barriers to participation. It must mean vigilantly policing the political process to ensure that the majority does not use other methods to prevent minority groups from partaking in that process on equal footing,” Sotomayor said. “I firmly believe that our role as judges includes policing the process of self-government and stepping in when necessary to secure the constitutional guarantee of equal protection.”

The civil and human rights community argued that Proposal 2 unfairly rigged the system against minority students and that the “political restructuring doctrine,” which formed the crux of Sotomayor’s dissent, would require the Court to overturn Proposal 2.

[An amicus brief](#) filed by The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund and signed by 31 other civil rights organizations argued that applying the “political restructuring doctrine,” known as the *Hunter/Seattle* doctrine—which requires heightened scrutiny—was vital in the context of state constitutional amendments that target race:

“By requiring heightened scrutiny for racially-focused initiatives that reallocate political power away from deliberative democratic processes in which minority groups have had success—leaving them only with more remote and difficult avenues for change, ones in which factional interests and passions are most likely to block their efforts—*Hunter/Seattle* acts as a check on structural change that deprives minority groups of an equal opportunity to participate in self-government.”

Schuette did not challenge Proposal 2's equal opportunity ban in public employment or public contracting and it did not address the constitutionality of race-conscious programs, specifically leaving intact the Court's 2013 *Fisher v. University of Texas at Austin* decision reaffirming that diversity is a compelling state interest.

Michigan was the third state to ban equal opportunity, following California in 1996 and Washington in 1998. In the years since Proposal 2 was passed three other states have banned the policy: Nebraska in 2008, Arizona in 2010, and Oklahoma in 2012.

Tyler Lewis is the director of messaging and project management for The Education Fund and The Leadership Conference.

Public/Private Partnership Seeks to Address Issues Facing Boys and Young Men of Color

Sakira Cook and Tyler Lewis

On February 27, President Obama announced “My Brother’s Keeper,” a White House initiative to empower boys and young men of color by addressing many of the ongoing structural challenges facing this community in the United States.

As part of the initiative, Obama signed a presidential memorandum establishing an interagency task force to help determine what current public and private policies and programs that impact boys and young men of color are working and, importantly, might be ripe to be scaled up and/or replicated. The task force had four objectives to complete in its first 90 days:

- Review and suggest improvements to all federal policies, regulations, and programs that apply to boys and young men of color;
- Create an administration-wide online portal to house and promote public and private programs and practices that have proven to be effective;
- Develop a public website (to be maintained by the U.S. Department of Education) to assess, on an ongoing basis, life outcomes of boys and young men of color; and
- Recommend to the president ways to ensure the initiative is sustainable.

The task force submitted its report on May 30. The recommendations center on ensuring boys of color enter school ready to learn, read at grade level by third grade, graduate from high school ready for college and careers, complete postsecondary education or training, and successfully transition into the workforce. Another key area of concern highlighted in the report is reducing violence and providing a second chance to those who need it.

Since the initial 90-day start-up period, the president has announced the initiative’s collaboration with the National

Mentoring Partnership to recruit mentors for boys and young men of color. He has also challenged cities, towns, counties and tribes to become “MBK Communities” that implement “cradle-to-college-and-career strategies” to improve opportunities for boys and young men of color.

In addition, 11 foundations committed to spending at least \$200 million over the next five years (in addition to \$150 million that had already been granted to organizations addressing this community) for the private sector companion, the Boys and Young Men of Color Initiative (BMOC).

BMOC is made up of six sector tables—nonprofit social justice, youth, philanthropy, state and local governments, corporate, and faith—that are designed to foster and expand public-private collaboration around proven policies and programs.

The Leadership Conference Education Fund heads the nonprofit social justice table, which includes both direct service organizations and local/state NGOs that work on programmatic and policy issues relating to boys and young men of color. The table developed a statement of principles around which it would organize (see principles below).

My Brother’s Keeper and BMOC are still in the early stages of development. Given the increasing national attention to boys and young men of color that has followed the killings of Michael Brown, Eric Garner, and other unarmed Black boys and men by law enforcement, the work of this public-private partnership is not only timely, but necessary.

