

**Civil Rights Act of 1964**  
Turns **50**  
**WHAT LIES AHEAD?**

**INSIDE:**

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**CHANGE COMES IN MANY FORMS**—from the passage of a single, momentous law to small, incremental policy shifts. Both are hard-fought and equally as important in advancing our rights and liberties. On the **50TH ANNIVERSARY** of the signing of the **CIVIL RIGHTS ACT OF 1964**, Judith Browne Dianis takes stock of how the steps we have taken, big and small, have brought us to 2014, and the work that lies ahead.

# UNDER FIERIE



Demonstrators hold the line even while being sprayed with high-pressure water hoses by riot police during a 1963 protest of segregation practices in Birmingham, Alabama.

**LESS THAN THREE WEEKS AFTER** the August 1963 civil rights March on Washington, a bomb ripped through a Sunday school classroom at the Sixteenth Street Baptist Church in Birmingham, Alabama, killing four black girls ages 11 to 14. In *The New York Times Magazine* later that month, Dr. Martin Luther King Jr. expressed his frustration at Congress' inaction on equal rights. At issue: protections against job discrimination, voter disenfranchisement, segregation and the widespread brutality against African Americans.

In his call for federal action, King wrote: "The hundreds of thousands who marched in Washington marched to level barriers. They summed up everything in a word—NOW. What is the content of NOW? Everything, not some things, in the president's civil rights bill is part of NOW."

Later that year growing pressure for a civil rights bill finally led to congressional action on what would become the Civil Rights Act of 1964. Signed into law by President Lyndon Johnson on July 2, the act prohibited many forms of discrimination against people of color and against women.

Although the Civil Rights Act of 1964 unquestionably led to significant progress toward equal opportunity in America, it wasn't a universal solution to the many forms unequal treatment takes. Fifty years later, after some satisfying victories and heartbreaking defeats, the civil rights of many are still under fire. Here's how our country has fared since—and, to borrow from Dr. King, the civil rights work that continues to address the urgency of NOW.

## Voting Rights

To win the support of Southern senators, elements of the act were weaker than what the movement demanded.

For example the act banned the longstanding practice of using different voter registration standards for black and white voters—such as imposing literacy tests only on African Americans. But the bill stopped short of abolishing literacy tests outright. Instead it required voting rules and procedures to be applied equally to all races, still posing barriers for less educated African Americans and poor whites. It also allowed local voter registrars to be the sole arbiters of who met state-mandated voter qualifications. Consequently, in the year after the Civil Rights Act was signed into law, there was no significant increase in the number of black voters in the Deep South.

The killings of voting rights advocates along with televised images of police beating African American citizens spurred passage of the Voting Rights Act of 1965. Finally the nation had an effective anti-voting-discrimination law. Not only did the act outlaw literacy tests but it also empowered the federal government to oversee elections in states with a history of racially discriminatory voting practices.

Congress reauthorized the act in 1982 and 2006. The ACLU contributed greatly in both years, exhibiting evidence to lawmakers of ongoing voter discrimination, from the moving of polling places at the last minute, to redistricting plans that undermined the political power of minorities. The ACLU's voting rights experts also testified at congressional hear-

ings, stressing the continuing critical need for federal voting rights protection.

The struggle to protect the right to vote continues. For example Florida had purged its eligible voter lists of people who had allegedly committed felonies, removing thousands of legitimate, mostly African American voters. In 2001 the ACLU and Advancement Project joined other civil rights groups in filing *NAACP v. Katherine Harris et al.* to vindicate the voting rights of that state's black voters. The organizations have continued to partner in Florida and other places to protect voters and American democracy.

In the two years leading up to the 2012 presidential election, a majority of states passed or proposed regressive voting policies. These measures—the greatest assault on voting rights in over a century—included onerous voter ID laws, cuts in early voting, purges of voter rolls, burdensome proof-of-citizenship requirements and easier voter challenges at the polls. Each tactic disproportionately affected voters of color, the elderly, the poor and the young.

To remove these barriers well before Election Day, organizations such as the ACLU launched statewide voter education campaigns. They advocated directly to election administration officials and lawmakers and deployed staff and volunteers to the polls to resolve problems. Public interest groups also sued to stop discriminatory voting practices before they took hold.

In one such victory the ACLU, Advancement Project and the Public Interest Law Center partnered to stop implementation of Pennsylvania's voter ID law, showing it stood to disenfranchise hundreds of thousands of registered cit-

izens who lack ID. A court temporarily blocked the law before the 2012 election.

