

# *Civil Rights Monitor*

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# *Acknowledgements*

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# *The Challenges and Opportunities of a Second Obama Administration*

## **Wade Henderson Commentary**

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By any measure, the 2012 election was a watershed moment in American democracy.

President Obama's re-election validated his first term and preserved his signature achievement, the Affordable Care Act (ACA), along with the Dodd-Frank Financial Reform Act and many other important achievements that the civil and human rights community championed.

Voters also elected more women and people of color to Congress than ever before, as well as the first openly LGBT person to the U.S. Senate, Tammy Baldwin.

There is no question that the 2012 election reaffirmed the tremendous power of the vote. Despite all the money spent and the sophisticated voter suppression campaign that was designed to make it harder to register and to vote, the American people showed up anyway to make their voices heard, challenging the proposition that money would be the deciding factor in the election. Some people stood in lines for nearly eight hours in places like Florida, Ohio and Pennsylvania to cast their vote.

The power of the votes of African Americans, Latinos, Asian Americans, young people, women, and voters with disabilities in the 2012 election confirmed our hopes coming out of the 2008 election—that the profound demographic shifts taking place in our country could be harnessed to create a new coalition of voters whose voices cannot be ignored.

But the 2012 election also revealed what many of us in the civil and human rights community have long understood: that our electoral system is outdated, inefficient, confusing, and difficult for citizens to easily navigate. One of our highest priorities for the 113<sup>th</sup> Congress is to push for comprehensive electoral reform that includes many of the concepts included in the Voter Empowerment Act, introduced by Sen.

Kirsten Gillibrand, D. N.Y., in the Senate and Rep. John Lewis, D. Ga., in the House of Representatives, such as the restoration of voting rights of citizens with past criminal convictions; permanent and portable voter registration within states; online registration; election day registration to correct errors; early in-person voting; and a bar against deceptive practices in the electoral process.

The conventional wisdom coming out of the election is that immigration reform is the next big piece of legislation that Congress will tackle—and that it is practically a done deal. But we know that even with the increasing strength of the Latino and Asian American vote, passing legislation this complex and this important is very difficult. Our coalition will need to find ways to help bridge the deep divisions among our elected officials if we are to see the kind of smart and humane reforms that our nation needs.

Our nation's immigration system must be reformed to better reflect the needs of the economy and society, to promote immigrant integration, to provide a pathway to citizenship for long-time resident immigrants, and to recognize the tremendous contribution of all immigrants to the United States. These principles, rather than the framework of protecting our borders, must undergird reform efforts.

And we clearly have to do something about the ongoing jobs crisis. Congress must introduce a plan to preserve and create good jobs for all people in the U.S., with targeted assistance to the underserved communities who have been hardest hit by the Great Recession and the sluggish economic recovery. We need to create the kind of economy that enables every person to benefit from sustained, long-term growth that's good for our nation, good for our communities, and good for our families, and we know how to do it—we just need the will to do so.



In addition, there are a number of bills that have been pending in Congress for far too long and should be passed as quickly as possible, including the Paycheck Fairness Act, which would amend the Equal Pay Act to strengthen remedies and enforcement and limit employer defenses of wage discrimination; the End Racial Profiling Act, which would prohibit law enforcement agencies from using racial profiling; the Employment Non-Discrimination Act, which would prohibit employment discrimination on the basis of sexual orientation or gender identity; and the Protecting Older Workers Against Discrimination Act, which would restore the rights of older workers facing age discrimination to what they have been for decades while ensuring a consistent standard for all employees facing employment discrimination or retaliation.

We also will need to redouble our efforts to push the Obama administration to pick up the pace of nominations and to stop Senate Republicans from keeping thoughtful, well-qualified nominees from getting a confirmation vote on the floor. This was an area of tremendous challenge for us during Obama's first term and it is likely to be just as challenging in his second.

Americans don't always pay a lot of attention to nominations to our federal courts. But with the recent decisions in the Arizona S.B. 1070 and ACA cases, the

attention that *Fisher v. University of Texas at Austin* drew last October, and the likely attention that we will see this year when the Supreme Court considers *Shelby County, AL vs. Holder*, a challenge to Section 5 of the Voting Rights Act, and two marriage equality cases, we have a real opportunity to remind all Americans that the courts are vital to protecting and advancing civil and human rights in the United States.

This year, we commemorate the 150<sup>th</sup> anniversary of the Emancipation Proclamation. While the nation will remember it as one of the defining moments in U.S. and world history, we must also remember that it was the culmination of an abolitionist movement that pushed President Lincoln to become one of our greatest presidents.

If our nation is to be as great as its ideals, the civil and human rights community will need to push Obama in the same way. A second Obama administration term provides our community with many opportunities that we must seize.

Because despite all that has been accomplished, there is still so much more to be done.

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

## *Building a 21<sup>st</sup> Century Leadership Conference Education Fund*

### **Karen McGill Lawson Commentary**

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I have had the pleasure of working for The Leadership Conference Education Fund for nearly 30 years. During that time I've seen the United States make great strides toward equality and greater equity for all—and I've been proud of the work that The Education Fund has done to help move that process along.

One of the great joys of working for an institution like The Education Fund for as long as I have is that I have the great privilege—and the tremendous challenge—of helping to figure out how to ensure that the organization continues to be relevant to the civil and human rights movement. The Education Fund was founded in 1969 to be the education and research arm of the coalition and while it has continued to play that role over the years, we've expanded our work to include more coordination of grassroots efforts in states around the country and more focused work around strategic communications to participate in (and sometimes change) the debate where we can on civil and human issues.

For most of their history, The Education Fund and The Leadership Conference on Civil and Human Rights, the nation's premier civil and human rights coalition founded to coordinate the legislative strategy on behalf of the civil and human rights community, were small operations based in Washington, D.C., which in turn ran sophisticated operations within the Beltway to effect policy change on issues of importance to the civil and human rights community.

But the past 30 years have been tremendously difficult ones for the civil and human rights community. We engaged in bruising battles through the 80s against the Reagan administration's rollback on civil rights; confronted welfare reform and the rise of the prison industrial complex in the 90s; and fought back against a sustained campaign to gut affirmative action and equal opportunity that continues today.

Coming out of those battles, we realized that we needed to take a step back and assess the structure of The Education Fund and The Leadership Conference. We wanted to be sure that we could continue to provide the support to the coalition and to the movement that would ensure our success and viability into the new millennium. So in 2000, we embarked on the first of a series of strategic planning processes designed to help us do just that.

The strategic planning processes enabled us to go from a small operation to a 40-plus person staff with expertise in key policy areas, field organizing and strategic online and offline communications, as well as increased capacity to run sophisticated public education campaigns around the country, such as the Digital Television Transition campaign and our 2010 census campaign. We also built a strong development department and brought on staff finance, IT and human resource professionals.

In addition, we've been able to expand our ability to support local and state organizations that are on the ground doing the daily work of educating Americans about the importance of civil and human rights—and connect these groups, many of which are small local community-based organizations, to The Leadership Conference coalition and our affiliated networks. We have found that our field work, buttressed by our communications outreach, increases our ability to affect policy on the local, state and national levels and ensures that activists on the ground feel a deeper, more direct connection to the work that happens in Washington, which has been essential to our success at the national level.

The sudden loss in 2012 of civil and human rights giant John Payton of the NAACP Legal Defense and Education Fund was a stark, painful reminder that we must figure out how to plan for leadership transitions that will ensure that the work of The Education Fund

and The Leadership Conference continues as seamlessly as possible—no matter who is at the helm.

So what is next? We've undertaken another round of strategic reflection and planning, this time focused on organizational strengthening, sustainability, board structuring, and emergency succession planning.

For we are at a crossroads as a nation. America is going through profound demographic changes. The Latino and Asian populations are growing at a rapid pace. We are only now beginning to recover from the worst recession in nearly a century. And we have to rebuild our infrastructure, schools, and economy to ensure that we are competitive in a global information-based economy that is increasingly reliant on highly skilled workers.

These are 21<sup>st</sup> century challenges that need 21<sup>st</sup> century solutions. I, along with Wade Henderson, president and CEO, and Nancy Zirkin, executive vice president and director of policy, are committed to working to ensure that The Education Fund and The Leadership Conference are the 21<sup>st</sup> century organizations that are fully capable of meeting these challenges.

*Karen McGill Lawson is the executive vice president and chief operating officer of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund.*



# *The Struggle Continues: Voting Rights Victories and Ongoing Challenges*

**Lisa Bornstein**

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The high-stakes struggle between the civil and human rights community and politicians who set out to restrict the ability of millions of Americans to vote was one of the most important stories of 2012.

The good news is that the energetic efforts of voting rights activists were frequently successful in encouraging voter turnout, and the most diverse electorate in history went to the polls on Election Day.

The bad news is that voter suppression tactics continued up to and beyond Election Day. More than a week after polls closed, advocates for Latino voters were protesting in Arizona to make sure that all eligible votes were counted, and the fate of thousands of provisional ballots cast in Ohio and other states was still unknown.

And only days after the election, the U.S. Supreme Court announced that it would reconsider the constitutionality of a key provision of the landmark Voting Rights Act, which had just proven to be an essential voter protection tool for the U.S. Department of Justice and civil rights advocates.

Given that new restrictive voting laws are scheduled to go into effect in several states before the next election, and that some politicians are prepared to redouble their efforts to impede voting, the victories in this election cycle should be studied as well as celebrated as civil and human rights organizations continue to advocate for policies that move the country toward truly universal voter participation.

The big picture context of 2012 was America's changing demographics. According to the U.S. Census, people of color accounted for 92 percent of the U.S. population growth between 2000 and 2010. Asian American and Pacific Islanders (AAPI) were the nation's fastest growing racial group. There were 22 percent more

Latinos eligible to vote in 2012 than there were in 2008. There were about 16 million more potential young voters in 2012 than there were four years earlier.

For years, activists have worked to engage people of color and new Americans to participate fully as citizens and voters. In 2008, record numbers of young people, African Americans, Asian Americans and Latinos joined their fellow citizens to engage in the most basic right and responsibility of citizenship. The 2008 election represented the most diverse electorate ever up to that point—a high point of American democracy and a milestone on the path toward the goal of a truly universal franchise where every voting-age American citizen has the right, opportunity, and ability to vote freely and fairly.

