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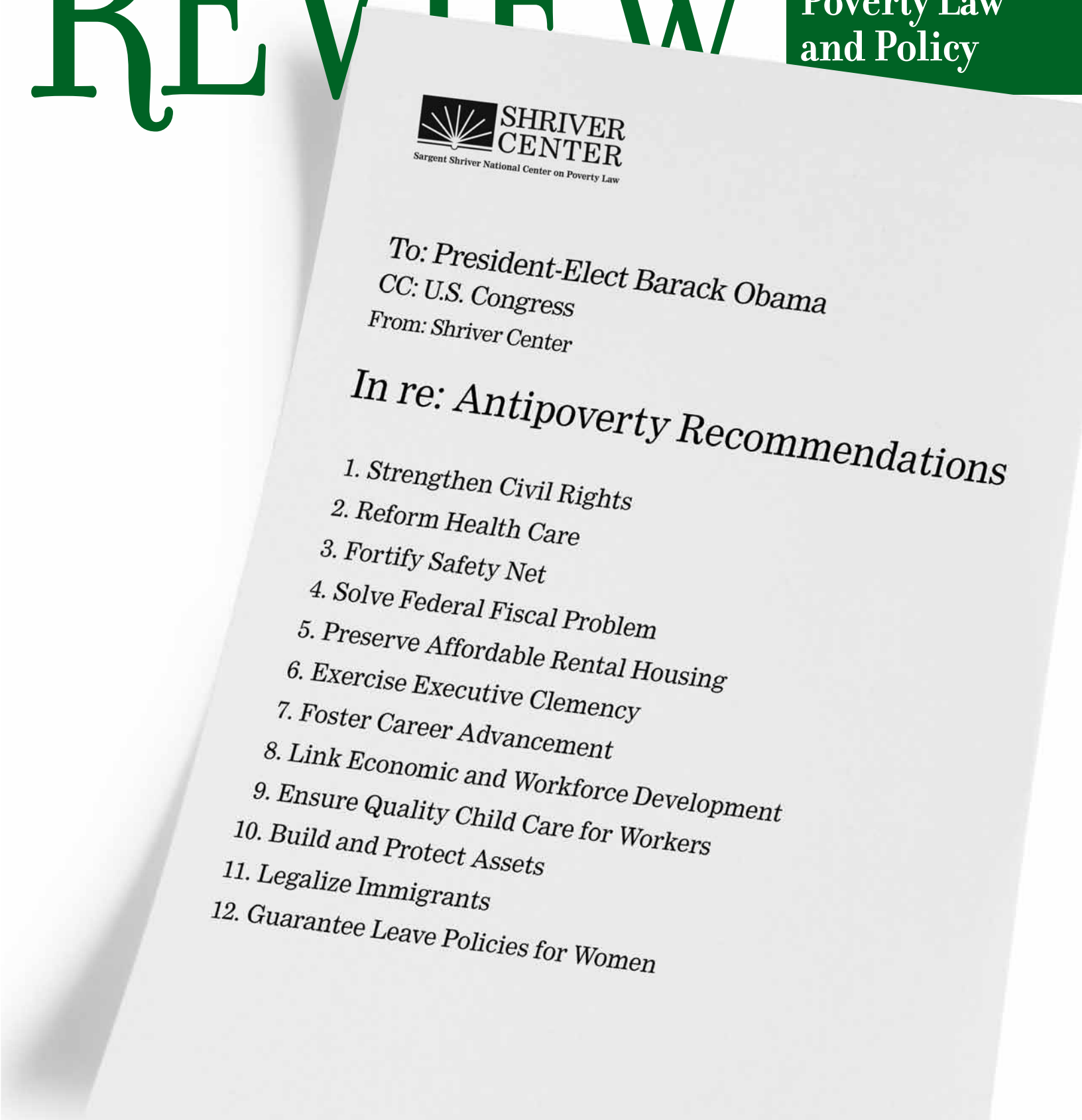

The Rollback of Civil Rights in the Courts and the Potential Impact of the Civil Rights Act of 2008

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To many, the recent presidential election shows just how far we have come as a nation. For the first time ever, an African American was the Democratic nominee. The Democratic primary featured a woman who very nearly became the nominee. And the Republican vice presidential nominee was a woman. Millions of new voters, including young people and immigrants, played a monumental role in the elections. As a result, there is a sense of security in the state of equality and opportunity in America and a feeling that the long struggle for civil rights has been a success and we can now all enjoy the fruits of that labor.

