



# Civil Rights Monitor

## 2007-2008

## Inside this **MONITOR,**

---

we review legislative activities related to **disability rights**, the **mortgage crisis**, and funding for the **2010 census**; discuss developments in **judicial nominations**, review the most recent **U.S. Supreme Court term**, and **fights on equal opportunity in the states**. We also summarize Leadership Conference activities, including ongoing initiatives on **reducing poverty** and **high school reform** and a new initiative on **fair housing**.

## Executive Branch

---

- 3 **Looking Forward to New Blood in Washington**  
*Opinion By Wade Henderson*

After eight years of the Bush administration, the civil rights community is looking forward to a change in leadership at the federal level that, we hope, will prioritize issues that matter to the nation's most vulnerable citizens, regardless of who is elected.

## On the Hill

---

- 6 **The Americans with Disabilities Act, Act Two**  
*Opinion By Andrew Imparato*

The passage and implementation of the ADA Amendments Act this year creates an opportunity for all of us to go out and re-educate our respective communities – at the local, state and national levels – about why there is still a need for a civil rights law like the ADA 18 years after its original enactment.

- 8 **As Home Foreclosures Climb, Efforts to Help Troubled Homeowners Continue**

*By Rob Randhava*

After years of ignoring warnings by civil rights and consumer groups about the crisis in the mortgage lending industry, policymakers in 2008 finally responded to the sharp nationwide increase in home foreclosures. However, the federal government's response will help only a fraction of homeowners keep their homes as foreclosures continue.

- 11 **The Year in Judicial and Executive Nominations**  
*By Paul Edenfield*

In 2008, President Bush continued his pattern of nominating individuals with troubling civil rights records to the Fourth Circuit and other courts. However, redoubled efforts by civil rights groups to resist such nominees helped preserve the federal courts from further politicization by the administration.

- 13 **Advocating for Federal Leadership on Education**  
*Opinion By David Goldberg*

Access to a high quality education is a fundamental civil right for all children and an economic necessity for the nation, yet policymakers at all levels of government have continued to tolerate an educational system that is failing half of our nation's children.

- 15 **Facing New Challenges with the 2010 Census**  
*By Paul Edenfield*

After ensuring that the Census Bureau had adequate funding to prepare for the 2010 census, civil rights activists spent much of 2008 working to ensure that the Bureau's management of new technologies would not hinder its ability to administer a successful count in 2010.

- 17 **Modernizing the Federal Poverty Measure**  
*By Corrine Yu*

As fears about the weakening economy continue to grow, the call for modernizing how the nation measures poverty has taken on new urgency.

- 19 **Piecemeal Legislation, Raids Take Place of Immigration Overhaul**

*By Rob Randhava*

While comprehensive efforts to overhaul our nation's immigration system remain on hold after the demise of a sweeping immigration bill in 2007, the issue of immigration remained high on the public agenda in 2008. This year's debate, both in and out of Congress, focused most heavily on enforcement.

## Below the Surface

---

- 21 In this new feature of the Civil Rights Monitor, we highlight a couple of issues that were either emerging for the civil rights community this year or were major issues in years past but flew a little below the radar this year. We anticipate that these issues will become more prominent in 2009 and will require the attention and focus of the civil rights community.

## In the Courts

---

- 24 **Wrapping up the Supreme Court's 2007-2008 Term**

*By Paul Edenfield*

The 2007-2008 Supreme Court term was decidedly mixed for the civil rights community, with decisions handed down that impact issues like voting rights, criminal justice, and workers' rights.

## In the States

---

26 **Colorado: Battleground for More Than Just the Presidency.**

*Opinion By Israel García*

Now the battle lines have been drawn in Colorado and Nebraska. Using vague and misleading ballot language, Connerly – through the guise of the “American Civil Rights Initiative” – plans to put an end to all initiatives designed to increase opportunity for women and people of color by amending the constitutions of both states

## Leadership Conference Activities

---

30 **Preventing a Digital TV Divide**

*By Mark Lloyd*

LCCR/EF is working to alert vulnerable communities to the digital television transition, and the availability of a government coupon to offset the cost of making the transition, to help ensure that all Americans continue to have equal access to important information and political discussion.

32 **Examining the State of Fair Housing in the 21st Century**

*By Tyler Lewis*

Forty years after the passage of the Fair Housing Act in 1968, the options for buying a house in a neighborhood of their choosing is still beyond the ability of many Americans, because the law is not adequately enforced.

34 **Bringing Diverse Communities Together**

*By Catherine Montoya*

As our country's minority populations continue to grow, civil rights and social justice activists find themselves with a unique challenge of bringing minority populations together around a common agenda in order to avoid on-going attempts by policy opponents to drive a wedge between different groups.

35 **32nd Annual Hubert H. Humphrey Civil Rights Award Dinner**

*By Tyler Lewis*

On May 14, the Leadership Conference on Civil Rights, along with its coalition of nearly 200 civil and human rights organizations, came together to honor and celebrate three civil rights leaders: Representative John Conyers, D. Mich.; housing advocate Patricia Rouse; and journalist Soledad O'Brien.

## Interviews

---

3 **Bob Edgar**

*New President and CEO of Common Cause*

22 **Kathryn Kolbert**

*New President of People for the American Way*

28 **Lilly Ledbetter**

*Pay Equity Advocate*

37 **John Payton**

*Director-Counsel and President of the NAACP Legal Defense and Educational Fund, Inc.*



# THE EXECUTIVE BRANCH

## Looking Forward to New Blood in Washington

*Opinion By Wade Henderson, LCCR*

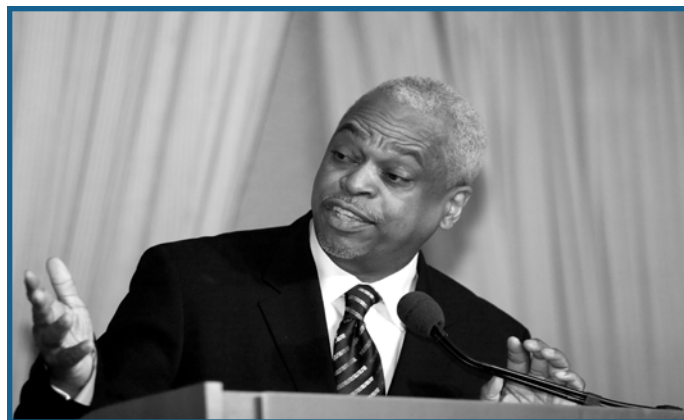
After eight years of the Bush administration, we in the civil rights community are looking forward to a change in leadership at the federal level that, we hope, will give priority to issues that matter to the nation's most vulnerable citizens.

We also hope that whoever becomes the next president of the United States breaks from the ideological, partisan nature of the Bush administration.

For too long, in nearly every respect, the important work of civil rights has been severely impeded by a Congress that passed very little civil rights legislation because of partisan political maneuvering and an administration hostile to the robust enforcement of existing civil rights laws to ensure equal opportunity and fairness for all Americans.

To be sure, we have had some victories – most notably, the reauthorization of the Voting Rights Act in 2006 by overwhelming majorities in both the House and the Senate, a long-overdue increase in the minimum wage, and the recent enactment of the ADA Amendments Act, which restores the original intent of the Americans With Disabilities Act.

But there have been far too many instances where political posturing has killed a civil rights bill, where a



Wade Henderson, President and CEO of the Leadership Conference on Civil Rights

judicial nominee's clear record of hostility to civil and human rights was ignored in favor of political expediency, or where laws that have been on the books for over four decades have been selectively or poorly enforced by federal agencies for partisan, ideological reasons.

So where do we start?

Determining the priorities of a coalition as large and inclusive as the Leadership Conference on Civil Rights is hard in any given year. For 2009, we are optimistic about a change that could potentially open up avenues on some or all of the issues that matter so deeply to LCCR's member organizations and their constituents.

We may find ourselves blessed with too many choices.





Congress has to pass the Fair Pay Restoration Act, which will restore the ability of victims of pay discrimination to file suit; pass the Employee Free Choice Act, which will restore the ability of American workers to unionize and ensure that their employers treat them fairly; and pass the Local Law Enforcement Hate Crimes Prevention Act, which will provide the resources that local law enforcement needs to fight hate crimes.

In addition, Congress has to address the nation's deteriorating health care and educational systems, repair our broken immigration system in a way that is fair to all Americans, and address the mortgage crisis so that Americans who bought homes in good faith can keep them. Congress must also provide the Census Bureau with every resource they need so that it can count every American and administer the 2010 census successfully.

We know that it is important to get civil and human rights legislation passed in Congress and signed into law by the president, but it is equally important that there be a strong commitment to enforcing the laws already on the books. The civil rights community is committed to working with the next president and his administration to ensure that federal agencies charged with enforcing our nation's laws do their jobs effectively and fairly.

In particular, the new administration faces the challenge of restoring the Civil Rights Division of the Department of Justice to its former position. The scandals that led to the firing of U.S. attorneys destroyed much of America's

**“...it is important to get civil and human rights legislation passed in Congress and signed into law by the president, but it is equally important that there be a strong commitment to enforcing the laws already on the books.”**

confidence in federal enforcement of the law, and undermined our sense of justice for all.

That scandal, however, is just the tip of the iceberg. Political tampering has gutted the division: with politically motivated hiring; high turnover of long-time career staff in most sections, which led to low morale for those career attorneys who stayed; and an overall lack of enforcement (particularly in voting and employment).

In our 2007 report, “Long Road to Justice,” the Leadership Conference on Civil Rights provided a number of recommendations for restoring the Civil Rights Division to its former glory and effectiveness.

These include:

- Rid the Civil Rights Division of politicization;
- Promote access to voting by enforcing the Voting Rights Act and other voting statutes;
- Combat housing discrimination by enforcing fair housing laws;
- Ensure compliance with the Americans with Disabilities Act (ADA);
- Combat employment discrimination;
- Promote and maintain integrated, high-quality schools; and
- Prosecute police misconduct and hate crimes

Clearly, the deterioration of the division presents challenges that will not be met easily or quickly. But with strong leadership from the new administration and a new attorney general, the Civil Rights Division can be resurrected.

We must also remember that no matter who takes office on January 20, 2009, the work of civil rights will still be hard. It will take political courage from both parties. It will require us to work harder, faster, and smarter. We will need to remind all Americans that civil rights benefit us all.