That is why it was so distressing to see some politicians and interests going to work to create new restrictions on the ability to register and vote. The concerted assault on voting took the form of unfair laws and restrictive procedures that politicians used to target groups of voters who had turned out in greater numbers in 2008—particularly young voters and people of color. These included restrictive voter ID laws and residency requirements, illegal purges of voting rolls, cutbacks in early voting, and restrictions on voter registration drives. The Colorado secretary of state ordered county election officials not to send ballot information to people who voted in 2008 but not in 2010. Intimidating billboards and deceptive robo-calls targeted minority communities. A tea party offshoot called True the Vote recruited volunteer “poll watchers” to challenge voters' eligibility and force more voters into using provisional ballots, which are less likely to be counted.

Civil and human rights groups mounted a massive legal, political, and grassroots organizing response. In Ohio, a coalition of labor and civil rights organizations

mobilized against H.B. 194, a shameful anti-voting law that would make it harder to vote in Ohio and harder for Ohioans' votes to be counted. The groups gathered enough signatures to challenge the law by a ballot initiative, which appeared likely to pass. Faced with an embarrassing rejection, the Ohio legislature and governor repealed most of their own law to keep it from a vote by the electorate. In Michigan, a fierce organizing campaign that included religious leaders convinced the governor to veto a restrictive voting bill.

Legal advocates, including the Lawyers Committee for Civil Rights Under Law, the NAACP Legal Defense and Educational Fund, the Mexican American Legal Defense and Education Fund, the American Civil Liberties Union, Project Vote, the League of Women Voters, the Advancement Project, and others fought many voting restrictions in court, as did the U.S. Department of Justice. Major legal victories protected millions of voters in Florida, Ohio, Pennsylvania, Texas, Wisconsin and elsewhere.

The Leadership Conference on Civil and Human Rights and several partner organizations in the nonpartisan Election Protection coalition—which is led by the Lawyers' Committee for Civil Rights Under Law—including Common Cause, United Steel Workers, and the National Education Association—invested in pro-voting billboards to support the efforts of local activists who successfully pressured billboard companies into dismantling anonymously funded billboards in Ohio and Wisconsin placed in poor and minority neighborhoods and meant to intimidate voters.

The Leadership Conference Education Fund launched the Every Voter Counts campaign to work with state and local partners to counter anti-voting schemes, distribute pro-voting materials, and run nonpartisan voter turnout campaigns. An Every Voter Counts video featuring activists from Ohio, Wisconsin, and Colorado was the centerpiece of a social media campaign that reached more than half a million people with a powerful voter participation message. The Leadership Conference called on leaders of the major political parties to repudiate anti-voting tactics and take action to protect the rights of all voters, and met with officials from the Organization for Security and Cooperation in Europe, an international organization that has monitored elections throughout the world, to provide information about these voter suppression efforts.

In the end, most of the worst voter suppression laws were at least temporarily held at bay for the 2012 election. This was a stunning accomplishment given earlier estimates that the wave of antivoting tactics had the potential to disenfranchise up to five million voters.

In fact, not only did antivoting initiatives largely fail, but their efforts may have actually strengthened the determination of the very people they sought to silence. Some journalists have argued that the war on voting backfired. As Matt Barreto, co-founder of Latino Decisions, told *The Nation*, “There were huge organizing efforts in the Black, Hispanic and Asian community, more than there would’ve been, as a direct result of the voter suppression efforts.” Ari Berman, the article’s author, added: “Groups like the NAACP, National Council of La Raza, National Association of Latino Elected and Appointed Officials, and the Asian American Legal Defense Fund worked overtime to make sure their constituencies knew their voting rights.” Rev. Tony Minor, Ohio coordinator of the African American Ministers Leadership Council, said, “When they went after Big Mama’s voting rights, they made all of us mad.”

These observations were backed by strong turnout numbers. Contrary to many pundits’ predictions, racial and ethnic minorities made up 28 percent of the electorate in 2012, up from 26 percent in 2008, [according to Pew Research Center](#). Voters aged 18-29 boosted their share of turnout, from 18 percent to 19 percent. In Ohio, where Secretary of State Jon Husted was relentless in his brazenly partisan efforts to restrict voting, Black voters’ share of the overall electorate increased from 11 percent in 2008 to 15 percent in 2012. In Milwaukee, where African-American organizations like the League of Young Voters mounted a major voter participation effort, the *Milwaukee Journal Sentinel* reported that the turnout rate this year was a remarkable 87 percent of registered voters, a big jump from 80 percent four years ago and 70 percent in 2004.

Latino turnout was also strong and influential. According to *The Nation*, “In the last two decades the Latino population has doubled. And more significantly, it has become more geographically diverse. Long gone are the days of equating the Latino electorate with only Los Angeles, Miami or Houston. To talk about Latinos today, we need to talk about Macon, Georgia, and Boise, Idaho.” Latinos made up 10 percent of the national electorate, [according to the Pew Hispanic Center](#), up from 9 percent in 2008 and 8 percent in 2004.

This is a proud moment for the civil and human rights communities, and also for millions of individual voters who simply refused to be discouraged from voting. As Andrew Cohen of *The Atlantic* wrote:

“If there is one thing this election has proven, if there is one thing I have come to know, it is that Americans don’t like it when their right to vote is threatened. (. . .) In places like Akron and Orlando and Denver and Milwaukee, they came. They

waited in long lines and endured the indignities of poll workers. Yet they were not cowed. Today is their day. A day when they can look at one another and appreciate that they are truly a part of the history of civil rights in this country.”

There is clearly still work to be done. Some politicians may respond to the 2012 election results with redoubled anti-voting efforts. Some unreasonably restrictive voter ID laws that were suspended by court order for this election may yet go into effect. And the nation must find a way to deal with the systemic failures reflected in the fact that so many voters had to stand in lines of four, six, even seven hours to cast a vote. As President Obama said in his remarks on election night, referring to those long lines, “We have to fix that.”

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## *Judicial Nominations*

**Jeff Miller**

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Continuing a pattern begun in the 111<sup>th</sup> Congress, filibusters were a frequent weapon of choice this year for the Senate minority to block or delay many of President Obama's judicial nominees. As a result, the pace of Senate confirmation of judicial nominees remained slow. At the end of the 112<sup>th</sup> Congress, the Senate had confirmed only 171 of the president's nominees to the district and appellate courts, considerably less than the number the Senate confirmed at this point in the Clinton or George W. Bush presidencies. Of the 90 current or announced vacancies, 27 of them were designated as "judicial emergencies" in which there have not been enough judges to handle the caseload. Obama also ended his first term without a confirmed judge to the important D.C. Circuit Court of Appeals, which had three of its 11 seats vacant.

In an effort to speed up the pace of confirmations, Senate Majority Leader Harry Reid, D. Nev., announced in early March that he would hold votes on 17 pending nominees, with the hope of forcing Republicans to either publicly answer for their use of procedural stalling tactics or stop using them. Before any votes took place, however, Senate Republicans agreed to vote on 14 of the pending nominees by May 7. While this deal represented the approximate number of judges who probably would have been confirmed anyway, advocates hoped it would strengthen Reid's hand if Republicans continued to slow the pace of pending nominees.

To increase public awareness of the impact of judicial vacancies on the nation's justice system, and the dire need for the Senate to increase the rate of judicial confirmations, The Leadership Conference on Civil and Human Rights and a number of its partner organizations urged the White House to hold a high-profile meeting on the issue. On May 7, more than 150 prominent lawyers, academics, and other legal experts came to Washington, D.C., to weigh in with the president, his senior staff,

and Senate offices. Attorney General Eric Holder was among the participants who met with the entire delegation, while a smaller group met with the president to encourage him to raise the profile of the issue.

To the dismay of advocates, however, Senate Republicans announced in June that they would no longer agree to any more confirmations of circuit court judges through the end of 2012, and suggested there would be a similar blockade of district court judges. In July, they filibustered the confirmation of Robert Bacharach, a nominee to the Tenth Circuit, even though he had the strong support of his home-state senators, Tom Coburn and Jim Inhofe, R. Okla. Despite their strong support of the nomination, both senators voted "present" rather than express their opposition to the filibuster.

Even with the obstruction, Obama succeeded in bringing unprecedented diversity to the federal courts. More than 40 percent of Obama's confirmed judicial nominees were women, 17 percent were African-American, 12 percent were Hispanic, 7 percent were Asian American, and three were openly LGBT.

With a second term secured, Obama will have an opportunity to influence the makeup of the courts for generations, and he moved quickly on the first day of the 113<sup>th</sup> Congress to renominate seven circuit and 24 district court nominees, many of whom have been waiting for months for a yes-or-no confirmation vote on the Senate floor. But his ability to impact the courts will still depend to a large degree on how willing the Senate minority is to abandon its obstructionist tactics and return to the tradition of considering judicial nominees on their merits as part of the Senate's routine business.

*Jeff Miller is the vice president for communications for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund*

## Supreme Court Roundup 2012

### Corrine Yu

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Though the Supreme Court's decisions in *National Federation of Independent Business v. Sebelius* and *Arizona v. U.S.* generated the most press and attention this term, the Court issued several decisions of importance to the civil and human rights community.

In *Hill v. United States* and *Dorsey v. United States*, the Court held that the mandatory minimum provisions of the Fair Sentencing Act (FSA) applied to defendants who committed a crack cocaine crime before the Act went into effect but were sentenced after its effective date in 2010. Before the FSA, a person charged with possession of just five grams of crack cocaine—the weight of two sugar packets—received the same five-year mandatory minimum sentence as someone caught with 500 grams—about a pound—of powder cocaine. The FSA reduced the sentencing disparity from a ratio of 100-to-1 to 18-to-1 and eliminated mandatory minimum sentences for simple possession of crack cocaine. In its June 21 decision, the Court noted that applying the former law “to the post-August 3 sentencing of pre-August 3 offenders would create disparities of a kind that Congress enacted the Sentencing Reform Act and the Fair Sentencing Act to prevent.” Justice Breyer wrote the opinion of the Court, joined by Justices Kennedy, Ginsburg, Sotomayor, and Kagan. Justice Scalia's dissenting opinion was joined by Chief Justice Roberts, and Justices Thomas and Alito.

