Volume 17, No.1 Winter 2007

Civil Rights Monitor

LC CR Education Fund

Civil Rights Monitor

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Inside:

In this Monitor, we review legislative activities related to workers' rights, immigration, and extending federal hate crimes and employment protections to the gay and lesbian community; discuss developments in judicial nominations, civil rights enforcement and an important Supreme Court decision on school integration; and provide an update on ongoing affirmative action battles in the states. We also summarize Leadership Conference activities, including new initiatives on high school reform and on reducing poverty.

On the Hill

Executive Branch

In the Courts

In the States

LCCREF Activities

Volume 17, No.1 Winter 2007

On the Hill

The Year in Judicial and Executive Nominations

By Paul Edenfield

The change in control of the Senate in the 2006 elections prompted the withdrawal of the president's most controversial judicial nominees in December of that year, including the nominations of Terrence Boyle to the Fourth Circuit, William Myers to the Ninth Circuit, William Haynes to the Fourth Circuit, and Michael Wallace to the Fifth Circuit.

These nominees had galvanized opposition from the civil and human rights communities, as well as environmentalists and other groups that work together to promote fairness in the nation's courts. They had already languished for months in a Republican Senate, and it became clear that the chances of confirmation for nominees with such extreme views would diminish further in the new Congress.

However, the administration resumed its efforts to appoint conservative ideologues to the federal bench.

One of the most significant battles began shaping up in January. Judge Leslie Southwick, a Mississippi state court judge, was nominated to a vacant Mississippi seat on the U.S. Court of Appeals for the Fifth Circuit. This was the same seat sought by Charles Pickering and Michael Wallace, whose nominations failed.

The anti-civil rights records of Pickering and Wallace led to their rejection. It was noted by many senators that the Fifth Circuit, consisting of Texas, Mississippi, and Louisiana, served an area with the largest proportion of African Americans of all the circuits.

On inspection of his record, Judge Southwick seemed cut from the same cloth. Most notably, Judge Southwick had issued decisions in cases involving the rights of minorities, gays and lesbians, and workers and consumers, which raised profound doubt about his commitment to equal justice.

"Just like Pickering and Wallace before him, Southwick appears ready and willing to turn back the clock on fifty years of social justice progress in our nation," said People For the American Way President Ralph Neas.

Several aspects of his state court record tended to support this conclusion. In 1998, Southwick joined a ruling in an employment case that upheld a state employee appeals board's reinstatement, without any punishment of a white state employee who was fired for calling an African American co-worker a "good ole nigger." The lower court's decision upheld a hearing officer's order that compared the racial slur to the term "teacher's pet." The Mississippi Supreme Court unanimously reversed the decision.

In 2001, Judge Southwick joined a ruling that upheld a lower court decision to take an eight-year-old girl away from her mother and award custody to the father, who was not married to the mother, largely because the mother was living with another woman in a "lesbian home." Southwick joined a concurrence that suggested that sexual orientation is a choice and stated that an adult is not "relieved of the consequences of his or her choice" – e.g., losing custody of one's child.

Judge Southwick also possessed a striking record of voting against injured workers and consumers in cases pitting their interests against those of business and insurance interests. In nearly 90 percent of split decisions in consumer and workers' rights cases, typically involving torts and workers' compensation, he voted against the injured party.

In spite of this record, senators – looking to Judge Southwick's personal qualities and placing hope in his assurances that he would be sensitive to racial injustice – voted to confirm him and he was ultimately confirmed, after a filibuster effort narrowly failed, by a vote of 59-38.

In response to the vote, Leadership Conference on Civil Rights (LCCR) President and CEO Wade Henderson stated, "Judge Leslie Southwick's confirmation is a slap in the face to African Americans and people of good will."

On other courts of appeal nominations, President Bush refused to honor the longstanding practice of consulting with home state senators, even though Senate Judiciary Committee Chairman Patrick Leahy, D. Vt., had reinstituted the blue slip practice (rescinded by Republicans when they controlled the Senate as a means to facilitate President Bush's divisive nominees), which required that both home state senators consent to a nomination before it could move forward. Spurning moderation and efforts to find middle ground, the Bush administration proceeded unilaterally, in some cases without even giving the home state senators any advance notice of who the nominee would be.

Judge Leslie Southwick's confirmation is a slap in the face to African Americans and people of good will.

– Leadership Conference on Civil Rights (LCCR) President and CEO Wade Henderson

An egregious case of the administration's thumbing its nose at the Senate was the nomination of Robert Getchell to the Fourth Circuit. Virginia Senators Jim Webb and John Warner, a Democrat and Republican respectively, had submitted a list of five recommended nominees for two Virginia Fourth Circuit seats. These included respected mainstream conservatives. These recommendations were ignored.

Executive Nominations

Attorney General Alberto Gonzales announced his resignation in late August 2007, and in September, President Bush nominated a federal judge, Michael Mukasey, to replace him. During Gonzales' tenure, Department of Justice priorities mandated by law and commanding broad public support, particularly civil rights enforcement, were neglected and subordinated to an agenda driven by political considerations. Meanwhile administration decisions that should have been made with the advice of an independent Attorney General, including decisions about the treatment of detainees, were instead ratified by political loyalists in the Department. Against this backdrop, the civil and human rights communities, while hopeful that Judge Mukasey would restore integrity to the Department, nonetheless urged careful scrutiny of the nomination.

In his hearing, Judge Mukasey refused to define waterboarding as unlawful even though it was widely condemned as torture by military and human rights experts. He advocated an expansive view of executive power, and suggested that the president could overrule the other branches of government. A coalition of civil and human rights groups led by LCCR opposed his nomination. Many senators rallied in opposition, and he was confirmed by a narrow vote of 53-40 – in spite of initial Senate enthusiasm for his candidacy.

On the Hill

DC Voting Rights: Closer than Ever

By Angela Okamura

For a time, 2007 seemed to be the year that voting representation for the District of Columbia would become a reality.

The D.C. Voting Rights Act passed the House of Representatives in April (241-177). But it was defeated in the Senate in September, despite garnering more support – 57 senators voted for it – than ever before.

The bill would have raised House membership to 437 members by giving the District of Columbia one seat and an additional seat to Utah, a state that was short-changed in the 2001 reapportionment.

Rep. Eleanor Holmes Norton, D. D.C., and Rep. Thomas M. Davis, R.Va., co-sponsored the bipartisan bill in the House. Reps. Norton and Davis had originally hoped for 2006 passage in Congress, but the House leadership failed to bring it to the floor. With a change in leadership, supporters were optimistic for 2007.

A 2005 poll found that 82 percent of Americans supported full House representation for residents of the District.

Despite broadbased and bipartisan support, the bill faced opposition on constitutional grounds, on the theory that the Constitution did not give Congress the authority to grant representation to residents of the District of Columbia. Opponents argued that only a constitutional amendment could grant Congress such power.

Momentum on the bill picked up in March when it passed the House Judiciary Committee (21-15). On the heels of the committee vote, D.C. Mayor Adrian Fenty, calling the bill's passage D.C.'s "number one priority," joined forces with 2,000 people to voice support for D.C. voting rights at a Leadership Conference on Civil Rights (LCCR) and DC Vote march on April 16.

Civil rights groups lauded the April 19 passage of the D.C. Voting Rights Bill in the House. LCCR President and CEO Wade Henderson said passage of the bill was "long overdue." He added that "this country continues to refine and align itself with our founders' democratic principles," and the bill's passage was a step forward in that direction.

However, the bill still faced the threat of a filibuster in the Senate and a presidential veto.

On May 15, 2007, the Senate Homeland Security and Governmental Affairs Committee heard testimony in support of the bill from LCCR's Henderson; Sen. Joe Lieberman, I. Conn.; Jack Kemp, former Republican Congressman from New York; Mayor Adrian Fenty; and Viet D. Dinh, former assistant attorney general for constitutional matters under President Bush, and others.

Sen. Lieberman, a co-sponsor of the bill in the Senate, characterized the passage of the D.C. Voting Rights Act of 2007 as "mending a tear in the fabric of our American democracy."

Former Rep. Kemp asked fellow Republicans to preserve the rich civil rights legacy of the Republican party, called opposition to D.C. voting rights "embarrassing to the party of Abraham Lincoln." The Republican party, Kemp said, had "a chance to be recorded on the right side of a civil rights issue."

Opponents echoed the same constitutional arguments

made in the House. Jonathan Turley, a law professor at George Washington University Law School and the only witness of eight to testify against the bill, said that it violated the constitutional condition that representatives be elected by the states.

Viet D. Dinh disputed this claim, arguing that the Constitution empowers Congress to "exercise exclusive Legislation in all Cases whatsoever" over the District, a power that includes granting representation.

Heartened by the support, the civil rights community continued to push for passage of the bill in the Senate, holding national call-in days for the public and an audio briefing for the media to explain why District residents should have elected representation.

"Our country is fighting wars abroad in the name of democracy, yet we continue to deny residents of our nation's capital their basic democratic right of representation in Congress," LCCR's Henderson told media participating in the call.

