ACLU WOMEN'S RIGHTS PROJECT REPORT

Published
May 2010

WRP MISSION STATEMENT

The goal of the ACLU WRP is to secure gender equality and ensure that all women and girls are able to lead lives of dignity free from violence and discrimination. This means an America where all women and girls have access to quality education, employment, housing, and health, irrespective of race, class, income, immigration status or involvement with the criminal justice system.

ADVANCING EQUAL EMPLOYMENT OPPORTUNITIES

Economic opportunity is the bedrock of personal autonomy. For this reason WRP seeks to ensure that all women – especially low-wage women of color – have equal access to employment and a fair workplace. Our advocacy to ensure economic opportunity and personal independence for women includes a broad strategy to end gender discrimination, sexual harassment, and workplace exploitation by strengthening affirmative action policies and practices, working to guarantee healthy and safe working conditions, and challenging the undervaluing of "women's work."

Protecting the Workplace Rights of Low-Wage Immigrant Women Workers

Low-wage immigrant women workers toil in jobs that are crucial to our economy, yet these workers and the work they perform remain undervalued and overlooked. Often, these women work in jobs where few, if any, workplace protections exist to guarantee fairness in pay and treatment, such as in small retail stores and restaurants, in nail salons, in private homes, in packing plants, and on farms. The women who occupy these jobs generally come from impoverished backgrounds, lack access to educational opportunity, and speak little English, so even when protections are in place, these women often lack familiarity with U.S. law and law enforcement mechanisms. Furthermore, in an era of rising anti-immigrant sentiment and policies, immigration status has been used in state and federal courts to limit the enforceability of women's right to work in safe and harassment-free environments. As a result, these workers are particularly vulnerable to sexual harassment and assault, exploitation, degrading treatment, and other forms of discrimination based on their gender, race, ethnicity, immigration status, and social status.

Combating the Abuse and Exploitation of Domestic Workers

Far too often sectors in which women are a majority of the workforce are undervalued and under-regulated, workers in these occupations are not extended the same protections as employees in other types of employment, and women are paid less than men working in comparable jobs. This is especially true in the field of domestic labor, such as with in-home caregivers and house cleaners, where the isolated and informal nature of the employment compounds workers' vulnerability. Domestic workers, the vast majority of whom are immigrant women of color, routinely face low pay and long hours,

and are denied health care and sick leave. They often endure physical and other forms of abuse, and many find themselves the victims of human trafficking.

WRP is partnering with grassroots organizations, including Domestic Workers United, Andolan: Organizing South Asian Workers, DAMAYAN Migrant Workers Association, and the National Domestic Workers Alliance, to advocate for state, federal, and international policies to protect domestic workers' human rights. In 2009 and 2010 WRP and the New York Civil Liberties Union worked with a coalition, led by Domestic Workers United, towards passage of the New York State Domestic Workers Bill of Rights, which will reform New York State law to guarantee basic work standards and protections for nannies, in-home caregivers, and housekeepers. The Bill of Rights is a comprehensive response to domestic workers' vulnerability to abuse and mistreatment, and works to counter domestic workers' exclusion from most labor protections. The Bill will ensure domestic workers are provided a limited number of paid sick days, personal days, and vacation days; notice and severance pay; yearly raises tied to inflation; full overtime pay for any work over 40 hours per week; one day of rest per week; protection from employment discrimination; and health benefits. If passed, the New York Bill would be the first of its kind in the country.

In March 2010, in conjunction with the 54th U.N. Commission on the Status of Women, WRP, the ACLU Human Rights Program, and our partner grassroots organizations held a parallel event to bring attention to the exploitation and abuse of domestic workers. The event began with a screening of the Brown Girls Productions documentary, *Behind Closed Doors*, which captures the ill-treatment that many South Asian domestic workers face in New York. The film was followed by a panel discussion in which panelists spoke of the extreme hardships and human rights abuses that domestic workers endure and the legislative, litigation, and advocacy efforts that are underway to raise awareness of and secure rights for this vulnerable workforce.

Diplomatic Immunity and Domestic Workers

Within the field of domestic work, there is a subset of workers – the domestic employees of foreign diplomats stationed in the United States – who face yet another level of vulnerability and, as a result, often suffer extreme exploitation rising to the level of slavery. Diplomatic immunity bars these workers from claiming their legal rights in court and, as a result, gives diplomats a free pass to mistreat them deliberately and without penalty.

***Sabbithi v. Al-Saleh* (D.D.C.)**

In 2007 WRP and the ACLU Human Rights Program filed suit against the State of Kuwait, a Kuwaiti diplomat and his wife for trafficking three Indian women and forcing them to work as domestic employees and childcare workers against their will and under slavery-like conditions. This litigation seeks to hold accountable not only the diplomat and his wife, but also the State of Kuwait for the abuse the women suffered at the hands of their diplomat employer.

Shortly after we filed our complaint in January 2007, the Department of Justice initiated a criminal investigation of the defendants for forced labor, involuntary servitude and trafficking violations. Following this investigation the Department of State requested that Kuwait waive Mr. Al Saleh's immunity from prosecution. Kuwait declined to waive immunity, but sent Mr. Al Saleh and his family back to Kuwait.

In March 2009, the court granted the Motion to Dismiss by the diplomat and his wife, on the grounds of diplomatic immunity. In November 2009, the court also granted the Motion to Dismiss by the State of Kuwait, on the grounds that the ACLU failed to properly effect service. The ACLU filed and was granted a Motion for Reconsideration on the grounds that service was properly effected. The court instructed the parties to submit supplemental briefing regarding liability under the Foreign Sovereign Immunities Act and granted a request by Kuwait to allow supplemental briefing regarding the issue of properly effecting service. The parties will submit all supplemental briefings by the end of April, and a motion hearing is scheduled for May 26, 2010.

***Baoanan v. Baja* (S.D.N.Y.)**

In October 2008, WRP, joined by Boat People SOS, Casa of Maryland, DAMAYAN, and a number of other domestic worker advocacy organizations, filed an *amicus* brief in support of Marichu Baoanan, a woman who was trafficked to the United States by the then-Philippines Ambassador to the U.N., Lauro L. Baja, Jr., and forced to work against her will in slavery-like conditions. Our brief argued that the commercial activities exception to diplomatic immunity should be interpreted in a manner consistent with established precedent that the employment of laborers by embassies or foreign missions constitutes a commercial activity under the Foreign Sovereign Immunities Act.

In April 2009, the U.S. government submitted a Statement of Interest, urging the court to assess the defendants' "residual" immunity because the lawsuit was filed more than a year after Ambassador Baja left his diplomatic post. The U.S. argued that, as a spouse of a former diplomat, Mrs. Baja does not enjoy residual diplomatic immunity, but did not take a position as to whether the same applies to Ambassador Baja. Additionally, the United States asserted that "there is a broad scope of a diplomat's conduct that is neither 'commercial' nor 'official,' for which former diplomats do not enjoy residual immunity," and called upon the court to conduct a separate analysis to determine whether a former diplomat's conduct would constitute an official act and qualify for residual immunity. In June, the Court denied the Defendants' Motion to Dismiss, ruling that it has subject matter jurisdiction over both Mr. and Mrs. Baja. The court held that the employment of Ms. Baoanan as a domestic worker was a "private act for which Baja cannot avail himself of residual immunity", nor is Mrs. Baja eligible for such immunity.

***Swarna v. Al-Awadi* (2d. Cir.)**

On February 16, 2010, WRP and the Asian American Legal Defense Education Fund (AALDEF) submitted an *amicus* brief in support of plaintiff Vishranthamma Swarna's claims against her former employer, former Kuwaiti diplomat Badar Al-Awadi and his wife Halal Muhammad Al-Shaitan. While employed as a domestic worker for the defendants, who were stationed at the Kuwait Permanent Mission to the United Nations,

Ms. Swarna asserts that the defendants subjected her to slavery-like conditions, including involuntary servitude and torture. Defendants are claiming diplomatic immunity exempts them from this suit. The Court of Appeals for the Second Circuit heard argument on April 20, 2010.

Federal Legislative Advocacy to Restore the Rights of Domestic Workers Employed by Diplomats

After intensive advocacy by many groups, led by WRP and the ACLU Washington Legislative Office (WLO), in December 2008, Congress passed and President Bush signed The William Wilberforce Trafficking Protection Reauthorization Act of 2008 (TVPRA), a bill reauthorizing the Trafficking Victims Protection Act of 2000. The new law requires significant measures to prevent the abuse, exploitation and trafficking of domestic workers employed by foreign diplomats in the United States. The law contains specific provisions to enhance domestic workers' protection by requiring that workers are made aware of their rights prior to coming to this country; that diplomats have a contract with domestic workers containing terms regarding the conditions of employment; that the State Department suspend the issuance of visas to a particular mission when the department receives credible evidence that a worker was exploited or abused and the mission tolerated the conduct; that the State Department maintains records regarding diplomats and domestic workers, including allegations of trafficking or abuse; and that several compensation approaches be studied and evaluated so that workers may receive appropriate compensation when their employment contracts are violated.

WRP and WLO's first steps to ensure full implementation of the TVPRA were brought to fruition in 2009. Together with other advocates and nongovernmental organizations, the ACLU drafted a model pamphlet designed to inform vulnerable workers who come to the United States of their legal rights and the resources available to them. In June 2009 the State Department published the pamphlet and we have confirmed that it is being distributed at consular offices the world over in more than six languages. We continue to advocate for implementation of the other provisions of the TVPRA.

Petition Alleging Violations by the United States of America of the Human Rights of Domestic Workers Employed by Diplomats (Inter-Am. C.H.R.)

In 2007, WRP, the ACLU Human Rights Program, and our coalition partners, the University of North Carolina School of Law Immigration/Human Rights Clinic and Global Rights, filed a petition before the Inter-American Commission on Human Rights (IACHR) on behalf of five domestic workers from Argentina, Bolivia, Bangladesh, Indonesia, and Zimbabwe and three organizations that provide services to domestic workers (Andolan, Break the Chain Campaign, and CASA of Maryland), asking the Commission to hold the United States accountable for abuses the petitioners suffered at the hands of their diplomat employers. Established under the auspices of the Organization of American States, the IACHR is expressly authorized to examine allegations of human rights violations by all countries in the Western Hemisphere, including the United States. In the name of the five named petitioners and the thousands of domestic workers they represent, the petition calls on the U.S. to comply with its

obligations under the American Declaration on the Rights and Duties of Man to ensure that no class of workers is subjected to human rights abuses in this country. The petition is currently pending before the Commission.

