

CIR

ANNUAL REPORT 2003-2004



About CIR:

“CIR would not think twice about representing a white male who had said something politically incorrect. . . . We would.”

Clint Bolick (Institute for Justice), *New York Times*

About CIR’s Lawsuits Against Racial Preferences:

CIR “has led the legal assault against race-conscious college admissions.”

Chronicle of Higher Education

About CIR’s First Amendment Lawsuits:

“The center . . . specializes in fighting ‘politically correct’ policies that it says violate freedom of speech or religion.”

Chicago Tribune



The Year in Review



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004 marks CIR's 15th birthday. As we look back on this comparatively short history, we can take great satisfaction in many accomplishments. CIR has won four major Supreme Court victories outright and set several dozen major precedents at the Courts of Appeals. Each of these victories made fundamental changes to constitutional law that have measurably increased individual freedom.

CIR's 1995 victory in *Rosenberger v. University of Virginia* started the Supreme Court down the road of government "neutrality" towards religion—neither including nor excluding religious organizations from government programs solely on the basis of their point of view. In *U.S. v. Morrison*, CIR helped restore vitality to the commerce clause, which is designed to limit Congress to regulation of truly national—not local—concerns. And CIR's various free speech cases, starting with *Silva v. New Hampshire*, were some of the first successful challenges to draconian college speech, dress, and harassment codes.

But by far, CIR's most enduring effort to date has been its effort to end the use of racial preferences. Beginning with our 1996 victory in *Hopwood v. Texas*, CIR's sole objective has been a series of Supreme Court rulings striking down the use of race preferences in college admissions, government contracting, and government employment.

Last summer's decisions in our two cases challenging the use of racial double standards by the University of Michigan—*Gratz v. Bollinger* and *Grutter v. Bollinger*—were a big step in that direction. The Court's decisions reflected the relentless effects of a decade worth of litigation—nearly all of it brought by the Center for Individual Rights. In place of the usual fictions and pretenses intended to cloak racial preferences with respectability, the opinions reflected—even if they did not explicitly acknowledge—what CIR long has asserted: there is no principled justification for treating individuals differently on account of their race. While college officials may argue that race preferences are a political expedient, the Court confirmed that they never can be more than that.

The Court declared that a school may use race as one factor to ensure a racially diverse class, if it concludes that there is no other way to achieve diversity consistent with a school's high academic standards. And the Court ruled that at best, race preferences are a temporary expedient that must be phased out within a twenty-five year period. Such qualifications and time limits underscore the lack of a firm constitutional foundation for racial double standards.

As a result of the Michigan rulings, schools across the country already are revising their admissions systems. Clearly illegal preferences are being jettisoned by the truckload. All uses of race are being closely scrutinized by university presidents and their nervous university counsel. No matter what they say in public, they well understand that a single lawsuit can force them into an expensive, long, and demoralizing legal battle the outcome of which can only be mixed.

CIR has achieved more than its share of decisive victories in its 15 years. It is regrettable that the Supreme Court did not see fit to end racial preferences once and for all as a matter of law. But the reality is that a political issue of this importance rarely can be "settled" by a single cataclysmic intervention by the Supreme Court. With or without the Supreme Court's cooperation, the fact remains that CIR's efforts over the last decade represent the most successful assault ever on racial preferences. In coming years, we will build on that record of success through continued legal challenges to racial preferences.

Even as it argued its Michigan cases before the Supreme Court, CIR was advancing the cause of individual rights and limited government in other areas. For example, CIR's free speech and association cases challenge the increasingly popular idea that there are two First Amendments—one set of protections for those who espouse politically progressive views and another, weaker set for everyone else. CIR actively defends the right of organizations and individuals to express unpopular views, regardless of political outlook.

In September, CIR filed an exceptionally strong case on behalf of Steven Hinkle, a student at California Polytechnic State University ("Cal Poly"), who had the temerity to post a flier advertising a campus book talk by black conservative author Mason Weaver. For this, Hinkle was prosecuted by campus officials for disrupting a campus "event," to wit, a group of students sitting nearby who were offended at the content of Weaver's book. The First Amendment is utterly clear in prohibiting state suppression of speech based on point of view.