In *Miller v. Alabama* and *Jackson v. Hobbs*, the Court considered whether the Eighth Amendment's prohibition against “cruel and unusual punishment” prohibits a sentencing scheme that requires life in prison without the possibility of parole for juvenile homicide offenders. Over the past 25 years, the Court has repeatedly held that the punishment for youths under age 18 who commit crimes generally must be different, and less severe, than the punishment for adults who committed

the same kind of crimes. In these combined cases, the Court in its June 25 decision stopped short of applying a blanket ban on life without parole for a juvenile who commits murder, instead barring such a sentence as mandatory in such cases. Though it left open the possibility that a life without parole sentence could be imposed, the Court stated that it expected such sentences to be uncommon. Justice Kagan delivered the opinion of the Court, joined by Justices Kennedy, Breyer, Ginsburg, and Sotomayor. Chief Justice Roberts dissented, joined by Justices Scalia, Thomas, and Alito.

In *U.S. v. Jones*, the Court considered, for the first time, the constitutionality of location-tracking technology, like Global Positioning System (GPS) devices. Antoine Jones had been convicted of drug trafficking based on evidence obtained through a GPS tracker the government had placed on a car registered to Jones' wife. All nine justices agreed in the January 23 decision that Jones' conviction should be reversed because the attachment of the GPS tracking device and then the use of that device to monitor the car's whereabouts for 28 days is a “search” for purposes of the Fourth Amendment, but they differed on the rationale. Justice Scalia authored the Court's opinion, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Sotomayor. Justice Sotomayor filed a concurring opinion. Justice Alito filed an opinion concurring in the judgment, joined by Justices Ginsburg, Breyer, and Kagan, but stating that he would have analyzed the case based on whether the long-term monitoring violated Jones' reasonable expectations of privacy.

Though the Court's docket is still being developed as we go to press, there are already several civil and human rights cases in the current term that are worth watching. In *Kiobel v. Royal Dutch Petroleum*, the Court will address whether corporations may be held liable for

torts in violation of international law such as torture, extrajudicial executions or genocide under the Alien Tort Statute. At issue in *Fisher v. University of Texas at Austin* is whether the Court's decisions interpreting the Equal Protection Clause of the 14<sup>th</sup> Amendment, including *Grutter v. Bollinger*, permit the University of Texas at Austin's use of race in undergraduate admissions decisions. And the question before the Court in *Vance v. Ball State University*, is whether the "supervisor" liability rule established by *Faragher v. City of Boca Raton* and *Burlington Industries, Inc. v. Ellerth* applies to harassment by those whom the employer vests with authority to direct and oversee their victim's daily work, or is limited to those harassers who have the power to "hire, fire, demote, promote, transfer, or discipline" their victim. And the Court is taking up a challenge to Section 5 of the Voting Rights Act in *Shelby County, AL vs. Holder*, a mere three years after it last heard a Section 5 case, *Northwest Austin Municipal Utility District No. 1 v. Holder*, and declined to rule on its constitutionality; a case on The National Voter Registration Act (*Arizona v. ITCA*); as well as two marriage equality cases, *U.S. v. Windsor* and *Hollingsworth v. Perry*.

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# *The Supreme Court Decision on Health Care Reform*

**Leonardo Cuello**

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On June 28, 2012, the Supreme Court issued a complicated ruling that upheld the constitutionality of the Affordable Care Act (ACA), the health care reform law passed by Congress and signed by President Obama in 2010. While the decision ultimately supported health care reform, it also created some new problems for ACA implementation and signaled a continued threat to the Constitution's role as a protector of civil rights.

## **The Supreme Court decision**

The Supreme Court's decision addressed the two critical issues that were at the core of all pending ACA litigation. First, the Court addressed the constitutionality of the individual mandate. The individual mandate is the ACA provision that creates a financial penalty, known as the "shared responsibility payment," for individuals who do not get health care coverage of some kind. Although the majority of courts and scholars agreed that the individual mandate was valid under Congress's constitutional authority to regulate interstate commerce, the Court's analysis concluded that the individual mandate penalty was not permissible under the Commerce power because it applies to individuals who choose *not* to get coverage, and the Commerce power can only be used to regulate activity, not *inactivity*.

However, the Court ultimately held that the individual mandate is valid based on Congress's constitutional Taxing power. The Court analyzed the mandate and determined it functions like a permissible tax. For example, the ACA requires the penalty to be paid to the IRS on tax day using normal tax forms. Thus, the Court concluded, the individual mandate stands.

Second, the Court addressed the constitutionality of the Medicaid expansion. The Medicaid expansion is a new category of eligibility in the Medicaid program that will cover individuals below roughly 133 percent of the federal poverty level who are not currently eligible for

Medicaid. The Medicaid expansion is projected to insure about 17 million individuals, about one-third of the nation's current uninsured population.

The lower courts found the Medicaid expansion to be a valid exercise of Congress's constitutional Spending power. Nonetheless, the Supreme Court viewed the Medicaid expansion as unconstitutionally coercive upon states to the extent a state would lose all of its existing Medicaid funding if it failed to implement the new Medicaid expansion category. The Supreme Court reasoned that when states first started their Medicaid programs, they could not have expected this new category would be part of the deal. However, instead of declaring the Medicaid expansion unconstitutional, Chief Justice John Roberts developed a remedy to address the coercion by simply invalidating the power of the federal government to withhold all Medicaid funding to a state that doesn't implement the Medicaid expansion—i.e. the federal government can only withhold Medicaid expansion category funds. This very specific remedy is the only way in which the Supreme Court's decision impacts the ACA.

## **Impact on health care reform**

The Medicaid expansion decision creates some problems for ACA implementation, in that it effectively separates the new expansion category from the rest of the Medicaid program, and each state can decide whether to implement the expansion. Since there is no power to withhold all Medicaid funding, there is no federal enforcement power to make a state implement the expansion. The practical effect of this is that it is possible that a state would choose not to implement the expansion.

A state choosing not to implement a Medicaid expansion would create a number of problems. This is because the various pieces of the ACA were designed to fit together. The Medicaid expansion was the coverage vehicle for

lower-income people (below 133 percent of the poverty level), and the new exchanges (with subsidies) created through the ACA are the coverage vehicle for higher-income people. If a state does not implement the Medicaid expansion, the system will contain a gaping, unfair hole: higher-income individuals will be covered through exchanges while lower-income individuals will have no coverage option whatsoever. It would be a terrible outcome for the lowest income individuals in a state.

The critical question is therefore whether states will *choose* to implement the Medicaid expansion. Unfortunately, a few states have viewed this only as a chance to score political points against the ACA and Obama's re-election campaign—and they have therefore publically rejected the Medicaid expansion. However, it is simply irrefutable that the Medicaid expansion is a fantastic deal for states, and any state conducting an honest financial analysis will realize this to be the case. The costs of the Medicaid expansion are low—the federal government will reimburse 100 percent of the costs of services in the first three years, and 90 percent in perpetuity.

While the costs are low for a state, the savings are enormous. For example, states spend millions of dollars on state health programs to cover the uninsured, but if a state implements a Medicaid expansion it will save on these expenses since the individuals will no longer be uninsured. All reputable economic analyses show that states that implement a Medicaid expansion will actually make money in the early years and come out nearly financially even in the later years—all the while insuring thousands upon thousands of state residents. For this reason, any rational state policymaker would implement a Medicaid expansion, and it is likely the vast majority of states will do so.

### Civil rights perspective

While the Supreme Court largely upheld the ACA and the decision may create problems only in a few states, the Supreme Court invented two new theories that could limit federal constitutional power in the future. The Court introduced a new “activity” test for Commerce power and found “coercion” in a Spending clause enactment. As a matter of precedent, these decisions may not be especially problematic, since the ACA case was very unusual. It is unlikely that Congress will attempt to regulate commercial “inactivity” again soon, if ever, and it is equally unlikely that we will see a Spending power case with the magnitude of the Medicaid expansion issue. Nonetheless, at its core, this case signals a threat to civil rights.

Beyond the direct precedential value, the ACA case was an attack on the federal authority to implement national solutions to national problems. By attacking congress-

sional power to undertake national projects under the Commerce and Spending powers, the ACA decision reflects the ideology of the conservative justices, who view the nation as decentralized with minimum national standards. This stands in stark contrast to the history of civil rights legislation, which has more often been driven by federal reforms that states have fought to resist.

The Supreme Court decision regarding the Spending power (Medicaid expansion) also represents a step backwards for additional reasons. First, as a practical matter, the Medicaid expansion will be beneficial to women and minority communities—such as persons of color, LGBT individuals, and individuals with chronic conditions—who are disproportionately uninsured and consequently likely to live in poor health. For these individuals, the Medicaid expansion is a real solution to real problems, and the Supreme Court decision has opened the door to allow some states to reject this solution, which will hurt these communities.

Second, as a matter of principle, the Supreme Court's decision could restrain the ability of federal programs to evolve. The Supreme Court did not establish a coercion test, and it gave little guidance to Congress about how actions are to be assessed for their coercive qualities in the future. Future Congresses and courts will have to act against this confusing backdrop. As a result, numerous lawsuits can be expected to test the range of congressional authority to improve national initiatives created through the Spending power. Improvements in areas such as Medicaid, antidiscrimination, disability rights, public health, education, child welfare, domestic violence, public safety, and the environment could all be stifled to the detriment of civil rights.

### Conclusion

While Medicaid has historically provided coverage only to *certain* low-income individuals, the Medicaid expansion creates a category to ensure coverage for *all* low-income individuals. In this sense, the Medicaid expansion may be the largest step in American history toward viewing health care as a human right. The Supreme Court has jeopardized that progress with its ACA decision, and the conservative Supreme Court justices have shown that they will oppose federal authority despite the fact that federal authority in the United States has, for years, paved the way for significant and long term advances in civil rights.

*Leonardo Cuello is the director of health reform at the National Health Law Program.*

# *Disability Rights Convention Rejected by U.S. Senate*

**June Zeitlin**

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Disappointing disability rights advocates and the broader civil and human rights coalition, the U.S. Senate failed on December 4, 2012, to agree to ratify the Convention on the Rights of Persons with Disabilities (CRPD). The Senate vote on the treaty (61-38) fell short of the two-thirds majority needed to adopt an international treaty.