We have a lot to do. ■

*Wade Henderson is the president and CEO of the Leadership Conference on Civil Rights, the nation's oldest and largest civil and human rights coalition.*

# INTERVIEW

## with Bob Edgar

New President and CEO of  
Common Cause, May 2007

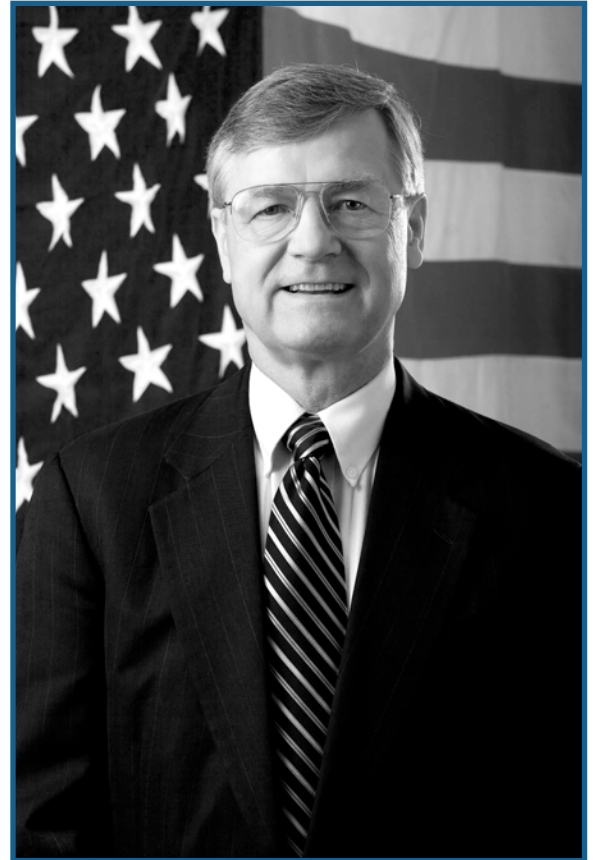
**Civil Rights Monitor:** Why did you decide to take your current position as the head of a major civil rights organization?

**Bob Edgar:** I think this period we are living through right now is one of the most dangerous periods in my lifetime for our democracy. The gains we made in the 60s and when I served in Congress during the post-Watergate period are being eroded and I think you have the same feeling of distrust in government today as you saw then. I think Common Cause can play an important role in a powerful new pro-democracy movement that restores our nation's respect for the rule of law and human rights.

Another reason I wanted to lead Common Cause is because of my deep respect for John Gardner [founder of Common Cause]. He believed citizens could make good things happen and without their participation the government is up for grabs. His vision is my vision.

**Civil Rights Monitor:** Looking forward, what are the issues with which your organization will be most concerned?

**Bob Edgar:** Common Cause is currently engaged in our "Recapture the Flag," campaign. At the center of the campaign is our desire to reclaim the flag as a symbol of true American values such as respect for the rule of law, human rights, and individual freedoms. To recapture the flag we need to put an end to secret renditions to countries we know torture, we need to close Guantanamo and restore the right to a fair trial, we need to obey the Geneva Conventions against torture, stop illegal wire tapping of American citizens, and restore the proper role of Congress as a watch dog over the executive branch.



We will also be expanding our work around the country as it pertains to money in politics, election reform, government ethics, and making certain our media serve the information needs of the public. Common Cause will also be looking at how we can further progress on meeting the basic human needs such as health, peace, and healing the earth.

---

**Civil Rights Monitor:** Can you talk a little bit about why you think civil rights issues are still important issues in the 21st century?

**Bob Edgar:** In my view, the vision of Reverend Martin Luther King has not been realized. Our Department of Justice in its current politicized state means justice only for some of us. Our education system does not meet the needs of many of our children and opportunities for higher education are dissipating, not increasing. Special interests from the financial service industry, the health industry, big pharmaceuticals and others are allowed to prey on the poorest and most vulnerable among our citizens. Our generation and the ones to follow in the next century have their work cut out for them.

**Civil Rights Monitor:** What do you think are the biggest challenges you and your organization face in doing the work that you do?

**Bob Edgar:** Common Cause is now 400,000 strong. In order to have the impact we want to we need to be more than 4 million. I think we also need to think less in finite organizational terms and more in movement terms. While some people today are joining organizations, it seems that more and more people see themselves as part of a movement and identify with the issues more than a specific organization. We need to involve these people and engage them in such a way that utilizes the technological resources that are available and leverages their old fashion enthusiasm and “boots on the ground” capabilities.

**Civil Rights Monitor:** Can you talk a little about why it's important for you and your organization to be a part of the LCCR coalition?

**Bob Edgar:** LCCR has been and will be the most important coordinating group around civil rights issues looking toward the future. It also been an important partner on key issues for Common Cause and helpful to us in broadening our understanding of the impact of the issues we work on from diverse perspectives. It also performs a much needed early warning function so that members of the community can quickly become aware of important developments relevant to civil rights issues and learn about opportunities to address issues in a productive way. ■





ON

THE

HILL

---

# DISABILITY RIGHTS

## The Americans With Disabilities Act, Act Two

*Opinion by Andrew Imparato, AAPD*

As I write this message, the Senate has just passed the Americans with Disabilities Act Amendments Act (ADA Amendments Act) by unanimous consent, and we're confident that it will be passed today in the House, and then off to the White House for signature. [Editor's note: The bill was signed by President Bush on September 25, 2008.]

The ADA Amendments Act will restore protections for certain people with disabilities – including, but not limited to, people with diabetes, epilepsy, heart disease, mental disabilities, and cancer – who were originally intended to be covered by the ADA but were excluded by a series of Supreme Court and lower federal court decisions in the last decade. The bill restates Congress' original intent with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination against Americans with physical and mental disabilities in such areas as employment, public accommodations, and transportation.

We are grateful to the bipartisan congressional champions of the bill—people like Tom Harkin, Orrin Hatch, Steny Hoyer, Jim Sensenbrenner, Mike Enzi and Ted Kennedy—who have been striving to bring home this victory before Congress adjourns.

The June 25 vote of 402-17 in the House and the reintroduction of a Senate bill with 67 Senators signing on as co-sponsors just before the August recess certainly gave the bill tremendous momentum going into the month of September. Now, we would not be where we are today without the coordinated advocacy of disability, civil rights and employer groups. To see who has been helping to lead the effort to pass the ADA Amendments Act, go to [www.adabill.com](http://www.adabill.com) and you will see for yourself a truly diverse and powerful coalition. I am confident that we can reconvene this same coalition to work on other disability, employment, and civil rights policy issues once we have this victory firmly under our belt.

What happens after the ADA Amendments Act is signed into law?

I was recently one of three speakers on a national teleconference on the ADA Amendments Act organized by the Great Lakes region's Disability Business Technical Assistance Center. Commissioner Christine Griffin from the U.S. Equal Employment Opportunity Commission (EEOC) was one of my co-panelists. Commissioner Griffin made the good point that once this bill passes, there will be a need for the EEOC and the U.S. Department of Justice to do another round of training so that people know how the new bill affects their civil rights.

## A Timeline of the ADA



Beginning with the Civil Rights Act of 1964, piecemeal legislative efforts provide only scattered pockets of protection for people with disabilities.

**1964 – 1990**

President George H.W. Bush signs the Americans with Disabilities Act into law, which prohibits discrimination against Americans with Disabilities in employment, and legislates accessibility for people with disabilities in commercial facilities, public transportation, and telecommunications.

**1990**

Lower courts focus on whether an individual has a severe enough disability, rather than on whether the individual had experienced discrimination because of the disability. Some courts also limit ADA coverage to persons limited in more than one major life activity.

**Late 90s – 2000s**

I encourage all activists to recognize that the passage and implementation of the ADA Amendments Act creates an opportunity for all of us to re-educate our respective communities – at the local, state and national levels – about why there is still a need for a civil rights law like the ADA 18 years after its original enactment.

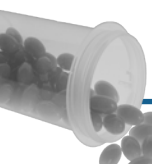
What are the access and attitudinal barriers that still exist in our communities, and what can community leaders do in partnership with disability leaders and organizations to remove those barriers once and for all? Why do we have to take actions like protesting the offensive portrayal of people with intellectual disabilities in Hollywood blockbusters like *Tropic Thunder*? Why are politicians, including Senators Obama and McCain, failing to mention their disability agendas in their campaign stump speeches? Why has it been so difficult to increase the employment rate for people with significant disabilities, and why is our nation's largest employer, the federal government, moving backwards on this issue? Why do hot new gadgets like the iPhone come out without paying adequate attention to accessibility for people with disabilities? Why has it been so difficult to implement the accessibility requirements in the Help America Vote Act?

We should be raising all of these issues, and many more, as we begin a dialogue with America around the implementation of the restorative amendments to this critical civil rights law.

The bottom line is that implementation of the ADA Amendments Act is an opportunity for all of us to refocus America on the benefits of full inclusion, full participation, and full citizenship for the more than 50 million Americans living with disabilities. For the implementation to be successful, we will need to engage the very broad coalition that is now working to pass the bill, and then reach out even more broadly to include more groups who can really help change attitudes and improve access.

Here at AAPD, we want disability to be THE social justice issue of our time. We see implementation of the ADA Amendments Act, coupled with the global implementation of the U.N. Convention on the Rights of Persons with Disabilities, as a great opportunity to put our issues front and center. When the bill is enacted into law, let's all work together, even harder, to implement it in a manner that truly elevates the visibility and quality of life of all people with disabilities in the United States and reestablishes our country's role as a model of inclusion for the rest of the world. ■

*Andrew J. Imparato is the president and CEO of the American Association of People with Disabilities, the largest national nonprofit cross-disability member organization in the United States.*

In *Sutton vs. US Airlines* the Supreme Court rules that mitigating measures (such as medication or prosthetic devices) must be taken into account in determining whether an impairment constitutes a disability.

1999

The Supreme Court's ruling in *Toyota Motor Manufacturing, Kentucky, Inc. vs. Williams* creates a "demanding standard for qualifying as disabled" under the ADA.

2002

An unprecedented and dedicated alliance of disability advocates, civil rights activists, legislators, and the employers' community rally around the ADA Amendments Act, which passes the House and Senate unanimously and is signed into law by President Bush on September 25, 2008.

2008

# HOUSING

## **As Home Foreclosures Climb, Efforts to Help Troubled Homeowners Continue**

*By Rob Randhava*

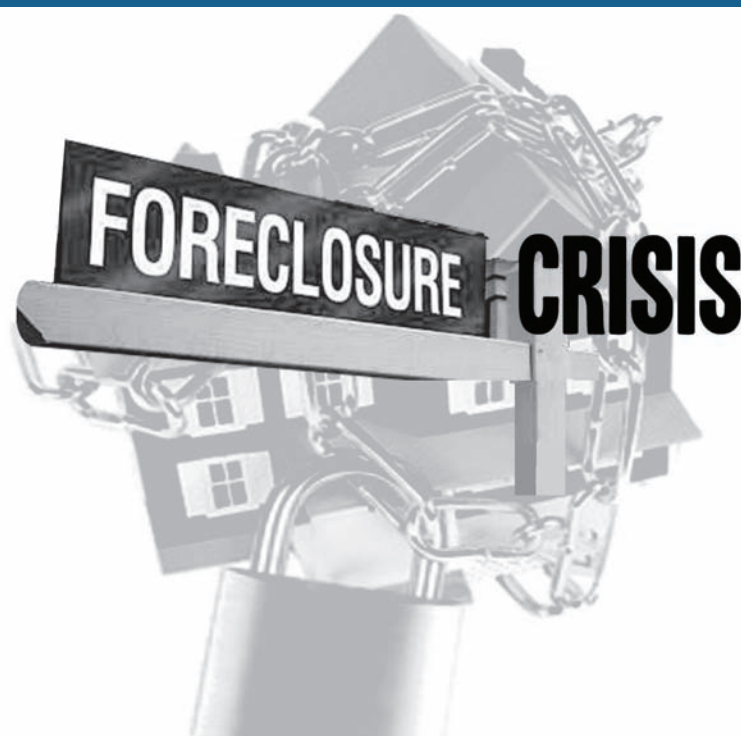
After years of ignoring warnings by civil rights and consumer groups about the growing crisis in the mortgage lending industry, policymakers in 2008 finally responded to the sharp nationwide increase in home foreclosures. However, the federal government's response will help only a fraction of homeowners keep their homes as foreclosures continue.