The day before the Senate vote, DC Vote and LCCR organized a rally in front of the Dirksen Senate Office Building. Rep. Norton, Mayor Fenty, and Jack Kemp spoke to reporters about the importance of the bill and urged supporters to contact their senators. "Not since segregation has the Senate blocked a voting rights bill," Fenty told the crowd.

Nonetheless, on September 18, 2007, the Senate fell three votes shy of the 60 needed to bring the bill to a vote.

Supporters were disappointed, but pledged continued commitment to the D.C. voting rights struggle.

A 2005 poll found that 82 percent of Americans supported full House representation for residents of the District.

On the Hill

Hate Crimes Bill Moves through Congress

By Tyler Lewis

This year, Congress came closer than ever in addressing a critical gap in current federal hate crimes law and expanded existing hate crimes coverage to include violence based on sexual orientation, gender, and disability.

"This is the closest we've been to enacting a more inclusive hate crimes bill," said Wade Henderson, president and CEO of the Leadership Conference on Civil Rights (LCCR). "We applaud Congress for recognizing the pressing importance of this vital legislation."

The bill, the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA), also provides grants to state and local communities to combat violent crimes committed by juveniles, train law enforcement officers, and/or to assist in state and local investigations and prosecutions of bias motivated crimes.

Most hate crimes are prosecuted by local authorities, but civil rights groups and law enforcement experts say that federal support is crucial in some cases.

"This bill would give law enforcement important tools to combat bias-motivated crime. Federal support will help to ensure that these hate crimes are investigated and prosecuted," said Abraham H. Foxman, national director of the Anti-Defamation League (ADL).

Though the bill has had bipartisan support in the past – most recently, a bipartisan majority in the House passed it overwhelming in 2005 – civil rights groups worked overtime to ensure that the new Democratic Congress this year would finally pass the bill and get it to President Bush's desk.

Following introduction in the House on March 20, 2007, the LLEHCPA was introduced in the Senate on April 12 by its chief co-sponsors, Democratic Senator Edward Kennedy, Mass., and Republican Senator Gordon Smith, Ore.

At the press conference, the two senators announced their decision to rename the Senate version The Matthew Shepard Act, after the hate crime victim murdered in Laramie, Wyoming nearly 10 years ago.

Despite bipartisan support, opposition to the LLEHCPA has been fierce, especially among some in the religious community who claim that the bill infringes on First Amendment rights of freedom of speech and freedom of religion.

However, more than 1,400 ministers across the nation signed a petition in support of the LLEHCPA on a website, ClergyAgainstHate.org, created by The Interfaith Alliance (TIA), the Unitarian Universalist Association of Congregations (UUA), and the Religious Action Center (RAC).

"Endorsement of this bill by faith leaders is especially important because opponents have all too often implied that the legislation is hostile to religion. The voices of a broad range of clergymen and women who preach that tolerance, acceptance, and kindness are essential religious values are needed more than ever," said Rabbi David Saperstein, director and counsel of RAC.

The LLEHCPA passed in the House on May 4, 2007 by a vote of 237-180. Because the Democratic majority was slim in the Senate, Sens. Kennedy and Smith decided to add the bill as an amendment to the Department of Defense bill.

On September 27, 2007, after a successful vote (60-39) to stop debate, the bill was added to the DOD bill and passed by voice vote.

Recent data shows that hate violence continues to be a problem in the U.S. According to the most recent FBI data, 7,722 incidents of hate crimes were reported in 2006, up 8 percent from 2005.

"For over a decade our community has worked tirelessly to ensure protections to combat violence motivated by hate and today we are the closest we have ever been to seeing that become a reality," said Human Rights Campaign President Joe Solmonese.

But on December 6, 2007, the hate crimes provision was dropped from the defense bill, a move that was a major disappointment to civil rights groups.

"Though the urgency of a hate crimes bill was beyond dispute, it was defeated by two forces: organized opposition from the House Republican leadership in deference to an intolerant segment of their base and some progressive Democrats who elevated symbolism over substance, knowing that this was the last clear chance to pass a hate crimes bill this term. This perverse form of bipartisanship is responsible for blocking what would have been the most significant gain in federal protections against hate crimes in nearly two decades," LCCR's Henderson said.

A hate crime is defined by the Federal Bureau of Investigation (FBI) as an act of violence motivated by race, religion, disability, sexual orientation, or ethnicity/national origin.

Recent data shows that hate violence continues to be a problem in the U.S. According to the most recent FBI data, 7,722 incidents of hate crimes were reported in 2006, up 8 percent from 2005.

Despite the increase in hate crime incidents, civil rights groups have expressed concerned about the lack of participation of law enforcement agencies around the nation. Only 16.7 percent of participating agencies reported even a single hate crime and nearly 5,000 police departments across the country did not participate in the FBI reporting program at all.

Volume 17, No.1 Winter 2007

On the Hill

Fighting to Preserve and Restore Workers' Rights

By Paul Edenfield

In 2007, a new Congress made economic justice an important part of its legislative agenda. But organized opposition by big business, abetted by the threat or use of procedural obstacles to prevent votes, resulted in the thwarting of some of the workers' rights agenda.

Minimum Wage

The leaders of the 110th Congress promised that one of its top priorities would be an increase to the severely outdated minimum wage of $5.15. The last increase had been in 1997, and the minimum wage, adjusted to reflect real dollars, was at its lowest level since 1951.

A number of economists stepped up to say that an increase would be good for the economy and that opponents' professed fear that a higher minimum wage would cost America jobs was greatly overblown.

The House promptly passed a minimum wage increase that would result in a $2.10 increase over a two-year period, from $5.15 to $7.25. Despite the modesty of this increase, there was considerable resistance and efforts were made to tie the bill to tax breaks.

In the Senate, however, where a minority party has more procedural tools at its disposal to thwart legislation, a filibuster (a procedural maneuver requiring 60 votes to allow a bill to move forward) was used by Republicans to force supporters of the increase to attach business tax cuts to the bill, in the amount of $8.3 billion. A further tax break was only narrowly rejected.

Minimum wage opponents in the Senate tried other strategies to derail the bill as well. Perhaps the most audacious of these was an amendment – garnering 28 votes – which would have effectively taken minimum wage entirely out of the federal government purview, leaving it up to individual states.

Although the Senate bill and the ultimate minimum wage law agreed to by both chambers contained small business tax cuts, the labor rights community had cause to celebrate as the minimum wage, after a decade without adjustment, was finally raised. The civil rights community lauded this accomplishment, as raising standards of living across the board for working people has a pronounced benefit for minorities and economically disenfranchised groups.

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Employee Free Choice Act

During the summer of 2007, a second major piece of labor legislation was brought forward, the Employee Free Choice Act (EFCA). AFL-CIO President John Sweeney called EFCA "the most important legislation helping workers economically in many, many years." It was designed to address the persistent problem of employer intimidation of employees in order to prevent them from voting to form a union in secret ballot elections.

Supporters of the bill, noting the many documented cases of employers firing, threatening and bribing employees in the period leading up to a secret ballot election, urged that the process be changed so that employers would recognize unions whenever a majority of employees signed petitions manifesting their desire to form a union.

The bill also increased penalties for discipline levied against workers in retaliation for their union activities. In addition, it attempted to neutralize another employer anti-union tactic – delaying or refusing to agree to a first contract after a union is formed, in order to undermine union support. The proposed law set up mediation and arbitration to facilitate reaching first contracts.

The bill passed in the House. Then, the Senate again used the filibuster to defeat the bill, even though it commanded majority support in that chamber. Labor and civil rights groups were disappointed. The Leadership Conference on Civil Rights (LCCR) strongly supported the bill. LCCR President and CEO Wade Henderson noted, "I don't think the public is fully aware of the nature of the struggles many workers endure in trying to form unions."

Indeed, LCCR and other civil rights groups have worked cooperatively on economic justice and civil rights legislation. LCCR was co-founded by A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters. The bond has persisted for more than a half century.

In the tradition of this partnership, LCCR and American Rights at Work co-authored and released a report in October 2007 about the civil rights implications of FedEx's practice of treating its "independent contractors" as employees, in order to raise awareness around the importance of fair labor practices and EFCA. This report, titled "Fed Up with FedEx." can be found on LCCR's website: www.civilrights.org.

Other Labor Issues

In other legislative matters concerning labor, the Senate also staved off an effort to strip all collective bargaining rights from airport screeners. Opponents of screener collective bargaining rights argued that this effort would compromise their public safety duties – even though countless firefighters, police officers, and other safety personnel were already unionized and still courageously defended public safety. The House resisted efforts to eliminate Davis-Bacon requirements from projects funded under the Homeland Security bill. The Davis-Bacon Act calls for the payment of prevailing wages on construction sites, preventing contractors from undercutting local wage rates by paying lower rates on large-scale federal projects.

In a year of both victories and disappointments, both the workers' and civil rights communities are optimistic that by working together, they can achieve success on EFCA and other legislation in the near future.

On the Hill

The Immigration Reform Debate Continues

By Rob Randhava

After the 2006 election shifted control of Congress to more progressive hands, civil and immigrant rights groups were more optimistic in early 2007 about the prospects for enacting comprehensive immigration reform. Because Congress still remained sharply divided, however, and with a presidential election just around the corner, efforts to enact even piecemeal improvements to the nation's immigration system were ultimately thwarted.

