

# CENTER FOR INDIVIDUAL RIGHTS

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November 30, 2011

Dear Friend,

Over the last twenty-two years, you and I have challenged some of the most ambitious and politically sacred projects of big-government liberalism.

You helped us demolish the case for racial double standards, reform Establishment Clause doctrine to allow religion to play its proper role in public life, end speech codes used to silence disfavored views, and restore federalist limits on Congress's Commerce Clause authority.

You helped us bring hard-hitting, high profile lawsuits -- cases that changed American law and moved public opinion in area after area.

But today all those gains are endangered.

The Left is desperate.

The Obama Administration is up against the wall, its influence diminished, its power to set the agenda in decline.

The President's only chance is to make the election a referendum on Wall Street, the rich, the Republicans, the banks...

...anything but his own record.

The forces behind Obama have no illusions. Not after the healthcare debacle, the failure of the stimulus, the continued joblessness brought about by high taxes and onerous regulations.

So the Left turns to its one remaining option: blocking conservative and libertarian reform for generations to come. By running up ruinous deficits that require new taxes. By ramming

regulation after regulation through -- so many that undoing them will take decades.

All of this threatens individual rights.

Compounding the problem posed by the Left's political desperation is the terrible state of the economy -- not just in this country but throughout the Western world.

Across the developed world, governments are strapped. Regulators are desperate.

Suddenly everything is too big to fail and too big to save.

Cash-starved governments reflexively raise taxes, write-down debt, inflate the currency -- anything to avoid the big, fundamental choices necessary to put things on the right path.

You and I know how dangerous this would be under any circumstances.

But it is doubly dangerous when we have an administration determined to make full use of a teetering economy to divide Americans between the "1%" and the rest of us.

This perfect storm of a bad economy and partisan opportunism should greatly alarm each and every one of us who believes in the importance of limited government based on individual rights.

What you and I do over the next year to stand up to these forces will determine whether our country emerges from this period as a strong democracy or just another European-like welfare state that limps through wasted decade after wasted decade.

We cannot sit idly by while a sputtering administration uses its remaining political energy to push further toward a central government loaded down with debt and a business world regulated into low-growth subservience to Washington regulators.

You and I know that it's possible to stop the Left in its tracks. We've done it before and we'll do it again.

We must be bold.

Three years ago, I asked CIR donors whether we should tackle the Obama Administration and the Democratic Congress's

plans for expansive government head on.

The answer was a resounding "yes."

So we went to work.

In 2009, we filed suit to stop the Justice Department from using the Voting Rights Act to politicize voting procedures in the mostly-Southern jurisdictions that have to "preclear" voting changes.

Then in 2010, we went to bat for two whistleblowers determined to put an end to ACORN, a notorious anti-poverty organization aligned with the president and implicated in voting irregularities across the country.

In 2011 we expanded the attack by joining in the legal fight against Obamacare -- one of the most important constitutional battles of this decade.

And that's not all -- we pressed ahead in two dozen other cases challenging racial preferences, defending free speech, and restoring limited government.

We now have a half-dozen cases that can change the law for the good no matter what damage Executive Branch appointees try to do in their remaining days in office.

This emphatically is not the time to stand down.

Let's be clear about what is at stake.

Hundreds of "Secretaries" and "Assistant Secretaries" and "Deputy Assistant Secretaries" have a very clear idea what they want and how fast and furiously they must work in the remaining months of the first term to get it.

These are the same people for whom racial preferences, speech codes, federal regulations, and high taxes are all articles of faith.

Along with other true believers populating think tanks and advocacy groups funded by George Soros, Warren Buffett, Michael Moore, and other members of the wealthy Left, these people are determined to shift as much power to the federal government as they can while they still have the chance.

They know it will take us years, maybe decades to undo

it all.

If they succeed, centralized power will be a fact of life long after they leave office.

Faced with the onslaught, some people will blink. They will start to think that crippling regulations to "stop global warming," comprehensive immigration "reform," and "free" medical care for all are inevitable.

They will doubt that it's worth the trouble to fight all of it, especially with the economy being in such bad shape.

Others will say this is just politics as usual, that the Republicans aren't any better, that the two major parties control everything.

Let us be clear about one thing.

This is not politics as usual.

And the fight is emphatically NOT about healthcare or global warming or immigration or any of the dozens of other policy areas over which Democrats and Republicans disagree.

It is a fight about whether our government is answerable to the individuals who created it -- the individuals who alone have the authority to set its powers.

The fight is about whether we are a united people who through good fortune and hard work are in control of the greatest nation in the history of the world or whether we must become a fragmented people, each group trying to get a bigger slice of a shrinking pie.

In that fight we cannot equivocate and we must never blink.

Let me assure you, CIR does not blink.