Yet, despite the high profile of the candidates for president and vice president, the struggle for equality and opportunity is far from over. Poverty rates in the United States are higher than in many other developed nations. Thirty-seven million Americans—one out of eight—live below the official poverty line.[1] Millions more struggle each month to make ends meet and many run out of savings when they lose their jobs.

Record economic gains since the 1970s in growth and productivity have not contributed to greater economic security for working Americans; instead inequality has returned to levels not seen since the years before the Great Depression.[2] Millions of Americans lack health care coverage or are underinsured.[3]

[1]Center for American Progress Task Force on Poverty, *From Poverty to Prosperity: Executive Summary*, Poverty and Race, July–Aug 2007, www.prrac.org/full_text.php?text_id=1146&item_id=10643&newsletter_id=94&header=Poverty+%2F+Welfare.

[2]Shawn Fremstad et al., Center for Economic and Policy Research, Working Families and Economic Insecurity in the States: The Role of Job Quality and Work Supports 12 (2008), www.cepr.net/documents/publications/state_2008_05.pdf.

[3]See Julia Contreras & Orly Lobel, *Wal-Martization and the Fair Share Health Care Acts*, 19 St. Thomas Law Review 105, 108 (2006).

Besides growing poverty and inequality, racial isolation in America's schools has risen in recent decades to levels not seen since the 1960s, before widespread efforts to integrate schools began.[4] In fact, almost 2.4 million students—including about one in six of both black and Latino students—attend hypersegregated schools, that is, schools in which the student population is 99 percent to 100 percent of color.[5]

In the past, civil rights advocates turned to the judiciary to safeguard individual rights and liberties and to press for equality. But in the past few decades, court decisions have rolled back the reach of many landmark civil rights laws.[6] Many of these laws were instrumental in bringing about change and giving hope to millions of disadvantaged Americans. Contrary to conventional wisdom, the hard-fought victories of the civil rights movement did not solidify into bedrock. Some of the most fundamental civil rights protections have arguably been gutted and others are at risk.

The U.S. Supreme Court has had the legal framework for civil rights enforcement in its crosshairs for some time. These laws, enacted by Congress beginning in the mid-1960s, are, among others, the Civil Rights Act of 1964, the Voting Rights Act of 1965, Title IX of the Education Amendments of 1972, the Civil Rights Attorney's Fees Act of 1976, and, later, the Americans with Disabilities Act of 1990.[7] Each of these laws, to one degree or another, has been affected by the Court's attempt to restrict civil rights laws.[8] The Court has successfully done so either by denying a right or by hindering the ability of individuals to enforce a right by denying a remedy.[9]

Our new president must act to restore the civil rights that have been lost and to protect them from further attack. The Civil Rights Act of 2008 will strengthen the foundation of civil rights and racial justice and ensure individual rights and liberties for millions of Americans.[10] The Act does not address the full range of significant issues raised by the rollback of civil rights or the decreased access to the courts but would, nevertheless, have an enormous impact.

I. The Effort to Roll Back Civil Rights

Beginning in the 1980s, there was a concerted and highly successful effort to move the federal judiciary to the right and limit the existing civil rights infrastructure. Pres. Ronald Reagan's administration summoned the full power of the executive branch to reduce the ability of low-income people and civil rights advocates to use legal services and poverty programs to enforce civil rights. At the same time, the Reagan administration staffed the Department of Justice with ideologi-

[4]Anurima Bhargava et al., Still Looking to the Future: Voluntary K-12 School Integration, A Manual for Parents, Educators and Advocates 11–12 (2008), www.naacpldf.org, click on "Publications," then select "Cases and Issue Related Publications.

[5]*Id.* at 11. "'Hypersegregation' describes metropolitan statistical areas for which census data show high levels of segregation on at least four of five dimensions by which segregation is measured" (Florence Wagman Roisman, National Housing Law Project, An Outline of Principles, Authorities, and Resources Regarding Housing Discrimination and Segregation § I (2007), www.nhlp.org/html/fair/outline.htm). The five dimensions are uneven distributions, lack of exposure to others, concentration, centralization, and clustering (Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 74 (1993)).

