ANNUAL REPORT 2009—2010

CIR

The Center for Individual Rights

is a nonprofit civil libertarian law firm. CIR believes legally enforceable individual rights are the best way to preserve liberty in a system of democratic self-rule. CIR brings a handful of high profile lawsuits that focus public attention on cases where individual rights are at greatest risk and offer the best chance of strengthening legal protection for their exercise.

CIR provides free representation to deserving clients who cannot otherwise obtain or afford adequate legal counsel and whose individual rights are threatened. In light of its limited resources and charitable mission, CIR selects a small number of cases based on several criteria, principally the ability of the case to set landmark precedent protecting individual rights. In addition, CIR looks for cases that fit well with its expertise, principally in the areas of race discrimination and free speech.

CIR is a nonprofit charitable organization. Contributions are tax-exempt under section 501(c)(3) of the Internal Revenue Code.

About CIR:

"The movement's first great legal victories came next, thanks to the formation of the Center for Individual Rights in 1989. In *United States v. Morrison* (2000), the Center for Individual Rights convinced the Supreme Court that portions of the 1994 Violence Against Women Act exceeded Congress's constitutional authority to regulate interstate commerce, while in *Gratz v. Bollinger* (2003), the group persuaded the Court to strike down the University of Michigan's race-based admissions policy for undergraduates."
Damon W. Root, *Reason Magazine*

About *Project Vote v. Anita MonCrief*
"The only way to defeat the Left's thugs is to stand up, fight back, and turn the tables. The victory for MonCrief, Graves, Bartle, Marcus & Garrett, and the Center for Individual Rights is a victory for all watchdogs targeted by the 'community organizing' racketeers. Be not afraid."
Michelle Malkin, *MichelleMalkin.com*

About *LaRoque et al. v. Holder*
"The Center for Individual Rights is filing a lawsuit, challenging the constitutionality of Section 5 of the Voting Rights Act. This is the issue the Supreme Court managed to duck last year, but with an opinion that left the door very much open to future challenges… this is a ripe issue, and the even better news is that the particular lawsuit being filed, involving Kinston, N.C., has a very favorable set of facts. Kudos to CIR!"
Roger Clegg & Hans von Spakovsky, *"The Corner," National Review Online*

The Year in Review

When CIR was founded twenty-one years ago, the need for a national public interest law firm devoted to an uncompromising defense of limited government based on individual rights was pressing and obvious. CIR's mission is still unique, and events in the past year have shown again just how important its high profile constitutional litigation remains in keeping government power within necessary limits.

Last year, CIR brought a broad new challenge to the use of the Voting Rights Act to favor the election of minority candidates. Since rules governing elections set forth the basic relationship between citizen and government in a democracy, *LaRoque v. Holder* may become not just one of the most important civil rights cases of this decade, but an important step in reasserting representative self-government as well.

The case takes square aim at a particularly pernicious federal racial preference now ensconced in Section 5 of the Voting Rights Act of 1964. Section 5 requires certain jurisdictions, mostly in the South, to preclear all changes in voting procedures with the federal Department of Justice. Under recent changes to Section 5, federal officials must withhold approval of any change that does not maximize the ability of minority voters to elect minority candidates.

Together with our co-counsel Michael Carvin, CIR hopes to get *LaRoque v. Holder* to the Supreme Court prior to the 2011–2012 redistricting, which is expected to add dozens of Congressional seats to Southern jurisdictions. The *LaRoque* case complements other pending challenges to Section 5 by not only challenging Section 5's selective coverage, but also targeting the manifestly unconstitutional race-based decision-making Section 5 imposes on local officials. If all goes well, the 2011–2012 redistricting will be the first in fifty years in which federal officials will not be able to inject race into Southern redistricting.

Free and fair elections are fundamental to self-government. Just as essential is freedom of speech, which not only makes possible the spirited, fearless character of democratic debate, but also ensures it will be fully informed and effective.