Central to CIR's mission is exposing the government's unconstitutional actions to public scrutiny—particularly when they deliberately are kept hidden by judicial sleight of hand. CIR continues to challenge consent decrees containing unconstitutional hiring

and promotion quotas, often negotiated behind closed doors by civil rights activists and compliant officials. It pressed ahead with one such case, Brennan v. New York City Schools, and looks forward to a resolution of this matter in the next year.

We take pride in the fact that despite CIR's ripe old age, it hasn't lost its edge. On what is a modest budget, CIR is fighting a dozen cases against powerful opponents with unlimited resources—the federal government; state governments; and large, prestigious state universities.

And yet, the tide is going our way. Not as quickly as we would have hoped, and not without setbacks, of course. But we are making a powerful point in the cases we bring and in the fact that we don't back down. We believe that CIR has made its donors' money go a very long way:

CIR's programs fill a niche and serve important purposes. With respect to racial preferences, the conservative agenda pretty much is CIR's agenda. It is a coherent, winning agenda; in fact, among the civil rights matters on CIR's docket are virtually all the important cases in the country.

Though there are no guarantees in this business, CIR's proven record of success and sound litigation strategy ensure that we'll make further substantial progress toward the goal of non-discrimination.

We owe our accomplishments, as always, to the generosity and dedication of the law firms and attorneys who have provided CIR with millions of dollars of pro bono time; to the persistence of our donors who support our efforts through years of litigation; and to our hardworking staff. To all of them, we extend our profound gratitude.



*Terence J. Pell
President*



*Jeremy Rabkin
Chairman of the Board*



United States Supreme Court

Gratz v. Bollinger, 539 U.S. 244 (2003). Civil Rights; Equal Protection. Challenging racial preferences in student admissions at the University of Michigan College of Literature, Science, and the Arts.

Outcome: Victory. Issue of injunctive relief and damages pending in District Court.

About **Gratz**:

“If you have a perfect SAT score, if you’re identified as a national student leader and you write an excellent essay, . . . you’ll come up with 19 points. If you’re a black applicant, you walk in the door with 20.”

Tom Brokaw, *A Question of Fairness* (NBC Special)

Grutter v. Bollinger, 539 U.S. 306 (2003). Civil Rights; Equal Protection. Challenged racial preferences in student admissions at the University of Michigan Law School.

Outcome: Loss.

Federal Appellate Courts

Father Flanagan's Boys Home v. District of Columbia, 2003 U.S. App. Lexis 7363 (D.C. Cir. April 17, 2003). Freedom of Speech. Defended neighborhood group sued by Boys Town for federal housing discrimination because of group's peaceful opposition to proposed housing project.

Outcome: Victory.

About *Father Flanagan's*:

"The American Civil Liberties Union and the Center for Individual Rights are representing the Southeast Residents' Group, who have characterized the lawsuit as an affront to First Amendment rights."

Roll Call

Perez v. Posse Comitatus, No. 01-6201 (E.D. N.Y. Aug. 19, 2003); *appeal docketed* No. 03-7963 (2nd Cir. Oct. 2, 2003). Freedom of Speech. Defended community group being sued under civil rights statutes because of its vocal opposition to illegal immigration.

Outcome: Victory. District Court dismissed lawsuit against the clients. Denial of attorney's fees appealed.

Smith v. University of Washington Law School, et al., 233 F.3d 1188 (9th Cir. 2000); *cert. denied*, 532 U.S. 1051 (2001). On remand at No. C97-335Z (W.D. Wash. June 5, 2002), *appeal docketed*, No. 02-35676 (9th Cir. July 19, 2002). Civil Rights; Equal Protection. Challenging racial preferences in student admissions at the University of Washington Law School.

Status: Pending. On appeal to U.S. Court of Appeals for the 9th Circuit following June 2002 loss in U.S. District Court after trial on narrow tailoring.

