

# *Civil Rights Monitor*

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# *Acknowledgements*

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# *The Soul of the Movement: Gearing up for Big Fights in 2017*

## **Wade Henderson Commentary**

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It probably goes without saying that the outcome of the 2016 election was not what those of us in the civil and human rights community anticipated. Instead, we were reminded in the starkest terms that the racial, ethnic, religious, economic and social divisions in our society remain formidable.

While the progressive agenda transcends partisanship and personalities, in 2008 and 2012 we had been encouraged by the election and re-election of a barrier-breaking president, and there was reason to believe that Americans would want to continue that legacy. In hindsight, we should have seen signs that trouble was brewing. In spite of the recovery, the economy still is not producing enough middle-class jobs. Workers' wages and living standards still are stagnant. Trade and technology seem to be producing more losers than winners.

In addition, we should have fully appreciated the larger international context in which we find ourselves, where right-wing populist parties and leaders have been gaining ground around the world. We've seen it in Brexit—the British referendum to leave the European Union—and in the growth of extreme nationalist parties in France, the Netherlands, Hungary, and Greece, and the election of an authoritarian in the Philippines. In country after country, we've seen how bigoted rhetoric, divisive policies, demagoguery and fearmongering can be effective tactics.

And perhaps most crucially for us, this was the first presidential election in 50 years to be conducted without the full protections of the Voting Rights Act (VRA). In the absence of federal oversight, 14 states had new voting restrictions in place for the first time in a presidential election, while 20 more have had such restrictions in place since 2010. And at least 868 polling places were closed in counties previously covered under Section 5 of the VRA.

While we accept the results of this election, the bigoted rhetoric and divisive policies that the president ran on are deeply troubling and have left many of us afraid that we won't have a place in Donald Trump's America. Faced with an emerging national agenda from the new administration and Congress that includes fundamentally un-American and inhumane policies like mass deportation of undocumented immigrants, a wall along our southern border, and a registry of Muslim and Arab Americans (and those often confused with Muslim or Arab Americans, like Sikhs), the question becomes: So what do we do?

We have to raise our game and build on the tremendous success that we helped to bring about over the last eight years. We must remember that Obama's presidency was marked by an unprecedented level of obstruction and hyperpartisanship, and yet, we accomplished things against incredible odds over those eight years. We can do the same in 2017 and beyond if we remain committed to principle and use our collective power nimbly and strategically.

Our polestar is the Constitution. Our values are not tied to the party in power. Now, perhaps more than ever, that has to be true if we are to be successful in protecting against the worst of what's to come and pushing for policies that will help ensure equal opportunity for all.

And, while we have different identities and interests, we need to define common goals and common strategies. As we move toward a new America, where no racial or ethnic group will be in the majority, coalition politics is the politics of the 21<sup>st</sup> century.

The work of the civil and human rights movement must continue. We must resolve to tackle these new challenges with the same creativity, agility, and focus that has brought us so much success in the past. There is far too much left to accomplish.

Every day, we are reminded that unemployment among communities of color, young people, and people with disabilities remains at recessionary levels. Gaps in wages and wealth are increasing exponentially. Our housing and our schools are too segregated by color and class, and those who need the most often get the least. We have failed to fix our immigration system and bring millions out of the shadows into full citizenship. We face continuing attacks on voting rights and unjustifiable assaults on innocent people by law enforcement. Our incarceration rates are exiling millions of men and women from mainstream America. And new forms of discrimination based on prejudice as old as time are emerging as “religious freedom” statutes in states across the nation.

I am under no illusions that the work before us on these issues will be easy. But we don’t fight for justice because it’s easy. We do it because it is what we are called to do.

Today, as my generation prepares to pass the torch to a rising generation, there’s no sugarcoating the fact that the immediate outlook appears bleak. But we will not accept efforts to roll back civil rights—not on our watch. At the same time, progressives should frankly acknowledge that we need to raise our game. When Dr. King said, “The moral arc of the universe is long, but it bends toward justice,” he meant that we should all pull together, put our shoulders to the wheel, and bend that arc together.

*Wade Henderson is the president and CEO of The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *After Eight Years, a Look Back at the Obama Administration*

**Patrick McNeil**

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Eight years ago, on January 20, 2009, Barack Obama was sworn in as the United States' 44<sup>th</sup> president, becoming the first African American elected to the position in our nation's history. Eight years later, it's worth recalling some of the reasons his two terms will be remembered as a period of progress.

Obama took over the presidency when our country was reeling from the Great Recession. His leadership helped our country recover, setting records over time for consecutive months of private-sector job growth. He also took action where he could to help and protect American workers. The first piece of legislation he signed, the Lilly Ledbetter Fair Pay Act, stands as proof of his dedication to ensuring fairness in the workplace. And the landmark consumer protection legislation he signed, known as the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank), showed his commitment to making sure the economy works for everyone—not just those at the top.

That sense of fairness and equality permeated Obama's tenure in the White House. He signed laws to reduce the discriminatory sentencing disparity between crack cocaine and powder cocaine offenses, to expand the definition of federal hate crimes and remove unnecessary obstacles to federal prosecution, and to help millions of Americans access health insurance—the latter which also included important civil rights protections. He took action—in 2012 and in 2014—to shield a number of undocumented immigrants from the threat of deportation. Obama signed an international human rights treaty to ensure that every nation provides people with disabilities the same rights as everyone else (though the Senate has yet to ratify it). And he took historic steps through his clemency initiative to help people who were convicted under overly punitive, discriminatory, and outdated sentencing laws.

Obama's presidency also fueled a notion that race relations in America were largely solved because a majority of Americans twice elected an African American to be president. Indeed, in his opinion invalidating a key provision of the Voting Rights Act, Chief Justice John Roberts wrote in *Shelby County v. Holder* that “our country has changed.” But by the end of Obama's second term, with the rise of a new civil rights activism found within the Movement for Black Lives, it had become increasingly clear that was far from the case. In August 2014, the police killing of Michael Brown in Ferguson, Mo., and of too many other unarmed people of color after him, reignited a conversation—that continues today—about what it means to live as a person of color in America, particularly after the election of a presidential candidate in 2016 whose campaign was notable for its demonization of racial, ethnic, and religious minorities. Obama's presidency was historic, both because of who he was and what he did. But the backlash has been real, and the effects of the 2016 election—on the Supreme Court, on Obama's executive actions, and on the soul of the nation—will be measurable.

In February 2015, a month before the 50<sup>th</sup> anniversary of Bloody Sunday, civil rights icon and Selma foot soldier John Lewis remarked that “If it hadn't been for that march across the Edmund Pettus Bridge on Bloody Sunday, there would be no Barack Obama as President of the United States of America.” Below we discuss what might not have been if not for the presidency of Barack Obama:

**President Obama faced unprecedented levels of obstruction during his presidency—but ultimately diversified the federal judiciary more than any other president. And he made other historic appointments along the way.**

Under Obama, the Supreme Court for the first time has three female justices, and a majority of circuit court

judges are women and people of color. He appointed 120 minority federal judges—the most in history—and greatly added to the experiential diversity of the nation’s federal courts. And he’s made history with other appointments, too. Eric Holder, for example, was the first African-American U.S. Attorney General, and his successor Loretta Lynch was the first African-American woman to hold the position. Under Obama, Janet Yellen also became the first woman to head the Federal Reserve.

Lynch’s nomination was emblematic of a troubling theme throughout Obama’s presidency: unprecedented levels of obstruction. Lynch waited 165 days to be confirmed—longer than the previous seven Attorney General nominees combined. Obstruction of three D.C. Circuit Court nominees in 2013 forced Democrats to change Senate filibuster rules. In early 2014, the Senate blocked the confirmation of Debo Adegbile to head the Civil Rights Division at the U.S. Department of Justice (DOJ) after extremists portrayed him, shamefully and inaccurately, as a buffoonish racialized caricature. Most recently, Senate Republicans’ refusal to even hold a hearing on Obama’s Supreme Court nominee Merrick Garland left the seat vacant for the new president to fill—even though the vacancy occurred with almost a year left in Obama’s second term.

#### **President Obama strongly supported the advancement of LGBT rights.**

Part of Obama’s diversification of the federal bench included appointing openly gay judges. President Bill Clinton appointed one openly gay judge, while Obama would end up appointing 11. In late 2010, Obama signed legislation to repeal the discriminatory “don’t ask, don’t tell” law banning gay and lesbian service-members from serving openly in the U.S. military (the transgender military ban ended in 2016). In 2012, Obama announced his support for same-sex marriage, which the U.S. Supreme Court legalized nationwide three years later. Obama signed executive orders barring discrimination against transgender federal employees and LGBT employees of federal contractors. In 2015, he became the first president to say the word “transgender” in a State of the Union address. And in 2016, his administration released guidance regarding the responsibility of schools, districts, and states to protect transgender and gender non-conforming students from discrimination.

And even as Congress refused to act on protections for LGBT people, the Obama administration began to interpret the Civil Rights Act’s sex discrimination ban as also protecting against sexual orientation and gender identity discrimination. But only legislation, or a ruling by the U.S. Supreme Court, would make that permanent and nationwide.

#### **In the face of Congressional inaction, President Obama took action to help (and protect) American workers.**

In addition to protecting LGBT federal workers, Obama took action to help a large swath of the American workforce. In February 2014, Obama issued an executive order raising the minimum wage for workers on federal construction and service contracts to \$10.10 an hour. The following month, he directed the Department of Labor (DOL) to propose revisions to modernize and streamline our existing overtime regulations. Obama issued two orders on equal pay in April 2014. One banned retaliation against employees of federal contractors for discussing their wages. The other instructed DOL to create new regulations requiring federal contractors to submit data on employee compensation. Soon after, he signed the Fair Pay and Safe Workplaces executive order, requiring federal contractors—before they can receive new federal contracts—to disclose labor law violations that have occurred in the last three years.

