ABOUT CIR:

"WHEN THE HISTORY OF THE ANTI-P.C. BACKLASH IS WRITTEN, THERE WILL BE CHAPTERS RESERVED FOR THE WALL STREET JOURNAL EDITORIAL PAGE, RUSH LIMBAUGH, CHARLES MURRAY, AND, NO DOUBT, WASHINGTON. D.C.'S OWN CENTER FOR INDIVIDUAL RIGHTS. ... WITH A MOTTO OF 'BRINGING LAWSUITS FOR A BETTER AMERICA,' THE NON-PROFIT LAW CENTER HAS SPENT THE PAST SIX YEARS POUNCING ON JUST ABOUT ANY PUBLIC INSTITUTION THAT ATTEMPTS TO DISCRIMINATE IN THE NAME OF POLITICAL CORRECTNESS."

WASHINGTON CITY PAPER

ABOUT HOPWOOD V. STATE OF TEXAS:

"ripples from the case are spreading throughout America. These ripples — the hopwood effect — have begun killing off or modifying affirmative action at one institution of higher education after another."

U.S. NEWS & WORLD REPORT

ABOUT THE NINTH CIRCUIT'S DECISION UPHELDING CALIFORNIA PROPOSITION 209:

"it is just possible that this decision ... marks out the road back down from the summit of judge-made law and social policy."

THE WALL STREET JOURNAL
CIR can look back on another year of remarkable success and continued growth. Among many accomplishments, one stands out: In July 1996, the U.S. Supreme Court let stand the Fifth Circuit Court of Appeals’ decision in Hopwood v. State of Texas, which held that the University of Texas Law School may not take race into account in student admissions.

To be sure, CIR made substantial headway in all three of its issue areas (civil rights, sexual harassment, and free speech and free exercise of religion). In Brzonkala v. Virginia Tech, for example, we persuaded a federal district court that neither the Commerce Clause nor the Fourteenth Amendment provides Congress with the authority to create a federal civil remedy for “discriminatory,” “gender-based” violence. The court’s ruling struck down core provisions of a federal statute (the 1994 Violence Against Women Act) — an event sufficiently rare to warrant celebration.

But neither Brzonkala nor any other CIR case rivals Hopwood’s momentous importance. The case has blown a huge hole in the defenses on which most affirmative action programs are based, and it has proven that elite institutions have for years administered racial quotas in disguise. Universities can no longer lie about quotas and preferences; they will have to defend them. In the long run, this will prove impossible. The Supreme Court’s refusal to overturn the Fifth Circuit’s decision — arguably, the first unequivocal endorsement of official colorblindness by a federal appellate court in three decades — is one of the two 1996 events to signal a breakthrough at the civil rights front.

The other event was, of course, the enactment of the California Civil Rights Initiative, or “Prop 209,” on November 5, 1996. For the very first time, racial preferences — largely the handiwork of unelected judges and bureaucrats — were put to a popular vote. Despite an appalling smear campaign by the defenders of the established order, official colorblindness won.

CIR is representing the sponsors of Prop 209 in pending litigation over the initiative. The lawsuit, brought by the ACLU and a host of other advocacy groups, contends that Prop 209’s categorical prohibition against official race or sex discrimination actually “discriminates” against minorities and women. In April 1997, a panel of the Ninth Circuit Court of Appeals rejected this desperate challenge. Although the case remains pending, we are confident that the Ninth Circuit’s decision will be sustained and that Prop 209 will eventually be found constitutional.

We may be too sanguine, perhaps, about the prospects of taking government out of the race business. Universities are doing whatever they can, in- and outside the law, to preserve racial preferences in higher education. The defenders of racial preferences (and of other multicultural targets of CIR-inspired litigation, from speech controls to sexual harassment regulations) occupy the command posts of higher education, much of the
media, and other powerful institutions. No one should expect a victory on a point of principle to translate instantaneously into wholesale institutional reform on the ground.

However, the idea that race preferences would fall with one big, dramatic blow (either by the Supreme Court or the Congress) has always been a chimera. What matters is to sustain the post-Hopwood, post-209 momentum toward official colorblindness, to cement public support for this principle, and to demoralize the defenders of the existing regime. CIR’s civil rights litigation program is tailored to these purposes.

First, we are seeking to preserve and extend the Hopwood principle of official colorblindness in appropriate lawsuits. Smith v. University of Washington, filed in March 1996, is a challenge to the defendant law school’s use of substantial race preferences in student admissions. Other cases may soon follow.