About *Smith*:

"The first time that a Federal Appellate Court has applied the guidelines for race-conscious admissions that were articulated by the U.S. Supreme Court last June."

Chronicle of Higher Education



Federal District Courts

Affordable Housing Development Corp. v. City of Fresno, No. F-97-5498 (E.D. Cal. Aug. 31, 2000). Freedom of Speech. Defending neighborhood homeowner sued by low-income housing developer for federal housing discrimination because of statements made regarding proposed housing project.

Status: Victory. U.S. District Court granted summary judgment in favor of CIR client Travis Compton. Jury found in favor of other defendants.

Brennan v. Ashcroft, No. 02-0256 (E.D. N.Y. filed Jan. 11, 2002).

United States v. New York City Board of Education, 260 F.3d 123 (2nd Cir. 2001). Civil Rights; Equal Protection. Representing white males challenging preferential benefits provided to minorities and women in settlement agreement in litigation in which U.S. Department of Justice charged New York City Board of Education with discrimination in hiring and promotion of school custodians.

Status: Pending in U.S. District Court after victory on intervention issue in U.S. Court of Appeals for the 2nd Circuit.

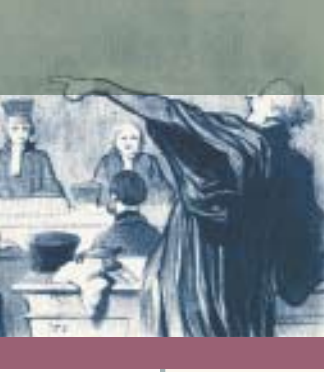
About *Brennan*:

“Quotas are what Washington is determined to impose on the schoolchildren of New York City, irrespective of the danger of putting unqualified people in charge of school boilers.”

New York Post (Editorial)

DynaLantic Corp. v. U.S. Dept. of Defense, et al., 937 F. Supp. 1 (D.D.C. 1996), *rev'd*, 115 F.3d 1012 (D.C. Cir. 1997). Civil Rights; Equal Protection. Challenging U.S. Department of Defense Section 8(a) minority contracting set-aside program on behalf of small business that manufactures training simulators.

Status: Pending in U.S. District Court after victory on standing issue in U.S. Court of Appeals for the D.C. Circuit.



Hinkle v. Baker, et al., No. CV-03-6918 (S.D. Cal. filed Sept. 25, 2003). Freedom of Speech. Representing student at Cal Poly who was charged with disruption by school administrators for posting a flyer advertising a speech by a conservative black author.

Outcome: Victory. Settlement agreement reached in which the University guaranteed Hinkle the right to post flyers on the same terms as everyone else.

About Hinkle:

A Cal Poly V.P. stated “that the white conservative [student] should have known that his very presence in the multicultural center would set off a, quote, ‘collision of experience.’”

Tony Snow, Fox News Sunday

Maitland v. University of Minnesota, 260 F.3d 959 (8th Cir. 2001), *cert. denied*, 535 U.S. 929 (2002). Civil Rights; Equal Protection. Challenged 1989 consent decree whereby the University of Minnesota agreed to distribute \$3 million to female faculty members to remedy alleged gender disparities in salaries.

Outcome: Victory. Settlement agreement reached, in which the University agreed not to determine salaries on the basis of gender.



Federal District Courts, *continued*

Sypniewski v. Warren Hills Regional Board of Education, 307 F.3d 243 (3rd Cir. 2002), *cert. denied*, 123 S. Ct. 2077 (2003). Freedom of Speech. Representing student who was suspended for wearing a T-shirt with the word “redneck” in a First Amendment challenge to the school district’s dress code and racial harassment policy.

Status: Pending on remand to U.S. District Court to determine extent of shirt’s disruption in school. School’s petition seeking Supreme Court review of its loss in 3rd Circuit Court of Appeals denied.

About *Sypniewski*:

“It just shows you individual rights count.”

Thomas Sypniewski, Sr., *New York Times*

Worth v. Jackson, et al., No. 02-1576 (D.D.C. filed Aug. 8, 2002). Civil Rights; Equal Protection. Representing U.S. Department of Housing and Urban Development employee suing HUD and the EEOC over racial and gender preferences in federal employment.

