

# Leadership Conference Education Fund

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# Civil Rights Monitor

# LEADERSHIP CONFERENCE EDUCATION FUND AND ADVERTISING COUNCIL LAUNCH \$25 MILLION PER YEAR ANTI-DISCRIMINATION MEDIA CAMPAIGN

On June 3, 1992, the Leadership Conference Education Fund and the Advertising Council kicked-off a long-term informational campaign to promote interracial understanding, combat bigotry of all kinds, and help build a new national consensus to eliminate discrimination in every sector of society. The Ad Council's Ethnic Perspectives Committee has been planning strategy with the Leadership Conference Education Fund since last fall. The Campaign Against Discrimination is expected to continue well into the next century, with approximately \$25 million in donated media time and space annually.

Beginning with 30-second public service announcements available for broadcast by television networks, cable systems, and local stations shortly, the media campaign will also include advertisements on radio, in newspapers and magazines, and on billboards. The media campaign's strategy is to persuade people to face the fact of discrimination and encourage them to talk about it.

The first commercial, which is already on the air, opens in a hospital nursery with babies of various races in cribs side by side. Then it races through a montage of harsh scenes of violence, prejudice, and demonstrations, closing on a hillside graveyard. The narrator reports as the babies sleep in the nursery: "Here's one time it doesn't matter who your neighbor is." And when the cemetery is seen, "Here's the other." The message: "Life's too short. Stop the hate."

Future messages will include encouraging individual Americans to overcome the prejudices in their own minds and among their families and friends, and urging Americans young and old to do something positive every day from making new friends from different backgrounds to refusing to tell or tolerate ethnic or sexist "jokes." While most advertising campaigns target narrow audiences of people with common differences from the general public, the anti-discrimination effort will have broad appeal. It is designed to inform, influence, and stimulate positive action on the part of all adults and older children.

As the campaign develops, public service announcements may include information about opportunities for volunteer service where people can join with people from all backgrounds to serve their communities. Many organizations affiliated with the Leadership Conference, including civil rights, religious, education, labor, and community service groups, have local branches where people can volunteer.

The Mingo Group, a New York Advertising firm owned and managed by blacks, has volunteered its time and talents for the first television phase of the media campaign. Broadcast and cable networks, local TV and radio stations, and newspapers and magazines will be providing time and space at no charge.

At a press conference on June 3, to announce the campaign Ralph G. Neas, Executive Director of the LCEF, and Ruth Wooden, President of the Ad Council, said:

"The recent events in Los Angeles underscore the urgency of the public education campaign we've been planning for many months to remind Americans that we can and must get along with each other in our workplaces, our communities, our schools, and our entire society."

Neas went on to say that:

"By the year 2000, approximately 80 percent of the people entering America's work force will be minorities and women. If the 21st Century is to be another American century, then our society will have to make our diversity a source of strength, not discord.

"Americans of every heritage need to learn new ways of working together and building a society where all of our people can achieve their God-given potential, without being held back by discrimination of any kind. Television has a unique capacity to help change how people think about our society and about one another, and we're going to put that power to good use."

## LCEF Civil Rights Education Campaign

The project with the Ad Council is one component of LCEF's Civil Rights Education Campaign which was undertaken to inform the public about the current state of civil rights and the need for the nation to remain vigilant in its struggle for equality of opportunity for all Americans. LCEF thought it was imperative for the civil rights community to apprise the public of the positive changes that have occurred in the country because of the Nation's commitment to civil rights and to discuss what remains to be accomplished. It was also our view that the attitudes of too many Americans towards civil rights were being formed by misinformation, and it was important that the civil rights community provide an accurate view of the principles of equal opportunity. A second component of the project is a Media/Information Package on a variety of civil rights and social justice issues. We will write a series of fact sheets that "tell the truth" about such issues as affirmative action, welfare, crime, the overall civil rights agenda, bilingualism, and the Americans with Disabilities Act.

The project will also develop articles and working papers that will address a number of civil rights issues with the focus on why a national commitment to remedying discrimination is good for the country. The articles will be disseminated through op-eds, popular magazines, union newspapers etc.

Long-range plans include establishing a summer youth institute to which students from colleges in Washington, D.C., Maryland, and Virginia as well as from local high schools would be invited. The institute would include seminars on civil rights issues, as well as the rationale behind remedies developed to address discrimination, and it would provide a historical perspective.

The LCEF Civil Rights Education Campaign is supported by grants from the Carnegie Corporation, Ford Foundation, Rockefeller Foundation, and William Penn Foundation.

## SUPREME COURT RULES IN SCHOOL DESEGREGATION CASE

On March 31, 1992, the U.S. Supreme Court ruled 8-0 that school districts could satisfy their desegregation obligations on an "incremental" basis. The Court reversed a decision of the Eleventh Circuit Court of Appeals holding that the DeKalb County, Georgia school system (DCSS) had not sufficiently erased the legacy of segregation to warrant the court's relinquishing jurisdiction and closing the case, and stated that school officials did not have to consider broader measures including busing to counter increasingly segregated housing patterns, *Freeman v. Pitts*, No. 89-1290. The Court remanded the case to the District Court with instructions that "a district court is permitted to withdraw judicial supervision with respect to discrete categories in which the school district has achieved compliance with a court-ordered desegregation plan. A district court, [the Court said] need not retain active control over every aspect of school administration until a school district has demonstrated unitary status in all facets of its system."

