

ANNUAL REPORT 2009
20TH ANNIVERSARY

CIR

The Center for Individual Rights

is a non-profit 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 which offer the best chance of establishing greater 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 non-profit charitable organization. Contributions are tax-exempt under section 501(c)(3) of the Internal Revenue Code.

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Two Decades of Achievement

At CIR we are not big on looking back. The current challenges are too pressing, the current situation too dire, for us to spare much time for retrospection. But 2009 does mark our twentieth anniversary, and it's worthwhile to examine just how we achieved our success – with an eye toward continuing and increasing that success in the future.

The last two decades were momentous ones for the country. And by any measure, the Center for Individual Rights has played an important role in some of most significant political and legal disputes of that era. In what follows we recount our origins, our mission, and a representative sample of CIR's resulting exploits over those twenty years.

First, how it all got started...

A Gamble That Worked

Michael Greve and Michael McDonald launched CIR as a two-year experiment. They told funders they would either find high profile lawsuits capable of driving a national agenda of limited government based on individual rights or they would shut down. They were convinced that existing public interest law firms were ignoring strategically important lawsuits because they were too wedded to filing endless *amicus*

briefs necessary for direct mail fundraising.

Instead, CIR would rely on a small group of dedicated funders who understood the importance of filing original cases on behalf of real clients – and who were willing to stay with those cases through years of appeals until a national precedent was achieved.

CIR would be nimble, too: instead of spending hundreds of thousands of dollars to hire an in-house legal staff, it would develop a network of leading private attorneys who would donate their time *pro bono* to CIR's precedent-setting litigation. And instead of dabbling in the hot issues of the day, CIR would develop expertise in a handful of key areas where the threat to individual rights was the greatest and the possibility for legal reform the most likely.

Greve and McDonald's approach was a gamble. It depended on finding good cases overlooked by others. It presupposed enough attorneys with a libertarian bent who had the time and talent to litigate high profile constitutional cases. And it meant enlisting the help of a handful of generous donors who did not need – or want – endless fundraising appeals.

As it turned out, 1989 was good time to begin such a venture. Many of the Reagan Administration's best lawyers were entering private practice with a desire to do



CIR's brand of *pro bono* work. The public – and the federal courts – saw the need to counteract twenty years of highly politicized left-leaning public interest litigation and were receptive to CIR's principled approach to the Bill of Rights. And CIR's early funders were eager to underwrite a new approach to public interest law.

It fell to us to bring some strong cases...

Radio Free America

It didn't take long. One of CIR's first clients was Thomas Lamprecht, a 28-year-old radio broadcaster whose application for a license had been denied by the FCC because

he was a man. Other public interest law firms shrank from Lamprecht's case. They already had enough "affirmative action cases" and lacked the resources (or the will) to litigate another such a case from the ground up.

But for Greve and McDonald, the *Lamprecht* matter was perfect. CIR took his case with alacrity, stuck with it through all its twists, turns and set-backs, and ultimately won - a "surprise" victory marking the first time a federal preference had been struck down by the courts.

Lamprecht showed that the CIR model worked: by seizing opportunities to represent real clients in original litigation using outside, *pro bono* counsel, CIR could bring about real legal reform at a lower cost and in shorter time than other groups. →

Georgetown Confidential

CIR made a splash early on when it represented embattled Georgetown law student Timothy Maguire. The law school was subjecting Maguire to disciplinary proceedings and threatening to expel him – all because he published an article in the

Georgetown Law Weekly in which he broke the news that the law school operated a dual admissions system based on race. Since he came upon this information when working as a temporary file clerk in the law school's admissions office, the law school seized on the pretext to charge him with a breach of confidentiality

– even though he revealed no confidential information about any applicant or student.

CIR decided to turn the tables, and on Maguire's behalf we charged the school with violating both Title VI of the Civil Rights Act and the District of Columbia Human Rights Law. The result: the law school backed down, agreeing to dismiss the charges against

Maguire and take no further action toward his expulsion.

Every major media outlet covered the case, with the result that the extent of race preferences by an elite school – and also the hysteria and injustice of their practitioners and supporters when someone dared blow the whistle – got wide exposure before a national audience.

About *Mcguire v. Georgetown Law School*:
"The Maguire affair shows the decay of liberalism."
Charles Krauthammer
Washington Post
April 26, 1991

About *Silva v. University of New Hampshire*:

“The Silva case has divided faculty members, students, legislators and the public over what speech should not be allowed on campus, with much discussion about context, the people to whom disputed remarks are addressed and a speaker’s intention.”

The New York Times
February 27, 1994

“The Center for Individual Rights...has tried to rescue the First Amendment from political correctness mania.”

The Wall Street Journal
October 19, 1994

Little Egypt and Little Minds

In the late 1980’s, a wave of trumped-up “sexual harassment” charges was sweeping unopposed over America’s campuses. When it struck tenured University of New Hampshire professor Donald Silva, he lost his job because of his use of two mildly sexual metaphors in a writing class (in one he followed famed belly dancer “Little Egypt” in comparing belly dancing to vibrating Jell-O on a plate). CIR seized the opportunity to enforce the First Amendment, even if it meant protecting the rights of a male college professor targeted by a noisy campus constituency.

