ANNUAL REPORT 2007—2008

CIR

The Center for Individual Rights

is a non-profit public interest law firm and a tax-exempt charitable organization under section 501(c)(3) of the Internal Revenue Code.

CIR's purpose is the defense of civil rights against the increasingly aggressive and unchecked authority of federal and state governments. CIR provides free legal 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, CIR can provide legal counsel in only a restricted number of cases. In selecting cases for litigation, CIR applies several criteria, including the following: the prospective client's need, the "fit" of the prospective case with both CIR's principles and its expertise, the legal and especially the constitutional ramifications of the case, and the likely costs of the case and its impact on CIR's ongoing public interest work.

About CIR:

"CIR's challenges to the constitutionality of affirmative action in university admissions in *Gratz v. Bollinger* and *Grutter v. Bollinger* succeeded in limiting the use of preferences in undergraduate admissions, and came within one vote of eliminating them in law schools.

"Just as important were CIR's challenges to restrictions on academic speech and its victories in *Rosenberger v. Rector and Visitors of the University of Virginia*, a landmark religious liberty case, *Reno v. Bossier Parish School District*, which restricted the use of race in local redistricting, and *United States v. Morrison*, where CIR successfully argued that provisions of the Violence Against Women Act exceeded Congress's power under the commerce clause.

"Despite the millions of dollars that conservative patrons invested in first-generation firms, none of them came close to this record of winning important, precedent-setting cases."

Steven M. Teles, *The Rise of the Conservative Legal Movement*

The Year in Review

This report of activities makes clear the continued value of focused litigation in protecting individual rights. At a time when neither national party embraces the virtues of limited government, the courts remain an effective—perhaps the only—means to pursue principled limits on government authority.

This year, as in the last several, the fight for individual rights took place against the backdrop of our country's efforts to counter radical Islamism here and abroad. Not just the United States but all the nations of the West continued to be targets of a "holy war"—one by its nature antithetical to the idea of self-government according to the exercise of reason.

As a consequence, freedoms we have taken for granted here are disappearing in countries we once thought similar to ours. In Canada, for example, authors and magazines are prosecuted before so-called "Human Rights Tribunals" for publishing statements Muslim political groups find offensive. In France, citizens routinely are tried for "inciting racial hatred," simply for writing letters critical of Muslim immigrants. In England, too, it is against the law to criticize Muslims (and other groups). Increasingly, racial quotas and other race-based laws are becoming a permanent way of life.

The record is decidedly more mixed in the United States. We are not likely to criminalize ethnic "hate" speech anytime soon. But advocacy groups continue to manipulate harassment and non-discrimination regulations to punish speech with which they disagree, including speech considered insulting to Muslim groups. And while American law continues to frown on the use of racial preferences, many elite schools and government agencies pay lip service to those restrictions while employing racial double standards in many aspects of their programs.

The resistance of the United States to European-style ethnic group politics depends now, as always, on the written guarantees of our Constitution—hence the vital importance of American individuals' willingness to keep those guarantees alive and relevant by defending them in court. This year, as in past years, there was no shortage of boldness among CIR's clients in asking the courts to enforce the fundamental rights that make up the substance of limited government.

Nowhere was this more apparent than in CIR's continued representation of Eric Russell, who sought to compel Michigan officials to honor a constitutional amendment that ended the use of racial preferences in Michigan state programs (*BAMN v. Granholm*). Two years ago, Russell single-handedly stood up to the Michigan Governor and Attorney General, three Michigan universities, and a federal judge, all of whom had collusively agreed to set aside the new amendment for a period of months until its constitutionality could be assessed. Represented by CIR, Russell filed an emergency appeal to the U.S. Court of Appeals for the Sixth Circuit, which promptly dissolved the illegal agreement and allowed the amendment to take effect as the voters intended while the courts considered various legal challenges.

Groups such as the NAACP, the ACLU and a Michigan advocacy organization called BAMN reacted with multiple challenges to the ballot initiative. Relying on Supreme Court precedent nearly twenty years old, these groups argued that making it more difficult for minority groups to secure racial preferences amounts to illegal discrimination *against* those groups.

Terry Pell, CIR President

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

In March 2008, though, it was Russell, not the organizations that opposed him, who was rewarded—with a major federal ruling upholding the authority of state citizens to vote to end the use of racial preferences. Federal District Court Judge David Lawson held that, far from precluding ballot initiatives to end racial classifications, the Constitution favors such initiatives. Russell's achievement was a sharp blow to ongoing efforts to make racial double standards a permanent feature of American life.

