



docket CIR report

Fall 2002

CIR Will Appeal UM's Racial Preferences—**ALL THE WAY**

An air of tense, but pleasant, anticipation hangs over CIR offices these days. After years of work and the dedicated efforts of many people, CIR's twin cases against racial preferences at the University of Michigan (*Gratz v. Bollinger* and *Grutter v. Bollinger*) are poised to go all the way to the Supreme Court. Soon, the American people will have a clear answer to the question: can publicly funded universities reject or accept applicants because of the color of their skin?

As it stands today, the case law on the use of racial criteria in college admissions is a hopeless muddle of conflicting lower court decisions. That is why, after decades of steadfastly dodging the issue, we expect that the Court will hear at least one of these cases.

The legal confusion in this area—and sometimes outright flouting of the law—goes back to 1978 when a very divided Supreme Court struck down a dual admissions system in *Regents of the University of California v. Bakke*. In that decision, Justice Lewis Powell seemed to leave the door to racial preferences ever so slightly ajar when he wrote that race could be taken into account as part of an overall effort to achieve “intellectual diversity.”

Ever since, many colleges and universities have exploited this loophole to justify racial favoritism in admissions. In 1996, however, a federal appeals court decision, *Hopwood v. Texas*, declared invalid the so-called “diversity rationale” for racial preferences. According to *Hopwood*, the 14th Amendment’s Equal Protection Clause forbids the elevation of “some races over others, even for the wholesome purpose of correcting perceived racial imbalance in the student body.” Other federal court decisions, however, have upheld in varying degrees the right of public universities to employ racial criteria in admissions decisions. But recent Supreme Court cases make it clear that race preferences must be narrowly tailored to serve a compelling state interest.

CIR has experienced both successes and setbacks in its litigation on behalf of clients challenging racial discrimination in higher education. In *Gratz v. Bollinger*, Judge Patrick J. Duggan found that the University of Michigan had indeed employed an impermissible “dual admissions” system before 1999. But

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CIR Goes to Trial Against Racial Preferences at UM

CIR was dismayed that the Court found an important distinction between the admissions system employed before 1999 and the one it adopted thereafter—given that both parties stipulated that the new system achieves the same substantive results as the old one. CIR is currently appealing the case to the U.S. Court of Appeals for the 6th Circuit.

Most disappointingly for CIR, in May 2002 the 6th Circuit narrowly upheld the University of Michigan Law School in its use of racial preferences for the sake of “educational diversity” in *Grutter v. Bollinger*. The 6th Circuit based its holding on Justice Powell’s lone opinion in *Bakke* that the state might have a compelling interest in providing an environment of “speculation, experiment and creation” on public university campuses. Anyone who has been on one of these college campuses recently will have a bitter laugh—most of these institutions are enclaves of carefully enforced political correctness and liberal orthodoxy. The only kind of diversity they welcome is the most

superficial kind—a variety of skin tones.

The American public is not fooled, nor is it confused about the ethical principle at stake. In 2001, a poll by the *Washington Post* disclosed that Americans were overwhelmingly opposed (by margins of from 84 to 94 per cent) to using race in college admissions. This was true for every demographic subgroup—whether the respondents were white or black, male or female, Democrat or Republican.

Ordinary Americans have a strong belief in the importance of simple fairness—of treating each person as an individual on

his or her own merits. But the liberal elites managing higher education often have a different perspective. Many want to achieve a predetermined racial “balance” in their student bodies, and they will spew any nonsense in an effort to excuse and justify their support for “race consciousness.”

CIR has been deeply involved for years in the legal struggle to end all remnants of racial discrimination in college admissions. The American people deserve something better than the racial spoils system that some college administrators want to impose. That is why CIR appealed the



Barbara Grutter anticipated from the beginning that her case would go to the Supreme Court.

Gratz decision to the 6th Circuit. And on August 9, the plaintiffs in *Grutter v. Bollinger* filed a petition for a writ of certiorari, asking the High Court to review the the 6th Circuit's 5-4 decision which upheld race-based admissions at the University of Michigan Law School.

As Judge Danny Boggs, on behalf of the dissenting four-judge minority in *Grutter v. Bollinger*,

wrote: "Michigan's plan does not seek diversity for education's sake. It seeks racial numbers for the sake of the comfort that those abstract numbers may bring. It does so at the expense of the real rights of real people to fair consideration."

CIR is determined to put a stop to the ongoing violation of individual rights taking place at almost every elite public college

in the country today. The University of Michigan college admissions cases are shaping up to be the most significant challenge in American history to the practice of racial discrimination in admissions at public universities. All that remains is for the Supreme Court to declare that the Constitution does not permit colleges to engineer a racial mix of students solely to achieve "diversity."