While all eight justices concurred in the judgment they were divided as to what factors the district court should consider in determining whether to relinquish judicial control of the school system. Justice Kennedy wrote the opinion for the Court in which Chief Justice Rehnquist, and Justices White, Scalia and Souter joined. Justices Scalia and Souter filed separate concurring opinions.

Justice Blackmun filed an opinion concurring in the judgment but wrote separately "to be precise about...what it means for the District Court in this case to retain jurisdiction while relinquishing 'supervision and control' over a subpart of a school system under a desegregation decree...[and] to elaborate on factors the District Court should consider in determining whether racial imbalance is traceable to board actions and to indicate where... [the District Court] failed to apply these standards." His opinion was joined by Justices Stevens and O'Connor. Justice Thomas did not take part in the consideration of the case as he had not yet been confirmed when the oral argument was held in October 1991.

### Background

The Supreme Court heard oral argument in this case on October 7, 1991. The issues before the Court were whether compliance with a desegregation order could be attained on a piecemeal basis, i.e., student assignments, faculty, staff, transportation, extra curricular activities, facilities (the *Green* factors as outlined by the Supreme Court in *Green v. County School Board of New Kent County* in 1968) and to what extent a school district can be held responsible to counter the effects of demographic changes that occurred after it initially

desegregated its schools.

Prior to 1966, the DeKalb County School District operated a racially segregated school system. In June 1969, after a "freedom of choice" plan had proved ineffective, the district court ordered the school superintendent to close all remaining segregated African American schools, and to adopt a neighborhood school attendance policy. The African American plaintiffs returned to court several times in the 1970s and early 80s to challenge school board actions that they alleged were in violation of the court order.

In 1986, the school board filed a motion seeking final dismissal of the case. In 1988, the district court denied the request for dismissal, and ordered the system to "equally distribute its experienced teachers and teachers with advanced degrees and to equalize expenditures among African American and white students." However, the district court refused "to impose additional duties on the DCSS in the areas of student assignment, transportation, and extracurricular activities." Both parties appealed.

The Court of Appeals affirmed in part, reversed in part, and remanded the case. It held that "a school system does not achieve unitary status until it maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extra curricular activities, and facilities." On the issue of demographic changes, the court rejected the lower court's finding that the school district was not required "to eradicate segregation caused by demographic changes."

For further discussion, see *CIVIL RIGHTS MONITOR*, Spring 1991, Winter 1992.

## The Opinions

Justice Kennedy states in his opinion for the Court that "in the course of supervising desegregation plans, federal courts have the authority to relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every area of school operations."

The opinion further states that:

"The Court of Appeals was mistaken in ruling that our opinion in *Swann* requires 'awkward,' 'inconvenient' and 'even bizarre' measures to achieve racial balance in student assignments in the last phases of carrying out a decree, when the imbalance is attributable neither to the prior de jure system nor to a later violation by the school district but rather to independent demographic factors."

*Swann* is a 1971 unanimous Supreme Court decision in which the Court approved a comprehensive desegregation plan and held that bus transportation is "a normal and accepted tool of educational policy" and that "desegregation plans cannot be limited to the walk-in school."

In discussing the demographics of DeKalb County, Kennedy says:

"The findings of the District Court that the population changes, which occurred in DeKalb County were not caused by the policies of the school district but rather by independent factors, are consistent with the mobility that is a distinct characteristic of our society.

"Residential housing choices and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies."

Finally, Justice Kennedy addresses the question whether the district court should retain control and supervision over student assignment in order to achieve compliance in other components of the school system. He responds in the negative:

"It is true that the school system was not in compliance with respect to faculty assignments, but the record does not show that student reassignments would be a feasible or practicable way to remedy this deficit."

## Concurring Opinions

Justice Souter while joining the opinion of the Court writes separately to explain his "understanding of the enquiry required by a district court applying the principle...[the Court] set out today." Souter asserts that while the Court recognizes that demographic changes that affect the racial composition of schools may have "no causal link to prior *de jure* segregation" it may be necessary for the court to continue to supervise student assignments in order to remedy vestiges of segregation in other areas. There are at least two other "possible causal relationships between or among unconstitutional acts of school segregation and various *Green*-type factors."

"The first would occur when demographic change toward segregated residential patterns is itself caused by past school segregation and the patterns of thinking that segregation creates. Such demographic change is not an independent, supervening cause of racial imbalance in the student body, and we have said before that when demographic change is not independent of efforts to segregate, the causal relationship may be considered in fashioning a school desegregation remedy....

"The second and related causal relationship would occur after the district court has relinquished supervision over a remedied aspect of the school system, when future imbalance in that remedied *Green*-type factor (here, student assignments) would be caused by remaining vestiges of the dual system."

