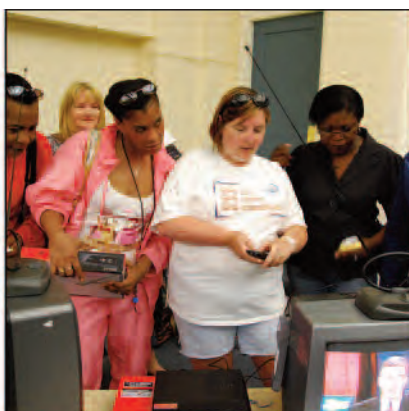


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Letter from the Executive Vice President and COO

Karen McGill Lawson

Our work to build public will for effective federal civil rights and social justice policies that promote equal opportunity for all Americans remains as challenging and rewarding as ever. However, the ground has never been more fertile for advancing the cause of civil and human rights in the United States. The election of the nation's first African-American president has truly inspired a new generation of Americans to believe that progressive change and social justice can occur.

We at The Leadership Conference Education Fund are rising to the challenge and opportunity that this new climate brings to our work. We have been engaged for a number of years in a strategic planning process to examine the health of our current brand, the operational structure of the organization, and the goals and strategies that will help us to be as successful in the 21st century as we were in the 20th.

This process has been a fruitful one. It has led us to a slight name change and a new logo that we believe captures the essence of who we are as an organization, and a reinvigorated sense that our mission to inform and educate Americans about the importance of strong civil rights policies is as critical as ever.

This issue of the Civil Rights Monitor is a reflection of that process. Though it is always a challenge to capture the dynamic work of the coalition, we hope this year's issue provides a clearer understanding of the work of The Education Fund and our sister organization, The Leadership Conference on Civil and Human Rights.

In this issue, you will have an opportunity to:

- read about the latest legislative developments;
- learn about the impact that recent Supreme Court cases

on the Voting Rights Act and anti-discrimination laws will have on your civil and human rights; and

- get an overview of the public education projects we undertake and the research reports that we produce.

In addition, you will also have an opportunity to view, in a special feature on our digital television transition project, The Education Fund's work to empower and mobilize local advocates around the country for progressive change. The increasing work outside the beltway is a reflection of our commitment to meeting Americans where they are and making the connection between federal policy and the concern they have for their communities.

Since our founding in 1969, The Education Fund has always believed that an educated and informed public is more likely to support effective federal civil rights and social justice policies. And now, 40 years later, we are adapting to new challenges, refining our messages and approaches, and seizing new opportunities in our work to build the public will for national policies that will create a more open and just society.

Undoubtedly, you have noticed I have a new title. As we celebrate the 60th anniversary of The Leadership Conference and institute other changes, we thought it time to return the leadership structure of The Leadership Conference and The Education Fund to that of a single president and CEO. I believe that this structure conforms to the reality of how both organizations currently operate and puts the organizations in the best position to succeed in the future. With your support we will continue to move the country forward.

Thank you,
Karen McGill Lawson
Executive Vice President and COO

Building on This Year's Momentum

Wade Henderson

Although 2009 was trying in many respects, the civil rights community has much to celebrate. Even as we grappled with the effects of the worst economic downturn in more than 70 years, civil and human rights advocates made significant progress on a number of vitally important issues from pay equity to hate crime enforcement.

Indeed, this progress was exactly what the nation sought in voting overwhelmingly for change in November 2008. The election of Barack Obama as the nation's 44th president was a watershed moment in American history, a moment that is the direct result of the civil rights movement's work over the last 60 years.

And though his administration has brought with it fresh, open, and dynamic thinking, and a commitment to basic fairness and equal opportunity for all Americans, our critical role as advocates who make the case for the importance of civil rights legislation and equal opportunity policies cannot be abdicated.

The challenge for us heading into this year's midterm elections and the second session of the 111th Congress, in which immigration reform, financial reform, education reform, and another Supreme Court vacancy are likely to be major issues, is to capitalize on last year's momentum by sustaining the interest of the millions of Americans – many of them the very people we represent – who were inspired to vote in the 2008 election. This year, we'll need the same kind of energy and engagement from successes in 2009.

Within weeks of becoming president, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009, which restored the ability for workers to challenge pay

discrimination in court; signed a reauthorization of the Children's Health Insurance Program, expanding its coverage to include 11 million low-income children; and signed an economic recovery bill that helps millions of our nation's most vulnerable citizens and keeps the economy from falling into further disrepair. These three laws were top priorities for The Leadership Conference on Civil and Human Rights.

In addition, the civil rights community played a critical role in a number of important appointments, including Eric Holder, the nation's first African-American U.S. attorney general; Thomas E. Perez, assistant attorney general for the Civil Rights Division at the U.S. Department of Justice; Harold Koh, legal advisor to the U.S. Department of State; and Michael Posner, assistant secretary of state for democracy, human rights, and labor at the State Department.

These are tremendous achievements for the civil rights community. Both Holder and Perez are fully focused on the challenge of restoring the Department of Justice's ability to vigorously enforce our federal civil rights laws. Koh and Posner are equally qualified to help guide our nation's foreign policy and ensure that these policies are consistent with human rights principles that ensure all people around the world are treated fairly.

By year's end another of our top priorities – the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act – was signed into law. Along with removing unnecessary obstacles to federal prosecution of hate crimes and providing local law enforcement with vital resources, the new law expands the definition of federal hate crimes to include sexual orientation, gender, gender identity, and disability. In fact, it is the first federal civil rights

enforcement statute that explicitly protects LGBT Americans. This is no small feat.

Many of these successes were long overdue. But let's not kid ourselves; these were not easy victories. The hate crimes law, for instance, has been pending in Congress in some form or another for more than a decade.

Perhaps, though, nothing has been more hard-fought this year than health care reform and the confirmation of Sonia Sotomayor to be the nation's first Hispanic American Supreme Court justice.

While the jury is still out, Congress may pass the first serious health care reform legislation since it created Medicare in 1965. This too would be no small feat, even though the debate surrounding the legislation was highly politicized, misinformed, and divisive. This debate succeeded in obscuring the fundamental goal of reform – to provide critical care to every single American – and confused many of the very people that are most in need of health care. Still, though the bill will not be perfect, it is likely to expand coverage to many American families in need.

In Justice Sotomayor, President Obama found an exceptionally qualified candidate. Her professional experience spans nearly every aspect of the law – prosecutor, partner in a law firm, trial judge, and federal judge. She has more federal judicial trial and appellate experience than any Supreme Court justice confirmed in a century. Yet some senators and other public figures chose to focus on statements pulled out of context to paint Justice Sotomayor as an ideologue with no respect for the rule of law.

Ultimately, Justice Sotomayor was confirmed and the nation is better for it. But her confirmation battle is a reminder that we must always be ready and willing to go to bat for fairness, decency, and the belief that the United States can and must provide equal opportunity for all its citizens no matter which party is in power.

The Leadership Conference has been fighting for an America as good as its ideals since 1950. This year, we will celebrate our 60th anniversary. Although our country has changed dramatically in that time, diverse coalitions like ours continue to play a critical role in fulfilling our nation's promise of providing equal rights and equal opportunity for all Americans.

We have our work cut out for us. This is an election year with yet another long list of priorities for all of us to tackle. At the top of that list is addressing the fallout from the economy – the jobs and foreclosure crises. We must work with Congress and the Obama administration to ensure that struggling homeowners can keep their homes. We must push Congress and the administration through public-private partnerships to create jobs and restore basic stability to millions of Americans hard hit by the recession. And with health care nearly done, we'll have to push Congress and the administration to fix the nation's broken immigration system and to provide quality education for all children.

None of this will be easy. As we celebrate our recent successes, we are emboldened by the new challenges that we face, the new generations that join the fight, and the new strategies and tactics we can employ to bring about the change we'd like to see in our country.

Because there is still more work to be done.

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

Hate Crime Legislation: The Long Path to the White House – and Next Steps

Commentary by Michael Lieberman

Rev. Martin Luther King Jr. was fond of saying that “the arc of the moral universe is long, but it bends toward justice.” I thought of Dr. King’s words, when President Barack Obama signed the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (HCPA) into law on October 28.

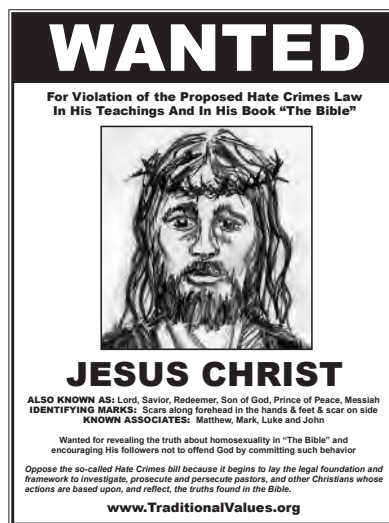
Under the leadership of The Leadership Conference on Civil and Human Rights, a broad coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations has been meeting regularly and working very hard to secure enactment of the HCPA since 1997.

The hate crimes coalition, co-chaired by the Anti-Defamation League, the Human Rights Campaign, the National Council of Jewish Women, and The Leadership Conference, is very unusual in that it has always included core civil rights organizations, such as the NAACP, the American Association of University Women, the National Council of La Raza, and the Asian American Justice Center – along with the International Association of Chiefs of Police, the Police Executive Research Forum, and the National District Attorneys Association. Those groups don’t lobby together very often at all.