[6]Jane Perkins et al., *The Supreme Court's 2006–2007 Term: The Shift to the Right Takes Shape*, 41 Clearinghouse Review 442 (Nov.–Dec. 2007).

[7]Civil Rights Act of 1964, in particular Title VII, 42 U.S.C. § 2000e (2000), and Title VI, 42 U.S.C. §§ 2000d–2000d-7 (2000); Voting Rights Act of 1965, 42 U.S.C. § 1973 (2000); Patsy T. Mink Equal Opportunity in Education Act (known until 2002 as Title IX of the Education Amendments of 1972), 20 U.S.C. §§ 1681–88 (2000); Civil Rights Attorney's Fees Act of 1976, 42 U.S.C. § 1988 (2000); and Americans with Disabilities Act, 42 U.S.C. § 12101 (2000).

[8]See, e.g., *Ledbetter v. Goodyear Tire and Rubber Company*, 127 S. Ct. 2162 (2007).

[9]Wade Henderson & Janell Byrd-Chichester, *The National Campaign to Restore Civil Rights*, in Awakening from the Dream: Civil Rights Under Siege and the New Struggle for Equal Justice 25, 28 (Denise C. Morgan et al. eds., 2005).

[10]Civil Rights Act of 2008, S. 2554, 110th Cong. (2008).

cal young attorneys such as Samuel Alito and John Roberts.[11]

Many conservatives understood early on the importance of the federal judiciary in shaping civil rights enforcement.[12] A group of politically and socially conservative politicians, lawyers, and others spearheaded an effort and, particularly in the last decade, succeeded in nominating and getting confirmed like-minded judges. This has led to a significant change in the makeup of the federal courts—for one, a dramatic shift in the Supreme Court.[13] During the 1980s the Justice Department issued two publications urging the president to reinterpret the Constitution through the selection of federal judges and encouraging federal courts to invalidate acts of Congress and recognize limits on congressional power.[14] The authors of that publication correctly envisioned what the efforts to stack the judiciary could accomplish.

The organized effort to move the courts to the right—including a shift at the U.S. Supreme Court—has culminated in a judiciary that views civil rights laws and the power of Congress to pass them with a degree of skepticism, if not animosity.[15]

II. The Rollback of Title VI

Title VI of the Civil Rights Act of 1964 prohibits federally funded entities from discriminating based on race, color, or national origin.[16] It is the crown jewel of the Civil Rights Acts because unlike other civil rights provisions, such as Title VII (employment) and Title IX (education), Title VI is not limited in scope. Title VI applies wherever federal funds are administered and is written to apply across every issue area. It has played a crucial role in ensuring that programs funded with federal money do not discriminate on the basis of race, color, or national origin. That is so because, until 2001, federal courts allowed individuals to sue for violations of Title VI and its regulations by recognizing an implied right of action to sue for discrimination under a theory of disparate impact.

But in *Alexander v. Sandoval*, a 5-to-4 Supreme Court, upending thirty years of precedent, barred private individuals from using Title VI to pursue disparate impact claims.[17] The Court held that only acts of *intentional* discrimination could be the basis of a private suit. In so doing, the Supreme Court made it immeasur-

[11]Evan Thomas & Bennett H. Beach, *One More Narrow Escape*, Time, Nov. 23, 1981, www.time.com/time/magazine/article/0,9171,922707,00.html.

[12]I use the word "conservative" here because it is the commonly used term, but many of the court decisions rolling back rights are anything but "conservative." E.g., how can a court that ignores congressional intent and strikes down civil rights statutes be considered "conservative" as opposed to an "activist" court?

[13]Dawn E. Johnsen, *Tipping the Scale: President Bush Picks Judges Based on Ideology—So Why Shouldn't Senators Reject Them for It?*, Washington Monthly, July–Aug. 2002, www.washingtonmonthly.com/features/2001/0207.johnsen.html; Herman Schwartz, Right Wing Justice: The Conservative Campaign to Take Over the Courts 4–5 (2004); Jeffrey Rosen, *Supreme Court Inc.*, New York Times Magazine, March 16, 2008, www.nytimes.com/2008/03/16/magazine/16supreme-t.html?pagewanted=prin.