### **How the Foreclosure Epidemic Emerged and Evolved**

The decade-long housing boom led many mortgage lenders to abandon traditional safeguards against risky lending tactics such as low introductory “teaser” interest rates that later called for higher monthly payments; “no-doc” loans, in which borrower assets could easily be falsified; and exclusion of such homeownership expenses as property taxes and insurance.

Rapid growth in securitization (bundling and selling mortgage loans to investors) further encouraged risky practices. Mortgage securitization was supposed to act as a way to quickly return funds to lenders, allowing them to make additional loans that would increase homeownership. It eventually did the opposite: accelerating mortgage loans without guaranteeing borrower payback.

Many lenders squeezed out even more money for themselves through predatory lending practices – paying bonuses, so-called “yield spread premiums,” to mortgage brokers for steering borrowers into subprime mortgages (more expensive loans meant for risky borrowers) even when they could have qualified for less expensive ones.



The civil and human rights communities had long expressed concern about predatory lending because these practices disproportionately targeted racial and ethnic minority borrowers, robbing them of their homes and their chief wealth-building asset. According to the Center for Responsible Lending, Black and Latino borrowers were over 30 percent more likely to get higher-cost loan than White borrowers, even after accounting for differences in borrowers' credit.

The results have been disastrous not only for minority homeowners, but for homeowners nationwide, with millions poised to lose their homes.

Despite early warnings from the civil rights community and consumer organizations, neither the Federal Reserve nor Congress did anything to avert this crisis. This was not because they were powerless, but because of the tremendous resistance from the lending industry, which steadfastly denied – even in the midst of the growing 2007 crisis in which foreclosures shot up 79 percent according to RealtyTrac, a national database of foreclosure listings – that predatory lending was a widespread problem.

**Washington Responds to Growing Foreclosures – Sort of**

Congress and federal regulators finally took action in late 2007. In November, the U.S. House of Representatives passed “The Mortgage Reform and Anti-Predatory Lending Act of 2007,” sponsored by Rep. Barney Frank, D. Mass. Among other things, the bill would prohibit lenders from steering borrowers into higher-rate mortgages and require lenders to verify whether borrowers could afford monthly loan payments.

Civil rights organizations were generally supportive of early versions of the bill, but its provisions were weakened before it reached the House floor, as its sponsors made compromises to secure enough votes for the bill to pass. Of key concern was a provision that prevented states from enacting more borrower-friendly laws than those that were established under the bill. Lending industry advocates had lobbied hard for the addition, claiming they would be more supportive of regulation as long as it was uniform.

**“The civil and human rights communities had long expressed concern about predatory lending because these practices disproportionately targeted racial and ethnic minority borrowers...”**

Ultimately, civil rights organizations were divided over the final version of the bill, with some supporting it as a generally positive first step and others opposing it because it could prevent more beneficial legislation in the future. In the end, the bill never proceeded beyond House passage. Senator Christopher Dodd, D. Conn., followed up by introducing stronger anti-predatory lending legislation, but faced insurmountable resistance in the closely divided Senate.

In addition, the Federal Reserve, the nation’s central banking system, finally announced that it would invoke its own powers under the Home Ownership and Equity Protection Act (HOEPA) – powers it had had since 1994 – and issued draft regulations in December 2007, which were finalized in July 2008.

However, the Federal Reserve or Congress had not yet addressed the most immediate problem of escalating foreclosures. Finally, in early 2008, the Senate began work on a comprehensive legislative package.

Senate Majority Leader Harry Reid, D. Nev., introduced the “Foreclosure Prevention Act,” which included a favorite proposal of civil rights and consumer groups: legislation that would allow borrowers to modify their mortgage terms in Chapter 13 bankruptcy proceedings, as borrowers can already do with almost any other kind of debt. The Center for Responsible Lending estimated that as many as 600,000 borrowers could be helped by such a process.

The financial services industry, however, adamantly opposed the bankruptcy proposal, which was dropped from the bill during a filibuster in April 2008.

Civil rights advocates did not support the eviscerated final version of the bill. LCCR President and CEO Wade Henderson said that “the bill amounts to Congress dancing around a fire when it should be putting it out,” and it was met with equally critical responses from the media.



Congress finally passed the bill on July 30 after months of negotiations. The final bill responded not only to the foreclosure crisis but to other housing-related policy issues. To boost foreclosure prevention, the bill established a program in which lenders could obtain Federal Housing Administration guarantees of refinanced loans if they voluntarily agreed to accept some losses on the original mortgage. The bill also:

- Provides \$4 billion in Community Development Block Grants for states and cities to purchase and rehabilitate foreclosed properties;
- Creates a long-desired “Affordable Housing Trust Fund” to provide affordable rental housing;
- Imposes a new nationwide licensing and registration system for loan originators; and
- Gives the federal government sweeping powers to fund and oversee Fannie Mae and Freddie Mac, the two government-sponsored companies that help provide liquidity to the housing finance market, but were saddled with growing losses.

LCCR supported the final bill, though it and other civil rights groups criticized the lack of mandatory anti-foreclosure reforms, such as the Chapter 13 bankruptcy proposal.

The bankruptcy proposal briefly saw new life in September as the faltering economy forced the federal government to consider bailing out the nation’s credit markets. On September 21, U.S. Treasury Secretary Henry Paulson proposed a controversial plan to buy up \$700 billion worth of bad debt from the financial industry.

The civil rights community pushed Congress to add the bankruptcy proposal to the final bill, arguing that struggling homeowners should be helped as well. However, the provision was stripped out on September 28, due to intense opposition from the lending industry.

**“With the foreclosure crisis expected to continue, the civil rights community will continue to urge Congress in 2009 to enact laws that give struggling homeowners more leverage in dealing with mortgage lenders and servicers.”**

#### **What’s Next**

With the foreclosure crisis expected to continue, the civil rights community will continue to urge Congress in 2009 to enact laws that give struggling homeowners more leverage in dealing with mortgage lenders and servicers. These efforts will focus, in particular, on Chapter 13 bankruptcy relief reforms and targeted foreclosure deferment policies. Groups will also look for assistance for families and communities that have already been devastated by widespread foreclosures. ■

*Rob Randhava is counsel for the Leadership Conference on Civil Rights and specializes in immigration and housing/finance issues.*

# JUDICIARY

## The Year in Judicial and Executive Nominations

By Paul Edenfield

As 2008 began, civil rights advocates feared that the Bush administration would continue its success in securing confirmation of controversial appointments, which had been capped last October by the confirmation of the controversial Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit.

The U.S. Court of Appeals for the Fourth Circuit, a court that had been dominated by conservatives for years and had long demonstrated particular hostility toward the rights of minorities in spite of containing the largest African-American population of any of the circuits within its jurisdiction, posed special risk. The five vacancies on that court offered the possibility of either a new direction for the court; or, if the current administration successfully appointed more of its ideological judges, a further retrenchment in civil rights.

In 2008, President Bush continued his pattern of nominating individuals with troubling civil rights records to the Fourth Circuit and other courts. However, redoubled efforts by civil rights groups to resist such nominees helped preserve the federal courts from further regression.

### Fourth Circuit

Since the 1980s, the Fourth Circuit has earned a reputation for its hostility to civil rights claims – the result of many years of a deeply conservative majority of judges, including J. Harvie Wilkinson, Karen Williams, and Michael Luttig. As documented by *The New York Times* in 1999, the circuit assertively sought to curtail important civil rights protections, including laws to ensure due process in criminal proceedings and constitutional standards empowering Congress to enact civil rights legislation.

**“In 2008, President Bush continued his pattern of nominating individuals with troubling civil rights records to the Fourth Circuit and other courts.”**

The circuit, for example, struck down part of the Violence Against Women Act as outside Congress’ constitutional authority. Maintaining the conservative majority on the Fourth Circuit appears to have been a goal of conservatives since President Clinton’s election in 1992.

In mid- and late-2007, President Bush put forward several nominees for the five Fourth Circuit vacancies. These included Steve Matthews to a South Carolina seat; Robert Conrad to a North Carolina seat, Rod Rosenstein to a Maryland seat, and E. Duncan Getchell to a Virginia seat. In early 2008, he nominated G. Steven Agee to fill the second Virginia vacancy.

The Getchell nomination was especially controversial because Virginia senators Warner and Webb had developed a bipartisan list of acceptable candidates for the Virginia vacancies on which Getchell’s name did not appear. The senators exercised their prerogative as home-state senators to block this nomination. Agee, who was on their list, was confirmed in May 2008. President Bush also failed to consult with Maryland senators about the Rosenstein nomination, and that, too, was blocked. Eventually the president withdrew the Getchell nomination and nominated another name from the Warner-Webb list, Glen Conrad. However, this occurred so late in the year that there are serious doubts as to whether the Senate Judiciary Committee will be able to review and process his nomination before the term ends.

Civil rights advocates had no home-state senators to champion their cause in North and South Carolina. But they were successful in convincing the Senate Judiciary Committee not to process the Matthews and Conrad nominations, arguing that their records were simply not up to snuff for a circuit of such crucial importance to minorities.

#### **Other Courts**

In addition to the Fourth Circuit nomination fights, civil rights groups opposed a number of nominees to other circuits.

In Pennsylvania, they teamed up with employment lawyers and labor leaders to convince Pennsylvania Senator Bob Casey that Third Circuit Court of Appeals nominee Gene Pratter was too hostile to employment plaintiffs to be confirmed, and Sen. Casey used his home-state senator rights to block Pratter's nomination. Civil rights groups also opposed the nomination of Richard Honaker to the Wyoming district court because of a record suggesting he would allow his own views to trump legal precedent, and convinced the Senate Judiciary Committee not to process his nomination.

Civil rights groups and labor unions also joined in reiterating their strong opposition to Peter Keisler, who was nominated to the D.C. Circuit Court of Appeals. Keisler's record, they said, failed to demonstrate that he would be a fair and independent voice the D.C. Circuit, a court second in importance only to the U.S. Supreme Court, given its jurisdiction over many matters relating to federal regulation of labor relations and other areas impacting the lives of working families. His nomination remains pending, but he is unlikely to be confirmed.

#### **Executive Nominations**

The nomination of Hans von Spakovsky to the Federal Election Commission, which civil rights had worked hard to defeat for many months, due to von Spakovsky's record of politicized decision making on voting rights matters while at the Department of Justice, was finally withdrawn. The president and his allies had sought to package a vote on von Spakovsky with other FEC nominees whose appointments were necessary to allow the agency to have enough commissioners to function. Senate Majority Leader Harry Reid, D. Nev., and others called the administration's bluff and refused to vote on the nominations. In May 2008, in a major triumph for civil rights and voting rights advocates, the von Spakovsky nomination was withdrawn.