The convention, which has garnered significant international support, advanced global human rights by setting forth the first comprehensive international standard to protect the rights of people with disabilities. Much like the pathbreaking U.S. law, the Americans with Disabilities Act (ADA), the convention reaffirms that persons with all types of disabilities enjoy certain fundamental rights. These include the right to be free from discrimination in all significant aspects of society, including economic, political and cultural life, as well as the right to accessible buildings, transportation and other important physical environments. It seeks to ensure that countries across the globe provide people with disabilities the same rights as everyone else in order to live full, satisfying and productive lives.

The United Nations adopted the convention on December 13, 2006, and it went into effect for participating nations on May 3, 2008. President Obama signed the convention on July 30, 2009, and sent it to the Senate for ratification in May 2012. As with the ADA, the convention garnered significant bipartisan support—with lead supporters including former Senate Majority Leader Bob Dole; Democratic Senators John Kerry, Richard Durbin, Tom Harkin, Chris Coons, and Tom Udall; and Republican Senators John McCain and John Barrasso.

A broad coalition of more than 300 disability groups, veterans' organizations and other civil and human rights groups supported ratification of CRPD. The coalition pointed out that ratifying the convention will maintain the position of the United States as a global champion of

human rights and as the world's leader in promoting the rights of people with disabilities. Supporters also have emphasized the convention's benefits to Americans with disabilities abroad who have experienced major challenges while living or traveling overseas.

However, opponents have misrepresented the effects of the convention, arguing that it would cede U.S. sovereignty to the United Nations and undermine parental rights, despite the fact that the convention does not create any new enforceable rights, as the United States already has the far-reaching ADA to guarantee the rights of people with disabilities domestically.

The Senate Foreign Relations Committee held a hearing on CRPD on July 12 and the convention was reported favorably out of committee by a bipartisan 13-6 vote on July 25. Before the Senate adjourned in September, Durbin tried to bring the convention to the floor by unanimous consent, but it was opposed by Republican senators.

After blocking consideration of CRPD, these same opponents argued that international treaties should not be brought up in the lame duck session and mobilized the Home School Association and others to flood Senate offices with calls against ratification of CRPD. Despite a broad effort by civil and human rights and disability groups to counter this opposition with the plain facts on the impact of CRPD, ratification was not successful.

The defeat of the CRPD has now received wide coverage in the media and Senate Majority Leader Harry Reid, D. Nev., has committed to bringing the treaty back up for a vote in the next Congress. The Leadership Conference and its supporters are optimistic that it will be ratified in the next session of Congress.

*June Zeitlin is the director of the CEDAW Project of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund.*

# *Building Toward Equitable Transportation*

**Lexer Quamie**

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In June 2012, Congress finally reauthorized the federal surface transportation law. The previous law, which technically expired nearly three years earlier, had been extended temporarily eight times while Congress struggled to reach agreement. The final legislation, Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), provides roughly \$118 billion over 27 months.

The law provides funding for research into the disparities of transportation access. It funds grants to enhance the mobility of seniors and people with disabilities. And it maintains resources for on-the-job training. But advocates were dismayed that the law lacks important provisions that would have staved off transit fare increases and service cuts in communities facing high unemployment. Advocates also believe the law could have done more to provide disadvantaged workers with pathways to employment in the transportation sector. The law also fails to help state and local decision-makers choose transportation projects that would bring benefits to distressed communities and low-income neighborhoods.

Nonetheless, there can be no question that the civil and human rights coalition's efforts to raise awareness about the need for greater transportation equity have laid a foundation for progress when MAP-21 is up for reauthorization in 2014.

The civil and human rights coalition will continue to educate policymakers and the public about the need for the next reauthorization to contain adequate protections from transit service cuts, provide disadvantaged workers with robust career pathways into employment in the transportation sector, ensure the involvement of disadvantaged communities in local decisionmaking, and guard against lapses in civil rights safeguards.

*Lexer Quamie is counsel for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund and specializes in criminal justice and workers' rights issues.*

## *The 36<sup>th</sup> Annual Hubert H. Humphrey Civil and Human Rights Award Dinner*

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The 36<sup>th</sup> annual Hubert H. Humphrey Civil and Human Rights Award Dinner was held on May 16, 2012, 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.

Two impressive individuals received the award in 2012: The Honorable Barney Frank, former United States Representative from Massachusetts 4<sup>th</sup> Congressional District, and Janet Murguía, president and CEO of the National Council of La Raza. Ann Lewis, former White House Director of Communications and Frank’s sister, and Marc Morial, president of the National Urban League, 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 were all invited to attend The Leadership Conference Education Fund Reception. This year’s reception was sponsored by UPS.



From left to right: UPS Foundation President Eduardo Martinez, former White House Director of Communications Ann F. Lewis, the Honorable Barney Frank, National Council of La Raza President and CEO Janet Murguía, National Urban League President Marc Morial, and Leadership Conference President and CEO Wade Henderson.





Erica Swanson of Google, Leadership Conference Executive Vice President Nancy Zirkin, Leadership Conference Executive Vice President and Chief Operating Officer Karen McGill Lawson, Google Vice President for Public Policy Susan Molinari.



Attendees pose for a photo during The Leadership Conference Education Fund reception before the dinner.



Attendees enjoying The Leadership Conference Education Fund reception before the awards dinner.



Attendees chatting during the reception.



Attendees enjoying the Google gelato bar.





The Honorable Barney Frank greets dinner attendees.



National Council of La Raza President and CEO Janet Murguía.



A crowd of 1,300 attended the dinner.



National Urban League President Marc Morial, National Council of La Raza President and CEO Janet Murguía, and Leadership Conference President and CEO Wade Henderson pose after Murguía receives her award.



Former White House Director of Communications Ann F. Lewis, the Honorable Barney Frank, and Leadership Conference President and CEO Wade Henderson pose after Frank accepts his award.





Leadership Conference President and CEO Wade Henderson greets activist Yoshiko Dart after the dinner.



Honorees National Council of La Raza President and CEO Janet Murguía and the Honorable Barney Frank chat backstage.



The evening's presenters, lead sponsors and Leadership Conference executive team pose with the 2012 Humphrey honorees backstage.



National Council of La Raza President and CEO Janet Murguía poses with her family after the dinner.



Leadership Conference Executive Vice President Nancy Zirkin; Hubert H. Humphrey's son, Hubert "Skip" Humphrey III; Leadership Conference Policy Assistant Kate Wikelius; and Leadership Conference President and CEO Wade Henderson pose for a photo.

## *Congress, Obama Continue Fierce Debates over “Fiscal Cliff”*

**Rob Randhava**

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Throughout 2012, the U.S. House of Representatives continued its efforts to radically reshape federal budget and tax policies. While Congress and President Obama managed to hammer out a year-end deal to temporarily avert a budgetary crisis that became known as the “fiscal cliff,” heated battles over spending are expected to continue well into 2013. Vital programs affecting health care, social safety nets, education, housing, civil rights, and countless other federal priorities rest in the balance.

### **Efforts to Undo the Budget Sequester**

Following the Republican Party takeover of the House in the 2010 elections, in which tea party fiscal conservatives claimed a mandate to cut government spending, a number of lawmakers refused to raise the federal debt ceiling—threatening the credit rating of the United States—if massive spending cuts were not made. In August of 2011, on the brink of a government default, Congress and Obama agreed to legislation to allow several increases in the debt ceiling in return for more than \$2 trillion in savings over the next decade. The details of most of those savings were to be worked out that fall. If the parties could not reach an agreement, the legislation would impose automatic spending cuts, or “sequestration,” evenly split between domestic and defense spending, beginning on January 1, 2013.

Not surprisingly, given the tense atmosphere in Washington, Democrats and Republicans failed to reach an agreement. Democrats argued that higher revenues should be a part of any deficit reduction package, but most Republicans had signed campaign pledges to oppose any tax increases, and many feared they would face electoral consequences if they compromised. As a result, the November 2011 deadline came and went without any agreement.

By early 2012, however, members of both parties voiced alarm over the size of the defense cuts that

were scheduled to take place under the sequester, raising expectations that the August 2011 deal would be revisited. The Leadership Conference on Civil and Human Rights and many of its coalition partners also expressed concern about the looming cuts to non-defense spending, and business leaders also became more vocal about the impact of the sequester on the economy as a whole. In March, focusing only on the defense half of the sequester, the House passed a budget championed by House Budget Chair Paul Ryan, R. Wis., which aimed to eliminate the defense cuts for 2013—and actually increase military spending—while making even bigger cuts to non-defense spending.

In May, the House passed another bill that worked out the details of these non-defense cuts. In legislation that The Leadership Conference described as “morally deficient” and “an embarrassment,” the House proposed cutting the Supplemental Nutrition Assistance Program (formerly known as food stamps) by \$36 billion, health care expenditures by \$115 billion, and social services block grants (to fund programs such as Meals on Wheels) by \$16.7 billion. Farm subsidies and other forms of corporate welfare, on the other hand, were left untouched.

Obama and Senate Democrats rejected these cuts to safety net programs and insisted that revenue increases had to be a part of any agreement to undo the sequester. With the 2012 presidential race heating up, however, neither party had much incentive to resolve the stalemate until the election.

### **Simultaneous Fight over Tax Policies**

The spending cuts required by the 2011 budget sequester were not the only major budgetary change set to take effect on January 1, 2013. After several extensions, the 2001 and 2003 tax cuts championed by former President George W. Bush were once again set to expire. While

both parties supported making the lower rates permanent for most taxpayers, they disagreed sharply over whether they should be renewed for those with higher incomes. Obama and his allies in Congress argued that taxes should be allowed to rise on anyone making more than \$250,000 a year, while Republicans insisted on extending them across all tax brackets. At the same time, the 2010 cut in federal payroll taxes was set to expire, but neither party expressed strong support for continuing it because of its impact on Social Security coffers.

In July 2012, both the House and Senate took largely symbolic votes on the expiring Bush tax cuts. The Senate passed a measure that would have made the cuts permanent for incomes up to \$250,000 while returning higher incomes to the Clinton-era tax rates. The House, on the other hand, voted to extend the cuts to all taxpayers, triggering a veto threat from Obama.

As with the issue of spending cuts, neither party had much incentive to compromise on taxes before the 2012 presidential election. Yet there were visible signs of strain in the Republican Party, particularly against the rigid anti-tax pledge that most candidates had signed in previous election cycles. Some Republican candidates in 2012 distanced themselves from it. Others suggested that the outcome of the election would be a mandate on the issue of taxes, one way or another. “If the president wins re-election, taxes are going up,” said Rep. Tom Cole, R. Okla., and “there’s not a lot we can do about that.”