Early in 2007, the Congressional leadership, with backing from the White House, announced that a sweeping immigration overhaul would be among its highest legislative priorities in the 110th Congress. The key goals of comprehensive reform were to: 1) provide the estimated 12 million undocumented immigrants in the United States with a way to legalize their status; 2) enact effective but humane approaches to border enforcement; 3) eliminate massive backlogs of applications for family-based visas; and 4) provide employers with more efficient ways to bring new workers into the country.

Black, Brown, and Asian: Leadership Conference Efforts To Build Bridges on Immigration

For many years, immigration restrictionists fostered and capitalized on tensions between racial and ethnic minorities to discourage a consensus on comprehensive reform.

Realizing this, the Leadership Conference on Civil Rights (LCCR) and the Leadership Conference on Civil Rights Education Fund (LCCREF) convened leaders from the African-American, Hispanic, and Asian-American communities in February 2007. The meeting resulted in a set of principles, endorsed by community-based organizations and stakeholders, including the NAACP, National Council of La Raza, the Asian American Justice Center, and the AFL-CIO, which declared that any successful immigration reform needed to address the economic concerns of low-income native workers as well as the legal status of immigrants.

The principles formed the basis of a set of legislative proposals that called for increased job training for low-income communities, more public notifications of job openings, increased enforcement of antidiscrimination laws, and more resources to help native-born workers relocate for new job opportunities.

These principles were warmly received on Capitol Hill when LCCR President and CEO Wade Henderson testified at a May 2007 hearing on the impact of immigration on native workers. At the hearing, Henderson reiterated LCCR's support for balanced immigration reform and rebutted allegations that immigrants were responsible for "stealing" jobs from Americans.

Senate Efforts at Compromise

Several weeks later, a bipartisan group of Senators – led by Sens. Ted Kennedy, D. Mass., Patrick Leahy, D. Vt., Jon Kyl, R. Ariz., and Arlen Specter, R. Penn., – announced a consensus on a legislative package that met the goals of comprehensive immigration reform.

The bill provided undocumented immigrants with a path to legalization but included draconian additions, including steep fines for applicants who would be required to temporarily leave the United States and apply for legal status at a border or port of entry, in a so-called "touch-back" process.

The bill scrapped much of the existing family-based immigration system for a controversial "point system" that favored education and employment prospects over family ties. It also established an immigrant "guest worker" program based on short-term visas.

LCCR and all of its member organizations were concerned about many aspects of the bill, but some favored moving the bill through the Senate and improving it later in the legislative process. Other groups, including the AFL-CIO, insisted that the bill needed improvement before further consideration.

Despite bipartisan support, immigration opponents decried the legislation as "amnesty" and leveraged Senate rules that required 60 votes to move forward with the bill to block it from further consideration. A second attempt met the same fate.

A narrower piece of legislation introduced this fall, the "DREAM Act," would provide legal status and more affordable education opportunities to young undocumented immigrants who were brought into the United States as children. It, too, was blocked.

Legislative Outlook

It appears unlikely that the 110th Congress will return to the issue of immigration reform in any meaningful fashion in 2008 – especially during a presidential election year.

In the absence of federal action, a number of state and city governments have enacted laws designed to "get tough" on unauthorized immigration. A federal court struck down one such law in Hazleton, Pa., but similar initiatives continue to crop up.

There was some positive news, however, this year. The cities of New Haven and San Francisco announced that they would provide identification for undocumented immigrants and many police departments continue to refrain from asking individuals about their immigration status so they will report more serious violations of the laws.

For many years, immigration restrictionists fostered and capitalized on tensions between racial and ethnic minorities to discourage a consensus on comprehensive reform.

Volume 17, No.1 Winter 2007

On the Hill

Congress Begins Addressing Subprime Mortgage Fallout

By Rob Randhava

An estimated 2.4 million subprime borrowers across the country will likely lose their homes to foreclosure in the next several years. In addition, a growing number of economists – pointing to volatile stock markets and a weakening dollar – believe that the foreclosure crisis could drastically weaken what has appeared on the surface to be a strong economy. For most Americans, whose biggest investment is their home, this news is coming as a shock.

The Modern Subprime Mortgage Industry: Causes of the Foreclosure Epidemic

Subprime mortgages are generally defined as higher-cost home loans made to borrowers with less-than-ideal credit. Responsible subprime lending has long been recognized as an important tool for giving opportunities to people who for various reasons might otherwise never be able to own a home. In recent years, however, the "responsible" part of "responsible subprime lending" has been rendered meaningless.

Much of what went wrong in the subprime lending industry lies in the widespread abuse of what were long considered to be sound subprime lending practices. For example, many Americans were given home loans without being required to prove that they had enough income to pay them back. Many other borrowers were only required to show they had enough income to pay low "teaser" rates for the first two or three years of hybrid adjustable rate mortgage (ARM) loans. To make mortgages look cheaper and more appealing to borrowers, many lenders did not factor in critical expenses, such as property taxes and insurance, into the cost of home loans.

At the same time, other aspects of the subprime mortgage lending system reflected not just carelessness and a lack of accountability, but outright greed. For example, many mortgage brokers were given bonuses, or "yield spread premiums," for steering unwitting borrowers into higher-rate subprime mortgages than their incomes or credit scores would otherwise dictate.

Assessing the Fallout

The Center for Responsible Lending estimates that as many as 2.4 million subprime mortgages are likely to fail in the next several years as a result of such practices. The situation is especially troubling to communities represented by LCCR member organizations.

According to Home Mortgage Disclosure Act data, in 2005, over half of the loans to African Americans were higher-rate subprime loans, including 54.7 percent of purchase loans and 49.3 percent of refinance loans. For Latino borrowers, these figures were 46.1 percent and 33.8 percent, respectively.

That same year, African Americans were 3.2, and Latinos 2.7, times more likely to receive a higher-rate home purchase loan than white non-Latino borrowers. And for refinances, African Americans were 2.3, and Latinos 1.6, times more likely to receive a higher-rate loan than non-Latino whites, according to Federal Reserve data.

According to research by the Center for Responsible Lending, these racial and ethnic disparities exist even after controlling for borrower traits such as credit scores, equity, and other risk factors.

As a result, as foreclosures continue to increase nationwide, minority communities are likely to be hit especially hard.

Responding to the Foreclosure Crisis

Many stakeholders, as well as federal and state regulators, are acknowledging the extent of the problems in the subprime market, and are taking a variety of steps to reduce the prevalence of irresponsible loans in the future. But to date, these efforts have amounted to a piecemeal approach that will not adequately protect borrowers.

Many lenders, often in cooperation with local and national community development organizations, have expanded the use of voluntary programs to avert foreclosures, including mortgage "rescue" programs, debt counseling and financial literacy campaigns.

Reformers also say that Congress and other policymakers must ensure that lenders and organizations delivering the counseling or other assistance are soundly equipped, knowledgeable, and genuinely working with the interests of the borrower in mind. Moreover, they urge Congress to ensure that there is an adequate system in place to provide pre-closing loan counseling to borrowers, so that borrowers are made aware of the full terms and conditions of their loans before arriving at the closing table.

Earlier this year, the Federal Reserve (the "Fed") and other federal regulators issued a Proposed Statement on Subprime Mortgage Lending, which also acknowledges the growing concerns with the current state of the subprime lending industry. It, however, falls short in several important respects in that it does not require: (1) documentation of income; (2) a meaningful evaluation of the long-term affordability of monthly payments to adjustable rate mortgages; or (3) truly helpful disclosures to borrowers – which would, at the very least, include a disclosure of the maximum possible monthly payments on adjustable rate mortgages. In addition, the Statement would only apply to subprime loans originated by federal depositories or their affiliates, and does not address unsound or predatory loans originated by state-chartered lenders. While some states have enacted strong anti-predatory lending protections, many have not.

Under the Home Ownership and Equity Protection Act of 1994 (HOEPA), the Fed has not only the statutory authority, but the obligation, to take much stronger action that would apply to all mortgage lenders. HOEPA states that the Federal Reserve "shall prohibit" mortgage loans that are "unfair, deceptive or designed to evade the provisions" of HOEPA, or that are associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

To date, the Fed has failed to use its sweeping authority under HOEPA to curtail abusive subprime mortgage lending practices. In an effort to push the Fed to take stronger action, the Leadership Conference on Civil Rights (LCCR) urged the Senate Banking Committee in July to delay confirmation of several new appointees to

An estimated 2.4 million subprime borrowers across the country will likely lose their homes to foreclosure in the next several years.

the Fed's Board of Governors until the nominees promised to use their authority. The response, from both the Banking Committee and the nominees, was encouraging.

LCCR believes that Congress must step in to enact strong protections for subprime borrowers. A sensible legislative response would:

- Establish a fiduciary duty for mortgage brokers and other non-bank mortgage originators;
- Create a "good faith and fair dealing" standard for all originators;
- Require originators to underwrite loans at the maximum possible payment for the first seven years of the mortgage;
- Require mortgage originators to create escrow accounts to set aside anticipated property taxes and hazard insurance;
- Prohibit the "steering" of borrowers into more expensive loans than their credit scores or other factors would warrant;
- Hold lenders responsible for policing their associated appraisers and brokers; and
- Prohibit originators from influencing the appraisal process.