[14]Office of Legal Policy, Department of Justice, Guidelines on Constitutional Litigation (1988), www.acslaw.org/pdf/guidelines.pdf; Office of Legal Policy, Department of Justice, Report to the Attorney General, The Constitution in the Year 2000: Choices Ahead in Constitutional Interpretation (1988), www.acslaw.org/pdf/year2000.pdf. See also Dawn E. Johnsen, *Ronald Reagan and the Rehnquist Court on Congressional Power: Presidential Influences on Constitutional Change*, 78 Indiana Law Review 363, 367 (2003).

[15]See, e.g., *United States v. Morrison,* 529 U.S. 598 (2000) (Clearinghouse No. 51,869) (striking down sections of the Violence Against Women Act, reasoning that the statute could not be sustained as remedial legislation under the Fourteenth Amendment, nor could it be sustained under Congress' commerce clause authority). See also Leadership Conference on Civil Rights Education Fund, Turning Right, Judicial Selection and the Politics of Power (2004), www.civilrights.org/publications/reports/judges/judges_report.pdf; Jan Crawford Greenburg, Supreme Conflict, The Inside Story of the Struggle for Control of the United States Supreme Court (2007); Paul Finkelman, *What Is Federalism and What Does It Have to Do with Civil Rights?*, in Awakening from the Dream, *supra* note 9, at 3, 19.

[16]Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (2000).

[17]*Alexander v. Sandoval*, 532 U.S. 275, 294–96 (2001) (Clearinghouse No. 51,706) (Stevens, J., dissenting) (discussing the sharp departure from thirty years of precedent established under Title VI of the Civil Rights Act of 1964, which had allowed a private right of action under Title VI under a disparate impact theory); *Lau v. Nichols*, 414 U.S. 563, 566–69 (1974) (allowing a private right of action to enforce rights guaranteed by Title VI under a disparate impact theory).

ably more difficult, if not impossible, for victims of discrimination to use Title VI to access courts to challenge discriminatory government action.

The *Sandoval* case concerned the ability of people who speak languages other than English to access government services. Martha Sandoval, an immigrant living in Alabama, was not a fluent English speaker but was able to drive and read road signs. As part of a growing antiimmigrant wave, Alabama passed a law mandating that all drivers' license tests be given in English only. Mrs. Sandoval, represented by the Southern Poverty Law Center, sued Alabama under Title VI and its implementing regulations for discrimination based on her national origin. Title VI had long been interpreted to ensure that persons with limited English proficiency are entitled to equal access to services regardless of their ability to speak English.[18] The Court's decision left Mrs. Sandoval and countless other nonfluent speakers without the protections of Title VI.

The *Sandoval* decision limits the enforceability of a myriad of civil rights laws in the United States, extending well beyond language access. For example, before *Sandoval*, advocates could bring Title VI actions claiming that educational opportunities for students of color were so inferior that they amounted to discrimination.[19] Similarly, advocates could use Title VI to challenge funding formulas that disparately had an impact on school districts with higher minority enrollments.[20] No more.

The ruling was also a setback for environmental justice. One stark example is the struggle of residents of South Camden, a desperately poor and predominately African American and Latino neighborhood in Camden, New Jersey, a city with a considerable industry base.[21] In 2001 South Camden hosted 20 percent of the city's contaminated sites, including two Superfund sites, four sites suspected of releasing hazardous substances, and fifteen other contaminated sites.

When the New Jersey Department of Environmental Protection allowed to locate in South Camden yet another plant that would emit dangerous pollutants, Camden Regional Legal Services and its cocounsel brought suit under Title VI on behalf of residents of this environmentally devastated neighborhood. Relying on the decision in *Sandoval*, the Third Circuit found that Title VI did not grant plaintiffs a private right of action and rejected the claim.[22]

III. The Attack on the Rights of Immigrant Workers

The United States is a nation of immigrants. According to a national poll, about 41 percent of citizens have grandparents who were born in another country.[23] One in five children in the United States is the native- or foreign-born child of an immigrant.[24] In recent years the racial and ethnic composition of the country has changed rapidly as immigration from Latin America has increased. As of 2004, over thirty million immigrants, representing 11 percent of the total population, were in the United States.[25]

While immigrants contribute significantly to the economy, they rely dispropor-

[18]See Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

[19]See, e.g., *Paynter v. State*, 735 N.Y.S.2d 337, 340 (N.Y. App. Div. 2001).

