ABOUT CIR:

“IF INFLUENCE IS MEASURED BY IMPACT ON THE LAW RATHER THAN BY PARTNERSHIP DRAWS OR INVITES TO CUSHY ABA CONFABS, THE CENTER’S THREE MIKES ARE AMONG THE MOST IMPORTANT LAWYERS IN TOWN.”

NATIONAL JOURNAL

ABOUT CIR’S LAWSUIT AGAINST THE UNIVERSITY OF MICHIGAN:

“JENNIFER GRATZ’S LAWSUIT CHALLENGING THE UNIVERSITY OF MICHIGAN’S UNDERGRADUATE ADMISSIONS POLICY IS A WIN-WIN PROPOSITION FOR OPPONENTS OF AFFIRMATIVE ACTION PROGRAMS AND A SIGNIFICANT HEADACHE FOR THEIR DEFENDERS.”

WASHINGTON POST (EDITORIAL)

ABOUT CALIFORNIA PROPOSITION 209:

“WITHOUT DISSENT OR COMMENT, THE (SUPREME) COURT LEFT INTACT A FEDERAL APPEALS COURT RULING THAT SAID: ‘THERE IS SIMPLY NO DOUBT THAT PROPOSITION 209 IS CONSTITUTIONAL.’”

BALTIMORE SUN
The Year in Review

Over the past twelve months, CIR has made further progress toward its long-term objective—the re-invigoration of meaningful constitutional constraints on government. CIR has pursued this objective in cases involving a broad range of issues, from federalism to free speech and the free exercise of religion. As in the preceding year, though, CIR’s chief priority has been civil rights litigation.

A year ago in these pages, we expressed the hope that CIR would live up to the promise of its best-known legal victory, Hopwood v. State of Texas—the Fifth Circuit’s 1996 decision that the Constitution prohibits the University of Texas from considering race in student admissions. In placing race beyond the reach of the state, Hopwood well-nigh defines CIR’s civil rights agenda. CIR has continued to pursue this agenda with considerable success.

In Reno v. Bossier Parish, the U.S. Supreme Court sharply curtailed the federal government’s ability to bludgeon state and local jurisdictions into adopting racially gerrymandered voting districts. In Coalition for Economic Equity v. Wilson, in which CIR represented the sponsors of California’s Proposition 209, the Ninth Circuit sustained the popularly enacted ban on state and local race preferences as plainly constitutional. We owe these two splendid victories in no small measure to Michael A. Carvin, a frequent CIR pro bono counsel and a member of its Board of Directors, who argued both Bossier and Coalition for Economic Equity for CIR’s respective clients.

Also in 1997, CIR filed three cases, Smith v. University of Washington and a pair of cases against the University of Michigan (Gratz v. Bollinger and Grutter v. Bollinger), that seek to extend the principles of Hopwood to other educational institutions and judicial circuits. The Michigan cases in particular garnered enormous public attention and demonstrated that Hopwood was anything but a passing blow to the existing preference regime. The Washington Post and other national publications compared CIR and its legal strategies to the long, methodical litigation campaign of the NAACP Legal Defense Fund, Inc. to end state-imposed segregation, culminating in Brown v. Board of Education.

The comparison seems exaggerated. Affirmative action preferences are odious and destructive, but they are not Jim Crow. The supporters of contemporary forms of state-sponsored race discrimination are more pathetic than menacing. Suing them requires confidence and resolve (along with substantial resources), but obviously nothing like the courage it took to fight segregation in the old South.

In both instances, however, the same formal principle is at stake. “Distinctions by race are so evil, so arbitrary and invidious that a state bound to defend the equal protection of the laws must not invoke them in any public sphere,” Thurgood Marshall wrote in his briefs in Brown v. Board. CIR subscribes to this principle.
Like the NAACP of old, moreover, CIR seeks to advance this principle by building precedent on precedent (its own accomplishments, and those established by others). Witness, for example and in addition to the Hopwood "clones" in Washington and Michigan, CIR's role as plaintiffs' counsel in DynaLantic Corp. v. U.S. Department of Defense. This case, a frontal attack on federal race-based contracting set-asides, seeks to apply and extend the Supreme Court's 1995 decision in Adarand v. Pena, which held that race-based set-asides are virtually always unconstitutional.