Last year CIR took on two new clients, James O'Keefe and Anita MonCrief, individuals who singlehandedly exposed the misdeeds

and illegal actions of the Association of Community Organizations for Reform Now (a.k.a. "ACORN"). For their pains, MonCrief and O'Keefe found themselves on the receiving end of multiple lawsuits coordinated by ACORN and its allies. Each suit alleged numerous violations of state laws—some absurdly, others more plausibly. Either way, the intent of the suits was clear: to discredit these individuals as reckless and unreliable, to force them to hire expensive attorneys, and ultimately to prevent them from speaking out further about ACORN.

CIR swung into action with the help of co-counsel Michael Madigan of Orrick, Herrington & Sutcliffe and Tod Graves and Edward Grime of the Kansas City firm of Graves, Bartle, Marcus & Garrett. We quickly achieved victory in the *MonCrief* case; the *O'Keefe* matter continues. As these cases demonstrate, CIR provides much-needed legal assistance to average citizens who cannot otherwise afford skilled legal counsel in cases central to democratic self-rule.

CIR enjoyed a favorable settlement in another such case, this one on behalf of Julie Waltz, a California resident who challenged that state's practice of placing group homes for emotionally unstable individuals in residential neighborhoods. Housing officials decid-

Terry Pell, CIR President

Professor Jeremy Rabkin,
Chairman of CIR's Board of Directors

ed to make an example of Waltz by launching a yearlong investigation of her for federal housing discrimination. And for good measure, they threatened to prosecute her if she did not relent.

With the generous help of lead counsel Henry Weismann of the Los Angeles firm of Munger, Tolles & Olson LLP, CIR defended Waltz. After a year of discovery, lawyers for the state asked whether Waltz would agree to settle the case. She agreed to do so, but only on the condition that the state adopt and publish a new regulation, to be called the "Julie Waltz First Amendment Policy." The regulation prohibits employees from investigating citizens for the exercise of their free speech rights. It must be published on the government's website, and the state must give employees training in its requirements, including annual refresher courses.

CIR suffered one notable setback last year in our case on behalf of the Mueller family, whose five-week-old child had been unconstitutionally seized by Boise, Idaho, police after her mother expressed concerns about a spinal tap that an emergency room physician intended to perform. After deliberating for five days, an Idaho jury found neither the doctor nor the hospital liable. CIR believes the verdict is contrary to law and its motion to set it aside is pending.

Despite the disappointing jury verdict, the trial judge has previously ruled that as a matter of constitutional law, the state may not second-guess medical decisions by parents in difficult cases—cases that have risks either way—unless the child is in imminent danger. Even before the case went to trial, the City of Boise had changed its procedures to require that if time permits, child protection officials must go before a neutral magistrate before depriving parents of the right to make medical decisions.

As *Mueller v. Auker* demonstrates, the benefits of high profile courtroom litigation are sometimes hard to predict. While we may not always achieve a legal victory, cases with strong facts and real plaintiffs have a way of producing needed institutional reform even in the absence of a favorable legal outcome. This is why CIR emphasizes representing real clients in original litigation.

As we enter 2010–2011, many major CIR cases will occupy the federal appellate courts. The most important of these is *United States v. New York City Board of Education*, a challenge to race-based consent decrees the U.S. Department of Justice imposes on local education, fire, and police employees, often without opposition by their employers and, nearly as often, without any finding of actual discrimination. And awaiting judgment by the U.S. Court of Appeals for the Sixth Circuit is *BAMN v. Granholm*, in which the constitutionality of the Michigan Civil Rights Initiative is at issue: the well-funded and -connected opponents of that ballot initiative (which passed overwhelmingly and became part of the Michigan Constitution in 2006) are trying to get the court to declare that a constitutional amendment to end race discrimination is itself somehow racially discriminatory.

In 2009–2010, CIR increased its efforts to publicize its courtroom efforts in the news media. As detailed in the pages of this report, CIR's cases were featured in numerous print, online, and broadcast stories. This level of coverage suggests even greater than usual interest in the project of re-limiting government through high profile litigation.