While Barack Obama pits the right against the left, black against white, and rich against poor, CIR will be there to press forward in the courts the old-time but always-new idea that the Constitution and our laws protect all of us equally, not certain groups differently.

The Left wants to sweep that whole concept under the rug.

But people are listening. And CIR's cases are making a

difference.

Some call us a "do" tank, not a think tank.

Because we choose -- and then fight -- the cases that matter. And we stick with them as long as it takes to get the results we need, even if that takes a decade or two decades or even more.

And I'm confident that we'll continue to make major progress.

Against race preferences, definitely.

Also in defense of free speech. And in all our other efforts to defend constitutional limits on state power.

Our case on behalf of Stephen LaRoque, John Nix, and other candidates and citizens in Kinston, North Carolina, shows what can be done to thwart not just this administration but future administrations that believe in centralized power.

Our immediate goal is to stop the Voting Rights Section from refusing to preclear a nonpartisan voting system favored by 63% of Kinston voters solely to preserve the power of the local Democratic Party.

But this is not just a fight about Kinston, North Carolina. The case challenges the constitutionality of a federal law that requires federal officials to favor the electoral interests of a particular favored racial group at the expense of individuals who do not happen to be members of that group.

After CIR learned what happened in Kinston, it took us just six months to file the most comprehensive legal challenge to Section 5 of the Voting Rights Act yet seen.

One that will stop this Administration -- and any future administration -- from using the Voting Rights Act to favor any race or any political party.

We knew this would be a tough fight and we were right. Last year a federal district judge, Judge John Bates, threw our clients out of federal court.

But we didn't give up then.

And neither did you.

We immediately filed an emergency appeal with the Court of Appeals for the D.C Circuit. And this past July we were rewarded with a resounding decision in our favor.

And in August, *LaRoque v. Holder* re-emerged as the strongest legal challenge yet to Section 5 and the long-prevalent idea that politicians can play racial games with election laws.

*LaRoque v. Holder* is on its way to the Supreme Court, maybe even before the 2012 election.

Thanks to you.

But that's not all CIR has done to tackle the big government activism of this administration -- and of future administrations.

You helped us set a hugely important precedent in the Second Circuit in May in *U.S. v. New York City Department of Education* -- a precedent that will make it much harder for employers to settle noisy discrimination complaints by simply handing out employment benefits to minority employees.

And will coincidentally make it much harder for the Justice Department to file flimsy shake-down cases against police, fire, and school authorities.

The influential Second Circuit Court of Appeals ruled that an employer must have a "strong basis in evidence" for concluding that numerical disparities are actually the result of the employer's discrimination.

Thanks to you, *U.S. v. NYC Department of Education* will keep activist lawyers in the Justice Department tied in knots for years to come.

While President Obama styles himself a post-racial president, it's we who are doing the hard work to put an end to the divisive racial politics played by Congress and his own Justice Department.

And the courts are listening to CIR.

Just last month, the Court of Appeals for the Eleventh Circuit struck down the individual mandate portion of Obamacare partly on the basis of an argument CIR made in an *amicus* brief it filed in the case.

When we wrote it, no one gave our brief much chance. Even we thought our argument was a "fallback" position at best.

Well, CIR's "fallback" argument has turned out to be one of the main arguments. And it is helping to carry the day.

The *National Review* reporter at the hearing called CIR's argument "devastating."

The Court of Appeals devoted a big chunk of its opinion to CIR's idea that just because some decisions not to purchase health insurance are motivated by economics, most are not.

And now *Florida v. HHS* is going to the Supreme Court where we have at least even odds to get a decision that Congress does not have the power under the Commerce Clause to order individuals to purchase health insurance.

If the Court strikes down Obamacare, it will no doubt rely on CIR's 2000 victory in *U.S. v. Morrison*, one of the leading cases establishing limits to Congress's authority to regulate the non-economic, purely instate activity of individuals.

People are taking note. They know Obamacare is crazy. And it makes a difference when someone stands up and says, "this is unconstitutional." And then proves the point in court.

We're up against some tough adversaries.

But we're not intimidated.

Take our defense of the Michigan Civil Rights Initiative, Jennifer Gratz and Ward Connerly's hugely successful ballot initiative to outlaw racial preferences of all kinds in Michigan.

We won two big victories in 2007 and 2008, the first allowing MCRI to get on the ballot and the second forcing state officials to implement the new initiative without delay.

But then, this summer, a rogue three-judge panel struck the initiative down as unconstitutional. According to the Sixth Circuit panel, a law ending racial discrimination is itself discriminatory because it makes it harder for certain groups to lobby for preferences based on race.

The panel's view is preposterous.

But regardless how ridiculous this claim sounds to you and me, there is legal precedent supporting it and the case may well go to the Supreme Court.