Justice Blackmun writes a second concurring opinion with Justices Stevens and O'Connor signing on. Blackmun writes that when a district court retains jurisdiction over a case while relinquishing supervision and control over some facets of the school district, "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch...remains enforceable by the district court without any new proof of a constitutional violation, and the school district has the burden of proving that its actions are eradicating the effects of the former *de jure* regime."

Blackmun further states that as the Court's opinion states "the district court must order changes in student assignment if it 'is necessary or practicable to achieve compliance in other facets of the school system'...[or] if the school district's conduct was a 'contributing cause' of the racially identifiable schools."

In discussing the DeKalb County school district's claim that racially segregated schools are the result of demographic factors, Blackmun asserts that "it is not enough, however, for DCSS to establish that demographics exacerbated the problem; it must prove that its own policies did not contribute. Such contribution can occur in at least two ways: DCSS may have contributed to the demographic changes themselves, or it may have contributed directly to the racial imbalance in the schools." Blackmun instructs the District Court to "examine the situation with special care."

Justice Scalia who concurs in the judgment wrote a separate opinion because, he wrote, the "decision turns upon the extraordinarily rare circumstance of a finding that no portion of the current racial imbalance is a remnant of prior *de jure* discrimination." He continues:

"We must resolve if not today, then soon what is to be done in the vast majority of other districts, where, though our cases continue to profess that judicial oversight of school operations is a temporary expedient, democratic processes remain suspended, with no prospect of restoration, 38 years after *Brown v. Board of Education*."

In an editorial in the *Nation* magazine, William Taylor, Vice-President of the LCEF, said that, "What was reported as an 8-0 decision in its result actually reflected a 4 to 4 split in the thinking of the Justices." Mr. Taylor noted that both the Souter and Blackmun concurrences representing the views of four justices, would require school systems to make showings that continued conditions of segregation are not the result of past segregation.

# SENATE JUDICIARY COMMITTEE REPORTS AFFIRMATIVELY THE NOMINATION OF EDWARD CARNES TO THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

On May 7, 1992, the Senate Judiciary Committee by a vote of 10-4 reported out the nomination of Edward Carnes of Alabama to the U.S. Court of Appeals for the Eleventh Circuit to the full Senate. Senators Joseph Biden (D-DE), Edward Kennedy (D-MA), Howard Metzenbaum (D-OH), and Paul Simon (D-IL) voted against the nomination.

Chairman Biden in announcing his opposition said:

"Today, this committee must vote on the nomination of Ed Carnes to serve on the U.S. Court of Appeals for the Eleventh Circuit. After the Supreme Court, the federal courts of appeals are the most important courts in the country the courts of last resort for most litigants...

"My concern is that, based on the record now before the committee, I am not convinced that Mr. Carnes fully appreciates that racial discrimination undermines the essential justness of verdicts and undercuts public confidence in our justice system.

"Mr. Carnes discussed a case handled by his office...in which the prosecuting attorney divided prospective jurors into four categories 'strong,' 'medium,' 'weak,' and 'black.'

"Asked whether he sought permission to confess error in the case, Mr. Carnes said no, noting only that he 'might well have' confessed error in that case had he been attorney general.

"He didn't say as I hoped and expected he would that with such unequivocal evidence, there is no doubt that the case should *not* be pursued on appeal; that if the decision were his, he would not and could not pursue an appeal.

"And again, when asked about this issue, he noted that such a practice is wrong, but stated:

*"Whether it renders a particular trial fundamentally unfair to the defendant and undermines the reliability of a guilty verdict depends upon the facts and circumstances."*

Senator Biden said: "I can think of no worse time for a nominee with [this] record...than in the aftermath of what I believe is a tragedy that occurred in part because of the nature of the jury selection process in Los Angeles."

Senator Kennedy in announcing his opposition said:

"...I am concerned that Mr. Carnes's many years of service as an aggressive advocate for the prosecution in death penalty cases have left him unable or unwilling to recognize the injustices that can and do occur in the criminal justice system.

"Mr. Carnes is not a racist. But he has let his zeal for obtaining and defending death sentences obscure the very real evidence of pervasive race discrimination in the application of the death penalty. Mr. Carnes told the committee that he did not believe that the death penalty is applied in a racially discriminatory way. Yet the General Accounting Office found a 'pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty.'

"In case after case, prosecutors in Alabama, and in other states as well, have excluded all Blacks from juries in cases involving Black defendants. Mr. Carnes and his office

have defended death sentences obtained from these juries, even after the Supreme Court reduced the requirements for proving racial exclusion from juries.

"Mr. Carnes has stated that defendants in capital cases in Alabama receive 'excellent' legal representation. That statement flies in the face of many well-documented instances in which untrained and inexperienced lawyers have failed even to file briefs in death-penalty appeals."

## Background

On January 27, 1992, Edward Carnes, who is 41 years old, was nominated by President Bush to fill the vacant seat on the Eleventh Circuit which covers Alabama, Florida and Georgia. The Eleventh Circuit has a rich legacy of path-breaking decisions in the area of civil rights, many of which were written by recently-retired Judge Frank Johnson whom Carnes will succeed if he is confirmed.