The case generated much press and public debate; in

the end CIR got Silva reinstated. A federal judge declared that the state may not revoke a professor’s tenure simply because some students were offended by his choice of words. *Silva v. University of New Hampshire*, with other cases CIR brought along these lines, stands for the proposition that the First Amendment can’t mean one thing when used to protect individuals and activities university officials favor and quite another when it protects ordinary people who stumble into the cross-hairs of political correctness. Across the country, those who enforced the new “speech codes” at public universities were compelled to take notice.

Just as important, *Silva* became something of a cause célèbre, thus focusing public attention on the increasingly intolerant climate on college campuses.

About *Rosenberger v. University of Virginia*:

“Rosenberger will be best remembered for the Supreme Court’s bold stance that viewpoint discrimination does not become any more constitutionally acceptable because it is used against religious groups.”

Harvard Law Review, Vol. 109
November 1995

Wide Awake Now

Free speech wasn’t the only area in which CIR worked to undo the drift of public interest law towards political liberalism. Over the last fifty years, the Establishment Clause had been reinterpreted to all but require states to discriminate against religious expression in *any* form and, correspondingly, to favor secularism in *all* forms. In a case challenging this one-sided view, CIR achieved its first major Supreme Court victory.

In *Rosenberger v. University of Virginia*, CIR defended the right of student publishers of *Wide Awake* magazine to compete for student activity funds on the same terms as any →

other student group regardless of the religious content of their magazine. The Supreme Court concurred, and *Rosenberger* became one of the most important Establishment Clause cases of the 1990's – one that made possible the whole sub-industry of follow-on cases in defense of religious liberty. →

As a University of Virginia student, Ronald Rosenberger published Wide Awake magazine to express his religious vision – until the University pulled the plug. Rosenberger fought back. Represented by CIR, he took the case to the Supreme Court and made legal history, winning a celebrated and far-reaching ruling.



Teaching While Religious

Columbia Union College v. Oliver

In 2002, CIR challenged the states' long-standing practice of denying government funds to religious schools that are too religious. The dreaded phrase was "pervasively sectarian."

States used to think that denying state support for secular programs at religious schools was not only constitutionally allowable, but required under Supreme Court precedent.

Thinking this an inaccurate reading of the law, CIR followed up its victory in *Rosenberger* with one on behalf of the Seventh Day

Adventist Columbia Union College in Maryland. Maryland officials had denied it a grant (over \$1,000 per student) the state gave to other private religious colleges because Columbia Union's undoubted sectarianism was, alas, pervasive. CIR helped the college challenge this determination in court and the Fourth

Circuit Court of Appeals concluded that even if Columbia Union was "pervasively sectarian," that was not enough of a reason for the state to deny it funding for its secular programs. The case was a body blow to state efforts to determine which institutions were and were not "too religious" to receive state funds.

About *Rosenberger v. University of Virginia*:
"The ferment on the Court . . . coincides with a political ferment over the relationship between religion and government, a combination that is likely to keep this case in a bright spotlight."
New York Times
June 15, 1999

About *United States v. Morrison*:
“[Morrison] has begun a jurisprudential counterrevolution in defense of federalism.”
George Will
Newsweek
May 29, 2000

Overfederalization Checked

CIR understood that conservative public interest litigation had to open new legal fronts if it was going to make good on its claim that the real problem was not any particular technical interpretation of the law, but rather the relentless subordination of the rule of law to various political interests.

CIR was presented with an opportunity to tackle the left’s politicized view of the federal government’s authority directly when it mounted a constitutional challenge on behalf of Antonio Morrison, a football player at

Virginia Polytechnic School who had been cleared of the same rape charges twice – only to have to defend himself one more time against a federal lawsuit brought by his accuser under the Violence Against Women Act.

Congress claimed authority to impose additional penalties on crimes of violence against women under the commerce clause, which permits it to regulate commerce among the states. Yet the statute covered *all* violent crimes against women, even those that had no connection to interstate commerce and even those that had been thoroughly



One That Got Away

P&M Enterprises v. Consumer Product Safety Commission

CIR made an early foray against regulatory overstretch, in the process going up (alas, unsuccessfully) against a major federal agency.

In the late 1980’s, Phil and Marilyn Dye were the proud makers of the “Worm Gett’r,” an electrical device used to

make worms come up out of the ground. The Dyes had sold over 30,000 of the devices to fishermen and bait store owners with no reports of accidents or injury.

At this perilous point, the federal government came to the rescue. The Consumer Product Safety Commission effectively banned the sale of the Worm Gett’r, determining that it was a “substantial

consumer risk.” Which meant, of course, that said fisherman and bait store owners would go on using electrical current to bring up worms, but do so using homemade devices that were less safe than the carefully-designed Worm Gett’r. With its ban, that is, the Commission actually exposed the public to more danger, not less.

Represented by CIR, the Dyes appealed the decision of an administrative law judge to the full Commission, which held its first hearing in almost ten years to consider the matter. The result was that the ban stood – unfortunately, the Commission resisted CIR’s invitation to construe the law so that it promoted public safety rather than regulatory power.

prosecuted by state and local officials twice already.