Status: Pending.

About *Worth*:

“The suit contends that HUD uses preferential hiring goals for women and minorities indiscriminately.”

Wall Street Journal



Public Appearances

CIR representatives participated in numerous public debates and addressed audiences of attorneys, scholars, journalists, and students, including:

ABA National Conference for the Minority Lawyer * American Association of Law Libraries, Annual Meeting * American Philosophical Association, Eastern Division Meeting * American University * Asian Pacific American Bar Association * Federalist Society Lawyers Chapter, Grand Rapids, MI * Federalist Society Student Chapter, Stanford University, Loyola University, Chicago School of Law * Manhattan Institute * National Youth Leadership Forum * Tulane Law Review Symposium * University of Notre Dame * Virginia Institute for Public Policy

Radio and Television

CIR representatives also discussed CIR's cases on numerous radio and television programs, including:

ABC: Nightline, Good Morning America & World News Tonight * BBC Television * NBC: Today Show, Nightly News & A Question of Fairness (Tom Brokaw special) * PBS: NewsHour with Jim Lehrer * CNBC: News with Brian Williams, Early Today & Business Center * CNN: Wolf Blitzer Reports, Newsnight with Aaron Brown, Inside Politics, American Morning, Live From the Headlines & Sunday Night * CNNFN: Lou Dobbs Tonight & Street Sweep * Court TV: Catherine Crier Live * FOX News Channel: Special Report with Brit Hume * MSNBC: Hardball with Chris Matthews, Countdown with Keith Olbermann & Lester Holt Live * Regional News Network * TV Azteca * KFMB-TV (San Diego) * KGTV (San Diego) * KSDK-TV (St. Louis) * KUSI-TV (San Diego) * WABC-TV (New York) * WDIV-TV (Detroit) * WNBC-TV (New York) * WRC-TV (DC) * WTTG-TV (DC) * WXYZ-TV (Detroit) * BBC Radio * CBS Radio network: The Osgood File * CNN Radio * NPR: All Things Considered * Voice of America * David Brudnoy Show * Jason Jarvis Show * American Family Radio * Michigan Radio * Minnesota Public Radio * Radio America * Talk America * KABC-AM (Los Angeles) * KERA-FM (Dallas) * KGO-AM (San Francisco) * KSFO-AM (San Francisco) * KSTP-AM (Minneapolis) * KTSA-AM (San Antonio) * WAAM-AM (Ann Arbor, MI) * WDET-FM (Detroit) * WILM-AM (Wilmington, DE) * WTOP-AM (Washington, DC) * WWJ-AM (Detroit)



CIR Publications (Selection)

Curt A. Levey. "Colleges Should Take No Comfort in the Supreme Court's Reprieve." *Chronicle of Higher Education*, July 18, 2003.

Curt A. Levey. "A Roadmap for the Continuing Legal Challenge to Race-Based Admissions." *Engage*, October 2003.

Terence J. Pell. "Camouflage for Quotas." *Washington Post*, June 30, 2003.

Terence J. Pell. "The Nature of Claims About Race and the Debate Over Racial Preferences." *18 International Journal of Applied Philosophy* 1 (forthcoming).

Terence J. Pell. "Comments on Sterba's 'Michigan Cases and Furthering the Justification of Affirmative Action.'" *18 International Journal of Applied Philosophy* 27 (forthcoming).

Terence J. Pell. "Culture War and Moral Renewal," Paper delivered at Notre Dame Center for Ethics and Culture Conference on Formation and Renewal, October 2003.

Michael E. Rosman. "Uncertain Direction: The Legacy of Gratz and Grutter." *JURIST*, September 2003.

News Coverage

CIR and its cases were covered in numerous articles and editorials. A sample of these follow:

Feature Articles on CIR

Diana Jean Schemo. "Group Vows to Monitor Academia's Responses." *New York Times*, June 25, 2003.