The March 2008 nomination of Grace Chung Becker to be Assistant Attorney General for the Civil Rights Division brought skepticism from civil rights groups, which were concerned that her relative lack of experience made her ill-suited to tackling the profound dysfunction within the division. Becker's hearing in the Senate Judiciary Committee did little to allay concerns, and her nomination remains pending. ■

*Paul Edenfield is counsel and policy analyst for the Leadership Conference on Civil Rights (LCCR) and specializes in workers' rights, census, and judiciary issues.*

# EDUCATION

## Advocating for Federal Leadership on Education

*Opinion by David Goldberg*

Access to a high quality education is a fundamental civil right for all children and an economic necessity for the nation, yet policymakers at all levels of government have continued to tolerate educational systems that are failing half of our nation's children. Federal government leadership is crucial in reforming schools, yet with few exceptions U.S. policymakers have failed to live up to this responsibility.

Reauthorizing and strengthening the Elementary and Secondary Education Act (ESEA), more commonly known as No Child Left Behind (NCLB), should have been one of the 110th Congress' top priorities. Despite the focus and commitment of a few legislators, such as the House Education and Labor Committee Chairman George Miller, D. Calif., Congress' lack of commitment to education reform as a national priority doomed the complicated reauthorization to infighting and political rancor, albeit over important and highly consequential details.

**“Congress’ lack of commitment to education reform as a national priority doomed the complicated reauthorization to infighting and political rancor...”**

The civil rights community has repeatedly called NCLB a civil rights law and urged Congress to reauthorize and strengthen it, while maintaining accountability for all students and doing more to help improve schools and support teachers. Civil rights advocates believe that several core principles should govern any federal education policy:

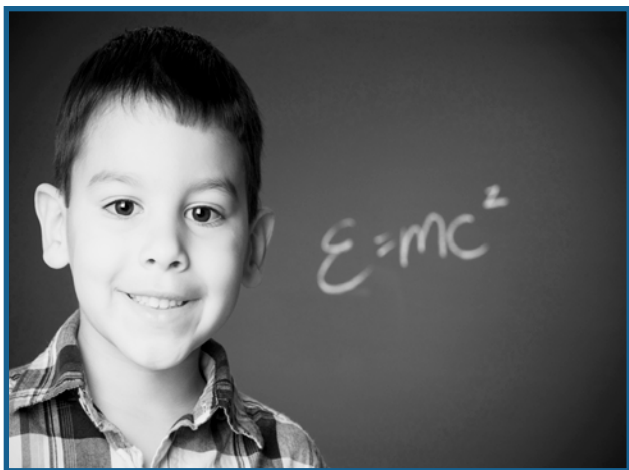
- Federal policy must be designed to raise academic standards;
- Those high academic standards must apply equally to all students, of all backgrounds;
- Schools should be held accountable for meeting academic standards;
- Accountability should be implemented through good quality assessments that are linked to academic standards; and
- Federal and state governments must ensure that schools, particularly those in neighborhoods of concentrated poverty, have the resources they need to give all children the chance to meet those standards.

Despite some evidence from NCLB testing data that shows that proficiency test score gaps between White students and minority students may be narrowing slightly, the chasm is still wide and the opportunity gaps that create them have gone unabated. Minority students are twice as likely to be taught by teachers with less than three years experience. White students are more than three times more likely to be in Gifted/Talented programs than Black and Latino students and more than four times as likely to be in AP Math classes.

The civil rights community has also urged Congress to address the dropout crisis afflicting low-income and minority communities. Currently the nation graduates 71 percent of its high

school students on time, but Black (58 percent), Latino (55 percent) and Native American (51 percent) children graduate at a far smaller rate., according to the most recent figures from Education Week's Diplomas Count.

However, the U.S. Department of Education picked up some of the slack in April with its Notice of Proposed Rulemaking (NPRM). These new proposed regulations act on some of the recommendations LCCR has made to Congress over the past two years, most critically, providing a uniform definition for graduation rates.



LCCR filed detailed comments on the proposal, which will likely become final in October of 2008, including recommendations for:

- Simplification of the rule by speeding the transition to the final graduation rate standard, rather than using transitional measures;
- Clarifying in the final rule that all children must be accounted for;
- Requiring a public process for setting graduation rate goals and growth rates that should include parents, educators and the public;
- Providing supplemental educational services, particularly for children with disabilities and English language learners, in schools if states cannot provide them; and
- Better data reporting and disaggregation of data by sub-groups.

Congress must still reauthorize the ESEA, but the Department of Education's regulation will lay the foundation for high school accountability by shining a brighter light on both the problem and on schools that have found solutions to the dropout solution. ■

*David Goldberg is senior counsel and senior policy analyst for the Leadership Conference on Civil Rights and specializes in education and equal opportunity issues.*



# CENSUS

## Facing New Challenges with the 2010 Census

*By Paul Edenfield*

After ensuring that the U.S. Census Bureau had adequate funding to prepare for the 2010 census, civil rights activists spent much of 2008 working to ensure that the bureau's management of new technologies would not hinder its ability to administer a successful count in 2010.

The decennial census is very important because apportionment of representation in Congress and redistricting, as well as federal funding for services -- hospitals, education, child-care, and disaster preparation -- are determined by the census count. Undercounting certain populations, such as minorities or low-income people, may reduce federal funding for the services that these populations need most, or fail to accord them proportionate voting representation.

This year, technological and other problems arose with respect to computer handheld devices that were to be used in door-to-door outreach to voters who failed to respond to the initial census mailing. As a result, the bureau had to scramble to reinstate plans to use the old, more cumbersome pen-and-paper method.

Moreover, cost increases due to this shift -- as well as a need for additional resources for using handheld computers to canvass address locations -- forced Census Bureau officials to request more funding from Congress in the spring of 2008. Civil rights leaders helped convince Congress to include additional funding in an emergency defense spending bill over the summer.

**“Undercounting certain populations, such as minorities or low-income people, may reduce federal funding for the services that these populations need most, or fail to accord them proportionate voting representation.”**

In addition, civil rights organizations urged the Census Bureau to implement communications and outreach plans that use materials tailored to diverse communities and take into account the special challenges involved in reaching certain sub-groups, including Latinos, Asian Americans, African Americans and other hard-to-count populations.

Toward this end, civil rights organizations pressed for inclusion of money in the 2008 Census Bureau budget for the Partnership Program, which conducts outreach to historically undercounted communities by using trusted community leaders to assuage distrust toward the counting process and bridge language and cultural barriers. The Partnership Program is intended to get a more accurate tally for undercounted groups, which include immigrants and language minorities, as well as seniors, people with disabilities, and low-income people.

Civil rights groups also argued that the bureau must consult and work with ethnic media as it implements its communications plan. Ethnic media are a trusted source of information for many of the nation's hard to reach residents, and these media outlets have extensive expertise on reaching different population groups.

Such steps are also important to deal with the fears generated by anti-immigrant rhetoric and the ever increasing immigration raids sweeping across the nation.

Reacting to these obstacles and to the fear that further disruptions could jeopardize an accurate count, civil rights leaders are urging the next administration to pay special attention to the Census Bureau and provide strong leadership for the 2010 count. The Partnership Program still faces staffing shortages and implementation delays that must be addressed, and the communications plan must be finalized and operationalized.

Though funding for 2009 and 2010 is critical, civil rights groups fear that Congress, disenchanted by the bureau's recent missteps and pleas for emergency funding, may be less generous with appropriations. ■

*Paul Edenfield is counsel and policy analyst for the Leadership Conference on Civil Rights (LCCR) and specializes in workers' rights, census, and judiciary issues.*

# POVERTY

## Modernizing the Federal Poverty Measure

*By Corrine Yu*

As fears about the weakening economy continue to grow, the call for modernizing how the nation measures poverty has taken on new urgency.

Anti-poverty advocates called on lawmakers to establish a new federal poverty measure at a House Subcommittee on Income Security and Family Support hearing on July 17, citing a broad consensus that the current measure, crafted in the 1960s, was significantly outdated.

Rep. Jim McDermott, D. Wash., drafted legislation designed to modernize the calculation of poverty thresholds and poverty rates. The McDermott bill, styled the Measuring American Poverty Act, reflects the 1995 recommendations of the National Academy of Sciences Panel on Poverty and Family Assistance, which many experts supported.

A poverty threshold is the minimum level of income deemed necessary to achieve an adequate standard of living. Those making less than this level are considered to be living in poverty.

The McDermott bill notes that “the official poverty measure, while helpful, is based on outdated assumptions and fails to accurately measure economic deprivation or take into account the availability of many economic resources.”

Instead, it proposes a measure of poverty that would be based on current consumption patterns for food, clothing, shelter and other basic necessities. Additionally, it would take into account income assistance from public programs (e.g., the Earned Income Tax Credit, food stamps, and housing assistance) and necessary expenses (e.g., federal taxes, work expenses, and out-of-pocket medical expenses). The new measure would also take into account geographical differences in the cost of living.

The current poverty measure omits such key expenses as transportation to work, child care, and state and local taxes. Nor does it include on the positive side a variety of non-cash benefits on which low-income families rely, such as food stamps, housing assistance, the Earned Income Tax Credit, and the Child Tax Credit.

**“...[the McDermott bill] proposes a measure of poverty that would be based on current consumption patterns for food, clothing, shelter and other basic necessities.”**

“The apparent simplicity of [the current] measure masks a number of straightforward deficiencies,” said Dr. Mark Levitan, the director of poverty research for the City of New York Center for Economic Opportunity.

Michael Bloomberg, the mayor of New York City, proposed a new poverty measure in July that is based largely on the National Academy of Sciences’ 1995 proposal.

Panelists at the hearing stressed the importance of a federal poverty measure that accurately accounts for tax credits and other non-cash benefits, as well as for work expenses and medical out-of-pocket expenses. Both steps would affect the numbers in poverty.

“If we want to track the well-being of America’s low-income families, and if we want to effectively measure the effects of our antipoverty policies... it is long past time to make this change,” said Dr. Rebecca Blank, the Robert V. Kerr Senior Fellow at the Brookings Institution. “We need a statistic that demonstrates how policy and economic changes affect low-income families.”

The Leadership Conference on Civil Rights (LCCR) has declared its commitment to setting a national goal to cut poverty in half in ten years. LCCR is a founding partner of Half in Ten: From Poverty to Prosperity, a new campaign run jointly by ACORN, the Center for American Progress Action Fund, the Coalition on Human Needs and LCCR. ■

*Corrine Yu is senior counsel and managing policy director for the Leadership Conference on Civil Rights.*

# IMMIGRATION

## Piecemeal Legislation, Raids Take Place of Immigration Overhaul

*By Rob Randhava*

Comprehensive efforts to overhaul our nation's immigration system remained on hold after the demise of a sweeping immigration bill in 2007, but the issue of immigration was still high on the public agenda in 2008. This year's debate, both in and out of Congress, focused most heavily on enforcement.

This spring, immigration restrictionists in the U.S. House of Representatives attempted to use a rare parliamentary maneuver, a "discharge petition," to force a vote on the "Secure America through Verification and Enforcement (SAVE) Act."

The bill threatened to divert attention from more even-handed legislative efforts, but even more troubling, it would have established a mandatory "E-Verify" system nationwide – a system that would require all employers to verify, through Social Security Administration databases, that their employees were legally eligible to work in the United States.

Civil rights and civil liberties groups warned that such a system would turn into a bureaucratic nightmare for many Americans. Widespread errors in SSA databases would prevent countless Americans from working; employers would be encouraged to practice racial and ethnic profiling; and SSA resources would be stretched far beyond their capacity – just as retiring baby boomers would need them the most.