The threat to individual liberty posed by such unlimited federal power was recognized by the trial judge, who said, “if I accepted plaintiff’s argument...I would be hard-pressed to posit any activity by an individual that Congress’s is without power to regulate...even in-somnia.” In 2000, the Supreme Court struck down this portion of the Violence Against Women Act.

U.S. v. Morrison is one of this decade’s most important constitutional precedents, restoring critical constitutional limits on Congress’ power to take over functions traditionally performed by the states. In the coming years, when the courts sit in judgment of today’s over-reaching federal legislation of all types, including the new federal “hate crimes” law, the import of this seminal decision is sure to be felt.

Separate and Unequal

Nowhere did liberal public interest law firms enjoy greater moral authority than in the area of civil rights. The NAACP Legal Defense Fund’s forty-year effort to end discrimination in public schools stands for many as the model of tenacious public interest law advocacy.

Yet what began as a principled effort to enforce the Fourteenth Amendment’s requirement that the state neither

favor nor disfavor any individual because of his race turned into a systematic effort to favor particular racial groups in employment, government contracting, and college admission, often in blatant disregard of Supreme Court precedent in this area.

What was badly needed was an original case challenging the increasingly unconstitutional use of racial preferences. Many public interest law firms found such a case “too controversial,” and so it fell to CIR undertake such a challenge. In 1993, CIR challenged the University of Texas Law School’s policy of evaluating minority and non-minority applicants under unequal standards. *Hopwood v. Texas* was the first successful challenge of an admissions preference in over twenty-five years, and it took square aim at the idea that ensuring racial “diversity” justified *any* consideration of race, let alone separate standards for minority applicants. In a ruling that sent shock waves through college and university admissions offices, the U.S. Court of Appeals for the Fifth Circuit agreed: there was no legal authority for the widespread practice of trying to engineer a diverse racial mix of students through race discrimination.

After the Supreme Court declined to review *Hopwood*, CIR set about filing similar challenges in other judicial circuits in the hope of creating a circuit-split that would make it more likely the Supreme Court would either limit or outlaw completely the diversity rationale. And so in 1997, CIR filed suits →

About *Hopwood v. State of Texas*:

“Ripples from the case are spreading throughout America. These ripples – the Hopwood effect – have begun killing off or modifying affirmative action at one institution of higher education after another.”

U.S. News & World Report
1996

Barbara Grutter, pictured at the University of Michigan Law School, which rejected her application in the name of “diversity.” Since then, state-sponsored race discrimination (for that or any reason) has been banned by the people of Michigan – and CIR is fighting to keep it that way.



against the University of Washington Law School, the University of Michigan Law School, and the University of Michigan undergraduate College of Literature, Science, and the Arts.

It was the two Michigan cases that made it to the Supreme Court, and in 2003, the Court struck down the undergraduate admissions system and came within a vote of striking down *any* use of race solely to achieve a diverse racial mix. In addition to setting one of the decade’s most significant legal precedents, eight years of highly public discovery, trial, and appeals had moved public opinion firmly against the use of race in college admissions. A 2001 *Washington Post* poll, for example, found that 94 percent of whites and 86 percent of blacks

were against using race as a factor *at all* in admissions.

The Michigan cases showed that not only that it was possible for a small public interest law firm to move a national agenda of racial fairness, but that such a firm was especially well situated to bring the kind of principled cases necessary for such an effort. Though the NAACP, the ACLU, every major educational institution, a large number of Fortune 500 Corporations, most newspapers and editorial writers, and the Bush White House all opposed CIR’s effort, the Michigan cases moved the country and the law further against the use of invidious racial double standards than anyone had thought possible. →

Black Like Them

Tompkins v. Alabama State University

It seems blacks and other minorities weren't the only ones getting preferential treatment from universities in the late nineties. At Alabama State University, whites were, too, with the result that blacks were

denied opportunities in favor of whites, who were judged by lower standards.

Alabama State is an historically black college. Though it did not discriminate in admissions, a federal judge thought its student body too monochromatic, and to fix that mandated the creation of all-white

"Diversity Scholarships" at the university. When graduate student Jessie Tompkins lost his teaching assistantship because funds were needed for the Diversity Scholarships, he applied for one but was told he was ineligible because, being black, he did nothing for the university's "diversity." So

Tompkins contacted CIR. In federal district court, we took on this system of reverse-reverse discrimination, with media coverage that included a *60 Minutes* segment on the case and us. In court we won modifications to the language of the "whites only" scholarship to include students of all races.

About Tompkins v. Alabama State University:
"[F]ew cases put affirmative action in as stark a light as does the Jessie Tompkins case . . . Last summer, the Center for Individual Rights . . . filed a suit on his behalf and three other Alabama State students."
Wall Street Journal
December 23, 1997

Operation Stop the Vote

But there was still a problem, one the Michigan cases only clarified: the attitude of non-compliance toward the Supreme Court's non-discrimination precedents, no matter what they were. After thirty years of increasingly politicized public interest law, state school officials viewed the law as a formality to be maneuvered around rather than a fundamental limit on their authority.