Over the past decade, our coalition educated its constituents; organized rallies, lobby days, call-in days; attended town hall meetings – and built support for the legislation one member at a time. Bipartisan majorities in both the Senate and the House had approved this legislation on a number of occasions, but never the same language at the same time. On any number of occasions over the past 12 years, members of Congress who opposed the legislation told us that they would drop their opposition – if only we would agree to drop the bill’s

coverage for crimes directed at individuals because of their sexual orientation, or because of their gender. We rightly, adamantly refused those offers. And, with the critical support of President Obama and Attorney General Eric Holder Jr., our Hill champions were finally able to enact this important measure, providing federal protection, for the first time for victims attacked because of their sexual orientation, gender, gender identity, or disability.

Enactment was long overdue – wrongly delayed by distortions, outright lies about the bill’s provisions (like the “Wanted” poster of Jesus below), and eight years of veto threats by President George W. Bush.



An example of anti-hate crimes legislation propaganda.

Far from the false labels by a vocal minority of conservative religious voices, (“Pedophile Protection Act” and “Hate Christians Act” to name just two), the HCPA is simple and straightforward – it closes gaps in existing federal authority to investigate and prosecute bias-motivated crimes. This update of a 40-year old federal hate crime law encourages partnerships between state and federal law enforcement officials to more effectively address hate violence. The new law also provides limited authority for federal investigations and prosecutions when local authorities are unwilling or unable to act.

Forty-five states and the District of Columbia now have hate crime laws, but it’s a patchwork of protection:

- Only 30 states and the District include sexual orientation in their law;
- Only 26 states and the District include gender;
- Only 12 states and the District include gender identity; and
- Only 30 states and the District include disability.

The HCPA expands protection to these four categories of victims everywhere – and federal support, through training or direct assistance, will help ensure that bias-motivated violence is effectively investigated and prosecuted.

The enactment of this important legislation – the most important, comprehensive, and inclusive hate crime law in the past 40 years – is a sweet victory.

But in the immortal words of “West Wing” President Jed Bartlet: “What’s next?”

Well, first, the Justice Department and coalition members should partner to train federal and state investigators and prosecutors on the new authority provided under the law – and about the availability of new resources to address hate violence. The HCPA, for the first time, authorizes the Department of Justice to investigate and prosecute certain bias-motivated crimes based on the victim’s actual or perceived sexual orientation, gender, gender identity, or disability. Prior federal law did not provide authority for involvement in these categories of cases.

Second, we must do more to improve hate crime reporting. Since the enactment of the 1990 Hate Crime Statistics Act (HCSA), the Federal Bureau of Investigation has published an annual report on hate crimes in America. The HCSA has sparked improvements in hate crime response since in order to effectively report hate crimes, police officials must be

trained to identify and respond to them. The FBI report is now the most authoritative snapshot of hate violence in America – though clearly incomplete, with thousands of police agencies not reporting hate crime data at all.

As documented in a trailblazing report by The Leadership Conference Education Fund, “Confronting the New Faces of Hate: Hate Crimes in America 2009,” hate crimes are still disturbingly prevalent in America. In 2008, the bureau reported nearly 7,800 bias-motivated incidents – almost one hate crime in America in every hour of every day. The FBI also documented the highest number of crimes directed at Blacks, Jews, and gay men and lesbians since 2001, along with a significant rise in the number of victims selected on the basis of religion or sexual orientation

Third, there is a growing awareness of the need to complement tough laws and more vigorous enforcement – which can deter and address violence motivated by bigotry – with education and training initiatives designed to reduce prejudice. The Education Fund report also revealed disturbing indicators on this front. The election of the first African-American president, a deep economic and housing crisis, a broken immigration system, and faster and anonymous means of communication among like-minded individuals online have combined to form a near-perfect storm of grievances for extremists and hate group organizing. The federal government has a central role to play in funding program development in this area and promoting awareness of bullying prevention and anti-bias education initiatives that work.

HCPA advocates and our champions in Congress have earned a moment to smell the roses. We can celebrate our success – finally! – in enacting this important new law. Then let’s roll up our sleeves and move on to the next steps in making America more equal, fair and safe.

Michael Lieberman is the Washington counsel for the Anti-Defamation League. He chairs The Leadership Conference on Civil and Human Rights hate crime task force in Washington, D.C.

Consumer Protection: Addressing the Root Causes of the Recession and the Foreclosure Crisis

Rob Randhava

As the nation's housing crisis accelerated throughout 2009, efforts to prevent foreclosures continued to fall short. As the fiscal crisis grew, legislators showed a willingness to embrace stronger measures that could provide Americans with greater protection from predatory lending practices and other abuses in the financial industry.

Despite Ever-Increasing Foreclosures, Little Help for Struggling Homeowners

Throughout most of 2009, the record-setting wave of nationwide mortgage foreclosures that began in 2006 continued to grow. While the bulk of home losses in the previous few years were caused largely by inherently risky loan products, such as mortgages that charged higher monthly payments after several years of deceptively low "teaser" rates, foreclosures in 2009 became increasingly tied to rising unemployment. Although precise estimates vary, most experts predict millions of additional home foreclosures over the next several years.

Faced with this still-growing crisis, the new Congress renewed its efforts to keep borrowers in their homes. The top legislative priority was the Helping Families Save Their Homes Act, designed to let homeowners secure reduction in the size of their loans in bankruptcy court if they could not keep up with their payments. While current law allows virtually any debt to be modified in bankruptcy proceedings, including vacation homes and yachts, residential mortgages have long been excluded.

Similar legislation was first proposed in 2007 with the strong backing of The Leadership Conference on Civil and Human Rights and many other civil rights and consumer advocates, while the housing crisis was still in

its early stages. But pressure from banking industry lobbyists bolstered a filibuster of the measure, preventing it from coming up for a vote in the Senate. Opponents charged that the bill would lead to higher interest rates on mortgage loans, even though they provided no evidence to back up their assertion.

After the collapse and subsequent bailout of the financial industry in late 2008 weakened the credibility of Wall Street lobbyists among many members of Congress, there was renewed hope that the bankruptcy measure might have a better chance of being enacted this year. In March, the House of Representatives passed a bill on a mostly partisan vote. In the Senate, however, the proposal once again faced tremendous resistance, forcing Sen. Dick Durbin, D. Ill., the legislation's key sponsor, to undertake negotiations on a bill that might be more acceptable to financial services industry lobbyists.

Shortly after Sen. Durbin's compromise legislation had been drafted, however, banking industry representatives inexplicably walked away from the bargaining table and again encouraged a filibuster. Once again, the bill was blocked from coming up for a vote in the full Senate, leading a frustrated Sen. Durbin to vent in a radio interview that "the banks – hard to believe in a time when we're facing a banking crisis that many of the banks created – are still the most powerful lobby on Capitol Hill. And they frankly own the place."

Meanwhile, policymakers looked to other channels to reduce home foreclosures. In February, the Obama administration announced the Home Affordable Modification Program (HAMP), a \$75 billion effort to provide financial incentives for lenders to reduce the monthly payments of struggling borrowers. Similarly,

Congress passed legislation in May to expand the 2008 HOPE for Homeowners law, which encourages lenders to refinance borrowers into lower-cost loans that would be guaranteed by the government.

These and similar efforts, however, have only helped a fraction of troubled homeowners to date, partly because many loans in recent years were sold by lenders and packaged into highly complicated investment products, making modification or refinancing extremely difficult. Even among borrowers who have been helped, questions remain about whether the modifications are significant enough to prevent default in the long run, or whether they simply delay the inevitable. The Leadership Conference continues to strongly favor the bankruptcy law change because it would allow more substantial write-downs of troubled loans – particularly in cases where loan servicers are unwilling or unable to provide them. But it remains unclear whether the bill can ever overcome Wall Street-backed opposition in the Senate.

The good news – perhaps – is that there are some early signs that foreclosure rates may have begun to level off in the past several months. RealtyTrac, a company that monitors foreclosures nationwide, reported in November that activity had slowed for the third consecutive month. Experts warned, however, that the stagnant housing market, high unemployment, and problems with high-risk loans continue to pose a threat – and that defaults are still considerably higher than they were a year ago.

Wall Street Collapse & Bailout Leads to Expansion of Financial Reform Agenda

While the foreclosure crisis continues, policymakers have also continued their efforts to institute broader, more forward-looking reforms of the financial industry with an eye toward eliminating practices that allowed the crisis to occur in the first place.

In May, the House revived a bill that had stalled in the previous Congress, the Mortgage Reform and Anti-Predatory Act. The bill had many provisions that civil rights and consumer protection organizations strongly supported. Among other things, it would prohibit lenders from tricking borrowers into taking higher-rate mortgages when they qualify for cheaper ones, and it would require lenders to ensure that borrowers could afford monthly loan payments.

As in 2007, however, the bill's enforcement provisions were weakened before it reached the House floor as its sponsors were forced to make compromises to secure enough votes for passage. In particular, language was

added to keep borrowers from taking advantage of potentially more favorable state laws. Once again, the compromises did nothing to satisfy financial industry lobbyists. While the bill ultimately passed the House, it did so with little support from stakeholders on either side of the debate, and it faced dim prospects in the Senate.