CIR's success in the Russell matter lay in the fact that we represented not a cause, but an individual. Unlike advocacy groups, public policy institutes, and the like, CIR does not promote a political agenda of any kind. Instead, on behalf of real litigants, we ask the courts to enforce the legal rights presupposed by limited government and contained in our written Constitution.

Nowhere did CIR's strategy of representing real individuals make a bigger difference this past year than in two cases against the New York City school system. Though New York Schools Chancellor Joel Klein had promised to make access to elite examination schools more objective and transparent, he did little to address the racial preferences that permeated the complex entrance system. In the end, it took two parents—Stanley Ng and Anjan Rau—to expose and end the race-based policies that elected officials preferred to leave in place.

Stanley Ng contacted CIR when he learned that his child had been barred from even competing for an important elite high school preparation program because, according to one school official, there were "too many" Asians in these high schools already. Anjan Rau had little choice but to sue after he learned that his daughter had been denied admission to a New York exam school even though she scored higher on the entrance exam than many white students who were accepted.

In both cases, CIR achieved quick and definitive results. A few months after *Ng v. New York Department of Education* was filed, the school system eliminated the racial criteria it had been using to exclude Asian children from the preparation program (though it continues to refuse to pay damages to the hundreds of parents

who paid for private tutoring). And a month after *Rau* was filed, Federal Judge Jack Weinstein finally was forced to end a 1970's-era desegregation court order that mandated racial quotas in favor of white students (*Rau v. New York Department of Education*).

The comparative ease with which CIR prosecuted the *Ng* and *Rau* cases demonstrates the cumulative effect of two decades of high profile legal challenges to racial preferences. School officials now understand the legal and public relations risks of litigation over these unpopular policies. And so, rather than fight us, they settle quickly.

Also CIR's free speech practice was extended yet further this year when we represented Julie Waltz in a major new suit challenging the use of "housing discrimination" investigations to discourage neighborhood residents from too-vociferously challenging state housing policies. Though such political speech clearly is protected by the First Amendment, officials have targeted those who engage in it on the pretext that it violates federal housing law.

In today's overwhelmingly liberal legal culture, winning constitutional precedents that favor limited government is indispensable. The success of CIR and its clients in continuing this fight another year is owing to the generosity and dedication of the law firms and attorneys who have provided CIR with millions of dollars worth of pro bono time, to the courage and generosity of our donors and contributors, 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 is the greatest and where litigation can accomplish the most: freedom of speech, civil rights, and limits on federal and state government.

Freedom of Speech and Religion

In recent years, the principle that individuals enjoy the freedom to express political views of every stripe has given way before the call for a "supportive" and "inclusive" environment for racial minority and other supposedly "marginalized" groups. This perspective informs college speech codes, harassment regulations, and the like. It has been used to "justify" silencing authors whose words are deemed offensive to Islamic sensibilities, punish student rallies in support of the war in Iraq, and investigate faculty members sympathetic to students who engage in speech deemed hateful. CIR's academic free speech cases are designed to do more than simply settle everyday disputes between campus partisans: each case is designed to establish a principled legal precedent that fundamentally changes institutional practices for years to come. Of note in this connection is our 2006 victory in *McConnell v. LeMoyne*. In that case, the New York Court of Appeals ruled that a private school could not arbitrarily expel a student because he wrote a paper critical of multiculturalism.

Underlying McConnell's expulsion was so-called "dispositions theory," which came to be part of the accreditation standards for graduate programs in sociology and education. On this view, any student at a teachers' college who did not share certain "dispositions"—dedication to "social justice" being the chief among them—was unfit to teach in a "multicultural" society. Soon after the New York Court ruled, the National Council for Accreditation of Teacher Education eliminated the politically loaded "social justice" requirement from its "professional dispositions standard" for America's teachers. The *McConnell* victory did more than get Scott McConnell re-enrolled—it helped change accreditation standards across the country.

Among CIR's other academic freedom precedents are *Levin v. Harleston* (Second Circuit, 1992), *Iota Xi Chapter of Sigma Chi v. George Mason University* (Fourth Circuit, 1993), *Silva v. University of New Hampshire* (District Court, New Hampshire, 1994), *Sypniewski v. Warren Hills School District* (Third Circuit, 2002), and *Hinkle v. Baker* (Central District, California, 2004).

California resident Julie Waltz challenged state housing officials' decision to place an adult living facility for former sex offenders in a residential neighborhood. Though her speech was clearly protected, housing officials decided to make an example of her by means of a protracted "investigation" for housing discrimination.