Strong Plaintiffs Make Strong Cases

Barbara Grutter—mother of two, small-business owner, and home-schooler—was denied admission to the University of Michigan Law School because she was not of the right race. Barbara Grutter is the lead plaintiff in *Grutter v. Bollinger*, the case against racial preferences in admissions at publicly funded colleges.

As an undergraduate, Barbara attended Michigan State University, from which she graduated in 1978 with high honors. She then

worked as a health-care consultant and manager before deciding to start her own business. In 1986, she founded a successful health-care information firm, and in 1996, at age 43, she applied to the University of Michigan Law School. Grutter was wait-listed and eventually rejected. Because her racial ancestry was not correct, admissions officials deemed her unable to contribute to "diversity" at the school. She still hopes one day to attend the University of Michigan Law School. In the

meantime, she continues working at her business and raising her two children.

Learning of the decision by the 6th Circuit Court of Appeals upholding the University of Michigan Law School's discriminatory admissions policy, plaintiff Barbara Grutter was not discouraged. In her own words: "I've anticipated from the beginning that this would have to go to the Supreme Court and today's decision just takes us one step closer."

Long Years Of “Outstanding” & “Highly Successful” Service—So Why No Success?



Dennis Worth, the lead plaintiff in *Worth v. Martínez*, has worked at HUD’s St. Louis office since 1978. For more than twenty years, he received job performance ratings of “outstanding” and “highly successful.” Whenever he applied for promotion, he always made the “best qualified” finalist list. Yet somehow, nearly

every time he applied for a position, a woman or a member of a minority was found better qualified and given the promotion instead. Over twenty years, each single act of discrimination against Dennis Worth and many others like him has a cumulative impact—preventing the career advancement of whole categories of people. Dennis Worth only wants to be judged fairly as an individual for the work he does. With CIR’s help, he and other federal employees hope to get that chance.

Federal employee Dennis Worth, lead plaintiff in Worth v. Martínez, wants to be judged as an individual.

TELL A FRIEND

We would like to tell a friend of yours about the important success you help us achieve here at the Center for Individual Rights.

We will send a free copy of this Docket Report to anyone you choose. Simply write the name(s) and mailing address(es) on the enclosed business reply envelope and we will send them exciting information about your CIR and our battles to defend individual rights.

If you would like additional copies of this Docket Report to hand out yourself, please let us know how many copies you would like.

EEOC: The Fox in Charge of the Henhouse

The Equal Employment Opportunity Commission (EEOC) is supposed to protect Americans from employment discrimination. Today, however, the EEOC is a major sponsor of discriminatory hiring—the exact opposite of its original mandate.

Americans believe in fairness. They agree that no one should be denied employment on the basis of race, color, religion, sex, or national origin. That means that everyone—black or white, Episcopalian or Jehovah’s Witness, male or female, descendant of Norwegians or Nigerians—should be judged by the same set of standards. Over the years, however, the very agency charged with safeguarding this principle has consistently departed from it—by abusing the power to set minority hiring “goals.”

The EEOC and HUD have worked together zealously for many years to remove any statistical underrepresentation of minorities and women in narrowly defined job categories—while studiously ignoring the resulting underrepresentation of white males in agency employment overall. The whole system is a scam. And it only survives because establishment civil rights

groups and the mainstream media carefully turn a blind eye to what is happening.

Many federal employees are tired of the unfairness and the hypocrisy. Now they are fighting back.

On August 8, CIR filed a class action lawsuit in federal court against Secretary of Housing and Urban Development (HUD) Mel Martínez and EEOC Chair Cari M. Domínguez. The lawsuit charges both government agencies with intentional race and sex discrimination in violation of the U.S. Constitution’s guarantee of “equal protection of the laws.”

The plaintiffs, HUD employee Dennis Worth and a class of similarly situated federal employees, are asking the court to end the discriminatory preferences at HUD, as well as the EEOC’s encouragement and approval of such preferences throughout the federal government.

By law, federal agencies must make data on their hiring and promotion practices available to the public. Since 1987, the EEOC has required all federal agencies to report detailed data on the race and sex of their workers. These agencies must also submit detailed plans for increasing the numbers of minorities and women

wherever these groups are “underrepresented.”

Many Americans are offended by this obsessive classification and counting of their fellow citizens by race and sex. But there may for once be a good side to the EEOC’s detailed racial reporting—because fair-minded people can now examine this data for what it really means. That is what CIR has done. The EEOC’s own data *prove* that women and minority groups are vastly over-represented in federal government employment!