Sexual Harassment in the Agricultural Industry

In 2009, WRP expanded our advocacy on behalf of immigrant women workers in the agricultural industry who are facing sexual harassment and other types of sex discrimination. As part of the AMPARO coalition, WRP advocates for farmworker women in Washington State in collaboration with the ACLU of Washington, Columbia Legal Services, and Northwest Justice Project. WRP has been reaching out to farmworker women in the Washington area through "Know Your Rights" trainings, public service announcements on local radio stations, and a hotline for farmworker women seeking legal assistance. In the summer of 2009, WRP began preparations to launch new outreach to service providers, such as sexual assault groups and domestic violence organizations, who come into regular contact with farmworker women, so that they can help disseminate informational materials—including a pocket card that highlights farmworker women's rights and provides contact information for AMPARO.

WRP is also a member of the Northeast Esperanza Committee, which builds on the work of the Southern Poverty Law Center's national Esperanza Project to combat sexual harassment and sex discrimination against farmworker women. In February 2009, together with Farmworker Legal Services of New York (FLSNY) and Friends of Farmworkers, WRP co-sponsored a meeting that brought together farmworker advocates, domestic violence advocates, attorneys, health practitioners, academics, and government agencies to address farmworker women's needs and develop a plan for follow-up training and communication. In June 2009, WRP co-hosted a conference call to train many of these advocates on outreach strategies to reach farmworker women. The Committee is continuing to explore the best way to support advocates in the Northeast who are working with or interested in working with farmworker women facing sexual harassment and sex discrimination.

To reach farmworker women directly in the Northeast, WRP also visited farmworker housing sites in the Hudson Valley region of New York, in Western New York, and in Kennett Square, Pennsylvania. At the invitation of FLSNY, WRP also visited Western New York to talk directly with small groups of farmworker women about sexual harassment.

EEOC Charge on behalf of S. Vergara

In March 2009, WRP along with the ACLU of Washington filed an administrative charge with the Equal Employment Opportunity Commission (EEOC) on behalf of a farmworker in Washington State who faced sexual harassment at work. The complainant is an immigrant woman from Mexico who worked for over a year at an orchard, often in very isolated settings. A male coworker subjected her to verbal and physical sexual harassment, and her employer failed to take appropriate corrective measures despite her complaints to management. As part of its investigation the EEOC interviewed Ms.

Vergara in May 2009. We await the EEOC determination regarding Ms. Vergara's charge.

Health and Safety of Food Processing Workers

WRP has initiated advocacy and outreach efforts to advance the rights of low-wage food processing workers in North Carolina to a safe and healthy workplace. We have provided training and outreach materials regarding legal claims that specifically affect women working in the industry, including pregnancy discrimination, sexual harassment, and other forms of sex discrimination and violations of health and safety regulations, to a statewide coalition of advocates for poultry workers and to a workers' center that specifically serves poultry workers. Together with the ACLU of North Carolina, WRP also participated in a regional human rights conference that addressed the health and safety concerns of low-wage women food processing workers.

In addition, in April 2009, in cooperation with the North Carolina Justice Center (NCJC) and in consultation with the ACLU of North Carolina, WRP conducted outreach to women crab workers in North Carolina who have experienced denial of work opportunities based on gender as well as wage and visa violations.

***Landeros Covarrubias, et al. v. Captain Charlie's Seafood Inc.* (E.D.N.C.)**

On March 17, 2010, in cooperation with the North Carolina Justice Center (NCJC) and the ACLU of North Carolina, WRP filed a lawsuit against Captain Charlie's Seafood, Inc. on behalf of three Mexican women employed on temporary worker visas. The lawsuit charges that Captain Charlie's unlawfully discriminated against female employees on the basis of sex by restricting them to certain work, which culminated in their wrongful termination in violation of North Carolina public policy prohibiting such gender-based employment decisions. The lawsuit also charges that the company violated the Fair Labor Standards Act and the North Carolina Wages and Hours Act in underpaying workers and failing to reimburse them for travel and visa expenses. The women have also filed charges of unlawful discrimination with the EEOC, claiming that gender-based job restrictions violated Title VII of the Civil Rights Act.

Nail Salons and Toxic Chemical Exposure

As part of a Skadden Fellowship project, WRP is undertaking work to improve the health and safety of women working with toxic chemicals in nail salons. Women employed in this industry spend long hours working with chemicals that can cause respiratory difficulties, skin rashes, problems with the nervous system, and even cancer and reproductive health problems such as miscarriages, infertility, and birth defects. Because these workers are primarily low-income immigrant women, their ability to assert their legal rights to health and safety protections is often impeded by language barriers, concerns about their immigration status, and lack of familiarity with the U.S. legal system.

To improve the rights and resources available to nail salon workers, WRP has provided support for legislative advocacy in the New York State Assembly, worked to

help several government regulatory agencies better address this issue, and convened an interdisciplinary taskforce of organizations to coordinate advocacy in New York for nail salon workers' health and safety. To reach more workers and engage advocates, WRP created and distributed a "Know Your Rights" brochure for nail salon workers for nail salon workers and a fact sheet for advocates, both of which have been translated into Spanish and several Asian languages. As part of a "Know Your Rights" presentation, WRP has also spoken directly with nail salon workers to give them information about their rights under federal and state law and to hear about the challenges they face in the workplace.

Petition Alleging Violations of the Human Rights of Undocumented Workers by the United States of America (Inter-Am. C.H.R.)

In 2006 WRP, along with the ACLU Human Rights Program, the ACLU Immigrants' Rights Project, the National Employment Law Project, and the University of Pennsylvania School of Law Transnational Legal Clinic, filed a petition urging the Inter-American Commission on Human Rights to find the United States in violation of its universal human rights obligations by denying equal rights and remedies to millions of undocumented immigrants and thus failing to protect them from exploitation and discrimination in the workplace. The petition was submitted to the Commission on behalf of the United Mine Workers of America, AFL-CIO, Interfaith Justice Network, and six immigrant workers who are representative of the six million undocumented workers in the United States labor force. The petition is pending a decision regarding its admissibility.

Women in Non-Traditional Occupations

For far too long, men have almost exclusively occupied the most lucrative and valued jobs in our society. In recognition of this fact, WRP has worked to break down barriers for access to employment opportunity and has advocated for equal pay for equal work. We also recognize that by providing hardworking women and men of color with access to employment opportunities, affirmative action policies have been critical tools in redressing the harmful effects of past and ongoing discrimination. In 2009, WRP continued the ACLU's longstanding commitment to advocating for women and people of color who dared to enter into and be successful in jobs from which they were historically excluded.

***United States v. New York City Board of Education* (2d. Cir.)**

In 1996, the U.S. Justice Department brought suit against the New York City Board of Education, alleging that the Board had long discriminated against women, African-Americans, Latinos, and Asian-Americans by failing to recruit them as custodians and by giving discriminatory civil service tests. In New York City public schools, custodians, who function as building managers and often supervise large staffs, are high-paying managers with civil service benefits and protections. In 1999, the Justice Department and the Board of Education entered into a settlement agreement providing

that the women, African-Americans, Latinos, and Asian-Americans working as custodians who were employed provisionally, meaning they could be fired at any time and they could not compete for various other employment benefits, would all become permanent civil service employees with retroactive seniority. The agreement also provided that if any of its provisions were ever challenged, the Justice Department and the Board of Education would defend the agreement and the awards it provided. Shortly after the settlement, a small group of white male custodians, represented by the Center for Individual Rights, challenged the agreement, arguing it constituted reverse discrimination. In an astounding and chilling turn in policy, in 2002 the Justice Department reneged on its promise to defend many of the women and minority custodians whose interests it had championed during the previous six years of litigation, leaving their job security hanging in the balance.

In response, WRP intervened to protect the settlement agreement and the affirmative action measures put in place. The judge issued a decision holding that the permanent appointments and retroactive seniority awarded to female custodians did not violate the Constitution or Title VII, but that men of color who did not take one of the discriminatory examinations could keep their jobs but would lose the seniority they received under the agreement. In 2008, WRP appealed a trial court decision that sharply limited the scope of affirmative action measures put in place by the New York City Board of Education to remedy a history of discriminatory hiring and recruitment policies and practices.

In April 2009, WRP filed its opening brief as Intervenors-Appellees-Cross-Appellants in the Second Circuit Court of Appeals, arguing that it is permissible for a public employer to use race-and gender-conscious affirmative actions policies. In July 2009, WRP filed its response and reply brief, arguing that the district court's Judgment that the challenged awards to twelve male African-American, Hispanic, and Asian beneficiaries violated the Constitution should be reversed. The brief also argued that the district court's conclusion that the remainder of the challenged awards complied with Title VII and the Constitution should be affirmed.

Oral argument was heard on February 1, 2010 and we await a decision.

Pregnancy Discrimination in New York National Guard

In June 2008, WRP and the New York Civil Liberties Union advocated for the elimination of a policy of the New York Department of Military and Naval Affairs that required each woman soldier serving on state active duty missions in the New York National Guard to sign a "statement of understanding" stating that she would be removed from the mission if she became pregnant and that she must submit to pregnancy testing every 90 days. Women who became pregnant were automatically removed from the mission and their families lost health benefits. In September 2008, we learned that the Guard planned to implement a new policy eliminating mandatory pregnancy testing and replacing the old statement of understanding with a form to be signed by both men *and* women indicating understanding that remaining on state active duty depends on the soldier being capable of performing the training and tasks of the mission. In March 2009, the Guard completed implementation of the new policy.

Strengthening Employment Protections

Title VII and its prohibition of employment discrimination based on race, color, religion, sex, and national origin, was passed into law as part of the Civil Rights Act of 1964, a hard-won and crowning legislative victory of the American civil rights movement.

In 2009, WRP worked to restore Title VII and ensure that its guarantees are construed as broadly as possible so as to allow all women access to economic opportunities critical to their advancement in society. WRP also supported efforts to ensure that Title VII's protections against retaliation are strong and that courts properly certify Title VII classes so as to recognize the common interests of current and past employees who seek to bring about policy changes to remedy discriminatory employment practices.