[20]See, e.g., *Powell v. Ridge*, 189 F.3d 387 (3d Cir. 1999) (Clearinghouse No. 52,628).

[21]*South Camden Citizens in Action v. New Jersey Department of Environmental Protection*, 274 F.3d 771, 775 n.1 (Clearinghouse No. 53,759). See Olga D. Pomar & Luke W. Cole, *Camden, New Jersey, and the Struggle for Environmental Justice*, 36 Clearinghouse Review 94 (May–June 2002).

[22]*South Camden Citizens in* Action, 274 F.3d at 778.

[23]Hamilton College/Zogby International, Immigration Opinion Poll 16 (2002), www.hamilton.edu/Levitt/surveys/immigration/immigration.pdf.

[24]National Immigration Law Center, *Facts About Immigrants*, caimmigrant.org/repository/wp-content/uploads/2006/08/pbimmfacts_0704.pdf (citing Urban Institute, Check Points (2000)).

[25]*Id.*

tionately on low-wage, low-benefit jobs for family-sustaining work, and many work under exploitative conditions.[26] Despite having a labor force participation rate similar to that of native-born Americans, 44 percent of immigrants who work full-time earn incomes under twice the poverty level (compared with only 22 percent of native-born workers).[27]

Immigrant workers are represented disproportionately in dangerous industries and in hazardous occupations within those industries. In 2002 immigrant workers made up 15 percent of the workforce but accounted for 69 percent of workplace fatalities, and Mexican workers were 80 percent more likely to die in a workplace accident than native-born workers.[28] In fact, one Mexican immigrant worker dies on the job every day.[29]

In 2001 the Supreme Court in *Hoffman Plastic Compounds Incorporated v. National Labor Relations Board* in a 5-to-4 decision, provided employers with additional incentive to exploit already vulnerable workers.[30] The Court held that undocumented workers who were wrongfully terminated for protected union activities were not entitled to back pay, the only remedy available under the National Labor Relations Act. The *Hoffman* Court concluded that the "legal landscape [had] now significantly changed" with the passage of the Immigration Reform and Control Act and reasoned that allowing undocumented workers to be awarded back pay "not only trivializes the immigration laws, it also condones and encourages future violations."[31]

Immediately following *Hoffman*, the Equal Employment Opportunity Commission determined that, under the federal employment discrimination laws, including Title VII, that the commission enforces, undocumented migrants did not have a right to back pay.[32] The *Hoffman* decision has been expanded by courts to apply to other laws designed to protect workers.[33]

The decision has undermined efforts to unionize workers. Denying back pay lowers the cost to the employer of an initial labor law violation and thereby increases the employer's incentive to find and to hire undocumented employees.[34] This, in turn, provides employers with a union-busting weapon to use against immigrant-organizing drives.[35]

The *Hoffman* decision has left workers who file discrimination charges more vulnerable to inquiries and retaliation on the basis of their immigration status and has resulted in the denial of relief to

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[26]See, e.g., Duke University Master of Engineering Management Program & U.C. Berkeley School of Information, America's New Immigrant Entrepreneurs (2007).

[27]See Marielena Hincapié & Ana Avendaño-Denier, *Immigrant Workers: The Rollback of Immigrant Workers' Civil Rights*, *in* Awakening from the Dream, *supra* note 9, at 149, 151; see also Michael Fix, Urban Institute Tabulation of Current Population Survey (2001) (Nearly 43 percent of immigrants work at jobs paying less than $7.50 an hour, compared to 28 percent of all workers).

[28]Bureau of Labor Statistics, U.S. Department of Labor, Census of Fatal Occupational Injuries (2002).

[29]*Id.*

[30]*Hoffman Plastic Compounds Incorporated v. National Labor Relations Board*, 535 U.S. 137 (2002) (Clearinghouse No. 54,508).

[31]*Hoffman*, 535 U.S. at 147, 150; Immigration Reform and Control Act, 8 U.S.C. § 1101 note (2000).