The drive to regulate speech extends beyond academia and oftentimes is directed at the core First Amendment right to petition the government and participate in elections. In the last several years, state officials have made it increasingly difficult for citizens to make needed changes to state law through ballot initiatives, generally by enacting myriad regulations designed to frustrate the collection of needed signatures. In addition, left-of-center advocacy groups have regularly mounted time-consuming and costly legal challenges in state and federal court against politically conservative initiatives.

Civil Rights

Like the First Amendment, the Fourteenth Amendment was adopted to protect a natural right: that of citizens to be treated equally by their government regardless of race. If individual citizens do not have this natural right, all the denunciations of past laws mandating segregation lose their moral and legal force; and if citizens do have this natural right, those of any race possess it in the same degree.

Over the years, courts have contrived exceptions to the Fourteenth Amendment, first in an effort to deny equal legal protection to black citizens, and more recently to engineer proportional representation of blacks and other racial minorities in all areas of endeavor.

In truth, the Constitution forbids the government from engaging in racial classifications no matter what purpose they serve. When the government classifies an individual by race, it depreciates merit and ability. Denying—or granting—university admission, employment, or a contract on the basis of ethnicity harms the individuals denied as well as those who receive benefits on terms unrelated to their abilities.

Almost alone among civil libertarian law firms, CIR has waged a comprehensive campaign in court against all major forms of racial double standards. CIR's cases have exposed the extent to which race has become the basis for admissions decisions at many schools and the unfair consequences of such decisions, including the racial disparities in grades, graduation rates, and professional exam passage rates that result from unequal admissions standards.

Following CIR's 1996 victory in *Hopwood v. Texas*, which struck down the dual admissions systems 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 Undergraduate College of Literature, Sciences and the Arts (*Gratz v. Bollinger*), and the University of Michigan Law School (*Grutter v. Bollinger*). Other cases challenged the use of racial preferences in government hiring (*Brennan v. New York City Schools*) and government contracting (*Dynalantic v. DOD*). CIR's goal was to put the issue of racial double standards before the U.S. Supreme Court.

In 2003, the Supreme Court heard two CIR cases challenging admissions preferences at the University of Michigan (*Gratz v. Bollinger, Grutter v. Bollinger*). In split rulings, the Supreme Court held that schools may take race into account to achieve "diversity" using an admissions system tailored after that of the University of Michigan Law School. At the same time, the Court struck down the Michigan undergraduate admissions system on the grounds that it awarded excessive and mechanical weight to race.

Though asserting that diversity is valuable, the Court did not spell out the educational interests that diversity serves. Nor did it explain the degree to which preferential admissions policies may be employed to achieve those benefits. As a result, diversity—racial balancing by another name—has come to be seen as an end in itself.

The Court's confused decisions in *Gratz* and *Grutter* permitted the continued wholesale admission of minority students with academic credentials substantially below those of their classmates. This practice is unfair both to students denied admission and to minority students who falsely assume they are being accepted on the same standards as other students. On average, preferenced students have lower grades and drop out at higher rates than they would if they attended a school that applied equal standards to all applicants.

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.*, *Ng v. New York City Dept. of Educ.*, which successfully eliminated two magnet school-related preferences 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

It is a reality too often ignored, but one recognized by our Founding Fathers, that liberty is endangered least by a dispersed government. Hence, the Constitution grants to the federal government only certain enumerated powers, divided among three branches. All other power is reserved to the states and to 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

BAMN protesters pursue CIR client Jennifer Gratz outside the Federal Courthouse in Detroit during a break in a case challenging efforts of Ward Connerly, Gratz, and others to place a referendum on the Michigan ballot forbidding the use of racial preferences. CIR's successful defense enabled the referendum to go forward as scheduled (Operation King's Dream v. Connerly). And CIR continues to defend the underlying constitutional challenges to the amendment (BAMN v. Granholm).

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 in order to perform a lumbar puncture 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.

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 School. 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. Just as it is important to limit the federal government to those powers enumerated in the Constitution, state government agencies are constrained by constitutionally protected individual rights as well.

By defending strict limits on state interference with churches, schools, and families, 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 —in this instance, a novel conception of marriage. 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.

As a result of the collapse of the traditional family structure, many children need protection, in varying degrees, from untrained or impaired 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, officials have invested new and unchecked powers on state child protection officials to intervene in family life.

CIR's effort to restore principle to this area of the law continues to focus on our representation the Muellers, an Idaho family who had their five-week-old infant 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* 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.