CIR expects so-called civil rights groups to put up a ferocious legal fight because so much is at stake. With 2.5 million civilian workers, the federal government is the largest employer in the United States. But CIR is ready to wage this legal battle on behalf of the right of all Americans to fair treatment in the workplace.

Smith v. University of Washington: Courtroom Setback, Political Victory, Another Appeal

On June 5th, 2002, U.S. District Court Judge Thomas Zilly caused quite a few jaws to drop. The judge ruled that the admissions system at the University of Washington Law School was consistent with the 1978 Supreme Court ruling in *Regents of the University of California v. Bakke*.

According to Judge Zilly, UW's policies were "narrowly tailored" to meet the objective of educational diversity. To reach this judgment, Zilly had to ignore voluminous evidence documenting the school's outrageous double standards and racially separate (you could say segregated) procedures in admissions. For example, in 1994, every black applicant with a GPA between 2.5 and 3.25 and an LSAT score in the 155-59 range was admitted. At the same time, not one of the 131 non-minority candidates in that GPA and LSAT range was accepted. Every single low-scoring candidate (all 158 of them) directly admitted by the Dean of Admissions in 1994 was a member of a racial minority. This

racial favoritism ensured that about one-third of each entering law school class consisted of minorities—even though the state of Washington had a minority population of only 15 percent.

Anyone with common sense could see that the University of Washington discriminated against white applicants—but Judge Zilly did not hold the university liable for discrimination.

Judge Zilly's decision was the latest in a drawn-out legal battle that has been going on for five years.

When CIR brings a case, it wants to win in the courtroom. But the value of a well-chosen public interest law suit goes beyond the legal arena when a case helps to focus public attention on specific acts of injustice. Publicity about the case against UW, taken up by newspapers and media outlets all over the state of Washington, helped dramatize the injustice done to plaintiffs Katuria Smith, Angela Rock, and Michael Pyle. The voters in Washington State took things from there, passing Initiative 200 in 1998, which forbade the use of race in government

contracts, hiring, and education. Despite the loss in court this time, CIR's law suit, *Smith v. University of Washington Law School*, has already helped to remind ordinary citizens why racial preferences are wrong and who is hurt by them.

CIR is appealing Judge Zilly's decision. The judge read the *Bakke* decision as forbidding only admissions systems that reserve certain seats exclusively for applicants of a particular race. So no matter how much advantage a college confers on applicants for having a desirable skin color, on this line of reasoning, racial preferences are always "narrowly tailored"! CIR believes that this holding makes clear the inherent emptiness of Justice Powell's idea that race can be used only "as one of many factors" in achieving diversity. If Judge Zilly's interpretation of *Bakke* stands, there is effectively no limit at all on racial discrimination in admissions.

The experience of Katuria Smith is a good illustration of what is so phony about the invocation of "diversity" to justify racial discrimination.

Plaintiff Katuria Smith

Through no fault of her own, Katuria came into this world poor and disadvantaged. Her mother dropped out of high school when she was born. Because of her father's problems with alcohol and gambling, the Smiths' finances were always precarious. In fact, the family (which eventually included two more sisters and a brother) was seldom able to stay in any one home; they just drifted from one rented quarters to another in the area of Everett, Washington.

At first it seemed that Katuria would continue the family pattern of economic marginality. In high school, she skipped classes and even got caught drinking. After the death of her father, however, when she was 21 years old, she decided to turn her life around. By chance, one of her friends (a policeman) advised her to enroll in

community college. Katuria did not believe at first that she could afford to continue her education. Her family had raised her with the belief that accepting "handouts" was shameful. When a college secretary directed her to the financial aid office, Katuria waited until the hallway was empty so that no one would observe her entering. Eventually, she learned that many people receive financial aid and student loans, and she decided not to be ashamed.

Attending night classes, Katuria completed a paralegal program and went on to an associate's degree program. Her hard work and talent impressed her teachers, who supported her transfer to the University of Washington. Eventually, she graduated cum laude from the University of Washington School of Business with an impressive 3.65 average. Ka-

turia didn't want to stop there—and her high LSAT (she scored in the 94th percentile) made her confident about being admitted to law school. Katuria was not afraid of hard work. As she explained in her law-school application, she had "worked full-time and carried a full load" throughout much of college. And she worked in some pretty diverse occupations, too: as a janitor, cocktail waitress, construction worker, and cattle auction hand. Under the law school's own criteria for economic disadvantage, her application fee was waived. But the law school never sent a letter to Katuria—as it routinely did in 1994 to minority candidates—asking how she might contribute to the law school's diversity. Because of this, the school knew little of Katuria's background and incorrectly concluded that she would add nothing to its

"diversity."