Eventually, 190 House members signed the petition, falling short of the 218 necessary to bring the bill to a floor vote. Similar anti-immigrant proposals were introduced in the Senate, but they were never considered. In late July,

however, the House passed a far more limited bill that would have reauthorized a voluntary pilot version of the "E-Verify" program for five years. Civil rights groups hoped that renewal of the more limited program, while also problematic, would kill any momentum for its expansion.

Not all of the discussion in Congress this year was about enforcement, however. There was a bipartisan agreement on legislation that would expand the numbers of family- and employment-based immigration visas. The proposal would have allowed unused family-based immigration visas to be used in subsequent years, which would help eliminate significant visa backlogs and allow hundreds of thousands of immigrant families to reunite. Another proposal supported by LCCR and other civil rights groups, the "Strengthening Communities Through English and Integration Act," would have provided extensive resources to help Americans learn English. Making it easier for immigrants to assimilate and learn English, advocates believe, would go a long way toward defusing the cultural tensions that often spark calls for overzealous immigration enforcement.

In the meantime, draconian immigration enforcement efforts showed no signs of abating in 2008, with increasing workplace raids growing bigger and bigger. In May, U.S. Immigration and Customs Enforcement (ICE) agents arrested close to 400 workers at a slaughterhouse and meatpacking plant in Postville, Iowa. Unlike most previous ICE raids, in which undocumented immigrants were quickly deported, many of the workers arrested in the Postville raid were detained on criminal charges of using false documents. An even larger raid took place in August at a plant in Laurel, Mississippi, resulting in the arrest of nearly 600 immigrant workers.





**“One of the most controversial aspects of immigration raids has been that they tear families apart, and can even result in children being left behind when their parents are deported.”**

One outcome of the Postville and Laurel raids was to focus attention on ICE's detention practices and conditions. One of the most controversial aspects of immigration raids has been that they tear families apart, and can even result in children being left behind when their parents are deported. In the Laurel raid, ICE officials were careful to ensure that arrested mothers were released, with monitoring bracelets, so they could care for their children. But nearly 475 other workers were shipped off to a detention facility in Jena, Louisiana, with many still facing possible criminal charges.

The Laurel raid also brought renewed focus to ongoing tensions between immigrants and native-born workers. ICE officials claim that they were tipped off to the presence of undocumented workers by local union members and it was reported that some plant workers applauded as the arrests were being made. Robert Shaffer, head of the Mississippi AFL-CIO, said that members had long complained that they were being undercut by immigrant workers.

At the same time, Shaffer put the blame where most civil rights and immigration advocates feel it belongs: on the employers who hire immigrants as cheap labor, rather than on the immigrants themselves. “I’m not against people trying to make a living,” Shaffer said in an August *Associated Press* interview. “I have a compassion for those folks. But at the same time, the taxpayers of Mississippi shouldn’t be subsidizing a plant that won’t even hire their own workers.”

One important element of comprehensive immigration reform, when the debate resumes, will be measures to ensure that low-wage, native-born workers are protected from any potential job displacement. Civil rights groups have been calling for a legislative package that would increase job training, improve labor protections, and expand awareness of job opportunities for native-born workers. A key element of the proposal, requiring employers to step up their advertising of job vacancies before attempting to hire immigrant workers, stood a good chance of being added to the comprehensive Senate bill last year, before the entire bill was derailed by opponents.

Civil rights groups have been discussing their immigration priorities for 2009. At the top of the list will be:

- ensuring that immigrant children are included in health care programs for children;
- reviewing and reversing many of the harsh enforcement policies of the Bush administration; and
- moving forward with popular bipartisan immigration measures such as the DREAM Act (which would give legal status to high-achieving young undocumented immigrants if they go to college or perform military service) and AgJOBS (which would drastically improve agricultural guestworker programs and put agricultural workers on a path to legal status) before following up with a more comprehensive reform effort. ■

*Rob Randhava is counsel for the Leadership Conference on Civil Rights and specializes in immigration and housing/finance issues.*

---

# BELOW THE SURFACE

**In this new feature of the Civil Rights Monitor, we highlight a couple of issues that were either emerging for the civil rights community this year or were major issues in years past but flew a little below the radar this year. We anticipate that these issues will become more prominent in 2009 and will require the attention and focus of the civil rights community.**

## Arbitration

Employers often require workers, as a condition of hire, to agree to submit workplace complaints to an arbitrator instead of a judge and jury. While arbitration can sometimes be a good alternative, workers are pushed into arbitration without any real choice, often leaving the selection of the arbitrator and the procedural rules for the arbitration in the hands of the employer.

The Arbitration Fairness Act (AFA) – approved by the House Subcommittee on Commercial and Administrative Law on July 15 – will ban pre-dispute mandatory arbitration clauses in employment and other contracts. Because the imposition of these potentially unfair tribunals on workers undermines workplace rights, civil rights groups have strongly supported the AFA. But the business community has rallied against it, and much work remains to get it passed by the full House and Senate in 2009.

*-- Paul Edenfield*

## Confrontation over REAL ID Act Delayed but not Averted

Embroiled in controversy since it was introduced in 2005, civil rights groups remain hopeful that the “REAL ID Act” will never see the light of day.

Supposedly meant to bolster airline security, the law required states, by May 2008, to drastically overhaul the way they issue ID cards. While civil rights groups strongly oppose the law based on discrimination and privacy concerns, state government opposition has been even more vocal, based on staggering cost estimates. To avoid an unusual federal-state confrontation, the Department of Homeland Security pushed off the deadline to 2013.

Given the additional time, Congress did not revisit the law in 2008. To date, however, 11 states have enacted laws that bar themselves from complying. Other states, thanks to recent budget crises, may not even have the money to comply. As a result, efforts to repeal the law could easily regain momentum in the next several years.

For more information on the REAL ID Act, visit the American Civil Liberties Union’s special website, [www.realnightmare.org](http://www.realnightmare.org).

*-- Rob Randhava*

# INTERVIEW

## with Kathryn Kolbert

New President of People For the American Way, March 2008

**Civil Rights Monitor:** Why did you decide to take your current position as the head of a major civil rights organization?

**Kathryn Kolbert:** After eight years as a journalist and educator, I was eager to return to being an advocate for individual rights and freedoms, particularly given the drubbing that civil rights protection and enforcement has taken in recent years. I am excited about the opportunity to lead People For the American Way, given its history as an advocate for women's rights, LGBT equality, voting rights, religious liberty, and a Supreme Court and federal judiciary that will actually protect all those constitutional values.

**Civil Rights Monitor:** Looking forward, what are the issues with which your organization will be most concerned?

**Kathryn Kolbert:** People For the American Way and People For the American Way Foundation will continue to champion First Amendment freedoms – religious liberty and free speech – full legal equality for all Americans, and the right to vote. We will continue to advocate for the nomination and confirmation of federal judges who are committed to upholding Americans' constitutional rights and legal protections. We will continue to monitor, expose, and counter threats to those values from the Religious Right and its political allies. And People For the American Way Foundation will continue to invest in the future of progressive leadership.



**Civil Rights Monitor:** Can you talk a little bit about why you think civil rights issues are still important issues in the 21st century?

**Kathryn Kolbert:** The freedoms protected by our Constitution – especially the freedom to speak one's mind and to play an equal role with other citizens in electing our leaders – are at the heart of what it means to be an American. That will always be the case. The issues are different in the first decade of the 21st century than they were in the middle of the 20th century, or the middle of the 19th century, but there are still great and defining issues being debated – how to balance individual rights and national security interests, how to protect the right to vote while legal and administrative barriers continue to be erected, how to achieve full legal equality for LGBT Americans, how to preserve legal protections for women's rights, [all of] which are under persistent attack.

**Civil Rights Monitor:** What do you think are the biggest challenges you and your organization face in doing the work that you do?

**Kathryn Kolbert:** There's always more work to do than time, staff, and financial resources permit, especially for a multi-issue organization. So we continually face challenging questions about priorities and have to make decisions about where we can be most effective. I'm excited about extending our reach by using new online organizing tools and strategies for engaging more of our members and activists in our work.

**Civil Rights Monitor:** Can you talk a little about why it's important for you and your organization to be a part of the LCCR coalition?

**Kathryn Kolbert:** It's a lot more likely that we'll be able to change the world when we're working together. Every great social justice gain in our nation's history has been won by engaging broad and diverse coalitions of Americans who come together for a common purpose. People For the American Way is proud of its membership and leadership role within the Leadership Conference on Civil Rights. It is a forum for strengthening working relationships across organizational boundaries, for devising shared strategies toward common goals, and for making the most of our resources by working in creative collaboration with colleagues. ■

# IN THE COURTS



## Wrapping up the Supreme Court's 2007–2008 Term

*By Paul Edenfield*

The 2007–2008 Supreme Court term was decidedly mixed for the civil rights community. On the one hand, the Court handed down a decision that is likely to reduce racial disparities in drug sentencing, along with two decisions that protect workers from retaliation for complaining about discrimination. On the other hand, the Court upheld a state voter identification law that threatens to disenfranchise minorities and the poor, as well as the controversial practice of execution by lethal injection.

The cases this term also led to some unusual voting alignments, as the justices occasionally crossed ideological boundaries. Kathleen Sullivan, former dean of Stanford Law School, recently told an audience at an American Constitutional Society event that the term can best be described as the “familiar ideological divide – but not every time.”

The Court took steps to restore racial equity in criminal sentencing with its 7–2 decision in *Kimbrough v. United States*. In *Kimbrough*, the Court expanded judges’ latitude to depart from harsh federal sentencing guidelines for crack cocaine offenses, guidelines that are about 100 times more severe than sentencing guidelines for powder cocaine – even

though there is no scientific or medical reason that justifies this wide disparity. The gap in sentencing has profoundly affected minorities, who are far more likely to be convicted for crimes involving crack cocaine than powder cocaine.

Also, in a decision that surprised many observers, the Supreme Court adopted a broad interpretation of workers’ rights statutes in two cases. In *Gomez-Perez v. Potter*, the Court held (6–3) that the Age Discrimination in Employment Act protects against retaliation against employees who have filed discrimination suits. Similarly, in *CBOCS v. Humphries*, the Court held (7–2) that a Reconstruction law (Section 1981 of the Civil Rights Act of 1866) barring discrimination in the making and enforcement of contracts protects individuals against retaliation in the workplace and other settings for complaining about racial discrimination. The *CBOCS* decision upheld the Civil Rights Act of 1991, which had reversed an earlier Supreme Court decision holding that Section 1981 did not apply to post-employment actions.

Unfortunately however, the term also had a number of decisions that have rolled back Americans’ civil rights.



In the companion cases *Crawford v. Marion County Election Board* and *Indiana Democratic Party v. Rokita*, the Supreme Court upheld (6-3) a controversial Indiana law requiring voters to show government-issued identification. The law had been widely criticized by civil rights and voting experts for creating unnecessary obstacles to voting for those individuals who are less likely to own a form of acceptable identification. These include people with disabilities, people on fixed incomes, seniors, and minorities. Notably, the state of Indiana failed to provide evidence that voter fraud, the purported justification for the law, was a real problem in the state.