The decision drew immediate appeals from all parties and now is before the Ninth Circuit Court of Appeals. 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.

Litigation Docket, 2007–2008

U.S. Supreme Court

Parents Involved in Community Schools v. Seattle School District No. 1, et al., 127 S.Ct. 2738 (2006). Civil Rights; Equal Protection. Filed an *amicus* brief on behalf of parents of public school students challenging a racially based high school assignment scheme that seeks to achieve a racial composition in oversubscribed schools mirroring that of the student population as a whole.

OUTCOME: Victory. Chief Justice Roberts ruled that the racially based scheme did not achieve a "compelling state interest" and therefore was unacceptable. Justice Kennedy concurred, ruling that the school district's method was not narrowly tailored on the basis of race.

Morse, Juneau School Board v. Joseph Frederick, 127 S.Ct. 2618 (2006). Free Speech. Filed an *amicus* brief on behalf of high school student Joseph Frederick, arguing that the school is precluded from punishing students for the content of their speech unless it is clearly disruptive.

OUTCOME: Loss. Chief Justice Roberts ruled that the school was allowed to restrict messages supporting illegal drug use.

Federal Appellate Courts

Operation King's Dream v. Ward Connerly, et al. 501 F.3d 584 (Sixth Circuit Court of Appeals). Civil Rights; Equal Protection. CIR represents Ward Connerly, Jennifer Gratz, and the Michigan Civil Rights Initiative Committee in a lawsuit that sought to have Amendment 2 retroactively removed from the Michigan Constitution.

OUTCOME: Victory. The Sixth Circuit held that the successful election mooted the case, and that the Court could not invalidate part of the Michigan Constitution.

Mueller v. Auker, et al., 2007 WL 627620 (D.Idaho, 2007); No. 07-35554 (Ninth Circuit Court of Appeals). Civil Rights; Due Process. Representing parents whose infant daughter was seized by child welfare authorities in order to administer a medical procedure to which the mother had not consented.

STATUS: Pending. The Ninth Circuit currently is reviewing whether one of the authorities has qualified immunity, and when the court decides that issue, the case will return to the District court.

Federal District Courts

Affordable Housing Development Corp. v. City of Fresno, No. F-97-5498 (E.D. Cal. Aug. 31, 2000); *aff'd in part and rev'd in part*, 433 F.3d 1182 (9th Cir. 2006). Freedom of Speech. Defended neighborhood homeowner, Travis Compton, sued by housing developer

for federal housing discrimination because of statements made regarding proposed housing project.

OUTCOME: Victory. CIR settled with the defendants over attorneys' fees, concluding the case.

BAMN v. Granholm, No. 06-15024, *temporary stay granted*, 473 F.3d 237 (2006). 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 last year, and Toward a Fair Michigan, a 501(c)(3) corporation seeking to educate and advise the public on civil rights issues. Multiple parties are seeking 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. CIR is currently representing Jennifer Gratz, the Director of Research at the American Civil Rights Institute, in a motion to intervene in the case, to ensure that Proposal 2 is applied to the University of Michigan Law School.

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), *rem'd* 448 F.Supp.2d 397 (E.D.N.Y., 2006). Civil Rights; Equal Protection. Representing school 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 hiring and promotion of school custodians.

STATUS: Pending. CIR succeeded in consolidating the case of Ruben Miranda, a Hispanic custodian injured by the settlement agreement, within the broader case in August 2007. CIR filed a complaint in front of the New York State Department for Human Rights on behalf of John Brennan. Various motions to reconsider and other proceedings are currently pending.

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

Federal District Courts, *continued*

program on behalf of small business that manufactures training simulators.

STATUS: Pending. Judge Sullivan ruled in August 2007 that Congress's 2006 reauthorization of the Department of Defense program required that attorneys submit new motions about the legal status of the set-aside program. Those proceedings are now pending in front of Judge Sullivan.

Father Flanagan's Boys Home v. District of Columbia, et al. / United States v. District of Columbia, et al., Consolidated Case Nos. 01-1732 and 04-00619 (D.D.C.). Freedom of Speech. Defended neighborhood groups sued by the parent corporation of Boys Town for federal housing discrimination because of group's peaceful opposition to proposed housing project. After CIR succeeded in having neighborhood members dismissed from case, CIR represented them in depositions and assisted them to prepare for in-court testimony at trial. CIR also filed an *amicus* brief in support of the District of Columbia's motion for summary judgment.

OUTCOME: Settled and dismissed. The Federal government will not sue for attorneys' fees.