***Crawford v. Metropolitan Government of Nashville and Davidson County, TN* (U.S.)**

In April 2008, WRP joined the National Women's Law Center's *amicus* brief in support of petitioner, Vicky Crawford, a woman who was fired from her job after she participated in her employer's internal investigation of sexual harassment and other discrimination against a high-level employee of the Metropolitan Government of Nashville and Davidson County. After the investigator's report left the allegations unresolved, Ms. Crawford found herself under investigation and she was ultimately terminated. Ms. Crawford sued her former employer, charging that firing her within months of her participation in its investigation of the high-level employee's behavior constituted illegal retaliation under Title VII.

On January 26, 2009, the Supreme Court ruled unanimously that petitioner, Vicky Crawford, can sue her employer for retaliation. This landmark decision reversed the Sixth Circuit Court of Appeals' ruling and held that employees are protected by Title VII's anti-retaliation provision, even when they did not initiate the allegations of discrimination, but reported discrimination in response to being questioned by investigators.

***Mary Lou Mikula v. Allegheny County of Pennsylvania* (3d. Cir.)**

In June 2009, WRP, the ACLU of Pennsylvania, and the National Partnership for Women and Families filed an *amicus* brief on behalf of Mary Lou Mikula, an employee of the Allegheny County Police Department who filed a Title VII sex discrimination complaint based on discriminatory pay for her work managing the County's grant budget. The District Court found that her Title VII claim was not timely filed and a Third Circuit panel's *per curiam* decision affirmed that judgment. The panel also ruled on Mikula's Equal Pay Act claim, but the *amicus* brief did not address that claim. The *amicus* brief, which was also joined by the Women's Law Project, supported a petition by the National Women's Law Center for panel rehearing or rehearing *en banc*, urging reversal of the decision on Mikula's Title VII claim.

The brief argued that the panel's decision was erroneous under the Lilly Ledbetter Fair Pay Act of 2009, which clearly delineated the various events that will trigger the statute of limitations for a Title VII claim. Under the Act, an Equal Employment

Opportunity Commission charge filed within 300 days of receiving a discriminatory paycheck is timely, as is a charge filed within 300 days of an independent discriminatory pay decision. Because Mikula filed her charge within 300 days of receiving a discriminatory paycheck and also within 300 days of the County's independent decision to deny her a raise she had requested, the *amicus* brief argued that her claim was timely and that to decide otherwise would undermine both the plain language of the Act and Congressional intent.

In September 2009, the Third Circuit reversed the District Court's decision that Mikula's Title VII claim for pay discrimination was not timely filed, remanding the case to be decided according to the clear guidelines set out in the Ledbetter Fair Pay Act. The Third Circuit's decision comports with the Ledbetter Fair Pay Act by making it clear that each discriminatory paycheck restarts the statute of limitations for a Title VII claim.

Lilly Ledbetter Fair Pay Act

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act into law. The Lilly Ledbetter Fair Pay Act, the first major bill that the President signed, overturned the Supreme Court decision in *Ledbetter v. Goodyear*, in which employees lost their right to their day in court for ongoing pay discrimination. The law amends Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and modifies the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes. The Lilly Ledbetter Fair Pay Act struck a powerful blow for justice not just for her, but for anyone who has suffered wage discrimination.

Paycheck Fairness Act

The Paycheck Fairness Act makes several changes to the 45-year old Equal Pay Act by strengthening its ability to combat wage discrimination. The bill puts the onus on employers to prove that wage differentials between men and women in the same position stem from facts other than sex. It provides protection against retaliation for employees who disclose their wages or ask about an employer's wage policy. It also requires training for Equal Employment Opportunity Commission staff and technical assistance from the Department of Labor for employers seeking to address the wage gap. The bill also establishes a national award for employers who make substantial efforts to eliminate pay disparities between men and women in the workplace.

In January 2009, the U.S. House of Representatives passed a paycheck fairness package that included the Paycheck Fairness Act bill. However, the Senate did not pass the package. Consequently, the future of this bill is in the hands of the Senate. President Obama has indicated that if the Senate passes the bill, he will sign the Paycheck Fairness Act into law. In 2010 the ACLU has continued its efforts to pressure the Senate to pass the bill, including working with affiliates in key states around the country to take action on April 20, Equal Pay Day.

ENDING VIOLENCE AGAINST WOMEN & GIRLS

Ending Housing Discrimination Against Survivors of Domestic Violence

When women flee domestic violence and take steps to protect themselves and their children from further violence, they are frequently forced to leave their homes, often with nowhere else to turn. For years, advocates have known that domestic violence is a leading cause of homelessness for women and children. Housing instability and a lack of safe and affordable housing options heightens the risks for women experiencing domestic violence, as a lack of alternative housing often leads women to stay in or return to violent relationships. Landlords also turn victims of domestic violence out of their homes because of violence perpetrated against them. In fact, many housing authorities and private landlords, in an attempt to combat crime, have adopted "zero tolerance for crime" policies and taken up the practice of evicting survivors of domestic violence, sexual abuse, or stalking. Relying on stereotypes about battered women – particularly, that if a women experiences domestic violence it is because she is inciting it or allowing it to happen – these policies discriminate in that they unfairly penalize survivors of violence for the crimes perpetrated against them.

Indigo Real Estate Services v. Rousey **(Wash. Ct. App.)**

In February 2009, WRP and the ACLU of Washington filed an *amicus* brief on behalf of a domestic violence survivor who sought to redact her full name from housing court records. In 2008, Ashlee Rousey's landlord attempted to evict her after she experienced domestic violence, in violation of a Washington state law that prohibits discrimination against abuse survivors. After the eviction case was dismissed, Ms. Rousey sought to replace her name with her initials in the court records so that she would not suffer loss of further housing opportunities based on the wrongfully filed complaint. The trial court denied her redaction motion, and she appealed.

The *amicus* brief submitted by WRP and the ACLU of Washington, joined by eight other women's rights, anti-violence, and housing organizations, argued that domestic violence and housing discrimination based on such violence present compelling privacy and safety concerns warranting the requested redaction. The brief discussed the fact that domestic violence is a primary cause of women's and children's homelessness and the numerous public policies that have been adopted to address the housing rights of survivors, including Washington's anti-discrimination law. Unless limited redaction is permitted in these unsubstantiated cases, domestic violence survivors will be punished for having exercised their rights to seek police assistance (which led to the filing of the eviction in this case) and to pursue the legal remedies available to them.

The state Attorney General filed an *amicus* brief supporting Ms. Rousey, while the Washington Coalition for Open Government and the Washington Landlord Association filed briefs opposing the requested redaction.

In August 2009, the Washington Court of Appeals reversed the lower court and ruled in favor of Ms. Rousey. The appellate court acknowledged that loss of housing opportunities for domestic violence survivors can be a compelling privacy or safety

interest sufficient to justify redaction and remanded to the lower court for further proceedings.

Advocacy for C. E. **(Mich.)**

WRP and the ACLU of Michigan intervened on behalf of a domestic violence survivor who received an eviction notice after her ex-partner broke into her home and assaulted her. C.E. lives with her young daughter in a Section 8-subsidized apartment outside of Detroit. The notice cited disturbance and an "unauthorized tenant" (referring to the ex-partner, who had never resided in the apartment) as the grounds for eviction. In September 2009, WRP and the ACLU of Michigan sent a demand letter to the owner and management company, arguing that the eviction violated the federal Violence Against Women Act and federal and state fair housing laws. In October 2009, following negotiations and conversations with the HUD Michigan office, the owner rescinded the notice and C.E. continues to live in her unit.

Lewis v. North End Village **(E.D. Mich.)**

WRP and the ACLU of Michigan continue to monitor compliance with a settlement agreement reached in a sex-discrimination suit brought against a Detroit housing management company that evicted a domestic violence victim based on a policy that held tenants responsible when their "guests" create a disturbance or damage the property, including tenants who are victims of domestic violence being harassed by their abusers. The suit was filed on behalf of Tanica Lewis who had obtained a protective order against her boyfriend after he harassed and stalked her. When the boyfriend subsequently broke the windows to her home and smashed in her front door the management company issued Ms. Lewis and her two young daughters a notice to quit. Our lawsuit, filed in 2007, charged that the management company's policy of evicting victims of domestic violence for the acts of their abusers constituted sex discrimination in violation of the federal Fair Housing Act and Michigan's Civil Rights Act.

Under the settlement that we reached in 2008, the management company agreed not to evict or discriminate against tenants because they have been the victims of domestic violence, dating violence, sexual assault or stalking, whether or not the abuser is residing in the tenant's household. The management company also agreed to offer early lease termination and relocation to tenants who have been the victims of abuse and need to leave their homes to ensure their safety. As such, the settlement goes beyond the federal Violence Against Women Act's (VAWA) fair housing requirements in both substance and scope and serves as an exemplary model for landlords and property management companies throughout the country. The ACLU is monitoring compliance for seven years.

The management company has taken a number of steps to accommodate survivors of domestic violence including implementing a new domestic violence policy (that also covers dating violence, sexual assault, and stalking and provides for early termination of a lease and the option of relocating to another property managed by the company if a tenant needs to flee violence) and ten properties throughout Detroit managed by the company have accepted the early lease termination and relocation provisions. This

means that there are now over 500 units available to tenants who need to relocate for safety reasons.

Domestic Violence and Fair Housing

In conjunction with a number of ACLU affiliates, WRP has worked closely with communities around the country to raise awareness about the housing discrimination often faced by domestic violence survivors. In 2009, the ACLU convened trainings and informational sessions for approximately 80 advocates and lawyers in San Diego and Portland on the protections the Fair Housing Act and Violence Against Women Act (VAWA) provide.

WRP has continued its advocacy with the U.S. Department of Housing and Urban Development (HUD) to ensure that housing discrimination against survivors of domestic violence, dating violence, and stalking is addressed. In January 2009, WRP submitted extensive comments, joined by 37 other housing and domestic violence organizations, calling on HUD to issue a final rule that fully effectuates the statute and provides much-needed guidance to public housing authorities and section 8 owners. WRP found common ground with landlords and housing managers and filed a joint letter with national housing provider groups on the need for further VAWA regulation. WRP also has highlighted the needs of immigrant domestic violence and trafficking survivors. In March 2009, WRP sent a letter discussing the impact of HUD's January 2009 rule requiring Social Security numbers for all applicants and tenants in public and section 8 housing on battered and trafficked immigrants.