CIR was able to address this spirit of non-compliance directly when CIR's former client Jennifer Gratz teamed up with California businessman Ward Connerly and together sought to introduce a ballot initiative in Michigan that would

ban all racial preferences, including those ostensibly designed to achieve "diversity." Amid scenes of tumult worthy of a Tom Wolfe novel instigated by a radical group called By Any Means Necessary (BAMN), CIR cleared away a late legal attempt to keep the initiative off the ballot. In November 2006, the people of Michigan voted by a margin of 58 to 42 percent to make it part of their state Constitution.

Almost immediately, defiant University of Michigan officials sought and were granted a federal stay of enforcement of the new amendment. CIR moved quickly to squelch this. On behalf of Eric Russell, a student who was then applying to law school, CIR made an emergency appeal to →

the Sixth Circuit Court of Appeals. While thousands of applicants to the University of Michigan awaited the outcome, the court lifted the stay and reinstated Michigan's new constitutional amendment, a ruling CIR then successfully defended in a further emergency appeal to the Supreme Court.

But CIR didn't stop with making Michigan's new law take effect when the voters intended. Since then, it has been engaged in a high profile defense of Michigan's new law against an organized effort to get the courts to declare, absurdly, that laws ending racial preferences are themselves discriminatory. →



BAMN protesters pursue CIR client Jennifer Gratz outside the Federal Courthouse in Detroit during a break in a case challenging efforts of Ward Connerly, pictured at rally, 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).

California Schemin'

In the 1990's, the war on campus free speech expanded to another locale: where Americans live. Government officials and private corporations alike sought to punish individual citizens for speaking out against government housing policies that had an adverse impact on their neighborhoods.

CIR stopped the federal Department of Housing and Urban Development in its tracks with a celebrated case defending three Berkeley, California, residents who were threatened with a \$100,000 fine for publicly opposing one low-income housing project. In one of the first ever such rulings, a California federal District Court held HUD employees liable in their personal capacities for ignoring the clear right of citizens to petition the government for redress of grievances.

And then in 2006, the Ninth Circuit Court of Appeals issued a scathing ruling in another CIR case. This one challenged a private developer who unleashed an abusive "housing discrimination" lawsuit against our client Travis Compton. All Compton had done was speak out against, and as a town officer vote against, the placement of one of the developer's lucrative Section 8 housing projects in his neighborhood. The Ninth Circuit ruled that the developer's suit was a legally frivolous abuse of the judicial process. ■



In the exercise of his constitutional right to petition the government, Fresno, California, resident Travis Compton, pictured with his family, helped keep a mammoth housing project from being approved for construction in his neighborhood. When the Section 8 developer launched a punishing lawsuit against him under "fair housing" laws, CIR was there to shut it down.



Terence J. Pell, President



Jeremy Rabkin, Chairman

2009 in Review

CIR's activities last year demonstrate the continued importance of high profile litigation in strengthening individual rights. If anything, the urgency is greater and the danger to freedom more ominous than ever before. At a time when both the Executive and Legislative branches embrace ambitious and expansive government, the courts still are the best – perhaps the only – means to pursue principled limits on government authority.

This year, the fight for individual rights continued against a backdrop of economic and political upheaval that was “fundamental and astounding” (to borrow from Lincoln). Both national parties pursued unprecedented interventions in the private markets to address a world-wide crisis in bank liquidity. Both parties ignored basic contract rights, operated out of public view, and rewarded failure – a troika of missteps each antithetical to democratic self government.

Now the liberal wing of the Democratic Party controls both the Executive and Legislative branches of the federal government. And in its view, the collapse of the financial markets is not merely an extraordinary event that requires an exceptional response. Instead it is a once-in-a-lifetime opportunity to expand permanently the scope and

authority of the federal government. Thus, the left has broadened measures to address the credit crisis to include related “crises” in the financial markets, health care, immigration, and the environment.

In such an atmosphere the constitutional checks and balances that distinguish majority rule from tyranny are forgotten. For example, to a reporter’s savvy question about the possible unconstitutionality of certain provisions of House health care legislation, Speaker Nancy Pelosi replied late last year with a dismissive “Are you kidding?” – as if the question were preposterous.

To CIR, it’s not.

The crisis now at its head, of course, has been building for decades. Granting the political class in either party control over ever-expanding slices of American life means that freedoms we have long taken for granted now are in real danger of disappearing. Everything from incandescent light bulbs – made illegal in legislation signed by the *last* president – to the size of one’s car to one’s decisions about medical treatment has become an opportunity for government experts to calculate an “optimum” choice and impose it on reluctant citizens.

Fortunately, political resistance to all this broke out on numerous fronts last year, from Tea Party activists to video cam-toting citizen journalists to newly-energized candidates running on a platform of limited government, lower taxes, and less regulation

These efforts (and the relative speed with which they emerged) depended, as they always have, on the written guarantees of our Constitution. Without a strong and legally enforceable Bill of Rights, citizens would be unable to express themselves so vocally yet peaceably, and mount political insurgencies so shocking and distasteful to the political class.

Hence the vital importance of American individuals’ willingness to keep those guarantees alive and relevant by defending them in court. This year, as in previous ones, there was no shortage of boldness among CIR’s clients in demanding that courts enforce the fundamental rights on which our system of limited government depends.