South Middlesex Opportunity Council, Inc., et al. v. Town of Framingham, et al. No. 07-12018 (M.A.D., filed October 24, 2007). Freedom of Speech. Defended Harold Wolfe, a resident of Framingham, Massachusetts, who attempted to stop the relocation of a drug rehabilitation center, South Middlesex Opportunity Council, Inc. (SMOC) to his neighborhood, through the operation of a website against the rehabilitation center. SMOC sued the town of Framingham, Mr. Wolfe, and a number of other neighbors and members of the Framingham city government, claiming that all had made false and defamatory statements.

OUTCOME: Victory. SMOC voluntarily ended its suit against Mr. Wolfe.

Center for Individual Rights v. United States Department of Justice No. 07-01125 (D.D.C. filed June 22, 2007). Freedom of Information claim. CIR is suing the Justice Department over a Freedom of Information Act (FOIA) request seeking documents related to its prior cases, *Father Flanagan's Boys Home v. District of Columbia* and *United States v. District of Columbia*. The Justice Department has asserted that some of the documents requested by CIR would interfere with law enforcement proceedings.

STATUS: Pending. CIR has asked the Court to reconsider a previous decision exempting the Justice Department from releasing a number of the documents.

Yes on Term Limits, et al. v. Savage, et al. No. 07-6233 (Tenth Circuit Court of Appeals). CIR submitted an *amicus* brief on behalf of the American Civil Rights Coalition regarding stringent petition requirements in the State of Oklahoma.

STATUS: Pending.

Rau v. New York City Department of Education No. 08-00210 (E.D.N.Y filed January 15, 2008)

Hart v. Community School Bd. No. 72-01041 (E.D.N.Y filed August 4, 1972) Civil Rights; Equal Protection. CIR intervened on a decades-old decision by Judge Jack Weinstein that imposed a racial quota on the Mark Twain Intermediate School for the Gifted and Talented. The school requires admissions tests. CIR filed on behalf of Nikita Rau, an Indian-American student restricted from the school despite strong credentials.

OUTCOME: Victory. The city agreed to end the racial quota as implemented in 1974 and Judge Weinstein terminated the consent decree.

Ng, et al. v. New York City Department of Education No. 07-04805 (E.D.N.Y filed November 20, 2007) Civil Rights; Equal Protection. CIR is suing the Department of Education on behalf of Asian and white parents whose children were not allowed to apply for the Specialized High School Institute (SHSI). SHSI is a free program run by the city designed to help prepare middle school students for the admissions tests to New York's elite public high schools, the Specialized High Schools.

STATUS: Pending.

Waltz v. Brumfield, et al. No. 5:2008cv00432, (C.D.CA. filed April 1, 2008) Freedom of Speech. CIR is suing 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: Pending.

New York parent Stanley Ng sued to end a New York City policy prohibiting Asian middle school students from attending an enrichment program because officials feared there were already "too many" Asians in elite city high schools. (Ng v. New York City Schools)

Financial Information

Statements of Financial Position

March 31, 2008 and 2007

Assets	2008	2007
Cash and Cash Equivalents	$ 704,395	$ 1,891,537
Investments	2,417,374	941,820
Grants Receivable	95,000	95,000
Accounts Receivable	292	
Prepaid Expenses	31,755	7,895
Property & Equipment (Net)	11,723	19,624
Deposits	$ 19,729	19,166
Total Assets	**$ 3,280,268**	**$ 2,975,042**
Liabilities and Net Assets		
Accounts Payable and Accrued Expenses	$ 117,021	$ 28,416
Security Deposit	3,975	3,975
Accrued Rent	99,354	75,366
Net Assets - Unrestricted	2,964,513	2,771,855
Net Assets - Temporarily Restricted	95,405	95,430
Total Net Assets	**$ 3,059,918**	**$ 2,867,285**
Total Liabilities and Net Assets	**$ 3,280,268**	**$ 2,975,042**