### **At the Edge of the Fiscal Cliff**

Emboldened by a decisive re-election victory, Obama announced on November 14 that he was reopening the negotiations over the looming sequester and expiration of the Bush-era tax cuts. At the center of his proposal was a \$1.6 trillion revenue increase, which included a tax hike on households making more than \$250,000 a year. He also proposed \$50 billion in new infrastructure spending, and pressed for another increase in the federal debt ceiling.

Over the next several weeks, Obama and House Speaker John Boehner, R. Ohio, sought to work out a compromise. Boehner maintained his opposition to tax hikes, however, and argued for savings from entitlement reform. By mid-December, the parties were moving toward each other, but there were few signs that they would actually reach a breakthrough. Meanwhile, business leaders and economists voiced growing concerns about the fiscal cliff looming on January 1, 2013. The combined impact of tax increases and spending cuts would equal roughly 5 percent of the gross domestic product over the next year, enough to tip the economy back into recession.

On December 18, with negotiations stalled, Boehner announced what he called his “Plan B”: He would bring

a bill to the House floor that, among other things, would increase taxes for households making more than \$1 million a year. He hoped that passing it would increase public pressure on the White House to cut a deal more favorable to Republicans. Yet Boehner misjudged the support in his own party for the proposal. Unable to secure enough votes for passage, he pulled the bill from the House floor two days later.

In the final week of 2012, negotiations resumed—this time, between Senate Majority Leader Harry Reid, D. Nev., and Minority Leader Mitch McConnell, R. Ky.—amid growing pessimism. Finally, late on December 31, the two senators announced they had reached an agreement. Under the deal, the Bush-era tax cuts would expire on households making more than \$450,000 a year (or \$400,000 for individuals), and estate and capital gains taxes would be increased. The deal also extended unemployment insurance, blocked a 27 percent cut in reimbursements to doctors for treating Medicare patients, and permanently blocked an expansion in the Alternative Minimum Tax. The payroll tax cut would also expire. In all, the agreement would raise \$660 billion in the next decade. Left unresolved, however, were two key items: the sequester cuts and the increase in the debt ceiling. The sequester was delayed for two months, while the Treasury Department indicated that it could use accounting maneuvers to avoid the debt ceiling for another two months. Early on the morning of January 1, the Senate approved the deal on an 89-8 vote.

The House still had to approve the deal, and House Republicans were not at all happy about the prospect of doing so. In an unusual move, Boehner announced that he would hold a vote on the measure even though it was unlikely to garner a majority of Republican support. This was significant because for years, House Republicans—when they controlled the House—had adhered to what they called the “Hastert Rule,” named after former Speaker Dennis Hastert, R. Ill., which barred any measure from coming to the House floor unless it was supported by a “majority of the majority,” i.e. most Republicans. Late in the evening on January 1, the House passed the measure by a 257-167 margin, but with only 85 Republicans supporting it and 151 opposing it. Obama signed the deal into law the following day.

### **Budget Fights to Continue Into 2013**

As explained above, the January 1 deal addressed only the issue of taxes, while temporarily punting on the issues of the sequester and the debt ceiling. The sequester is now scheduled to take effect on March 1, and House Republican leaders have recently indicated that they are prepared to go over the cliff this time if

Obama does not agree to cuts elsewhere. It is unclear if they will maintain that position. Throughout 2012, defense hawks in both parties voiced strong concern about the depth of military spending cuts, and those concerns have not changed. While Defense Secretary Leon Panetta has ordered the Pentagon to “prepare for the worst,” Congress is likely to face much greater pressure to negotiate as the March 1 deadline approaches.

With respect to the debt ceiling, Congressional Republicans appear more hesitant than they did in 2011. While some initially called for breaching the debt ceiling if additional spending cuts were not made, they soon backed off their threats. On January 23, the House passed a measure that would suspend any enforcement of the debt ceiling until May 18 of this year. While a growing number of experts have called for eliminating the debt ceiling entirely, many fiscal conservatives believe they can continue using it as leverage to force additional spending cuts.

In other words, this story is far from over. Given the strongly held positions of both parties on the issue of the federal budget, and the repeated use of short-term compromises to stave off fiscal crises, it is unclear whether we will see a lasting resolution any time soon.

*Rob Randhava is a 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.*



# *Creating Shared Prosperity*

## **Melissa Boteach and Corrine Yu Commentary**

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The latest poverty data revealed that 46.2 million people in America lived in poverty in 2011—about 15 percent of the population—and more than one in three lived in low-income households. Women, children, communities of color, and people with disabilities were especially hard-hit.

At the same time, Congress has stymied comprehensive job creation efforts and set forth multiple proposals to gut health, nutrition, education, and other services for struggling families. Unprecedented partisan gridlock coupled with a large long-term deficit has put a stranglehold on efforts to make new investments needed to lift people into the middle class.

In times of attack, it is natural to assume a defensive posture and to mobilize in opposition to cuts and proposals that would undermine opportunities for those on the economic margins—the communities that the civil and human rights movement has always championed.

The danger of a “defense-only” posture, however, is that the debate is waged on the opponent’s terms with little room to do anything other than stopping a backward slide at a time when what is needed are policies that will actually help begin to eradicate poverty.

Though it’s been a long time since the needs, hopes, and dreams of those at the bottom of the economic spectrum have had a prominent place in our national dialogue, several groups have recently set forth policy, advocacy, and communications tools that pivot from defense to offense, and set forth a proactive vision of a more inclusive society where prosperity is broadly shared—where families are able not just to meet basic needs, but also to have the opportunity to thrive.

Here are a few key resources stakeholders should be aware of as they seek to change the national narrative on

poverty and opportunity and create the space for policy victories.

### **Half in Ten: From Poverty to Prosperity**

Half in Ten is a project of The Leadership Conference on Civil and Human Rights, the Center for American Progress (CAP) Action Fund, and the Coalition on Human Needs to mobilize the political and public will to cut poverty in half in 10 years and restore shared prosperity. The campaign has several new resources that help make the case that progress to create greater economic opportunity is possible—even in the context of deficit reduction—setting forth specific policy plans to achieve this goal.

Last year, CAP released a long-term budget plan that dramatically reduces poverty while balancing the budget by 2030. The plan shows definitively that lifting people out of poverty is doable and affordable, even under the strict fiscal constraints like the ones we’re grappling with today. CAP’s [recent brief](#), “Making the Right Choice for Fiscal Stability,” walks through the various policy interventions in that plan to create greater economic opportunity and grow our economy while cutting our deficits. In “Cutting Poverty and the Federal Deficit is Possible,” CAP also shows that [poverty reduction and deficit reduction have historically gone hand-in-hand](#) and that balancing the budget on the backs of the most vulnerable would be breaking with bipartisan tradition.

In October 2011, Half in Ten released “[Restoring Shared Prosperity](#),” a report that established a baseline and started the clock on the campaign’s goal to cut U.S. poverty in half in 10 years. The baseline includes 20 indicators relating to good jobs, strong families, and economic security.

On November 19, Half in Ten released the second edition of the report, tracking progress from 2010



to 2011 and offering proactive policy recommendations to move the indicators in the right direction. The report also shows that cutting poverty is about all of us: When we shortchange the poor, we slam the brakes on the economy and undermine our long-term economic growth and prosperity. The report also explains how, in contrast, investments to move people off the economic margins would create greater economic growth and shared prosperity for all of us. The campaign is providing state-by-state data, rankings, and fact sheets at [www.halfintention.org/indicators](http://www.halfintention.org/indicators), along with a grassroots toolkit that is available for download at <http://halfintention.org/indicators/publications/toolkit>.

### **Prosperity Economics: Building an Economy for All**

Though many of the nation's policymakers are advocating for some form of austerity economics, several of the largest labor, community and advocacy groups in the country—including the AFL-CIO, Center for Community Change, The Leadership Conference on Civil and Human Rights, Economic Policy Institute, SEIU, and the National Council of La Raza—agree that prosperity economics is the best way to rebuild and restore America.

A new paper from Professor Jacob Hacker and Nathaniel Loewentheil of Yale University, "Prosperity Economics: Building an Economy for All," provides a blueprint to achieve the kind of economy that enables every person to benefit from sustained, long-term growth that's good for our nation, good for our communities, and good for our families.

"Prosperity Economics" identifies three distinct ways to restore the U.S. economy and create a successful future for generations to come.

- Innovation-led growth grounded in job creation, public investment and broad opportunity. This will require immediate action to jump-start our sagging economy. Going forward, there is a need to invest in people and productivity that will lead to good jobs and rising wages.
- Security for workers and their families, the environment and government finances. This is in recognition that markets work better when working families feel a basic security for their futures. Only when families can be sure they will not be deprived of necessities like health care and retirement security can we create a dynamic and competitive economy.
- More democracy, inclusivity, and accountability in Washington and the workplace. Democracy means having a strong system of checks and balances both in our government and in the private sector

that empowers citizens, guarantees more inclusive decision making and creates strong mechanisms of accountability.

### **Charting a New Course**

In short, we cannot win victories for low-income families from a crouched, defensive position. We need to say upfront what we want to achieve and present a compelling vision of what that looks like.

We know that we can reduce poverty dramatically and create greater economic opportunity for all. We've done it before. These resources set out pathways to do it again, even in the context of deficit reduction. Together, we can chart a new course for the future.

*Melissa Boteach is director of Half in Ten Campaign, Center for American Progress Action Fund. Corrine Yu is managing policy director at The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund.*

## *Congress Fails to Renew the Violence Against Women Act*

**Scott Westbrook Simpson**

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For the first time in almost 20 years, partisan disagreements prevented Congress from reauthorizing the Violence Against Women Act (VAWA). VAWA, enacted in 1994, sought to address the widespread and harmful effect of domestic violence, dating violence, sexual assault and stalking on women and their families. It was updated, expanded and reauthorized in 2000 and 2005 with large bipartisan majorities.

In April on a bipartisan, 68-31 vote, the Senate passed a comprehensive and inclusive bill to reauthorize VAWA. The Senate bill was endorsed by a large coalition of domestic violence advocates as well as law enforcement organizations. Despite this support for the Senate bill, Republican leadership in the House put forward and passed a different version that rolled back protections for some immigrant women and failed to include new provisions that would provide greater protections for students, the LGBT community, and American Indians.