In *Baze v. Rees*, the Court declared (7-2) that execution by lethal injection does not violate the 8th Amendment's prohibition of "cruel and unusual punishment." The three-drug cocktails used in lethal injection have been controversial because data suggests that when the mixture does not work properly, it can cause extreme pain during execution.

The civil rights community expressed profound disappointment with the Court's decision. Steven Shapiro, ACLU's legal director, said that the Supreme Court's decision "upheld a lethal injection protocol that veterinarians in nearly half the states, including Kentucky, are prohibited from using when putting our pets to sleep." In a concurring opinion, Justice John Paul Stevens expressed concern about the continuing risk of racial discrimination in death penalty sentences and called for a re-examination of the United States' use of the death penalty.

The decisions of the Court adverse to rights claims have serious consequences that are difficult to undo. Civil rights advocates are still struggling to attain a legislative remedy for decisions of past terms – most notably 2007's *Ledbetter v. Goodyear Tire and Rubber Company*, which made it significantly more difficult for workers to prevail in pay discrimination claims. ■

*Paul Edenfield is counsel and policy analyst for the Leadership Conference on Civil Rights (LCCR) and specializes in workers' rights, census, and judiciary issues.*

# IN THE STATES



## Colorado: Battleground for More than Just the Presidency

*Opinion By Israel García*

Americans have very diverse political opinions on matters ranging from border security to stem cell research and public education to health care. Despite all of this, Americans overwhelmingly value the underlying principles of the “American Dream:” opportunity, fairness, hard work, community, success, and justice. These values have held the country together and allowed us to grow, transform, and succeed over the past 200 years.

Being raised on these principles allowed me to achieve what my ancestors could only dream. As a Mexican first-generation American, the son of immigrant parents, raised in a low-income family in rural Colorado, my opportunities in life were limited from the very beginning. Nonetheless, through hard work, dedication, and support from my family, I was able to attend the University of Colorado at Boulder on a “full ride” scholarship and eventually earn three Bachelor’s degrees and a certificate.

Many people would say that I am the “American Dream.”

But my story would not be complete without the many equal opportunity initiatives that allowed a young man like me to build my skills, talents, and abilities and help me develop the courage, determination, and faith to forge a path no one in my family or neighborhood had ever taken. Initiatives such as Gifted and Talented, Upward Bound, Talent Search, and a variety of other programs at CU-Boulder offered me the

support that I needed to reach my highest potential. They were not a handout or a free ride, but rather initiatives that addressed the challenges I faced as a student from a background different from most of my collegiate counterparts.

I am a product of affirmative action and equal opportunity, the beneficiary of equal opportunity initiatives, and I could not be more proud of who I am and what I have accomplished.

But in today’s world this means something different from what it did a generation ago. It is less something to be proud of, no matter the hours, months, and years of hard work and struggle, than it was before. Of course, such thinking has less to do with the initiatives that I participated in and more to do with the political climate of our time.

As a student raised in a post-civil rights era, I have seen a dramatic shift in the way we now discuss the very initiatives which were supposed to – and, in many ways, have – led us to a new, brighter, more equitable future. These initiatives have opened the door of opportunity to many who would have never had a fighting chance in the time of their forebears. Increasing equal opportunity has brought people of color and women to the Supreme Court, governors’ mansions, Senate chambers, House seats, and now even possibly the White House.

But it is these same initiatives that are being labeled as programs that offer “preferential” treatment to women and people of color. They are said to foster “reverse discrimination,” and unearned advantages. We are being asked to look at society through a color- and gender-blind lens. We are asked to ignore the vast inequalities that still exist in education, housing, health care coverage, income, etc. between men and women, between people of color and Whites.

It is this type of twisted logic, misinformation, and bad policy that has brought me to the front lines of the battle to ensure, expand, and promote equal opportunity in Colorado.

I am currently working as the Colorado field director for the United States Student Association, a student-led organization that fights to ensure that education is a right. We are facing a huge challenge to those efforts in Colorado. Ward Connerly, a California millionaire and former regent of the University of California system, has set out on a national campaign to bring an end to equal opportunity. He has waged successful campaigns in California, Washington, and Michigan. He has attempted, but failed, in Oklahoma, Missouri, and Arizona this year.

Now the battle lines have been drawn in Colorado and Nebraska. Using vague and misleading ballot language, Connerly – through the guise of the so-called “American Civil Rights Initiative” – plans to put an end to all initiatives designed to increase opportunity for women and people of color by amending the constitutions of both states with a clause that claims to prohibit “the state from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

In truth, this ballot measure has had negative effects in the states where it has passed. As a result, we have seen a drop in admissions rates of minorities, hiring of minorities and women in the public sector, and in public contracting for women- and minority-owned businesses. Connerly’s “civil rights initiative” has successfully closed the door of opportunity to countless gifted women and people of color who are simply looking for a chance to compete and achieve the “American Dream.”

Connerly, in essence, has set out to make unlikely stories like mine even more unlikely.

In Colorado, we have developed a broad coalition to inform the electorate about the true intents of Connerly’s initiative, Amendment 46, and why it is bad for Colorado. Civic leaders, grassroots organizations, students, business, faith, and labor leaders have all come together to tell voters to “Vote No on Amendment 46.”

This will be an uphill battle, but I am confident that if we can get Coloradans to reconnect with the principles behind equal opportunity: – fairness, hard work, community, success, and justice – we will be able to continue to expand, not roll back, equal opportunity. ■

*Israel García, 23, of Monte Vista, CO, is the Colorado field director for the United States Student Association and a 2008 graduate of the University of Colorado at Boulder with B.A.s in Sociology, Ethnic Studies, and Political Science and a Certificate in Leadership Development and Theory. If you are interested in becoming part of the efforts or wish to offer monetary support to protect equal opportunity in Colorado please contact Israel García <Colorado@usstudents.org>.*

# INTERVIEW

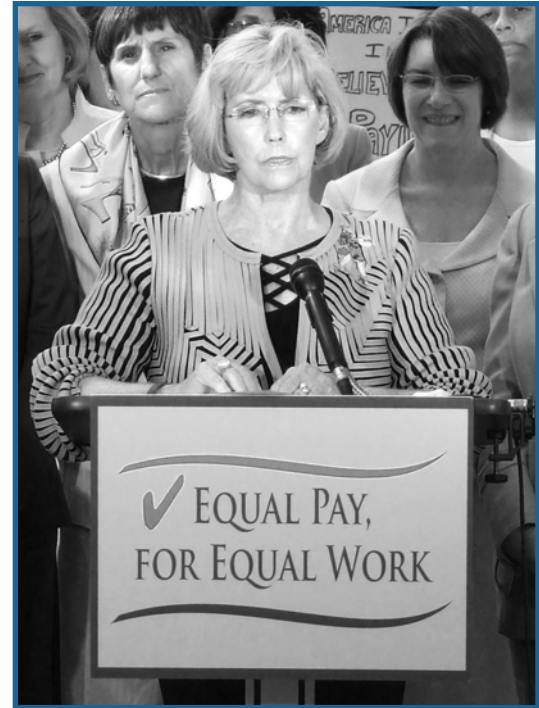
## with Lilly Ledbetter

### Pay Equity Advocate

On May 30, 2007, the U.S. Supreme Court drastically limited the ability of workers to sue their employers for pay discrimination, in a case called *Ledbetter v. Goodyear Tire & Rubber Company*. The decision redefined a longstanding legal understanding of workers' rights to combat pay discrimination under Title VII of the Civil Rights Act of 1964. For years, in the context of pay discrimination, courts interpreted Title VII's prohibition of "unlawful employment practices" to include all paychecks workers receive that are tainted by a discriminatory pay decision.

But, in *Ledbetter*, the Supreme Court reversed precedent and decided that "unlawful employment practices" only occur when pay decisions are made and that workers who are discriminated against only have 180 days from the time pay decisions are made to file suit.

Lilly Ledbetter was the plaintiff in the case and has since become an advocate for pay equity.



**Civil Rights Monitor:** What was your immediate reaction when the Supreme Court ruled last year in your case, *Ledbetter v. Goodyear Tire & Rubber Co.*? How did the ruling make you feel?

**Lilly Ledbetter:** I was, frankly, devastated by the ruling. The 11th Circuit [Court of Appeals] had previously ruled against me, but my lawyers had assured me that the law was really on my side and that the 11th Circuit had gotten it wrong. I had great hopes that the U.S. Supreme Court would correct the injustice that had been done to me. Its failure to do so was a terrible blow.

**Civil Rights Monitor:** Would you say there was a moment when you decided to be an advocate or did it just take on a life of its own?

**Lilly Ledbetter:** I never formally sat down and said "now I am an advocate." After the Supreme Court dismissed my case, the House Education & Labor Committee asked me to come to testify about the discrimination I had faced. That was just the beginning. Since then, I've had the privilege of appearing before other congressional committees and many gatherings of advocates, workers, and women and men who have faced – or want to fight – pay discrimination. What keeps me going is the knowledge that if we can get this bill [The Fair Pay Restoration Act] passed, no one will ever have to go through what I did again.

**Civil Rights Monitor:** Equal pay for equal work seems like a "no-brainer." Why do you think there has been such difficulty in passing legislation making it illegal to discriminate with salaries?

**Lilly Ledbetter:** Equal pay for equal work seems like a "no brainer" to me, too. And yet, we've never reached that goal – even though pay discrimination has been illegal for more than 45 years. Even today, women on average make only 78 cents for each dollar paid to men. I can't say why there's so much resistance to passing legislation that would give women the tools they need to challenge pay discrimination. I just know that I will do everything I can to overcome that resistance and make the bill that bears my name the law.

**Civil Rights Monitor:** Are you hopeful that a new administration will pass this legislation?

**Lilly Ledbetter:** Actually, I haven't given up hope that the current Senate will pass – and the current administration will sign – this bill. But if it doesn't happen, I know that the supporters of the bill won't give up until it becomes the law. And I hope that that will be quick, so that my daughter and my granddaughter can once again have the right to demand equal pay for equal work. ■

# LC CR ACTIVITIES

---

## DTV TRANSITION



### Preventing a Digital TV Divide

*By Mark Lloyd*

America is in the midst of a major transition in technology, moving away from the old technology of analog, or over-the-air, broadcasting to a new digital age. Americans who are not prepared for this transition may lose their television service. And those who care about inequality in our society may be soon living in a society where some of our most vulnerable communities lose access to the most relied upon source of information.

The transition has been widely publicized this year as bringing us sharper images and better sound. Less known to the public is that digital television (DTV) offers the potential of improved service to those with hearing or visual disabilities. It also offers translations in languages other than English, more local programming, and more efficient use of the public airwaves.

In 2005, Congress set a date—February 17, 2009—requiring all full-power television stations in the United States to stop sending their old analog signals. While some broadcasters began transmitting digital signals as early as 1996, millions of television viewers still rely on analog television sets and can not receive digital signals. Though nearly two-thirds of Americans get television via cable or satellite, the Governmental Accountability Office (GAO) estimates that roughly 21 million households need to prepare for the transition to digital TV.

A disproportionate number of these households are the people of fixed incomes, seniors, minorities, and people with disabilities. When they are deprived of television service, they lose more than entertainment. To lose television service is to lose the primary means by which the vast majority of Americans get information about emergency situations such as natural disasters, and information about local, state and national political issues such as education, health care, housing, economic opportunity and equal justice.