[32]Equal Employment Opportunity Commission, No. 915.002, Rescission of Enforcement Guidance on Remedies Available to Undocumented Workers Under Federal Employment Discrimination Laws (2002), www.eeoc.gov/policy/docs/undoc-rescind.html.

[33]See *Escobar v. Spartan Security Service*, 281 F. Supp. 2d 895, 896–98 (S.D. Tex. 2003) (plaintiff, who alleged workplace sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964 in his suit against his former employer, was not entitled to back pay because he was an undocumented migrant at the time of the events, even though he had obtained his legal work status prior to trial); *Crespo v. Evergo Corporation*, 841 A.2d 471 (N.J. Super. Ct. App. Div. 2004) (undocumented worker was precluded from economic and noneconomic damages under state discrimination statute).

[34]*Escobar*, 281 F. Supp. 2d at 895 (citing *Hoffman*, 535 U.S. at 155 (Breyer, dissenting)).

[35]Hincapié & Avendaño-Denier, *supra* note 27, at 155.

Additional Provisions of the Civil Rights Act of 2008

The Civil Rights Act of 2008 covers a host of issues designed to ensure accountability for rights violations, beyond those discussed in this article. Among other provisions the Act would

- **protect students from harassment** by reversing *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 285 (1998), which holds that "deliberate indifference to discrimination" in the form of an official's refusal to act is the only scenario in which a school district should be liable for harassment by teachers (§ 111);
- in most instances, **invalidate mandatory arbitration clauses** in employment contracts (§ 423);
- **enhance equal pay enforcement** by amending the Fair Labor Standards Act to require that pay disparities between genders be justified by a "bona fide factor … such as education, training, or experience" (current law allows pay disparities so long as payment is made pursuant to a differential based on any factor other than gender) (§ 452(a);
- **restore attorney fees** by reversing *West Virginia University Hospitals v. Casey*, 499 U.S. 83, 88 (1991), which held that expert fees could not be recovered under 42 U.S.C. § 1988, and *Buckhannon Board and Care Home Incorporated v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001) (Clearinghouse No. 53,373), which rejected the "catalyst theory" as a permissible basis for a fee award (Subtitle D) (see also Gill Deford, *The Imprimatur of* Buckhannon *on the Prevailing-Party Inquiry*, 42 Clearinghouse Review 122 (July–Aug. 2008));

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immigrant plaintiffs whose rights have been violated.[36] In one chilling example, a group of immigrant workers sued their employer for failing to pay them minimum and overtime wages. During the deposition of one of the plaintiffs, the defense lawyers asked the plaintiff whether he was authorized to work in the United States. At his lawyer's insistence, the plaintiff asserted his Fifth Amendment privilege and refused to answer. During a break, defense counsel called the police. Three police officers arrived and asked the plaintiff whether he was a legal citizen. When the plaintiff's lawyer refused to allow him to answer, the police called the Department of Homeland Security's Bureau of Citizenship and Immigration Services.[37]

Some have called the Supreme Court's decision in *Hoffman* the *Dred Scott* of worker rights.[38] Others cite it as evidence of judicial activism. *Hoffman* has had a profound impact on labor and organizing, and it is affecting both immigrants and nonimmigrants alike.

IV. The Civil Rights Act of 2008

The cases discussed above are only a handful in a series of Supreme Court rulings that have curtailed the enforceability of civil rights and access to the federal courts. The Civil Rights Act of 2008, introduced by Sen. Edward Kennedy, is an omnibus bill designed to overturn a number of these Supreme Court rulings and restore the civil rights of millions of people in this country.[39]

The Act would reverse *Alexander v. Sandoval* and restore to individuals the ability to challenge practices that have an unjustified discriminatory effect based on race, color, national origin, or disability.[40] More specifically, the Civil Rights Act of 2008 could provide a right to challenge actions that have an unjustified racially disparate impact under Title VI and Title VII and the Voting Rights Act of 1965.[41] Passage of the Act would allow communities, such as those in Camden, to enjoin sitings of dangerous polluters where the siting has a racially discriminatory impact. It would allow challenges to discriminatory school funding schemes. Restoring Title VI would also provide a legal mechanism to ensure that many children in inner-city neighborhoods have access to green spaces, something that is key to addressing the epidemic of obesity, inactivity, and related diseases.[42]