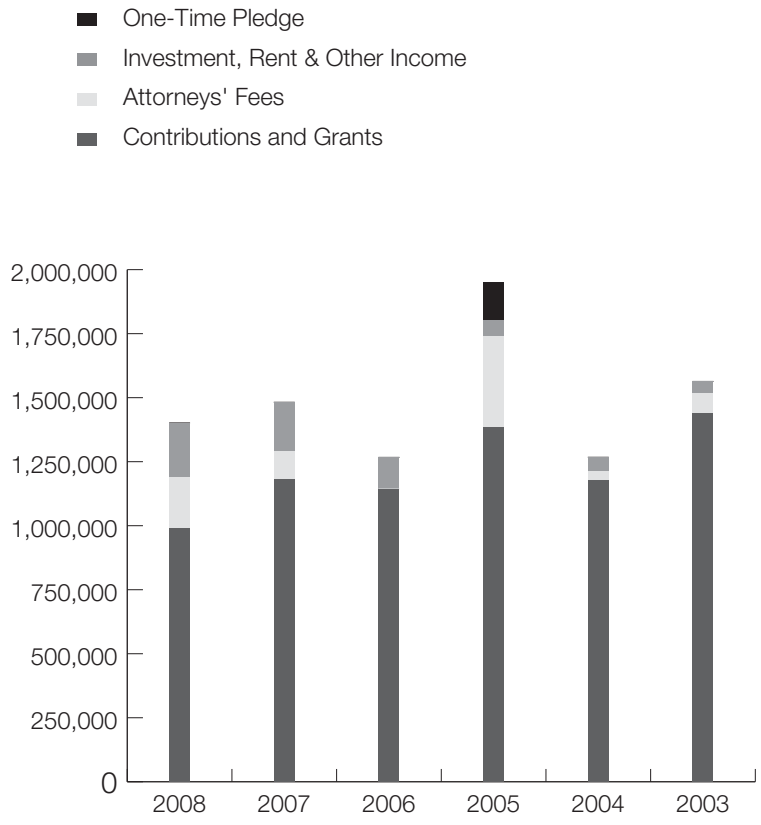
Statements of Activities

March 31, 2008 and 2007

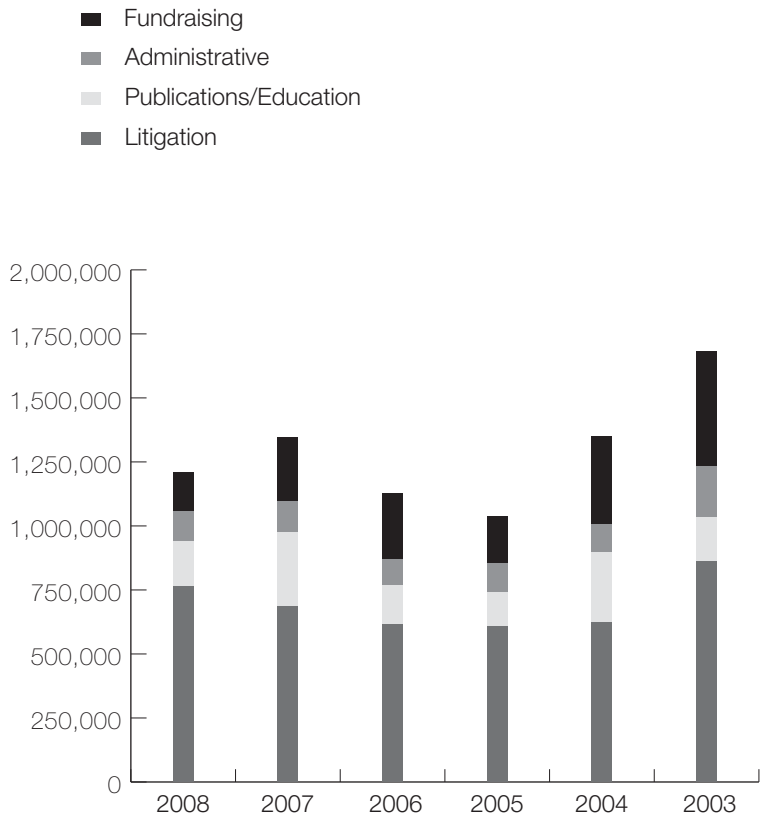
Support	2008	2007
Contributions and Grants	$ 990,459	$ 1,180,150
Attorneys' Fees	197,739	110,218
Investment, Rent & Other Income	213,209	191,724
Total Support	**$ 1,401,407**	**$ 1,482,092**
Expenses		
Programs:		
Litigation	$ 764,427	$ 683,465
Publications/Education	175,121	292,853
Total Program Expenses	$ 939,548	$ 976,318
Administrative	$ 118,174	$ 119,063
Fundraising	151,052	250,723
Total Expenses	**$ 1,208,774**	**$ 1,346,104**
Change in Net Assets	$ 192,633	$ 135,988
Net Assets - Beginning	2,867,285	2,731,297
Net Assets - Ending	**$ 3,059,918**	**$ 2,867,285**

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.