Mr. Carnes has been an Assistant Attorney General for the State of Alabama since 1975 and he has served as the Chief of the Capital Litigation Division of the Attorney General's Office since the early 1980s. In this role he is responsible for representing the state in all capital litigation.

A number of national and Alabama organizations have voiced their opposition to the Carnes nomination including the NAACP, NAACP Legal Defense Fund, the Leadership Conference on Civil Rights, the National Bar Association, Congressional Black Caucus, Southern Christian Leadership Conference, Alabama New South Coalition, Alabama Prison Project, the Southern Center for Human Rights, and Civil Liberties Union of Alabama.

Among Mr. Carnes' supporters are Senator Howell Heflin (AL) and Morris Dees, a civil rights lawyer who heads the Southern Poverty Law Center. In a letter to Senator Biden expressing his support for the nomination, Dees wrote:

"Ed Carnes...has a demonstrated record against racial discrimination. He has successfully prosecuted judicial misconduct charges against two state judges who engaged in racist behavior, and through his efforts both of those judges were removed from the bench. Ed has also tirelessly sought to prohibit the practice of white defendants accused of race crimes using peremptory strikes to remove black citizens from juries. On behalf of the Southern Christian Leadership Conference, I filed an *amicus curiae* brief in support of one of Ed's efforts on that issue. No one has done more on behalf of ensuring the rights of black citizens to serve on juries in cases involving hate crimes against blacks that Ed has."

Retired Judge Frank Johnson who Carnes will succeed if confirmed was quoted in the Birmingham News as saying of the nominee, "He's good at oral argument" which should make him a "very good" choice for the appeals court.

Opponents assert that Ed Carnes has been a defender of the racially biased criminal justice system in Alabama. They argue that Carnes has defended on appeal a number of cases in which African-Americans were systematically struck from juries, has defended Alabama's system of capital punishment which executes African-American defendants disproportionately; and that he lobbied against the proposed federal Racial Justice Act which seeks to ensure that the death penalty is not applied in a discriminatory manner, and lobbied for another provision in proposed federal crime legislation to limit the number of times a death row defendant may ask for review of his or her case.

In testimony before the Senate Judiciary Committee, Mr. Carnes said:

"I do not believe that capital punishment is applied in a racially discriminatory manner in Alabama or in the nation. If I thought that, I would not support it, much less have spent the time I have spent working in the area."

The Alliance for Justice in a recent report refers to Carnes' statement before the Senate Judiciary Committee that there is no racial discrimination in the criminal justice system in Alabama and then cites cases that the Alliance says "raise questions about not only his sensitivity to such issues but also his candor."

For example, the Alliance reports:

"Patricia Jackson is an African-American woman sentenced to death by an all-white jury after the prosecutor struck all 12 black persons from the jury. A federal judge found not only racial discrimination, but incompetent legal representation. Carnes acknowledged in his answer to Chairman Biden that there was racial discrimination in selecting her jury. But Carnes personally argued to the Court of Appeals that this biased action should be ignored and Patricia Jackson executed because of a procedural technicality.

"In the case of *Ex Parte Floyd*, the prosecutor used eleven peremptory strikes to remove all qualified black jurors, and an all-white jury was empaneled. Floyd's lawyer did not raise this issue on appeal because the Supreme Court case of *Batson v. Kentucky*, outlawing such discrimination, had not yet been decided. When *Batson* was announced, Floyd's attorney raised the issue, but Carnes argued that it was untimely. However, the court rejected his argument, reached the merits, and found that intentional racial discrimination had marred jury selection in the case."

In a May 20, 1992 letter to members of the U.S. Senate, civil rights leaders Benjamin L. Hooks, Executive Director of the NAACP, Coretta Scott King, President, Martin Luther King Center for Nonviolent Social Change, Joseph E. Lowery, President, Southern Christian Leadership Conference, and Julius Chambers, Director-Counsel, NAACP Legal Defense and Education Fund, wrote:

"We oppose Mr. Carnes' nomination for several reasons...We...believe that...our concerns are especially noteworthy, and particularly so, in the wake of the Rodney King trial verdict.

"First, as an Assistant Attorney General and Chief of the Capital Litigation Division, Mr. Carnes has defended numerous cases where African Americans have been systematically stricken from juries on technical grounds that were subsequently found to have been a pretext for racial discrimination. Certainly invidious racial discrimination is always repugnant in whatever form; but it is especially disturbing in the context of a criminal trial where a death sentence may result, or where guilt or innocence may hang in the balance....

"Second, Mr. Carnes has frequently used his position with the Attorney General's office to become a national policy advocate. In that capacity, he has often denied the existence of racial factors in death penalty sentencing...Mr. Carnes' views on the possibility of racial discrimination in death penalty sentencing are in direct conflict with the practice of prosecutors in removing blacks from juries and compelling evidence indicating patterns of racial discrimination in the application of the death penalty..."

The Carnes nomination may be voted on by the full Senate in middle to late June.