In 2015, Obama signed an order requiring federal contractors to provide employees with up to seven days of paid sick leave per year, and he directed the Office of Personnel Management (OPM) to explore modifying its rules to delay criminal history inquiries until later in the hiring process—an important move to help reintegrate formerly incarcerated Americans back into their communities. And in 2016, the Consumer Financial Protection Bureau (CFPB), created by Obama’s landmark Dodd-Frank law, proposed rules to tackle payday lending. More than 1 million comments were filed on the proposed rulemaking—an unprecedented number.

#### **President Obama revitalized the Civil Rights Division, the “crown jewel” of the Justice Department.**

When he took office in 2009, Attorney General Eric Holder vowed to make the Civil Rights Division the “crown jewel” of the DOJ. Indeed, in his 2010 State of the Union address, Obama remarked that “My administration has a Civil Rights Division that is once again prosecuting civil rights violations and employment discrimination. We finally strengthened our laws to protect against crimes driven by hate.” From fair housing, equal opportunity in education, voting rights, disability rights, and religious freedom, to combating hate crimes and human trafficking, the division has been revitalized by former civil rights lawyers—like Tom Perez and Vanita Gupta—who led the division and worked to hold institutions accountable. In the wake of the shooting death of Michael Brown, for example, the division’s investigations of police departments in cities like Ferguson, Baltimore, and San Francisco have found extremely troubling racial biases in police operations. In 2016, when announcing the division’s lawsuit against North



Carolina over the state's anti-LGBT law, Gupta—the acting head of the division—stated plainly that “Transgender men are men—they live, work and study as men. Transgender women are women—they live, work and study as women.” On these issues of police accountability, transgender rights, and so many others, a strong Civil Rights Division has seriously made a difference.

President Obama's accomplishments have been significant, and the civil and human rights community will continue to protect our nation's most vulnerable, to combat efforts to turn back the clock on progress, and to ensure that everyone has a seat at the table.

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President Obama speaks in front of the Edmund Pettus Bridge in Selma on the 50th anniversary of Bloody Sunday. Official White House Photo by Pete Souza, obtained through Wikimedia Commons.

## *Americans Feel the Effects of a Gutted Voting Rights Act*

**Patrick McNeil**

After Congress failed to restore the Voting Rights Act (VRA) in 2015 during the law's 50<sup>th</sup> year, advocates hoped that in 2016—ahead of the first presidential election in 50 years without the VRA's full protections—lawmakers would finally act. But even as voter suppression during primary and general elections made headlines, and with federal courts knocking down state voting restrictions for discriminating against minority voters, Congress ended the year without so much as holding a hearing to investigate voting discrimination.

In early February, it seemed like Congress might actually do something to address the issue. In a meeting with the Congressional Black Caucus, House Speaker Paul Ryan, R. Wis., said he supported the Voting Rights Amendment Act—a bill introduced in January 2015 that would help restore the VRA. But he also said he couldn't do anything about it, and that legislation would have to go through the House Judiciary Committee where Rep. Bob Goodlatte, R. Va., was chairman. That didn't please Wade Henderson, president and CEO of The Leadership Conference, who responded by saying that "Lip service is not public service. While voters of color appreciate Speaker Ryan's acknowledgement of the need to restore the VRA, that alone does nothing for the millions of voters who have to fight tooth and nail just to exercise their right to vote."

Later that month, Ryan made another encouraging, albeit symbolic, gesture. During a bicameral, bipartisan ceremony in Emancipation Hall of the U.S. Capitol, members of Congress, including Ryan, awarded Selma's foot soldiers the Congressional Gold Medal. One of Selma's marchers, Rev. C.T. Vivian, responded to the medals by wondering if they were the best way to honor the marchers who had helped inspire the VRA. "The Congress that wants to honor us won't get its act together to restore what we've lost, what we worked so

hard for... We won't allow our legacy to be neutered and relegated to the museums. A medal will not mollify us. The way to truly honor our sacrifice is to fully restore the Voting Rights Act."

In March, House Majority Whip Steve Scalise, R. La., joined the delegation of Rep. John Lewis, D. Ga., in Selma to commemorate Bloody Sunday's 51<sup>st</sup> anniversary. Scalise's actions were only symbolic, as he ignored the VRA for the rest of the year.

During the presidential primaries, the effects of a gutted VRA were felt across the country. Voters in North Carolina, for example, experienced electoral chaos as a result of the state's monster voter suppression law. In Arizona, some voters waited more than five hours to vote because of polling place closures in Maricopa County—where people of color comprise 40 percent of the population. Henderson said "the disenfranchisement taking place in these states since freed from Section 5 oversight is a canary in the coal mine, a sign of things to come."

In June, The Leadership Conference Education Fund and several partner organizations issued a report called "[Warning Signs](#)," which outlined voter suppression activities in five states that were once fully or partially covered by Section 5 of the VRA and were—at the time—host to competitive 2016 contests for 84 Electoral College votes, two Senate seats, and one governor's seat. The report found that, since 2013 when the Supreme Court gutted the VRA in *Shelby County v. Holder*, all five—North Carolina, Arizona, Florida, Georgia, and Virginia—had engaged in deceptive and sophisticated practices to disenfranchise voters. The report was released as part of a nationwide week of action to restore the VRA, endorsed by more than 140 organizations.

It didn't help that the U.S. Department of Justice announced that, because of *Shelby*, it would severely cur-

tail its federal election observer program, which Henderson warned “creates an open invitation for more voting discrimination and voter suppression to go unchecked in the November election.”

But some relief came in July. The U.S. Court of Appeals for the Fifth Circuit ruled that Texas’ strict voter ID law violated the VRA because it discriminates against Black and Hispanic voters. The court also asked a lower court to find a remedy to prevent 600,000 Texans who lack a required form of ID from being disenfranchised during the presidential election. The following week, a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit ruled that North Carolina’s monster voter suppression law, H.B. 589, was enacted with a “racially discriminatory intent” to “target African Americans with almost surgical precision.” The law was enacted in August 2013—just weeks after the U.S. Supreme Court gutted the VRA. The decision meant that photo ID would not be required for the general election. It also restored provisions that H.B. 589 had eliminated, including a week of early voting, same-day registration, out-of-precinct voting, and a preregistration program for 16 and 17 year olds.

By the VRA’s 51<sup>st</sup> anniversary in August, several other courts had struck down or weakened voting restrictions in other states across the country. The victories proved that voting discrimination efforts are widespread, require massive investments of time and money to litigate, and intentionally harm voters of color. It took years of litigation to strike down or weaken the laws, meaning countless voters were denied the right to cast ballots in the meantime—votes they’ll never get back. Still, Republican leadership in Congress remained uninterested in holding a hearing on legislation to restore the VRA.

Later in August, The Leadership Conference urged the Organization for Security and Cooperation in Europe (OSCE) to expand its election monitoring mission in the United States and to target resources to states where voter discrimination and intimidation was most likely. “A confluence of factors has made the right to vote more vulnerable to racial discrimination than at any time in recent history. The need for additional election observers is paramount. The unprecedented weakening of the Voting Rights Act has led to a tidal wave of voter discrimination efforts nationwide and has required the United States to drastically scale back its own election monitoring program,” the letter explained. The Organization of American States also announced that it would send its first-ever election observation mission to the United States—a move The Leadership Conference applauded.

Two weeks before the election, 89 national civil rights and voting rights groups urged state election officials

to create plans to prevent voting discrimination. In letters sent to state election officials in every state, the groups cited their concern with the loss of Section 5 of the VRA. The national organizations also partnered with state and local groups to send letters to officials in Arizona, Florida, Georgia, North Carolina, Texas, and Virginia, citing specific examples of voting discrimination in those states.

In early November, just before the election, The Education Fund released a report, “The Great Poll Closure,” to document how states and counties with records of voting discrimination—both current and historic—have closed hundreds of polling places since *Shelby* eliminated federal oversight of their voting changes. The report was based on a study of 381 of the approximately 800 counties that were covered by Section 5 of the VRA. According to the analysis, voters in these counties had at least 868 fewer places to cast ballots in the 2016 election than they did in past elections, a 16 percent reduction. Of the counties studied, 43 percent reduced voting locations—some on a massive scale.

In addition to these closures, voters in 14 states faced new restrictions for the 2016 election. Some of the restrictions were weakened by federal courts—others were struck down. One presidential candidate’s recruitment of supporters to challenge and intimidate voters at the polls—combined with last-minute lawsuits challenging voting rules across the country—likely confused voters and poll-workers, and disenfranchised far too many Americans. In 2017, lawmakers must come together as they have before and protect the right to vote for all eligible Americans by working to restore the Voting Rights Act.

*Patrick McNeil is digital communications manager for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

# *ESSA Implementation Takes Center Stage*

**Tyler Lewis**

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After a huge legislative fight in 2015, civil and human rights groups, as well as education reform organizations, turned their attention in 2016 to the implementation of the new federal education law, the Every Student Succeeds Act (ESSA), and to work for policies that ensure states, districts, and schools are providing the educational experiences that all children need to succeed.

ESSA, signed into law by President Obama on December 10, 2015, is the latest reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. The original law was a centerpiece of President Lyndon Johnson's War on Poverty and was developed in response to the civil rights and low-income communities' demands that the federal government do more to address poverty and limited educational opportunity for people of color.

## **Federal Regulations**

In preparation for the federal regulatory process that would address the law's implementation, the U.S. Department of Education (ED) in January held a series of public hearings on issues and provisions within Title I of the law. Title I provides the bulk of federal funding for school districts and schools and includes the majority of the law's accountability and reporting requirements.