Some of these measures were included in The Mortgage Reform and Anti-Predatory Lending Act of 2007 (H.R. 3915), a bill recently passed by the House. Because the bill did not contain adequate enforcement mechanisms, LCCR was unable to support it in its entirety, but it is possible that the Senate will enact a more effective bill.

Congress is also considering allowing troubled borrowers to restructure their debts in Chapter 13 bankruptcy proceedings. Currently, most other debts – including second homes – can be reworked in bankruptcy, but primary home mortgages cannot be included in this process. Changing the law would potentially allow hundreds of thousands of borrowers to keep their homes, benefiting borrowers and lenders alike. The lending industry, however, has strongly opposed such measures.

Congress, as well as President Bush, has also discussed increasing the number and size of mortgage loans that can be guaranteed by the Federal Housing Administration, or purchased by federally-backed corporations such as Fannie Mae and Freddie Mac. Congress has yet to take any action in this direction, however; and because any such remedy could be branded as a "bailout" by opponents, it may be reluctant to do so in the future.

The prospects for any legislation are uncertain at this point, but next year, according to several studies of the housing market, an even greater number of subprime mortgages are scheduled to reset at higher interest rates, possibly leading to an even greater number of foreclosures. This could increase the pressure on Congress and other policymakers to take more definitive action.

As a result, as foreclosures continue to increase nationwide, minority communities are likely to be hit especially hard.

On the Hill

Successes and Setbacks on ENDA

By Tyler Lewis

In a historic vote held against a backdrop of controversy, bipartisan legislation that would extend employment protections to gay, lesbian, and bisexual employees passed the House of Representatives on November 8, 2007.

The House passed the Employment Non-Discrimination Act (ENDA) by a vote of 235-184. It had been 11 years since the bill's last vote.

Currently, an American employee can be fired legally in 31 states based on sexual orientation. ENDA would extend the same employment discrimination protections currently accorded to race, religion, gender, national origin, age, and disability, and make it illegal to discriminate on the basis of sexual orientation.

Civil rights groups applauded the historic vote, but called it incomplete because the bill does not extend protections to the transgender community.

"This is not a perfect bill because it does not cover transgender Americans who are among the most victimized by workplace discrimination. However, we do see it for what it is – an important first step," said Wade Henderson, president and CEO of the Leadership Conference on Civil Rights (LCCR).

ENDA included language addressing the transgender community when introduced in the House on April 24 by chief sponsor Rep. Barney Frank, D. Mass., and Reps. Deborah Pryce, R. Ohio, Tammy Baldwin, D. Wis., and Christopher Shays, R. Conn.

However, after the bill stalled, Rep. Frank removed the language protecting transgender workers. The House leadership argued that the strategy was the only way to pass any bill in the narrowly divided chamber.

This strategy angered civil rights groups and gay rights activists. The National Center for Transgender Equality said the original bill was "prematurely abandoned and should still be called to a vote."

Ultimately, many civil rights groups, though disappointed with the final House bill, felt that the House passage of ENDA would provide momentum on an issue that had been dormant for over a decade.

"While we celebrate this victory, we do not intend to let another 10 years pass before we protect the entire community," said Nancy Zirkin, LCCR vice president and director of policy.

In a November 6 letter to the House, LCCR called the civil rights community's decision to support the final House bill "extraordinarily difficult."

The letter described what was at stake, stating: "As civil rights organizations, however, we are no strangers to painful compromise in the quest for equal protection of the law for all Americans. From the Civil Rights Act of 1957 through the almost-passed District of Columbia House Voting Rights Act of 2007, legislative progress in the area of civil and human rights has almost always been incremental in nature. With each significant step toward progress, the civil rights community has also faced difficult and sometimes even agonizing tradeoffs. We have always recognized, however, that each legislative breakthrough has paved the way for additional progress in the future. With respect to ENDA, we take the same view."

ENDA enjoys broad public support. According to a May 2007 Gallup poll, 89 percent of respondents supported equal job opportunities for gays and lesbians. A 2004 Hart Research poll found that 65 percent of respondents believe it should be illegal to fire someone because he or she is transgender. In addition, much of corporate America has already embraced equal protection for the GLBT community. Nearly 90 percent of Fortune 500 companies have policies that prohibit discrimination based on sexual orientation.

On the Hill

Backlash against the REAL ID Act Grows

By Rob Randhava

Enacted in 2005 with no hearings and little debate, by being slipped into an unrelated bill, the "REAL ID Act" finally garnered public attention in 2007, rendering the future of the controversial law uncertain.

The law, touted as a response to the September 11, 2001 terrorist airline hijackings, called upon states to radically overhaul the manner in which they issue drivers' licenses and other forms of identification. Under it, states would need to determine the immigration or citizenship status of every applicant, and have to verify each piece of identification – such as a birth certificate or utility bill – with the agency that issued it.

The law also required states to compile personal identifying information into databases that would be connected to other states and made available to other countries. Beginning in May 2008, state ID cards that did not comply with the federal requirements would no longer be acceptable for any "federal purpose," such as entering airport terminals or federal buildings.

The Leadership Conference on Civil Rights (LCCR) adamantly opposed the measure when it was introduced, and organized a coalition effort focused on defeating it. "These are provisions that need really serious study, and none whatsoever has taken place," LCCR Counsel Rob Randhava explained at the time.

The coalition succeeded in watering down several unrelated provisions of the bill, including harsh new rules for asylum applicants, and an unprecedented provision that allowed the Secretary of Homeland Security to waive "any law" in the name of building border fences. But at the insistence of the House leadership, the drivers' license provisions remained intact.

During 2005 and 2006, a number of organizations – most notably the American Civil Liberties Union – opposed the law on a state-by-state basis. Several months after its enactment, Arkansas Governor Mike Huckabee summed up state reactions: "The federal government doesn't have the guts to put out a national ID card, and they are trying to make 50 states come up with this program … It's absurd. The cost to the states will be staggering."

A number of state legislatures openly rebelled against the law, declaring that they would not comply. State opposition snowballed in late 2006, when the National Conference of State Legislatures and the National Governors Association released a study estimating that it would cost states $11 billion over five years to comply with the law.

In early 2007, Congress appeared poised to take another look at the 2005 law. Rep. Tom Allen, D. Maine, and Sens. Daniel Akaka, D. Hawaii, and John Sununu, R. N.H., introduced legislation to repeal it. But in a tacit acknowledgement of the costs and problems with implementing the law by May 2008, in February 2007, the Department of Homeland Security revised its deadline, announcing that REAL ID-compliant cards would not be required for commercial air travel until mid-2013. More recently, the deadline was extended to 2018.

Critics of the REAL ID Act believe that the law must be repealed. "DHS is doing back flips in order to get states to say they are complying with REAL ID. It was flawed in principle from the beginning, and DHS is attempting a 'Hail Mary' pass to try to coerce and convince states that what they are doing under existing statutes is acceptable," ACLU Legislative Counsel Timothy Sparapani told *The Washington Post*.

The future of the REAL ID Act today is uncertain. Seventeen states have now enacted laws or resolutions stating that they will not comply with the law and Congress has repeatedly blocked efforts to fund it.

Executive Branch

Déjà Vu at the FCC?

By Corrine Yu

The last time the Federal Communications Commission (FCC) tried to relax rules on media ownership, its rulemaking proceeding proved to be the battleground for intense fights at the agency, Congress, and the courts. The agency's current media ownership rulemaking promises to produce more controversy.

Despite broad public opposition, in June 2003, the FCC voted 3-2 to lift broadcast cross-ownership restrictions, loosen limits on local broadcast ownership, and permit one company to own stations reaching 45 percent of the national audience.

In response to a public outcry, a bipartisan majority in the Senate voted to overturn the rule changes. Congress eventually reached a compromise – limiting the number of stations one company could own to 39 percent of the national audience.

Then, in June 2004, the U.S. Court of Appeals for the Third Circuit overturned the FCC's other changes to the media ownership limits and directed the FCC to conduct a new review. Among other things, the court directed the FCC to address the specific proposals for promoting diversity in ownership that had been presented to, but not considered by, the agency.

In June 2006, the FCC initiated a new media ownership proceeding. Federal Communications Chairman Kevin Martin, a commissioner at the time of the earlier vote, took a slightly different approach, committing to hold six public hearings on the issue, to his predecessor's one.

Nonetheless, many civil rights and public interest groups believe the agency is not being specific enough in its inquiry to generate relevant comments, nor is it devoting adequate resources to create a full record on the issue of minority and female ownership.

To highlight what is really at stake in the battle over media ownership – equal opportunity and equal access to important local and national information and resources – the Leadership Conference in June 2007 sponsored a web-based, national town hall meeting simultaneously in Washington, DC and Denver, CO called "Why Media Diversity Matters." (Video from the June event, which featured author, commentator, and talk show host Tavis Smiley; Denver Mayor John Hickenlooper; and FCC Commissioner Michael Copps, can be viewed at http://www.civilrights.org/issues/communication/telecom-webcast.html.)