After being denied admission, Katuria gave up on attending the University of Washington Law School, even though such taxpayer-funded institutions presumably exist to serve all citizens of the state without discrimination. Katuria had received letters from several top-ranked out-of-state law schools, such as the University of Michigan, inviting her to apply. But since she didn't have funds to cover the \$50 application fees (didn't even have a credit card, in fact), Katuria had applied only to UW. But Katuria did not give up on herself. After the rejection from UW, Katuria pulled together a new application in four days to the less prestigious and more expensive Seattle University Law School. Today, she is a general counsel at Tradescape Corp., a technology company in NYC.

CIR Defends Free Speech on Campus

North Hennepin Community College: Back in America



This satirical poster was deemed intolerable by administrators at North Hennepin Community College.

In 1994, a student at North Hennepin Community College complained to a college administrator about being “offended” in a class on American history. The teacher in question was Professor Jon Willand, an experienced educator.

Willand had been teaching American history since 1966 at this third largest community college in Minnesota. During all those years, he had tried to make his students appreciate how unique and precious are the freedoms we enjoy as Americans. Willand knew that these freedoms were not just handed to our citizens. Brave men and women throughout our history have struggled to ensure them against foreign and domestic foes of liberty.

Over the years, Professor Willand had noticed that students seemed to arrive at the community college with a decreasing fund of historical knowledge to draw upon. So Professor Willand could understand how nowadays some students—thanks to the dumbed-down curricula of their high schools—might indeed be startled to hear facts and interpretations of history that they had not encountered previously. For example, one student claimed to be greatly shocked—and filed a complaint—after Professor Willand stated that Stalin’s regime was responsible for even more murders than Hitler’s. Another student complained after Willand stated his view that the ancestors of all Americans were immigrants at some time, so no group should

be characterized as “Native” Americans.

But Willand always expected that his college would encourage students to expand their knowledge through reading, research, and debate. That is the way Professor Willand always believed that higher education was supposed to work.

Instead, Willand found that the administration of his college was keen to use student complaints as an excuse to shut down free intellectual inquiry.

In response to student complaints, Hennepin’s “Interim Associate Dean of Liberal Education,” Robert Alexander, issued directives [see box on page 9] to Professor Willand that reflected his view that the student’s “right not to be offended” trumped the First

Amendment and Willand's academic freedom—to say nothing of the school's responsibility to educate.

And that was not all. In 1996, the same administrator, citing an anonymous complaint, removed a satirical poster of General George Custer that Willand had put up on his office door—and ordered him never to post it again, nor “any other materials which may be offensive to others.”

Professor Willand was stunned. At first he thought that this idiocy must be the work of a single misguided bureaucrat. But it wasn't. When Willand appealed these directives, the dean's outrageous instructions were upheld by the president of the college!

And even that wasn't all. In August 2000, the college notified employees that they must comply with a statement of “Statewide Electronic Communication and Technology Ethics” which banned computer use for the “receipt, storage or transmission of offensive, racist [or] sexist...information.”

Professor Willand certainly wasn't trying to offend anyone with his colorful poster of General Custer. Nor did he mean to offend when he told his class that Pocahontas used to turn somersaults in the nude—a bit of information that can be learned from the Historic Jamestown

web site. Sometimes, however, people are determined to take offense.

Professor Willand knew that college administrators should not be allowed in the name of “sensitivity” to prevent intellectually challenging material from being taught. So in the summer of 2001, Professor Willand, with the help of CIR and attorney Daniel Rosen of Rosen and Rosen (and an amicus brief from the Minnesota Civil Liberties Union) brought suit in federal court. The suit challenged the school's prohibition against Profes-

sor Willand saying anything that someone might find offensive. The suit also took on the state's computer speech codes that banned the use of computers for the “receipt, storage or transformation of offensive, racist or sexist information.”

College administrators could not have enjoyed the publicity that accompanied the lawsuit. The *Chronicle of Higher Education* (August 10, 2001) devoted a half page of coverage to the case. The *Minnesota Law and Politics* magazine chose it as one of the ten

most important in the state for 2001. The case was also written up in a new book, *The New Thought Police: Inside the Left's Assault on Free Speech and Free Minds* by Tammy Bruce. Catherine Crier on Court TV discussed the case as did radio shows in San Francisco, Denver, and New York.

Professor Willand's story has a happy ending. Administrators for North Hennepin Community College in Minnesota withdrew the reprimands, directives, and suspension restricting Professor Jon Willand's free speech and academic freedom. State officials also agreed that Professor Willand could not be prohibited from using his computer to research information for his class, thereby recognizing the supremacy of academic freedom over the state policy restrictions for all 34 Minnesota higher education campuses.