One of the big fights during the legislative campaign in 2015 between civil rights groups and Republicans was over the proper role of the department and the U.S. Secretary of Education in education policy decisions. Ultimately, ESSA restricted some of the secretary's power, but the department still had enforcement power that civil rights advocates felt must be deployed in order to make the new law work well for all children. Citing the long history of state and local decisionmaking that failed to ensure educational opportunity for all children, [55 civil rights organizations sent a letter in March to Secretary John King](#), urging the department to "use its full authority" to ensure the law was implemented in

ways that would serve all children, particularly girls and boys of color, English Learners, students with disabilities, Native American students, low-income students and those who are migrant, homeless, in foster care or returning from or placed in juvenile detention, or LGBTQ. The groups said that "the only way for states, districts, and schools to be in compliance and consistent with the law's intent is through robust and meaningful federal regulation and oversight."

The first test would come just a month later during the negotiated rulemaking process. Negotiated rulemaking is a process used by federal agencies to negotiate the terms of a regulation prior to the publishing of the draft regulation. It was decided early on in the regulatory process to enter into negotiated rulemaking around two areas: assessments and a little-known, but longstanding provision related to resource equity called "[supplement, not supplant](#)," which addresses how schools are funded within districts.

The Leadership Conference served as a negotiator on behalf of the civil rights community alongside the National Disability Rights Network, NAACP Legal Defense and Educational Fund, and the Migration Policy Institute. The civil rights community pressed hard to protect the rights and interests of students with disabilities, English learners, students of color, and low-income students during the process.

The process resulted in consensus around assessment regulations, but the negotiators couldn't agree on how the department should regulate the "supplement, not supplant" provision despite urging from [30 civil rights and education groups](#).

This provision has been in the law since the passage of the original law in 1965. But during the legislative fight over the reauthorization in 2015, Congress expressly forbade the department from using the process it had

always used to enforce the provision. Congress made no mention of how the department should enforce the requirement, but issues regarding local funding for schools have always been controversial. When legislators learned that the department was planning to issue a regulation that would require equity, it ignited a firestorm that lasted most of the year.

Most of this opposition to regulating the “supplement, not supplant” provision of the law is rooted in support for the ways that districts have historically managed their funds, an unwillingness to change that system, and resistance to federal involvement in local decision making. The civil rights community supported the department’s efforts to find a way to regulate the provision, and worked hard to urge the department to issue the strongest possible rule.

But Senate HELP Committee Chair Lamar Alexander, R. Tenn., and ESSA’s lead sponsor in Congress, [argued that the department’s move to regulate the provision as proposed was illegal](#). The Obama administration did not finalize the rule before its term ended.

While the fight over the “supplement, not supplant” provision was perhaps the most contentious of the year, nearly every regulation issued by the department reignited (if only briefly) debates around the proper role of the federal government in education policymaking.

For its part, the civil rights community pushed all year for the department to issue strong regulations that would ensure that the rights of the most vulnerable students were protected, calling the initial accountability regulations “[a good first step](#)” and issuing a set of recommendations for how the department could improve the regulation.

Ultimately, the final accountability regulation issued in November was met with cautious support. [According to The Leadership Conference](#), “while there are areas of the final regulation that fall short, the final rule includes important protections to support students and is essential to the successful and inclusive implementation of the law in a way that is consistent with its civil rights legacy.”

**States Develop Plans for Holding Schools Accountable**  
Meanwhile, states moved quickly to put together the state accountability plans that are required under the law.

Most of that activity involved state education officials conducting outreach to various stakeholders—including parents and civil rights groups—as part of their requirement under the law to “meaningfully” engage parents and communities in the processes that lead to the state plans.

That work looked different in every state. Some states, including Arizona, Colorado, Illinois, Tennessee, and

Oregon, held [listening tours across their states](#) to hear from parents and communities. In other states, like Colorado, Alabama and Georgia, committees of parents, community leaders, teachers, administrators, and others were created to formalize input and feedback into the process.

The civil and human rights community worked hard to ensure that parents and community leaders of color were included in these processes as much as possible. Organizations like the National Urban League and the National Council of La Raza were quite successful in ensuring their local affiliates and leaders were part of the process, which will be critical to ensure the state plans are reflective of, and responsive to, the needs of all students.

But holding states accountable wasn’t without its hiccups. In May, Colorado attempted to allow districts to hide educational inequities by collapsing the reporting about diverse groups of students, including students of color, English learners, and students with disabilities, into one large category called a “combined subgroup” in its state accountability plan.

The response by the civil rights and education advocacy communities in Colorado and nationally was swift. A coalition of more than 20 organizations [sent a letter to the state board of education](#) urging the state department to reconsider their proposal. Because the Colorado proposal was the first major move by a state to shirk its legal duties to all students, [national civil rights leaders weighed in](#) as well to ensure that other states wouldn’t try similar proposals.

The work paid off—the Colorado department withdrew its proposal—and sent a clear signal to states that the civil rights community was watching.

## Conclusion

The real test will come in spring 2017 when the state plans are due. ESSA requires that the plans be available for public comment before submission to the U.S. Department of Education. While the participation of parents, community leaders, and civil rights advocates in the initial drafting phase was significant, the comment period will offer another opportunity for these stakeholders to weigh in and push the states to do right by their most vulnerable students in the final plans that are submitted to the federal government.

*Tyler Lewis is the director of messaging and project management for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*



## *In Historic Fashion, Senate Fails to do its Job on Federal Judges*

**Patrick McNeil**

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In 2016, the Senate slowed judicial confirmations to a crawl by confirming only 11 nominees—the fewest number since 1960. The Senate Republicans’ slow-walking of Loretta Lynch’s nomination to be U.S. Attorney General in 2015 was also historic—taking more than five months—but would end up demonstrating for America just a fragment of what Republicans would do in 2016. Judicial confirmations did not improve, and the unprecedented obstruction of a U.S. Supreme Court vacancy spawned a new mantra for activists and advocacy organizations across the nation aimed at Senate Republicans: Do your job.

**Unprecedented Blockade of a Supreme Court Nominee**  
Supreme Court Justice Antonin Scalia passed away in February, creating a vacancy on the Court and immediately polarizing Washington. Just hours after Scalia’s death, Senate Majority Leader Mitch McConnell, R. Ky., released a statement saying, “The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new President.” Meanwhile, President Obama delivered remarks saying something very different. “I plan to fulfill my constitutional responsibilities to nominate a successor in due time,” Obama said. “There will be plenty of time for me to do so, and for the Senate to fulfill its responsibility to give that person a fair hearing and a timely vote. These are responsibilities that I take seriously, as should everyone.”

A coalition of civil rights, voting rights, public interest, environmental, labor, religious, and education groups agreed. In late February, 82 organizations wrote to Senate Judiciary Committee Chairman Chuck Grassley, R. Iowa, and the 10 other Republicans on the committee, with a clear message: “We believe in upholding the Constitution. So should you.”

On March 16, Obama fulfilled his responsibility by nominating Merrick Garland, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, to fill the vacancy. The Leadership Conference applauded his nomination and Obama’s commitment to the Constitution and our democracy.

“Judge Garland is the most well-prepared Supreme Court nominee in generations. From Supreme Court clerk, to the Justice Department, to the private sector, to overseeing the prosecutions of the Oklahoma City bombers, to Chief Judge of the D.C. Circuit, Garland has more federal judicial experience than any nominee in history. His 1997 bipartisan confirmation was supported by seven sitting Republican senators: Dan Coats, Thad Cochran, Susan Collins, Orrin Hatch, James Inhofe, John McCain, and Pat Roberts,” said Wade Henderson, president and CEO of The Leadership Conference, after Garland’s nomination. “Filling this vacancy should absolutely be a priority for the Senate. Now that the president has done his job, it’s time for Senate Republicans to drop their unprecedented and destructive blockade on any nominee. To do otherwise would create a constitutional crisis and handcuff all three branches of government.”

Henderson’s statement would prove to be prescient. As the Supreme Court issued decisions throughout May and June, it became clear that the short-handed Court’s eight justices would be unable to resolve every case. In the 4-4 split decision that has perhaps received the most attention, the justices issued no determinative ruling on Obama’s November 2014 executive actions on immigration. “The inability of the short-handed Supreme Court to render a decision in *U.S. v. Texas* is a disappointing setback for millions of undocumented immigrants in our country, and a major blot on the rule of law,” Henderson said that day.

The obstruction broke records and continued for the entire year. Garland became the first Supreme Court nominee in history to have his nomination span multiple Court terms, and the first to wait more than 125 days for a confirmation vote. On day 202 of his nomination, which marked the first day of the new Court term, advocates and legal experts gathered outside to deliver their refrain once more: Do your job, hold a hearing and a vote on Garland's nomination.

### **Senate Republicans Also Stalled Lower Court Nominations**

But it wasn't just the Supreme Court that was affected by the obstruction. Senate Republicans, as they had done in 2015, blocked district and circuit court nominees as well. Ahead of a seven-week summer recess, the Senate confirmed just eight district court nominees, one circuit court nominee, and two nominees to the Court of International Trade. After that, McConnell didn't schedule votes on any additional nominees, often citing an irrelevant statistic about the total number of judges Obama and President George W. Bush had confirmed. What *was* relevant—that judicial vacancies under Obama had skyrocketed—was ignored by the majority leader. Additionally, judicial emergencies more than tripled from 12 when Republicans took control of the Senate in January 2015 to 38 by the end of 2016.