The unanimous conclusion of participants in the town hall meeting was that the FCC was not doing an adequate job of identifying and working to eliminate the barriers to participation of women and minorities in radio and television.

Racial and ethnic minorities make up 33 percent of the U.S. population; yet they only own 7.7 percent of full-power radio stations and 3.26 percent of television stations.

According to the media reform group Free Press, racial and ethnic minorities make up 33 percent of the U.S. population; yet they only own 7.7 percent of full-power radio stations and 3.26 percent of television stations. While women make up 51 percent of the U.S. population, they own just six percent of U.S. full-power radio stations and less than five percent of U.S. television stations.

Some members of Congress have requested that the Commission complete a consideration of the issues of minority and small business ownership before taking up the wider media ownership issue, but the FCC has not yet agreed to do so.

Instead, in the fall of 2007, Chairman Martin, a Republican, announced a timeline and plan that prompted a firestorm of debate about both the substance and the process.

In mid-October, he proposed that the agency conclude the public comment process, consider new rules still being drafted, and vote on them by December 18. Then, in mid-November, Martin released proposed rule changes that would allow one company to own a daily newspaper and a TV station in the same market.

Democratic Commissioners Michael J. Copps and Jonathan Adelstein called Martin's rules "clearly not ready for prime time."

"Congress and the thousands of American citizens we have talked to want a thoughtful and deliberate rulemaking, not an alarming rush to judgment characterized by insultingly short notices for public hearings, inadequate time for public comment, flawed studies, and a tainted peer review process – all designed to make sure that the Chairman can deliver a generous gift to Big Media before the holidays. For the rest of us: a lump of coal," the commissioners said in a November 13, 2007 statement.

A bipartisan group of senators – led by Byron Dorgan, D. N.D., and Trent Lott, R. Miss., and including presidential candidates Barack Obama, D. Ill., Hillary Clinton, D. N.Y., and Joseph Biden, D. Del., – has introduced new legislation that would slow down Martin's timeline and try to ensure that the FCC follows its mandate to protect the public interest. The Senate Commerce Committee unanimously passed the bill on December 4, 2007.

Restraining media concentration is central to the mission of the FCC, the federal agency that regulates interstate and international communications by radio, television, wire, satellite and cable. The FCC determines questions of media ownership, including how many stations one company can own in each market and the cross-ownership of different sectors, such as broadcast stations and daily newspapers.

Under the Communications Act of 1934, the FCC is charged with promoting "localism" in broadcast media and enhancing democracy by insuring that broadcasters "present those views and voices which are representative of [their] community and which would otherwise … be barred from the airwaves."

The Communications Act of 1996 substantially deregulated national radio ownership rules and eased national TV ownership limits. The law also forced the FCC to consider whether to revise local rules on how many media properties one company can operate in any one community. The 1996 Act also included a directive requiring the FCC to conduct biennial (now quadrennial) reviews of all remaining broadcast ownership rules "to determine whether any of such rules are necessary in the public interest as a result of competition."

Civil rights advocates point out that the struggle for a media that presents the breadth and diversity of the experience of all Americans is one of very high stakes.

"Media diversity is a civil rights issue," said Leadership Conference on Civil Rights President and CEO Wade Henderson. "The battle over who controls the media is a battle that the civil rights community has fought for decades because we have long recognized the critical role the media plays in creating a more just and equitable society."

In the Courts

Supreme Court Hands Down Major Decision on School Integration

By Corrine Yu

On June 28, 2007, a sharply divided U.S. Supreme Court invalidated the voluntary desegregation plans of school districts in Seattle and Louisville in a decision that will have far-reaching implications for the future of the nation's schools.

While the Court's decision was specific to the Seattle and Louisville plans, it limited the ability of communities to voluntarily and consciously address racial isolation and inequality in public schools.

The Court did not categorically reject measures to bring about racial diversity and avoid racial isolation in schools, other than those employed in the Seattle and Louisville plans.

The cases, *Parents Involved In Community Schools v. Seattle School District, No. 1* and *Meredith v. Jefferson County School Board*, marked the end of the Court's longest period without review of a K-12 school desegregation case since its unanimous 1954 decision in *Brown v. Board of Education*.

Today, the nation's public schools are more segregated than they were in 1970. Concerned about how these trends were affecting their own children and community, locally-elected school boards in Louisville and Seattle adopted student assignment measures to foster desegregated, diverse schools.

From 1975 to 2000, the Jefferson County Public Schools district, which includes Louisville, was under a court order to dismantle its system of historically segregated schools. After the court order was lifted, the school district voluntarily continued to implement its program to prevent the schools from backsliding into segregation. The district is the 28th largest school district in the nation, with more than 97,000 students, one-third African-American, attending 150 schools.

Under its plan, elementary schools were grouped into 12 local clusters, with parents able to rank the schools within the cluster that they live. About 95 percent of elementary students were given their first choice within their local cluster. Middle and high schools were not grouped by cluster and all students were initially assigned to their local schools, known as their "resides" schools. Any student who didn't want to attend his or her assigned school could request a transfer to any school, regardless of whether it was in their local cluster. Despite this option, in 2003, Crystal Meredith decided to sue the local school district, claiming that her son was unlawfully denied admission to the school of his choice based on his race.

The Seattle school district adopted its voluntary school choice program to avert a lawsuit by African-American parents. The program allowed its students entering high school to rank their preferences among the city's 10 high schools, instead of assigning all students to a particular school.

Under this program, 80 percent of students got their first choice school, but five of the city's high schools did not have enough space to accommodate every student who chose it. Most of the remaining students were assigned based on keeping siblings together or which school was closest to their home, unless the school was racially isolated.

In 2000, a small group of parents whose children got their second choice sued the school district, arguing that its school choice program was unconstitutional.

Lower courts upheld both districts' plans, and both cases were appealed to the Supreme Court. In a 4-4-1 split decision, the Court struck down the specific policies used by the Louisville and Seattle communities, but five Justices also said that educational diversity and combating segregation are compelling governmental interests that governments may pursue through careful race-conscious efforts.

The Court did not categorically reject measures to bring about racial diversity and avoid racial isolation in schools, other than those employed in the Seattle and Louisville plans. A majority of the Court – Justices Kennedy, Stevens, Breyer, Ginsburg, and Souter – left open the way for school districts to use race-conscious measures to achieve these interests, but Justice Kennedy rejected the use of statistical criteria to achieve the goal.

Civil rights groups were greatly troubled by the plurality opinion of Chief Justice Roberts, joined by Justices Thomas, Scalia, and Alito, which would have outlawed almost all effective efforts to promote inclusion in our nation's schools. This view – even though it did not carry a majority of the justices in this decision – could threaten programs that seek to provide opportunities and access to students of color throughout their K-12 educational career. In a demonstration of the deep splits within the Court, Justice Stephen Breyer issued a strong dissent from the bench condemning the plurality's position.

The decision will have a widespread impact on school districts and communities around the country who will need to determine how to continue to promote diverse, inclusive schools in an effective and constitutionally permissible manner. Civil rights advocates emphasize that a majority of the Court made clear that a range of other affirmative measures remain available to pursue integration and inclusion in schools. According to Justice Kennedy, who wrote the controlling opinion, "School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race."

Civil rights groups underscore the fact that desegregation remains the policy of the U.S., as expressed in the Civil Rights Act of 1964 and elsewhere, and that desegregation remedies are required when courts find that school authorities have intentionally segregated schools. William L. Taylor, chair of the Citizens' Commission on Civil Rights and Vice Chair of the Leadership Conference on Civil Rights, pointed out that there are a number of avenues to desegregation that are not vulnerable to legal attack. He cited the transfer provisions of the No Child Left Behind Act, which allow students to move from schools in need of improvement to those that are doing better, moves that frequently result in desegregation.

In the States

New Threats to Affirmative Action

By Angela Okamura and Anjali Thakur

The dust had hardly settled around the 2006 decision by Michigan voters to ban affirmative action programs in education, employment and contracting when supporters of affirmative action found themselves forced to combat similar attempts in other states.

On November 7, 2006, voters in Michigan approved a constitutional amendment effectively banning state affirmative action programs in higher education, employment, and contracting, making it the third state in the U.S. to approve such a ban. California and Washington approved similar laws in 1996 and 1998, respectively.

Leading the initiatives to ban affirmative action in all three states was California businessman Ward Connerly.

Galvanized by the Michigan vote, in December 2006, Connerly announced that he would seek a "Super Tuesday" on election day in 2008, pursuing anti-affirmative action ballot initiatives in Colorado, Missouri, Arizona, Nebraska, and Oklahoma.

Petitions to ban affirmative action have been filed in all of these states. Connerly employed the same language in these petitions that he used in Michigan.

Opponents of Connerly's initiatives contend that their negative impact in California and Washington underscore the need to defeat further attempts to eliminate affirmative action programs.

Affirmative action supporters say that the states where petitions have been filed could be similarly adversely affected. Scholarships aimed at women and minorities could be terminated, as could state goals and plans to contract with minority- and women-owned businesses, supporters say.