Unfortunately legislatures still push laws that make it harder to vote. In June 2013 the Supreme Court dealt a blow to voting protections. (See "The Fight for Voting Rights, Redux," page 42.) Ruling in *Shelby County v. Holder*, the court struck down the formula that determined which jurisdictions would have to submit to federal control to repair histories of voter discrimination. That ruling neutered the act's central purpose: mandating federal approval before those jurisdictions could change voting procedures. Immediately after the court's decision, states subject to such approval moved to erect barriers to voting.

Among the worst offenders, North Carolina cut a week from early voting, eliminated same-day voter registration, created a strict photo ID requirement—which even prohibits use of college student IDs—and made it easier to challenge voters. The ACLU sued, challenging the law. Each change has a discriminatory impact on voters of color. Officials in six other Southern states also announced plans to implement voter ID laws, and Florida said it would resume its voter-roll purge of alleged non-U.S. citizens.

Fighting back, the ACLU is actively involved in drafting bipartisan support for a new formula while protecting everyone's right to vote. Groups also continue to litigate under other provisions of the Voting Rights Act.

## Employment Discrimination

The Civil Rights Act of 1964 prohibits employment discrimination by private

businesses. Before the act no legislation prevented employers from discriminating based on race, gender, religion or national origin.

Even after the law's enactment, covert discrimination persisted, with many employers claiming they could not find qualified people of color or women to hire.

In a 1965 executive order President Johnson required employers to ensure that African Americans and other groups enjoy workplace opportunities that had once been whites' near-exclusive privilege. Affirmative action remains one of the most effective tools for redressing discrimination.

The Civil Rights Act of 1964 also created the Equal Employment Opportunity Commission (EEOC). This federal agency enforces laws that prohibit workplace discrimination and provides fair-hiring guidance. Interpretation of Title VII of the act and EEOC guidance have addressed subtle types of employment discrimination. Those include employers who refuse to hire people with criminal convictions—a racial disparity of the criminal justice system. The ACLU has worked closely with the EEOC to end this form of backdoor discrimination, helping persons with criminal records re-enter the workforce and strengthening worker protections for them.

The Civil Rights Act also gave working women the right to expect equal treatment on the job. Women no longer could be fired for becoming pregnant or denied jobs because they had small children. It also paved the way for legal tools to break the glass ceiling such as 2009's Lilly Ledbetter Fair Pay Act. The ACLU advocated for its pas-

sage, authoring a congressional letter-writing campaign and presenting expert testimony at congressional hearings. Lilly Ledbetter, which President Barack Obama signed into law during his first week in office, also lifted the time limit imposed by a 2007 Supreme Court ruling that gave workers just 180 days after receiving their first paycheck to sue for pay discrimination, even if they were unaware of the problem.

But for all the gains women have made in the workplace, they still earn just an average of 77 cents for every dollar men earn. The figures are even worse for women of color. African American women make approximately 64 cents and Latinas only 55 cents for each dollar earned by a white male. One proposal to remedy these disparities is the Paycheck Fairness Act to End Wage Discrimination, for which the ACLU has led extensive lobbying efforts on Capitol Hill and in the White House. The bill requires employers to provide a business justification for paying men and women differently for the same work. It also protects workers from retaliation when they ask about their employers' wage practices or disclose their own salaries.

Although these equal pay protections are long overdue, the Paycheck Fairness Act has twice been rejected (in 2010 and 2012) by federal legislators who say we don't need another law that helps women earn their fair share. As the ACLU continues to push for the bill's passage, the group also works closely with the White House Council on Women and Girls, pursuing executive measures to ease the problem of employment discrimination.



President Lyndon Johnson shakes the hand of Dr. Martin Luther King Jr. at the signing of the Civil Rights Act of 1964 in Washington, D.C., while officials look on.

## BATTLEGROUND BREAKTHROUGHS

While there is undeniably still much work to be done to achieve all of the goals of the civil rights movement, considerable ground has been covered since the Civil Rights Act of 1964 was enacted. Here's a timeline of significant civil rights victories—and the ACLU's role—over the last 50 years.



**1968:** IN *JONES v. ALFRED H. MAYER CO.*, the Supreme Court held that the Civil Rights Act of 1964 bans racial discrimination in housing by private, as well as governmental, housing providers. The ACLU served as counsel.