As a result, a broad coalition consisting of domestic violence service providers, women's groups, law enforcement, civil rights organizations, and representatives of affected communities came together to support passage of the Senate bill, dubbing it the "real VAWA." Vice President Joe Biden, author of the original VAWA, called passing a bill that protects all victims of domestic violence and sexual assault, including immigrants, Native Americans and LGBT Americans, "an issue of basic decency." President Obama threatened to veto the House bill.

A robust advocacy and media campaign was undertaken by this broad coalition to highlight diverse voices and stories of student, Latino, LGBT and American Indian survivors of sexual and domestic violence. Despite the success of the campaign and the increasing media attention around the need to reauthorize VAWA, the stalemate persisted until Congress adjourned in October.

Following the election, The Leadership Conference on Civil and Human Rights, in partnership with the National Task Force to End Sexual and Domestic Violence Against Women, launched a social media campaign aimed at pressuring Congress to reauthorize VAWA during the lame duck session. A Facebook photo campaign, called "[Pass VAWA 2012](#)," asked supporters to submit photos holding signs declaring the need to reauthorize VAWA before the end of the 112<sup>th</sup> Congress. The campaign went viral within a week, generating more than 400 photo submissions and successfully putting many human faces on this vital issue.

The failure of the 112<sup>th</sup> Congress to reauthorize VAWA in the lame duck session leaves thousands of students and other victims of domestic violence and sexual assault excluded from the basic protections of the law. It is unconscionable that a person's immigrant status or sexual orientation should determine whether they can receive needed help. The Leadership Conference will continue to push for passage of VAWA in the 113<sup>th</sup> Congress.

*Scott Westbrook Simpson is the press secretary of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund.*

# *The Slow Progress of Federal Education Reform*

**Dianne Piché**  
**Commentary**

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Ensuring that every child in the United States has access to high-quality education is one of our nation's most important responsibilities and a vital imperative to maintaining our leadership role in the world. And yet, there is no question that we are failing in our responsibility to our nation's most vulnerable children—poor children, minority children, children with disabilities. By nearly every measure used to assess the educational gains of American children, these children are falling behind.

The primary responsibility for educating children rests with the states, but states have never done well at educating all children. While No Child Left Behind (NCLB)—the current version of the nation's primary federal education law, the Elementary and Secondary Education Act (ESEA)—has often come under fire for a number of its requirements and provisions, the law has brought needed attention to the progress of student subgroups often overlooked within overall student populations and has pushed states to make improvements.

The law is long overdue for reauthorization so that it meets the needs of today's students. But Congress is deeply divided on how best to strengthen the law and, as a result, is moving slowly in reauthorizing it.

## **No Child Left Behind Waivers**

In light of the 112<sup>th</sup> Congress' inability to strike bipartisan compromise on the best way to renew the law and with NCLB's 2014 looming deadline for schools and districts to demonstrate that all kids have reached grade-level "proficiency" in reading and math, the Obama administration proposed in late 2011 a plan to offer states waivers from some NCLB requirements in exchange for a set of reforms.

Waivers allow the U.S. Department of Education to grant flexibility to states with respect to such requirements as NCLB achievement targets, those that call for

school choice and free tutoring in low-income schools whose students have not met achievement goals. In exchange, states must adopt college and career-ready standards (or something comparable) for all students; create their own accountability standards and support systems; report achievement results to parents and to the public by subgroups; report graduation rates; and implement statewide teacher-evaluation systems that use student performance as a component. However, regardless of these waivers, the federal government will provide oversight and levy sanctions if students do not meet achievement targets.

Despite skepticism regarding the waiver of key provisions of a federal law designed to close achievement gaps and improve learning conditions in high-poverty communities, The Leadership Conference on Civil and Human Rights, along with a number of other civil and human rights groups, worked with the administration to ensure that the plan was developed in a way that would prevent states from abdicating their responsibility for educating all students. Measuring student achievement by subgroups—including minorities, low-income and special education students—and setting high expectations for those students, remains an important bedrock principle for the civil and human rights community. As a result, the waiver plan maintains the critical tenet of federal oversight and a focus on achievement gaps between White and minority students; more affluent students and their low-income peers; and students with disabilities and other students.

Instead of identifying schools that fail to meet the federal achievement targets or make adequate yearly progress (AYP) under NCLB, states with waivers must instead focus on "priority" schools, defined as the lowest performing 5 percent of schools and high schools with graduation rates under 60 percent. Once identified, states

must develop and implement their own interventions based on a set of federal turnaround principles that range from redesigning the school day to emphasizing the use of data. In addition, states also must identify “focus” schools—i.e. the 10 percent of disadvantaged schools with the largest academic achievement gaps between subgroups of students—and develop plans to improve them.

During the crafting of the waiver plan, the civil and human rights community was adamant that the Department of Education require states to consult with local community-based organizations, parents and other stakeholders given the radical changes to education policy that would be taking place. But by early 2012, it was clear that the consultation was not happening.

Prior to the approval of the first set of waivers, the Campaign for High School Equity (CHSE), a diverse coalition of national organizations representing communities of color that believe high schools should have the capacity and motivation to prepare every student for graduation, college, work, and life, sent a letter to the department signed by eight organizations, including The Leadership Conference, the National Urban League, and National Council of La Raza (NCLR), outlining its concerns:

“The civil rights community is disheartened that some states did not take more seriously the requirements regarding consultation with stakeholders in the Department of Education’s guidelines for waiver applications. . . . [I]n Colorado, New Mexico, and Georgia, for example, CHSE’s local affiliates and partners were not meaningfully engaged in the development of their respective states’ waiver applications. Many of our affiliates were not contacted by their states. In light of how schools have historically underserved students of color and Native students, CHSE is disappointed that some states did not demonstrate real engagement with our civil rights organizations.”

In addition, The Leadership Conference called for strict oversight of waiver regulations by the Department of Education to ensure that the achievement of struggling students, particularly minority and low-income students, are not disguised when measuring achievement or targeting and implementing interventions.

In a February 9 statement following the department’s announcement of the first 11 state waivers, Nancy Zirkin, executive vice president of The Leadership Conference, said that the move “should in no way be construed as giving a free pass to any state to ignore their obligations

to educate every child. States have made many hollow promises in the past, under both No Child Left Behind and the Improving America’s Schools Act, and it will be critical for the administration to ensure that states deliver this time.”

However, as states begin to operate under these waivers, concerns have arisen. While states must identify schools that graduate less than 60 percent of their students, states vary greatly in their approach to graduation-rate accountability. For example, Georgia plans to use a five-year cohort graduation rate in its school rating system. Aside from violating the 2008 federal regulation that established a four-year cohort graduation rate, triggering interventions and accountability based on a five-year rate will hide disparities in student achievement, produce data that is incompatible across the country, and create a disincentive to ensuring all students graduate on time.

Policymakers and civil rights groups also were worried that some states’ plans would mask poor performance of certain groups of students, particularly minority and low-income students. In a January 17 letter to Education Secretary Arne Duncan, Rep. George Miller, D. Calif., ranking member of the House Education and Workforce Committee, and Sen. Tom Harkin, D. Iowa, chairman of the Senate Health Education Labor and Pensions (HELP) Committee, expressed concern that under some waivers, states intended to combine several categories of students together into one “super-subgroup” for accountability purposes.

“We fear that putting students with disabilities, English language learners and minority students into one ‘super subgroup’ will mask the individual needs of these distinct student subgroups and will prevent schools from tailoring their interventions appropriately,” the letter noted. The Miller-Harkin letter urged the federal government to closely evaluate waiver requests seeking that mode of flexibility and to make sure to enforce accountability provisions.

### **Slow Progress on ESEA Reauthorization**

By late 2012, the Department of Education had granted 34 states and the District of Columbia waivers. Meanwhile, Congress made incremental progress moving legislation to reauthorize ESEA.

In the Senate, the ESEA reauthorization bill has been stalled since October 2011, when it was approved by the HELP Committee. Although that bill keeps some of the key NCLB accountability provisions in place—including a requirement that states adopt academic standards and implement a system of statewide assessments aligned with the standards—many civil and human rights groups withheld support for it, calling the bill

“flawed” for its lack of federal oversight and its requirement to improve only a small number of low-performing schools. In particular, civil and human rights groups criticized the bill for failing to require states to set any measurable achievement and progress targets or even graduation rate goals.

The bill made little progress toward the Senate floor in 2012. Harkin, the bill’s sponsor, has said he would not seek a floor vote for the legislation until the House passed a bipartisan ESEA reauthorization bill.

In the House, GOP-backed legislation to reauthorize the Act moved forward fitfully—and in a piecemeal fashion. On February 28, the House Education and the Workforce Committee approved two pieces of legislation introduced by Chairman John Kline, R. Minn., which would reauthorize portions of the ESEA, but also would significantly decrease the federal role in education even more than the Harkin bill.

In the face of the vigorous objection from the civil and human rights community, the committee approved Kline’s Student Success Act, which would dismantle a key accountability provision of NCLB. The bill seeks to scrap NCLB’s goal of adequate yearly progress for students and subgroups of students, and essentially free schools from having to meet specific achievement goals, with no penalties for missing academic targets. The bill also would give states flexibility to use federal education dollars at their own discretion instead of specifically directing them toward federally required purposes and student populations, such as low-income students.

In a January 24 letter to Kline, a coalition of nearly 40 civil rights organizations, including The Leadership Conference, NCLR, and NAACP, along with the U.S. Chamber of Commerce, opposed the legislation, calling it a “rollback” that “undermines the core American value of equal opportunity in education embodied in *Brown v. Board of Education*.”

Kline’s bill would “thrust us back to an earlier time when states could choose to ignore disparities for children of color, low-income students, [English language learners], and students with disabilities. The results, for these groups of students and for our nation as a whole, were devastating,” the letter said.

On their own, states have a history of failing to set meaningful achievement targets for students, adopting vague or low targets for achievement. Before the enactment of NCLB requirements to focus on the achievement of subgroups like minorities, students with disabilities, and English language learners, only two states had included the performance of individual groups

of students in their accountability systems. Some civil rights groups say it seems unlikely that states would make disadvantaged students a priority if given the freedom to set their own standards and goals without federal accountability.