Unfortunately, some of the most egregiously illegal racial preference programs are widely perceived to be immune from legal review in light of Hopwood because they are enshrined in now decades-old collusive legal settlements and consent decrees. To address this problem, CIR is pursuing challenges to two consent decrees, one covering a state university system, Tompkins v. Alabama State University, and the second concerning a secondary school system, Ho v. San Francisco Unified School District. Through these cases, CIR hopes not only to remove existing consent decrees as an obstacle to colorblind policies, but also to cut off a possible future escape route to compliance with the post-Hopwood standard.

These strategies have prompted our critics to charge that CIR is committed to an agenda of "judicial activism." As commonly understood, however, the phrase describes litigation that aims to expand government's reach and to institute ambitious social engineering scheme, typically without a plausible constitutional warrant. CIR, in contrast, seeks to limit such schemes, based on the clear warrant of the Fourteenth Amendment.

The NAACP Legal Defense Fund, Inc. eventually sacrificed its commitment to official colorblindness in — truly activist — lawsuits for school busing and racial preferences, the better to accommodate the changing demands of its constituency. In contrast, CIR is a litigation boutique, not the legal spearhead of a social movement. CIR has no reason to sacrifice or subordinate constitutional principle to constituency demands because it has no constituency — only clients. In litigating civil rights cases, we seek to enforce constitutional principles and to obtain relief for our clients. We have not the slightest inclination to design appropriate student admission systems for universities in Texas, California, Washington, or Michigan, far less to subject these institutions to judicial management. University administration is for university administrators— provided they do not base their decisions on race.

Above all, CIR's civil rights agenda is based not on beliefs about the role of race but rather about the role of government in a free society. Since politics is a divisive, zero-sum game, race must be placed beyond the reach of the state, and the baseline of strict government neutrality is the only means of accomplishing this goal. This is the point of official colorblindness.

In other words, CIR is committed to official colorblindness as one hugely important application of broader, more general principles of government neutrality and non-interference. These principles unite Hopwood and its progeny with CIR cases outside the civil rights arena. In Columbia Union College v. Maryland, for example, we are working to advance the principle, articulated prominently in our Supreme Court victory in Rosenberger v. University of Virginia (1995). That case, one of CIR's most important victories, established that the government may not exclude religious viewpoints and institutions from participating, on an equal footing with secular groups, in public funding schemes. Similarly, in Brzonka v. Virginia Polytechnic Institute, which is awaiting a decision by the full Fourth Circuit Court of Appeals, CIR is attempting to re-invigorate long-ignored federalism constraints on congressional authority. And so on.

In the coming year and beyond, the fight to end state-sponsored race discrimination will continue to attract the lion's share of public attention — and of CIR's legal work. While the media, for the most part, have already found the University of Michigan guilty of race discrimination, a conclusive judicial resolution and remedial relief for CIR's clients, alas, lie well in the future. CIR will pursue these objectives as part of its larger and, we think, compelling agenda of subjecting a meddlesome government to constitutional limitations.

Michael P. McDonald
President

Michael S. Greve
Executive Director
United States Supreme Court

Outcome: Victory.

Federal Appellate Courts

Status: Victory in district court. Reversal by three-judge panel vacated by Fourth Circuit en banc; oral argument held before en banc court; awaiting decision.

Outcome: Victory. U.S. Court of Appeals for the Ninth Circuit denied Plaintiffs' request for re-hearing en banc. Plaintiffs' Petition for Writ of Certiorari before U.S. Supreme Court denied.

Status: Judgment by District Court in favor of defendants on appeal to Fourth Circuit.