Willand's case was not the first free speech case that CIR has brought on behalf of embattled academics. Nor will it be the last. Liberals have so much control over the college campus these days that they have started to believe their own lame excuses for squelching the speech of anyone with whom they disagree. But thanks to CIR and its supporters, victimized professors will not be alone when they fight back.

It is worth quoting the dean's directives to Professor Willand at length to get the full flavor of what the “sensitivity police” on campus these days are like:

“You will avoid making comments and using phraseology which do not manifest a clear concern for student sensibilities and which may promote student misunderstandings.”

“You will avoid making comments and using phraseology which may be interpreted by a reasonable person as articulating or promoting racism, sexism, or any other ideology which incorporates stereotypical, prejudicial, or discriminatory overgeneralizations that might intimidate or insult students.”

“You will not use language or examples which are provocative or inflammatory, hence likely to give rise to offense in others.”

“You will in all others [sic] ways manifest a sensitivity to the opinions of others in your dealings with students.”

CIR Helps Ordinary Americans

Some people can't take a joke— the case of the “redneck” T-shirt still pending

Near the end of his senior year of high school in Washington, New Jersey, the last thing on Tom Sypniewski's mind was a lawsuit. But one day in March 2001, Assistant Principal Griffith demanded that he remove his T-shirt because it was “offensive.” The T-shirt listed comedian Jeff Foxworthy's “Top 10 Reasons you might be a Redneck Sports Fan.”

As Tom explained later: “I knew he was wrong about the shirt and I knew it was my right to wear it, so I said I wouldn't change it.” Principal Griffith suspended Tom for 3 days.

Tom, with the full support of his parents, immediately appealed his suspension and explained himself to the school board. He pointed out that neither the shirt's graphics nor any of the 10 reasons had a racial connotation. Despite his obviously sincere assurances that he was not a racist and had meant no harm to anyone, the Board decided to support the assistant principal who had claimed that “redneck” is slang for a violent, bigoted person—even though no one at the school except for this administrator claimed to be offended by the shirt.

School administrators in the district were probably in a touchy mood, because in the recent past a handful of students at the

school had paraded a Confederate flag through the halls, told racially offensive jokes, and organized a theme day called “White Wednesdays.” But none of this had anything to do with Tom or with Jeff Foxworthy's innocent brand of humor—except in the minds of school officials desperate to demonstrate their toughness on racism.

According to the Superintendent of Schools, Tom was suspended for violating a long-standing district dress code that bans “offensive or vulgar” messages on T-shirts. But the school board's official press release alleged that, by wearing the Foxworthy T-shirt, Tom was attempting to portray a message of “racial stereotyping” in violation of the district dress code.

Although Tom had been a student in good standing with no previous problems at school, he was suddenly denied student privileges that he had earned. He and his family—now publicly branded as racists—even began receiving hate mail.

Sypniewski and his two brothers (who are also avid Foxworthy fans), are co-plaintiffs in the case. They are asking the court to declare the dress code and related harassment policy unconstitutional. The Center for Individual Rights (CIR) in Washington, DC and

New York's Katten Muchin Zavis Rosenman are representing the three brothers.

CIR's Curt Levey sent a letter to Jeff Foxworthy about these events. Foxworthy—living proof that a redneck can be a gentleman (and a mensch)—wrote back to say that “redneck” defines “a glorious absence of sophistication” and is not intended to be offensive. Foxworthy said he “was absolutely amazed at the suspension of Tom for wearing [the] shirt.”

The case of the Sypniewski brothers is important. School administrators shouldn't stigmatize students as “racist” for innocently exercising their right to free speech. Although the rights and wrongs of this case are clear to CIR, the workings of justice may take some time. Trial judge Mary Cooper ruled that the relevant portion of the dress code “appears not to satisfy the [constitutional] standard,” but she declined to issue a preliminary injunction. Also, Judge Cooper upheld the racial harassment policy – after interpreting it narrowly – and concluded that, in the future, it can be used to ban shirts like the one Tom wore. CIR promptly appealed her denial of the preliminary injunction to the 3rd Circuit. At oral argument before the appeals court on March 4, CIR co-counsel Gerald

Defend Their First Amendment Rights

Walpin of New York's Rosenman & Colin argued that neither the Foxworthy T-shirt nor the word "red-neck" could be constitutionally banned without evidence – absent here – that they would cause disruption in school. CIR anxiously awaits the outcome of this case.