This report sets forth CIR's solid record of success last year, and makes clear why CIR's role remains as crucial as ever. We owe our record of success first and foremost to our clients, whose fights to make the law reflect the basic principles of democratic self-government are themselves a form of self-government—perhaps the most indispensible of all. No less do we owe thanks to the law firms and attorneys who have provided CIR with millions of dollars' worth of *pro bono* time, to our exceedingly generous donors, and to our hardworking staff. To all of them we extend our warmest thanks.

Terence J. Pell
President

Jeremy Rabkin
Chairman

CIR'S Mission

Each year, CIR represents a handful of individuals in high profile cases raising important issues of individual rights. CIR concentrates its limited resources on three areas where the threat to individual rights now is the greatest and where litigation can accomplish the most: freedom of speech, civil rights, and family rights.

Freedom of Speech and Religion

In recent years, the principle that individuals enjoy the freedom to express political views of every stripe has been steadily undermined through campus speech codes and harassment regulations, and more recently through discrimination investigations and malicious lawsuits designed to keep individuals under a legal cloud for years. While they do not always directly prohibit speech, efforts of the latter sort utilize the power of the state to frustrate speech based on the speaker's point of view. Because of this, they often violate the First Amendment.

Of particular concern to CIR have been recent efforts to stifle citizen journalists who use internet blogs, YouTube videos, and other new media to publish stories not covered by the mainstream media. These individuals lack the resources to mount legal defenses to the often frivolous lawsuits directed their way and so are especially vulnerable to the use of malicious litigation to silence them.

CIR recently took on three cases defending internet bloggers and YouTube videographers: *Project Vote/Voting for America, Inc. v. Ashwanita MonCrief and John Doe*; *Vera v. O'Keefe, et al.*, and *Wolk v. Olson, et al.* CIR's goal is to win a handful of strategically important cases designed to challenge the malicious use of privacy, libel, and trademark laws to silence individual bloggers who lack the resources to mount an adequate courtroom defense on their own.

Another focus of CIR's free speech litigation is the defense of citizen ballot initiatives. In the last several years, a variety of interest groups and state officials have attempted to make it difficult to change the law directly through ballot initiatives. In November 2006, CIR client Jennifer Gratz worked with Californian Ward Connerly to put the issue of racial preferences on the state ballot in Michigan. A Michigan advocacy group called "BAMN" filed suit in federal court claiming the petition amounted to racially targeted voter fraud. CIR's successful defense in *Operation King's Dream v. MCRI* enabled the referendum to appear on the ballot. After the initiative passed, CIR defended the new constitutional amendment against a legal effort by BAMN, the ACLU, and the NAACP to block its enforcement on the grounds that ending racial preferences was itself a form of illegal race discrimination. CIR's legal defense of the ballot initiative is ongoing (*BAMN v. Granholm*).

A third area of increased speech regulation involves the use of civil rights investigations to punish citizens who express opposition to land use and zoning policies in their own neighborhoods. Of note is CIR's 2010 victory in

Waltz v. Brumsted, in which we successfully represented California resident Julie Waltz in a suit challenging a year-long housing discrimination investigation. State fair housing officials had mounted their investigation of Waltz because of her public challenge to the placement of group homes in residential neighborhoods. The case was settled when state officials agreed to implement the "Julie Waltz First Amendment Policy," which requires that training in First Amendment law be given to all state housing investigators.

CIR's victory in *Waltz v. Brumsted* reinforced a string of earlier CIR victories involving investigations by federal and state housing authorities, including *White v. Lee* (Ninth Circuit, 2000); *Southeast Citizens v. Boys Town* (District of Columbia, 2002); *Perez v. Posse Comitatus* (Eastern District, New York, 2002); *Hendrickson v. IRS* (Northern District, California, 2005); *Hart v. IRS* (Northern District, California, 2005); and *Affordable Housing Development Corp. v. Fresno* (Ninth Circuit, 2006).

Civil Rights

CIR's civil rights cases are designed to get the government out of the business of granting preferential treatment to members of favored racial groups. Just as the First Amendment prohibits the government from favoring (or disfavoring) the expression of certain points of view, the Fourteenth Amendment prohibits the government from enforcing its laws, rules, and policies differently solely on account of the race of an individual.