Status: Summary judgment for defendant affirmed on appeal. Petition for Writ of Certiorari to the U.S. Supreme Court to be filed.
**Ho v. San Francisco Unified School District**, 965 F. Supp. 1316 (N.D. Cal. 1997), appeal pending. Civil Rights; Equal Protection. Representing state board of education in lawsuit brought to terminate long-standing school desegregation order. Although initially allied with defendant school district, state board now opposes the racial preferences in school assignments mandated by the order.

Status: Case argued on April 15, 1998; Pending.

**Hopwood v. State of Texas**, 78 F.3d 932, (5th Cir.), reh'g en banc denied, 84 F.3d 720, cert. denied, 116 S. Ct. 2581 (1996), remanded for further proceedings. Civil Rights; Equal Protection. Successfully challenged racial preferences in landmark case against University of Texas Law School.

Outcome and Status: Victory. Petition for Writ of Certiorari to Supreme Court denied. Following remand, district court held that plaintiffs were entitled to $1 in damages notwithstanding racial discrimination. Appeal from district court judgment to Fifth Circuit filed.


Status: Denied without prejudice to refiling if FCC fails to take appropriate action by August, 1998.

**Lutheran Church v. Federal Communications Commission**, No. 97-1116, 1998 WL 168712 at *5 (D.C. Cir. April 14, 1998). Civil Rights; Equal Protection. Filed amicus brief challenging FCC regulations that required broadcasters to consider race in support staff hiring but forbade religiously-affiliated broadcasters from considering religion in such decisions.

Outcome: Victory. FCC regulations partly withdrawn and otherwise declared unconstitutional.


Outcome: Loss. U.S. Court of Appeals for the Fourth Circuit ruled that Scallet’s speech was not the cause of his removal and that no genuine issue of material fact existed to warrant a trial. Petition for Writ of Certiorari denied.


Status: Pending. Federal defendants (Department of Health and Human Services, National Institute of Health, and Department of Agriculture) settled out of court; case proceeding against remaining defendants.

Status: Pending. District court decision dismissing case on grounds of mootness reversed and remanded with leave to amend complaint to include challenge of "8(a)" program as a whole.


Kidd v. National Science Foundation, No. 97-2005-A (E.D. Va. filed Dec. 12, 1997). Civil Rights; Equal Protection. Of-counsel to graduate student challenging minorities-only graduate fellowship funded by the National Science Foundation.

Status: Pending.

ABOUT THE UNIVERSITY OF MICHIGAN CASES:

"BECAUSE OF THESE SUITS, SCHOOL ADMISSIONS HAVE MOVED TO THE FOREFRONT OF THE AFFIRMATIVE ACTION DEBATE, AND THE CENTER IS BETTING THAT ONE OF ITS CASES WILL FORCE THE HIGH COURT TO REEXAMINE THE QUESTION WHETHER ADMISSIONS OFFICERS CAN EVER TAKE ACCOUNT OF RACE."

US NEWS AND WORLD REPORT

ABOUT SMITH V. UNIVERSITY OF WASHINGTON:

"IN MARCH, 1994 KATURIA SMITH WAS REJECTED BY THE UNIVERSITY OF WASHINGTON LAW SCHOOL. SHE FAILED, I BELIEVE, BECAUSE ON HER APPLICATION SHE CHECKED THE BOX IDENTIFYING HER AS ‘WHITE’ ... AMONG HER ATTORNEYS ARE MEMBERS OF THE D.C.-BASED CENTER FOR INDIVIDUAL RIGHTS."

NAT HENTOFF,
WASHINGTON POST


Outcome: Victory. Settled on eve of trial. Client received $1.4 million in damages and attorneys’ fees.

Reisner v. CUNY College, No. 95-CV-8087 (JSM) (S.D.N.Y. filed Sept. 20, 1995). Civil Rights; Equal Protection; Title VII. Challenged state college’s refusal to hire non-minority applicant for position reserved for minorities.

Status: Victory. Settled on eve of trial for $280,000 in damages, attorneys’ fees, and costs.