## LEGISLATIVE UPDATES

### Motor Voter Registration Bill Passed by Congress

On June 16, the House by a vote of 268-153 passed the Motor Voter Registration Bill. The Senate passed the bill on May 20, 1992, by a vote of 61-38. The bill, which President Bush is expected to veto, would allow people to register when they apply for or renew their drivers' licenses as well as when they apply for public services such as welfare and unemployment compensation or marriages licenses or hunting permits. Twenty-seven states already have in place a system of motor-voter registration.

Rules Committee Chairman Wendell H. Ford (D-KY), the principal Senate sponsor of the bill, said that the bill will increase the opportunity for citizens to participate in the political process. "No matter what color, what station in life, whether handicapped or healthy, young or old...this will increase the opportunity for people to vote," Ford said (Congressional Quarterly, May 23, 1992).

Last summer the Senate twice failed to invoke cloture (the three-fifths majority vote (60) necessary to limit debate) on the motion to proceed to the bill. A similar bill died in the 101st Congress after a failed cloture vote.



The House of Representatives passed a similar bill in the previous Congress by a vote of 289-132.

## The Voting Rights Act

In the Senate, on June 18, the Voting Rights Language Assistance Amendments, S. 2236, was reported out of the Senate Judiciary Committee by a vote of 12-2.

In the House, on May 7, the Voting Rights Improvement Act, H.R. 4312, which was introduced by the Hispanic Caucus, was adopted by the House Subcommittee on Civil and Constitutional Rights and reported to the Judiciary Committee. On June 5, the Judiciary Committee reported out the bill by voice vote without amendment.

### Background

Section 203, one of the bilingual election requirements provisions, of the Voting Rights Act (VRA) is due to expire in August 1992. If the provisions are not reauthorized sixty-eight jurisdictions that currently provide bilingual assistance will no longer be required to do so. Section 203 and two other language assistance provisions were added to the Voting Rights Act in 1975 to address the exclusion of limited English proficient voting age citizens from effective participation in the electoral process. Section 203 is based upon a congressional finding in the 1975 Act that the unequal educational opportunities commonly suffered by language minorities tend to result in high illiteracy rates and low voting participation, thus preventing these citizens from exercising their right to vote.

In addition to extension, the bill contains an alternative to the general coverage provision which civil rights advocates are supporting, to permit a numerical threshold of 10,000 limited English-proficient persons in one of the protected groups to trigger coverage in lieu of the five percent trigger now contained in section 203. Civil rights groups also support a new alternative in the provision for coverage of Native Americans to assure that Native Americans living on reservations that cross-county or state lines will be entitled to bilingual assistance when five percent of the reservation voting-age population is limited-English proficient. Presently, Native Americans are covered only where five percent of a county's voting age population consists of limited-English speaking Native Americans. Both bills pending in Congress contain these two amendments.

On May 7, the House Subcommittee on Civil and Constitutional Rights also reported out the Voting Rights Extension Act of 1992 "to amend the Voting Rights Act to clarify certain aspects of its coverage and to provide for the recovery of additional litigation expenses by litigants." On June 5, the Judiciary Committee reported out the bill without amendment by voice vote.

The bill seeks to overturn the Supreme Court's 6-3 decision in *Presley v. Etowah County Commission* that section 5 of the Voting Rights Act does not require covered jurisdictions to submit changes in the decision-making authority or allocation of power among state and local officials to the Department of Justice or to the U.S. District Court for the District of Columbia for pre-clearance. The majority asserted that "such changes have no direct relation to, or impact on, voting." For a thorough discussion of *Presley* see the *CIVIL RIGHTS MONITOR*, Spring 1992.

The bill would also overturn *Rojas v. Victoria Independent School District* which also involved a change in the procedure or authority of a governing body following the election of a minority member. After the election of the first Latina member of the school board, the board voted to change the procedural rules to give the chair discretion to require two rather than one vote in order to place an item on the agenda for discussion.

The bill also amends the Voting Rights Act to allow a prevailing party, other than the United States, to collect "reasonable expert expenses, and other reasonable litigation expenses."

## Equal Remedies Act

The Equal Remedies Act (S. 2062/ H.R. 3975), to remove the cap on monetary damages available under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act to women, persons with disabilities, and certain religious groups who are victims of intentional job discrimination, was approved by the Senate Labor and Human Resources Committee without amendment on a voice vote on March 11, 1992.

The principal sponsors are Sen. Edward Kennedy (D-MA) in the Senate, where the bill has 34 co-sponsors, and Rep. Barbara Kennelly (D-CT) in the House of Representatives, where H.R. 3975 has 115 co-sponsors as of June 10, 1992.

The Senate committee report was filed on May 21, 1992. The committee found that:

"The limitations on damages create an unjustifiable hierarchy of victims of intentional employment discrimination. Two people who suffer identical harm may not receive the same remedies, even after separate juries decide that they deserve equal compensation..."

"Moreover, the caps deny a full remedy to the most severely injured victims...[and]...protect the worst violators of America's anti-discrimination laws....Those who act in the most outrageous and indefensible ways or cause the most severe harm, will be shielded from full liability."