The power of an individual lawsuit to blunt the expansive designs of activist officials was nowhere more apparent than in CIR’s continuing representa- →

tion of John Brennan and nearly a dozen other New York City school building superintendents (in *U.S. v. New York City Dept. of Education*).

Some years back, these intrepid individuals decided to challenge a consent decree that required school officials to grant retroactive seniority to minority and female employees solely on the basis of statistical imbalances between the school system's workforce and the labor pool at large. Engineered by the Clinton Justice Department's Civil Rights Division, the decree dispensed with any need for a finding that the numerical imbalance was the result of illegal discrimination.

Brennan's case has achieved much already, including a Second Circuit ruling giving affected employees the right to intervene in Justice Department suits to challenge the legality of such settlements. That early victory enabled much fruitful discovery over the last several years. Among other things, CIR discovered that most of the minority and female employees granted retroactive seniority could not themselves have been the victims of any discrimination and thus were not entitled to *any* remedy under settled law, much less the generous benefits provided by the settlement.

Brennan's case comes on the heels of a strong Supreme Court ruling last summer in *Ricci v. Destefano*, in which the Court struck down a decision by New Haven officials to cancel a firemen's promotion test solely because it did not produce an acceptable racial outcome. Brennan's case will present the Court with an opportunity to expand that ruling much further.

Brennan's case is timely for another reason. In 2009, the Obama Justice Department announced a new push to sue local fire, police, and school agencies for statistical imbalances in their workforces. A strong ruling would stop this aggressive tactic by Obama's DOJ in its tracks.

John Brennan's case shows the value of original litigation. Instead of filing *amicus* briefs in the cases of others, CIR always has built cases from the ground up that are designed to vindicate the legal claims of real clients. Though original litigation requires long discovery periods and numerous levels of appeal, it is the best way to set real legal precedents that make lasting changes in the law. *Brennan* shows how a case can suddenly assume great importance when its unique facts reach the appellate courts.

CIR's strategy of representing real individuals paid dividends in another case, this one on behalf of Eric Russell, a lone law school applicant who took on almost the entire political and legal establishment of Michigan in order to defend the right of voters to elect to do away with racial preferences. Russell's timely intervention in a 2006 case challenging Michigan's Civil Rights Initiative forced Michigan officials to honor the amendment and end the use of racial preferences on the schedule set by the voters – that is, immediately.

Despite that early victory, the NAACP, the ACLU, and a Michigan advocacy group called BAMN continued to press their constitutional challenge to the amendment. Last year, U.S. Federal District Judge David Lawson refused to reconsider his earlier ruling upholding the initiative. In a blow to Russell, however, Lawson declared Russell's intervention to be at an end on the grounds that his interests were now adequately represented by the Michigan Attorney General. (They aren't.)

Russell could still appeal, of course, and after each side did just that, the case now is before a three-judge panel of the Sixth Circuit. Almost regardless of what the panel decides, the case is likely to be taken to the full Sixth Circuit and then to the Supreme Court.

Last year also saw progress in CIR's several-year effort to restore the right of parents to make important medical decisions on behalf of their minor children.

CIR's lawsuit on behalf of the Mueller family of Boise, Idaho, already has broken new ground: in 2007, the trial judge ruled that the state does not have authority to assume custody of a minor child in order to make a difficult medical decision – one that has risks either way. The year 2009 saw *Mueller v. Auker* before the Ninth Circuit on the question of the liability of a police officer. A December ruling that the officer enjoyed qualified immunity for his actions cleared the way for trial, to occur in mid-2010.

As former Attorney General Edwin Meese has noted, *Mueller* is an exceedingly important effort to protect a basic freedom – that of a family to make its own medical decisions. Unless the parents were acting unreasonably, it is they – not state officials – who have the right to weigh the costs, risks, and benefits of competing treatments.

The Muellers' case will have consequences beyond child protection law; the precedent it sets could restrict the power of government officials to remove treatment decisions from patients and doctors, no matter what health care legislation gets passed. →

From the accounts of this and the last twenty years, some important lessons can be gleaned about how best to design and run a small public interest law firm to achieve big results. Fundamentally, we owe our record of accomplishment in this and the last twenty years to the foresight of CIR's founders, Michael Greve and Michael McDonald, and founding Board Members Jeremy Rabkin, Michael Carvin, and Gary Born, all of whom understood sooner than others the potential of a public interest law firm unhindered by political or ideological blinders.

More than other public interest law firms, CIR depends on the generosity and dedication of the law firms and attorneys who have provided CIR with tens of millions of dollars worth of *pro bono* time. Over the last two decades, dozens of law firms and attorneys have devoted countless hours free of charge to the fight to restore individual rights.

But at the core of CIR's high profile cases are individual clients who are willing to shoulder the burden to redress society's careless attention to the rule of law. For their courage and dedication we owe a debt of thanks that probably can never be paid. It has been our profound privilege to represent individuals like Thomas Lamprecht, Donald Silva, Ronald Rosenberger, Anthony Morri-

son, Jennifer Gratz, Barbara Grutter, Corissa and Eric Mueller, and dozens of others who have lent their names and their reputations to CIR's legal efforts.