On CIR and Freedom of Speech

Sally Ann Connell. "Freedom of Expression Is Tested in 2 Cases at 'the Un-Berkeley.'" *Los Angeles Times*, September 28, 2003.

John Leo. "Campus Censors in Retreat." *U.S. News and World Report*, February 16, 2004.

Mary Beth Marklein. "Cal Poly Student's Lawsuit Says He Was Punished for Trying to Post Flier." *USA Today*, September 25, 2003.

Jay Mathews. "Tempers Flare Over Flier Incident at Calif. School." *Washington Post*, August 19, 2003.

Stuart Taylor Jr. "How Campus Censors Squelch Freedom of Speech." *National Journal*, July 14, 2003.

"Battle Lines Drawn Over Ban on Iraq T-shirt." *Home News Tribune* (New Jersey), June 12, 2003.

On CIR and Civil Rights

Joel Budd. "A Supreme Showdown." *The Guardian* (London), June 21, 2003.

Jodi S. Cohen. "Judge's Misconduct Cited in U-M Case: Appeals Court Admits Mistakes That Could Have Steered Outcome." *Detroit News*, June 6, 2003.

Richard Cohen. "Confused O'Connor." *Washington Post*, June 26, 2003.

Daniel Golden. "Colleges Cut Back Minority Programs After Court Rulings." *Wall Street Journal*, December 30, 2003.

Luther Keith. "Anti-Affirmative Action Side Scored Semantic Coup." *Detroit News*, July 7, 2003.

Martha Montelongo. "No Longer 'We, the People.'" *Washington Post*, June 29, 2003.

Debra Rosenberg. "Michigan's Day in Court." *Newsweek*, April 14, 2003.

Peter Schmidt. "Affirmative Action Remains a Minefield, Mostly Unmapped: Supreme Court Rulings Confuse Colleges and May Imperil Scholarships Based on Race." *Chronicle of Higher Education*, October 24, 2003.

Peter Schmidt. "At U. of Washington, a First Test of the Michigan Rulings." *Chronicle of Higher Education*, March 19, 2004.

Greg Toppo. "Michigan Unveils Admissions Standards: University Alters Policy on Race Following Ruling." *USA Today*, August 29, 2003.

George F. Will. "Race-Norming in Michigan." *Newsweek*, June 23, 2003.

Greg Winter. "Across U.S. Campuses, Relief Is Apparent but Not Absolute." *International Herald Tribune*, June 26, 2003.

Eric Wolff. "Frustrated, Long Island Contractor Attacks Federal 'Set Aside' Program." *New York Sun*, July 7, 2003.



Financial Information

Statements of Financial Position March 31, 2004 and 2003

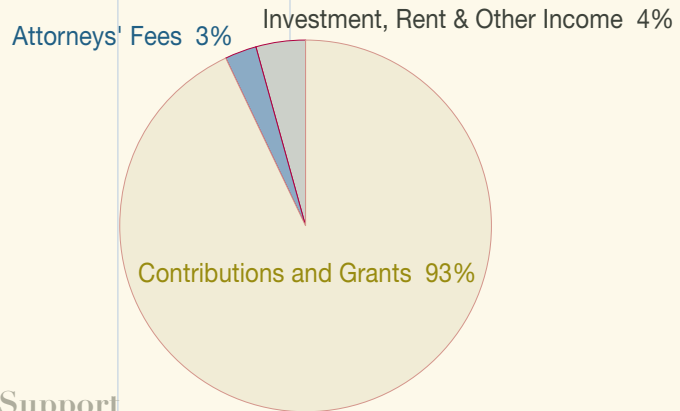
Assets	2004	2003
Cash and Cash Equivalents	\$ 694,121	\$ 1,042,648
Investments	934,261	697,413
Accounts Receivable	54,131	50,843
Prepaid Expenses	6,954	11,509
Property and Equipment (Net)	34,656	19,951
Deposit	17,575	17,075
Total Assets	\$ 1,741,698	\$ 1,839,439
Liabilities and Net Assets		
Accounts Payable and Accrued Expenses	\$ 32,439	\$ 55,511
Accrued Rent, Current Portion		5,284
Security Deposit	3,975	2,555
Accrued Rent, Net of Current Portion	27,720	13,650
Net Assets—Unrestricted	1,627,564	1,712,439
Net Assets—Temporarily Restricted	50,000	50,000
Total Net Assets	\$ 1,677,564	\$ 1,762,439
Total Liabilities And Net Assets	\$ 1,741,698	\$ 1,839,439