While Kline’s legislation passed out of committee, an amendment introduced by Rep. Glenn Thompson, R. Pa., which would have overhauled the distribution of Title I money intended to aid schools with significant populations of disadvantaged students, was defeated in committee vote of 22-16. The amendment would have altered the formula to favor smaller, rural schools over high-population, urban areas.

### Conclusion

The Elementary and Secondary Education Act was due to be reauthorized five years ago, but the deep divisions in Congress are such that the prospects of reauthorization are slim. The NCLB waivers, which are for two years, are a temporary and incomplete fix to a problem Congress will have to address soon – by reauthorizing and strengthening the law. The civil and human rights community will continue to stress the need for a reauthorization bill that maintains a strong federal role in equity and accountability; requires states and districts to close gaps in such areas as achievement, high school graduation, and discipline rates; and undertakes meaningful interventions to improve low-performing schools and those with significant achievement gaps.

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## *Social Justice Groups Partner to End Predatory Prison Phone Rates*

**Lisa Bennett**

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The Leadership Conference Education Fund and a broad coalition of social justice organizations are working together to end predatory prison phone rates—an issue that disproportionately impacts people of color, women, immigrants and low-income communities.

Many people are unaware that excessive telephone rates are one of the most widespread injustices confronting incarcerated people and their families in the United States. Thanks to a bidding system that rewards prisons with inflated commission payments (otherwise known as “kickbacks”), exorbitant charges are imposed upon prisoners who seek to stay in touch with loved ones, consult with legal representation and access community resources. Only eight states and the District of Columbia do not accept such kickbacks.

The differences between rates inside and outside of prison are often jaw-dropping, with many states charging as much as \$15 for a 15-minute call. This means just one hour of calls per week can result in a monthly bill of almost \$250. The Center for Constitutional Rights reports that incarcerated individuals often simply give up communicating with loved ones, or their families make sacrifices—from going without groceries to going bankrupt—in order to stay in touch.

The ability to connect with family and assist in their own defense is critical to prisoners’ successful transition from incarceration back into the community. In addition, inflated phone charges undermine the economic security of family members who shoulder the costs of these calls—just at a time when they need to conserve their resources for their loved ones’ legal expenses and costs of reintegration.

For an incarcerated parent and his or her child, regular contact is essential. Over 2.7 million children in the U.S. have at least one parent in prison, and more than half of

those prisoners are in facilities 100-plus miles away from home.

Changes enacted in New York state demonstrate that the system can be reformed with concerted advocacy. According to the Media Justice Fund, prior to reform the state was taking more than 57 percent of the profits from prison phone calls, thus pocketing more than \$200 million from 1996 to 2007. Today, New York prisons charge five cents a minute for local and long-distance calls, compared with states like Georgia, where the cost exceeds a dollar a minute.

Urging each of the remaining 42 states to ban kickbacks within their borders would take considerable effort. However, the Federal Communications Commission (FCC) has the power to cap prison phone rates nationwide. A petition asking the FCC to do just that was submitted nearly a decade ago. A coalition led by The Leadership Conference on Civil and Human Rights has played a part in renewing interest in this appeal, known as the Wright Petition for one of its plaintiffs, Martha Wright, whose grandson is incarcerated. This work has resulted in an editorial in *The New York Times* and a letter from Bobby Rush, D. Ill., and Henry Waxman, D. Cal., calling on the FCC to “move expeditiously to resolve this issue.”

The coalition’s ongoing action plan involves engaging potential supporters through blog posts, social media, action alerts and an educational toolkit; lobbying legislators at both the state and national level; meeting with the FCC; outreach to the media; and participating in a public education and awareness campaign based around a new Sundance award-winning movie, “Middle of Nowhere,” which chronicles a woman’s separation from her incarcerated husband, revealing the challenges faced by families in staying connected to loved ones in prison.

*Lisa Bennett is communications director for the National Organization for Women Foundation.*



## *Immigration Reform: Is Washington Headed For Another Try?*

**Rob Randhava**

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For years, immigrants' rights advocates have been left frustrated by the failure of Congress to enact a long-overdue overhaul of immigration policies. In the absence of federal legislation, a growing number of states have taken matters into their own hands by passing harsh "enforcement" measures that only worsen the problems caused by a dysfunctional national system. Several recent developments, however, have renewed hopes that Congress and President Obama will again take up the issue in 2013.

### **Supreme Court Weighs in on State Immigration Laws**

In the vacuum left by several failed attempts by Congress to enact a bipartisan immigration bill, a number of states undertook their own efforts to address perceived failures in immigration enforcement. In 2010, Arizona enacted the first of a series of highly controversial state measures, S.B. 1070. This law, and so-called "copycat" laws that were subsequently enacted in other states such as Alabama and Georgia, were rooted in the idea that in the absence of aggressive federal deportation policies, creating a hostile legal environment to unauthorized immigrants would cause such individuals to voluntarily "self-deport." Among other things, S.B. 1070 and other state laws require police officers to detain anyone they suspect, during a stop or arrest, of being in the country illegally in order to determine their legal status and notify federal immigration authorities.

Before S.B. 1070 could take effect, it was quickly challenged on several fronts. Civil rights and immigrant advocates sued Arizona alleging that the law enforcement provision would encourage racial and ethnic profiling, and they launched nationwide protests and a boycott of the state. The U.S. Department of Justice also filed suit, arguing that immigration enforcement is a purely federal matter under the Constitution and that states are

pre-empted from acting on their own. After much of S.B. 1070 was blocked by a federal district court in a ruling that was upheld by the U.S. Court of Appeals for the Ninth Circuit, the U.S. Supreme Court agreed in late 2011 to review the case.

In one of the highest-profile cases of the year, *Arizona v. United States*, the Supreme Court ruled in June 2012 that several of S.B. 1070's provisions were unconstitutional because they intruded upon federal authority over immigration policy. The Court held that it was premature, however, to strike down the most controversial part of the law, which requires police to determine the immigration status of people they stop or arrest. Writing for the Court, Justice Anthony Kennedy argued that Arizona might be able to implement the law so that suspected unauthorized immigrants are not detained any longer than they would be held for the underlying offense. It would be up to the state's courts to clarify the limits on the law. Yet he concluded that the ruling "does not foreclose other pre-emption and constitutional challenges to the law as interpreted and applied after it goes into effect," leaving the door open to future challenges.

The reaction of civil rights and immigrant advocates to the ruling in *Arizona v. United States* was mixed. Many expressed strong disappointment that the so-called "papers please" provision was allowed to stand for now. Wade Henderson, president and CEO of The Leadership Conference on Civil and Human Rights, however, found more to like in the ruling. "Today's Supreme Court decision is not all that we wanted, but it's certainly not all that we feared," he said. "We are confident that this provision will ultimately be struck down, either in the courts or at the ballot box, because it is simply not workable. We have grave doubts that Governor Jan Brewer and the state of Arizona can implement S.B. 1070 without seriously violating Arizonans' civil rights."

Regardless of whether the “papers please” section of S.B. 1070 ultimately survives what is certain to be a protracted battle in the courts, the Court’s ruling may deter other states from enacting similar laws in the near future. While the Court essentially punted on the measure, it set the constitutional bar fairly high, and states may not have either the will or the financial resources to spend years in courts they know will be skeptical.

At the same time, states with Arizona “copycat” laws have also faced unexpected economic consequences as a result of enacting these laws. Many immigrant workers have fled states like Georgia and Alabama, leaving farmers with unpicked crops, businesses with fewer customers, and state and local governments with shrinking tax bases. Instead of resolving the issue of immigration, the wave of state laws has only increased the pressure on Congress to come up with a solution.

#### **Obama: If Congress Won’t Help DREAMers, I Will**

Only days before the Supreme Court weighed in on state immigration laws, and frustrated with congressional paralysis, President Obama made a surprising announcement that grabbed the attention of advocates on all sides of the immigration debate. On June 15, he stated that his administration would no longer deport young unauthorized immigrants who are eligible for relief under the DREAM Act, a bipartisan measure that had been repeatedly blocked in Congress.

The DREAM Act, first introduced in 2001, would provide legal status to unauthorized immigrants who arrived in the United States as children if they pursue higher education or military service. The rationale for the bill is simple enough: children who grow up in this country should not be punished because their parents brought them here illegally. Yet since 2001, and even though opponents have been hard-pressed to come up with principled arguments against the bill, it has been bogged down in Congress. Most recently, in late 2010, the House of Representatives passed the bill. The bill also had majority support in the Senate, but the Senate’s 55-41 vote fell short of the 60 votes needed to overcome a filibuster.

Obama’s executive order cannot grant legal status to immigrants. Only Congress can do that. But it relies on the long-established notion of prosecutorial discretion: bluntly defined, an administration can decide to not pursue certain deportation cases where there are humanitarian reasons or other compelling factors.

Civil and human rights advocates were thrilled. “Today, the administration has provided these young adults the opportunity to pursue the American Dream,” said Laura W. Murphy, director of the ACLU Washington Legis-

lative Office. Wade Henderson called it “a good day for America.” The reactions from many DREAM Act opponents were more measured; sensing that Obama would enjoy strong public support on the merits, many attacked him on process instead. Senate Minority Leader Mitch McConnell, R. Ky., meanwhile, deferred to GOP presidential candidate Mitt Romney, who promised to “replace” the policy, but never specified how.

#### **A Changing Electorate Speaks Out in 2012**

Just a few years ago, the outcry over Obama’s decision would have been much, much stronger. Yet a growing number of his opponents have come to realize that immigrants, and Latinos in particular, are a growing part of the American electorate that both parties must attract if they are to survive. At no time was this more evident than on the morning of November 7, the day after Obama was re-elected. Exit polls showed that Obama won more than 77 percent of the Asian American vote (according to an exit poll conducted by the Asian American Legal Defense and Education Fund), as well as 70 percent of the Latino vote, with an even stronger margin in many swing states. “This poll makes clear what we’ve known for a long time: the Latino giant is wide awake, cranky, and it’s taking names,” said Eliseo Medina, secretary-treasurer of the SEIU, regarding one such poll conducted by CNN.