CIR's ability to mount high profile litigation and stay with it through sometimes endless appeals is due solely to the generosity and loyalty of CIR's financial supporters over the years. It seems appropriate at the two-decade mark to call special attention to the handful of foundations that provided critical start-up funds to CIR in its first year: the Lynde and Harry Bradley Foundation, the John M. Olin Foundation, and the Smith Richardson Foundation.

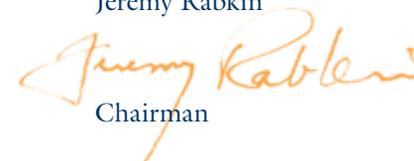
To all of our predecessors, cooperating counsel, clients, and most of all our donors, we extend our deepest thanks.

Terence J. Pell



President

Jeremy Rabkin



Chairman

Litigation Docket

U.S. Supreme Court

Frank Ricci, et al. v. John D. Destefano, et al., 129 S. Ct. 2658 (2009). Civil Rights; Equal Protection. Filed an *amicus* brief on behalf of Connecticut firefighters who were denied job promotions despite top test scores.

STATUS: Victory. The Supreme Court ruled that an employer cannot discard employment test results unless it has “strong basis in evidence” that the test violates Title VII.

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 hiring and promotion 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 university 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 motions for reconsideration. The case is now on appeal before the U.S. Court of Appeals for the Sixth Circuit.

Federal District Courts

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 state authorities in order to administer medical procedures to which the mother had not consented.

STATUS: Pending. The Ninth Circuit held that one of the defendants has qualified immunity and remanded the case for further proceedings. After remand, the Court largely denied the state defendants' motion for reconsideration of a prior determination that they had violated the Constitution. A trial is scheduled for mid-2010.

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. 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. He recently 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.

Yes on Term Limits, et al. v. Savage, et al., 550 F.3d 1023, (10th Cir. 2008). CIR submitted an *amicus* brief on behalf of the American Civil Rights Coalition raising First Amendment challenge to Oklahoma ban on non-resident petition circulators.

STATUS: Victory. Tenth Circuit ruled that ban on use of non-resident petition circulators in state's initiative and referendum process was not narrowly tailored to serve state's compelling interest in protecting and policing integrity and reliability of its petition process, and thus violated free speech clause of First Amendment.

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 sued the New York City Department of Education on behalf of Asian-American 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: Victory. The case was settled on favorable terms on December 10, 2008.

Waltz v. Brumfeld, 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.

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.

Michael E. Rosman. “State Anti-Preference Laws and the Role of Federal Courts.” *The William & Mary Bill of Rights Journal*, Volume 18, Forthcoming.

News Coverage

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

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.

Robin Erb. “U-M’s Black Enrollment Up 12% for Freshmen.” *Freep.com*, October 21, 2008.

William Kaempffer. “Lawyers Line Up in Firefighters’ Reverse Bias Case.” *The New Haven Register*, November 10, 2008.

Elise Castelli. “Ruling on Minority Contracts Worries Contracting Officials.” *Federal Times.com*, November 19, 2008.

John Rosenberg. “*Ledbetter v. Goodyear Tire and Rubber*: Where the Rubber Meets The Road, Or ... Bring on the Unintended Consequences!” *Discriminations.us*, February 3, 2009.

Joan Biskupic. “The Supreme Court Tackles Race: Series of Cases Could Alter Civil Rights Laws.” *USA Today*, April 21, 2009.

Bill Meyer. “Reverse Discrimination the White Man’s Burden?” *Cleveland.com*, April 28, 2009.

Deborah Hastings. “White Man’s Burden? Discrimination Suits Flourish.” *The Bay State Banner*, May 7, 2009.

Warren Richey. “Sotomayor on Tape: What She Said in Firefighter Race Case.” *The Christian Science Monitor*, June 3, 2009.

Rowan Scarborough. “Sotomayor’s Firefighter Case May Not Be Over Yet.” *Human Events*, June 4, 2009.

Deborah Hastings. “White Man’s Burden? Despite Decades of Reverse Discrimination Rul-

ings, Lawsuits Still Flourish.” *The San Francisco Examiner*, June 20, 2009.

Jim Malone. “Supreme Court Rules in Major Civil Rights Case.” *Voice of America News* and *SmallGovTimes.com*, June 29, 2009.

James Osborne. “California Democrat Accuses Talk Radio Conservatives of ‘Terrorizing’ Republicans.” *Fox News.com*, June 30, 2009.

Chetly Zarko. “Supreme Court Gets New Haven Firefighters Race Preference Case Right.” *OutsideLansing.com*, June 30, 2009.

Editorial. “Firefighters Ruling Draws New Lines on Race and Hiring.” Michael Rosman response: “Make Race Irrelevant.” *USA Today*, June 30, 2009.

Robert Tomsho. “Adding Personality to the College Admissions Mix.” *The Wall Street Journal*, August 20, 2009.

Public Appearances

CIR representatives discussed CIR’s cases on numerous broadcast programs in addition to other public appearances, including:

American Constitution Society Press Briefing at the National Press Club, broadcast live on C-Span, April 14, 2009.

Federalist Society Podcast about the *Ricci* case, May 28, 2009.

American Constitution Society National Convention, Panel Discussion “Race and the Law in the Wake of the 2008 Election”, June 19, 2009.