The stonewalling of judicial nominations wasn't met with silence. On several occasions, Senate Democrats took to the Senate floor to ask for votes on pending nominees—and each time, McConnell or another Republican was waiting to object. During one memorable exchange, McConnell objected to holding votes on nominees, and instead offered a package of nominees that skipped over the next two in line—who were both Black men. Cory Booker, a Black senator from New Jersey whose nominee would have been skipped over, wasn't pleased.

“At a time that this nation is looking at our judicial system as needing to confront issues of racial bias. At a time that judicial organizations of all backgrounds are pointing out the need for diversity on the federal court, what is being suggested right now is that we come up with a bargain to skip over the two longest-waiting district court judges, who happen to be the only two African Americans on the list of the next 15—that to me is unacceptable,” Booker said. “The perception alone should be problematic to all of us in this body.”

By the end of the year there were more than 100 judicial vacancies nationwide and dozens of judicial nominees left pending in the Senate Judiciary Committee and on the Senate floor, including 27 women and 18 people of color—many who would have made history. In September, Obama nominated Abid Qureshi to the D.C. District

Court. He would have been the first-ever Muslim federal judge. Jennifer Puhl, nominated to the Eighth Circuit, would have been the first woman in North Dakota on the federal bench. Myra Selby would have been the first African American and first woman from Indiana on the Seventh Circuit. And the list goes on.

By early December, lawmakers left for the holidays. Senate Republicans hadn't allowed a vote on a judicial nominee in more than five months—and hadn't even held a hearing on Garland. With a new president unlikely to re-nominate the same nominees—including the 25 who had been vetted and were waiting for a vote on the Senate floor—the process starts all over again in 2017. And throughout the year, as Republicans obstructed, justice delayed for many Americans meant justice denied.

*Patrick McNeil is digital communications manager for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

# *Recent Developments in Policing and Technology*

**Compiled by Leadership Conference Education Fund Staff**

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In recent years, civil rights groups have begun sounding the alarm about new surveillance and data gathering tools that can assemble detailed information about any person or group, thereby creating a heightened risk of profiling and discrimination. The groups have highlighted the fact that police departments are failing to implement safeguards for the communities they have sworn to protect. These tools are often put into place with very little transparency and absolutely no accountability, which threatens the Constitution's promises of equal protection and due process. According to the groups, protecting the public and the civil and human rights of every single American should not be exclusive; both can be accomplished, but only if policies and practices are developed in concert with the community—not behind its back.

## **Racial Bias in Predictive Policing**

In the 2002 Tom Cruise science fiction thriller, “Minority Report,” police would enforce what was called “pre-crime” and punish people for crimes they had yet to commit. Today, predictive policing is commonplace with systems that use flawed data to profile entire communities.

Late in August, a broad coalition of civil rights, privacy, and technology organizations issued a sweeping rebuke to the use and misuse of predictive policing products by police departments. The 17 organizations signed a shared statement of civil rights concerns about the systemic flaws, inherent bias, and lack of transparency endemic to predictive policing products and their vendors. The groups pointed out how these products exacerbate deep dysfunction and disproportionate policing practices that are “systemically biased against communities of color and allow unconscionable abuses of police power.”

Predictive policing products are marketed with names like “Beware,” “Hunchlab,” and “PredPol.” Police

nationwide have begun using them to predict who might commit crimes or where crimes might be committed, and to target policing to those people and places. However, as the groups noted, “The data driving predictive enforcement activities ... is profoundly limited and biased. ... As a result, current systems reinforce bias and sanitize injustice.”

Released the same day, the technology firm Upturn’s new report, “Stuck in a Pattern,” found “a trend of rapid, poorly informed adoption” of predictive policing, with “pervasive, fundamental gaps in what’s publicly known” about how these systems work.

Among six key concerns in the statement, the groups condemned departments for not disclosing or seeking public input on the use of these products, and the vendors for “shrouding their products in secrecy, and even seeking gag clauses or asking departments to pledge to spend officer time resisting relevant public records requests.” The statement also noted promising uses of data in policing, pointing out that, “Even within a broken criminal justice system, there are places where data can be a force for good: For example, data can identify mentally ill people for treatment rather than punishment, or provide early warning of harmful patterns of officer behavior. However, today, most ‘predictive policing’ is not used for such constructive interventions.”

## **Police Use of Face Recognition**

In October, 50 national civil rights, civil liberties, faith, and privacy organizations sent a letter to DOJ urging it to investigate the increasing use and impact of face recognition by police. The letter, sent in partnership with the ACLU and The Leadership Conference on Civil and Human Rights, came amid mounting evidence that the technology is violating the rights of millions of Americans and having a disproportionate impact on communities of color.

The letter, sent to the U.S. Department of Justice’s Civil Rights Division, explained how federal, state, and local police forces use driver license photos to identify suspects—without warrants, accuracy tests, or audits. “This technology supercharges the racial bias that already exists in policing,” said Sakira Cook, counsel at The Leadership Conference. “For the good of the nation, we can’t afford to let these inherently biased systems operate without any safeguards.”

On the same day, Georgetown Law’s Center on Privacy & Technology released a report finding that police departments across the country are frequently using face recognition technologies to identify and track individuals—whether crossing the street, captured on surveillance cameras, or attending protests. The report highlighted that existing deficiencies are likely to have a disparate impact on African Americans.

*This story was compiled by staff of The Leadership Conference Education Fund.*

## *States and Obama Administration Act to Increase Economic Security*

**Arielle Atherley**

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While Congress did very little in 2016 to address improving Americans' economic security, there was progress in the states on issues like raising the minimum wage. And thanks to the Obama administration, new policies and protections are in place to help American workers. In 2017, the new administration could attempt to roll back many of these policies, but the civil and human rights community remains committed to protecting them.

### **Pay Equity and the Minimum Wage**

The official poverty rate decreased by 1.2 percent between 2014 and 2015, leaving approximately 41.3 million people living in poverty. Of that group, women were 35 percent more likely to live in poverty than men. The proposed Paycheck Fairness Act would update and strengthen the Equal Pay Act of 1963 by closing loopholes in the law that have consistently obstructed its effectiveness in ending pay discrimination, and would eliminate certain unfair defenses for pay discrimination, prohibit retaliation for employee discussion about salaries, and improve wage data collection. Congress failed to act on that legislation in 2016 despite a persistent and pervasive gender-based wage gap. Women on average are paid approximately 79 cents for every dollar White, non-Hispanic men make; the gap is exacerbated for African-American women, who make 60 cents on average and Hispanic women, who make 55 cents on average.

In January 2016, Massachusetts passed a pay equity law requiring employers to pay men and women equally for comparable work. This was followed by a September 2016 announcement that the Equal Employment Opportunity Commission (EEOC) would collect summary pay data, broken down by gender, race, and ethnicity, from all businesses with 100 or more employees. The data collection will cover approximately 60,000 employers and 63 million employees.

Raising the federal minimum wage would also help narrow the gender wage gap, but Congress again failed to vote on legislation like the Raise the Wage Act to raise the minimum wage to \$12 per hour and eliminate the subminimum wage for tipped working people—which has now been frozen at \$2.13 per hour for more than a quarter century.

However, California, New York, Oregon, and Washington, D.C., passed legislative minimum wage increases in 2016, and voters in Arizona, Colorado, Maine, and Washington voted on Election Day to raise their states' minimum wage. There's clearly momentum for reform outside of Washington: dozens of cities and counties and 17 states have now passed increases over the past three years.

### **Paid Family Leave and Paid Sick Days**

As of 2016, the United States is the only member of the Organization for Economic Co-Operation and Development (OECD) that does not require employers to provide workers with paid family leave upon the birth of a child or to care for an ill family member for even a shorter-term paid sick leave. Too many workers, particularly low-income women and women of color, face a choice between their job and caring for an ill parent, a newborn child, a sick child, or even their own health during pregnancy.

In February 2016, the U.S. Department of Labor (DOL) announced new rules to implement President Obama's Executive Order 13706 to establish paid sick leave for federal contractors. The Leadership Conference, along with 18 organizations, submitted comments in strong support of the rule. In late September, DOL finalized its rule to implement the executive order, which requires federal contractors to provide employees with up to seven days of paid sick leave per year.



Though the executive order is a step in the right direction, the Healthy Families Act, which would set a national paid sick days standard to help working families meet their health and financial needs, has remained stalled in Congress.

### **Payday Lending**

In June 2016, the Consumer Financial Protection Bureau (CFPB) proposed a rule to rein in predatory payday and car title lending. The proposed rule would require lenders to take steps to make sure consumers have the ability to repay their loans and would cut off repeated debit attempts that rack up fees. These proposed protections would cover payday loans, auto title loans, deposit advance products, and certain high-cost installment and open-end loans.

Consumer advocates viewed the rule as largely on the right track, though the proposal could still put many people at risk of falling into the debt trap because of loopholes and exemptions. Debt trap lenders are drivers of inequality, notoriously targeting older Americans, men and women in military service, and communities of color. In fact, studies show that payday lenders choose to concentrate their store-fronts in communities of color, meaning a disproportionate number of debt-trap loans go to people of color. Payday loans and debt-trap lending effectively exacerbate already large racial and gender wealth disparities.

Many states have already rejected payday lending or enacted protections to reduce the hardship posed by payday loans, but additional states and the federal government must work to catch up. In October 2016,

consumer groups submitted over 400,000 comments urging the CFPB to adopt a strong payday rule to protect vulnerable populations. The bureau has the power to significantly reform the industry and promote affordable, non-predatory lending. A final rule should end the abusive practices of payday-style lenders.

### **Overtime Rules**

Since 1975, the percent of salaried workers protected by overtime laws has plummeted from 62 percent to a miniscule 8 percent. This drastic shift in overtime protections undermines the 40-hour workweek as the pillar for economic security. Americans, especially female-led households and communities of color, cannot afford to work overtime without receiving any overtime pay.