CIR client Anita MonCrief explains the post-ACORN world to a gathering of fellow bloggers. CIR successfully defended MonCrief against a lawsuit designed to stop her from blogging about inappropriate actions of Project Vote, an ACORN affiliate for which she worked.

Whereas civil rights leaders once sought equality of treatment and redress for discrimination, now the civil rights movement seeks proportional representation by means of discriminatory policies under the guise of achieving "diversity." Instead of judging individuals by the same standard regardless of race, officials employ separate, race-based standards to produce racially proportional outcomes in voting, university admissions, government employment, and government contracting.

Of particular concern to CIR is the use of the Voting Rights Act of 1964 to force state and local officials to ensure that voting procedures maximize the ability of minority voters to elect minority candidates. Whereas the Voting Rights Act once was used to end racial discrimination, now it is being used to create a new form of discrimination.

CIR is currently representing a group of citizens, voters, and candidates in Kinston, North Carolina, in a suit challenging the constitutionality of Section 5 of the Voting Rights Act. Section 5 requires mostly Southern jurisdictions (and only those jurisdictions) to preclear changes in voting procedure with the Department of Justice. The law requires federal officials to deny preclearance to any change that does not maximize the ability of minority voters to elect their "candidates of choice," which officials deem to be minority candidates.

In addition to challenging racial preferences in elections, CIR continues its campaign of litigation against racial preferences in government hiring and promotion. *U.S. v. New York City Department of Education* challenges the use of consent decrees engineered by the Department of Justice that require local police, fire, and educational institutions to hire and promote on the basis of race even in the absence of any proven past discrimination. The case is now before the U.S. Court of Appeals for the Second Circuit.

Terry Pell (far right) with Stephen LaRoque and co-plaintiffs in Kinston, North Carolina, announcing CIR's suit challenging the constitutionality of Section 5 of the Voting Rights Act.

In addition to racial preferences in voting and employment, CIR has successfully challenged racial preferences in publicly supported institutions of higher education. Following its 1996 victory in *Hopwood v. Texas*, which struck down the dual admissions system of the University of Texas Law School, CIR challenged similar policies at the University of Washington (*Smith v. University of Washington*), the University of Michigan College of Literature, Science and the Arts (*Gratz v. Bollinger*), and the University of Michigan Law School (*Grutter v. Bollinger*). CIR's goal was to put the issue of racial double standards before the U.S. Supreme Court.

In split rulings released in June 2003, the Supreme Court decided that while schools may take race into account in order to ensure a racially diverse class, they must also consider other contributors to diversity besides race and may not, in any event, use separate admissions standards for different racial groups. In the view of many observers, the Court did not so much enunciate a clear legal standard as postpone resolution of the issue to another day. Accordingly, CIR continues to seek cases with strong facts with which to challenge the use of racial preferences in college admissions.

Since *Grutter* was decided, CIR has filed nearly a half-dozen cases challenging racial preferences that serve no legitimate educational purpose. In 2007, the Court ruled unconstitutional two race-based school assignment plans with objectives that differed little from racial proportionality: one in Seattle, Washington, and the other in Louisville, Kentucky. CIR promptly filed several other cases challenging racial balancing programs in secondary school systems (*Rau v. New York City Dept. of Educ.* and *Ng v. New York City Dept. of Educ.*, each of which eliminated a separate magnet school-related preference in New York City, and *Smith v. Virginia Commonwealth University, et al.*, which opened up a high school summer journalism workshop to all races).

Limits on Federal and State Government

The Founding Fathers realized a truth now widely ignored: liberty is endangered least by a dispersed government. Hence, the Constitution grants the federal government only certain, enumerated powers, divided among three branches. All other powers are reserved to the states and individuals.

For some time, CIR has sought to restore a principled conception of the constitutional limits on government. In part, this is the idea called "federalism," sometimes misleadingly described as "states' rights." But for CIR, the main issue is not which government, federal or state, should regulate the lives of citizens, nor are our efforts driven by any particular ideology: we seek to restore the proper limits to all levels of government.