Bill Bennett’s *Morning in America* radio broadcast, June 29, 2009.

CBS News *Washington Unplugged Show*, June 29, 2009.

Nina Totenberg’s *NPR Morning Edition Show*, June 30, 2009.

Federalist Society Podcast about the *Ricci* case, July 13, 2009.

Financial Information

Statements of Financial Position

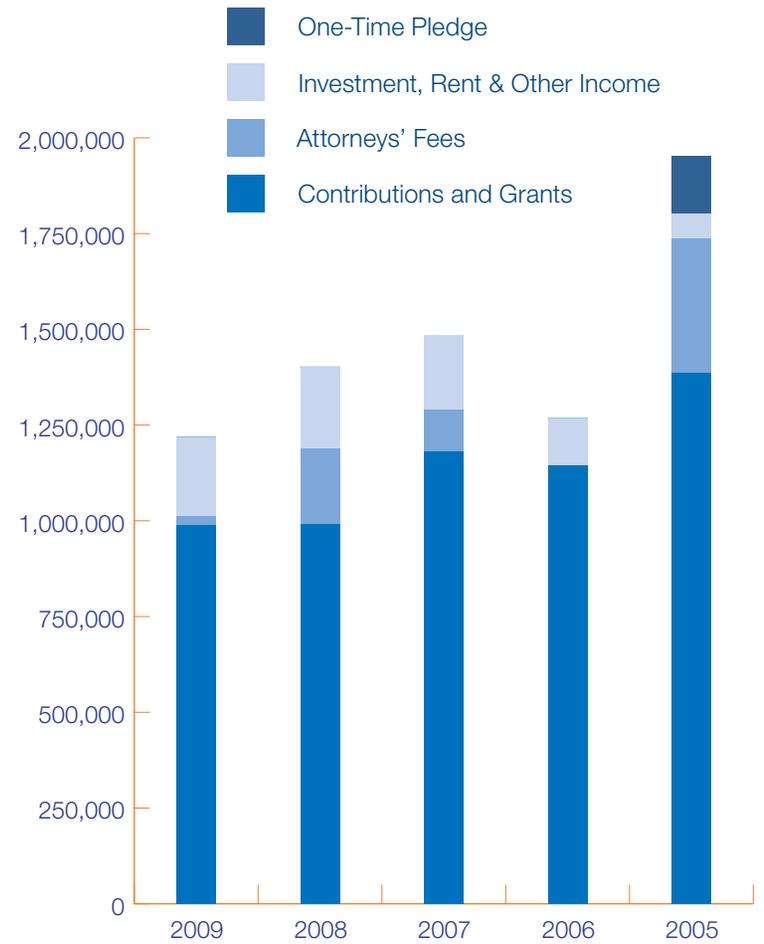
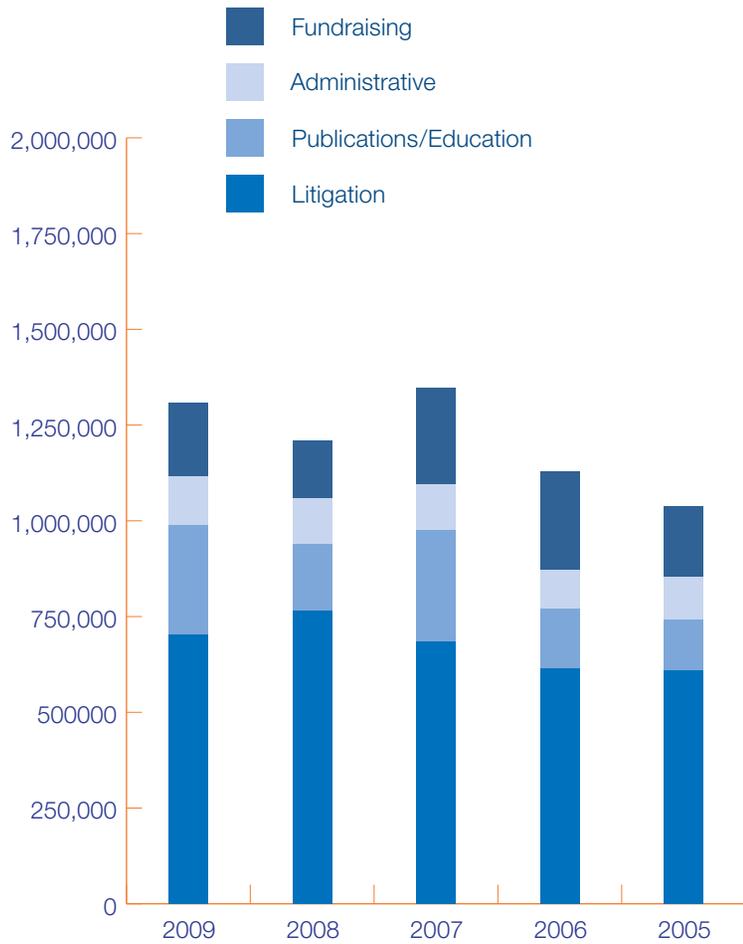
March 31, 2009 and 2008