The report concludes:

"Congress must decide whether it will accept a legal regime which values the injuries suffered by women, religious minorities, and people with disabilities less than identical injuries suffered by others, and which on its face discriminates between different victims of intentional discrimination. Congress should not deny the right of those who are injured by intentional discrimination to full compensation, and fair and equal treatment, in the nation's courts. For this reason, the committee concludes that the Equal Remedies Act must become law."

The bill is expected to reach the Senate floor for debate and a vote in June. Some of the bill's opponents plan to introduce amendments on tort reform and product liability, issues that would complicate the debate and could hurt chances of passage of S. 2062. The bill's supporters hope to defeat all amendments in order to keep the bill as "clean" and noncontroversial as possible.

The House leadership has indicated its intention to take up the legislation as soon as possible after Senate passage.

## **Justice for Wards Cove Workers Act**

The Justice for Wards Cove Workers Act (H.R. 3748, S. 1962) would eliminate an exemption in the 1991 Act which prevents the complaining workers in the *Wards Cove* case from enjoying the broader fair employment protections provided by the Act. The bill was introduced in the last session by Representative Jim McDermott (D-WA) and Senator Brock Adams (D-WA) and presently has 120 cosponsors in the House and 14 in the Senate.

The language in the Civil Rights Act of 1991 that exempts *Wards Cove* provides "notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983." The only known case to which this applies is the *Wards Cove* case itself.

In the Senate, the bill has been reported out of the Labor and Human Resources Committee. In the House it was reported out of the Subcommittee on Civil and Constitutional Rights and is awaiting action by the Judiciary Committee and the Education and Labor Committee.

## **Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) was introduced in the 102nd Congress in January 1991 (H.R. 2, S. 5). A compromise version passed the Senate on October 2, 1991, with a 65-31 roll call vote. A similar version passed the House on November 13, 1991 by a vote of 253-177. The bill now awaits a conference and supporters are hopeful the conference report will be considered by both bodies this summer. President Bush has said he will veto the bill as he did in 1990.

The bill as passed by the Senate and House would provide workers with 12 weeks of unpaid, job-guaranteed leave in the case of a newborn or newly-adopted child, a seriously ill child, parent or spouse, or a serious personal illness. It covers employers with 50 or more employees, and employees must have worked for the employer for one year and 1250 hours for the employer to be eligible. The House bill differs slightly from the Senate bill in provisions for federal employees.

## District of Columbia Statehood

The New Columbia Statehood Act (H.R. 4718), legislation to grant full statehood to the District of Columbia, was introduced by Congresswoman Eleanor Holmes Norton (D-DC) on March 31, 1992.

Rep. Norton, DC's non-voting representative in Congress, and the civil rights community are intensifying the campaign for D.C. statehood. A vote is scheduled for later this year.

Arguments put forth by opponents of DC statehood include:

- "The Founding Fathers intentionally failed to grant statehood to DC in the Constitution, so an amendment is necessary to allow statehood;
- "The 23rd Amendment, which grants DC two electoral votes in presidential elections, would have to be repealed before DC could become a state;
- "DC is too small to be a state, and lacks the economic resources to support itself; and
- "If DC wants congressional representation, it should be retroceded to Maryland."

Supporters of statehood counter that these arguments merely mask the true political reasons for opposition: DC would likely elect two liberal Democrats (and possibly two blacks) to the Senate. They say that the District could be admitted to statehood in the same way as other states with simple Congressional approval and the President's signature. Economically, DC has a strong service-sector base, and currently loses revenue because it is prohibited by Congress from taxing income earned in the district by non-DC residents. Statehood would allow DC to negotiate arrangements to recover this revenue, a right enjoyed by all states.

Statehood proponents point to "taxation without representation" (DC pays more federal income tax than eight states) and the denial of the fundamental right of self determination. There is no geographic size requirement for a state to meet, and DC has a larger population than four states.

DC currently lacks autonomy over local matters. The President and Congress must approve all DC law and budgets, including those which allocate only locally-raised revenues. Of the 115 nations with elected national legislatures, the United States is alone in denying representation to the citizens of its capital.

## Civil Liberties Act Amendments of 1992

The following borrows heavily from a memorandum prepared by the Japanese American Citizens League.

The Civil Liberties Act Amendments of 1992 (H.R. 4551, S.2553) would authorize an additional \$320 million to fulfill the commitment of the Civil Liberties Act of 1988 (Public Law 100383), which officially apologizes for the internment of Japanese Americans during World War II and provides reparations to the surviving internees.

The CLA of 1988 established the Civil Liberties Public Education Fund to make reparation payments of \$20,000 to each former internee living on the date of enactment and to provide for a public fund to finance historical research and education about the internment so that similar violations of civil and constitutional rights would never happen again.

It was estimated that there were 60,000 eligible persons on August 10, 1988; \$1.25 billion was authorized to make these payments. However, the Department of Justice now estimates that the original figure was too low and that a total of 75,000 redress payments will be needed to complete the program. An increase in the authorization from \$250 million (which the President has already requested for Fiscal Year 1993) to \$320 million will be necessary in order to complete the payments as well as to fulfill the education purpose of the Act.