Efforts to rein in abusive credit card practices, on the other hand, proved to be slightly more successful. In May, with the support of consumer advocates, Congress passed and President Obama signed the "Credit CARD Act," which outlawed retroactive interest rate increases, double-cycle billing, and a number of other deceptive billing practices designed to extract more money from credit card users. In the wake of the law's enactment, however, credit card issuers quickly found other ways to extract this money, such as instituting higher interest rates and new fees that were not covered by the law.

If there is a lesson to be learned from the experiences with the mortgage lending and credit card bills, it is that Congress is not the most ideal venue for regulating predatory lending practices. It is usually very slow to respond to abuses – if it does so at all – and when it does, the laws that emerge often include major compromises that limit their effectiveness.

It should be good news, then, that policymakers appear to have shifted their approach. Spurred by public outrage over 2008's massive taxpayer bailout of the financial industry, and by the growing sense that Wall Street has failed to learn from its mistakes, the Obama administration and its allies in Congress have turned to far more sweeping reforms of the financial industry and the infrastructure that is currently charged with regulating it.

In June, the administration issued an 88-page blueprint for a dramatic overhaul of the financial regulatory system. Among other things, it called for consolidating some of the existing bank regulators, allowing the government to break up large financial firms that threaten economic stability, and overseeing derivatives and other financial products that had previously escaped any meaningful regulation. Americans for Financial Reform, a coalition of more than 200 advocacy organizations including The Leadership Conference, was formed to build support for the blueprint, and legislation was introduced in both the House and the Senate.

For civil rights and consumer advocates, the most appealing part of the blueprint has been the proposal of a new "Consumer Financial Protection Agency" (CFPA). The CFPA would assume jurisdiction over most consumer

protection laws, and because those laws would be the agency's exclusive focus, it would likely provide much stronger and more nimble oversight than existing agencies. The Leadership Conference and other civil rights organizations were quick to support the CFPA.

As is the case with the bankruptcy legislation discussed above, Wall Street has been furiously lobbying its allies in Congress to block the CFPA. The progress of the bill to date, however, has given civil rights and consumer advocates some reason for optimism. It was marked up by several House committees, and despite some troubling changes – including an exemption for loans provided by auto dealers and the exclusion of the Community Reinvestment Act from the new agency's jurisdiction – the bill emerged in fairly strong form overall. Legislative action on the CFPA and the rest of the financial overhaul blueprint is expected to continue over the next several months.

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

Health Care Reform: A Major Civil and Human Rights Issue

Commentary by David Goldberg

The Current Health Care Crisis

Health care is a fundamental civil rights issue because it is inextricably linked to every aspect of social and economic justice.

When people lack access to quality and affordable healthcare, a medical emergency can bankrupt a family. As long as families face this danger, they have no economic security. Without access to quality and affordable healthcare, chronic medical problems can prevent a worker from changing or keeping jobs and advancing at work, which destroys equal employment opportunity. Without access to quality and affordable health care, poor health can keep a child out of school, which denies that child educational opportunity.

And the sad truth is that health disparities may begin before birth and last a lifetime.

Hispanic and African-American women are more than twice as likely as White women to receive only very late prenatal care or none at all. Native American women are more than three times as likely to do without timely prenatal care.

Given the racial and ethnic disparities in prenatal care, it is not surprising that there are similar racial disparities in low birth-weight babies. For example, African-American women are twice as likely as White women to give birth to low-weight babies.

In our nation's cities, these disparities are even worse than the national averages. In Washington, D.C., White women have even better access to early prenatal care, but both Black and Hispanic women are even less likely to have access to timely care. Taken together, minority women in the District are more than 3.5 times more likely

to go without first trimester prenatal care than White women; and the incidence of low-weight births among Black women in the District of Columbia is almost triple the rate for White women.

These racial disparities continue, and often increase, during children's school years. Perhaps the most dangerous long-term health crisis facing the nation is the obesity epidemic, with its profound array of economic and health consequences. While there is no official definition of obesity for children, the numbers of overweight children have skyrocketed over the last three decades. According to the National Center for Health Statistics, the percentage of overweight adolescents has increased two-and-a half-fold, from six percent in 1974 to 15 percent in 2002. Among elementary school children, the rate has nearly quadrupled, from four percent to 15 percent. Those numbers double to 30 percent if you include children who are deemed "at risk" of becoming overweight.

The overall numbers are alarming for all Americans, but they are far worse for minority children, with African-American and Latino youth approximately twice as likely to be overweight than their White counterparts.

Being overweight has profound and often immediate health consequences for children. It can result in chronic conditions such as diabetes, asthma, high blood pressure and cholesterol, sleep apnea, and a wide range of bone and joint problems. All of these health problems impose catastrophic costs on families and further detract from a child's ability to learn. And with so many of the nation's low-income and minority children overrepresented in failing, underresourced schools, access to health care becomes essential for real educational opportunity.

Fast forward a few years, and all these problems diminish the opportunities of adult workers, just as they shrink the futures of our children. When adult Americans have chronic medical conditions and have received inadequate educations, they have trouble qualifying for good jobs, keeping such jobs, and moving ahead in their careers. Still later, they are less likely to have adequate pension plans. And they also have a harder time just providing for themselves – much less accumulating and passing along family wealth to future generations.

Health Care Reform

As Congress wrangled for months on health care reform legislation, the stark reality of our health crisis was nearly lost, obscured by a divisive national debate in which facts mattered less than partisan diversions and attacks. Even so, Congress has managed to make significant progress on this critical issue, with the House of Representatives passing its health care reform bill in early November and the Senate completing its bill in late December.

In the civil rights community, we are fighting to expand access, eliminate discrimination, and make sure that the reforms are financed in an equitable way that will maintain the lofty goal of universal health insurance coverage. The House and Senate bills have taken very different approaches to these issues and The Leadership Conference on Civil and Human Rights has been working with both chambers to ensure that there will be real support and protections for disadvantaged individuals and communities.

We are trying to expand access to Medicaid and ensure meaningful subsidies for people left to buy insurance on the market, regardless of whether they are buying a private plan or any type of public option. For Medicaid, for example, we support the House's decision to raise the floor for eligibility to 150 percent of the poverty line for every state and for every class of potential beneficiaries.

Central to our advocacy are enforceable antidiscrimination provisions. We had advocated for language that prohibits discrimination based on “personal characteristics” unrelated to the provision of health care, because it would be broad and inclusive, and we had coupled it with a powerful enforcement provision that would have addressed both intentional discrimination and practices that had a disparate impact. The House-passed bill adopted the “personal characteristics” approach, but did not include the enforcement clause.

The Senate was not receptive to this approach. Instead its bill, as introduced, uses a more traditional formulation that would bar discrimination based on race, national origin, gender, age, and disability (categories already protected by other federal laws) and only in federally funded programs. However, unlike the House bill, the Senate bill does include an enforcement provision. Taken together, the House and Senate bills have the building blocks of a powerful antidiscrimination law and we will work to help craft a final version that includes the best of both approaches.

Finally, we have been fighting against a financing measure known as the “free rider” provision. This provision would require employers of firms with 50 or more employees who do not offer health coverage to pay the average subsidy cost per person for all employees who are eligible for a subsidy (in general, low and middle-income families) and who purchase coverage in the new health insurance exchanges, which are state-based marketplaces to purchase private insurance.

By imposing a tax on employers for hiring people from low- and moderate-income families who would qualify for subsidies in the new health insurance exchanges, the measure would discourage firms from hiring such individuals and would favor the hiring — for the same jobs — of people who don't qualify for subsidies (primarily people without children or with spouses who had jobs with good pay or health benefits). The House bill does not have the free rider provision, and the Senate bill has changed substantially, but still has elements of free rider in it.

The health care reform bills are large, complicated pieces of legislation and there are many parts that still need work and refinement, but we are committed to ensuring that the best possible bill makes it to President Obama's desk.

David Goldberg is senior counsel and senior policy analyst for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund and specializes in education, health care, and equal opportunity issues.

Anti-Immigrant Rhetoric Complicates Legislative Agenda

Antoine Morris

With the economy in free fall, health care dominating the congressional calendar, and other competing priorities, the daunting task of overhauling the nation's immigration system remained on hold for yet another year. In the absence of reform, anti-immigrant sentiment continued to surge, suffusing the airwaves and complicating the passage of other pieces of other legislation seemingly unrelated to immigration.

Hate Crimes and Immigration

As civil rights groups made a strong push this year to enact a critical hate crimes bill that would remove unnecessary obstacles to federal prosecution, many called attention to the correlation between anti-immigrant sentiment stoked by an increasingly heated debate over reform and a marked increase in hate violence against Hispanics.

In March 2009, the Southern Poverty Law Center released a report documenting an increase in the number of hate groups nationwide between 2007 and 2008, due in part to "fears of Latino immigration."

A few months later, The Leadership Conference Education Fund released a report ("Confronting the New Faces of Hate: Hate Crimes in America 2009") that analyzed trends in federal hate crimes data. The report documented a four-year increase in hate violence against Latinos that correlated with the latest national debate over immigration reform fueled in part by an escalation in anti-immigrant vitriol on radio, television, and the Internet from high-profile national media personalities, including Talk Show Network's Michael Savage and Lou Dobbs, formerly of CNN.