In the wake of the election, many observers were quick to point to harsh Republican stances on immigration – including state enforcement laws and the blockade of the DREAM Act – as a decisive factor for Latino voters. Some Republicans, such as Sen. Marco Rubio, R. Fla., had tried to build on the outreach of former President George W. Bush, while others, like Sen. Lindsey Graham, R. S.C., warned in August that “we’re not generating enough angry white guys to stay in business for the long term.” Yet they had often been stymied by their own party, while being badly outflanked by Democrats.

Since November 6, more Republicans appear to have taken notice. House Speaker John Boehner, R. Ohio, said that “a comprehensive approach [to immigration reform] is long overdue, and I’m confident that the president, myself, others can find the common ground to take care of this issue once and for all.” Even archconservative Fox News host Sean Hannity said that his views on immigration had “evolved,” including on “a pathway for those people that are here.”

#### **Challenges Remain**

As Obama begins his second term, and a new Congress gets to work, immigration reform appears to have moved up near the top of the legislative agenda. Obama has devoted more attention to the issue, including in his inaugural address. In the Senate, a bipartisan group calling

itself the “Gang of Six” is engaged in active discussions over a blueprint, which they hope will translate into a consensus on legislation.

Few observers, however, expect the path to be easy. In the short term, Congress will continue an ongoing fierce debate over the federal budget. After the tragic December 14 shooting at Sandy Hook Elementary School in Newtown, Conn., in which 20 children and six adults were murdered, the national debate over gun violence appears to have reached a boiling point. Both issues are likely to consume some of the legislative calendar, and could taint the prospect of bipartisan cooperation on other issues like immigration.

Then there is also the overwhelming complexity of the immigration issue itself, which involves many moving parts and difficult details. Questions of border enforcement and a roadmap to citizenship for unauthorized immigrants remain highly controversial, but they are only part of the debate. The Senate’s last serious effort at immigration reform, in 2007, was derailed in part over the issue of temporary work visas, pitting immigration and labor advocates against business interests, even though they were allied on other parts of the bill. A comprehensive bill would also have to take on tough questions surrounding family visas, farmworkers, and detention policies. In spite of these challenges, Congress appears more determined than ever to try.

*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.*

# *The Census and American Community Survey: Time for Vigilance and Preparation*

**Terri Ann Lowenthal**  
**Commentary**

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With the 2010 census receding in the rearview mirror, civil rights advocates could be forgiven for putting goals such as a fair, accurate and comprehensive enumeration on a back burner. But they shouldn't.

Yes, the population count portion of the census—required every 10 years by Article I of the U.S. Constitution—is finished. Congressional and legislative redistricting based on the new population numbers is essentially done for the decade, and the Census Bureau has issued scores of data products to help guide public and private investment decisions and the allocation of fiscal resources through program formulas. But there are important reasons to keep the census in the forefront of the civil rights agenda:

1. With the advent of the American Community Survey (ACS), the census now extends beyond a moment-in-time snapshot of the population. The decennial enumeration features only the most basic demographic information, including race and Hispanic origin, sex, age, household relationships, and housing tenure (own or rent), while the ACS gathers vital socio-economic characteristics throughout the decade.
2. The window of opportunity to research and test new enumeration methods for the 2020 census is small.
3. And hanging over these critical activities is a cloud of small-government sentiment and fiscal austerity that threatens to decimate our nation's vital data infrastructure and undermine a fair and accurate population count less than eight years from now.

## **The American Census: More than just one, two, three...**

The 2010 census was the first since 1940 to gather only the most basic population and housing data from all

of America's households. Previously, the census had used the so-called "long form" to collect a wide range of social, economic and housing information. The long form provided detailed profiles at the community level on important indicators, such as educational attainment, housing conditions and costs, labor force participation and occupation, veteran's status, ancestry, local transportation patterns, income and poverty, and disability. Congress directly or indirectly required most of the data to administer, monitor and evaluate federal laws and to allocate hundreds of billions of dollars annually in federal grants to states and localities. Long-form data also were used to implement sections of the Voting Rights Act, notably calculations of the voting age population for redistricting and the designation of places requiring language assistance for elections.

But Congress grew weary of the long form after the 1990 census posted the highest disproportionate undercount of people of color (Blacks, Hispanics, Asians, and American Indians) ever recorded. The 1990 census also was the first to be measurably less accurate than the prior census. Legislators urged the Census Bureau to find alternate means of gathering vital data needed for programs and policymaking, to reduce response burden in the decennial population count, and to focus the enumeration on accuracy for the constitutional purposes of congressional apportionment and fair redistricting.

And so was born the ACS, an ongoing canvass of roughly 3.5 million homes each year that asks the same or similar questions as those on the traditional long form. Implemented nationwide in 2005, the ACS compiles enough data over five years to produce statistical profiles for areas as small as an average census tract of 4,000 people. Unlike long-form data, ACS data are updated annually and therefore are more useful in helping policymakers monitor trends and changing



conditions at the community level. According to a Brookings Institution analysis, Congress allocated \$416 billion in federal grants in Fiscal Year 2008 based on ACS data. The Census Bureau has since added several questions based on new legislative requirements, such as the Affordable Care Act.

With so much riding on ACS data and seemingly inherent congressional interest in the data for policy purposes, you would think lawmakers would support a scientifically robust survey by providing an adequate, consistent funding stream. But you would be wrong.

In the 112<sup>th</sup> Congress, as pro-small government voices gained more sway with the governing majority in the House of Representatives, a previously slow-moving effort to turn the ACS from a mandatory to an optional survey took hold among growing numbers of primarily Republican members, including committee and party leaders. The House by voice vote adopted an amendment offered by Rep. Ted Poe, R. Texas, to make ACS response voluntary. But that seemingly simple change would have devastating consequences. Previous Census Bureau testing showed that survey response rates would plummet, especially among historically hard-to-reach population groups, and costs would soar by at least 30 percent, making it difficult—if not impossible—for the Census Bureau to produce statistically valid estimates for urban neighborhoods, rural and remote communities, and the diverse range of smaller population subgroups such as Chinese, Dominican, and Haitian Americans.

Emboldened House Republicans didn't stop there. By a largely party-line vote, they also passed a subsequent amendment to eliminate funding for the ACS entirely. Imagine: No current socioeconomic indicators to determine the distribution of federal and state resources; to guide trillions of dollars in business investments in new stores, services, and manufacturing plants; or to implement key sections of the Voting Rights Act and other important civil rights laws.

Fortunately, neither the Poe amendment nor the measure to wipe-out all funding for the ACS became law during the 112<sup>th</sup> Congress. But risks to the ACS remain real, with the survey's critics likely to try again in the 113<sup>th</sup> Congress.

### **The Importance of Early Planning for Census 2020**

The decennial enumeration is the nation's largest peacetime mobilization; it takes a full decade or more to conduct thorough research and testing, draw up design plans, and prepare to enumerate 310 million (and counting!) residents in 134 million (and growing!) housing units, as well as in group facilities such as military barracks, prisons, college dorms, and nursing homes.

Yet Congress generally has lacked foresight when it comes to early investment in census research and planning, despite strong evidence that groundwork early in the decade could save taxpayers hundreds of millions, if not billions, of dollars in census execution. Soon after the 2010 census, Congress scolded the Census Bureau for not offering an Internet response option and ordered the agency to develop secure electronic response methods for the next count. Substantial reliance on electronic response in 2020 could save significant resources by reducing the need for paper questionnaires and costly field follow-up, allowing the bureau to devote more resources to hard-to-count populations that might not be able or inclined to respond via the Internet.

But the Census Bureau can't—and shouldn't—implement major design changes in the census without comprehensive testing and allowing time for meaningful stakeholder feedback. For example, advocates for communities of color have urged the Census Bureau to revise the way it gathers data on race and ethnicity. A number of Black leaders are proposing more choices for African-American respondents (such as Haitian, Nigerian, Somali, Jamaican) that would better capture this population's diversity. While the Census Bureau started evaluating alternative questions on race, ethnicity, and ancestry in the 2010 census, much work remains to be done before agency experts can recommend new questions for 2020.

Several states—including New York and Maryland—have taken the lead in changing the way they count prisoners for purposes of state legislative redistricting, preferring to place them at their pre-incarceration addresses—often predominantly urban—instead of at the prison—often hundreds of miles away in a rural area. If the Census Bureau is even to entertain the possibility of changing its census “residence rules,” it must conduct thorough research and testing of alternative data collection methods, which could take years.

And research into a broader use of administrative records—such as the Supplemental Nutrition Assistance Program and Medicaid rolls—could help the Census Bureau identify uncounted members of low-income households. But use of these government databases could raise sensitive privacy issues. Technical issues, such as how to fill in information missing from administrative records (such as race), are also a challenge. The Census Bureau needs to invest in research and testing early in the decade to overcome substantial barriers to incorporating government records into its 2020 census design.

Of course, adequate funding is a continuing issue. For Fiscal Year 2013, President Obama asked Congress

for a modest 3 percent increase over his Fiscal Year 2012 budget proposal for the Census Bureau. Senate appropriators were supportive of the request, which would fully fund core programs like 2020 census planning, the ACS, and the 2012 economic census. Their House counterparts weren't as thoughtful, knocking \$92 million from the administration's proposal. The Census Bureau has a reprieve from impending budget Armageddon, thanks to election-year budget gridlock that produced a temporary measure funding the federal government at FY2012 levels. But census stakeholders should not let down their guard. Congress will continue to grapple with discretionary spending restrictions and must complete action on current year funding bills early in the 113<sup>th</sup> Congress.

### **Preserving Census Data: A Civil Rights Issue for the Long Haul**

Civil rights advocates put the census and the ACS on a back-burner at their peril. Sure, nonprofit resources are stretched thin and there are myriad important issues to monitor and champion. But think how difficult it would be to make the case for social justice, equal employment, educational opportunity, affordable housing, and access to health care *without* the comprehensive, timely, and accurate data from the decennial census and ACS.

The decennial census is the foundation of our democratic system of governance; from an accurate census flows the means to ensure fair redistricting and strong implementation of the Voting Rights Act. The ACS puts flesh on the bones of the basic population count, giving policymakers the tools to assess community conditions, identify needs, and set priorities. And all of these publicly available data allow Americans to hold elected officials and business leaders alike accountable for their actions. If we want to promote continued transparency in decision-making, we must fight throughout the decade to preserve and strengthen the only reliable, objective tool available to ordinary citizens—comprehensive, accurate data from the U.S. Census Bureau.

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