In June 2009, WRP and the Washington Legislative Office (WLO) submitted testimony to the Senate Judiciary Committee regarding the next reauthorization of the VAWA and the need for further protection against housing, employment, and insurance discrimination for survivors of domestic violence, sexual assault, and stalking. WRP and WLO are participating in the national Task Force charged with advocating for the next VAWA reauthorization.

In November 2009, WRP staff members attended the National Forum on the Human Right to Housing, hosted by the National Law Center on Homelessness & Poverty and Georgetown University Law Center. On the first day, the United Nations Special Rapporteur on the Right to Adequate Housing, Raquel Rolnick, hosted a National Town Hall Forum – the final piece of her 18-day official mission to the United States to investigate housing rights violations. This was the first official visit to the United States by a UN Special Rapporteur on Housing. WRP presented written and oral testimony to the Special Rapporteur about the housing rights of domestic violence survivors and participated in a panel about domestic violence and the gender component of the human right to housing. In March 2010, the Special Rapporteur presented a report to the United Nations Human Rights Council, summarizing her investigative findings and recommendations and identifying the many housing rights violations people face in the U.S., including the "persistent impact of discrimination in housing." Citing a fact sheet published by the WRP, the Rapporteur noted in her report that current housing policies "negatively target victims of domestic abuse, as they do not take into account whether tenants who are subject to eviction are the victims or the perpetrators of criminal activity."

Sexual Harassment and Housing

Poor women, who are economically vulnerable and have few resources, are at particular risk of sexual harassment by housing managers, who assume they will not be held accountable for their behavior. Faced with few affordable housing options, poor women are too often the targets of landlords and rental agents who exploit these women's vulnerability by demanding sex as a condition of housing. In 2009, WRP continued to advocate for the rights of economically disadvantaged women and to challenge sexual harassment of these women by their landlords.

***Boswell v. GumBayTay* (M.D. Ala.)**

In 2007, in partnership with the ACLU of Alabama, Legal Services of Alabama, and the Central Alabama Fair Housing Center, WRP brought a lawsuit on behalf of Yolanda Boswell under the federal Fair Housing Act to challenge the harassment of low-income women who have few affordable housing options. Holding her housing over her head, the defendant, Jamarlo GumBayTay, had repeatedly tried to coerce Ms. Boswell into having sex with him. When Boswell refused the defendant's sexual advances, he raised her rent.

In July 2008, as a result of an investigation of the property agent by the ACLU and co-counsel, the U.S. Department of Justice Civil Rights Division filed suit against him and several owners of other properties he managed based on his sexual harassment of 12 additional women.

In March 2009, summary judgment was issued in favor of Ms. Boswell, and WRP's motion for disqualification of opposing counsel was granted on the grounds that defense counsel acted unprofessionally and menacingly toward the plaintiff and plaintiff's counsel. The court ruled from the bench that it was entering judgment for the plaintiff under the federal Fair Housing Act and awarded WRP's client damages.

Police and Governmental Response to Domestic Violence

Victims of domestic violence can seek civil protective orders, sometimes called restraining orders, in every state in the United States. Protective orders can also be issued in criminal court when an abuser is being prosecuted. Protective orders generally prohibit the abuser from harming or contacting the holder of the order. Protective orders can also address child custody and visitation, possession of a joint residence, and payment of child support or spousal support. Protective orders are important tools for keeping survivors of domestic violence safe, but alone, do not guarantee security. In fact, one study found that protective orders are violated in 67 percent of rape cases, 50 percent of physical assault cases, and 69 percent of stalking cases. Because protective orders are often violated, women who obtain them depend on the police to protect their safety and the safety of their family.

To reduce the prevalence of domestic violence and ensure the safety of domestic violence survivors who are taking steps to protect themselves and their families, many states have passed laws requiring police officers to take certain measures, including

arresting the abuser, when a protective order is violated. Yet a pervasive attitude persists in many police departments that domestic violence is a private matter, to be dealt with behind closed doors. Consequently, many officers do not treat domestic violence with the seriousness they would other comparably violent crimes. In some instances, obtaining a protective order may lead a batterer to retaliate against the victim; thus, when police fail to properly and meaningfully enforce protective orders, they increase danger to the victim by potentially exposing her to further violence.

In 2009, WRP continued its advocacy to ensure that police officers enforce domestic violence protective orders and that they are held accountable when they fail to do so. Beyond questions of redress, WRP continues to use novel strategies to advocate that federal and state governments take affirmative steps to end the cycle of violence and guarantee the human right of all women and children to live free of violence.

Gonzales v. United States, State of Colorado **(Inter-Am. C.H.R.)**

WRP and the Human Rights Program have continued to pursue our case on behalf of Jessica Gonzales pending before the Inter-American Commission on Human Rights (IACHR). We filed the petition after the Supreme Court, in June 2005, ruled that victims of domestic violence do not have a due process right to police enforcement of orders of protection against their abusive partners and dismissed Jessica Gonzales's case. Ms. Gonzales had filed suit after her three daughters were kidnapped by her estranged husband and subsequently killed after the police failed to take the actions required by state law to enforce her order of protection. The petition before the IACHR describes the widespread problem across the country of police failure to enforce legal protections for victims of domestic violence and argues that the U.S. failed to protect Ms. Gonzales's rights under the American Declaration of the Rights and Duties of Man.

The IACHR held a hearing on the petition's admissibility, in March 2007, at which Ms. Gonzales and her attorneys testified. In October 2007, the IACHR declared in a landmark "admissibility" decision that Ms. Gonzales's case could proceed, rejecting the U.S. government's position that the American Declaration on the Rights and Duties of Man does not create positive governmental obligations. Instead, the decision holds the U.S. to well-established international standards on state responsibility to exercise "due diligence" to prevent, investigate, and punish human rights violations and protect and compensate victims of domestic violence. The IACHR subsequently held a hearing on the merits in October 2008. Ms. Gonzales and her counsel again had an opportunity to testify at length to the Commissioners about the ways in which the government had violated her human rights by failing to arrest Mr. Gonzales, failing to conduct a thorough investigation of the events of that night, and failing to provide her with a remedy for the horrible atrocity she suffered as a result. We expect the Commission to issue its findings and recommendations in the Fall of 2010, and we are hopeful that Ms. Gonzales will finally be offered some measure of justice and that we will be able to use the recommendations to advocate for changes in police policies and state laws nationwide to better protect women from violence.

***Reedy v. Evanson* (3d. Cir.)**

In September 2009, WRP and the ACLU of Pennsylvania joined an *amicus* brief filed by the Women's Law Project in support of a sexual assault survivor whose Section 1983 claims were dismissed on summary judgment by the U.S. District Court for the Western District of Pennsylvania. Sara Reedy was arrested and charged with making a false statement months after she reported to police that she had been sexually assaulted at her workplace during a robbery. The charges against her were dropped, and she sued the police for false arrest and imprisonment. In granting summary judgment for the defendants, the district court held that the police had probable cause to arrest Ms. Reedy because, after cooperating with police extensively, she expressed reluctance to continue to work with them and refused victim services. The *amicus* brief explains how the district court relied on myths and gender stereotypes about how "real" rape victims should behave in concluding that no jury could find that the police had acted unreasonably.

Ending Employment Discrimination Against Survivors of Domestic Violence

Economic independence is a crucial factor in eradicating violence against women in the form of domestic violence, sexual assault, and stalking. Affording survivors of domestic violence and sexual assault economic independence is a key step toward enabling them to protect themselves and their families from further violence. Similarly, an employee should be able to report sexual assault on the job without fear of reprisal or loss of her job. In 2009, WRP continued its advocacy to protect the employment rights of victims of gender-motivated violence and in 2010, we will continue to advocate for state laws and local ordinances that recognize the complexity of gender-based violence and protect the employment rights of survivors to ensure that they are not re-victimized by punitive employment policies.

***Simmonds v. NYC Department. of Correction* (S.D.N.Y.)**

Correction Officer Danielle Simmonds works for the New York City Department of Correction (DOC) and was sexually assaulted by a co-worker. Simmonds reported the assault to the DOC. The DOC failed, however, to adhere to its own procedures governing correction officer assaults on fellow officers. Furthermore, the DOC retaliated against Simmonds after she inquired why no investigation or disciplinary action had been taken against her assailant. The DOC also failed to provide Simmonds with several reasonable accommodations that employers are obligated to provide the victims of sexual assault or domestic violence under the NYC Human Rights Law.

We filed EEOC charges on behalf of Ms. Simmonds in April 2006 and subsequently filed a complaint against the DOC and Ms. Simmonds' assailant in the Southern District of New York. In August 2007, we obtained damages against the City Defendants through an offer of judgment. In December 2007, we filed a motion for default judgment against Ms. Simmonds' assailant. In September 2008, the court granted our motion for attorneys' fees and costs against the DOC and also entered default

judgment against Ms. Simmonds' assailant. In December 2008 the court granted our motion for fees and costs against Ms. Simmonds' assailant. We are in the process of enforcing the judgment against him.

REFORMING THE CRIMINAL & JUVENILE JUSTICE SYSTEMS

Collateral Consequences

In close partnership with ACLU affiliates across the country, and in some coordination with the Racial Justice Program and other ACLU projects, WRP has been developing an advocacy and litigation initiative to address the consequences for women, especially poor women and women of color, of criminal convictions or prior arrests. Government policies and private discrimination can bar women with criminal records (or whose family members have criminal records) from access to housing, professional licensing, employment opportunities, public benefits, and other rights and benefits. Thus far, our initiative has focused on the right to equal employment and housing, as described below.