The Office of Intelligence and Analysis at the U.S. Department of Homeland Security was pointed in its assessment of the situation, stating that "in some cases, anti-immigration or strident pro-enforcement fervor has been directed against specific groups and has the potential to turn violent."

Immigration and Health Care

Anti-immigrant sentiment has also distorted the health care debate. In a joint address to Congress on September 9, President Obama sought to blunt criticism from the opponents of health care legislation by stating, "There are also those who claim that our reform effort will insure illegal immigrants. This, too, is false – the reforms I'm proposing would not apply to those who are here illegally."

Conservatives pressured lawmakers to call for additional proof of citizenship requirements in health care reform bills moving through various congressional committees, even though the bills already contained explicit language barring the estimated seven million undocumented immigrants from accessing government-funded care.

In the Senate Finance Committee, several senators introduced problematic amendments, including provisions that relied on error prone biometric technology to verify citizenship and the reinstatement of a five-year Medicaid and Children's Health Insurance Program waiting period for legal immigrant children and pregnant women, which had been repealed with the reauthorization of CHIP in February. All of these amendments were excluded from the final committee bill.

The House of Representatives did not adopt an amendment to bar undocumented immigrants from purchasing health insurance with their own money, but there is a provision in the House bill that denies immigrants access to certain subsidies provided in the legislation.

Health care reform advocates say barring immigrants, including the undocumented, could have substantial costs for taxpayers, since discouraging patients from regular doctor visits could lead to more expensive emergency room visits. Also, as vividly illustrated by the threat of the H1N1 virus, excluding the undocumented – or anyone else – from health care coverage is a threat to the public health that could increase the spread of epidemic.

Immigration and the Census

However, no immigration-related controversy garnered as much attention as an amendment to the Commerce Justice and Science (CJS) FY10 Appropriations bill proposed by Republican Senators David Vitter of Louisiana and Bob Bennett of Utah. The amendment would have required the 2010 census form to add a question asking respondents about their citizenship and immigration status in order to exclude noncitizens from the count used to reapportion congressional districts.

In addition to determining representation in local, state and federal lawmaking bodies, census data are used to allocate billions of dollars in funding for schools, housing, health care, job training, economic development and enforcing landmark civil rights laws such as the Voting Rights Act of 1965.

The Leadership Conference on Civil and Human Rights and other civil and human rights groups warned Congress in a letter that the amendment would “deter many residents from responding, and result in an inaccurate census count.” With millions of questionnaires already printed out, “the Vitter amendment would waste the \$7 billion in research, planning, and preparation that has occurred for Census 2010,” the groups said.

A bipartisan group of eight former Census Bureau directors echoed these concerns in their own letter to Congress, saying: “We can say unequivocally that adding an untested question at this late point in the decennial process would put the accuracy of the enumeration in all communities at risk and would likely delay the start of the census and all subsequent activities, such as reapportionment.”

More importantly, civil rights advocates said that by selectively counting the number of people who live in the United States, the Vitter amendment violates the Constitution’s 14th Amendment (repudiating the three-fifths compromise of 1789), which mandates a full count of “every person” in the country.

Ultimately, a procedural vote cut off debate on the amendment, keeping it from being included in the final version of the spending bill.

Status of Immigration Reform Legislation

In the meantime, legislative action on immigration reform itself in the 111th Congress got off to a slow start in 2009. As we went to press, Sen. Chuck Schumer, D. N.Y., and Rep. Luis Gutierrez, D. Ill., are working on bills to enact a comprehensive solution to the nation’s broken immigration system. Judging by information on their respective websites, Sen. Schumer’s bill will likely focus on enforcement efforts whereas Rep. Gutierrez’ will emphasize worker protections and integration of immigrants into the American society. Both bills are expected to include provisions that would at least afford undocumented immigrants an opportunity to legalize their status, if not a pathway to citizenship.

Still, it is unclear when the debate over immigration reform will resume and whether Congress will pursue a piecemeal approach without addressing larger questions about providing civil rights protections and enforcement.

In a November 13 2009 speech at the Center for American Progress, Homeland Security Secretary Janet Napolitano articulated the goals of the Obama administration in a reform bill: “Let me be clear: when I talk about ‘immigration reform,’ I’m referring to what I call the ‘three-legged stool’ that includes a commitment to serious and effective enforcement, improved legal flows for families and workers, and a firm but fair way to deal with those who are already here,” Napolitano added, “That’s the way that this problem has to be solved, because we need all three aspects to build a successful system.” The secretary said she expected Congressional action on the issue in 2010.

For its part, The Leadership Conference continues to support reversing much of the harsh enforcement policies of the Bush era. The Leadership Conference also supports the passage of the Development, Relief and Education for Alien Minors Act (DREAM Act), which would give legal status to high-achieving young undocumented immigrants

if they attend college or join the military, and the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS), which would dramatically improve agricultural and guestworker programs – and provide a pathway to citizenship.

Antoine Morris is a policy associate and researcher for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund. Jennifer Ng'andu, deputy director of the National Council of La Raza's Health Policy Project, also contributed valuable assistance for this article.

Legislative Updates

Amshula Jayaram

A number of important civil rights bills were introduced during the first session of the 111th Congress. Here is a brief roundup of bills that are still pending and that The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund will continue to focus on in 2010.

More information can be found in The Leadership Conference's Voting Record at <http://www.civilrights.org/advocacy/voting/>.

D.C. Voting Rights

On February 26, the Senate passed the DC Voting Rights Act, which would give full voting representation in the House of Representatives to the disenfranchised citizens of the District of Columbia. However, the Senate-passed bill included an amendment by Sen. John Ensign, R. Nev., which would significantly ease the city's gun restrictions. The amendment effectively stalled consideration of the bill in the House of Representatives. Many House members who would otherwise support D.C. voting rights are opposed to easing D.C.'s gun laws, and the D.C. government has voiced strong concerns about moving forward with the DC Voting Rights Act if it includes the gun amendment. The stalemate is likely to continue into 2010.

Graduation Promise Act

Currently in the United States, 1.2 million students, largely from low-income and minority households, do not graduate from high school in four years. The Graduation Promise Act, introduced in September by Sen. Jeff Bingaman, D. N.M., and Senate Majority Leader Harry Reid, D. Nev., is intended to aggressively combat this problem by providing federal funding for competitive grants to high schools with the highest dropout rates, sometimes referred to as "dropout factories." Currently,

these schools account for half of America's dropouts. At the core of this legislation are the High School Improvement and Dropout Reduction Fund, which will authorize \$2.4 billion towards the creation of school-community partnerships to give students the support they need finish high school, and an additional \$60 million towards programs for at-risk students and those who have already dropped out. Congress is likely to consider the bill in 2010.

Fair Sentencing Act

Under the 1986 Anti Drug Abuse Act, Congress set federal penalties for use and possession of crack and powder cocaine. Under this law, defendants convicted for possessing just five grams of crack cocaine – less than the weight of two sugar packets – are subject to a five-year mandatory minimum sentence. Yet, defendants selling powder cocaine have to be caught selling 100 times – 500 grams – as much to receive the same sentence.

Although the 1986 law was intended to target major drug traffickers and kingpins, it has led instead in large scale convictions of low-level drug users. The result has had a discriminatory impact on African Americans and low-income people.

A bill introduced in the House of Representatives by Rep. Bobby Scott, D. Va., would raise the trigger for the mandatory minimum sentence for crack cocaine to 500 grams – equal to the trigger for powder cocaine. The House Judiciary Committee voted 16-9 to approve the bill on July 30. Sen. Dick Durbin, D. Ill., recently introduced similar legislation in the Senate that would end the disparity and increase penalties for major drug traffickers and violent criminals. Neither bill has been brought up for a floor vote.

ENDA

Legislation to prohibit employment discrimination based on gender identity or sexual orientation was introduced in both the House and Senate in 2009.

The Employment Non-Discrimination Act (ENDA) would extend the same federal employment discrimination protections currently given to race, religion, gender, national origin, age, and disability. Currently, only 20 states prohibit such discrimination. Both chambers have begun to hold hearings on the bills. The House bill, introduced by Rep. Barney Frank, D. Mass., has 192 cosponsors while the Senate bill, introduced by Sen. Jeff Merkley, D. Ore., has 43 cosponsors.

The legislation also has widespread support within the corporate community and among the general public.

Amshula Jayaram is currently working on a master in public policy degree at Georgetown University. She is working with The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund through a year-long fellowship from Georgetown's Center for Public and Nonprofit Leadership.



Tribute to Senator Kennedy

On August 25, 2009, Senator Edward M. Kennedy died of brain cancer. The nation lost a political giant and the civil and human rights community lost a fiercely dedicated and committed advocate in Congress.

In this special section, we have collected testimonials from civil and human rights leaders. These testimonials demonstrate the depth of Sen. Kennedy's commitment to fairness and equal opportunity for every American and show just how profound his impact has been on America's fight for civil and human rights.

The Leadership Conference

"Edward M. Kennedy was the most effective senator of his generation and a leader in achieving every major legislative advance during his service in the Senate. From the Civil Rights Act of 1964 through the Lilly Ledbetter Fair Pay Act of 2009, the cause of civil and human rights had no better friend than Senator Edward M. Kennedy."