In May 2016, the DOL issued a final rule to update overtime protections for American families that will raise the salary threshold from \$23,660 to \$47,476. The rule also establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the 40<sup>th</sup> percentile.

The final rule extends overtime pay and the minimum wage to nearly five million workers within the first year of its implementation and raises Americans' wages by about \$12 billion over the next 10 years. The rule was set to take effect on December 1, but in November, a district court judge in Texas issued a nationwide preliminary injunction on the rule.

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Then-Secretary of Labor Tom Perez speaks at a June 2016 Education Fund convening on strengthening economic security for working families.

## *As Sentencing Reform Stalls, President Obama Takes Historic Steps on Clemency*

**Patrick McNeil**

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At the end of 2015, a bipartisan group of senators introduced the Sentencing Reform and Corrections Act—a major criminal justice reform package aimed at reducing some mandatory minimum sentences for nonviolent people who were convicted of drug offenses and curbing recidivism. In addition to applying the Fair Sentencing Act of 2010 retroactively—a law that decreased the sentencing disparity between powder and crack cocaine offenses—the bill also provided for prison reform based on the CORRECTIONS Act, a proposal that allows some currently incarcerated people to qualify for early release through participation in recidivism reduction programs. By the end of October 2015, the Senate Judiciary Committee had advanced the bill by a 15-5 vote.

In the House, another bipartisan group of lawmakers introduced the Sentencing Reform Act of 2015 to reform federal sentencing laws. The House version of the bill, which did not include the CORRECTIONS Act piece, passed out of the House Judiciary Committee by voice vote on November 18, 2015.

### **Sentencing reform stalled in both chambers.**

With a limited congressional schedule in 2016, advocates understood the urgency of getting votes on justice reform bills. “The window of opportunity is here. To have a coalition of small government conservatives and civil rights-minded progressives, an engaged Congress, a bipartisan bill ready for the Senate floor, and a president willing to sign it into law is a rare chance to show the country that Washington can both reduce the size of government and protect its citizens all at once,” said Wade Henderson, president and CEO of The Leadership Conference, in a statement in January. “Working through disagreements is a part of legislating; now let’s continue moving forward in 2016.”

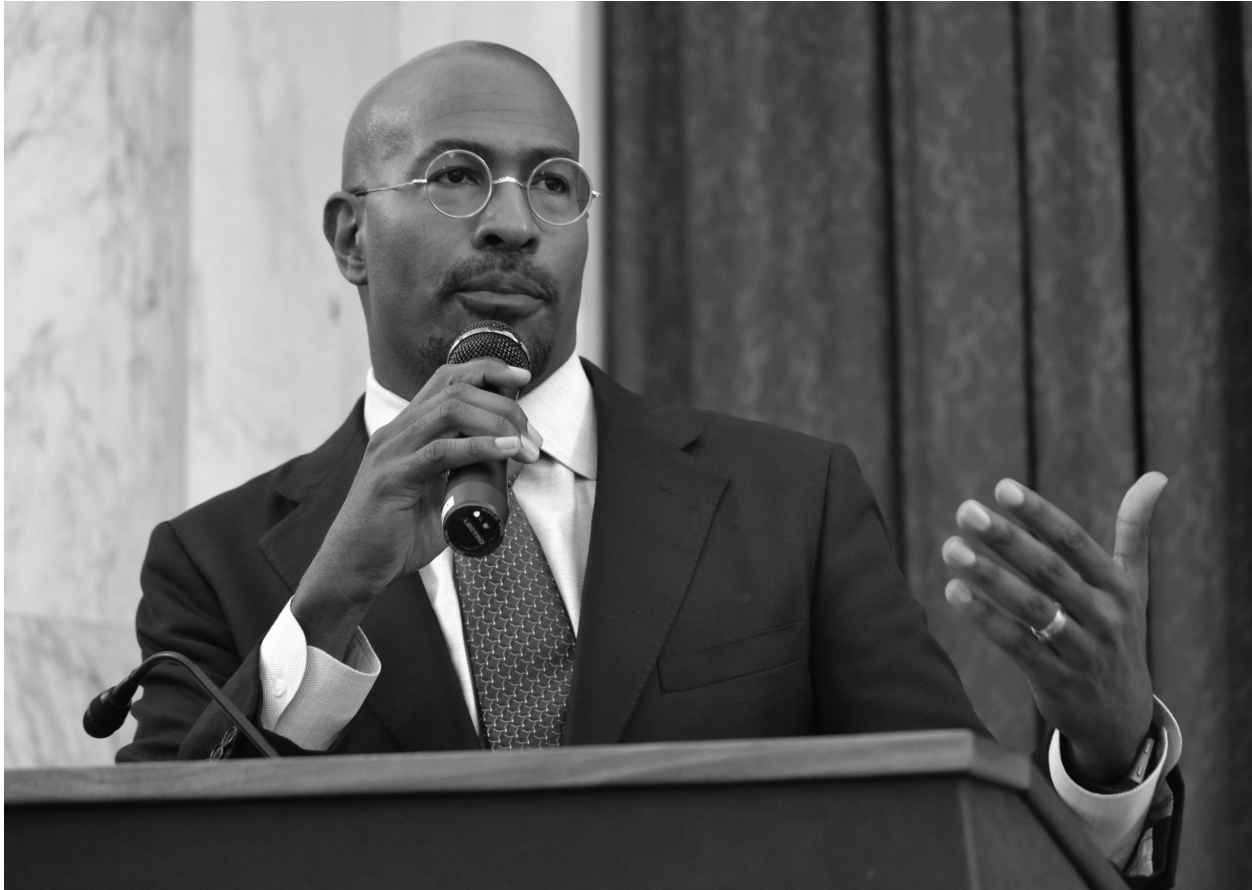
In February, the House Judiciary Committee approved the Recidivism Reduction Act, a bill similar to Title 2

of the Senate’s Sentencing Reform and Corrections Act, which (along with the Sentencing Reform Act) was part of a series of criminal justice bills that the House intended to move individually and then bundle later. Though the House legislation wasn’t as strong as its Senate companion, it was still an encouraging step forward.

The following day, the heads of five civil rights and criminal justice organizations sent a letter to a bipartisan group of Senate Judiciary Committee members urging them to stay the course on sentencing reform. “We commend the bipartisan effort that has been developed over the past several months to support the Sentencing Reform and Corrections Act, which should serve as a model for further efforts to solve the problems that have become pervasive in America’s justice system,” the leaders wrote.

By late April, sentencing reform still hadn’t made it to the House or Senate floor—but on the Senate side, there was a glimmer of progress. On April 28, a revised version of the sentencing bill was announced with an additional group of bipartisan cosponsors. The same day, actors, advocates, and senators came together on Capitol Hill to call on Senate Majority Leader Mitch McConnell, R. Ky., to move quickly and allow a vote on sentencing reform. The event, “#JusticeReform-NOW: Celebrities for Justice & Voices of Impacted People,” drew hundreds of advocates and congressional staffers and was sponsored by The Leadership Conference, #cut50, and the American Civil Liberties Union (ACLU). Sens. Dick Durbin, D. Ill., and Mike Lee, R. Utah, were honorary co-hosts and both spoke at the event.

Durbin highlighted the case of Alton Mills, who was a low-level drug courier sentenced to a mandatory term of life in prison under federal “three strikes” laws. Mills’ prison sentence was commuted by President Obama in December 2015 after he spent 22 years in prison.



Van Jones, founder of #cut50, speaks at an April 2016 event in Washington, D.C. featuring advocates, senators, and clemency recipients. The event was cosponsored by #cut50, The Leadership Conference, and ACLU.

At the event, Mills was joined by seven other formerly incarcerated leaders sentenced under harsh and racially biased drug laws who were also granted clemency.

But lengthy breaks made getting anything through Congress particularly difficult in 2016, when the customary “August recess” lasted seven weeks—and when another six-week break before the election made legislating in Washington nearly impossible. Prior to the Senate’s mid-November return, The Leadership Conference and four other civil rights organizations wrote to McConnell to express their deep disappointment that he hadn’t brought bipartisan sentencing reform legislation up for a vote. The organizations had reason to be discouraged; at that point in October, the bill had been languishing on the Senate floor for more than a year.

“We hope that your words and experiences over the last 50 years have been a down payment on a commitment to civil rights,” the groups wrote, citing McConnell’s attendance at the 1963 March on Washington and his commemoration of Dr. King’s life since that time. “By bringing up [the bill] for a vote, you will demonstrate a firm commitment to the advancement of civil rights, not only in words but also in action.” By the end of Congress’s

lame-duck session, neither McConnell nor Speaker Paul Ryan managed to bring up legislation for a vote.

#### **President Obama grants record-breaking number of commutations.**

In the absence of congressional action, Obama made history in 2016 by granting more than one thousand commutations—a total of 992 in 2016 and 1,176 overall (and by the time he left office in January, that number jumped to more than 1,700). It was the most in a single year by any president and more than the last 11 presidents combined. In May, the White House published a story by Obama discussing his clemency initiative.

“While I will continue to review clemency applications, only Congress can bring about the lasting changes we need to federal sentencing. That is why I am encouraged by the bipartisan efforts in Congress to reform federal sentencing laws, particularly on overly harsh mandatory minimum sentences for nonviolent drug offenses,” Obama wrote. “Because it just doesn’t make sense to require a nonviolent drug offender to serve 20 years, or in some cases, life, in prison. An excessive punishment like that doesn’t fit the crime. It’s not serving taxpayers, and it’s not making us safer.”

Congress never answered his call.