***Sharps, et al. v. The Housing Authority of the City of Annapolis, et al.* (Md. Cir. Ct.)**

On August 12, 2009, WRP and the ACLU of Maryland, in cooperation with the law firm of Orrick, Herrington & Sutcliffe LLP, filed a lawsuit challenging a policy that unlawfully bans certain individuals from being on or near public housing in Annapolis, Maryland, even when they are invited guests of tenants. Under the policy, Annapolis public housing residents who allow banned friends and family members into their homes are subject to evictions, and the banned individuals are subject to arrest and prosecution for trespass. The lawsuit charges that the banning policy violates the rights of public housing residents and their families and friends to freedom of intimate association and of assembly, to substantive and procedural due process, and to freedom from unreasonable arrest under federal and state law. The suit was filed against the Housing Authority of the City of Annapolis (HACA) and the Annapolis Police Department on behalf of residents of Annapolis public housing as well as family and friends of those residents who have been prevented from visiting and participating in raising and caring for their children, parents, grandchildren and other relatives.

In conjunction with the 2009 filing, WRP and the ACLU of Maryland launched a public education campaign around the case, producing two short videos entitled "Families Untied: Public housing banning policy tears families apart," which illustrate the devastating effects of the policy. The ACLU also profiled the plaintiffs on its website, authored op-eds and blog posts about the issue.

In September 2009, HACA filed a motion to dismiss or, in the alternative, motion for summary judgment. In November 2009, WRP and the ACLU of Maryland filed an Opposition to Defendants' Motion to Dismiss or in the alternative, a Motion for Summary Judgment. A hearing has been set for May 24, 2010.

Human rights and other advocacy related to housing and criminal records

In November 2009, WRP and two of the plaintiffs in *Sharps v. The Housing Authority of the City of Annapolis* presented written and oral testimony to the UN Special Rapporteur on Adequate Housing, Raquel Rolnick, during the National Town Hall Forum she held in Washington, DC at the conclusion of her official mission to the U.S. Our testimony described discriminatory public housing policies, byproducts of the War on Drugs, that tear families apart by criminalizing behavior and banning people from residing in, or even visiting other residents, in public housing. Plaintiffs Glenda Smith and Esther Sharps testified at the town hall meeting about the devastating impact of these banning policies on their families. Ms. Smith spoke about her granddaughter, who has been prohibited from living with or visiting her own son, who is in Ms. Smith's care, because she was placed on the Housing Authority's banned list after a juvenile arrest three years ago, for which she has long since served her sentence. "The banning policy is unfair because it is punishing [my granddaughter] beyond what the court decided her punishment should be; it is punishing our whole family." WRP also participated in a panel about the intersectional challenges in access to housing, highlighting the *Sharps* case and the race, gender, and class implications of the Housing Authority's banning policy.

In March 2010, the Special Rapporteur presented her findings and recommendations to the United Nations Human Rights Council. In her report, she referenced the problematic public housing policies raised by WRP's and our clients' testimony, expressing her concern about "the discriminatory nature of these practices towards the residents of public housing, and their negative, fragmenting effects on families."

In March 2010, WRP convened a round-table discussion of public housing advocates to discuss ways in which the executive branch could have a positive impact on both the housing restrictions affecting low-income women and families with criminal records, as well as on the discourse surrounding these issues, and discussed these issues during a conference at UCLA on intersectionality.

Employment Discrimination Advocacy

Women with arrests or convictions in their past often experience employment discrimination by employers (who frequently conduct background checks or simply refuse to hire anyone with a conviction), as well as statutory bars to employment in certain fields. The Equal Employment Opportunity Commission (EEOC) has held, following some court decisions, that discrimination against people with convictions or arrests can violate Title VII of the Civil Rights Act of 1964 because bans on hiring people with convictions or arrests have a disproportionate impact on people of color as a result of the racial inequities of the criminal justice system. The EEOC issued similar policy statements in the 1980s, but Title VII has rarely been used in court since then to challenge discrimination based on criminal records.

During the past two decades, discrimination against people with criminal histories has become a serious problem, and due to the gross overrepresentation of people of color in the criminal justice system, this is especially true for poor people of color, particularly

growing numbers of women. The number of women with convictions, especially low-level "war on drugs" convictions, has skyrocketed. At the same time, criminal records have become easily available online, and employers can download them for a minimal fee. These reports are often riddled with errors and it is nearly impossible to correct all copies of a report that contains incorrect information, or records that should have been sealed or expunged. When women with criminal records cannot get a job, they cannot successfully rebuild their lives, regain custody of their children, and avoid re-incarceration. For these reasons, the ACLU is developing advocacy to fight employment barriers for people with convictions with a particular focus on women of color.

WRP has held trainings for attorneys and re-entry professionals on employment discrimination against people with criminal histories, both at a nationwide conference and in conjunction with three affiliates. WRP is currently working with a number of affiliates to identify individuals who have been denied a job because of a criminal record.

WRP established a nationwide intake initiative allowing individuals to tell us their story of discrimination based on criminal conviction, and have heard from more than 350 individuals. Along with an affiliate and RJP, we have reached out to one large company that had posted many job announcements excluding people with criminal records, and are currently in discussions to clarify the company's policy.

Girls in the Juvenile Justice System

There are currently more than 14,000 girls incarcerated in the United States, a number that has been rapidly increasing in recent decades. Most of these girls are arrested for minor, non-violent offenses and probation violations. Locked up under the guise of rehabilitation, girls nationwide – the vast majority of whom have previously been sexually and/or physically abused – are subjected to physical, psychological, and sexual abuse, including solitary confinement and routine strip searches. Meanwhile, they are denied the mental healthcare, education, and social services that are crucial to their rehabilitation. Far from helping them cope with the trauma they have suffered or providing assistance necessary to their successful reentry into society, youth prisons re-traumatize girls and further impede their rehabilitation, often propelling them into further cycles of self-destruction and recidivism.

K.C. v. Nedelkoff **(W.D. Tex.)**

In June 2008, in partnership with the ACLU National Prison Project, the ACLU Human Rights Program, and the ACLU of Texas, WRP filed a lawsuit on behalf of five girls held in a "high security" youth prison located in central Texas and operated by the Texas Youth Commission (TYC), the state's juvenile corrections agency. The complaint charged that TYC subjects the girls to unwarranted solitary confinement, routine strip searches, and brutal physical force in violation of their rights under the Fourth, Eighth, and Fourteenth Amendments, as well as international standards. In conjunction with the filing of the suit, WRP launched a website that includes photos of TYC prisons and excerpts of interviews with girls incarcerated there.

After the suit was filed, the largest Texas youth prison in which girls are held halted its use of strip searches, replacing them with pat searches. In January 2009, a

judge of the Western District of Texas granted the defendants' motion to transfer venue and transferred the case to the Northern District of Texas. After the transfer, our motion for class certification was denied. In September 2009, the court granted the defendants' motion to dismiss and denied our motion for leave to amend the complaint and to join plaintiffs. The court held that the case was moot because the plaintiffs had been released.

Juvenile Justice and Delinquency Prevention Act (JJDPA)

The Juvenile Justice and Delinquency Prevention Reauthorization Act is a bill that, if passed, will update and improve key elements of the juvenile justice system and provide continued funding to protect the rights of juveniles in conflict with the law. In December 2009, the bill passed out of the Senate Judiciary Committee by a vote of 12 – 7.

We are supporting efforts by our Washington Legislative Office to secure passage of the bill. In particular, we provide WLO past and current research regarding the experiences of girls in the juvenile justice system and the ways in which the bill could improve their lives, author Congressional testimony on juvenile justice issues, and assist in reviews of versions of the bill and the formulation of the ACLU's position on bill provisions.

Youth PROMISE Act

In December 2009, the House Judiciary Committee, on a vote of 17-14, sent the Youth PROMISE Act onto the House of Representatives for a vote in the near future by the full chamber. This legislation advances a new, forward-looking, "smart on crime" approach to confronting juvenile justice issues by focusing resources on cost-effective, evidence-based prevention and intervention strategies rather than the usual mix of longer sentences and more prison beds. For example, rather than waiting until after a crime or violent act has occurred, the Youth PROMISE Act will empower communities to work in positive ways with at-risk young people. Additionally, the legislation was actually strengthened during the mark-up by ensuring that these prevention and intervention strategies also take girls into account, whose needs are often ignored by the justice system. The legislation's focus on front-end prevention strategies will help to prevent both boys and girls from falling into a cycle of violence and incarceration.

As with the JJDPA Reauthorization, we are providing substantive support to efforts by our Washington Legislative Office to secure passage of the Youth PROMISE Act. We also worked with a coalition of girls' advocates to help ensure the inclusion of language responsive to girls' needs into the Act, earlier versions of which had contained no such language.

House Judiciary Committee Subcommittee on Crime, Terrorism and Homeland Security – Girls in the Juvenile Justice System: Strategies to Help Girls Achieve Their Full Potential

On November 4, 2009, WRP submitted testimony to the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee for a hearing

entitled, "Girls in the Juvenile Justice System: Strategies to Help Girls Achieve Their Full Potential." We authored testimony regarding girls' experiences in the juvenile justice system and major rights abuses that we have encountered in our work with girls. This testimony was submitted jointly by WRP and WLO.

Conditions of Confinement

In 2009, WRP broadly advocated to ensure that when women and girls are imprisoned, they are held in humane conditions and afforded medical and psychological services and other programming and services appropriate to their needs and to the rehabilitation process.

***Jones v. Hayman* (N.J. Supr. Ct.)**

WRP and the ACLU of New Jersey filed suit against the New Jersey Department of Correction (NJDOC) following the NJDOC's abrupt transfer of forty-one women, many of whom were classified as medium security and were model prisoners, from New Jersey's sole women's prison to the New Jersey State Prison (NJSP). NJSP is a "super-max" men's prison holding over 1,800 male prisoners. With the transfer, the women were stripped of conditions and services appropriate to their needs, and subjected to virtual lock-down conditions. At NJSP, the transferred women were confined to a small section of the prison and denied access to the vast majority of educational opportunities and other services available to male prisoners. Under these conditions, the women's mental and physical health rapidly deteriorated.

Our lawsuit, filed in December 2007, challenged the transfer and the subsequent discriminatory treatment of the women prisoners. As a result of ACLU advocacy, the Elizabeth City Council and the Newark City Council passed similar resolutions calling on the NJDOC to immediately end its policy of incarcerating women in a men's facility and to return the women to the New Jersey women's prison. The resolution also called for the conditions under which the women are held to be improved immediately. In July 2008 the New Jersey Superior Court denied the Defendants' motion to dismiss and motion for summary judgment, granted our motion for class certification, and preliminarily enjoined the defendants from transferring any more female prisoners to the NJSP.

