

# CENTER FOR INDIVIDUAL RIGHTS

1233 TWENTIETH STREET, N.W., SUITE 300  
WASHINGTON, D.C. 20036

(202) 833-8400, ext. 113  
FAX: (202) 833-8410  
E-mail: [pell@cir-usa.org](mailto:pell@cir-usa.org)  
<http://www.cir-usa.org>

May 29, 2009

Dear Friend,

You and I cannot stop now.

We must stay on offense.

Three of our most important cases are before federal appellate courts this year.

Any of these cases could end up at the Supreme Court.

After years of work on these three cases, we're now poised to set appellate level legal precedent.

Including a ruling upholding the right of the states to end racial preferences...

And a landmark ruling allowing employers to decline to give preferences to minority employees who weren't themselves the victims of discrimination...

And a ruling that parents have a constitutionally protected right to make medical decisions for their children.

Three cases that could change the legal landscape for years to come.

We're so close.

Three chances to stop big government liberalism in its tracks.

No organization has done more in the last twenty years to advance the idea of limited government through high-profile court cases.

Our win/loss record is almost 88%. And nearly 78% of our expenses goes directly to litigation and public education.

And now, your CIR has three cases already at the federal appellate level that will protect state ballot initiatives, roll-back racial preferences, and restore the right of families to raise their children without state interference.

We must press ahead as hard and as fast as we can.

Any of these cases could get to the Supreme Court in the next two years -- before the Court shifts too far to the left.

Victories in any one of these cases could do so much good for the cause of limited government...

...at a time when the cause of limited government is under the most outrageous assault ever.

Take our case defending the Michigan Civil Rights Initiative -- or "MCRI".

It is potentially one of the most important civil rights cases in the country right now. At stake is the right of voters to ban the use of racial preferences across the board in their states' Constitutions.

Ballot referenda are one of the few avenues ordinary citizens still have to try to reign in out-of-control state governors and legislatures.

Ballot referenda are going to become even more important in coming years as the left tries to solidify its stranglehold on national politics.

Our opponents in this case are some of the wealthiest and most powerful interest groups around -- the ACLU, the NAACP, approximately twenty of the most liberal law professors in the country (including Harvard's Larry Tribe) -- all backed up by mega New York law firm Cravath, Swain & Moore, one of the most prestigious big litigation firms in the country.

Our opponents are trying to get the Supreme Court to rule that ending racial preferences is a form of illegal race discrimination.

You and I must stop them.

If they prevail, all of the state referenda prohibiting racial preferences -- from California's Prop. 209 and Washington's I-200, to the more recent Michigan and Nebraska referenda -- will be out the window.

If that happens, Ward Connerly and Jennifer Gratz might as well shut down their plans to bring referenda in additional states in 2010, because they will all be unconstitutional.

You can see why this case is so important.

We've won several huge victories already. In 2006, and on one weekend's notice, we filed an emergency petition on behalf of Eric Russell -- a lone applicant to the University of Michigan law school -- to force MCRI's immediate implementation. After appeals all the way to the Supreme Court, we prevailed and MCRI went into effect as the voters intended.

We're not taking any chances now.

Charles Cooper -- one of Washington's best litigators -- agreed to serve as lead counsel. Chuck served as a Deputy Assistant Attorney General in the Reagan Administration. He has won some huge Supreme Court victories.

He has donated thousands of hours of his firm's time -- worth several hundred thousand dollars in fees.

That's how important Cooper thinks this case could be.

If this case goes to the Supreme Court, Cooper thinks it could spell the end of a noxious pair of 1970's-era Supreme Court precedents that the left drags out every time citizens vote to end racial preferences.

According to these precedents, race preferences are no different from any other preference, including economic preferences benefitting big corporations.

And so, our opponents say, if the government sponsors one kind of preference, it has to sponsor all kinds of preferences, including race preferences.

You can see where this logic leads.

It turns the 14<sup>th</sup> Amendment on its head.

Instead of prohibiting racial classifications, our opponents think the 14<sup>th</sup> Amendment requires race preferences!

This view is plainly crazy, but I assure you, the left takes it very seriously.

So seriously that California Attorney General Jerry Brown recently sent a letter to the California Supreme Court making the identical argument against Prop. 209 in litigation in that state.