Statement of Activities For the Years Ended March 31, 2004 and 2003

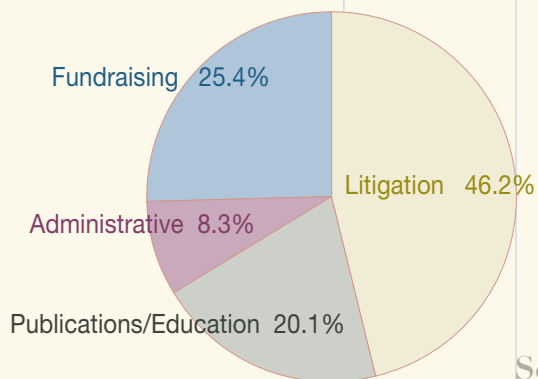
Support	2004	2003
Contributions And Grants	\$ 1,177,645	\$ 1,440,994
Attorneys' Fees	35,000	74,824
Investment, Rent & Other Income	54,619	47,636
Total Support	\$1,267,264	\$ 1,563,454
Expenses		
Programs:		
Litigation	\$ 624,139	\$ 862,018
Publications/Education	272,264	173,072
Total Program Expenses	\$ 896,403	\$ 1,035,090
Administrative	112,076	198,196
Fundraising	343,660	448,365
Total Expenses	\$ 1,352,139	\$ 1,681,651
Change In Net Assets	\$ (84,875)	\$ (118,197)
Net Assets—Beginning	1,762,439	1,880,636
Net Assets—Ending	\$ 1,677,564	\$ 1,762,439

Figures are excerpted from the audited financial report. Center for Individual Right's complete audit is available upon request from the Center's Washington, D.C., office.

2004



Schedule of Support



Schedule of Expenses

Staff

Terence J. Pell (Ph.D., Notre Dame, 1996; J.D., Cornell Law School, 1981; B.A., Haverford College, 1976) is CIR's President. He is a member of CIR's Board of Directors.

Michael E. Rosman (J.D., Yale Law School, 1984; B.A., University of Rochester, 1981) is CIR's General Counsel. Formerly a litigator with the firm of Rosenman & Colin, he joined CIR in 1994.

Ralph L. Casale (J.D., Cornell Law School, 1988; B.A., University of Chicago, 1983) is CIR's Associate General Counsel. Formerly a litigator with the firm of Tucker, Flyer and Lewis, he joined CIR in 1998.

Curt A. Levey (J.D., Harvard Law School, 1997; M.S., Brown University, 1987; B.A., Brown University, 1984) is CIR's Director of Legal and Public Affairs. Formerly a clerk with Judge Richard Suhrheinrich of the U.S. Court of Appeals for the 6th Circuit, he joined CIR in 1998.

Silvio A. Krvaric (J.D., Santa Clara University, 2000; B.A., Vesalius College, 1996) is CIR's Associate Counsel. After clerking for the AIDS Legal Services at the Santa Clara County Bar Association, he joined CIR in 2001.

N. Joy Jones (M.P.P., American University, 2004; B.A., Taylor University, 1998) is CIR's Director of Development. She joined CIR in 1998.

Kalli Kokolis (B.A., University of Virginia, 2003) is CIR's Legal Assistant. She joined CIR in 2004.

Law Clerks and Interns, 2003–2004



Pierre-Luc Arsenault (Harvard University Law School)

William Baude (University of Chicago)

Brian Ford (Georgetown University Law School)

Ryan Gavin (Georgetown University Law School)

Eliana Johnson (Yale University)

Andrew J. Patch (Stanford Law School)

Daniel Staroselsky (Georgetown University Law School)

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