The three Sypniewski brothers and their lawyer; from left to right, Brian, Tom, Gerald Walpin (attorney and CIR Board member) and Matthew.

Boys Town suit against two D.C. residents dismissed

Did you ever think that you could be sued for "federal housing discrimination" just because you exercised your right as an American to express your views on the wisdom of a building project in your neighborhood? Ellen Opper-Weiner and Will Hill never thought so—until it happened to them.

Ellen and Will live in southeast Washington D.C.—not the most prosperous or crime-free part of our nation's capital—and that is putting it mildly. The legal trouble started when a \$900 million "non-profit" corporation, Boys Town, decided that it wanted to build a group home for "very troubled youth" in an already very troubled neighborhood. Ellen and

Will helped put together a volunteer neighborhood organization—Southeast Citizens for Smart Development—to object to the siting of this project.

Boys Town argued that Ellen and Will's speech had the purpose and effect of denying housing opportunities to racial minorities and handicapped individuals. (In this case, the term "handicapped" referred to drug-addicted youth.) According to Boys Town, even delaying the housing project is an act of culpable "discrimination." The fact that Will Hill (and others connected with SCSD) are themselves African American did not dissuade Boys Town from alleging these acts of discrimination.

CIR has been seeing

Will Hill and Ellen Opper-Weiner



too many of these kinds of cases lately. In the early years of the Clinton administration, federal officials began to use housing discrimination law to support developers in their legal attacks on citizens who spoke out against proposed low-income housing projects. CIR helped

to defeat several of these nuisance lawsuits.

In one case, CIR won an important victory for a resident of Fresno, California—Travis Compton—who had been accused of federal housing discrimination by a low-income housing developer. A U.S. Federal

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First Amendment Rights. *continued*

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District Court Judge issued an order granting summary judgment in favor of Mr. Compton on all claims of discrimination lodged against him.

In another case (*White v. Lee*) HUD began officially to persecute three Berkeley, California residents, threatening them with fines of up to \$100,000, for opposing a homeless shelter in their neighborhood. CIR's clients sued the HUD officials and won

that case too.

The ACLU and CIR don't always see eye to eye on legal issues. But when Boys Town started its campaign of legal harassment, the ACLU and CIR joined forces to fight on behalf of Ellen and Will. If a developer can sue citizens just because they speak out against a housing project, then the First Amendment is dead, and citizen speech is effectively without any legal protection.

Thanks to their own steadfastness, the help of their lawyers, and the support of CIR donors, Will Hill and Ellen Opper-Weiner were successful in asserting their rights as citizens. On August 1, 2002, a federal district court judge dismissed the claims that Boys Town had brought against them. The judge ruled that the "First Amendment protects citizens from liability for petitioning the government for redress of their grievances." Whew.

Court affirms the right to petition in Farmingville

On September 10, 2002, U.S. Federal District Judge Joanna Seybert granted CIR's motion to dismiss a lawsuit brought against the Sachem Quality of Life (SQL), a Long Island community group formed in response to an explosion of illegal immigration in Farmingville, an area in Long Island, New York.

CIR's main client in this case, Margaret Bianculli, is a high school business teacher from Farmingville. Margaret and others in her community have been concerned for some time about the reluctance of public officials to enforce our country's immigration laws.

Margaret heads the small community organization, the Sachem Quality of Life, that has spoken out about the failure of law enforcement in the locality. At the town level, her organization was able to get a law on

the books to limit overcrowded housing. Of course getting the law enforced was not so easy.

Margaret is a peaceful person who would never commit or encourage any crime, especially not a crime of violence. In an incident completely unrelated to her organization, several illegal immigrants were physically assaulted. The police did their job and the perpetrators (who were not even residents of Farmingville) were apprehended, prosecuted, and convicted.

But immigration activists decided to use the crime to advance their own political agenda—punishing Americans for exercising their First Amendment right to criticize the government. Bianculli and other members of the organization were sued by the victims of the assault—allegedly for creating a climate of violence.

It is doubtful that the immigra-

tion activists who brought this suit ever expected to prevail in court. And thankfully they did not. But another purpose was served. By putting Margaret and her friends under a legal cloud, the activists probably thought they could intimidate citizens from speaking out on the importance of enforcing immigration and housing laws. CIR is very pleased that it was able to defeat this malicious design in court.



Margaret Bianculli

From left to right, Anthony Sanders, Jon H. Book, Catherine Sevchenko, and John M. McNichols



Summer Clerks and Interns

Every summer, CIR gives college students the opportunity to serve the public while furthering their own educations. Internships at CIR are our small way of offering idealistic students the means to channel their energies into work that truly improves American society. These opportunities help get the message out to young people that public service is not a monopoly of the Left and liberals.