Second, we are seeking to clear the way for ongoing efforts in many states to enact initiatives and referenda similar to California’s Prop 209. The lesson of Prop 209 is that legislatures, beholden as they are to special interest groups, will do little or nothing in the way of curbing race-based preferences, notwithstanding the public support such reforms would enjoy. Initiatives and referenda such as Prop 209 are an effective means of trumping entrenched interest groups and bureaucratic resistance. This is precisely why the civil rights establishment is so eager to overturn Prop 209 in court — and why the defense of the initiative is CIR’s priority.

Third, we will continue to challenge particularly egregious preference policies, especially federal programs that categorically exclude non-favored groups from participation. This past year, we successfully concluded two lawsuits over such programs; a third case (Doe v. Department of Health and Human Services) is pending. While such attacks on flagrantly unlawful preference programs are unlikely to set precedents, they show that the affirmative action advocates who deny the very existence of quotas are lying. Moreover, repeated demonstrations that the defenders of the existing civil rights regime do not care what the law requires will further increase public opposition to a corrupt regime.

Over the years, CIR has racked up numerous precedent-setting victories — among them, the single biggest civil rights case of the past decade. As a result, CIR has gained the respect of its friends and its enemies. National newspapers and legal trade publications have noted that CIR has never lost a case against a college or university.

Increased financial support from a steadily growing number of generous contributors has enabled CIR to enlarge its staff, thereby enabling us both to expand our litigation program and to play a much more prominent role in the public debate over civil rights and other matters within CIR’s purview. And CIR is fortunate to have at its disposal an infrastructure of dedicated and resourceful pro bono attorneys — the often unsung heroes on whose generous assistance CIR depends for so much of its work and success.

CIR may never escape the large shadow of Hopwood: much as the case has well-nigh eclipsed CIR’s noteworthy victories on free speech, freedom of religion, and sexual harassment, so it may make all our future accomplishments seem small by comparison. On reflection, though, this is a curse we are happy to live with. Official race preferences and state-sponsored discrimination are among the very few issues in modern American politics of which it can be said that a handful of people and a small number of organizations have made all the difference, against forbidding odds.

CIR is one of these organizations, and we make no apologies about our role in curbing the government’s diversity industry. We may not see a “colorblind society” for another generation or more. But we should in any event resist the temptation of replacing the counterproductive, meddlesome pursuit of “diversity” with another ambitious campaign to impose an equally meddlesome, statist regime of universal colorblindness. What we can and should do is to put race beyond the reach of the state — to end zero-sum games of racial politics.

Hopwood and Prop 209 have moved this objective within reach. CIR’s track record, its enhanced resources and reputation, and its docket of carefully selected cases should ensure further progress over the coming year and beyond. We may never live down Hopwood. But we may yet live up to its promise.

Michael P. McDonald
President

Michael S. Greve
Executive Director
United States Supreme Court


Status: Prevailed. Lower court decision vacated and remanded for further proceedings.


Outcome and Status: Victory before 5th Circuit; cert. denied; case pending in district court for damages, injunctive relief and attorneys’ fees. See also Federal District Courts.

In the Matter of John R. Topp, __ S.Ct. __ (1997); No. 96-01098 (amicus). Freedom of Speech. Supported certiorari petition on behalf of Idaho attorney reprimanded by State Bar Association for criticizing state judge’s ruling as “political.”

Outcome: Certiorari denied.

Federal Appellate Courts


Status: Victory in district court; plaintiffs’ appeal pending before Fourth Circuit.


Status: District court enjoined implementation of Proposition 209 pending trial. Victory before 9th Circuit, which reversed district court. Plaintiff’s request for rehearing en banc pending.


Status: District court granted defendant’s motion for summary judgment. Appeal pending.

Outcome and Status: Fourth Circuit ruled that speech Scallet contended was protected was not the cause of his removal and that no genuine issue of material fact existed to warrant a trial. Cert. petition pending.


Outcome and Status: Prevailed. Fourth Circuit Court of Appeals, sitting en banc, reversed district court's grant of defendants' motion for summary judgment (May 1996). Case settled on eve of trial (September 1996) for damages, injunctive relief, and costs and attorneys' fees.

Federal District Courts


Status: Case pending on cross motions for summary judgment (February 1997); awaiting decision.


Status: Pending.

Fair Housing Council of Suburban Philadelphia v. Local Daily News, et al. No. 96-CV-1383 (E.D.Pa. 1996). Represented landlord in case challenging standing of housing groups and paid "testers" to sue landlords, real estate agents and newspapers for discrimination under the Fair Housing Act when housing advertisements contain words or symbols that may indicate a "discriminatory" preference.

Status: Prevailed. Plaintiff's case dismissed with prejudice.
See Federal Appellate Courts.