**Obama administration takes other critical steps forward.**

The Obama administration took action on a number of other justice reform issues in 2016. In March, the U.S. Department of Justice (DOJ) sent a letter to chief judges and court administrators taking a strong stance against unjust court practices and fines for petty offenses that target and trap low-income people in a cycle of mounting debt and unnecessary incarceration. DOJ also announced a package of resources and a competitive grant program to help state and local efforts to reform harmful practices related to the assessment and enforcement of fines and fees. The following month, the White House announced that the Office of Personnel Management would be directing some federal agencies to “ban the box” on job applications, thereby giving formerly incarcerated job applicants a fair chance to work in government.

In June, DOJ announced that all federal law enforcement officers and prosecutors would receive mandatory training in implicit bias—which Leadership Conference President Henderson said “sends a clear signal to the nation that there’s no room for discrimination in America’s justice system.” In August, DOJ said it would begin phasing out the use of private prisons, setting an example—advocates hoped—for the Department of Homeland Security to do the same regarding immigrants housed in private prisons.

In 2017, under a president who questions the possibility of implicit bias and who has called for a nationwide stop-and-frisk policy, The Leadership Conference will continue working with bipartisan members of Congress to pass meaningful justice reform.

*Patrick McNeil is digital communications manager for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*



## *The 40<sup>th</sup> Annual Hubert H. Humphrey Civil and Human Rights Award Dinner*

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The 40<sup>th</sup> annual Hubert H. Humphrey Civil and Human Rights Award Dinner was held on May 11, 2016, at the Washington Hilton in Washington, D.C.

The Hubert H. Humphrey Civil and Human Rights Award is presented to those who best exemplify “selfless and devoted service in the cause of equality.” The award was established by The Leadership Conference in 1977 to honor Hubert Humphrey and those who emulate his dedication to and passion for civil rights.

The 2016 honorees were The Honorable Nancy Pelosi, current Democratic Leader of the House of Representatives and the first woman Speaker of the House, and Bryan A. Stevenson, lawyer, social justice activist, founder and executive director of the Equal Justice Initiative, and a professor at NYU School of Law.

The Honorable James E. Clyburn introduced Pelosi. Elaine Jones, a past Humphrey Award recipient and former director-counsel of the NAACP Legal Defense and Educational Fund, accepted the award on behalf of Stevenson, who could not be present but recorded a video message for the audience.

Prior to the dinner, a distinguished array of civil and human rights champions, including members of the executive branch, both houses of Congress, business leaders, educators, civil and human rights leaders, and the next generation of social justice advocates, attended The Leadership Conference Education Fund reception, which was sponsored by UPS.

The 2017 Hubert H. Humphrey Civil and Human Rights Award Dinner will be held on May 17, 2017.



Leadership Conference Chair Judith Lichtman; the Honorable James E. Clyburn; Leadership Conference EVP for Policy Nancy Zirkin; Leadership Conference COO and EVP Karen McGill Lawson; the Honorable Nancy Pelosi, House Minority Leader and Humphrey Award honoree; Leadership Conference President and CEO Wade Henderson; and former President and Director-Counsel of the NAACP Legal Defense and Educational Fund Elaine Jones.

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Education Fund reception guests are treated to a gelato bar sponsored by Google every year.



Then-Acting Assistant Attorney General for Civil Rights Vanita Gupta and the Honorable Rep. Bobby Scott enjoying the dinner.





Leadership Conference President and CEO Wade Henderson on the dais as Humphrey Dinner emcee Maureen Bunyan looks on.



Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, delivers the invocation.



Education Fund Board Member John Relman; Leadership Conference Chair Judith Lichtman; the Honorable James E. Clyburn; the Honorable Nancy Pelosi, a 2016 Humphrey Award recipient; and the Honorable James Clyburn.



Hubert H. Humphrey family representative Anne Tristani and Leadership Conference EVP Nancy Zirkin.



Dinner Emcee Maureen Bunyan and Children's Defense Fund President Marian Wright Edelman.



Elaine Jones, former Director-Counsel of the NAACP Legal Defense and Educational Fund, presents the Humphrey Award to Bryan Stevenson.





Guests enjoying the 40<sup>th</sup> Annual Hubert H. Humphrey Civil and Human Rights Award Dinner.



Former Human Rights Campaign President Joe Solmonese, Matthew Shepard Foundation Board President Judy Shepard, Matthew Shepard Foundation Executive Director Jason Marsden, Matthew Shepard Foundation Board Member Emeritus Dennis Shepard, Leadership Conference President and CEO Wade Henderson, and Center for American Progress Senior Fellow Bishop Gene Robinson.

## *Civil Rights and the 2015-16 SCOTUS Term*

**Patrick McNeil**

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During its 2015-16 term, a Supreme Court left short-handed by the death of Justice Antonin Scalia on February 13, 2016, was unable to resolve several of its cases. The civil rights coalition paid close attention to many of the Court's rulings, ultimately pleased with some of the decisions and disappointed with others. Here are the cases we followed.

### ***Fisher v. University of Texas at Austin***

*Fisher v. University of Texas at Austin* was a reconsideration of an identical case the Court heard three years earlier. In 2013, the Court remanded *Fisher* to the U. S. Court of Appeals for the Fifth Circuit, which again ruled that the university's carefully crafted admissions policy was constitutional.

This case was a challenge to the Fifth Circuit's reconsideration.

In November 2015, 16 civil rights and education groups supporting equal opportunity in higher education joined The Leadership Conference and the Southern Poverty Law Center (SPLC) in filing an amicus brief with the Court. The Leadership Conference and SPLC brief argued that the university's admissions policy is necessary in order for students to receive the vast and critical benefits associated with diverse campus environments. The brief also made the argument that the current role of race in America provides crucial context for the Court's consideration of the questions posed in *Fisher*. The brief detailed the ongoing backdrop of racial disparities in American society by pointing to the recent, alarming displays of violence against young Black men at the hands of police and citing data on persistent racial gaps in educational attainment, income, and incarceration.

On June 23, 2016, the Court ruled (4-3) to uphold diversity in college admissions. With the death of Justice

Scalia, and the recusal of Justice Elena Kagan, only seven justices were available to decide the case.

"After years of litigation in this case, the Supreme Court has determined that the University of Texas' admissions program is constitutional. Today's ruling continues the Court's recognition of the importance of racial diversity in college admissions," said Wade Henderson, president and CEO of The Leadership Conference. "As Justice Kennedy noted in this decision, student body diversity is central to a university's identity and educational mission, and the university must be given deference to pursue those goals."

### ***Evenwel v. Abbott***

*Evenwel v. Abbott* was a challenge to the well-established "one person, one vote" principle that legislative districts should be based on the total number of people who live within them. The challenge sought to narrow who is counted in redistricting to something other than total population, which would result in a lack of representation for countless individuals, including immigrants, people of color, people with disabilities, and families with children.

In September 2015, The Leadership Conference and six other civil rights groups filed an amicus brief in the Court. The brief highlighted the impact that reversing this principle would have on minority and underrepresented people. Since registration rates, age, naturalization status, and language proficiency vary dramatically among racial and ethnic minorities, immigrants, and low-income people, a ruling in favor of the challengers would have eliminated the right of many individuals to be represented in our political system entirely.

In an 8-0 opinion issued on April 4, the Court upheld Texas' use of total population as their method of apportionment when drawing electoral districts.



“Today’s unanimous ruling strongly affirms our nation’s longstanding constitutional principle that everyone deserves representation in our democracy. We applaud the Supreme Court for rejecting the challengers’ misguided, politically-motivated attempt to pervert this principle and exclude countless children and other non-voters from political representation,” Henderson said in a statement. “As the Court noted, children and other non-voters have a crucial stake in many policy debates, including those surrounding public education, infrastructure, and constituent services. We elect our representatives to serve everyone, not just the people who voted for them or the people eligible to vote. The Supreme Court’s decision sends a clear message that drawing districts based on total population is the only way to ensure the right of all Americans to equal representation.”

#### ***Friedrichs v. California Teachers Association***

*Friedrichs v. California Teachers Association* was a challenge to the Court’s 1977 ruling in *Abood v. Detroit Board of Education*, which affirmed the constitutionality of “fair share” provisions for public sector unions. Because the unions represent everyone in a workplace, these representation fees are a fair way for all employees to contribute to the cost of securing the benefits and protections that the union negotiates for all public employees, whether or not they choose to join the union.

For nearly 40 years, *Abood*’s fair share rule has yielded significant economic opportunities and protections for millions of workers and their families. More than 70 civil and human rights groups joined The Leadership Conference, the National Women’s Law Center, and the Human Rights Campaign in November 2015 in filing an amicus brief that highlighted how unions provide a powerful tool against discrimination and a critical path to the middle class, especially for women, people of color, and LGBT workers. In every important respect—wages, benefits, work place safety, and schedule predictability—unions can and have bargained for greater economic opportunity and equality for all workers. As the brief stated, “Put simply, unions have provided a critical path to the middle class for generations of working people, including the nurses, first responders, teachers, and others who comprise the membership of public sector unions.”

On March 29, 2016, the Court split 4-4 in a per curiam opinion—affirming the 9<sup>th</sup> Circuit by an equally divided court. Henderson applauded the outcome because it would enable working people to continue to better their lives with the benefits of a fully functioning court. But Henderson did use the opportunity to express his deep concern that Senate Republicans were refusing to consider any Supreme Court nominee.

#### ***Zubik v. Burwell***

*Zubik v. Burwell* raised the question of whether a one-page opt-out form or an “accommodation” under the Health and Human Services (HHS) contraceptive coverage mandate in the Affordable Care Act violated the Religious Freedom Restoration Act by imposing a substantial burden on an organization’s ability to exercise religious beliefs.