The bill was introduced in the House on March 24, 1992 by Majority Leader Richard Gephardt (D-MO) and Republican Whip Newt Gingrich (R-GA). It has been reported out of the Subcommittee on Administrative Law and Governmental Relations and is pending before the Judiciary Committee.

In the Senate, the bill was introduced on April 8 by Senator Daniel Inouye (D-HI). Senator John Glenn (D-OH), chair of the Governmental Affairs Committee, is planning to mark up the bill in full committee on June 25 unless a member of the committee objects.

## Balanced Budget Amendment

The Leadership Conference on Civil Rights joined with an array of organizations including labor unions, Common Cause, American Association of Retired Persons, National Council of Jewish Women, Children's Defense Fund, and the National Urban League to oppose an amendment to the Constitution to require a balanced federal budget. The chief sponsors of the amendment are Representative Charles W. Stenholm (D-TX), and Senator Paul Simon (D-IL).

On June 11, the amendment was defeated in the House by a vote of 280-153. A constitutional amendment must be passed by a two-thirds majority in both Houses, and then ratified by three-fourths of the states. The vote probably killed the amendment for the year as Senator Simon said he would not seek a vote in the Senate. Supporters said they would push for passage of the amendment in the 103rd Congress.

The Senate and House measures were similar but not identical. Both bills would have required a balanced federal budget each year beginning with the second fiscal year after the amendment was ratified.

In a letter to members of the House, the LCCR wrote:

"Passage of a balanced budget amendment would severely damage the U.S. economy and require the government to direct public policy by process rather than by substantive need. According to a study by the Wharton Econometrics Forecasting Associates, a balanced budget amendment would result in decreased economic output, higher deficits for all state and local governments, higher individual and corporate tax collections, lower personal income.

"A balanced budget amendment would likely result in damaging and unfair cuts in federal domestic programs. As low- and middle-income families receive most of their government benefits through programs (as opposed to tax subsidies for upper-income Americans), the burdens of deficit reduction would fall disproportionately on those in the bottom half of the incomescale. And lower income Americans are disproportionately minorities, older Americans, persons with disabilities, and children.

"To consider seriously a balanced budget amendment is to ignore the clarion call sounded by the recent events in Los Angeles. The balanced budget amendment debate diverts attention from the reality exposed so powerfully by those incidents: that government must be able to respond effectively to our nation's pressing social and economic problems, not paralyze itself with constitutional restrictions."

On June 2, a group of more than 400 economists including seven Nobel laureates issued a statement to warn the President and the Congress that the Balanced Budget Amendment to the Constitution "is a misguided initiative that would produce adverse economic consequences." The statement provides:

"When the private economy is in recession a constitutional requirement that would force cuts in public spending or tax increases could worsen the economic downturn, causing greater loss of jobs, production, and income."

Readers wanting more information on the Balanced Budget Amendment should write to the Center on Budget and Policy Priorities, 777 North Capitol Street, N.E., Suite 705, Washington, D.C. 20002 or AFSCME, Legislative Department, 1625 L Street, NW, Washington, D.C. 20036-5687.

## FAIR EMPLOYMENT COUNCIL ISSUES REPORT ON DISCRIMINATION AGAINST LATINO JOB APPLICANTS

The Fair Employment Council of Greater Washington has released the findings of a study that examined discrimination against Latinos in the job market in the Washington, D.C. area. The study, *Discrimination Against Latino Job Applicants: A Controlled Experiment* concludes that:

"When an Anglo and a Latino job applicant apply for the same job with the same credentials, Latinos in the Washington are encountering discrimination more than one time in five."

The study paired Anglo and Latino students to act as job applicants for the same job (testers). In each case the Latino had equal or better qualifications than the Anglo applicant. The testers applied for jobs using the telephone or by mailing responses to nearly 500 want ads in newspapers and other sources.

The Council reports:

"The results of this 'controlled experiment' contradict the claims that current hiring practices are effectively colorblind or favor minority applicants. The study concluded that Latinos were treated worse than their Anglo counterparts 22.4 percent of the time. Discrimination was encountered in a broad range of occupations and geographic locations.

"In one case, a position was advertised in a suburban newspaper for an optometrist's receptionist. When the Latino tester called to apply, she was put on hold, then called by the wrong name (Carmen, when she had given her name as Juanita) and told that no further applications were being taken. Her Anglo counterpart, calling thirteen minutes later, was given an appointment for an interview.

"In another case, resumes were mailed to a downtown Washington employment agency specializing in clerical personnel for law firms. The following day, and again three days later, the Anglo tester received a telephone message to call the agency. The Latino tester whose resume showed a higher grade average, faster typing, more computer skills, and more responsible current employment was never called during the 23 days that responses were monitored."