Hopwood, et al., v. State of Texas, et al., No. A-92-CA-563-SS. Civil Rights; Equal Protection. Trial on damages and injunctive relief following 5th Cir. ruling that state law school may not use racial preferences in student admissions.
Status: Argued; pending.

Outcome: Victory. State and private agencies settled for $20,000 in attorneys' fees, costs, and damages and agreed to cease participation in certain race-restricted summer program (October 1996). U.S. Department of Justice agreed not to participate in program for six years and to pay CIR $7,500 in attorneys' fees and costs (January 1997).

Status: Pending.

Rosenberger, et al., v. Rector and Visitors of the University of Virginia, No. 91-0036-C, slip op. Sept. 17, 1996 (W.D. Va.). Suit for damages and attorneys' fees subsequent to Supreme Court ruling that public university may not exclude religious student newspaper neutral, university-wide student funding system.
Outcome: District court awarded $310,000 in fees and costs.

Status: Pending.

Thorpe v. Virginia State University, et al. CA No. 3:96 CV975 (E.D. Va. 1996). Commerce Clause; Equal Protection. Representing black student athletes at VSU accused of violating the Violence Against Women Act (VAWA) on grounds that civil remedies under VAWA exceed congressional power under the Commerce Clause and the Fourteenth Amendment.
Status: Pending.

Status: Defendants' motion to dismiss Bivens claims for damages denied. Defendants' motion to dismiss claims for injunctive relief granted. Pending.

Administrative; State Courts


Status: Briefed; awaiting decision.

Hartman v. Bowling Green University, No. 3:96 CV 7419. Assisted white journalism professor in challenge to University denial of job on the basis of race and pursuant to a diversity program mandated by educational accreditation agency. Outcome: Client agreement terminated.


Status: Pending on judicial remand to the FCC. Awaiting decision.


Status: Defendants' motion to dismiss denied in part; granted in part. Appeal of dismissed counts pending in appellate court; remaining claims pending in trial court.


Status: Pending; awaiting trial. For related case, see Federal Courts.


Status: Loss in superior court; appeal pending.
CIR Publications, 1996 - 1997 (Selection)


Public Appearances

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

CNN * CNN Headline News * CBS Morning News * Les Kinsolving Show * Roger Hedgecock Show KSDO-AM (San Diego, CA) * Gil Gross Show, WSPD Afternoon News (Toledo, OH) * NET Capitol Watch * NET Legal Notebook * NET Direct Line with Paul Weyrich * NET Mitchell’s in the Morning * NewsTalk TV * Bottom Line with Kweisi Mfume * Court TV * Rivera Live * KBOI-AM News (Boise, ID) * KPNR-AM News * KGA-AM News (Spokane, WA) * KRSU-AM Ricci and Tre Ware Show (San Antonio, TX) * KXLY Radio (Spokane, WA) * KIRO-AM News (Seattle, WA) * Dave Ross Show KIRO-AM (Seattle, WA) * KOMO-TV (Seattle, WA) * KIRO-TV (Seattle, WA) * KING-TV (NBC Affiliate, Seattle, WA) * Seven Live KIRO-TV (Seattle, WA)

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

Feature Articles on CIR & Friends


Civil Rights: Articles of Note


Freedom of Speech/Free Exercise: Articles of Note


Sexual Harassment: Articles of Note

## Financial Information

### Statement of Financial Position

**MARCH 31, 1997 and 1996**

<table>
<thead>
<tr>
<th>Assets</th>
<th>1997</th>
<th>1996</th>
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</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>$ 523,793</td>
<td>$ 346,622</td>
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<td>Grants Receivable</td>
<td>$ 245,000</td>
<td>$ 232,500</td>
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<tr>
<td>Accounts Receivable and Deposits</td>
<td>2,540</td>
<td>6,503</td>
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<td>Prepaid Expenses</td>
<td>$ 15,175</td>
<td>9,618</td>
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<td>Fixed Assets (Net)</td>
<td>$ 126,628</td>
<td>39,540</td>
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<td><strong>Total Assets</strong></td>
<td><strong>$ 913,136</strong></td>
<td><strong>$ 634,783</strong></td>
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<table>
<thead>
<tr>
<th>Liabilities and Net Assets</th>
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<tbody>
<tr>
<td>Accounts Payable and Other Accrued Liabilities</td>
<td>$ 78,379</td>
<td>$ 19,711</td>
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<tr>
<td>Net Assets - Unrestricted</td>
<td>$ 589,757</td>
<td>382,572</td>
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<tr>
<td>Net Assets - Temporarily Restricted</td>
<td>$ 245,000</td>
<td>232,500</td>
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<tr>
<td><strong>Total Net Assets</strong></td>
<td><strong>$ 834,757</strong></td>
<td><strong>$ 615,072</strong></td>
</tr>
<tr>
<td><strong>Total Liabilities and Net Assets</strong></td>
<td><strong>$ 913,136</strong></td>
<td><strong>$ 634,783</strong></td>
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### Statement of Activity