National Partnership for Women and Families

"Senator Kennedy was a partner we trusted completely to provide strategic guidance on a range of issues including health care reform, reproductive choice, paid sick days, women's and civil rights, and other issues that are critically important to the nation. Not as well known as the Senator's public positions were his keen political and strategic judgment, and his extraordinary capacity to bring together opposing parties to reach the agreements the country needed. Those were skills we treasured, and will miss terribly."

Asian American Justice Center

"Sen. Kennedy was the Senate's extraordinary advocate for equality...Asian Americans in particular honor him for his work in 1965 when he led, and won, the battle to pass that year's Immigration Act, which lifted the 1924 racial restrictions on immigration from Asia and abolished immigration quotas. He led the fight for the Refugee Act of 1980, which ensured humanitarian protections for refugees in overseas camps or seeking asylum. The Asian American community would not be as large or as diverse as it is today without his championing of immigrants and refugees,"

AARP

"Senator Kennedy was a tireless fighter for the poor and the working class and the programs they relied upon, especially Medicare and Social Security ... Regardless of the issue, Senator Kennedy seemed to have one guiding principle: how will this help average Americans? He pushed his colleagues to ask themselves the same question and he challenged us all to make this nation an example for the world."

AAPD

"I cannot imagine a more effective champion for disability rights, for civil rights, for health care, for basic human decency, than Edward M. Kennedy. His legacy will be felt by more than 600 million children and adults with disabilities around the world for generations to come."

AFL-CIO

"He has left an enormous footprint on America. For nearly a half century, Ted Kennedy was the chief standard-bearer for working families in the United States Senate—and on the Senate Labor Committee"

Human Rights Campaign

"Senator Kennedy has been an unwavering supporter of the LGBT community, leading the charge on important legislation like the Employment Non-Discrimination Act and the Matthew Shepard Hate Crimes Prevention Act and forcefully opposing discriminatory proposals, including the Defense of Marriage Act and the Federal Marriage Amendment."

NAACP LDF

“Senator Kennedy possessed a rare combination of qualities that allowed him to carry the torch on civil rights in the U.S. Senate. He had an unwavering commitment to ensuring equal opportunity, the courage to fight the hard battles, the optimism to lead others, and the perseverance and statesmanship that ensured victory after victory.”

National Congress of American Indians

“We have lost a strong, true leader in Congress and an unyielding supporter of tribal sovereignty for all Indian nations. Sen. Kennedy was a champion for all Americans, and specifically for Native people and communities. He supported the reauthorization of the Indian Health Care Improvement Act and ensured federal funding reached schools on reservations. Sen. Kennedy’s door was always open to American Indians and Alaska Natives.”

National Council of La Raza

“No senator in history has supported more legislation that will improve the lives of our community than Senator Kennedy. He became a household name for so many Latinos. Senator Kennedy has been at the forefront of every major debate affecting the Latino community, including civil rights, increasing educational opportunities for English language learners, improving the country’s health care system, and comprehensive immigration reform”

American Jewish Committee

“At AJC, we shall long remember his commitment to civil rights and human dignity for all. Ted Kennedy was also a friend of the Jewish community. When Soviet Jews sought freedom from oppression, Ted Kennedy stood with them. Whenever anti-Semitism reared its ugly head, he could be counted on to speak out.”

Find more testimonials to Senator Kennedy on The Leadership Conference’s website:
www.civilrights.org/monitor/winter-2009/kennedy-remembered.html

2009 Hubert H. Humphrey Civil Rights Award Dinner

The 33rd Annual Hubert H. Humphrey Civil Rights Award Dinner was held on Thursday, May 7, 2009, at the Hilton Washington, in Washington, D.C.

The Hubert H. Humphrey Civil Rights Award is the civil rights community's highest honor, awarded to outstanding individuals who, "through selfless and devoted service in the cause of equality," best exemplify the spirit of Hubert H. Humphrey, vice president, senator and outspoken civil rights pioneer.

This year's honorees were Sheila Bair, the chairperson of the Federal Deposit Insurance Corporation (FDIC), and Van Jones, a pioneer in human rights and the clean energy economy. Former Senator Bob Dole and *New York Times* columnist Thomas Friedman introduced the honorees.



Honorees Sheila Bair and Van Jones surrounded by Dorothy Height of the National Council of Negro Women; Karen McGill Lawson of The Education Fund; Maureen Bunyan of WJLA-TV; Ricardo Byrd of the National Association of Neighborhoods; Wade Henderson of The Leadership Conference; Kathryn C. Brown of Verizon; Former Senator Bob Dole; Maria Echaveste of Nueva Vista Group, LLC; Frederick S. Humphries of Microsoft; Nancy Zirkin of The Leadership Conference; Anne Howard-Tristani of Howard-Tristani Consulting Group; Ed Martinez of the UPS Foundation



Sheila Bair accepts the Hubert H. Humphrey Award.

Sheila C. Bair

Ms. Bair is the Chairperson of the Federal Deposit Insurance Corporation (FDIC), which plays a pivotal role in insuring and supervising the nation's financial institutions. With today's financial crisis affecting everyone from individual homeowners to some of the largest banks in the country, Bair and her agency have moved to the forefront of the government's response. Standing at the vanguard, Bair was one of the first people to take notice and speak against an alarming trend in aggressive lending practices, warning of the need for more regulation to protect consumers. Bair's passion and work do not end with protecting the financial institutions – she devotes much of her energy and focus to people who have been unfairly targeted by subprime lenders. Bair plays an exemplary role in promoting civil rights by advocating for fair banking services for low-income families. Predatory lending is one of the greatest threats to families working to achieve financial security, and Bair has offered a visionary and holistic approach to solving the financial crisis, one that addresses the root of the problem.



Van Jones; Maureen Bunyan, WJLA-TV anchor; Thomas L. Friedman, *New York Times* Columnist; and Wade Henderson, President of The Leadership Conference.

Van Jones

Mr. Jones is a civil rights and environmental advocate working to combine solutions to social inequality and environmental injustices. From March to September 2009, Jones worked as the special advisor for green jobs at the White House Council for Environmental Quality. His central focus was home energy efficiency – the fastest way to save Americans money on their energy bills, reduce pollution from power plants and create good jobs. In the Obama administration's first nine months, the federal government made unprecedented progress toward increasing the number of green job opportunities available to all Americans. Jones is the founder of Green For All, a national organization dedicated to building an inclusive green economy strong enough to lift people out of poverty. Green For All grew out of a "Green Job Corps" program at the Ella Baker Center for Human Rights, which he co-founded. Jones has worked to join civil rights and environmental justice, long narrowly defined, so that a green economy not only embraces people of color but inner cities, helping to lift the urban disadvantaged out of poverty while enhancing their environment.



Photos: Leadership Conference President Wade Henderson with George Irvin, Senior Fellow, Alaska Federation of Natives, Ursula Irvin, and Janice Paniyak Tamang; Dinner guests applaud the entrance of Dr. Dorothy Height; Leadership Conference Executive Vice President Nancy Zirkin with Debo Adebile, director of litigation at the NAACP Legal Defense Fund; Tom Perez, assistant attorney general for the Civil Rights Division of the U.S. Department of Justice with Andy Imparato, president of the American Association of People with Disabilities.

First Hispanic Justice Confirmed to U.S. Supreme Court

Robyn Kurland and Corrine Yu

Four months after being sworn in as the first African-American president, Barack Obama made history again on May 26, 2009 when he nominated U.S. Court of Appeals Judge Sonia Sotomayor to be the first Hispanic justice and only the third woman on the U.S. Supreme Court. After a relatively brief but intense confirmation process, on August 8, Sotomayor became the Court's 111th justice.

Supporters of the nomination said that Sotomayor's extensive legal experience, academic brilliance, and compelling personal story made her an inspiring choice, particularly among the fast-growing Hispanic population. But the sometimes rabid conservative opposition to Sotomayor's appointment also signaled that this would be just the first of many heated battles to confirm the nominees of the Obama administration.

In announcing the nomination, President Obama declared, "When Sonia Sotomayor ascends those marble steps to assume her seat on the highest court of the land, America will have taken another important step towards realizing the ideal that is etched above its entrance: Equal justice under the law."

While that may be true, her immediate impact on the Court may be limited. The retirement of Justice David Souter handed Obama the opportunity to promote Sotomayor, but not to change the prevailing conservative majority on the nine-member court. Although Justice Souter was nominated by a Republican president, toward the end of his 19-year tenure he often voted with the court's more liberal justices on issues of concern to the civil rights community—frequently on the losing end of 5-4 decisions.

A dramatic shift in the court's ideological balance is not expected unless Obama has the opportunity to replace one of the five conservative justices. But even with lowered stakes, both sides sought to use the nomination as an opportunity to frame the debate about judicial selection.

Sotomayor had broad experience as a federal judge. In addition, her journey from modest beginnings to the pinnacle of her profession made her the epitome of the American dream.

Raised in a Bronx housing project, she went on to earn scholarships to Princeton University, where she graduated with honors, and Yale Law School, where she was a law review editor.

After serving as a prosecutor and partner in a law firm, she was nominated in 1992 by the first President Bush to the U.S. District Court for the Southern District of New York. With bipartisan backing from New York's senators, Sotomayor was confirmed by unanimous consent.



Advocates rally on Capitol Hill in support of Justice Sotomayor shortly before her confirmation in August.