Schedule of Support, 2003–2008



Schedule of Activities, 2003–2008



Public Education and Outreach

Staff Articles

Terence J. Pell. "By No Means: Michigan Judge Turns Tables on Advocacy Groups Determined to Derail Civil Rights Initiative." *National Association of Scholars Website,* April 7, 2008.

News Coverage

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

ABC *World News.* "The Emily Smith Case." June 23, 2007.

Jan Crawford Greenburg. "Supreme Court Returns to Race Issue." *ABC News.com*, June 24, 2007.

Dan Mangan. "Color-Barred Student Shut Out by School's Race Quota." *New York Post,* June 25, 2007.

Gail Heriot. "Affirmative Action Backfires." *The Wall Street Journal,* August 24, 2007.

Kenneth Jost. "Racial Diversity in Public Schools." *CQ Researcher,* September 14, 2007.

Chuck Bennett. "In 'Wrong Minority' H.S. Test Prep Denied for Asians: Suit." *New York Post,* November 19, 2007.

Elissa Gootman. "Brooklyn: Action Filed Over School Admissions." *The New York Times,* November 20, 2007.

Editorial. "End the Race Games." *New York Post,* November 20, 2007.

Dan Mangan. "Family Sues Over Quotas." *New York Post,* January 14, 2008.

Editorial. "Free Mark Twain!" *New York Post,* January 16, 2008.

Joseph Goldstein. "Brooklyn School's Racial Quota Is Under Fire." *New York Sun*, February 13, 2008.

Jennifer Medina. "City Moves to Overturn 1974 Ruling on Race." The New York Times, February 13, 2008.

Editorial. "Ending a Racial Outrage." *New York Post,* February 19, 2008.

Jennifer Medina. "Desegregation Order Lifted From a School in Brooklyn." *The New York Times,* February 23, 2008.

"Judge Dismisses Suit Challenging Proposal 2." *The Detroit News,* March 18, 2008.

Paige Austin and Alicia Robinson. "Norco Woman's Lawsuit Accuses State of Trying to Intimidate Her After She Protested a Group Home Next Door." *The Press-Enterprise,* April 1, 2008.

Jason W. Armstrong. "Suit Accuses State of Intimidation." *Los Angeles Daily Journal,* April 3, 2008.

CIR in the News

NEW YORK POST

EDITORIAL

Ending a Racial Outrage

FEBRUARY 19, 2008 -- Schools Chancellor Joel Klein last week moved to exorcise one of the city's most embarrassing racial quotas.

the magnet school ... should follow the ... preme Court Chief Justice ... erts, who stated in the major... ion on the Kentucky and W... cases: "The way to stop discri... on the basis of race is to ... criminating on the basis ...

Daily Journal TOP STORIES **California**

LOS ANGELES DAILY JOURNAL • THURSDAY, APRIL 3, 2008 • PAGE 2

THE DETROIT NEWS

Tuesday, March 18 2008

Judge dismisses suit challenging Proposal 2

DETROIT -- A federal ... on Tuesday dismissed a l... challenging Proposal 2, a sta... that bans preferential trea... based on race or gend... government hiring and uni... admissions.

U.S. District Judge David ... son's ruling upholds the co... tionality of the measure Mi... voters approved in 2006.

In dismissing the suit, L... said the plaintiffs failed to ...

The New York Times

SUNDAY, FEBRUARY 23, 2008

Desegregation Order Lifted From a School in Brooklyn

BY JENNIFER MEDINA

A federal judge on Friday lifted a 1974 desegregation order for a Brooklyn middle school, effectively eliminating racial quotas that had been in place at Mark Twain Intermediate School for more than three decades.

The order was imposed when the district, No. 21, was largely white and the Federal District Court in Brooklyn ruled that it was steering white, middle-class students away from the school, deliberately segregating it ...

The order stated that the school had to reflect the basic makeup of the ...

that because of the court order and the demographic changes, minority students ...

Earlier this year, an Indian-American family filed a lawsuit against the school ...

admissions policy would be changed for the 2008-9 school year to become ...

1974 ... in fac... Ju...

NEW YORK POST

IN 'WRONG MINORITY' H.S. TEST PREP DENIED FOR ASIANS: SUIT

BY: CHUCK BENNETT

NOVEMBER 19, 2007 -- Three Chinese parents in Brooklyn are expected to file a federal lawsuit today challenging a popular city-run tutoring program on the grounds it discriminates against Asians, The Post has learned.

The Specialized High School Institute gives gifted but "disadvantaged" minorities to ace the competitive exam to get into top city high schools like Stuyvesant or Brooklyn Tech.