In August 2008, under the continued pressure of litigation, the NJDOC transferred the women from NJSP back to Edna Mahan Correctional Facility, New Jersey's women's prison. The defendants subsequently moved to dismiss the case as moot. In May 2009, the court granted the Defendant's motion, holding that because the women prisoners were moved back to the women's prison the case was now moot.

***Nelson v. Norris* (8th Cir.)**

In May 2003, Shawanna Nelson was sent to McPherson, a women's prison in Newport, Arkansas, after she was convicted of a nonviolent crime. At that time she was five months pregnant. When Ms. Nelson went into labor, authorities from the Arkansas Department of Correction (ADOC) transported her to a hospital where she was

handcuffed and shackled to the delivery table with an 18-inch leg chain as she gave birth to her baby. Only upon the doctor's request were the restraints removed by ADOC authorities. In 2004, Ms. Nelson brought a civil suit against ADOC alleging that she experienced extreme and unnecessary mental anguish and suffered long-term, if not irreparable, physical pain and suffering resulting from being shackled as she was in labor.

In June 2007, the district court allowed Ms. Nelson's suit against the ADOC Director and guard to proceed on constitutional grounds notwithstanding claims of qualified immunity. In July 2008, the 8th Circuit Court of Appeals reversed the trial court's decision. The Eighth Circuit held that the prison's policy allowing for the shackling of Ms. Nelson during labor was constitutional and, even if the policy were deemed unconstitutional, the Defendants were immune from suit. Following a petition for rehearing *en banc*, the appeals court agreed to rehear Ms. Nelson's case and did so on September 24, 2008.

In October 2009, the Eighth Circuit *en banc* court issued a historic decision, finding that the guard who shackled Ms. Nelson did not have qualified immunity because it is clearly established law that shackling a pregnant woman during labor violates the Eighth Amendment of the Constitution. The case was remanded to the district court for trial as to Ms. Nelson's claim against the guard, but dismissed as to the supervisor because the Court found that he was protected by qualified immunity.

Challenging Discriminatory Criminal Prosecutions

WRP is committed to ensuring that whenever punitive measures are taken, they are not based on stereotypes that unfairly target a person because of her or his gender.

***In re: a Juvenile* (Mass.)**

In October 2008, in partnership with RFP and the ACLU of Massachusetts, WRP filed an *amicus* brief with the Supreme Judicial Court of Massachusetts in a case where a boy is being prosecuted for statutory rape and indecent assault and battery for engaging in non-coercive sexual activity with three girls. The brief argues that the Commonwealth of Massachusetts' opposition to the disclosure of certain evidence as ordered by the trial court may allow a prosecution of the boy based on stereotyping, and contrary to sound public policy, to proceed without necessary judicial review and that such a prosecution would constitute unlawful gender discrimination. The brief goes on to demonstrate a history of sex stereotyping in statutory rape prosecutions and the harms such stereotypes inflict on girls and women. The brief concludes that it is therefore crucial that information permitting a proper assessment of the nature of this prosecution be made available for judicial consideration. Further, the brief argues that prosecutorial schemes that target adolescents who engage in voluntary sexual activity with peers threaten minors' health by discouraging them from seeking appropriate sexual health care and accurate information about sex and the risks involved.

The case was argued in November 2008. In December 2008, the court in a summary order denied the Commonwealth's petition, vacated the stay of discovery, and ordered that the case proceed without further delay. In February 2009 the court issued an opinion explaining the reasoning behind the order. In August 2009, in a jury-waived

trial, the trial judge found the boy not delinquent on all charges, taking into account in his decision the fact that the boy was a minor.

***The State of Texas v. Amber Lovill* (Tex. Crim. App.)**

On July 29, 2009, WRP, RFP, the ACLU of Texas, Legal Momentum, the National Partnership for Women and Families, the National Women's Law Center, and the Southwest Women's Law Center submitted an *amicus* brief to the Texas Court of Criminal Appeals in support of Amber Lovill. In 2007, during a routine report to her probation officer, Amber Lovill took a required drug test and informed the officer that she was pregnant. After she tested positive for drug use, the state moved to revoke her probation and incarcerated her for the duration of her pregnancy. At the revocation hearing, officers repeatedly admitted that if Amber Lovill were not pregnant, less restrictive alternatives would have been the typical response to a positive drug screen. The *amicus* brief urges the court to affirm a lower court ruling that probation officers treated Amber Lovill differently from others who violated probation but were not pregnant. Additionally, the brief argues that under the Texas Equal Rights Amendment, the state cannot justify subjecting pregnant women to more severe punishment than and treat them differently from others based on gender stereotypes. Oral argument was held in October 2009. On December 16, 2009 the Criminal Court of Appeals reversed on procedural grounds. It held that Lovill had not sufficiently preserved her sex discrimination claim at the trial stage and therefore it could not be pursued.

Performing Activism (Words from Prison)

Marking six years of partnership, WRP and ACLU affiliates collaborated again in 2009 and 2010 with V-Day – the global movement to stop violence against women and girls, founded by playwright Eve Ensler – to educate the public about the civil rights of incarcerated women and battered women.

ACLU affiliates in Rhode Island, Michigan, Nevada, New York, and Washington, DC each co-sponsored local performances of "Any One Of Us: Words from Prison," a collection of personal narratives written by incarcerated and formerly incarcerated women about their experiences with the criminal justice system. The play brings to light the intersections of personal, institutional, and systemic violence as it comes to bear on the lives of incarcerated women, with the ultimate goal of impacting policy, laws, and treatment of women and girls in prison.

WRP assisted the affiliates in creating educational program materials that were distributed at the events, highlighting the many rights violations that incarcerated women and girls face, and providing state-specific action steps for audience members to take, and information about how to get involved with local organizations that provide services to victims of violence and incarcerated and formerly incarcerated women.

Following the March 2009 performance in Providence, WRP participated in a panel discussion, highlighting the importance of addressing systemic and institutional violence, the disparate impact of over-criminalization on poor women and girls of color who have experienced violence in their lives, and the life-long barriers faced by women with criminal records. WRP also partnered directly with student organizers of

performances at Berkeley City College, San Diego State University, and at New York Law School. The February 2010 New York Law School performance benefited and involved members of WORTH, Women on the Rise Telling HerStory, an association of formerly and currently incarcerated women that works to transform the lives of women directly impacted by incarceration and to change public perception and policy.

GUARANTEEING EQUAL EDUCATIONAL OPPORTUNITY

Education is a key tool for people to advance their social and economic circumstances and to ensure that today's youths have greater opportunities than their parents did. Access to education expands horizons and opens doors and thus is one of the most effective ways to secure full equality between men and women in society. In 1972, federal lawmakers recognized this fact by passing Title IX of the Education Amendments of 1972. While perhaps best known for its requirement that schools provide girls with equal athletic opportunities, the promise of Title IX applies more generally to all educational programs that receive federal funding, and to all aspect of a school's educational system: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." At the time of its enactment, Title IX was an unprecedented effort to end the ubiquity of sex discrimination in education and for over 35 years it has been the lynchpin in efforts by advocates to establish, protect, and advance gender equity in public schools. Since the enactment of Title IX, WRP, in close partnership with ACLU affiliates across the country, has made significant inroads in promoting Title IX's guarantee of gender equality in educational opportunity.

Yet, in recent years, Title IX has come under attack. Under the administration of President George W. Bush, the U.S Department of Education, the branch of the federal government primarily responsible for providing guidance as to the proper implementation of Title IX, issued new regulations with respect to sex-segregated education that raise serious constitutional concerns and strike at the core principles of Title IX aimed at remedying a history of gender discrimination in our public school systems. Women and girls also continue to have their right to a quality education diminished by schools that fail to take seriously allegations of peer-on-peer sexual harassment and assault.

In 2009, WRP advocated to restore and strengthen the protections guaranteed by Title IX so as to ensure equal access to educational opportunity and resources for all students. WRP also continued its efforts to hold schools responsible for fostering an educational environment free from sex discrimination in the form of gender-based violence.

Sex Segregated Public Education

In recent years, many public school districts have introduced programs that allow for expanded use of single-sex education, often presenting these programs as a panacea to, what is in some cases, generations of failed schools. This trend sharply accelerated after October 2006, when the U.S. Department of Education announced new Title IX

regulations that have made it easier for public schools to implement single-sex classrooms. Proponents of sex-segregated education often stress that the voluntariness of sex-segregated educational programs is crucial to avoiding legal liability for sex discrimination, but when training, instruction, and resources differ based on the sex of the student, there is no meaningful way for a boy to opt-into a girls' educational program or vice versa – thus, separation by sex is never truly voluntary. Moreover, if history has shown us anything, it is that difference breeds inequality. It was in response to this history of deep inequality that Title IX was born.

In addition to being unlawful, the dominant rationale behind sex-segregated academic programs is harmful to all children. These programs are often based on controversial pop-scientific theories about how girls' and boys' brains develop in fundamentally different ways and reinforce disturbing and outmoded gender stereotypes. For example, some proponents of sex-segregated schools tell teachers that boys need a competitive and confrontational learning environment, while girls can only succeed if they work cooperatively and are not placed under stress. Some proponents assert that when establishing authority, teachers should not smile at boys because boys are biologically programmed to read this as a sign of weakness. Although these ideas are hyped as "new discoveries" about brain differences, they are, in fact, only dressed up versions of old stereotypes. These are but a few examples of the troubling and absolutist assumptions about sex differences that underlie this growing educational movement. These are not theories espoused by pedagogical outliers; in fact, one of the leading sex-segregation training organizations, The Gurian Institute, based in Colorado Springs, Colorado, claims that it has trained over 35,000 teachers in more than 2,200 schools and districts in the United States.

Creating sex-segregated schools and classrooms is a wrongheaded diversion of much needed resources from initiatives that have been proven to improve the education of both boys and girls – such as reduced class sizes, increased teacher training and professional development, teaching practices rooted in individuated learning styles, and greater parental involvement. Moreover, sex-segregated classes fundamentally deprive students of important preparation for the real un-segregated world of work. Rather than offering choice, sex-segregated programs limit the education of both boys and girls. Our public schools should be a sanctuary where the lessons of democracy are taught and opportunity is shared equally. The future of our youth is too valuable to subject it to the radical experiment of sex-segregated public education.