Statement of Principles

The need to expand opportunity and improve the life outcomes of young men and boys of color is a concern for the entire nation and provides a window into the broader structural inequities that plague young people of

color more broadly. Disproportionate numbers of boys and young men of color are denied equitable access to education, employment, and civic life; and are overrepresented in our criminal justice system. The existing barriers to their success, as well as the implicit biases and racial discrimination that affect their daily lives, are national problems that require national solutions.

If we are to address these challenges comprehensively, we must collect data, disaggregated by race, gender and all other demographics, and address any and all gaps. We must develop solutions that are holistic in nature and support the health and vitality of everyone—boys and girls, men and women—in the communities in which they live, empower young people of color to realize their greatest potential, and reframe the public images of (and narratives around) all young people of color. These solutions must also take into account and address the root causes of the barriers facing young people of color. We look to national, state, and local governments, business, and philanthropy to respond with adequate resources to address these challenges and to collaborate across sectors.

The following is a set of broad principles that lay a framework for the nonprofit social justice community to identify and implement key programmatic and policy interventions to advance the health and success of communities of color.

Promoting Healthy Children, Families and Communities

Every person in the community, from parents and teachers to faith leaders and caregivers, is a critical partner in ensuring a bright future for boys and young men of color. We must create a culture in our communities where children and families of color are supported, empowered, celebrated, and mentored; where the personal development, physical and mental health, and healthy self-concept of these families are nurtured; where there are sensible policies that address home and public safety needs; and where adequate culturally and developmentally appropriate resources and systems are in place to strengthen and support all families.

Ensuring Educational Opportunity

Children of color deserve a diverse, high-quality and equitable public education from early childhood through higher education that addresses their academic, physical and social needs and prepares them for post-secondary education, occupational skills training, and/or high-demand careers. All schools should have the resources, support and training they need to create a climate that nurtures and sets high expectations for every student; honors and respects the unique talents, heritage, culture and history of every student; and strives to keep every student in the school by eliminating overly harsh school discipline policies (including zero tolerance policies) and keep-

ing young men of color out of the juvenile and criminal justice systems.

Decriminalizing Young People of Color

Incarceration should not be a for-profit enterprise or a form of social control. Incarceration should be reserved for the worst crimes in society. All communities and public institutions (such as educational systems, child welfare agencies, and public safety entities) should have the tools necessary to intervene and prevent young people of color, especially boys and young men of color, from having contact with the criminal and juvenile justice systems. Implicit and explicit institutional racism must be eradicated at every stage of the criminal and juvenile justice systems. All communities should develop appropriate alternatives to divert as many young people of color as possible, especially boys and young men of color, from incarceration to education and workforce programs; supportive mental health and, substance abuse programs, and other services that address individual needs. We must also support (and provide resources for) the reintegration of young people of color who were involved with the juvenile or criminal justice systems back into their communities.

Creating Economic Opportunity

Young people of color and their families should have the ability to take advantage of the benefits and opportunities that the global economy offers. Communities must have institutions and supports that prepare young people of color, especially boys and young men of color, for high-paying jobs with fair and equitable wages; encourage and foster wealth-building; provide education and workforce development training, including outreach and apprenticeships; guard against all forms of discrimination; and provide opportunities for those returning from incarceration to work and be successful. Employers must be ready and willing to hire and train young people of color in their companies.

Promoting and Protecting Civic and Community Engagement

Every American has a voice that is valuable to our communities and our democracy. Laws and policies that infringe upon the franchise or discriminate against citizens' right to vote should be reconsidered and repealed. We must ensure that young people of color are appropriately represented, and have a voice and participate in their communities and the political process at the national, state, and local level.

Sakira Cook is counsel for The Leadership Conference Education Fund and The Leadership Conference Civil and Human Rights and specializes in criminal justice system issues and human rights. Tyler Lewis is the director of messaging and project management for The Education Fund and The Leadership Conference.