The Civil Rights Act of 2008 would also go a long way toward restoring protections for workers. It would reverse the Court's decision in *Hoffman*, thereby removing the perverse incentive for employers to exploit immigrant workers. It would ban the use of mandatory binding arbitration agreements in employment disputes, thereby restoring the original balance that Congress intended: giving employers and employees an equal chance in the alternative mechanism chosen for resolving disputes.[43] Under the Act, companies could no longer ban their employees from defending their rights in open court. Employers who want to

[36]National Immigration Law Center, Issue Brief, Workplace Rights of Undocumented Workers After the Supreme Court's *Hoffman Plastic* Ruling 3, www.nilc.org/immsemplymnt/IWR_Material/Attorney/Issue_Brief_Workplace_Rights_post_Hoffman_3-06.pdf.

[37]Hincapié & Avendaño-Denier, *supra* note 27, at 149.

[38]Ed Ott, Executive Director of the New York City Central Labor Council, in a meeting with Marianne Engelman Lado and Eddie Bautista of the New York Lawyers for the Public Interest National Campaign to Restore Civil Rights (2002).

[39]Civil Rights Act of 2008, S. 2554, 110th Cong. (2008).

[40]*Id.* §§ 102–104, 305.

[41]Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, 42 U.S.C. § 2000e (2000); Voting Rights Act of 1965, 42 U.S.C. § 1973 (2000). The Civil Rights Act of 2008 would also allow disparate impact challenges under the Patsy T. Mink Equal Opportunity in Education Act (20 U.S.C. §§ 1681–88 (2000)), the Americans with Disabilities Act (42 U.S.C. § 12101 (2000)), and Section 504 of the Rehabilitation Act (29 U.S.C. § 94 (2000)).

[42]Robert García et al., Healthy Children, Healthy Communities, 31 Fordham Urban Law Journal 101 (2004).

[43]S. 2554, 110th Cong. § 422 (2008).

arbitrate would need to secure a separate agreement after the dispute arises so that all "parties involved knowingly and voluntarily consent to submit such dispute to arbitration."[44] This is the fair, meaningful dispute resolution system that Congress approved, one that respects the rights of both parties, while preserving an alternate to traditional litigation (see the sidebar for additional provisions).

The Act is comprehensive, but, of course, it does not reach many other obstacles for civil rights enforcement such as the growth of qualified immunity and other doctrines that shield civil rights violators. A few notable cases that will need to be addressed in future legislation include *Gonzaga University v. Doe,* which severely undercut the viability of 42 U.S.C. § 1983, and *Board of Trustees of University of Alabama v. Garrett*, which rolled back the rights of people with disabilities.[45]

■ ■ ■

This has been a challenging time for legal services lawyers and civil rights advocates. We have seen a rollback in access to the courts and other major changes. As we look to the future, the next step will be to focus on not only counteracting the rollbacks but also going beyond the defensive posture and envisioning how to achieve equity and justice on behalf of our clients.

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[44]*Id.*

[45]*Gonzaga University v. Doe,* 536 U.S. 273 (2002); *Board of Trustees of University of Alabama v. Garrett,* 531 U.S. 356 (2001) (pursuant to the Eleventh Amendment, states have immunity from claims of retroactive relief in cases of discrimination against people with disabilities).

Additional Provisions of the Civil Rights Act of 2008

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- **protect those in military service** by reversing *Alden v. Maine*, 527 U.S. 706 (1999) (Clearinghouse No. 52,332), which holds that Congress lacks the authority to subject nonconsenting states to private suits for damages in their own courts (Title II);
- **protect state employees** by providing that a state's acceptance of federal funds constitutes a waiver of sovereign immunity to employees' enforcement of the Fair Labor Standards Act (§ 469);
- **restore the rights of older workers** by reversing *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000) (Clearinghouse No. 52,102), which holds that Congress lacks authority to abrogate state sovereign immunity in the Age Discrimination in Employment Act, despite its stated intent to do so (Title III);
- **strengthen Title VII** by removing caps on compensatory and punitive damages (§§ 441–442).

For the full text of the Civil Rights Act of 2008, see www.govtrack.us/congress/billtext.xpd?bill=s110-2554.

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