The battle over affirmative action has been primarily focused at the state level, through ballot initiatives, but attacks have been stepped up at the national level in Congress and at the U.S. Commission on Civil Rights (USCCR), the Office for Civil Rights at the Department of Education, and the Department of Justice.

Opponents of Connerly's initiatives contend that their negative impact in California and Washington underscore the need to defeat further attempts to eliminate affirmative action programs.

In 2007, Rep. Timothy Walberg, R. Mich., proposed an amendment to the Department of Defense appropriations bill that would have banned affirmative action programs in defense contracting. The amendment was defeated by a 126-284 vote.

A few months later, Rep. Walberg introduced an amendment to the House version of the Department of Transportation (DOT) appropriations bill that would have ended the successful Disadvantaged Business Enterprise program at DOT. The Walberg provision was incorporated without a vote in the House, but the House and Senate conferees stripped it out of the bill. The conference report has been passed by the full House but has not yet been considered on the Senate floor.

Affirmative action has also met with hostility at the USCCR, where several members are well-known opponents of the policy. The Commission has issued two reports in three years opposing affirmative action programs. Most recently, in 2007, it published a report that civil rights groups called an assault on affirmative action programs in law schools. The report, which recommended that the American Bar Association revise its diversity standard, was based on a flawed study, critics said.

"The Commission seems set on sabotaging the very mission it was designed to protect – the enforcement of our civil rights laws," said Wade Henderson, president and CEO of the Leadership Conference on Civil Rights, when the report was released. "This report not only undermines the country's commitment to equal opportunity, it diminishes our highest ideals."

In what is seen as another threat, opponents of affirmative action have also requested that the Department of Justice and the Office for Civil Rights at the Department of Education investigate programs at universities that are designed to grant equal opportunity to those who are underrepresented, such as minority scholarships.

Faced with state and federal attacks on affirmative action and equal opportunity programs, LCCR and its partners have renewed their efforts to outline a comprehensive strategy to identify allies at all levels and wage efforts to keep proposals like Connerly's off of state ballots.

LCCREF Activities

Civil Rights Enforcement Takes Center Stage

By Julie Fernandes

In 2007, the Leadership Conference on Civil Rights (LCCR) and the Leadership Conference on Civil Rights Education Fund (LCCREF) launched a campaign to promote national awareness of the importance of vigorous enforcement of federal civil rights laws and Supreme Court decisions eroding access to the courts and effective remedies in civil rights cases.

"The laws remain on the books, the agencies continue to exist, but weakened statutes, anemic enforcement, and lack of meaningful reporting and oversight have rolled back civil rights protections, without fanfare or public debate," said LCCR President Wade Henderson. "Our challenge with this campaign is to lift the issue of civil rights enforcement to the front of the American consciousness and promote public support for reversing the retreat on civil rights."

As part of this effort, in September 2007, LCCREF launched a new, interactive website, www.ReclaimCivilRights.org, which provides information about the history of civil rights enforcement and the important role meaningful federal civil rights laws have played in creating the more just and equal society in which Americans live.

On October 19-20, 2007, LCCREF co-hosted a conference in Durham, North Carolina entitled, "Why We Can't Wait: Reversing the Retreat on Civil Rights." The conference, which was co-hosted by North Carolina Central University Law School and the National Campaign to Restore Civil Rights, brought together more than 300 lawyers, community leaders, academics, and other stakeholders to discuss the civil rights rollback, its impact, and the need to have a coordinated response.

LCCREF plans to host similar events around the country in the next two years as part of its campaign.

Understanding the Supreme Court's Impact

The centerpiece of the campaign has been to highlight the Supreme Court's effort to rollback access to the court and meaningful remedies for civil rights plaintiffs.

For example, in 2001, the Supreme Court gutted the right of victims of discrimination to achieve redress in the federal courts in its *Alexander v. Sandoval* ruling, which held that individuals have no right to sue under the disparate impact regulations promulgated under Title VI of the Civil Rights Act of 1964. Title VI bars discrimination in federally funded programs.

> *Our challenge with this campaign is to lift the issue of civil rights enforcement to the front of the American consciousness and promote public support for reversing the retreat on civil rights.*
>
> – LCCR President Wade Henderson

As a result of *Sandoval*, numerous cases were stalled in their tracks, including cases challenging inequitable funding of public schools, concentration of toxic wastes in minority communities, and the failure to provide access to the disabled in air travel. With this decision and others, the Court has dramatically limited the power and effectiveness of many of our nation's civil rights and labor laws.

Civil Rights Division Oversight

While the Supreme Court is rolling back access to courts and meaningful remedies for civil rights plaintiffs, the effectiveness of the nation's largest civil rights law firm – Civil Rights Division at the Department of Justice – has declined over the past few years.

The centerpiece of the campaign has been to highlight the Supreme Court's effort to rollback access to the court and meaningful remedies for civil rights plaintiffs.

In March 2007 testimony before the House Subcommittee on the Constitution, LCCR Vice Chair William L. Taylor stated, "As the Division approaches its 50th anniversary, it is in deep trouble because the Bush administration has used it as a vessel for its own political objectives, often disregarding the law and sullying the group's reputation for professionalism and integrity." In support of this statement, Taylor cited accounts from six former attorneys of the Civil Rights Division featured in a report by the Citizens' Commission on Civil Rights and the Center for American Progress, "The Erosion of Rights: Declining Civil Rights Enforcement under the Bush Administration."

As part of its systematic monitoring of the work of the Civil Rights Division, the Leadership Conference released a report on September 5, 2007, entitled "Long Road to Justice: The Civil Rights Division at 50," which examines the history of the Division and the decline of its effectiveness.

The report's critique focuses on three main areas of concern: a sharp decline in the total number of cases prosecuted by Division attorneys; changes in the Division's civil rights enforcement priorities; and recent politicization of the attorney hiring process. It also proposes recommendations to restore the Division's integrity and return it to its original mission.

"As long as discrimination based on race, ethnicity, religion, gender or disability remains a sad, harsh reality in this country, the battle against it must remain a central priority of the Civil Rights Division," said LCCR's Henderson.

In recent months, LCCR has also worked to oppose the confirmation of Hans von Spakovsky to the Federal Election Commission (FEC). Von Spakovsky, a former official in the Civil Rights Division with oversight of the Voting Section, has drawn criticism from a wide variety of civil rights and good government groups.

"Von Spakovsky's record of partisan enforcement of the voting rights laws while an official at the Department of Justice, and his pursuit of policies that systematically block access to the franchise for poor and minority voters make him unqualified to serve on the Federal Election Commission, " said Julie Fernandes, LCCR senior counsel.

LCCR is working with its coalition partners to make the case that, if confirmed to a six-year term on the FEC, von Spakovsky would use this position – through three election cycles – to interpret and enforce the campaign finance and elections laws to the detriment of minority, low income and rural voters.

Legislative Activity

In June 2007, the Supreme Court issued its decision in *Ledbetter v. Goodyear Tire & Rubber*, a pay discrimination case under Title VII of the Civil Rights Act of 1964. In this case, a 5-4 Court held that Title VII's requirement that employees file their pay discrimination complaints within 180 days of "the alleged unlawful employment practice," means that the complaint must be filed within 180 days from the day Goodyear first started to pay Ledbetter differently, rather than – as many courts had previously held – from the day she received her last discriminatory paycheck.

To address this, LCCR, working with its coalition partners, is pursuing a legislative fix to *Ledbetter*, the Lilly Ledbetter Fair Pay Act, which would make clear that a plaintiff's pay discrimination claim is timely if brought within 180 of the last discriminatory paycheck.

The House passed the bill on July 31, 2007 by a vote of 225 to 199. The Senate has a companion bill that is expected to move soon.

While LCCR's legislative work to combat the civil rights rollback is focused now on the problem of the *Ledbetter* decision, this decision is part of the Court's recent pattern of limiting both access to the courts and remedies available to victims of discrimination.

In response to this wholesale attack on civil rights, LCCR has worked with its coalition partners to develop a comprehensive civil rights bill that would enable individuals to challenge practices that have an unjustified discriminatory effect on their lives, protect students from harassment in schools that receive federal funds, hold employers accountable for age discrimination, and improve accountability for other violations of civil rights and workers' rights by restoring access to the courts and meaningful remedies.

CERD

To educate the public and policymakers about the intersection of domestic civil rights obligations and U.S. commitments under the Convention to Eliminate Racial Discrimination (CERD), the Leadership Conference is submitting a shadow report to the United Nation's CERD Committee, to be considered as part of the Committee's review of the United States' April 2007 submission on compliance with the treaty. The Leadership Conference's shadow report includes an assessment of U.S. compliance with the CERD and helps to frame further inquiry by the CERD committee members.

LCCREF Activities

Leadership Conference Steps Up Anti-Poverty Efforts

By Corrine Yu

In May 2007, a rapt audience at the Leadership Conference on Civil Rights' (LCCR's) annual Hubert H. Humphrey Civil Rights Award dinner heard one of LCCR's honorees, former President Bill Clinton, issue a challenge to the civil rights coalition.