A.N.A. v. U.S. Department of Education (W.D. Ky.)

In May 2008, WRP and the ACLU of Kentucky took over representing several plaintiffs and filed an amended complaint in a class action suit that challenges the lawfulness of a Kentucky school district's policy of segregating its students by sex and thereby exposing them to a learning environment that is fundamentally unequal in violation of the Fourteenth Amendment, Title IX, the Equal Educational Opportunities Act, and Kentucky sex equity law. The amended complaint expands a previous lawsuit filed by a private attorney against the school district by naming the U.S. Department of Education (DOE) as a defendant, and arguing that the Title IX regulations issued by the DOE that encourage school districts to segregate students by sex are themselves

unlawful. In conjunction with the filing of the amended complaint, WRP launched a website that includes podcasts, fact sheets, and additional information about WRP's work on sex segregation in public schools: www.aclu.org/sexsegregation.

In July 2008, we filed a Motion for Class Certification. In August 2008, Judge Simpson denied the Breckinridge County Defendants' Motion to Dismiss, allowing our case to proceed against the County Defendants. In March 2009, the court granted the Federal Defendants' Motion to Dismiss and granted the A.N.A. Plaintiffs' Motion for Class Certification. The parties here concluded discovery and are currently engaged in motion practice.

***Doe, et al. v. Vermilion Parish School Board, et al.* (W.D. La.)**

On September 8, 2009, WRP and the ACLU of Louisiana filed a lawsuit in a federal district court in Louisiana challenging the Vermilion Parish School District's illegal sex segregation policy. The lawsuit was filed on behalf of two students placed without parental consent into sex-segregated classes at the start of the 2009-2010 school year, and who are still being denied equal educational opportunities. The suit challenges the sex segregation at Rene A. Rost Middle School (RRMS) for violating Title IX, its implementing regulations, and the Equal Protection Clause of the Constitution.

On February 24 -25, 2010, attorneys from WRP, ACLU of LA and co-counsel firm Debevoise & Plimpton LLP appeared before the Honorable Richard T. Haik, Sr. in the Western District of Louisiana to argue for a preliminary injunction. During the hearing, the court heard testimony from school officials who admitted that the purported "coed alternative" is in fact a class for students with special education needs. The school principal admitted that the pilot program data he showed to parents and the school board to secure support for sex-segregated classes was in fact flawed. The Vermilion Parish School Board asked for an opportunity to cure any legal defects from the current year when they offer parents the option of sex-segregated classes for the 2010-2011 year.

On April 19, 2010, the District Court denied our request for a preliminary injunction. Although the Court found that the sole justification for the sex segregation—an experiment conducted by the principal with some students the prior year—was "deeply flawed" it nevertheless held that sex segregation at RRMS was lawful "so long as it is completely voluntary and there is a substantially equal coed opportunity available for every student." The Court set forth certain requirements the school must make in proceeding with some—though a reduced number—of sex-segregated classes for the 2010-11 school year. On April 21, 2010, we filed an appeal and are currently seeking expedited review.

Open Records Act Requests

In December 2008, WRP filed an Open Records Act request to the Alabama school districts to make public all documents relating to sex segregation policies in public schools from the past two years. After we engaged in extensive negotiations and threatened to sue Mobile County to stop sex segregation in public schools, on March 24, 2009, the Board of School Commissioners of Mobile County approved a settlement agreement changing the policy.

In May 2009, the St. Clair County School System in Alabama agreed to end the single-sex education program at Odenville Middle School and no longer offer single-sex education at any other school in the district for the 2009-2010 year. This policy change came after WRP and the ACLU of Alabama notified the district that these programs are illegal and discriminatory and ACLU of Alabama testified at a Board of Education meeting in April, discussing how sex-segregated programs inevitably lead to inequality, and violate Title IX of the Education Amendments, the Equal Education Opportunities Act and the Constitution. .

In July 2009, the Lawrence County School District in Alabama entered into a settlement agreement with the ACLU, agreeing to end the single-sex education program at East Lawrence Middle School. Pursuant to the agreement, since the fall of 2009, all courses have been integrated in every school in the county, and no school will institute any sex-segregated programs for the next three years. From fall 2012 through spring 2015, Lawrence County is required not to institute any sex-segregated programs unless it first alerts the ACLU.

WRP has assisted a number of other affiliates in filing open records act requests as a means of investigating sex-segregated classes in public schools. Those affiliates include New Mexico, Colorado, and Virginia.

Sexual Harassment/Assault in Schools

In 2009, the ACLU supported efforts to ensure that victims of gender-motivated violence in educational settings can enforce their rights in federal court. Under Title IX, discrimination on the basis of sex has been interpreted broadly to include sexual harassment, rape, and sexual assault if the harassment or assault is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." Courts have generally found that even a single instance of rape or sexual assault by another student meets this threshold. A primary or secondary school, college, or university that receives federal funds may be held legally responsible when it *knows about* and is *deliberately indifferent to* sexual harassment or assault in its programs or activities whether committed by a faculty member, staff, or student against a student. In other words, according to the U.S. Supreme Court, a school becomes liable for sex discrimination when the school's response to the harassment "is clearly unreasonable in light of the known circumstances." Given that women and girls are much more likely to be the victims of sexual harassment or assault, ultimately, when a school does not take steps to rectify gender-motivated violence on campus, the school perpetuates a hostile educational environment and the critical opportunity that education affords to women and girls to get ahead in life is unfairly hindered if not foreclosed altogether.

Fitzgerald v. Barnstable School Committee **(U.S.)**

In January 2009, the Supreme Court issued a unanimous decision in this case holding that a plaintiff has the right to bring constitutional sex discrimination claims under the Fourteenth Amendment by bringing suit under 42 U.S.C. § 1983 while also enforcing her right to equal educational opportunity under Title IX. The case involved a girl who was sexually harassed on the school bus. School officials ignored her parents'

complaints and they brought suit against the Barnstable School Committee (BSC) under Title IX and the Equal Protection Clause. The district court held that Title IX precluded the plaintiffs from pursuing Equal Protection claims under § 1983, and it also concluded that no jury could find the school liable for maintaining a sexually hostile environment, because BSC's response to the harassment was not unreasonable, given that the plaintiff was not subjected to further sexual harassment by her peer after officials learned about the harassment. The First Circuit affirmed the trial court's decision.

In August 2008, WRP and the Legal Department, in partnership with the National Women's Law Center and joined by 39 other education, civil rights and women's rights advocacy organizations, filed an *amicus* brief arguing that the statutory protection against sex discrimination that Congress enacted in Title IX was intended to expand upon, not to limit, the right of equal protection enshrined in the Constitution and made enforceable through § 1983. The brief argued that a high bar must be met before the Court concludes that § 1983 is unavailable to remedy violations of the Fourteenth Amendment, in light of § 1983's history as a statute intended to enforce that Amendment. The brief further argued that the scope of Title IX's protections differ from the constitutional protections and that legislative history indicates that Congress did not intend for Title IX to bar constitutional claims brought under § 1983. We were very pleased with the Court's decision.

***J.K. v. Arizona Board of Regents* (D. Ariz.)**

In January 2009, a favorable settlement was reached in this case brought by a student at Arizona State University (ASU) who was raped in her dormitory room by a fellow ASU student, whom ASU administrators had arranged to admit to ASU and had failed to supervise adequately, despite knowing firsthand that he had engaged in repeated egregious sexual harassment at ASU prior to his admission in the fall. Indeed, Plaintiff's assailant's harassment of women at ASU during the "Summer Bridge" program for incoming first-year students was so intolerable that ASU took the unusual step of expelling him from the Summer Bridge program and evicting him from ASU dorms, only to re-admit him to ASU and to the dorms a few weeks later without taking precautions to protect women at ASU from further harassment.

WRP and the ACLU of Arizona, on behalf of a number of other leading women's rights and legal advocacy organizations, submitted an *amicus* brief in support of the plaintiff in opposition to the Arizona Board of Regents' Motion for Summary Judgment.

The settlement agreement requires ASU to appoint a statewide Student Safety Coordinator who will review and reform policies for reporting and investigating incidents of sexual harassment and assault, and awards the plaintiff $850,000 in damages and fees.

Title IX and Sexual Violence in Schools

During Sexual Assault Awareness Month, April 2009, WRP launched a webpage featuring fact sheets, and a podcast series, and various other resources about Title IX as a tool to combat sexual violence on campus. The fact sheet entitled, "Title IX and Sexual Assault: Know Your Rights and Your College's Responsibilities," and podcast series explain how Title IX's prohibition of discrimination on the basis of sex can apply to

sexual assault and harassment on college campuses. WRP partnered with ACLU affiliates in Pennsylvania and North Carolina, the ACLU student chapter at New York Law School, *License to Thrive: 35 Years of Title IX*, and SAFER, a national non-profit organization committed to empowering students to hold colleges accountable for sexual assault on campus, to distribute these resources to hundreds of college students to educate them about their rights and how they can engage their campus officials in taking proactive steps to guard against sexual assault on campus and to prevent backlash against victims who have the courage to come forward.

Athletics and Title IX

***Arezou Mansourian v. Regents of the University of California* (9th Cir.)**

In February 2009, WRP and the ACLU of Northern California, in partnership with the Association for Gender Equity Leadership in Education, submitted an *amicus* brief to the Ninth Circuit Court of Appeals in support of the Appellants in *Arezou Mansourian v. Regents of the University of California,* which challenges the failure of the University of California at Davis to provide female students with an equal opportunity to participate in varsity intercollegiate athletics, particularly in the sport of wrestling. In the brief, which provides a brief history of and primer on Title IX's application to college athletics, we argue that the district court improperly interpreted Title IX and erred in granting Defendants' summary judgment motion on the plaintiffs' Title IX claim. The court heard oral arguments in October 2009. On February 8, 2010, the court reversed the district court's decision to grant the University of California at Davis summary judgment.