With your continued support, we will vigorously defend MCRI all the way to the Supreme Court -- and win.

Three cases with the potential to go to the Supreme Court might be enough for some organizations.

But not for CIR. Not this year. Not with what is at stake.

We're also accelerating our efforts on behalf of free speech. You see, another favorite tactic of the big-government crowd is stifling speech they deem out of line with their favored "narrative."

This is a tactic we've seen a lot in the last three years. It started during the campaign, when Obama supporters flooded radio shows with hostile calls intended to drown out guests who wanted to talk about candidate Obama's history of radical connections.

After the election, Obama himself joined in targeting individual critics by name, singling out Rush Limbaugh and other talk radio hosts for opposing his policies.

So we shouldn't have been surprised when his supporters picked up the cue and started going after other less famous people who dared to tell the truth about the left's various efforts to transform America.

In 2010 Anita MonCrief, a single mother and former employee of the notorious ACORN, went to the *New York Times* with the truth about ACORN.

When she faced a crushing lawsuit brought by ACORN to shut her up, CIR went to bat for her. With your support we assembled a top-flight legal team that went on offense.

By the end of 2010, the suit was dismissed with prejudice.

MonCrief wasn't the only ACORN whistleblower to be sued. When James O'Keefe released his explosive undercover videos about the willingness of ACORN employees to help set up a brothel, he was sued in three states and investigated by a half-dozen grand juries.

Once again, your financial support helped CIR assemble a legal team that to this day is successfully defending O'Keefe's First Amendment right to make undercover films that expose the hypocrisy of ACORN, teachers unions, and public radio and television, among other sacred cows of the Left.

Whether or not you and I win -- and we win eight out of ten cases -- our lawsuits remind the country of the importance of respecting individual rights during a time of economic and political upheaval.

And when we win, we set precedents that pay dividends for years to come.

We keep our eye on the ball and stay with cases as long as it takes to win.

Our big victory last summer in *U.S. v. NYC Department of Education* shows why persistence in these fights makes all the difference.

We've built on our victories and we've pushed forward after our losses.

Whether we win or lose, each case is another opportunity to remind this country of what made it great. And what will make it great again.

And people are listening. With your help again this year, we'll press forward in our three cases near the Supreme Court level.

I've told you why our strategy is so successful. And how it contributed to a major win in our case challenging employment preferences in the New York City schools, and is helping lead to significant legal rulings against Obamacare.

And I've explained why you and I must continue to push as aggressively as possible in our case challenging the Voting Rights Act and our case defending the Michigan Civil Rights Initiative.

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 possibly increase -- your support if CIR is to have the strength to fight

and win the important cases we need to keep and build on the momentum we have achieved at this crucial point.

Will you send \$50 today to help CIR make sure we prevail in our Kinston case challenging Section 5 of the Voting Rights Act?

Or if you can, will you send \$100 to help CIR carry the day in the constitutional fight against Obamacare? Or possibly \$250 to make sure we prevail in our defense of the Michigan Civil Rights Initiative?

I know I'm asking a lot. I know the economy is tough right now. And 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 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 "TJP Pell", written in a cursive style.

Terence J. Pell  
President

P.S. Your CIR is the *only* organization that time after time, stands up and speaks out. And we win -- eight out of ten cases we bring. The future of our constitutional principles and the individual rights they protect is on the line.

# CENTER FOR INDIVIDUAL RIGHTS

## Help CIR Stay on Offense in 2012

TO: Mr. Terry Pell, President  
Center for Individual Rights  
1233 20th Street, NW, Suite 300  
Washington, DC 20036  
Toll Free: (877) 426-2665 ext. 113

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

My Phone Number: (\_\_\_\_) \_\_\_\_\_

Dear Terry,

\_\_\_ I agree CIR must press ahead with high profile cases designed to roll back the encroachments of big government.

\_\_\_ And I agree CIR must force defenders of racial preferences, speech codes, and intrusive regulatory interference to defend their policies in court and under oath.

\_\_\_ To help CIR stay on offense and take advantage of its opportunities to set vital appellate and Supreme Court precedents, I've enclosed my tax-deductible contribution of:

\_\_\_ \$250    \_\_\_ \$100    \_\_\_ \$50    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 would like to spread my contributions to CIR over 12 equal monthly payments using my credit card.*** This will authorize CIR to charge the credit card above \$ \_\_\_\_\_ per month on the \_\_\_\_\_ day of each month. My email address for confirmation is:

\_\_\_\_\_ ; Phone (\_\_\_\_) \_\_\_\_\_.

The Center for Individual Rights is a 501(c)(3) non-profit, public interest law firm. Contributions to CIR are tax deductible to the limits provided by law. 120030