This argument has been repeatedly rejected by the Ninth Circuit and now the Sixth Circuit. And I am confident the Supreme Court will reject it, too.

But our opponents won't give up.

Which is why we have to win in *BAMN v. Granholm* and settle this craziness once and for all.

With a Supreme Court victory.

We're so close.

With your help, we'll get there.

But that's not the only reason your support is so important right now. Because in addition to helping us deliver a win in *BAMN v. Granholm*, your contribution will help us prevail in a second case now at the appellate level, this one before the influential Second Circuit.

In *U.S. v. New York City*, we are defending New York's civil service rules against the determined efforts of the Clinton, Bush and now Obama Justice Departments to throw out those rules in favor of various schemes designed to promote diversity.

This is nothing more than another spoils system -- based on race.

The specific target of our appeal to the Second Circuit is the idea that an employer can react to racial "disparities" in hiring simply by apportioning out jobs and seniority to a randomly selected group of minorities...

...whether or not those individuals suffered discrimination or even were qualified for a job.

When we pushed ourselves into this case, we knew what they were up to in New York was going to look, and be, bad. But even we could not have imagined how careless DOJ had been in crafting its supposed "remedy" for a hiring test that produced disparate outcomes.

And now, after years of digging, we are back to the Second Circuit with evidence that ought to persuade any judge, liberal or conservative.

We have a good shot at getting the necessary votes to shut down the preposterous effort by the Obama Justice Department to justify what its predecessors in the Clinton Administration tried to do when no one was looking.

The Clinton Justice Department did a hasty "investigation" of hiring discrimination among building superintendents, decided the City's multiple-choice hiring test produced "disparate impact," and then proceeded to enter into settlement discussions.

Without requiring Justice Department lawyers to prove any of this, a federal judge signed off on a "settlement agreement" that gave several dozen minority individuals enhanced seniority over non-minority superintendents.

Only, as we have just finished proving, not one of the minority individuals who got this bonanza actually suffered any discrimination.

- One didn't even claim to be a member of a minority group...
- Several others didn't even meet the qualifications for the job...
- Others passed the offending civil service exam and were hired -- proving that they didn't suffer discrimination.

It's hard to say how any of these individuals could be "victims" of discrimination...yet the government contends to this day that they deserved extra seniority.

Can you imagine what Justice Roberts could do with facts like these?

He could author an opinion that would spell disaster for the expansive use of "disparate impact." With the evidence in this record, Justice Kennedy likely would go along with a good part of it.

That's why we want to get this case through the Second Circuit as fast as possible and on to the Supreme Court.

And with your help this year, that's just exactly what we'll do.

No matter how difficult the political environment is today, one battleground stands out where you and I can take on the forces of unprincipled and expansive big government and win.

That battleground is the courts.

When we can focus on the issues that are favorable to limited government with hard-hitting lawsuits, we can win.

Your CIR stays focused on its mission -- year in and year out. We don't write op-ed's. We don't author white papers.

We litigate big cases that change the rules of the game for years to come.

I've told you about two of our cases that are before the federal appellate courts this year. And I've explained how your support will make a crucial difference in helping us win each of those cases.

But that's not all your support will help accomplish.

Your CIR has a third big case at the appellate level this year. We're very close to a ruling in the Ninth Circuit in our case challenging dysfunctional child-protection systems.

The assault on individual rights by state child protection procedures is a national problem.

As former Attorney General Ed Meese summed it up recently, "these cases are important for freedom."

In 2007, U.S. District Judge B. Lynn Winmill issued a ruling -- one of the first and certainly the most comprehensive to date -- that parents have a federal constitutional right to make medical decisions on behalf of their children.

He said the state may not interfere in situations where parents face a difficult choice between treatments.

That's just what happened when Corissa Mueller took her five-week-old infant to the emergency room for a fever.

An impatient doctor and an overzealous police officer physically removed Mrs. Mueller's child from her so they could perform a spinal tap on the baby, a potentially dangerous procedure to which Mrs. Mueller had not yet consented.

Judge Winmill's ruling makes clear that responsible parents cannot lose custody of their children for trying to do the right thing in difficult circumstances.