Assets	2009	2008
Cash and Cash Equivalents	\$ 417,623	\$ 704,395
Investments	2,617,132	2,417,374
Grants Receivable	25,000	95,000
Accounts Receivable	--	292
Prepaid Expenses	37,153	31,755
Property & Equipment (Net)	7,701	11,723
Deposits	20,309	19,729
Total Assets	\$ 3,124,918	\$ 3,280,268
Liabilities and Net Assets		
Accounts Payable and Accrued Expenses	\$ 26,757	\$ 117,021
Accrued Rent, Current Portion	5,101	--
Security Deposit	5,101	3,975
Accrued Rent	117,196	99,354
Net Assets - Unrestricted	2,935,361	2,964,513
Net Assets - Temporarily Restricted	35,405	95,405
Total Net Assets	2,970,766	3,059,918
Total Liabilities and Net Assets	\$ 3,124,918	\$ 3,280,268

Statements of Activities

March 31, 2009 and 2008

Support	2009	2008
Contributions and Grants	\$ 987,929	\$ 990,459
Attorneys' Fees	23,280	197,739
Investment, Rent & Other Income	206,389	213,209
Total Support	\$ 1,217,598	\$ 1,401,407
Expenses		
Programs:		
Litigation	\$ 701,615	\$ 764,427
Publications/Education	288,008	175,121
Total Program Expenses	\$ 989,623	\$ 939,548
Administrative	\$ 126,305	\$ 118,174
Fundraising	190,822	151,052
Total Expenses	\$1,306,750	\$ 1,208,774
Change in Net Assets	\$ -89,152	\$ 192,633
Net Assets - Beginning	3,059,918	2,867,285
Net Assets - Ending	\$2,970,766	\$ 3,059,918



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.

Dr. Larry P. Arnn is President of Hillsdale College. Dr. Arnn previously served as the President of the Claremont Institute in Southern California. While there he was the founding chairman of the California Civil Rights Initiative (Proposition 209), which prohibits race preferences in state hiring, contracting and admissions. Dr. Arnn has a Master's and Ph.D. in Government from the Claremont Graduate School.

Dr. Robert P. George is McCormick Professor of Jurisprudence and Director of the James Madison Program in American Ideals and Institutions

at Princeton University. In 2005, Dr. George won a Bradley Prize for Intellectual and Civic Achievement and the Philip Merrill Award for Outstanding Contributions to the Liberal Arts of the American Council of Trustees and Alumni. He is a graduate of Swarthmore College and Harvard Law School and earned a doctorate in philosophy of law from Oxford University.

James B. Mann, Esq. is CEO of IPPsolar. Previously, Mr. Mann served as Director of Structured Finance of Soltage, Inc., Director of Derivative Products Group of Société Generale, Deputy Assistant Attorney General of the Tax Division of the U.S. Department of Justice, and General Counsel of the U.S. Commission on Civil Rights. He received an M.B.A. from Columbia University Graduate School of Business and a J.D. from Harvard Law School.

Arthur Stephen Penn, Esq. is President of Elmrock Capital, Inc. Prior to the founding of Elm-

rock, Mr. Penn was a practicing attorney in New York City. He earned his J.D. degree from New York University School of Law in 1961 and his B.A. from Cornell in 1956.

Dr. James Piereson is President of the William E. Simon Foundation. He is the former executive director and trustee of the John M. Olin Foundation. Before joining the foundation in 1981, Mr. Piereson was a member of the political science faculty at the University of Pennsylvania.

Terence J. Pell, Esq. is President of CIR. Prior to working for CIR, Mr. Pell served as General Counsel and Chief of Staff at the Office of National Drug Control Policy. From 1985 through 1988, Mr. Pell was a Deputy Assistant Secretary for Civil Rights in the U.S. Department of Education. He received his law degree from Cornell University, a Ph.D. in Philosophy from the University of Notre Dame, and a B.A. from Haverford College.

Staff

Terence J. Pell, Esq. (Ph.D., Notre Dame, 1996; J.D., Cornell Law School, 1981; B.A., Haverford College, 1976) is CIR's President. He is a member of CIR's Board of Directors.

Michael E. Rosman, Esq. (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.

Christopher J. Hajec, Esq. (Ph.D., University of Miami, 1998; J.D., University of Pennsylvania Law School, 1990; B.A., University of Michigan, 1987) is one of CIR's Associate Counsels. Formerly an officer in the Judge Advocate General Corps of the U.S. Navy serving as a defense attorney and appellate government counsel, he joined CIR in 2004.

Megan B. Lott (B.A., The College of William and Mary, 1982) is CIR's Senior Director of Development. Formerly Senior Director of Membership and Development, The American Legislative Exchange Council, she joined CIR in 2008.

Stephen Meli (B.A. American University, 2008) is CIR's paralegal and legal assistant. He joined CIR in 2009.

Michelle A. Scott, Esq. (J.D., Drake University Law School, 1995; B.A. Illinois Wesleyan University, 1992) is one of CIR's Associate Counsels. Formerly a litigation associate with Shapiro, Lifschitz & Schram, P.C., she joined CIR in 2005.

Law Clerks and Interns, 2009

Alexandra Arney
(Harvard Law School)

Alexander Cox
(University of Virginia School of Law)

Katherine Miller
(Georgetown University Law Center)

Joshua Newborn
(George Mason School of Law)