Status: Victory. Settled prior to trial for minimal damages.


State Courts


CIR Publications, 1997 - 1998 (Selection)


Public Appearances

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


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

## Statement of Financial Position

**MARCH 31, 1998 AND 1997**

### Assets

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1997</th>
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</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>$890,650</td>
<td>$523,793</td>
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<tr>
<td>Grants Receivable</td>
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<tr>
<td>Accounts Receivable and Deposits</td>
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<tr>
<td>Prepaid Expenses</td>
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<td>Fixed Assets (Net)</td>
<td>$91,363</td>
<td>$126,628</td>
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<td><strong>Total Assets</strong></td>
<td>$1,190,074</td>
<td>$913,136</td>
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### Liabilities and Net Assets

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<tr>
<th></th>
<th>1998</th>
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<tr>
<td>Accounts Payable and Other Accrued Liabilities</td>
<td>$39,377</td>
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<td>Net Assets - Unrestricted</td>
<td>$918,497</td>
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<tr>
<td>Net Assets - Temporarily Restricted</td>
<td>$232,200</td>
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<tr>
<td><strong>Total Net Assets</strong></td>
<td>$1,150,697</td>
<td>$834,757</td>
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<tr>
<td><strong>Total Liabilities and Net Assets</strong></td>
<td>$1,190,074</td>
<td>$913,136</td>
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## Statement of Activity

**FOR THE YEARS ENDED MARCH 31, 1998 AND 1997**

### Support

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<thead>
<tr>
<th></th>
<th>1998</th>
<th>1997</th>
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<tr>
<td>Contributions and Grants</td>
<td>$1,547,495</td>
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<td>Attorneys’ Fees</td>
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<td>Interest and Miscellaneous Income</td>
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<td>$16,864</td>
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<td><strong>Total Support</strong></td>
<td>$1,606,932</td>
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### Expenses

<table>
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<tr>
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<tr>
<td>Programs:</td>
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<tr>
<td>Litigation</td>
<td>$713,873</td>
<td>$647,736</td>
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<tr>
<td>Publications/Education</td>
<td>$207,492</td>
<td>$104,715</td>
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<td><strong>Total Program Expenses</strong></td>
<td>$921,365</td>
<td>$752,451</td>
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<td>Administrative</td>
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<td>Fundraising</td>
<td>$94,242</td>
<td>$56,400</td>
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<tr>
<td><strong>Total Expenses</strong></td>
<td>$1,290,992</td>
<td>$1,054,673</td>
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### Change in Net Assets

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<thead>
<tr>
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<th>1998</th>
<th>1997</th>
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<tbody>
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<td><strong>Change in Net Assets</strong></td>
<td>$315,940</td>
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<tr>
<td>Net Assets - Beginning</td>
<td>$834,757</td>
<td>$615,072</td>
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<tr>
<td><strong>Net Assets - Ending</strong></td>
<td>$1,150,697</td>
<td>$834,757</td>
</tr>
</tbody>
</table>

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. He previously worked as an attorney with the firm of Arent, Fox, Kintner, Plotkin & Kahn and served as General Counsel and subsequently, Chief of Staff of the Office of National Drug Control Policy.

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.

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

Ann H. Coulter (J.D., University of Michigan Law School, 1988; B.A., Cornell University, 1985) is CIR’s Associate Counsel. She joined CIR in 1997 after working 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.

Todd Kessler (B.A. Lafayette College, 1995) is CIR Fundraising Director. He joined CIR in 1997.

Law Clerks and Interns, 1997 - 1998

Leola Cox  
(George Mason University Law School)

Eugene Healey  
(University of Chicago Law School)

Kenneth Hodge  
(George Mason University Law School)

Meredith Nicholson  
(University of North Carolina-Chapel Hill Law School)

Willis Sauter  
(University of Chicago Law School)

Thomas Wielgus  
(Thomas Cooley School of Law)

Robert Worst  
(William and Mary School of Law)