But the benefits of the intern program are not just for the students. The clerks and interns perform useful work for CIR, and this summer was a busy one.

John M. McNichols, a graduate of Yale University, and currently in his second year at the University of Michigan Law School, worked on an amicus brief for the *Scheidler v. NOW* case. John's background is a bit different from that of most of his peers—he started law school after serving 8 years in the U.S. Army.

Anthony Sanders worked on a law review article, wrote op-eds, and researched issues related to separation of powers and federalism. This fall, he will be a

second year law student at the University of Minnesota. Anthony came to CIR through the Koch Fellows program at the Institute for Humane Studies.

Jon H. Book was a bundle of energy. He not only filled in as the CIR receptionist, but he put together the Annual Report, updated CIR's information folders, and assisted in preparing materials for a major foundation proposal and a CIR board presentation. Jon will be returning this fall to the University of Michigan, where he contributes

to the conservative student paper *Michigan Review*. Maybe not everyone there will be happy to see him back—he was one of three student protestors against racial preferences at the University of Michigan oral arguments in Cincinnati in December!

Ollivia Sexton helped prepare op-eds related to CIR's racial preferences case against the Department of Housing and Urban Development. She also researched admissions data in 5 states where racial preferences in higher education have been suspended. This fall, Ollivia will begin work on a joint masters and law degree in environmental law at Vermont Law School.

Catherine Sevchenko worked on issues pertaining to First Amendment law, including *Szoka v. FCC*. This fall, Catherine will begin her fourth year at George Mason Law School (where she has been attending its evening school). In her life before law school she worked in the U.S. Foreign Service. Catherine came to CIR through the Steptoe and Johnson summer public service program.

From the August 2002 letter to CIR supporters written by John M. McNichols

I came to CIR after eight years in the military because I realized that not every threat to our Constitution and way of life comes from abroad. During my internship, I helped write a brief for the Supreme Court. I interviewed potential clients. I researched a broad range of constitutional questions, from due process to states' rights. Your contributions helped make my experience possible, and for that I thank you. More importantly, however, your donations help ensure that the rights and liberties upon which America depends will always have a defender.

Chairman of the CIR Board of Directors: Professor Jeremy Rabkin



CIR is fortunate to have the services of a hands-on Board of Directors. No one typifies that involved approach better than its new Chairman, Professor Jeremy Rabkin. Jeremy teaches courses on American constitutional history and international law in the Department of Government at Cornell University in Ithaca, NY. He is well-known on that overwhelmingly liberal campus for presenting his conservative views in a provocative and engaging style.

Because of the high demand for his presence at congressional hearings and policy conferences in the nation's capital, Jeremy is also a frequent visitor to Washington, DC. This will be especially true this coming year, since Jeremy is Acting Director of the "Cornell in Washington" program and also a member of the Council of Academic Advisors of the American Enterprise Institute. When in town, Jeremy enjoys dropping by CIR's offices to catch up with the staff, find out about progress on our litigation, and bounce around ideas about new cases.

Jeremy's connection to CIR goes back to the beginning. In the early 1980s at Cornell, he got to know graduate student Michael

Greve (later one of the founders of CIR) and law student Terence Pell (CIR's current Chief Executive). At that time, Rabkin was particularly troubled by the expansive role of the judiciary in such areas as school busing and prison regulation. Rabkin, Greve, and Pell worked together on research projects that surveyed the extent of judicial activism in these areas.

From that early work, Jeremy became convinced of the need for a new type of public interest law firm to break the liberal monopoly on "public interest" litigation. Such a firm would bring cases intended to restrain the government instead of to expand it. So Jeremy was extremely pleased to learn that his former student Greve and CIR co-founder Michael McDonald were planning the Center for Individual Rights to work on behalf of limited government and individual freedom. Such a firm would represent real clients, not vague causes; it would file a handful of precedent-setting cases rather than function as a legal services corporation.

When McDonald and Greve decided to go ahead with the idea, they asked Jeremy and another friend, attorney Michael Carvin, to form the nucleus of

CIR's board of directors. Rabkin and Carvin promised to assist in whatever way they could. This was a promise that each no doubt came to rue, yet loyally kept, over the ensuing twelve years as CIR shamelessly sought their advice on case after case.

CIR is a "litigation boutique," not a legal services organization. Success depends on correctly identifying a very small number of cases that have the potential to fundamentally change the American legal landscape for the better. Consequently, CIR depends on the advice and counsel of a circle of knowledgeable people as it tries to identify fruitful areas of litigation.