In February 2016, The Leadership Conference joined the American Civil Liberties Union, NAACP Legal Defense and Educational Fund, National Coalition on Black Civic Participation, and National Urban League in filing an amicus brief in support of HHS’ position. As noted in the brief, “HHS has emphasized the importance of including contraception in the designated list of preventative services, not only to equalize women’s health care costs but also to help women become equal participants in society.” The brief continues, “The Leadership Conference... believes that the core values of religious freedom and legal and social equality are not incompatible; rather, this nation must stand united in ensuring religious liberty while continuing to work together to dismantle institutionalized discrimination.”

On March 29, after oral argument, the Court requested all parties to file supplemental briefs “that address whether and how contraceptive coverage may be obtained by petitioners’ employees through petitioners’ insurance companies, but in a way that does not require any involvement of petitioners beyond their own decision to provide health insurance without contraceptive coverage to their employees.” The Court also offered its own proposal, and the parties responded in April.

On May 16, 2016, the Court issued an unsigned per curiam opinion. *Zubik* was a consolidation of seven cases, and the Court vacated each of those decisions and remanded them for further proceedings. It was another example of how a shorthanded bench was impacting the ability of the Court to issue determinative rulings.

#### ***United States v. Texas***

*United States v. Texas* was a lawsuit involving President Obama’s November 14 executive actions on immigration, which was brought by 26 states. The Obama administration’s expansion of the Deferred Action for Childhood Arrivals (DACA) program as well as the new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) initiative were stopped by a federal district court in Texas, and that court’s order subsequently was upheld by the U.S. Court of Appeals for the Fifth Circuit.

In March 2016, a diverse coalition of 326 immigration, civil rights, labor, and social service groups filed an am-



icus brief with the Supreme Court, urging the Court to lift the injunction that blocked the executive actions. “If the injunction is lifted, many families will be more secure, without the looming threat that loved ones will be deported at a moment’s notice,” the brief argued. “Many deserving individuals will also have access to better jobs and the ability to improve their lives, the lives of their families, and their communities. DHS has discretion to grant or deny applications for the initiatives at issue, and the concocted argument to the contrary should not be used to prevent individuals from even applying.”

On the day of oral argument, Henderson urged the justices “to stand on the side of immigrant families who need relief immediately, not on the side of partisan politics and hatred that would tear thousands of vulnerable families apart.”

On June 23, 2016, the Court issued a 4-4 opinion, a nondecision that left millions of undocumented immigrants in limbo and effectively upheld the Fifth Circuit’s decision.

“For undocumented immigrants who are our neighbors, friends, and family members, working hard to build a better life for themselves and our country, today’s nondecision is an especially bitter pill,” Henderson said. “Instead of receiving the clarity they need around the president’s commonsense DAPA and DACA-plus programs, they must continue to cope with the uncertainty and risk of needless deportations and family separations. And because immigration is not only a human rights issue but also an economic one, all Americans will pay the price for this uncertainty.”

*United States v. Texas* was a devastating reminder of the hamstrung Court’s inability to decide important cases—ones that would impact the lives of millions of people.

*Patrick McNeil is digital communications manager for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *Ensuring a Fair and Accurate Count of the Incarcerated*

**Alicia Smith**

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Though it's three years away, efforts to ensure a fair and accurate 2020 census count have already begun, including ensuring that people who are incarcerated are counted in the right place.

Unfortunately, the U.S. Census Bureau's current policy on counting incarcerated people does not meet these standards and violates the civil and human rights of nearly two million Americans.

The bureau's standard residency criteria are used to determine where people are counted during each decennial census and call for counting people at their "usual residence"—defined as the place where a person "eats and sleeps most of the time." But for many decades, the bureau has chosen to count people who are incarcerated as if their usual residence is at jails and prisons that may be far from their homes, in a different part of their state, or even in a different state altogether.

Last year, the bureau sought public comments on this practice for the 2020 census, and 96 percent of those comments advocated counting incarcerated persons at their home address. But instead of heeding those comments, the bureau announced it was sticking with its outdated practice, a practice that is inconsistent with other counting methods. For instance, military personnel will be counted at their home address, even though they may be deployed halfway across the world and for longer periods of time than many people spend incarcerated.

Counting people in the wrong place not only results in an inaccurate census, it also distorts data that are fundamental to our representative democracy. The impact is particularly unfair to communities of color. The rise of mass incarceration over the past 40 years has taken a devastating toll on African Americans and Latinos, who make up a disproportionate share of the increase in the nation's prison population. Counting people in places

that don't accurately represent them socially, politically, or economically dilutes the rightful representation their communities are entitled to, resulting in political districts that don't accurately reflect their populations—a misfortune known as *prison gerrymandering*.

On September 1, 2016, 39 organizations joined The Leadership Conference on Civil and Human Rights in signing a letter urging the U.S. Census Bureau to amend their residence rule in time for the 2020 census. The groups called the bureau's proposal a "distortion of democracy." These concerns were shared by an overwhelming majority of commenters in previous years and in letters sent by the past two former directors of the Census Bureau along with 35 foundations. The bureau is expected to reach a final decision early in 2017.

The census resides at the very core of American democracy, and a fair and accurate count remains a vital civil rights issue—especially when so many people are at risk of political misrepresentation.

*Alicia Smith is a communications assistant for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *With Federal Legislation Stalled, States Take Action on LGBT Issues*

**Patrick McNeil**

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Thanks in part to lawsuits challenging anti-LGBT laws across the country and federal guidance seeking to protect transgender students, the debate in 2016 about whether and how to protect LGBT Americans—now nearly two years since the Supreme Court’s ruling in favor of marriage equality—centered on religious liberty, bathroom access, and a Congress that refused to take action.

In February, The Leadership Conference Education Fund released a report, *“Striking a Balance: Advancing Civil and Human Rights While Preserving Religious Liberty,”* documenting how the religious arguments commonly used today against LGBT equality have been used to oppose the abolition of slavery, women’s suffrage and equality, racial integration, inter-racial marriage, immigration, the Americans with Disabilities Act, and the right to collectively bargain. The report also examined the current legal and political landscape in which religious exemptions are being used to deny civil and human rights, including LGBT equality.

“For as long as people have demanded freedom, dignity, and equality under the law, many arguments to deny these rights have been wrapped in a false flag of religious liberty,” said Wade Henderson, president and CEO of The Leadership Conference, when the report was released. “Religious liberty is a sacred American ideal, not a cynical strategy to oppose LGBT equality.”

But that’s what many states are doing.

After a 39-hour filibuster by Democrats in Missouri’s Senate, Republicans forced a vote on a bill that used the language of religious freedom to discriminate against LGBT people—which The Leadership Conference condemned. The following month, the bill failed in a House committee and was ultimately not enacted. The Leadership Conference applauded Georgia Governor Deal for vetoing legislation in that state to discriminate under the

pretense of religious beliefs. And when faced with an anti-LGBT bill in Mississippi, Henderson, in urging a veto, warned Governor Bryant that “Mississippi has been down this road before.” Bryant ended up signing the law, which Henderson condemned, saying Bryant had “turned back the clock to a dark time in Mississippi’s past.”

North Carolina’s law has perhaps received the most national attention. In late March, Governor Pat McCrory signed H.B. 2, which bans cities and counties from enacting nondiscrimination protections and prevents transgender people in schools and government buildings from using the bathroom that corresponds with their gender identity. The bill also prevents cities and counties from passing minimum wage increases.

The response to H.B. 2 was swift and negative. Because of overwhelming backlash, McCrory was forced to sign an executive order that attempted to backpedal on the law. While the order extended new protections for state workers, statewide nondiscrimination protections remained unchanged—and the bathroom provision of H.B. 2 was left untouched. Because McCrory didn’t repeal the law or properly address its issues, the U.S. Department of Justice (DOJ) wrote a letter to McCrory in May telling him that H.B. 2 violates Titles XII and IV of the Civil Rights Act, and that the state was in jeopardy of losing \$861 million in federal funding for schools.

Days later, North Carolina and DOJ filed dueling lawsuits. North Carolina asked a district court to preserve H.B. 2. DOJ filed its complaint in a separate district court, alleging the state was violating federal law—including the Civil Rights Act of 1964—by discriminating against transgender individuals.

In a landmark speech for a U.S. attorney general, Loretta Lynch spoke to the people of North Carolina—her home state. “You’ve been told that this law protects vulnerable

populations from harm—but that just is not the case. Instead, what this law does is inflict further indignity on a population that has already suffered far more than its fair share. This law provides no benefit to society—all it does is harm innocent Americans.”

“Let me also speak directly to the transgender community itself,” Lynch continued. “Some of you have lived freely for decades. Others of you are still wondering how you can possibly live the lives you were born to lead. But no matter how isolated or scared you may feel today, the Department of Justice and the entire Obama administration wants you to know that we see you; we stand with you; and we will do everything we can to protect you going forward. Please know that history is on your side. This country was founded on a promise of equal rights for all, and we have always managed to move closer to that promise, little by little, one day at a time. It may not be easy—but we’ll get there together.”

In September, McCrory dropped the state’s lawsuit against DOJ, though a case against the state brought by the American Civil Liberties Union and Lambda Legal is still making its way through the courts.

North Carolina’s discriminatory law wasn’t the only catalyst for a national conversation about bathroom access. In May, DOJ and the U.S. Department of Education released joint guidance to clarify schools’ Title IX obligations (under the Education Amendments of 1972) regarding transgender students.

“A school’s Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns,” said a letter sent to schools nationwide, signed by the civil rights heads of both departments. “As is consistently recognized in civil rights cases, the desire to accommodate others’ discomfort cannot justify a policy that singles out and disadvantages a particular class of students.”