In 1990, the Urban Institute conducted similar experiments using ten pairs of young men one African American and one white -- who were carefully matched on all characteristics that might effect an employment decision and they were trained for the interview process. The study, *Opportunities Diminished, Opportunities Denied*, consisted of 476 audits in Washington, D.C. and Chicago. The authors reported:

"The hiring audit demonstrates that unequal treatment of black job seekers is entrenched and widespread, contradicting claims that hiring practices today either favor blacks or are effectively color blind. Specifically, in one out of five audits, the white applicant was able to advance farther through the hiring process than his equally qualified black counterpart. In other words, the white was able to submit an application, receive a formal interview, or be offered a job when the black was not. Overall, in one out of eight or 15 percent of the audits, the white was offered a job although his equally qualified black partner was not."

A second Urban Institute audit, *Employer Hiring Practices: Differential Treatment of Hispanic and Anglo Job Seekers* (1990), found that Hispanic applicants encountered discrimination 29 percent of the time in San Diego, California and 33 percent of the time in Chicago, Illinois when compared to their white matched pair.

The Fair Employment Council report is available from the Council, 1400 I Street, NW, Suite 550, Washington, D.C. 20005. The Urban Institute studies are available from the Institute, 2100 M Street, NW, Washington, D.C. 20037.

## **PEOPLE FOR THE AMERICAN WAY REPORT DOCUMENTS IMPACT OF REAGAN-BUSH JUDICIAL APPOINTMENTS**

PFAW reports that Reagan and Bush have appointed more than half of the 837 federal judges, District, Appellate and Supreme Court. Their appointees are in the majority on the Supreme Court, and in nine of the

thirteen appellate circuits. The report predicts that, if President Bush is reelected, by 1997 Reagan and Bush will have appointed 90 percent of the federal judiciary.

The report examines the selection process used by both Presidents which PFAW says included screening for ideology, the selection of young nominees (no president before Reagan had appointed such a high proportion of appeals court judges under the age of 45), the selection of law professors whose "publish or perish" writings could be used to predict future rulings, and requiring that they pass a litmus test of conservatism. In discussing the litmus test used by the Reagan Administration, the report states:

"...the Administration's strategy involved a final element: the willingness to reject candidates, even mainstream Republicans, whose record showed even the slightest chink in their conservative armor. The Reagan record is littered with such instances. One nominee, first in her law school class and highly rated by the ABA, was rejected because she had supported the Equal Rights Amendment, as had the Republican party itself until 1980. Several conservative groups nevertheless charged her falsely with being a closet Democrat, and the White House struck her name from the list of potential candidates.

"Another candidate, a former Deputy Solicitor General, was rejected by the Administration's supporters for having made small donations to Planned Parenthood and the National Coalition to Ban Handguns. Thirteen senators demanded his withdrawal, and the President obliged."

The 300-page report details the impact of the Reagan-Bush courts on constitutional rights in four areas:

"The Right to Privacy. The report enumerates the stages of the Reagan-Bush courts' inexorable retreat on reproductive freedom, from the Supreme Court's *Webster* decision to a host of other Supreme Court and lower federal court rulings, such as *Webster's* approval of a ban on publicly-funded abortions, the ban on health insurance policies covering abortions approved in *Coe v. Melahn*, and the mandatory 24 hour waiting period approved in the *Casey* decision now being considered by the Supreme Court...

"Freedom from discrimination. In a cluster of 1989 decisions, the Supreme Court signalled a major retreat from civil rights laws protecting fairness in employment. The weakening of the law was so severe that in 1991 Congress passed the Civil Rights Act to repair most, but not all, of the damage. In addition, the Reagan-Bush courts have made it difficult to obtain court orders stopping abusive police tactics in Los Angeles and elsewhere in *Los Angeles v. Lyons*, and failed to protect equal justice in cases such as *Rabidue v. Osceola Refining Company* involving egregious sex harassment, *Allen v. White* concerning discrimination in private schools, and the Supreme Court's recent *Presley* decision on voting rights.

"Freedom of Expression. In the 1991 *Rust v. Sullivan* decision, the Supreme Court ignored years of precedents in allowing curbs on free speech for recipients of federal funds. In a series of other First Amendment decisions, the courts have undermined the right of some citizens to political free expression, as well as harmed artistic free expression and free speech in the public schools. For example, the Supreme Court approved firing a government employee for circulating a questionnaire about office policies and work performance in *Connick v. Myers*, and a school was allowed to punish an honors student for simply criticizing the school administration in a student government campaign speech in *Poling v. Murphy*.

"Freedom of Religion. In recent years, the Reagan-Bush courts have whittled away at a vital protection: the legal principle that the government must have a compelling reason before it can limit a person's right to practice his or her religion. In *Employment Division v. Smith*, the Supreme Court virtually destroyed this standard. As a result, lower courts have harmed religious liberty by, for example, forcing the family of an accident victim to endure an intrusive government autopsy violating their religious beliefs in *Montgomery v. County of Clinton*. Another key constitutional safeguard, the separation of church and state, has also been undermined by recent court decisions regarding, for example, prayer in public facilities and the official government observance of religious holidays."

Copies of the report are available from the Communications Department, PFAW, Suite 400, 2000 M Street, NW, Washington, D.C. 20036

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