PUBLIC HEALTH & CIVIL LIBERTIES

WRP is committed to advancing effective and fair public health policies for women and in 2009 continued to challenge the federal government's restriction of U.S. health organizations' ability to work inclusively to end the global HIV/AIDS epidemic. WRP also advocated for legislation that would guarantee paid sick leave for employees to recover from illness or to care for a sick family member.

***Ass'n for Molecular Pathology et al. v. U.S. Patent and Trademark Office et al.* (S.D.N.Y.)**

On May 12, 2009, WRP, the First Amendment Working Group, the Technology and Liberty Project and the Public Patent Foundation (PUBPAT) filed a lawsuit against the U.S. Patent and Trademark Office, Myriad Genetics, and the University of Utah Research Foundation, charging that patents on two human genes associated with breast and ovarian cancer (BRCA1 and BRCA2) stifle research that could lead to cures and limit women's options regarding their medical care. The lawsuit, filed on behalf of breast cancer and women's health groups, individual women patients and scientific associations representing approximately 150,000 researchers, pathologists and laboratory professionals, argues that patents on these genes are unconstitutional and invalid, and is the first to apply the First Amendment to a gene patent challenge.

Defendants filed motions to dismiss in July. In August 2009, we filed oppositions to their motions as well as a motion for summary judgment. Several major organizations, including the American Medical Association, the March of Dimes and the American Society for Human Genetics filed amicus briefs in support of our plaintiffs. In September 2009, Judge Robert Sweet heard arguments on the defendants' motions to dismiss.

Throughout October 2009, Breast Cancer Awareness Month, WRP, TLP and FAWG organized and participated in several public education events focused on our case challenging gene patents and the surrounding issues. We hosted a film screening at Tribeca Cinemas of the award-winning PBS documentary, *In the Family*, which chronicles women's experiences with genetic testing for breast and ovarian cancer. The screening was followed by a panel discussion about gene patenting and the impact on women's health and science, featuring the filmmaker, Joanna Rudnick; plaintiffs, attorneys, and experts in the ACLU lawsuit; and other special guests. We also co-sponsored a similar screening at Cardozo Law School with our co-counsel, PUBPAT and participated in the Fourteenth Annual Ellen P. Hermanson Memorial Symposium, "Patenting Genes: Does This Stifle Research, Offend the First Amendment and Impact Patient Care?" We subsequently participated in screenings and panel discussions as part of Yale Law School's *Access to Knowledge and Human Rights* conference, and an event organized by the New York Law School ACLU student chapter and the NYLS Institute for Information Law and Policy. Additionally, we've continued working with WLO in our advocacy efforts regarding legislation dealing with human gene patents.

In November 2009, the U.S. District Court for the Southern District of New York ruled that patients and scientists can challenge patents on human genes in court, thus allowing the lawsuit to move forward. In the opinion, the court noted the significance of this case, stating, "The widespread use of gene sequence information as the foundation for biomedical research means that resolution of these issues will have far-reaching implications, not only for gene-based health care and the health of millions of women facing the specter of breast cancer, but also for the future course of biomedical research. The novel circumstances presented by this action against the USPTO, the absence of any remedy provided in the Patent Act, and the important constitutional rights the Plaintiffs seek to vindicate establish subject matter jurisdiction over the Plaintiffs' claim against the USPTO."

In December 2009, Myriad Genetics and the University of Utah defendants filed papers in opposition to Plaintiffs' motion for summary judgment, along with a cross-motion for summary judgment. In December the U.S. Patent and Trademark office filed its opposition to Plaintiffs' motion to dismiss, along with a cross-motion for judgment on the pleadings.

On March 29, 2010, the federal district court granted our motion for summary judgment holding invalid the patents that had been issued on the BRCA1 and BRCA2 genes. In his decision, the judge declared that all 15 patent claims that we challenged are invalid, based on the fact that they cover products of nature and abstract ideas. The precedent-setting ruling marks the first time a court has found patents on genes invalid and calls into question the validity of patents now held on approximately 2,000 human genes.

***Alliance for Open Society Int'l, Inc. v. U.S. Agency for Int'l Dev.* (S.D.N.Y.)**

WRP is counsel for several public health organizations in this suit challenging the constitutionality of a government requirement that U.S.-based organizations receiving certain government funding for HIV/AIDS programs adopt a policy explicitly opposing prostitution. In addition, WRP and WLO have coordinated the ACLU's submission of comments to the U.S. Department of Health and Human Services (HHS) on the agency's proposed rule to implement the "pledge" requirement, opposing the rule as a restriction on free speech. In April 2010, HHS published revised regulations on the requirement. Because the new regulations do not cure the constitutional infirmities previously identified by the ACLU, we will again submit briefing before a federal appeals court opposing the restriction on behalf of public health organizations.

HUMAN RIGHTS

In the words of Ruth Bader Ginsburg, Supreme Court Justice and co-founder of the ACLU Women's Rights Project, "Women's rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy." Since its founding, WRP has worked to bring about the full promise of equality and human dignity for all. In pursuit of this goal, we have integrated a human rights framework into our litigation and other advocacy in order to bring the United States into line with international norms that recognize a set of rights inherent to all members of the human family. Further, we have petitioned international human rights tribunals not only to hold the United States accountable for its affirmative obligations to honor and protect human dignity for all, but also to shape international jurisprudence to address meaningfully the lived experience of the most vulnerable women in our country.

CEDAW

On December 18th, 2009, the United Nations and women's human rights advocates around the world celebrated the 30th anniversary of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the international treaty dedicated to gender equality. Worldwide, 186 countries have ratified the treaty; the United States is one of only seven countries that have not. The U.S. signed the treaty in 1980, but it has never been ratified by the Senate.

In 2009 and 2010 WRP has been working with the CEDAW Task Force convened by the Leadership Conference on Civil and Human Rights to work toward U.S. ratification of CEDAW. Ratification would encourage the U.S. to take stronger measures regarding issues such as gender-based and domestic violence, discrimination against women in housing, and access to health, education and employment. CEDAW calls on countries to fight human trafficking and take special measures to end the marginalization of immigrant and indigenous women and women of color.

In March 2010, in conjunction with the 54th U.N. Commission on the Status of Women, (CSW) WRP and HRP hosted a discussion panel on the significance of CEDAW and the impact that U.S. ratification would have on American women. Panelists included representatives from Amnesty International, The Leadership Conference, the Center for

Women's Global Leadership, the U.S. Human Rights Network, UNIFEM, and the State Department. The event was a great success and was a step forward in the coalition's advocacy efforts toward ratification.

New York City Human Rights Initiative

WRP, in collaboration with the Human Rights Program, the NYCLU, Amnesty International, the Urban Justice Center, Legal Momentum, and the Women of Color Policy Network, is a co-convener of the New York City Human Rights Initiative. We drafted New York City legislation based on the principles of CEDAW and the Convention on the Elimination of Racial Discrimination. These international human rights treaties affirm the necessity of eliminating all forms of gender and racial discrimination. The New York City ordinance would be unique because of its particular focus on the overlap of gender and race. In 2004, this groundbreaking legislation was introduced in the New York City Council. In March 2008 the legislation was reintroduced. Throughout 2009, advocates continued to push for a hearing.

PROTECTING FREEDOM OF RELIGION & BELIEF FOR MUSLIM WOMEN

Muslim women are a fast-growing segment of the United States population that reflects the breadth of this country's racial, ethnic, and multicultural heritage and includes United States-born Muslims of diverse ethnicities, immigrants from many countries and regions, and converts from various backgrounds. Many Muslim women, although by no means all, practice *hijab* in accordance with their religious beliefs: these women may wear a headscarf, also known as *hijab* or *khimar*, and loose-fitting clothing when they are in public and when they are in the presence of men who are not part of their immediate families. Muslim women, like all people in the United States, have the fundamental right to practice their religion. They also have the right to be treated equally and the right not to be discriminated against or harassed because of their religion, their gender, or perceptions about their nationality, race, or ethnicity.

Notwithstanding legal protections, Muslim women who wear hijab sometimes face infringements on their rights to equal treatment and freedom of religion and belief. They have been harassed, fired from jobs, denied access to public spaces, and otherwise discriminated against because they wear hijab. Because of their heightened visibility, Muslim women who wear hijab face particular exposure to discrimination and increasingly have been targets for harassment in the aftermath of September 11. While it is difficult to obtain accurate statistics about discriminatory incidents, reported instances of discrimination appear to be on the rise.

These infringements happen in a variety of contexts, including at work, at school, in law enforcement contexts, and in public places. WRP, in collaboration with the ACLU Program on Freedom of Religion and Belief, is committed to ensuring that Muslim women are free to exercise their fundamental right to freedom of religion and belief and to be treated with equality and fairness at all times.

***Webb v. City of Philadelphia* (3d. Cir.)**

In January 2008, WRP joined the ACLU of Pennsylvania and the Program on Freedom of Religion and Belief, along with a number of leading Muslim advocacy organizations, in filing an *amicus* brief in support of Officer Webb, a female police officer who was denied the right to wear her hijab (a religious head covering worn by many Muslim women in accordance with their religious beliefs) underneath her hat and tucked into her shirt while at work.

Officer Webb lost at the trial court on summary judgment with the court holding that allowing Officer Webb to wear her hijab would create an undue hardship for the City by damaging the Police Department's culture of cooperation, esprit de corps, hierarchical structure, and authoritative and neutral image. Our *amicus* brief argued that the Police Department's policy must be viewed in the context of modern police and military practices and when viewed in this way, the City's conclusory assertion that permitting Officer Webb to wear her hijab would interfere with Departmental goals fails, as a matter of law, to establish the requisite hardship to rebut Officer Webb's claims for religious accommodation. On April 7, 2009 the court affirmed the judgment of the district court holding that the city would suffer undue hardship, for purposes of Title VII, if it were required to allow Officer Webb to wear her hijab.

Ongoing Advocacy

WRP continues to advocate for the rights of Muslim women to practice their religion, including covering their hair or faces, free from discrimination or harassment. WRP has provided advice regarding lawful policies to accommodate Muslim women in jails, police holding facilities, and courthouses. WRP has conducted trainings on the legal tools available to Muslim women who experience harassment or discrimination at work, in school, in jail, or in public places. WRP also continues to consult with affiliates about legal options after incidents of discrimination and when legislation that would affect Muslim women's rights is introduced.

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