In 2005, Congress set aside \$1.5 billion toward a subsidy for a converter box that would allow analog television users to view a digital signal. The National Telecommunications and Information Administration (NTIA) was authorized to operate a coupon program to distribute this subsidy and to educate consumers about the coupons program. But after a rancorous debate, Congress limited NTIA's consumer education effort to only \$5 million.

The coupon program and an educational outreach effort began in 2008. Also in 2008, a new Congress conducted several oversight hearings on the coupon program. The \$5 million is a paltry sum given the complexity of the issue, the immense audience that needs to be reached, and, notably, the amount of money other nations, such as the United Kingdom and Germany are spending on their transition to digital. In addition to insufficient funding, the Leadership Conference on Civil Rights (LCCR) has raised a number of issues regarding the DTV transition, including:

- Absence of clear federal leadership and a comprehensive transition plan;
- Viewer and retailer confusion;
- TV converter box coupon program problems and complexities;
- Excessive and unanticipated costs and burdens to viewers to make the transition;
- Loss of community low power analog television service;
- Difficulties in finding and connecting the appropriate equipment (including converter boxes and antennae);
- Reports of unnecessary retailer upselling (attempts to get consumers to buy more expensive merchandise);
- Difficulties for seniors and people with disabilities in accessing captioning and any available video description on digital converter, cable, or satellite boxes, and finding converter boxes that support video description; and
- No rapid response capability to deal with problems on and after February 17, 2009.



LCCR and the Leadership Conference on Civil Rights Education Fund (LCCREF) are engaged in alerting vulnerable communities to the digital television transition, and the availability of a government coupon to offset the cost of making the transition, to help ensure that all Americans continue to have equal access to important information and political discussion.

In 2008, LCCR/EF became a founding member of the Steering Committee of the DTV Transition Coalition and worked closely with broadcasters, electronic retailers and manufacturers, government agencies, and others to coordinate a national educational effort. LCCR/EF is also working with the American Association of People with Disabilities, the NAACP, the National Congress of American Indians, the National Council of La Raza, the National Urban League, the Southeast Asian Resource and Action Coalition and others to reach communities most at risk for losing the vital link of television service.

LCCR/EF established strong partnerships with national consumer groups and with public television stations to form and implement concerted local outreach and grassroots activity about the transition. In addition LCCR/EF has testified before Congress several times in 2007 and 2008 on the state of the digital transition and has published a report on the challenges regarding the DTV transition.

Minorities, non-English speakers, senior citizens, and people with disabilities are far more likely to be confused about whether and how the DTV transition will affect them.

To make certain that the digital divide does not extend to television service, LCCR/EF recommends the following:

- Improve the organization of the transition by establishing a comprehensive federal plan as recommended by GAO in 2007;
- Provide funding for increased consumer outreach, education and research. LCCR/EF worked with APTS and others to authorize NTIA to spend additional funds on grassroots outreach, but much more is needed;
- Reduce costs and burdens of transition on viewers by funding direct assistance programs that would support home visits to deliver and install converters and antennas for those who need assistance;
- Preserve communities' access to analog low-power community broadcast stations and rural translator stations; and
- Prepare for rapid response to the inevitable challenge that many people will fall through the cracks and will lose television service after February 17, 2009.

All Americans concerned about securing equality in access to vital information and about inequality in the opportunity to participate in the local and national discussion of all the issues that touch our lives need to press Congress to ensure that all Americans make the transition to digital television. ■

*Mark Lloyd is the vice president for strategic initiatives at the Leadership Conference on Civil Rights. His book, "Prologue to a Farce: Communication and Democracy in America," was published by the University of Illinois Press in 2007.*

## FAIR HOUSING

### Examining the State of Fair Housing in the 21st Century

*By Tyler Lewis*

For many Americans, the dream of owning a home is only a dream.

Forty years after the passage of the Fair Housing Act in 1968, the option to buy a house in a neighborhood of their choosing is still beyond the ability of many Americans, because the law is not adequately enforced.

In order to examine the state of fair housing and all its complexities in America, the Leadership Conference on Civil Rights Education Fund, the Lawyers' Committee for Civil Rights under Law, the National Fair Housing Alliance, and the NAACP Legal Defense and Educational Fund created a National Commission on Fair Housing and Equal Opportunity.

The commission's goal is to address the significant and ongoing national issue of housing discrimination and residential segregation and develop recommendations for strengthening fair housing advocates' work fighting housing discrimination and developing and supporting integrated communities.

It is co-chaired by two former secretaries of the U.S. Department of Housing and Urban Development: Henry Cisneros and Jack Kemp. Other commissioners included Okianer Christian Dark, associate dean for Academic Affairs at the Howard University College of Law; Gordon Quan, Houston, former mayor pro tem and chair of the Housing Committee for the City of Houston; Pat Combs, past president of the National Association of Realtors; Myron Orfield, professor at the University of Minnesota School of Law; and I. King Jordan, president-emeritus of Gallaudet University.

The commission is conducting regional hearings in Chicago, Los Angeles, Boston, and Atlanta, and Houston, to collect information and hear testimony about the nature and extent of illegal housing discrimination and its origins, its connection with government policy and practice, and its effect on American communities.

The results of the hearings will be released in a report in Washington, D.C. in December 2008, which will include detailed testimony provided at the hearings and outline recommendations for future action.

The first hearing was held in Chicago on July 15, the second in Los Angeles on September 9, and the third in Boston on September 22. The last hearing is scheduled to be held in Atlanta on October 17.

A half-day hearing in Houston was held on July 31 in conjunction with the annual conference of the National Bar Association and focused on housing discrimination and re-segregation of the Gulf Coast since the hurricanes.

At every hearing, witnesses spoke about the role that government policy, private discrimination, and housing industry practices play in perpetuating housing discrimination and segregation. In addition, local residents testified about their experiences with housing discrimination.

Each hearing addressed a different aspect of fair housing in order to capture the complexity of the issue:

- The Chicago hearing focused on the history of residential racial segregation and the nature and scope of housing discrimination. In addition, the commission reviewed the actions of federal agencies that have fostered segregation and the failures of the federal government to address housing discrimination by enforcing the Fair Housing Act.
- The Los Angeles hearing looked at the foreclosure crisis and its connections to discrimination and segregated communities. In addition, the commission examined whether or not the federal government is providing vigorous fair housing enforcement and education for the public, for the housing industry, and for victims or potential victims of discrimination.
- The Boston hearing focused on the work of key players in advancing fair housing, and the failures and strengths of those players. In addition, the commission examined the role of housing choice in establishing vibrant and integrated communities, the connections between integrated communities and the quality of life for residents, and ways federal programs can be used to achieve these communities.
- The final hearing in Atlanta is designed to address the track record of the federal government in enforcing fair housing laws and the ways in which it has failed, both in individual cases and in missing opportunities to address discrimination systemically.

The hearings are held at accessible locations with sign language interpretation being available. ■

For more information about the commission:

<http://www.civilrights.org/issues/housing/commission/>

*Tyler Lewis, LCCR's communications manager, is responsible for writing and editing content for LCCR's award winning website, [civilrights.org](http://civilrights.org), and manages the design of LCCR publications.*

## MULTICULTURALISM

### Bringing Diverse Communities Together

*By Cathy Montoya*

As our nation's demographics profile continues to change, civil rights and social justice activists face the challenge of bringing minority populations together around a common agenda.

Most recently, opponents of immigration reform continue work to divide the Black and Hispanic communities.

In response, the Leadership Conference on Civil Rights (LCCR), along with its research arm, the Leadership Conference on Civil Rights Education Fund (LCCREF) has declared an intent to find common ground among different constituencies. LCCREF's new Multicultural Leadership Project is a year-long project devoted to identifying common ties that will unify groups around work that will benefit everyone.

To guide the project, LCCREF has developed a national advisory committee made up of key stakeholders at the national and state level, including representatives from groups that have strong grassroots networks, such as the National Council of La Raza, the NAACP, the Asian American Justice Center, and the National Association of Latino Elected Officials.

LCCREF has identified Milwaukee, Wisconsin; Biloxi, Mississippi; and Los Angeles, California, as cities in which to focus its planning. As part of this work, LCCREF will host regional convening, in conjunction with local organizations, to discuss collaboration opportunities, engage in dialogue, and present research findings.

LCCREF is working with Lake Research Associates to develop a comprehensive public opinion strategy that will identify challenges and opportunities for communities of color to collaborate around a common agenda. To date, LCCREF and Lake have conducted a series of focus groups to identify common values and possible policy issues around such

issues as immigration, education, poverty, economic security, and other areas central to the low-wage workforce. Additionally, LCCREF will conduct national polls to determine effective messages to unify diverse communities around a common agenda.

Additional research objectives include:

- establishing a shared research agenda that will result in information to under-gird policy development and mobilization;
- conducting public opinion research in communities of color;
- developing message frames to better communicate with various populations about common goals; and
- developing a business plan that includes a set of strategies to build common ground and eventual consensus around specific policy goals.

LCCREF is also partnering with the University of California at Berkeley's Warren Institute, to convene scholars, researchers, and advocates to develop a comprehensive scholarly research agenda, review existing available research, and identify the research needs of advocates. The convening will cover such issue areas as immigration, economic security, education, and perhaps persistent poverty.

By spring 2009, LCCREF expects to have developed a comprehensive three-year initiative to implement strategies leading to joint policy development and collective action across communities nationally and regionally. ■

*Catherine Han Montoya is a field manager with the Leadership Conference on Civil Rights and directs the Multicultural Leadership Project. For more information regarding the Multicultural Leadership Project, please contact Catherine Han Montoya at [montoya@civilrights.org](mailto:montoya@civilrights.org) or 202-466-1847.*

## 32nd Annual Hubert H. Humphrey Civil Rights Award Dinner

*By Tyler Lewis*

On May 14, the Leadership Conference on Civil Rights (LCCR), along with its coalition of nearly 200 civil and human rights organizations, came together to honor and celebrate three civil rights leaders: Representative John Conyers, D. Mich.; housing advocate Patricia Rouse; and journalist Soledad O'Brien.

The three leaders received the civil rights community's highest honor, the Hubert H. Humphrey Civil Rights Award. The award was named for the former United States vice president, senator, and civil rights pioneer whose years of public service, leadership, and dedication to equal opportunity changed the face of America.

The annual dinner brings together people from all walks of life – members of both houses of Congress and the executive branch, business leaders, educators, civil rights leaders and community activists, and young people who are the next generation of civil and human rights advocates.

This year, for the first time, the awardees were introduced by young activists in the civil rights community.

"I was flattered Wade actually called me when I was on work-related travel just so he could personally ask me to present at the dinner. It was truly an honor to be able to co-present Soledad O'Brien and recognize her tremendous journalism," said Preetmohan Singh, director of legislative affairs for the Interfaith Alliance.

Besides Singh, the presenters included Erica Williams, issue campaigns manager for Campus Progress and former LCCR field associate; Gabriel Pendas, president of the United States Students Association; and Kim Borowicz, project coordinator for the Progress Center for Independent Living's Aging and Disability Resource Center, and a former LCCR intern.