President Clinton said that the Leadership Conference needed to "revive the last chapter of Dr. King's legacy, and talk about economic opportunity as a civil right."

It was Rev. Dr. Martin Luther King, Jr. who once asked, "What good is it to be able to sit at a lunch counter, if you can't afford the price of a hamburger?"

Clinton echoed this theme, asking, "What difference does it make in the end to somebody trying to raise two or three kids if they can vote at election time, when no vote they cast for anybody gives them a chance at a better job, a secure retirement, or access to credit at affordable rates?"

Rising to this challenge, the Leadership Conference, guided by the LCCR Economic Security Task Force, is developing a project designed to examine the intersection of race and poverty and more broadly, to help the national civil rights community play a central role in the policy debates over how to reduce poverty in the United States.

This initiative focuses on two primary frames: first, low-wage work, which accounts for much of the longstanding disproportionate poverty of African Americans, Latinos, Native Americans, and some Asian Americans; and second, the concentrated poverty of the inner city, which typically has an African-American or Latino face, and came as an apparent surprise to so many Americans by way of Hurricane Katrina.

Increasing public awareness about the relationship between poverty and racial isolation is a key objective of the project. Toward this end, on June 7, 2007, the Leadership Conference on Civil Rights Education Fund (LCCREF), in partnership with the Center for American Progress and the National Partnership for Women and Families, convened the first in a series of policy briefings designed to engage the civil rights community, policymakers, and the media around issues at the intersection of race and poverty, and help identify policy priorities around which the coalition could mobilize.

The briefing, "Intersections: Race, Ethnicity, Gender and Poverty," focused on the persistence of poverty and the intersection of race, poverty, gender, and ethnicity. The panel brought together two researchers who discussed the implications of racial, ethnic, and gender disparities in poverty rates, Peter Edelman of Georgetown University Law Center and Avis Jones-DeWeever, of the Institute for Women's Policy Research; and advocates who identified potential policy solutions, including Angelo Falcon of the National Institute for Latino Policy, Kiran Ahuja of the National Asian Pacific American Women's Forum, Jacqueline Johnson of the National Congress of American Indians, and Hilary Shelton, of the NAACP.

> *The reason why the Leadership Conference decided to get involved in this issue is simple: economic opportunity is a civil right.*
>
> – LCCR President Wade Henderson

LCCREF's second briefing in the series was convened on September 12, 2007. Entitled "Poverty, Income and Health: What the New Census Data Tells Us," this briefing focused on new data on poverty and family income – critical information for policymakers to consider as they pursue initiatives to assist low-income families, such as increasing access to affordable quality health care for low-income children and adopting measures to raise the incomes of families in deep poverty. Panelists included Rebecca Blank, Visiting Fellow, The Brookings Institution and Ron Pollack, Families USA , who gave perspectives on the new data; and Mark Greenberg, of the Task Force on Poverty, Center for American Progress, Cecilia Muñoz, of the National Council of La Raza, Terry Ao, of the Asian American Justice Center, Stephanie Jones, of the National Urban League, and Jen Kern, of ACORN, who discussed the data's policy implications.

More recently, building upon these efforts, the Leadership Conference has joined the Center for American Progress (CAP), ACORN, and the Coalition for Human Needs in a new multiyear public awareness and advocacy campaign to reduce poverty in the United States by 50 percent within ten years. The campaign is based on the recommendations of CAP's Task Force on Poverty in its report, "From Poverty to Prosperity, A National Strategy to Cut Poverty in Half," and will educate policymakers at the federal, state, and local levels, while using a targeted communications plan to reach the public.

The campaign will seek to achieve the following objectives:

- Elevate and sustain national, state, and local focus on the economic conditions that contribute to poverty and impede opportunity in America today;
- Build and strengthen an effective constituency to demand legislative action on poverty and economic inequality and to hold political leaders accountable for these actions; and
- Pass or advance specific legislation or policies at the national and state level that will achieve the overall goal of cutting poverty in half within a decade.

As part of a multifaceted effort to engage policy elites, grassroots advocates, opinion leaders, and elected officials at the federal and state level, the campaign will initially focus on a key set of high-impact substantive recommendations, many of which were identified by the CAP Poverty Task Force Report:

- Expanding the Earned Income Tax Credit and the Child Tax Credit;
- Raising both state and federal minimum wages;
- Guaranteeing child care assistance to families in need;
- Increasing eligibility for unemployment insurance; and
- Preventing predatory lending practices and preserving home ownership.

Although these issues were selected as the campaign's top tier, the collaborative will also draw from a larger set of policy priorities described in CAP's report. Those include housing assistance, improvements in food stamps, and other key policies.

The campaign will draw on existing relationships with coalitions of labor and civil rights organizations, grassroots activists, service providers, advocates for children and other populations, groups focused on specific needs, and the growing leadership among faith-based advocates for information sharing, strategic planning, and potential sub-granting of campaign activities to increase field capacity. Through use of established networks, the campaign will build on ongoing work while at the same time being prepared to provide bold leadership in coordination of advocates where and when it is valuable.

LCCR President and CEO Wade Henderson views stepped-up efforts on this issue as a priority for the civil rights coalition. "The reason why the Leadership Conference decided to get involved in this issue is simple: economic opportunity is a civil right," Henderson said. "President Clinton said that the Leadership Conference has always been in the tomorrow business, but you know, there's not going to be a tomorrow for millions of Americans if we don't take a hard look at anti-poverty measures that cut across race, ethnicity, and gender."

LCCREF Activities

New Civil Rights Partnership Calls Attention to Nation's High School Crisis

By Corrine Yu

Ten of the nation's major civil rights and education organizations came together this year to launch the Campaign for High School Equity, a new initiative aimed at raising public awareness on the need for fundamental high school reform and providing access to quality high school education as a fundamental civil right for all children.

One-third of the nation's high school students do not graduate and the rates are even higher for students of color. In the 2002-03 school year, only 51.6 percent of black students, 47.4 percent of American Indian and Alaska Native students, and 55.6 percent of Hispanic students graduated on time, according to data from the Editorial Projects in Education Research Center.

The graduation rate among Asian and Pacific Islander students cannot be accurately determined, because current data collection methods do not distinguish by ethnic group; but evidence suggests that many of these students are experiencing similar challenges.

Taken together, the 2,000 high schools that have been identified as "dropout factories" graduate less than half of their students and account for the majority of all the dropouts in the U.S. More than 900 of the schools are concentrated in major metropolitan areas and have student bodies that are overwhelmingly low-income children of color.

The Campaign's partners include the Leadership Conference on Civil Rights Education Fund, the League of United Latin American Citizens, the Mexican American Legal Defense and Educational Fund, the NAACP, the National Association of Latino Elected and Appointed Officials Educational Fund, the National Council of La Raza, the National Indian Education Association, the National Urban League, the Southeast Asia Resource Action Center, and the Alliance for Excellent Education.

Announcing the launch of the Campaign, Leadership Conference on Civil Rights President and CEO Wade Henderson said, "We cannot continue to provide the least education to the most rapidly growing segments of society at exactly the moment when the economy will need them the most. When 21st century jobs require a science education, for how long will we continue to be the land of opportunity if we tolerate an opportunity gap where racial, economic, and linguistic disparities combine to make white students more than four times as likely as African-American and Latino students to have access to Advanced Placement science classes?"

Early grade investments are paying dividends for younger students, in the form of improved reading and math scores on the National Assessment for Educational Progress; but these gains are not being realized by older students, according to the Campaign. Much of the early grade effort may be lost as students move into under-resourced, poorly designed high schools that are not preparing them for success in college, work, or citizenship.

With national attention finally focusing on the crisis in American high schools, the partners in the Campaign believe that coordinated efforts within the civil rights community can greatly impact public attitudes and national policy to not only reduce the dropout rate afflicting minority communities, but to simultaneously raise the standards for high school graduation to levels reflecting the real needs of the 21st century work and life.

While the Elementary and Secondary Education Act (ESEA) provides federal assistance to students at all public school levels, for a variety of reasons, high schools receive the least. The initiative will call for federal leadership in establishing greater high school assistance in the ESEA.

Emphasizing that it's not too late to invest in the development of students once they reach high school, the Campaign's inaugural publication, "A Plan for Success: Communities of Color Define Policy Priorities for High School Reform," provides a blueprint for meaningful reform. Among its recommendations:

- Make all students proficient and prepared for college and work;
- Hold high schools accountable for student success;
- Redesign the American high school;
- Provide students with the excellent leaders and teachers they need to succeed; and
- Invest communities in student success.

For more information about the Campaign for High School Equity, or to download a copy of "A Plan for Success," please visit: http://www.highschoolequity.org.

Taken together, the 2,000 high schools that have been identified as "dropout factories" graduate less than half of their students and account for the majority of all the dropouts in the U.S.

LCCREF Activities

Why Americans Should Care about the Great Switch to DTV

By Corrine Yu

February 17, 2009 marks the date of the next phase of television.

On that day, American television stations will switch their broadcasting from analog to digital. Approximately 21 million Americans will lose their television signal unless their television sets are connected to cable or satellite, have a built-in digital tuner, or are connected to a digital converter box.