**1972:** IN *DUNN v. BLUMSTEIN*, the Supreme Court invalidated Tennessee's one-year residency requirement for registration and voting. Aside from its general impact on all voters, such residency requirements had been enacted by many Southern states to deter registration and voting by blacks. The ACLU served as counsel.



**1978:** IN *REGENTS OF THE UNIVERSITY OF CALIFORNIA v. BAKKE*, the Supreme Court ruled that race could lawfully be considered as one of several factors in making admissions decisions. The ACLU coauthored an amicus brief.



## School Integration

The ACLU believes school integration remains a viable means of creating diverse educational opportunities for all children. This is why for decades the organization has focused on improving and equalizing our nation's schools.

By 1964, 10 years after the landmark school desegregation case *Brown v. Board of Education of Topeka*—in which the ACLU was a friend-of-the-court participant—schools remained segregated, and equal educational opportunities for all were sharply limited. Less than 2 percent of black students in the South attended integrated schools.

Title IV of the Civil Rights Act of 1964 finally triggered change, empowering the Justice Department to file lawsuits and allowing the government to deny federal funds to school districts that continued to segregate. As a result the federal government became an important player in school desegregation alongside non-profit organizations.

The Civil Rights Act was an important tool in fulfilling the promise of *Brown v. Board*. By 1968, 32 percent of black students in the South attended integrated schools. In 1979, concerned that the Topeka Public Schools' open enrollment policy would lead to further segregation, the ACLU reopened *Brown v. Board* and successfully negotiated a desegregation plan consisting largely of magnet schools.

Students today still face unequal opportunities, with a large and growing number of schools remaining racially segregated. More than one in six African American children and one in 10 Latino children attend schools where 90 percent or more students are of color.

Often those schools concentrate in low-income urban areas with middle-class, majority-white suburbs nearby.

In addition students of color are more likely to face harsh discipline, as well as policies that funnel them into the criminal justice system, a phenomenon known as the “school-to-prison pipeline.” In public schools one out of every 20 white students are suspended, whereas one out of six black students experience the punishment.

The multiyear case of *Sheff v. O'Neill* is a good example of the ACLU's dogged determination to eliminate school segregation. The case started in 1989 when parents in Hartford, Connecticut, sued on behalf of their children against then Gov. William A. O'Neill. The suit aimed to redress the inequity between the quality of education provided to students at Hartford Public Schools and the superior resources available to children in surrounding suburban districts.

Seven years later the Supreme Court of Connecticut ruled that the state must correct education inequities and prioritize integration. Yet by 2008 Hartford schools remained divided by race and class. That year the ACLU and co-counsel struck an agreement with the state to finally comply with the longstanding desegregation order.

The ACLU also has challenged in court numerous public school system practices that contribute to the school-to-prison pipeline. In 2008 the ACLU filed a class action lawsuit against a for-profit Atlanta company that ran an alternative school, charging the company violated students' constitutional rights. The school's educational standards were so lacking that not a single

student reached his or her senior year in 2006. As a result of the suit, Atlanta Public Schools ended its relationship with the company.

The ACLU of Mississippi and Advancement Project are partnering to reform harsh student discipline policies and practices. In January 2013 the two organizations joined the Mississippi State Conference of the NAACP and the Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse to publish “Handcuffs on Success.” This report documented the effects of common disciplinary practices against children of color. Those findings are being used to push for reforms to promote commonsense discipline policies that keep students on an academic track and less likely to be criminalized.

### Equal Access to Public Accommodations & Federally Funded Programs

One of the crowning achievements of the Civil Rights Act of 1964 was the dismantling of Jim Crow segregation. No longer was it legal for places of public accommodation to discriminate on the basis of race, color, religion or national origin. Within a few years, instead of having African Americans arrested for entering “white only” hotels and restaurants, discriminatory business owners and local governments faced sanctions. The hateful signs soon disappeared.

The act's equal-access provision continues to give all citizens a legal avenue to stand up for their rights. Also, Title VI of the act gives the federal government the power to withhold federal funding from government entities engaged in discrimination. An important check on local and state governments,

as well as institutions that receive federal funds, this section has been used to combat discrimination in education, transportation, providing health care, and environmental hazards. Although in 2001 the Supreme Court weakened the section by limiting enforcement to the federal government (*Alexander v. Sandoval*), Title VI remains a significant resource for securing equality.