For decades, the federal government's legislative activities have exceeded the powers given to Congress by the Constitution. There simply is no support in either the letter or spirit of the Constitution for national laws regulating vast parts of citizens' lives. For example, in 1994, Congress enacted subtitle C of the Violence Against Women Act, which created a federal tort remedy

for female victims of violence. Congress claimed authority to do so under the "commerce clause," which permits it to regulate commerce among the states.

CIR mounted a constitutional challenge to subtitle C on behalf of a student at Virginia Polytechnic Institute. In its 2000 decision in this case, the Supreme Court struck down this portion of the Violence Against Women Act. *U.S. v. Morrison* is one of the decade's most important constitutional precedents, restoring critical constitutional limits on Congress's power to regulate individual conduct. (CIR has helped to restore principled limits on federal authority in other cases, too, notably in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al.* (2000) (amicus brief) and *Scheidler v. NOW* (2006) (amicus brief).)

Restoring limits on the authority of the federal government requires a parallel effort to enforce principled limits on state government. Not only is the federal government limited to those powers enumerated in the Constitution, but both it and state government agencies are constrained by constitutionally protected individual rights.

By defending strict limits on state interference with individuals, CIR is helping to revive the idea of self-government based on the right of individuals to control their own lives. The institutions of marriage and the family are one area of the law where state judges, legislators, and welfare officials have set aside principled limits on state authority in order to further "progressive" views—including a novel conception of marriage itself. On the one hand, liberal state judges busy themselves rewriting the laws of marriage and child adoption to give individuals the widest possible latitude to avail themselves of the "rights" of marriage and family. Yet on the other hand, state child protection officials routinely sanction the traumatizing removal of children from traditional families for the slightest deviations from current fashions in education, child rearing, and even medical treatment.

Gratz v. Bollinger *and* Grutter v. Bollinger *challenged the use of racial preferences at the University of Michigan undergraduate college and law school. Shown here, CIR clients Barbara Grutter (l) and Jennifer Gratz (r), address the media after oral arguments at the U.S. Supreme Court in the spring of 2003.*

As a result of the collapse of the traditional family structure, many children need protection, in varying degrees, from impaired or otherwise irrespon-

sible parents. But too often, instead of grappling with the ways in which state judges and other officials have themselves undermined the family, and thus endangered children, those same officials have conferred new and unchecked powers on state child protection functionaries to intervene in family life.

CIR's effort to restore principle to this area of the law continues to focus on our representation of the Muellers, an Idaho family who had their five-week-old daughter removed from their custody because an emergency room physician interpreted the mother's questions over the proper treatment of a high fever as child endangerment. In 2007, the federal district judge hearing *Mueller v. Auker, et al.,* said what should have been said long ago—the state has no basis to displace the right of parents to make difficult medical decisions unless the parents are ignoring a clearly less risky alternative.

In June 2010, an Idaho jury found neither the doctor nor the hospital liable. CIR has moved to set aside the verdict and, in any event, expects to appeal the case to the Ninth Circuit. There, CIR hopes to broaden and strengthen constitutional presumptions in favor of the right of families to make important medical (and other) decisions without state interference, particularly those decisions involving matters of judgment with no clearly reasonable (or unreasonable) choice either way.

CIR's case on behalf of Boise, Idaho, resident Corissa Mueller and her family seeks to strengthen a federal constitutional right of families to make important medical decisions without state interference. During a visit to the hospital, daughter Taige was seized by child welfare workers so that a lumbar puncture could be performed on her over her mother's objections. In February 2007, a federal district judge ruled that "[a] difficult choice—a choice that poses risks either way—should never trigger intervention by the State. With no safe alternative, the State...loses all claim to make decisions for the child." The case is ongoing.

Litigation Docket, 2009–2010

U.S. Supreme Court

Free Enterprise Fund et al. v. Public Company Accounting Oversight Board et al., 130 S.Ct. 3138 (2010) (*amicus*)

Separation of Powers. Filed *amicus* brief in support of challenge to constitutionality of federal Public Accounting Oversight Board on grounds that the Sarbanes-Oxley Act contravened the separation of powers by conferring executive power on Board members without subjecting them to Presidential control. CIR's brief made the point that the plaintiff, an accounting firm, was entitled to judicial review without having to deliberately violate the law in order to provoke a sanction.