Jeremy's advice is based on his extensive academic research on the role of courts in modern American society. In 1989, he published *Judicial Compulsions: How Public Law Distorts Public Policy*, an analysis of the role of the judiciary in several controversial areas of public policy. In 1998, he published *Why Sovereignty Matters*, a critical appraisal of the trend toward submitting domestic policies to international treaties and supranational institutions.

Jeremy's writings present a sustained critique of the increasing role played by appointed judges, government experts, and international organizations in settling political disputes that ought to be resolved through the normal democratic process.

As Chairman of the Board, Jeremy will continue to collaborate closely with everyone at CIR as it seeks—working through the judicial system—to uphold the traditional role of individual citizens in governing themselves.

Letter from CEO Terry Pell

CIR is not a think tank or a policy institute. Compared with similar organizations, our staff is small (about ten) and composed almost entirely of litigating attorneys. We do not have a public relations department nor do we hire media consultants.

All of this is by way of saying that the Docket Report you are holding in your hands is not the usual kind of CIR publication. More often, we find it easier to write a quick letter to our friends and supporters than to put together a magazine or newsletter.

Still, we thought it time to send out something that conveys the breadth and variety of our many legal efforts -- efforts made possible with the generous support of you, our donors.

Because, on every front, we are making historic progress in our effort to restore principled constitutionalism.

As this Docket Report goes to press, we await word from the Supreme Court on whether it will take one of our two exceptionally strong cases challenging racial preferences in college admissions at the University of Michigan.

We're in the home stretch of one of the most successful public interest law efforts of the last decade. With your continued support, we will achieve the goal we're all looking for -- the end of officially sanctioned racial

discrimination by our nation's colleges and universities.

But we're not waiting for the outcome of that effort to tackle another, even more egregious instance of government racial engineering. As you can read on pages 4-5, a few short weeks ago, we launched a frontal assault on the use of racial quotas in federal government hiring and promotions. We expect our newest case, *Worth v. Martinez*, to do for employment preferences what our Michigan litigation is doing for college admissions preferences.

And CIR's traditional defense of free speech continues unabated. As described in these pages, in the last few weeks we have achieved several significant victories in our efforts to make sure the First Amendment protects not just the speech of the politically correct, but that of everyone.

In preparing this Docket Report, we've gone to special pains to introduce you to some of the clients helped by your support. Setting strategic legal precedents depends on these courageous individuals. In these pages, you'll read what CIR's efforts have meant to them. Without your generous support, they would be on their own -- and likely without legal representation.

CIR's efforts on behalf of individual rights would not be possible without the generous



support of our many loyal donors. You understand that the sort of uncompromising defense of individual liberties we favor at CIR is not a one-shot or quick effort.

Many of our most successful legal campaigns -- our decade-long effort to strike down the use of racial preferences in college admissions and our ongoing drive to end the use of non-discrimination law to stifle free expression, to mention but two -- took years to bring to fruition.

We are tremendously grateful to the many donors who give year in and year out to make sure we have the resources to see these campaigns through to a successful conclusion. As you can see from these pages, your support is making a difference.

Terry Pell

In Memory of Kaj Areskoug— A Legacy of Defending Individual Rights

On June 29, 2001, the Center for Individual Rights dedicated the Board Room in its Washington, D.C. headquarters to the memory of economist, author, and friend Kaj Areskoug.

Like many immigrants to the United States, Dr. Areskoug valued individual rights and the Constitution that protects those rights. Dr. Areskoug made a decision to leave a legacy of defending freedom by remembering the Center for Individual Rights in his will.

Dr. Areskoug was born in Sweden in 1933. He earned a law degree from the University of

Lund in Sweden and then came to the United States. He continued his education at Columbia University where he earned a Ph.D. in economics.

During his career as an economist, Dr. Areskoug taught at New York University, Columbia University, the University of Texas at Dallas, and Fordham University. He also served as a research economist for several banks and corporations. Dr. Areskoug was the author of two books—*International Economics* (co-authored with Ingo Walter) and *Equal Opportunity in a Free Society: The Libegalitarian System*.

Dr. Areskoug's friends knew him as one who did not shy away from argument. In many ways, the Center for Individual Rights reflects his passion for defending human freedom.

Dr. Kaj Areskoug's generous bequest will be used by the Center for Individual Rights to defend individuals—through litigation of precedent-setting cases—against the unconstitutional exercise of state power.

If you're interested in making a bequest to the Center for Individual Rights, please contact the CIR Director of Development, Ms. Joy Jones at 202-833-8400 ext. 106 or by e-mail at jones@cir-usa.org.

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