Rep. John Conyers Jr, the highest ranking Black congressman and one of the original founders of the Congressional Black Caucus, gives his acceptance speech at the 32nd Annual Herbert H. Humphrey Civil Rights Award Dinner.

### The Awardees

#### **Rep. John Conyers Jr.**

Rep. John Conyers Jr. was honored for the indelible mark he has made on civil rights. Rep. Conyers, who was elected to Congress in 1964, is the highest ranking Black congressman and the first Black chair of the House Judiciary Committee.

In addition, Rep. Conyers is one of the original founders of the Congressional Black Caucus, which was created to achieve greater equity for Black Americans.

During his 40 years in Congress, Rep. Conyers has been an advocate for the civil rights of all Americans. He championed major civil rights legislation, including the Fair Housing Act of 1968, the Martin Luther King Holiday Act of 1983, the Motor Voter Act of 1993, the Violence Against Women Act of 1994, and the Help America Vote Act of 2002.

"Rep. Conyers ... has been a leader on civil rights for decades, using his position in Congress to achieve greater equity for African Americans and all Americans," said Wade Henderson, president and CEO of LCCR.

## Patricia Rouse

LCCR honored Patricia Rouse for her many years of work in support of fair housing.

In 1982, Rouse co-founded the housing advocacy organization Enterprise Community Partners with her husband, builder James Rouse. The Maryland-based organization helps low-income families find affordable and decent housing by providing financing and expertise to community and housing developers.

Through public-private partnerships, Enterprise works to create mixed-income communities, combining grants, technical expertise, low-interest loans, and equity investments with low-income housing tax credits to increase the supply of supportive housing. Supportive housing is designed to support individuals with social services such as job training, alcohol and drug abuse programs and case management.

“Her commitment to affordable housing for all Americans is an inspiration to all of us who want to see the promise of fair housing fulfilled,” said Henderson.

Rouse’s award was presented by her step-grandson, actor Edward Norton.

## Soledad O’Brien

Soledad O’Brien was honored for her “pivotal role in telling the stories of Katrina’s homeless,” according to Henderson.

As a journalist for CNN, O’Brien has put a human face on major news events, contributing to the dialogue over civil and human rights issues. O’Brien’s work on CNN’s coverage of the thousands of victims of Hurricane Katrina helped win the network a George Foster Peabody Award for broadcasting excellence. Her documentary *Children of the Storm* put cameras in the hands of young Hurricane Katrina survivors so they could tell their own stories of life after the hurricane.

O’Brien also covered the London terrorist attacks in July 2005 and the aftermath of the tsunami in Thailand, which won CNN the Alfred I. duPont Award for broadcast journalism.

Recently, O’Brien participated in “CNN Presents: Black in America,” which chronicled the current state of Black America 40 years after the assassination of Dr. Martin Luther King Jr. ■

*Tyler Lewis, LCCR’s communications manager, is responsible for writing and editing content for LCCR’s award winning website, [civil-rights.org](http://civil-rights.org), and manages the design of LCCR publications.*



Award recipients Soledad O’Brien and Patricia Rouse with presenter Edward Norton.



# INTERVIEW

## with John Payton

New Director-Counsel and President of the  
NAACP Legal Defense Fund, December 2007

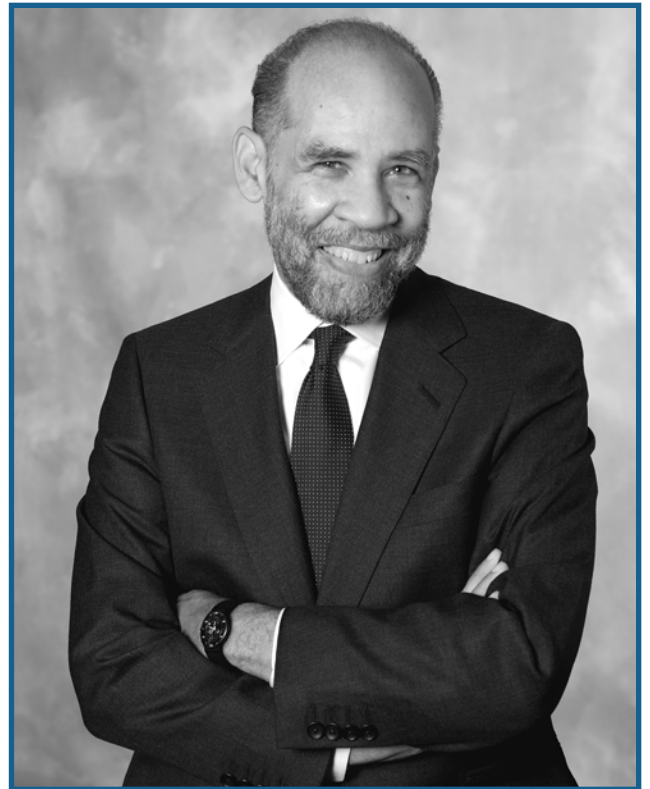
**Civil Rights Monitor:** Why did you decide to take your current position as the head of a major civil rights organization?

**John Payton:** The mission of LDF is to see that African Americans become full, equal and thriving participants in our democracy. For the last several decades, LDF has fought to make this a better country and a truer democracy for every single person in this country. Our democracy has never needed LDF more than it needs it today to achieve promises and possibilities not yet realized. I accepted the position of president and director-counsel at LDF because there is no other organization doing more to wrestle with and resolve the great challenges that our country continues to face with respect to race, equality and power.

At LDF we are aggressively engaged in addressing the most significant and fundamental racial problems in our society, problems that undermine the health and viability of our democracy. In my new role, I have the opportunity to help lead the oldest – and we believe finest – civil rights organization on behalf of Black America in the pursuit of solutions to the ongoing problems of race in America.

**Civil Rights Monitor:** Looking forward, what are the issues with which your organization will be most concerned?

**John Payton:** While our country faces significant challenges today with respect to racial equality, one need only look at the state of public schools in our inner cities to see the enormity and complexity of those challenges. While we celebrate education, only about half of the children in our inner city schools



graduate from high school. In some cities the graduation rate is much lower: Detroit, 25 percent; Cleveland, 34 percent; Baltimore, 35 percent; and in New York it is 45 percent. The average of the 50 largest school districts is 52 percent. The kids that are not graduating are disproportionately African American, and these are catastrophic numbers.

The consequences of this failure are profound as education is the gateway to opportunity. The premium associated with education in the job market is so significant that the lack of such an education is now frequently disqualifying. Today,

our inner city schools fail more often than they succeed in providing their students – those who do not graduate and those who do graduate – with the skills necessary for them to participate in our economy or our society.

Many of those kids failed by their schools will be unable to perform any role in our economic life. Many will end up in the pipeline from these failed schools to the criminal justice system: the school to prison pipeline. Those entangled in the criminal justice system may be denied their right to counsel and, in some states, could face the permanent or temporary loss of their fundamental right to vote. Those with convictions may encounter difficulty getting access to employment opportunities and suffer other consequences that result from having a criminal record.

Indeed, without a quality education, our students today will encounter problems that touch on virtually every area of LDF's core practice: education, criminal justice, economic justice and political participation. In short, the vortex of the failure of our public schools is spinning out serious problems across our society, and LDF is engaged in identifying solutions to the problems in every aspect.

**Civil Rights Monitor: Can you talk a little bit about why you think civil rights issues are still important issues in the 21st century?**

**John Payton:** Despite the progress we have seen since the Civil Rights Movement and the passage of the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act, the 21st century still continues to present significant challenges. In many ways, the problems of race have grown more challenging. We now frequently see large metropolitan areas characterized by minority urban cores surrounded by white suburbs. Many of those inner cities and their tax bases are deteriorating; the student population of those inner city public school systems is increasingly African American or Hispanic. The inner city schools are not providing the students with the high quality education that today's complex, globalized economy requires.

The problems that LDF continues to fight are important if we are to ever achieve the promise of our democracy. I recognize the progress that has been achieved but have not allowed that to distort the reality of the challenges that remain. In this year alone, LDF has filed litigation, pursued advocacy or mounted public education campaigns against a range of issues that illustrate the deep-seated nature and complexity of the ongoing problem of race in our society.

In the political participation context, we have fought against restrictive, government-issued photo identification requirements that have been adopted in a number of states and remain focused on the important goal of preparing voters to overcome the barriers that may stand between them and the ballot box during the upcoming November election. We have also been defending a core provision of the Voting Rights Act against a constitutional attack in a case that will be heard by the Supreme Court next year.

In the criminal justice context, we recently challenged the failure to provide counsel to indigent persons in their first appearance before the Circuit Court in the City of Baltimore; and successfully persuaded a federal court to overturn the death sentence of a Herbert Williams, an African-American man who sat on death row for nearly 20 years, in a which the sentencing judge and jury were not given the opportunity to hear all of the evidence that weighed in favor of saving his life.

And, in a groundbreaking action, our Economic Justice Project successfully settled a federal class action lawsuit that required New York City to pay more than \$21 million to settle claims stemming from alleged race and national origin discrimination against the New York City Parks Department. Our Education Project has been actively involved in challenging targeted campaigns to roll back civil rights nationwide – campaigns spearheaded by wealthy California businessman Ward Connerly and his deceptively named “American Civil Rights Institute” (ACRI); and our Katrina Project continues to find new ways to resolve the ongoing crises faced by persons throughout the Gulf region in the wake of Hurricanes Katrina and Rita. While this by no means covers the full breadth and work of LDF in the last year, these examples illustrate the complexity of the challenges that we continue to face in the 21st century.

**Civil Rights Monitor:** What do you think are the biggest challenges you and your organization face in doing the work that you do?

**John Payton:** The problems of race and inequality in our country have proven to be enduring and deep-seated in nature. Long term solutions for these problems of justice and equality will require far-reaching change. LDF has a unique role to play and decades of experience in developing strategies that have had a profound impact on our society. But we must recognize that this is a marathon and not a race if we are to find solutions that will work. The challenge is figuring out how to best leverage the momentum of communities across the country in the broader fight for equality and human rights. In my view, our democracy has never needed LDF more than it needs it today to achieve promises and possibilities not yet realized.

**Civil Rights Monitor:** Can you talk a little about why it's important for you and your organization to be a part of the LCCR coalition?

**John Payton:** The LCCR plays a critical role in the civil rights movement of the 21st century helping to unite the voices and amplify the messages of those organizations that are engaged in the struggle for equality. LCCR helps facilitate the coalition-building and cross-collaboration necessary to help educate all Americans about the challenges that the civil rights community face today. LDF shares LCCR's longstanding commitment to fostering a fuller understanding and celebration of our nation's diversity, and remains an active participant and loyal member of the LCCR coalition. ■

# Civil Rights Monitor

**Senior Editor:** William L. Taylor

**Contributing Editors:** Karen Lawson, Karen DeWitt, Tyler Lewis, Corrine Yu

**Layout & Design:** Jenna Wandres

**LCCREF Board:** William L. Taylor, Mary Frances Berry, Cheryl Mils, Muriel Morissey, Carolyn Osolinik, John Podesta, Marilyn Sneiderman, William Robinson, Frank Wu



Leadership Conference on Civil Rights  
1629 K Street, NW  
10th Floor  
Washington, DC 20006  
202.466.3311  
[www.civilrights.org](http://www.civilrights.org)