The Leadership Conference and 22 other organizations responded in a letter strongly supporting the guidance, saying it “will make clear to students and their families that transgender students are entitled to safe and supporting learning environments where they can focus on the work of learning and preparing for adulthood without fear of harassment, exclusion, or discrimination based on who they are.”

Eleven states, led by Texas, filed a federal lawsuit challenging the guidance in May. Ten more states joined in July. The following month a federal judge temporarily

blocked the guidance, and in October, the judge reaffirmed that his order applied nationwide—not just to the states opposing the policy.

The same judge also considered a challenge to the regulations implementing the anti-discrimination provision of the Affordable Care Act, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. On December 31, the federal district court issued a preliminary injunction enjoining HHS from enforcing the Section 1557 regulations’ prohibition against discrimination on the basis of gender identity or termination of pregnancy.

In the nation’s capital, Congress did nothing to advance LGBT nondiscrimination protections, despite legislation—the Equality Act—introduced in both chambers in July 2015. There was also little action in the states, though Massachusetts’ governor signed legislation to ban transgender discrimination, and New Hampshire’s governor issued an executive order prohibiting discrimination in state government on the basis of gender identity or gender expression. And though there was some significant progress—the Pentagon announced in June that it would lift its ban on transgender military service, for example—there are still many steps the United States can take to outlaw all forms of discrimination and ensure the equal treatment of everyone.

*Patrick McNeil is digital communications manager for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## *Bringing Broadband into the Homes of Millions of Americans*

**Milan Kumar**

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Almost every aspect of our lives is affected by the internet—it's used to connect with friends and family via e-mail, stay up-to-date on the news, watch television and movies, navigate unfamiliar territory, and help children with their homework assignments. While many Americans take access to the internet for granted, more than 64 million Americans live on the other side of the digital divide without access. These communities lack the basic connectivity to greater opportunities.

Cost is the biggest reason that these Americans do not sign up for broadband internet service, with only half of those in the lowest income tier having a broadband subscription. This means that the most vulnerable communities miss out on jobs that are posted only online, are often unable to apply for benefits, and cannot access health, financial, and educational information.

Since 1985, Lifeline has provided low-income Americans in the nation's poorest communities with access to vital communications through subsidies for basic phone service. Lifeline has been a success in ensuring that more than 12 million Americans are given the opportunity to contact potential and current employers and to connect with critical health, educational, and family services. In 2005, under President Bush, the program was expanded to include wireless telephone services, but since then, it has not kept up to date with advances in technology.

Ensuring that all Americans have access to the essential communications services they need in today's digital age has been a priority for The Leadership Conference. In 2015, The Leadership Conference and a broad coalition of civil rights, labor organizations, public interest, health providers, and consumer advocates issued a set of principles to address this digital gap and guide Lifeline modernization. They also filed recommendations with the Federal Communications Commission (FCC) after the

agency released a proposal in 2016 that addressed several issues including broadband in the Lifeline program.

The FCC on March 31 voted to modernize the Lifeline program by giving low-income consumers subsidies for broadband internet service, a result that The Leadership Conference applauded. Lifeline's inclusion of broadband internet service can help alleviate this costly burden for millions of Americans.

The Obama administration also joined in the efforts to bring broadband access to low-income Americans. In addition to submitting a recommendation to the FCC on the plans to reform Lifeline, the administration in March announced its ConnectALL initiative with a "goal of connecting 20 million more Americans to broadband by 2020." The ConnectALL initiative has six components to ensure the most vulnerable Americans are not left behind in the digital world:

- Increasing affordability of broadband;
- Increasing digital literacy training;
- Increasing access to affordable devices;
- Tools to support broadband planning;
- Bringing together private sector companies for affordable connectivity, and
- Increasing philanthropic support for digital inclusion.

With the support of Lifeline and ConnectALL, the efforts to bring broadband access to everyone across income levels have made great progress.

Yet despite the success of Lifeline and overwhelming support for its modernization, threats to the program persist. In June, House Republicans introduced H.R. 5525, the "End Taxpayer Funded Cell Phones Act of



2016,” to undercut the goals and principles of Lifeline and its modernization. The Leadership Conference sent a letter opposing the bill, stating, “H.R. 5525 prohibits commercial mobile services or commercial mobile data services from receiving Lifeline support. Prohibiting the use of mobile devices in Lifeline would be a counter-productive measure that would reduce the likelihood that low-income people could reestablish financial stability.” H.R. 5525 was defeated on the House floor on June 21 by a vote of 207-143.

Access to broadband internet service has the potential to transform the lives of millions of Americans and unlock untapped human potential by bringing everyone into the 21<sup>st</sup> century. Advocates will continue efforts to expand broadband and ensure the implementation of the new Lifeline modernization offers the highest quality services to low-income people.

*Milan Kumar is a policy associate for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

# Polling the New Education Majority

**Tyler Lewis**

For the first time in American history, students of color make up the majority of students in the public school system. These students are the “new education majority.”

However, the debate around equity and opportunity in education is one that rarely includes the voices and perspectives of diverse communities, and in fact, often makes assumptions about what is best for low-income communities and communities of color without actually engaging these communities.

In 2016, The Leadership Conference Education Fund commissioned the first of what will be an annual public attitudes poll among Black and Latino parents and families, the “New Education Majority” poll. The poll reveals the actual perspectives, aspirations, and concerns that new majority parents and families have of their children’s education and of the education system itself.

The poll found that new education majority parents and families really value academic rigor, safety, and great

teaching and expect schools to have high expectations for their children; they see the racial and class disparities in education and how they affect children of color’s success; and they believe they have power to make the system better but believe all levels of government have to step up as well.

As annual research, the poll will be an important part of the national discussion about educational equity and will be useful to all decisionmakers and advocates seeking to engage and empower communities of color in education policy reform.

Learn more at [NewEducationMajority.org](http://NewEducationMajority.org).

*Tyler Lewis is the director of messaging and project management for The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights.*

## KEY FINDINGS

➡ **More than 3 in 5 Latino parents and families** (61 percent) think that schools in **Latino communities** do not receive the same funding as schools in **White communities**.

➡ **Most Latino parents and families** think that U.S. schools are trying their best to educate Latino students, even if they often leave many behind, but **a quarter believe that schools “are not really trying.”**

➡ **Most Latino parents and families** (84 percent) believe that students **“should be challenged more in school** to ensure they are successful later in life.”

➡ **More than 4 in 5 Black parents and families** (83 percent) think that schools in **Black communities** do not receive the same funding as schools in **White communities**.

➡ **Most Black parents and families** think that U.S. schools are trying their best to educate Black students, even if they often leave many behind, but **a third believe that schools “are not really trying.”**

➡ **Almost all Black parents and families** (90 percent) believe that students **“should be challenged more in school** to ensure they are successful later in life.”

## Reports

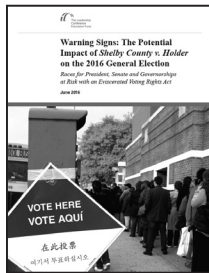
This year, The Leadership Conference Education Fund and The Leadership Conference on Civil and Human Rights released a number of reports that explore important civil rights issues. The full reports can be found here:

[www.leadershipconferenceeducationfund.org/reports/](http://www.leadershipconferenceeducationfund.org/reports/).



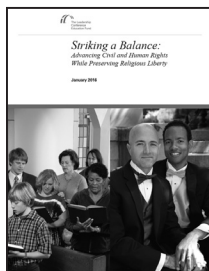
### **The Great Poll Closure (November 2016)**

“The Great Poll Closure” documents how states and counties with records of voting discrimination—both current and historic—have closed hundreds of polling places since the Supreme Court in 2013 gutted the Voting Rights Act (VRA) and eliminated federal oversight of their voting changes. The report is based on a study of 381 of the approximately 800 counties that were covered by Section 5 of the VRA before the Court’s decision in *Shelby County v. Holder*.



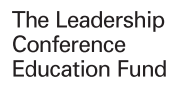
### **Warning Signs: The Potential Impact of *Shelby County v. Holder* on the 2016 General Election (June 2016)**

“Warning Signs” profiles voter suppression activities in states that were once covered by Section 5 of the VRA and are host to competitive 2016 contests for 84 Electoral College votes, two Senate seats, and one governor’s seat. The report finds that, since the U.S. Supreme Court’s decision in *Shelby County v. Holder*, all five of these states—North Carolina, Arizona, Florida, Georgia, and Virginia—have engaged in deceptive and sophisticated practices to disenfranchise voters that will have an impact on the 2016 election. The report is a collaborative effort of The Leadership Conference Education Fund, and relies on recent reports and materials from the ACLU, the Advancement Project, Asian Americans Advancing Justice | AAJC, the Brennan Center for Justice, the Lawyers’ Committee for Civil Rights Under Law, the NAACP Legal Defense and Educational Fund, and the NALEO Educational Fund.

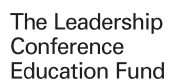


### **Striking a Balance: Advancing Civil and Human Rights While Preserving Religious Liberty (March 2016)**

“Striking a Balance: Advancing Civil and Human Rights While Preserving Religious Liberty,” documents how religious arguments have been used to justify discrimination against diverse communities including opposing the abolition of slavery, women’s suffrage and equality, racial integration, inter-racial marriage, immigration, the Americans with Disabilities Act, same-sex marriage, and the right to collectively bargain. It reviews the historical context of religious arguments that were marshalled in public policy debates, both to support the expansion of civil rights and legal equality and to support various forms of discrimination, including slavery, racial segregation, ethnically targeted immigration restrictions, the disenfranchisement of women, and suppression of workers’ rights.



## This image shows a full page of a handwriting practice worksheet. It consists of numerous horizontal dashed lines spaced evenly across the page, providing a guide for letter height and placement. The background is plain white, and there are no margins or additional markings.

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