STATUS: Victory. The Court held that the courts had jurisdiction to hear the case and separately held that portions of the law that insulated board members from Presidential control were invalid.

Federal Appellate Courts

Miranda v. New York City Department of Education, (E.D.N.Y. filed June 6, 2006)
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), *on remand*, 448 F.Supp.2d 397 (E.D.N.Y. 2006), *order clarified on reconsideration,* 487 F.Supp.2d 220 (E.D.N.Y. 2007)

Civil Rights; Equal Protection. Representing school building superintendents ("custodians") 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 recruiting and hiring of school custodians.

STATUS: Cross appeals to Second Circuit pending.

BAMN v. Granholm, 539 F. Supp. 960 (E.D. Mich. 2008); *mot. for reconsideration denied,* 592 F. Supp. 948 (E.D. Mich. 2008)

Civil Rights; Equal Protection. CIR filed a motion to intervene on behalf of Eric Russell, a Michigan resident who applied to the University of Michigan Law School in 2006. Multiple parties sought to challenge and/or delay Michigan's Proposal 2, a ballot initiative passed by the voters of Michigan in November 2006, outlawing racial and gender preferences. When the Governor and Attorney General of the State of Michigan, as well as the

governing bodies of three universities, all stipulated to the suspension of Proposal 2's application to the universities' admissions and financial aid policies until July 2007, and the district court entered an order pursuant to that stipulation, CIR appealed the order to the Sixth Circuit and procured a temporary stay of the suspension order.

STATUS: Pending. The District Court upheld the constitutionality of Prop. 2 and denied one of the plaintiff's motion for reconsideration. The case is now on appeal before the U.S. Court of Appeals for the Sixth Circuit.

Wolk v. Olson, et al., 2010 WL 3120213 (E.D. PA, August 2, 2010)

Free Speech, First Amendment. Representing Theodore Frank, one of several bloggers sued for defamation over a blog item published on *Overlawyered.com*.

STATUS: Pending. District Court dismissed complaint for failure to file within the statute of limitations; appeal to U.S. Court of Appeals for the Third Circuit pending.

Federal District Courts

LaRoque, et al. v. Eric Holder, No. 1:10-cv-00561 (D.D.C., filed April 7, 2010)

Voting Rights; Civil Rights; Equal Protection. CIR is representing individual citizens, prospective candidates, referendum organizers, and a citizens group in a challenge to the constitutionality of Section 5 of the Voting Rights Act of 1965. The case grows out of a 2009 refusal by the Department of Justice to grant preclearance to the City of Kinston, North Carolina, to implement a nonpartisan voting system employed by the large majority of other municipalities in North Carolina and approved by Kinston voters by a two-to-one margin.

STATUS: Pending

Mueller v. Auker, et al., 2007 WL 627620 (D.Idaho, February 26, 2007); 576 F.3d 979 (9th Cir. 2009)

Civil Rights; Due Process. Representing parents whose infant daughter was seized by police in order to administer medical procedures to which the mother had not consented.

STATUS: Pending. After a trial in June 2010, a jury rendered a verdict in favor of the defendants. Plaintiffs' motion for a new trial is pending.

Project Vote/Voting for America, Inc. v. Ashwanita MonCrief and John Doe, No. 1:09cv1109-RWR (D.D.C., filed June 17, 2009).

Free Speech; First Amendment. Representing Anita MonCrief, a former employee of Project Vote, an affiliate of the Association of Community Organizations for Reform Now (ACORN). After leaving the organization in 2008, MonCrief published articles and information critical of Project Vote and ACORN. In retaliation and in an effort to silence her, Project Vote sued MonCrief for federal trademark infringement and misappropriation of trade secrets as well as a variety of common law torts. MonCrief counterclaimed against Project Vote and ACORN for abuse of process.

STATUS: Victory. Both sides agreed to dismiss all claims with prejudice.