Just as his ruling makes clear that the state has authority to act in cases of true neglect.

You and I have achieved a lot with this case already. But now we have to fight this through to a conclusion.

This year, we'll get a ruling in the Ninth Circuit on a procedural appeal by one of the police officers in the case. Then it's back to the lower court for a short trial to settle "who said what to whom" that night in the emergency room. We've already lined up pro bono counsel -- one of the best litigators we've ever worked with.

Then, it's back to the Ninth Circuit.

We'll set a major precedent that builds on what we've already achieved. One that will be binding in nine states. One that will be followed by courts in other states.

And one that could end up in the Supreme Court.

We have a lot to do this year in the *Mueller* case.

With your help, we'll move forward.

To get a big victory, not just for the Muellers, but for parents across the nation.

You can see why your support is more important than ever this year.

The news out of Washington is not good these days.

But that doesn't stop your CIR from going full-throttle on every one of its ambitious cases.

You won't read about CIR's cases in the papers. It seems we don't fit the media's preferred "narrative" of a political movement that's flat on its back.

You and I know better. With your help today, CIR will continue to work hard at what we do best.

We know how to use the courts against an opposition that would prefer to ignore what we're saying.

And now, we have three exceptionally strong cases before the federal appellate courts. Each one has accomplished a lot already.

And with your help, we'll accomplish a lot more.

Any of these three cases could go to the Supreme Court and cause the partisans of big government years of headaches.

I know you are careful with your money. You want to be effective and you want to win.

Your support in past years already has helped CIR achieve results many said were impossible. And out of all proportion to our size.

But today I must ask you to continue and even increase your support if CIR is to have the strength to fight and win the important cases now before the federal appellate courts.

Will you send \$50 today to help CIR make sure we prevail in our case defending the Michigan Civil Rights Initiative?

Or if you can, will you send \$100 to help CIR defend New York school employees against a nearly decade-long effort to eviscerate the civil service laws?

I know I'm asking a lot, but will you possibly consider a gift of \$250 to make sure we have the resources necessary to win our case on behalf of the Muellers?

I know you already have been generous with your support.

But you have seen firsthand what your support helps achieve. And so you have a good idea what you and I can achieve

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together in the future. I hope your gift, today, will help us achieve it.

Thank you for all you do to help your CIR defend individual rights.

Sincerely,

A handwritten signature in black ink, appearing to read "TJPell". The signature is written in a cursive, somewhat stylized font.

Terence J. Pell  
President

P.S. Your CIR knows how to use the courts to fight those that would put this country, its prosperity, and the freedom of its people at grave risk. With your help, we have three chances to advance the cause of limited government this year. But we can't stop now.

# CENTER FOR INDIVIDUAL RIGHTS

## Help CIR Win in 2009

TO: Mr. Terry Pell, President  
Center for Individual Rights  
1233 20th Street, NW, Suite 300  
Washington, DC 20036

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Terry,

\_\_\_ I agree we must press ahead as hard and fast as we can to protect individual rights and limited government before the Supreme Court shifts too far to the left.

\_\_\_ To help CIR aggressively fight to protect free speech, roll-back racial preferences and restore the right of families to raise their children without state interference, I've enclosed my tax-deductible contribution of:

\_\_\_\$50      \_\_\_\$100      \_\_\_\$250      \_\_\_Other \$\_\_\_\_\_

\_\_\_ \$1,000 to join CIR's Liberty Club

\_\_\_ \$10,000 to join CIR's Leadership Council

\_\_\_ I prefer to charge my contribution to my (circle one) Visa, MasterCard, Diners Club, or American Express Card.

Card number \_\_\_\_\_ Exp. Date \_\_\_\_\_

CVV number \_\_\_\_\_ or CID number \_\_\_\_\_ (AmEx only)  
(CVV-last 3 digits on signature panel; CID-4 digits above card number)

Signature \_\_\_\_\_

\_\_\_ I'm interested in information about making a planned gift such as a gift annuity or a bequest to the Center for Individual Rights. Please call or send me more information.

My phone number is: \_\_\_\_\_

*The Center for Individual Rights is 501(c)(3) non-profit, public interest law firm. Contributions to CIR are tax deductible to the limits provided by law. 100010*