In 1997, President Clinton nominated Sotomayor to the U.S. Court of Appeals for the Second Circuit. Despite her stellar record and a rating of “well-qualified” by the American Bar Association, Sotomayor’s nomination was delayed for more than a year by Senate Republicans, in part because of her potential as a Supreme Court candidate. With the help of Sen. Alfonse D’Amato of New York, a Republican who had supported her nomination to the district court, the Senate finally took up her confirmation in October 1998. The vote to confirm was 67-29, with 25 Republicans voting to confirm.

Throughout her career, Sotomayor has been characterized as a strong, no-nonsense judge who adheres to the rule of law. Early on, she gained a small measure of fame when she issued the injunction that ended the 1994 Major League Baseball strike and “saved baseball.” As an appeals court judge, she reviewed more than 3,000 cases and wrote 380 opinions with only three reversed by the Supreme Court.

A 2009 study by the nonpartisan Congressional Research Service concluded that Sotomayor’s “most consistent characteristic” as an appellate judge was her “adherence to the doctrine of stare decisis, i.e. the upholding of past judicial precedents. Other characteristics appear to include what many would describe as a careful application of particular facts at issue in a case and a dislike for situations in which the court might be seen as overstepping its judicial role.”

The civil rights community fully embraced Sotomayor and worked behind the scenes to support her nomination. The Coalition for Constitutional Values, co-chaired by The Leadership Conference on Civil and Human Rights, Alliance for Justice, and People For the American Way, led the effort and developed a 30-second TV ad to help introduce Sotomayor to the public. Wade Henderson, president and CEO of The Leadership Conference, testified before the Senate Judiciary Committee on behalf of the civil rights community in favor of Sotomayor’s appointment. The coalition also organized nationwide watch parties during the confirmation hearings and organized a pro-Sotomayor rally outside the Senate the day before the final confirmation vote.

Sotomayor’s moderate judicial record combined with the Democrats’ 60-seat Senate majority left little doubt that she would eventually be confirmed as an associate justice. But where the civil rights community found much to admire in her personal and professional history, many conservative opponents sought to portray her as a liberal judicial activist outside the mainstream of judicial thought.

In 2001, Sotomayor gave a speech on diversity in which she said, “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.” Conservatives seized on the statement as evidence of bias – or worse. Talk radio host Rush Limbaugh and former Republican House Speaker Newt Gingrich labeled her remarks “racist,” although Gingrich later expressed regret for the statement. Responding to the controversy, Sotomayor explained during her confirmation hearing that the remark was “a rhetorical flourish that fell flat,” adding that “I do believe that every person has an equal opportunity to be a good and wise judge, regardless of their background or life experiences.”

Republicans also pressed Sotomayor about her vote as an appeals court judge to uphold the right of the City of New Haven, Conn., to toss out an employment test in which no Black firefighters qualified for promotion. Just before the hearing, the Supreme Court overturned the ruling on a 5-4 vote. Sotomayor said simply that she and the majority on the appellate court were “following precedent.”

The Senate Judiciary Committee voted 13-6 on July 28 to recommend Sotomayor to the full Senate. Only one Republican senator, Lindsay Graham of South Carolina, supported Sotomayor’s confirmation. Sen. Graham called Sotomayor “one of the most qualified nominees to be selected for the Supreme Court in decades,” adding that she “follows precedent and has not been an activist judge.” But few of Sen. Graham’s Republican colleagues agreed.

On August 6, the full Senate voted 68-31 to confirm Sotomayor, with only nine Republicans voting yes, 16 fewer than voted to confirm her to the appeals court. Sotomayor was sworn in two days later, in time to join the Court for arguments in a critical campaign finance case.

The successful appointment of Sonia Sotomayor to the Supreme Court was clearly a major victory for civil rights and for a vision of American that is committed to equality, diversity and the rule of law. But the fact that a majority of Republicans opposed the nomination of a well-qualified centrist such as Justice Sotomayor left many civil advocates questioning whether they would find any Obama nominee acceptable.

Robyn Kurland is field manager for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund. Corrine Yu is senior counsel and managing policy director for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund.

Wrong About Ricci

Commentary by Alan Jenkins

On June 29, the U.S. Supreme Court issued its much-anticipated decision in *Ricci v. DeStefano*, the New Haven firefighters case. While the Court's decision was disappointing in many respects, it preserved employers' ability, and obligation, to ensure freedom from discrimination in the workplace.

Ricci involved the city of New Haven's attempts to ensure the fair and accurate selection of captains and lieutenants in its fire department. After administering a new promotions exam, the city found that the test was severely discriminatory in practice, excluding all African-American applicants from consideration. Contrary to most news reports about this case, that was the beginning of the city's careful inquiry, not the end.

Because what race you are is no predictor of your firefighting skills, the city took that lopsided outcome as a sign that the test might be flawed, triggering an extensive research and hearings process. In four days of hearings, the city's concerns were confirmed. They learned of multiple flaws in the existing selection process, that it did not reliably select the most qualified candidates, and that other Connecticut cities like Bridgeport had effective selection systems that, unlike New Haven's, were not discriminatory in practice.

Based on that evidence, the city set aside the results of the flawed test. They were then sued by several White, and one Latino, firefighter, who had done well on the test and argued that cancelling it discriminated against them based on their race.

The district court and court of appeals ruled for the city, finding that it had the power under our civil rights laws to set aside a flawed and discriminatory selection process in

order to seek a better one. The U.S. Supreme Court took up the case and, by a 5-4 margin, the high court disagreed.

The Supreme Court's decision is disappointing because it makes it harder for employers voluntarily to ensure a workplace free of discrimination. The Court adopted a new standard in such cases, holding for the first time that employers must have a "strong basis in evidence" that an existing process is discriminatory in order to set it aside.

That's overly burdensome, because it requires employers to begin documenting a case against themselves in order to alter a business practice that they believe to be flawed. And it ignores the significant efforts that New Haven actually took in this case—days of hearings, expert testimony, research on alternative practices—before deciding that its existing selection process was inaccurate and unfair.

As Justice Ginsburg noted in her dissenting opinion for four members of the Court, the firefighters who did well on the original test warrant our empathy, but no one has a right to be hired pursuant to a flawed or discriminatory selection process.

At the same time, the Court's decision did have some encouraging elements. A majority of the justices clearly understand that employment discrimination remains a serious problem in our society, and that employers and government have a responsibility to take proactive measures to address it. Justice Kennedy's opinion for the Court, for example, noted that "employers' voluntary compliance efforts...are essential to the statutory scheme and to Congress's efforts to eradicate workplace discrimination."

There's no question that we've made a lot of progress in our country when it comes to race relations. But research and experience make clear that discrimination continues in different forms. For example, research has found that identical resumes with African-American-sounding names like "Jamal" receive fewer callbacks than White-sounding names like "Brad." And researchers at Princeton University found that White job applicants with criminal records on their resume received more callbacks than identically-qualified African-American applicants with no criminal record. A friend-of-the-court brief filed by The Opportunity Agenda assembled much of this evidence.

As Justice Ginsburg noted in her dissent, fire departments around the country, including in New Haven, have a long history of excluding minorities and women. And that history is often perpetuated today, through old boy networks, word-of-mouth hiring, and, frequently, flawed and biased testing procedures. As Justice Ginsburg explained in her dissent, "while many Caucasian applicants could obtain materials and assistance from relatives in the fire service, the over-whelming majority of minority applicants were 'first-generation firefighters' without such support networks."

Despite the Court's disappointing ruling, the law still requires employers to avoid policies that are discriminatory in practice, and there is still a range of steps that employers can take voluntarily to make sure they are providing equal opportunity in the workplace. Specifically, for example, employers must scrutinize their selection procedures closely for fairness and accuracy before administering them to actual candidates. And when there appears to be discrimination in practice, they need to collect additional information about potential flaws and alternatives before acting either way.

Another important step is moving toward more accurate and comprehensive selection criteria, rather than written tests, especially for jobs like fire department captain, that focus on leadership and decision-making ability in the field. Bridgeport, Connecticut and many other departments use assessment centers that effectively measure leadership and communication skills, as well as applicants' ability to handle emergencies. Bridgeport's system promotes the most highly qualified candidates and, unlike New Haven, that city's fire lieutenants and captains are largely proportionate to the city's Latino and African-American populations. As Matthew Colangelo of the NAACP Legal Defense Fund told *The New York Times*, "Most cities have long since realized that a pencil and paper test, which largely measures memorization, is not the best way to identify who will be the best leader."

Now that the case has been decided, the Obama administration has an important role to play by giving employers guidance on their equal opportunity obligations in light of the decision. The Equal Employment Opportunity Commission, the Department of Justice, and the Labor Department should work together to provide clear guidelines and practical recommendations.

That task has greater urgency today, because of federal economic stimulus investments that the White House says will create or save 3.5 million jobs. Ensuring an equal opportunity to access those jobs irrespective of race and gender is the responsibility, not only of enlightened employers, but also of our elected leaders.

Alan Jenkins is the executive director and co-founder of The Opportunity Agenda. The Opportunity Agenda was founded in 2004 with the mission of building the national will to expand opportunity in America. Republished with permission. All rights reserved.