Katherine Conway-Russell v. James E. O'Keefe, III, et al., Civil Action 10-cv-00276-TJS (E.D. PA, filed Jan. 21, 2010)
Association of Community Organizations for Reform Now (ACORN), Tonja Thompson, and Shera Williams v. James E. O'Keefe, III, et al., No. 24C09006238, (Circuit Court for Baltimore City, filed Sept. 23, 2009)
United States v. Robert Flanagan, Joseph Basel, James O'Keefe, and Stan Dye., No. 10-12 (E.D. LA, filed January 25, 2010)
Juan Carlos Vera v. James O'Keefe, Hannah Giles, et al., Civil Action 10CV1422 L JMA, (S.D. CA, filed July 8, 2010)

Free Speech; First Amendment. Representing James O'Keefe, who videotaped several encounters with employees of the Association of Community Organizations for Reform Now (ACORN). O'Keefe was documenting illegal and inappropriate actions of ACORN employees in advising him and an undercover accomplice of ways to disguise the source of proceeds from a fictitious brothel. As a consequence, O'Keefe was sued by ACORN and several of its employees for violating state laws that required the consent of both parties before recording conversations. In a subsequent effort, O'Keefe attempted to film employees of Louisiana Senator Mary Landrieu responsible for answering telephone inquiries from constituents. O'Keefe was charged with a misdemeanor for entering a federal building under false pretenses.

STATUS: Pending. Pennsylvania's case was settled, and the Baltimore case was dismissed for failure to prosecute.

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 minority contracting set-aside program on behalf of small business that manufactures training simulators.

STATUS: Pending. After hearing oral argument on the parties' motions for summary judgment in August 2004, Judge Sullivan ruled in August 2007 that Congress's 2006 reauthorization of the Department of Defense program required the parties to make additional submissions about the evidence Congress had before it at that time. In 2009, he granted defendants' motion to further supplement the record with evidence presented to Congress after the 2006 reauthorization. The proceedings are still pending in front of Judge Sullivan.

Waltz v. Brumfeld, et al. No. 5:2008cv00432, (C.D.CA. filed April 1, 2008)

Freedom of Speech. CIR sued several officials of the California Department of Fair Employment and Housing ("DFEH") on behalf of California resident Julie Waltz. The suit alleges that state officials used a housing discrimination investigation to stifle criticism of its policies relating to the placement of sex offenders in residential neighborhoods.

STATUS: Victory. Case was settled on favorable terms, including the creation of a "Julie Waltz First Amendment Policy" in DFEH.

Statements of Financial Position

March 31, 2010 and 2009

Assets	2010	2009
Cash and Cash Equivalents	$ 207,170	$ 417,623
Investments	2,514,294	2,617,132
Grants Receivable	55,000	25,000
Accounts Receivable	0	0
Prepaid Expenses	34,984	37,153
Property & Equipment (Net)	10,610	7,701
Deposits	20,906	20,309
Total Assets	**$ 2,842,964**	**$ 3,124,918**
Liabilities and Net Assets		
Accounts Payable and Accrued Expenses	$ 38,533	$ 26,754
Deferred Revenues	0	5,101
Security Deposit	0	5,101
Accrued Rent	128,729	117,196
Net Assets - Unrestricted	$ 2,597,793	$ 2,935,361
Net Assets - Temporarily Restricted	77,909	35,405
Total Net Assets	2,675,702	2,970,766
Total Liabilities and Net Assets	**$ 2,842,964**	**$ 3,124,918**