The Growing Movement to Change Washington Professional Football Team's Offensive Name

Patrick McNeil

At its annual meeting in December 2013, The Leadership Conference on Civil and Human Rights voted unanimously for a resolution urging the owner of Washington's NFL football team to change the team's name, saying it "cannot in any reasonable way be viewed as honoring the culture or historical legacy of any particular Native American tribe or individual."

Throughout 2014, challenges to the team's name have been unrelenting.

In January, the Change the Mascot Campaign and the National Congress of American Indians released a powerful two-minute video, "Proud to Be," which spoke to the pride and diversity of Native Americans juxtaposed to the offensive mascot. The video made an immediate impact and was viewed more than three million times on YouTube during the year and shown during a game of the NBA Finals.

In May, 50 U.S. senators signed a letter circulated by Sen. Maria Cantwell, D. Wash., urging National Football League Commissioner Roger Goodell to support changing what they called a racial slur.

A month later, the U.S. Patent and Trademark Office (PTO) cancelled six federal trademark registrations for the name of the team, saying in a decision that the "registrations must be cancelled because they were disparaging to Native Americans at the respective times they were registered." The ruling was issued by the PTO's Trial and Appeal Board in response to a case brought against the team by Amanda Blackhorse, a Navajo and psychiatric social worker.

In July, the Center for American Progress released a report, "Missing the Point: The Real Impact of Native Mascots and Team Names on American Indian and Alaska Native Youth," concluding the team's name is

more than just racist: it has real effects on American Indian and Alaska Native (AI/AN) youth every day. The report revealed that offensive mascot names can foster hostile learning environments for AI/AN students, result in lower self-esteem and mental health, and lead to the development of cultural prejudices since the stereotypical depictions are often understood to be true. Native mascots not only misrepresent the AI/AN community—they mask an enduring affliction that is felt every day.

In a step forward, some televised broadcasts attempted to alleviate those enduring afflictions by revising policies about using the name. In July, the chairman of CBS Sports said that announcers and production teams would decide for themselves whether to use the name, and ESPN made the same announcement a month later.

In August, the National Congress of American Indians and the Oneida Indian Nation sent letters to Twitter, Facebook, and Google asking that the team's official, verified accounts be deleted from their sites. The request was with respect to the sites' terms of service and community guidelines, all which—to some degree—ban hate speech. Later in the month, the *Washington Post* editorial board declared it would no longer use the name, saying "while we wait for the National Football League to catch up with thoughtful opinion and common decency, we have decided that, except when it is essential for clarity or effect, we will no longer use the slur ourselves."

New York Daily News followed suit a week later, saying the publication would refer to the team simply as "Washington." Six days later, online retailer Etsy banned sellers from selling items that use the team's name or logo.

In September, popular cartoon series "South Park" satirized team owner Dan Snyder's continued use of

the name in its 18th season premiere. In a clip aired during the fourth quarter of a matchup between Washington and Philadelphia, one of the show's primary characters (Cartman) begins to use the team's name and logo to promote his own company—which he claimed is perfectly legal given the cancellation of the team's trademark registrations. A cartoon Snyder challenges Cartman and calls the move offensive and derogatory, to which Cartman responds: "When I named my company...it was out of deep appreciation for your team and your people."

Inspiration for Cartman's words may have come from Tom Wheeler, chairman of the Federal Communications Commission (FCC), who earlier in the month used those same terms—offensive and derogatory—to describe the team's name at a conference in Las Vegas. Wheeler also said at a press conference that the FCC's board would consider a petition filed by a George Washington University law professor claiming the team's name is in violation of federal rules banning indecent content on television.

Elsewhere in Washington, the Change the Mascot campaign sent a letter to every NFL team owner calling on them to take action against continued use of the slur, and reminding them of their obligation to ensure taxpayer resources don't promote racism.