But the parents say it is unfair - and illegal - for the Department of Education to limit eligibility to blacks and Latinos.

"The program only selects certain kinds of minorities and unfortunately my daughter didn't fall into that category," said Peggy Foo-Ching, 47, a mom from Bensonhurst who said her 12-year-old daughter's application last year was ignored.

The Specialized High School Institute was created to expand the ... black and Latino students at the ... high schools, but the Department of Education has always insisted anyone who qualifies for a free lunch could apply.

Foo-Ching's eldest daughter qualified for the institute in 2003 and is now a student at Brooklyn Tech, but the mother believes guidelines were changed barring her younger daughter from participating last March.

A Department of Education internal memo obtained by lawyers trying the case indicated that eligibility criteria excludes whites and Asians.

"What the memo reveals is blatant and categorical discrimination ... white or Asian, you're not supposed to get an application," said Christopher Hajec, an attorney with the Center for Individual Rights, a conservative advocacy group.

"It's not the business of the government of New York City to be counting up the Asians or whites in, say, Stuyvesant High School and concluding there are too many of them."

Andrew Jacob, a Department of Education spokesman, said the racial criteria has been under review since summer, when a US Supreme Court ruling said ethnicity could not be ... public schools ... He could not comment on the suit, but said no policy will be changed before March, when the next group of sixth-graders will be invited to apply to the program.

The father who initiated the suit, Stanley Ng, said he understood how controversial his challenge may be viewed ...

"It's not something that I t... lightly," he said. "There are m... Asian and white kids in this ... trict who can't pay for tutor... What is their recourse?"

COLOR LINE: Stanley ... with daughter Christie, says ... was denied tutoring that w... have helped her get into an ... high school.

The New York Times

WEDNESDAY, FEBRUARY 13, 2008

City Moves to Overturn 1974 Ruling on Race

BY JENNIFER MEDINA

New York City went to court on Tuesday seeking to undo a 1974 desegregation order for a middle school in southwest Brooklyn, arguing that the ruling was outdated and no longer reflected the racial mix of the neighborhood

The original court order for Mark Twain Intermediate School was imposed when the region, District 21, was overwhelmingly white The court held that the local school board was deliberately segregating that school by sending middle class white students elsewhere The court ruled that the school should not have more than 10 percent more minority students than the districtwide average, which was about 30 percent

Over time, however, the neighborhood has changed and the proportion of white students has steadily decreased in the area's middle schools, down to roughly 40 percent in 2007

As a result, the court order has ended up leading Mark Twain, now a respected program for gifted students, to require higher scores on admissions tests for minority students than for white students

"Mark Twain is now a racially mixed, highly sought-after, excellent school," the city's brief, filed in United States District Court in Brooklyn, states, adding that the school attracts "children from all over the district and the city into the Coney Island neighborhood Thus, the defendants have more than satisfied the goal of the remedial order to desegregate the school by providing Mark Twain students with an excellent education in a racially mixed environment"

The motion asks the court to overturn the ruling immediately, so no race-based criteria would be used to determine admissions for the 2008-9 school year City officials declined to comment further

In June, a bitterly divided United States Supreme Court ruled that public school systems could not seek to achieve or maintain integration through measures that take explicit account of a student's race

In the wake of that decision, the parents of Nikita Rau, an 11-year-old whose family immigrated from India, filed a class action lawsuit last month against the Department of Education after Mark Twain rejected her last year She scored a 79 on the school's music admissions test — below the 84 4 required for minority students to be accepted, but above the 77 for white students

After The New York Post reported Nikita's rejection in June, Schools Chancellor Joel I Klein called the quotas an unnecessary "anachronism," but made no move to have the court abolish them Last month, when the Raus announced that they were suing the city, Mr Klein said he would ask the court to overturn the order

"I think it's unfortunate that we had to go to a lawsuit to bring this about," Anjan Rau, Nikita's father, said on Tuesday "If they had done this right away, my daughter would already be in Mark Twain"

She is now a sixth grader at Bay Academy, a public middle school in Sheepshead Bay, Brooklyn "I hope the judge will see the same wisdom as the chancellor that this is an antiquated rule in today's world," Mr Rau said

CIR Board of Directors

Professor Jeremy A. Rabkin (Chairman) is a professor of International Law at the George Mason Law School. Professor Rabkin is an expert in government regulation, bureaucracy, public law and policy, and the judiciary. Professor Rabkin received his Ph.D. in Government from Harvard University in 1983.

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