Statements of Activities

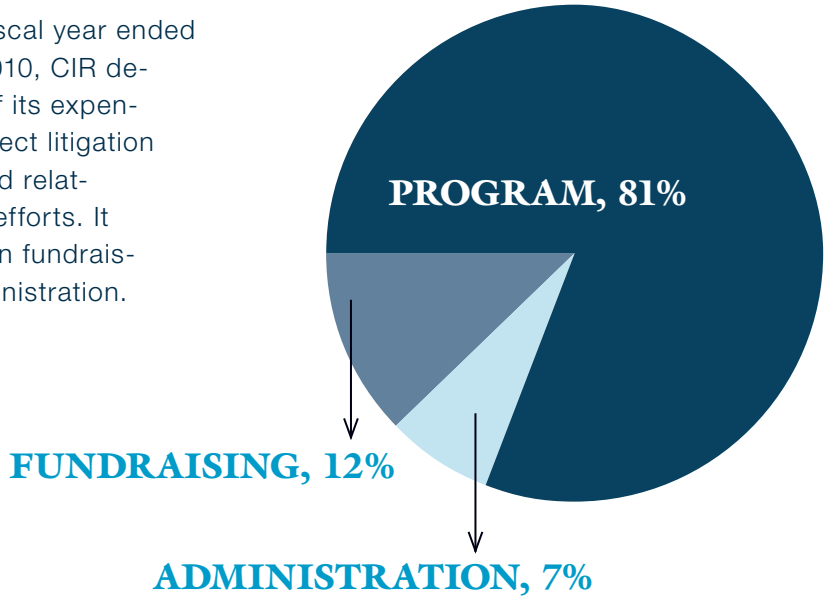
March 31, 2010 and 2009

Support	2010	2009
Contributions and Grants	$ 1,538,794	$ 987,929
Attorneys' Fees	500	23,280
Investment, Rent & Other Income	135,539	206,389
Total Support	**$ 1,674,833**	**$ 1,217,598**
Expenses		
Programs:		
Litigation	$ 1,322,416	$ 701,615
Publications/Education	281,601	288,008
Total Program Expenses	**$ 1,604,017**	**$ 989,623**
Administrative	$ 129,740	$ 126,305
Fundraising	236,140	190,822
Total Expenses	**$ 1,969,897**	**$ 1,306,750**
Change in Net Assets	$ –295,064	$ –89,152
Net Assets - Beginning	2,970,766	3,059,918
Net Assets - Ending	**$ 2,675,702**	**$ 2,970,766**

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.

Allocation of Expenses

During the fiscal year ended March 31, 2010, CIR devoted 81% of its expenditures to direct litigation expenses and related publicity efforts. It spent 19% on fundraising and administration.



Public Education and Outreach

Staff Articles

Michael E. Rosman. "*Jones v. Alfred Mayer* and the Uniqueness of Race: The Court's Decisions on Race Discrimination Since 1968." *SCOTUSblog.com*, February 9, 2010.

Michael E. Rosman. "Challenges to State Anti-Preference Laws and the Role of Federal Courts." 18 *The William & Mary Bill of Rights Journal* 709 (March 2010).

Michael E. Rosman. "Counting the Days Gone By: A Eulogy for Former Rule 6(a)(2)," 159 *Pennsylvania Law Review* Issue 3 (*forthcoming*).

News Coverage

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

"Parental Rights Battle Goes to Federal Court." *KIVITV.com,* June 23, 2010.

Associated Press. "Battle Continues Over Michigan's Affirmative-Action Ban." *Michigan News,* November 17, 2009.

Associated Press. "Jury Hears Arguments in Parents' Rights Case." *Fox-12Idaho.com,* June 10, 2010.

Editorial. "Reversing Justice's Race-Based Politics: Lawsuit Challenges the Bad Part of the Voting Rights Act." *The Washington Times,* April 8, 2010.

Anderson, David. "Local Citizens' Group Sues in Federal Court for Nonpartisan Voting." *Kinston.com,* April 8, 2010; *EncToday.com,* April 8, 2010.

Anderson, David. "State NAACP, Kinston Citizens, Intervene in Nonpartisan Lawsuit." *EncToday.com,* July 14, 2010.

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Public Appearances

CIR representatives discussed CIR's cases and other pertinent cases in numerous broadcast programs in addition to other public appearances, including:

WPTF News Radio 680, *The Bill Luaye Show,* Raleigh, North Carolina, April 8, 2010 (Terry Pell)

KCBQ 1170 AM, *The Rick Amato Show,* San Diego, California, July 29, 2010 (Christopher Hajec)

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