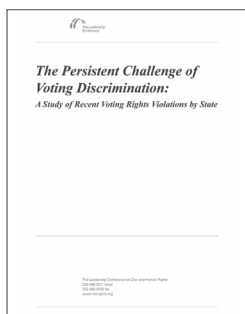
In November, Del. Eleanor Holmes Norton, D. D.C., addressed the team's tax-exempt status by introducing legislation threatening that status should the team continue using the name. The legislation mirrored a bill introduced in the Senate in September by Sen. Cantwell.

As challenges to the name continue to mount, that legislation is stalled—at least for now. And in December, the FCC dismissed the George Washington University professor's petition, finding that the "Redskins" name was not profane within the meaning of the Communications Act, which defines profanity as being sexual or excretory in nature. Undeterred, advocates remain committed to highlighting why it's time—finally—for the team to part ways with its offensive name.

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

Reports

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.civilrights.org/publications/reports/.



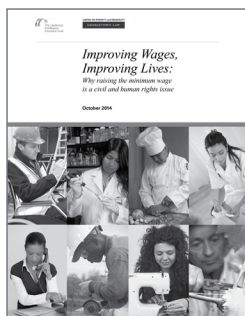
The Persistent Challenge of Voting Discrimination – June 2014

“The Persistent Challenge of Voting Discrimination” examines the ongoing threat of racial discrimination in voting. The report documents nearly 150 voting rights violations recorded across 29 states between 2000 and June 2013, when the Supreme Court gutted the Voting Rights Act (VRA) in its *Shelby County v. Holder* decision. The report also highlights 10 post-*Shelby* violations in seven states that have raised concerns about voting discrimination and our ability to adequately address them with a weakened VRA.



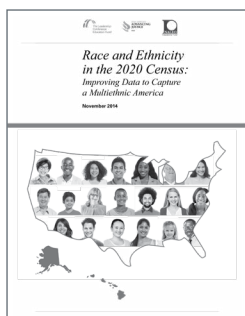
Falling Further Behind: Combating Racial Discrimination in America – July 2014

“Falling Further Behind” documents America’s mixed track record of creating opportunities for people of color and ending racial discrimination. The report, which was submitted to the U.N. Committee on the Elimination of All Forms of Racial Discrimination, was co-authored with the Lawyers’ Committee for Civil Rights Under Law and the National Association for the Advancement of Colored People (NAACP).



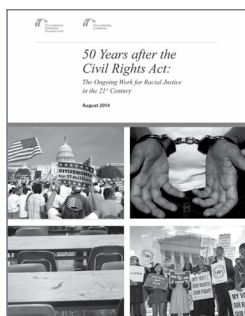
Improving Wages, Improving Lives: Why Raising the Minimum Wage Is a Civil and Human Rights Issue – October 2014

“Improving Wages, Improving Lives” makes a case for why raising the minimum wage is essential to advancing civil and human rights in the United States today. The report seeks 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, including workers who rely on tips.



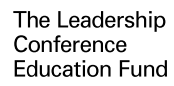
Race and Ethnicity in the 2020 Census: Improving Data to Capture a Multiethnic America – November 2014

“Race and Ethnicity in the 2020 Census” is the culmination of The Leadership Conference Education Fund’s year-long project to examine the Census Bureau’s research and testing program from the perspective of civil rights stakeholders and to ensure that any revisions to the 2020 census race and ethnicity questions continue to yield data that support the advancement of fairness and equity in all facets of American life. The report – co-branded with Asian Americans Advancing Justice | AAJC and the NALEO Educational Fund – includes a set of recommendations for the Census Bureau and the U.S. Office of Management and Budget.



50 Years after the Civil Rights Act: The Ongoing Work for Racial Justice in the 21st Century – December 2014

“50 Years after the Civil Rights Act: The Ongoing Work for Racial Justice in the 21st Century” documents the state of civil and human rights, and paints a persuasive picture of just how far the United States still has to go to make racial justice a reality. The report also makes a series of policy recommendations in the areas of justice reform, education, employment, hate violence, housing, human rights, immigration policy, media and technology, and voting.

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