**FOR THE YEARS ENDED MARCH 31, 1997 AND 1996**

<table>
<thead>
<tr>
<th>Support</th>
<th>1997</th>
<th>1996</th>
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<tbody>
<tr>
<td>Contributions and Grants</td>
<td>$ 989,161</td>
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<td>Attorneys’ Fees</td>
<td>$ 268,333</td>
<td>40,609</td>
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<td>Interest and Miscellaneous Income</td>
<td>16,864</td>
<td>5,742</td>
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<td><strong>Total Support</strong></td>
<td><strong>$ 1,274,358</strong></td>
<td><strong>$ 919,010</strong></td>
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<table>
<thead>
<tr>
<th>Expenses</th>
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</thead>
<tbody>
<tr>
<td>Programs:</td>
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<tr>
<td>Litigation</td>
<td>$ 647,736</td>
<td>$ 385,169</td>
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<tr>
<td>Publications/Education</td>
<td>$ 104,715</td>
<td>89,174</td>
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<td><strong>Total Program Expenses</strong></td>
<td><strong>$ 752,451</strong></td>
<td><strong>$ 474,343</strong></td>
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<tr>
<td>Administrative</td>
<td>$ 245,822</td>
<td>159,286</td>
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<td>Fundraising</td>
<td>$ 56,400</td>
<td>17,039</td>
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<tr>
<td><strong>Total Expenses</strong></td>
<td><strong>$ 1,054,873</strong></td>
<td><strong>$ 650,668</strong></td>
</tr>
</tbody>
</table>

| Change in Net Assets         | 219,685  | 268,342  |
| Net Assets - Beginning       | 615,072  | 346,730  |
| **Net Assets - Ending**      | **834,757** | **615,072** |

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

Staff

Michael P. McDonald (J.D., George Washington Law Center, 1982; B.A., Catholic University, 1978) is CIR's co-founder and President. He is a member of CIR's Board of Directors.

Michael S. Greve (Ph.D., Cornell University, 1987) is CIR's co-founder and Executive Director. 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.

Terence J. Pell (Ph.D., Notre Dame, 1996; J.D. Cornell Law School, 1981; B.A., Haverford College, 1976) is CIR's Senior Counsel for Legislative and External Affairs. He previously worked as an attorney with the firm of Arent, Fox, Klintner, Plotkin & Kahn and served as Chief of Staff at the Office of National Drug Control Policy.

Michael J. Troy (J.D., University of Michigan Law School, 1992; B.A., George Washington University, 1989) is CIR's Associate General Counsel. He joined CIR in 1994.

Hans Bader (J.D., Harvard Law School, 1994; B.A., University of Virginia, 1991) is CIR's Associate Counsel. He joined CIR in 1996 after a clerkship with U.S. District Judge Lawrence Lydick.

Ann H. Coultier (J.D., University of Michigan Law School, 1988; B.A., Cornell University, 1985) is CIR's Associate Counsel. In 1989-90, she clerked for Judge Pascoe Bowman of the U.S. Court of Appeals for the Eighth Circuit. Prior to joining CIR in 1997, Miss Coultier worked as a litigation associate for the firms of Cahill, Gordon & Reindel and Kronish, Lieb, Weiner & Hellman and as a Judiciary Counsel to U.S. Senator Spencer Abraham.

Robert Alt (B.A., Azusa Pacific University, 1996) is CIR's Director of Public Affairs. He joined CIR in 1996.

James McCamet (B.A., Mount Vernon Nazarene College, 1996) is CIR's Administrative Director. He joined CIR in 1996.

Sumeet Caberwal (B.A., Duke University, 1997) is a CIR Research Assistant. She joined CIR in 1997.

Law Clerks and Interns, 1996 - 1997

Andrea Aultert
(Valparaiso University Law School)

Matthew O'Herron
(George Mason University Law School)

Hae Sung Park
(George Mason University Law School)

Peter J. Baker
(Olivet Nazarene University)

Willis Sauter
(University of Chicago Law School)

Jason Cooley
(George Mason University Law School)

James Sheahan
(University of Chicago Law School)

Karen Rho Han
(Georgetown Law School)

Thomas Wielgus
(Thomas Cooley School of Law)

Eugene Healey
(University of Chicago Law School)

Caleb A. Williams
(George Fox College)

Nita Joy Jones
(Taylor University)

Steven Wolmark
(Cornell University)

Howard C. Nielsen, Jr.
(University of Chicago Law School)