Congress mandated the conversion to all-digital television broadcasting, also known as the digital television (DTV) transition, because digital is a more efficient way to broadcast. The transition will also free up the airwaves for other services, including public safety, such as police, fire, and emergency rescue. DTV also provides clearer pictures, better sound quality, and more channels and programming options.

Making the transition to digital is not simply a matter of being able to watch wrestling, or *American Idol*, or reruns of *Friends*. At stake in the transition to digital television is the ability of the nation's most vulnerable populations – low-income households, minorities, seniors, and persons with disabilities – to maintain uninterrupted access to their key source of news and information and emergency warnings: free, over-the-air television. The transition from analog to digital could affect millions of Americans:

- In 2005, the GAO found that up to 19 percent, or roughly 21 million American households, rely exclusively on over-the-air, free television.
- Forty-eight percent of households that rely solely on over-the-air television have incomes under $30,000.
- Non-white and Hispanic households are more likely to rely on over-the-air television than are white and non-Hispanic households.
- Eight million of the 21 million over-the-air households include at least one person over 50 years of age, while an estimated one-third or more of over-the-air television viewers have disabilities.

After the DTV transition, Americans who rely on free, over-the-air TV will face an expensive choice if they wish to continue to receive a television signal:

- Beginning in early 2008, consumers will be able to purchase a DTV converter box that enables continued broadcast television reception on an analog TV set. At about the same time, the federal government will launch a program through which consumers can obtain $40 coupons toward the purchase of these boxes.
- Purchase a new television set with a built-in digital tuner. All TVs with a digital tuner are able to receive digital signals broadcast by television stations.
- Subscribe to cable, satellite or a telephone company video service provider to continue using analog TV sets.

The millions of Americans who don't currently get cable or satellite television or own digital TVs are a very mixed group, cutting across all segments of society. For this reason, the government has created a "Digital-to-Analog Converter Box Coupon Program" allocating $990 million for all U.S. households (but including cable and satellite customers) to receive up to two $40 coupons to purchase up to two digital-to-analog converter boxes. Once that money runs out, if the government requests the additional $510 million already authorized by Congress, then households that certify in writing they rely on over-the-air reception will be eligible for coupons.

Civil rights and consumer groups are concerned that the transition to digital TV could exacerbate an already-existing digital divide if the millions of households that rely on over-the-air television lose their television service after the transition because they don't know about the switch or the coupon program, or are unable to get coupons.

Congress is conducting hearings on the DTV transition, demonstrating intent to take its oversight responsibilities seriously, which is good news for Americans. But witnesses who testified at a October 17 hearing of the House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet identified a number of challenges.

Nancy Zirkin, vice president and director of public policy of the Leadership Conference on Civil Rights (LCCR), expressed concern about the level of funding appropriated to enable a smooth transition, especially for the lower-income households, seniors, minorities, and persons with disabilities who are most dependent on television.

Zirkin also called attention to the need to have a comprehensive plan in place that includes research, outreach, and rapid response to ensure that those who are most at risk of losing service are protected.

Finally, Zirkin said, given the magnitude of the public education effort necessary to inform those Americans most at risk of losing their television signal, there needs to be coordination on educational outreach among all federal agencies – not just the two agencies most responsible for managing this transition – the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) – with replication of these efforts at the state and local level.

Testifying on behalf of the U.S. Government Accountability Office (GAO), Mark L. Goldstein confirmed that despite public-private sector interaction designed to help facilitate the transition, no comprehensive plan exists for the DTV transition. Goldstein echoed a key theme of Zirkin's testimony, namely, that "a challenge of consumer education is that those households that need to take action may be the least likely to be aware of the transition."

And while the transition has the potential to open the door for more Americans to participate fully in the digital age, individuals with disabilities are already being left behind, according to testimony by Claude Stout on behalf of the Coalition of Organizations for Accessible Technology (COAT).

Stout said that consumers with disabilities are reporting significant problems with DTV, including "disappearing, delayed, garbled, or otherwise unintelligible closed caption on television shows that previously provided relatively problem-free captions."

Stout and COAT also reported that networks whose analog channels were previously covered by the FCC's closed captioning mandates now deny coverage for their new high definition (HD) channels.

Both the FCC and NTIA are involved with the Digital Television Transition Coalition, a large coalition representing industry groups, grassroots and membership organizations, manufacturers, retailers, trade associations, community groups, and civil rights organizations (including LCCR). Yet while federal and private stakeholders have taken initial steps on providing consumers with information about the transition, GAO notes that these efforts are "still largely in the planning stages and widespread efforts have yet to be implemented."

With the arrival date for the future of television drawing near, a number of critical questions remain unanswered. Will *all* Americans be sufficiently educated about the transition, so that they will be able to make it relatively easily and without undue economic burden? Moreover, will *all* Americans actually receive the benefits of digital television, including HD Television and multicasting, or will they be deprived of these remarkable technological advances? At this point, millions of Americans can only stay tuned.

For more information, call 1-888-CALL-FCC (1-888-225-5322) or 1-888-DTV-2009 (1-888-388-2009), or visit the following web sites:

- DTV Transition, www.dtvtransition.org;
- FCC: Countdown to Digital Television, http://www.dtv.gov/;
- NTIA: Digital Television Transition and Countdown to Public Safety, http://www.ntia.doc.gov/dtvcoupon/index.html.

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LCCREF Activities

President Clinton, John Hope Franklin, and Tammy Duckworth Are 2007 Hubert H. Humphrey Honorees

By Tyler Lewis

Former President William J. Clinton, scholar Dr. John Hope Franklin, and activist/veteran Tammy Duckworth, were honored by the Leadership Conference on Civil Rights (LCCR) at this year's Hubert H. Humphrey Civil Rights Award Dinner on May 10, 2007.

"This year's nominees are individuals who work to bring dignity to the life of everyday working Americans," said LCCR President and CEO Wade Henderson.

Former President William J. Clinton received the award for his foundation's AIDS work and poverty work.

Since starting its HIV/AIDS Initiative in 2002, the Clinton Foundation has worked with 25 countries in Africa, the Caribbean, and Asia to set up AIDS treatment and prevention programs.

The foundation already provides access to lower-priced AIDS drugs in 65 countries. Some 750,000 people are now receiving AIDS drugs purchased through the Clinton Foundation.

Most recently, the Clinton Foundation brokered a deal that will make it possible for AIDS patients in the developing world to get once-a-day antiviral medication for $1 a day. The agreements with generic drug makers Cipla and Matrix Laboratories will save developing nations 25 percent (up to 50 percent for middle-income countries). An estimated half a million patients will require these drugs by 2010.

President Clinton has recently expanded his foundation's poverty work with The Urban Enterprise Initiative by adding three new programs. The Urban Enterprise Initiative supports the expansion of opportunity and economic growth in urban communities by helping small businesses and entrepreneurs compete in the changing urban marketplace. To date, the Initiative has provided more than 50,000 hours of pro bono technical assistance.

Awardees are selected based on their distinguished contributions to the advancement of civil and human rights.

Dr. Franklin was honored for his consistent commitment to incorporating blacks into American historical texts and representations. His pioneering works, including *From Slavery to Freedom* and *Mirror to America: The Autobiography of John Hope Franklin*, are well-regarded nationally and internationally.

"Dr. Franklin's work has and continues to be a guide along our national road to an equal and just society. He has worked tirelessly to make sure that the story of America includes the stories of us all," said LCCR's Henderson.

Dr. Franklin has served as president of The American Studies Association, the Southern Historical Association, and the American Historical Association. In the 90s, he helped to open a national dialogue on race and equality when he was appointed by President Clinton to One America: the President's Initiative on Race.

In addition to many awards, Dr. Franklin has received honorary degrees from more than 100 colleges and universities.

Tammy Duckworth was honored for her work on behalf of veterans and health care reform. Duckworth lost both her legs in a 2004 helicopter accident in Iraq and then began a life of public service.

For her military service, she received a Purple Heart and promotion to the rank of major at Walter Reed Medical Hospital. In 2006, Duckworth ran for an Illinois Congressional seat, on a platform calling for equal access to health care, common-sense immigration reform, mandatory funding of veterans' health care, and improvements in transition assistance for those returning to civilian life, particularly for those with disabilities.

After a narrow loss, Governor Rod R. Blagojevich appointed her as Director of the Illinois Veterans' Affairs Department. She also serves as a major in the Illinois National Guard.

"Tammy Duckworth made the health and welfare of returning veterans a priority in her public service work," said LCCR's Henderson. "Her tireless efforts on behalf of children, families, and veterans embody the true spirit of civil rights and we are honored to celebrate her work."

LCCR's Civil Rights Award was named for former United States vice president, senator, and civil rights pioneer Hubert H. Humphrey, whose years of public service, leadership, and dedication to equal opportunity changed the face of America.

Awardees are selected based on their distinguished contributions to the advancement of civil and human rights. Previous recipients include Senator Edward Kennedy; Representative John Lewis; civil rights leader Julian Bond; disability rights advocate Justin Dart; publisher Monica Lozano; and actor-activist Danny Glover, among other civil rights leaders.

Civil Rights Monitor

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Access this material online at www.civilrights.org

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