Americans apprehensively watched unemployment figures rise in 2008, heralding the Great Recession. Congress the following year passed the \$787 billion American Recovery and Reinvestment Act, a mix of spending on infrastructure, clean energy and education, tax cuts, and safety net assistance for the unemployed. The ACLU stepped in to help ensure that the benefits of those funds reached communities of color. Along with the Kirwan Institute for Race and Ethnicity at The Ohio State University and other partners, the ACLU launched a website containing tracking tools and resources to aid in the equitable distribution of federal dollars. Those efforts were especially critical considering the housing foreclosures that factored greatly in the economic crisis had existed in communities of color long before the nation became concerned about the condition of financial institutions.

### What's Next for Civil Rights?

Watchdog efforts starkly illustrate that for all the progress gained under 50 years of the act, civil rights remains unfinished business. Increased enforcement is part of the solution. But it's also critical to reignite the passion that led to past successes. Change comes through grassroots organizing as well as community-based coalition build-

## Border Battles

**ACTIVISM IS PART OF LISA OPPENHEIMER'S DNA.** “I've been an ACLU member my entire life,” she says, having grown up in a family where activism was ingrained in everything they did. “I come from a long line of card-carrying members. From the time I was born, civil rights themes were commonplace at the dinner table.”

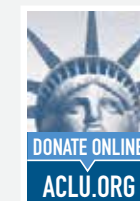


Lisa Oppenheimer

Oppenheimer's mother, Esther Brown, was a seminal activist in the movement to desegregate schools in Kansas. When she learned about the horrible conditions at an all-black school in her community, she took action and challenged segregation in her town. Her efforts helped lead to the landmark 1954 *Brown v. Board of Education* case in which the Court struck down Kansas' law establishing separate public schools for black and white students.

Oppenheimer says her mother took up the issue “because of the basic injustice of it all.” She knew there was no such thing as “separate but equal.”

Today Oppenheimer sees similar disparities in her current state of New Mexico. “The racial divide is against Native Americans and Latinos,” she says. But thanks to the support of ACLU members across the country, the organization has led the challenge against racially divisive laws in that state and elsewhere.



“The ACLU has been very successful in advocating for immigrants' rights here in New Mexico, tackling abuses toward citizens and noncitizens alike,” Oppenheimer says.

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ing that taps litigation and legislation as tools.

For example as communities across the country organize around issues of mass incarceration and overall criminal justice reform, their efforts gain traction and victories through collaboration with the ACLU. Similarly, the ACLU's efforts to enact the End Racial Profiling Act is critically important in the aftermath of the headline-making shootings of Trayvon Martin and other young people of

color, as well as police policies such as stop-and-frisk.

From fair access to the ballot box, to equal pay for equal work, to inequities in our schools and justice system, there's much more work to be done. The civil rights community remains determined and prepared to build on the accomplishments of 1964 and all that came after it, towards creating Dr. Martin Luther King Jr.'s “the content of NOW.” ■



Milo Sheff, center, talks during a press conference in 1995.

**1996: IN SHEFF v. O'NEILL**, the Supreme Court overturned a 1989 school desegregation decision, ruling that the state of Connecticut had an affirmative obligation to provide the state's schoolchildren with an equal educational opportunity. In 2008, the ACLU and other organizations struck an agreement with the state to create a detailed road map to follow in its effort to end racial segregation.



Schuette v. Coalition defendant Chase L. Cantrell

**2006: IN SCHUETTE v. COALITION TO DEFEND AFFIRMATIVE ACTION**, a U.S. Court of Appeals panel struck down Michigan's Proposal 2, a constitutional amendment that eliminates the consideration of race in university admissions despite the fact that the Supreme Court has upheld such admissions policies. The ACLU served as co-counsel.

**2006: IN ANTOINE v. WINNER SCHOOL DISTRICT**, the Court ruled that the South Dakota school district discriminated against Native American students by acting hostile toward their families and taking statements from students involved in disciplinary matters and later using the statements to prosecute them in juvenile and criminal courts. The ACLU served as counsel.



**2008: ACLU FILED A CLASS ACTION LAWSUIT AGAINST THE ATLANTA INDEPENDENT SCHOOL SYSTEM AND COMMUNITY EDUCATION PARTNERS (CEP)** for violating students' constitutional right to an adequate public education. As a result of the suit, Atlanta Public Schools ended its relationship with the company.