Supreme Court Hands Down Decisions on Two Provisions of the Voting Rights Act

NAACP Legal Defense and Educational Fund

This past term, the U.S. Supreme Court ruled on two important cases that reinterpret two key provisions of the Voting Rights Act (VRA) of 1965, one of the nation's most effective civil rights laws – *Bartlett v. Strickland* and *Northwest Austin Municipal Utility District No. 1 v. Holder*.

Bartlett v. Strickland

The Court issued a ruling on March 9 in *Bartlett v. Strickland*, a case involving an interpretation of Section 2 of the VRA. Section 2, which prohibits vote dilution and other voting discrimination on account of race, is designed to ensure enforcement of the 15th Amendment. In this North Carolina case, the state argued that compliance with Section 2 of the VRA required the state to deviate from certain redistricting criteria in order to preserve an opportunity district that was less than 40 percent Black but one in which Black voters formed coalitions with crossover voters to elect the minority candidate of choice.

The Court decided that Section 2 of the VRA does not require the drawing of districts in which racial minorities would make up less than 50 percent of the voting age population of the district. While officials remain free to draw or have discretion to create these coalition districts, the Court's ruling establishes that these districts are not required by Section 2, and thus cannot be defended on that basis in most circumstances.

The decision could have a significant impact in the post-2010 redistricting cycle.

Even as the Court announced a stringent standard that must be met by litigants in future Section 2 cases, Justice Anthony Kennedy, in his plurality opinion which was

joined by Chief Justice John Roberts and Justice Samuel Alito, recognized the incomplete state of America's efforts to eradicate entrenched voting discrimination, observing that: "racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and tradition..."

Northwest Austin Municipal Utility District No. 1 v. Holder

The U.S. Supreme Court rejected a challenge to the constitutionality of the VRA.

In an opinion written by Chief Justice John Roberts and joined by seven other justices, the Court declared that "the historic accomplishments of the Voting Rights Act are undeniable." It also stated that Section 5 of the law – the provision under specific challenge – was critically important in preventing and addressing voting discrimination faced by citizens in jurisdictions across the country.

Section 5 requires some entire states and some jurisdictions within other states which have a history of discrimination in voting to obtain permission, or "preclearance," from the Department of Justice or special federal courts before changing voting procedures.

The NAACP Legal Defense and Educational Fund (LDF) was one of the organizations contributing a friend-of-the-court brief in the highly-charged case. Debo P. Adegbile, director of litigation, argued the case before the Court in April, along with the federal government's Deputy Solicitor General Neal Katyal.

John Payton, president and director-counsel of LDF, said in a statement after the ruling, “The entire thrust of LDF’s argument was that Section 5 remains critical to our democracy, and however grudgingly, the Court acknowledges that in its opinion today.”

Payton characterized the ruling as “unusually harmonious,” saying it “upholds the constitutionality of an essential core protection of our democracy. . . . Section 5 has long been symbolic of the nation’s long and unsteady march toward greater political equality. Without its protection, our nation would face the grave risk of significant backsliding and retrenchment in the fragile gains that have been made.”

“The utility district brought this case to tear out the heart of the Voting Rights Act,” said Adegbile. “Today, it failed. The Voting Rights Act remains one of Congress’s greatest legacies.”

The Court’s ruling expanded the number of jurisdictions that can seek to “bailout” or exempt themselves from pre-clearance. However, no Section 5-covered jurisdiction can do so without proving it’s had a clean bill of health for a 10-year period.

The bailout provision has proven workable and achievable for those jurisdictions that have sought it, LDF attorneys said. They added, however, that it remains to be seen how the Court’s interpretation of the bailout provision will impact enforcement of Section 5. If, for any reason, the Court’s ruling renders Section 5 unworkable in the future, Congress could always amend the statute.

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Supreme Court Rejects Mixed Motive in Age Discrimination Case

By the National Senior Citizens Law Center

On June 18, 2009, the Supreme Court held 5-4 that mixed-motive claims are never permissible under the Age Discrimination in Employment Act (ADEA).

Mixed-motive claims refer to adverse employer decisions that may be motivated by both legitimate and illegitimate reasons (such as race, gender, national origin, or religion). In *Gross v. FBL Financial Servs. Inc.*, the Court distinguished precedent interpreting language in Title VII of the Civil Rights Act from language in the ADEA, holding that unlike race and sex discrimination under Title VII, age discrimination claims require the plaintiff to show that age was the “but-for” or sole cause of an adverse employment action. Justice Thomas wrote for the Court, joined by Chief Justice Roberts and Justices Kennedy, Scalia and Alito. Justices Stevens and Breyer wrote dissents on behalf of themselves and Justices Souter and Ginsburg.

Jack Gross, 54, was transferred from his position at FBL and his former job responsibilities were reassigned to a younger worker. FBL defended its action as part of a corporate restructuring. The district court gave a mixed-motive jury instruction, and Gross won a substantial award for lost compensation. The Eighth Circuit Court of Appeals held that a plaintiff must present direct (as opposed to circumstantial) evidence of discrimination to obtain a mixed-motive instruction. The Supreme Court granted cert. on the question of whether direct evidence is specifically required for ADEA mixed-motive claims, or whether any evidence will suffice, as is true under Title VII. See *Desert Palace v. Costa*, 539 U.S. 90 (2003).

Instead of deciding this question, the Court instead considered and accepted the argument, raised for the first time in FBL's reply brief and not briefed by Gross or

amici, that mixed-motive claims are barred under the ADEA. While the dissenters attacked this course of action as “irresponsible” and “unnecessary lawmaking,” Thomas defended it under the Court's rule that it may consider “every subsidiary question fairly included” in the question presented.

The Court distinguished *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), which held that the “because of” language of Title VII permitted mixed-motive claims. Although the ADEA's language is identical to the language interpreted in *Price-Waterhouse*, 29 U.S.C. s 623(a)(1), Thomas distinguished that case. He emphasized that Congress, in the 1991 Civil Rights Act, specifically codified *Price-Waterhouse's* “motivating factor” test for Title VII but not for the ADEA. 42 U.S.C. s 2000e-5(g)(2)(B). Although the purpose of this amendment was only to eliminate a Title VII affirmative defense also created by *Price-Waterhouse*, Thomas reasoned that Congress made a clear, deliberate choice to permit mixed-motive claims under one statute but not the other.

Having distinguished *Price-Waterhouse*, Thomas stated that the “ordinary meaning” of “because of” is “solely because of,” citing dictionary definitions and cases interpreting unrelated statutes. Although this was precisely the position of the dissent in *Price-Waterhouse*, Thomas made the bold assertion that “it is far from clear” that *Price-Waterhouse* would be decided the same way today. Remarkably, Thomas appeared to suggest that today's Court has generally abandoned a flexible, purposive approach to statutory interpretation in favor of a more mechanistic, literal approach. Thomas further stated that *Price-Waterhouse* should not be “extended” because its burden-shifting framework has proved to be “difficult to apply.”

The majority concluded that under the ADEA, a plaintiff must show by a preponderance of evidence that age was a "but-for" cause of the employer's actions, and the employer need never show that it would have made the same decision regardless of age. The result is to make age discrimination claims substantially harder to win than race or sex discrimination claims.

Justice Stevens attacked the majority for its "utter disregard of our precedent and Congress's intent" in resurrecting a but-for standard long since rejected by both the Court and Congress. He argued that "the most natural reading" of "because of...age" is to prohibit actions motivated in whole or in part by age, and that the dictionary definitions cited by Thomas simply did not support the majority's conclusion. Stevens also argued that it is not for the Court to reject as "unworkable" a mixed-motive framework specifically blessed by Congress, albeit under a slightly different statute. Stevens concluded that mixed-motive claims are viable under the ADEA, and per *Desert Palace*, do not depend on any distinction between direct and circumstantial evidence.

Justice Breyer attacked the majority for failing to explain why "because of" must mean "but for." He noted that while a but-for standard may be straightforward in tort cases involves only physical causation, but it is much more difficult to questions of motive. Breyer suggested that the pre-amendment *Price-Waterhouse* standard, affording an affirmative defense where the defendant shows it would have made the same decision regardless of age, would be appropriate, and that the instruction in this case was valid under that standard.

On October 6, Congress introduced a bill in both the Senate and the House of Representatives that will overturn the Court's decision in *Gross* and restore the rights of older workers facing age discrimination to what it has been for decades. A broad coalition of civil rights groups and workers' rights advocates has formed to urge Congress to pass this bill and ensure a consistent standard for all employees facing employment discrimination or retaliation.

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A Successful Digital Transition

Jenna Wandres

At midnight on June 12, 2009, the nation's full-power television stations turned off their analog signals and began broadcasting exclusively in digital. The new digital service offered many benefits to TV viewers, including sharper images, superior sound, and more channels. However, the switch to digital also posed a massive challenge.

The digital transition disproportionately impacted low-income Americans, seniors, people with disabilities, non-English speakers, and minorities. Members of these communities – communities served by The Leadership Conference – were disproportionately reliant on free over-the-air television as their lifeline to important news, weather, or public safety information.

In order to prepare these millions of vulnerable viewers,

The Leadership Conference Education Fund developed a grassroots outreach and support program in seven markets nationwide. Working with local community-based organizations, The Education Fund set up DTV assistance centers where advocates and volunteers helped community members prepare for the transition. Campaign outreach work included: helping individuals apply for coupons; distributing donated coupons to those most in need; demonstrating how to install converter boxes; troubleshooting antenna needs; providing outreach in more than 10 languages; and holding ethnic media briefings.

Through partnerships with approximately 100 local community based organizations and the work of local coordinators, The Education Fund provided outreach and direct assistance to nearly a quarter million people most in need.



A pile of donated converter boxes which were distributed to residents of a group house in Seattle.



DTV Assistance on-the-ground campaign cities:

Atlanta, GA
Detroit, MI
Minneapolis, MN
Portland, OR
San Antonio, TX
San Francisco, CA
Seattle, WA



Photo Captions

(1) A group of volunteers in prepare to do an informational DTV canvass in an Atlanta neighborhood; (2) Volunteers in Detroit run a technical assistance phone bank on transition day; (3) Advocates help elderly community members configure their converter boxes at the Self-Help for the Elderly DTV assistance center in San Francisco; (4) Interpreters help deaf and hard-of-hearing community members learn about the transition in San Antonio; (5) Residents of a group home in Seattle learn how to set up their new converter boxes; (6) Volunteers help Minneapolis residents apply for government converter box coupons.

(1)	
(2)	
(3)	(6)
(4)	(5)



Census 2010: Civil Rights Community Works to Ensure a Fair, Accurate Count

Corrine Yu

In just a few months, the great national headcount will begin. The census is the nation's largest peacetime mobilization of personnel and resources, employing more than a million temporary workers during peak operations. Mandated by the Constitution, the decennial census provides information that is the cornerstone of knowledge about the American people. It is the basis for virtually all demographic and socioeconomic information used by educators, policymakers, and community leaders.

Census data directly affect representation in Congress and Electoral College allocations, federal spending on many important programs, compliance with federal civil rights laws, and private sector decisions on investment and location of facilities. Every ten years, census population counts are used to reapportion the 435 seats in the House of Representatives among the states and then to draw legislative districts within each state. The number of electors each state receives for presidential elections is the number in its congressional delegation (number of representatives in the House and Senate).

In addition, census data directly affect decisions made on all matters of national and local importance, including education, employment, veterans' services, public health care, rural development, the environment, transportation, and housing. Many federal programs are statutorily required to use decennial data to develop, evaluate, and implement their programs. Federal, state, and county governments use census information to guide the annual distribution of hundreds of billions of dollars for critical services. The data are also used to monitor and enforce compliance with civil rights statutes, including the Voting Rights Act of 1965, and employment, housing, lending, and education anti-discrimination laws.

Counting every person residing in the United States is a difficult endeavor, and despite the Census Bureau's best efforts, some households are missed by the count; some households are counted more than once; and still others respond with incorrect information. However, because the accuracy of the census directly affects our nation's ability to ensure equal representation and equal access to important governmental resources for all Americans, ensuring a fair and accurate census must be regarded as one of the most significant civil rights issues facing the country today.

Overview of the 2010 Census Plan

The first U.S. census took place in 1790, when U.S. Marshals rode out on horseback to count the populations of the 13 new states of the United States. For the 2010 census, some \$7 billion worth of research, planning, and preparation has already been conducted. As required by law, the Census Bureau submitted to Congress the topics and questions two years before the count. Other steps in the process include printing more than 200 million questionnaires, opening local offices, and recruiting and training census takers.

The 2010 census includes the most significant change to the census since 1930. In 2010, every household will receive a short form census consisting of ten questions, covering six topics. The six topics are:

- Tenure: Is the home owned or rented?
- Relationship: How are the people in the household related to each other?
- Sex
- Age
- Hispanic origin (considered an ethnicity, not a race)
- Race (respondents may choose one or more races).

Meeting the Challenges

Community-based organizations have played an extraordinary role in raising public awareness about the census and promoting participation among the hardest-to-count segments of the population. The Census Bureau, recognizing the pivotal role these organizations and their respected leaders have played in conveying to the public the importance and confidentiality of census response, has established the 2010 Census Partnership Program and is actively seeking cooperation from national, state, local, and neighborhood groups.

The Leadership Conference Education Fund, working with a collaborative of national civil rights groups with expertise in the census—the Asian American Justice Center, the National Association of Latino Elected and Appointed Officials, the NAACP, and the National Congress of American Indians—has launched a national campaign to educate stakeholders, including the civil and human rights community at the national, local, and state levels, about the importance of a fair and accurate 2010 census, and to encourage census participation, especially among the hardest-to-count populations.

More information about the “It’s Time. Make Yourself Count. Census 2010” campaign can be found here:
<http://www.civilrights.org/census/>

Corrine Yu is senior counsel and managing policy director for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund. She manages the “It’s Time. Make Yourself Count. Census 2010” campaign.

Fair Housing Campaign Aims to Protect Americans from Foreclosure and Predatory Lending

Tyler Lewis

The foreclosure crisis continues to wreck havoc on families across the country.

Nearly six million foreclosures have been initiated since 2007 alone, according to the Center for Responsible Lending. It is estimated that 13 million homes will fall into foreclosure during the next five years. And while the foreclosure crisis is hitting homeowners hard, people who rent homes or apartments are not immune to the catastrophe. An estimated 40 percent of people who are facing eviction due to foreclosure in the United States are renters, not homeowners.

Many of these families struggling to keep their homes entered into predatory, high-risk loans unknowingly and many of them do not know what to do in order to keep their homes.

To help address the foreclosure crisis, the National Fair Housing Alliance (NFHA) and the U.S. Department of Housing and Urban Development (HUD) launched a national media campaign in June to inform Americans about how to avoid foreclosure and predatory, high-risk loans, and how to recognize when they might be experiencing housing or rental discrimination.

The campaign is designed to target:

- families in immediate need to refinance their homes;
- families in or on the brink of foreclosure;
- families facing eviction or already in the rental market; and
- families looking to purchase a home.

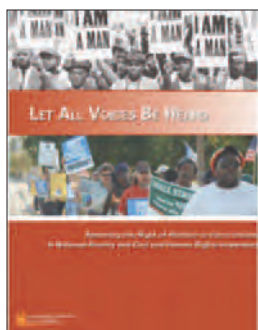
Tyler Lewis is communications manager for The Leadership Conference on Civil and Human Rights and The Leadership Conference Education fund.



Some examples of print and television PSAs geared towards homeowners on how to avoid foreclosure. The PSAs ran in magazines and newspapers and on radio and television in English, Spanish, and Chinese.

Leadership Conference Reports

This year, The Leadership Conference on Civil and Human Rights and the The Leadership Conference Education Fund released a number of reports on important civil rights issues facing the nation. You can find the full reports on our website at:
<http://www.civilrights.org/publications/reports/>.



**Let All Voices Be Heard -
Restoring the Right of
Workers to Form Unions: A
National Priority and Civil
and Human Rights
Imperative – September 2009**

Today, the labor and civil rights movements confront another shared crisis — the systematic, often brutal denial of the right of American

workers "to form, join, or assist labor organizations, to bargain collectively..." This report details how this attack on organizing rights is one piece of an overall roll-back of civil and workers' rights over the past quarter century, as federal policymakers and judges have etched away at rights and protections for all workers.

<http://www.civilrights.org/publications/voices-2009/>



**Counting in the Wake of a
Catastrophe: Challenges and
Recommendations for the
2010 Census in the Gulf Coast
Region – August 2009**

Four years after the catastrophic combination of Hurricanes Katrina and Rita and multiple failures of government preparation and response, this

report reviews factors that contribute to the unique difficulties in obtaining an accurate count in the Gulf Coast region for the 2010 Census. The Education Fund recommends a set of policy and operational changes that would increase the likelihood of a successful count, which is vitally important to continued progress in communities still recovering from the impact of the storms.

<http://www.civilrights.org/publications/gulf-coast-census/>

**Confronting the New Faces of
Hate: Hate Crimes in America
2009 – June 2009**

This report is an update of our 2004 hate crimes report, "Cause for Concern." Sadly, five years later, the problem of hate crimes continues to be a significant national concern that demands priority attention. In the report, The Education Fund analyzes trends in federal hate crimes data — particularly the rise in anti-Latino hate crimes in the wake of the heated national debate over immigration reform — and documents how extremists use the Internet, radio and other forms of media to promote their messages and recruit new members. The report highlights the need for a coordinated response by every sector of society to eradicate this problem.

<http://www.civilrights.org/publications/hatecrimes/>





Low Power Radio: Lost Opportunity or Success on the Dial? – April 2009

Low power radio (LPFM) stations are non-commercial, community-based radio stations that operate at very low power, have a range of only a few miles, and often address specific local concerns. In this report, The Leadership

Conference shows that increasing access to LPFM in an era of mass media consolidation is a critical component of ensuring that diverse viewpoints can be represented over the public airwaves.

<http://www.civilrights.org/publications/low-power/>



Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights – March 2009

Established in 1957, the U.S. Civil Rights Commission has played a crucial role in securing and protecting the civil rights of the American citizens who had been historically disenfranchised and

segregated from mainstream society. But since the 1980s, the commission has been debilitated by efforts to weaken and undermine its integrity and independence. This report chronicles the history of, and the need for, the commission over the years, as well as offers recommendations on how to restore the commission to its original position as a major force for preserving and protecting the civil and human rights of all Americans.

<http://www.civilrights.org/publications/reports/commission/>

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