



NATIONAL CAMPAIGN TO **RESTORE CIVIL RIGHTS**

RACIAL JUSTICE

Throughout the history of our nation, federal law and court rulings have been crucial to protecting racial justice. The fact remains that people of color still experience discrimination in subtle and overt ways. To make matters worse, several recent key cases in federal court are making it more and more difficult to go to court if you are discriminated against on the basis of race.

Brown v. Board of Education was an historic legal victory. In this landmark case, the Supreme Court ruled that racially segregated schools were not, in fact, equal and that the systems of racially segregated schools found across the South violated the United States Constitution. This decision, now more than 50 years old, and the cases that followed it, forced major change, bringing an end to formal segregation in American schools. Still, children of color across the country are more likely to go to poorer schools with fewer resources, and our public schools are as segregated as they were before *Brown*.

The Supreme Court's decisions in two cases in 2007 retreat from the principles in *Brown*. The Court discouraged assigning students to public schools for the purpose of overcoming racial isolation, and went so far as to posit that racial diversity in schools was not a compelling state interest. Although a majority of the Justices agreed that some types of programs to promote diversity are constitutional, the Court's decision poses a new barrier to efforts to overcome racial inequality in education.

The persistence of deep racial disparities in many areas of everyday life - such as which schools have resources or where we usually put garbage dumps - points to the need for strategies and policies to address systemic inequities.

The Civil Rights Act of 1964 was enacted to end discrimination based on race, color, or national origin. The idea was that no federal funds should be used for any programs or activities that discriminated. It helped transform American society and prohibited discrimination in public facilities, in government, and in employment. The 1964 Act was followed by additional civil rights laws beginning to address deeply entrenched ways of doing things that were discriminatory in areas like housing and voting. These laws were a good beginning but were not able in a brief time to end all discrimination.

The federal courts have also played a critical role in interpreting and enforcing these laws, but now their rulings threaten to limit their effectiveness. The Supreme Court, in a case called *Alexander v. Sandoval*, restricted the use of the Civil Rights Act of 1964, ruling that victims of racial discrimination cannot bring their claims to court under the standards set out by federal agencies and used for decades. In the 2009 case *Ricci v. DeStefano*, the Supreme Court struck down the city of New Haven's decision to set aside the results of a promotional test, made out of concern that the test had been administered in a discriminatory way. The *Ricci* decision may

weaken public resolve to take a second look at and address unfair and discriminatory employment practices, such as the test administered to firefighters in New Haven.

In recent years, the Supreme Court has been sharply divided on fundamental constitutional issues, with many of the most important cases decided by one or two votes. On both the Supreme Court and lower federal courts, who is on the court can make a difference. For example before joining the Supreme Court, Justice Alito's record raised cause for concern. In 1997, in *Bray v. Marriott Hotels*. when Justice Alito was a circuit judge, he disagreed with his colleagues who ruled in favor of a Marriott Hotel employee who said she had been discriminated against on the basis of race, Justice Alito argued that her case shouldn't even have been heard, based on reasoning that would have made it harder for victims of discrimination to prove their cases.

In *Riley v. Taylor*, James Taylor, an African American man, was convicted for felony murder, and sentenced to death by an all-white jury. When he first challenged his conviction in federal court, Alito was the deciding vote in striking down Taylor's claims that black potential jurors were rejected solely because of their race, that he had received an incompetent court appointed lawyer, and given a misled jury. Taylor's claims were finally upheld, and it was found that his rights had in fact been violated. The majority of the court took offense at Alito's earlier attempts to argue that statistical evidence about black jurors being repeatedly excluded from juries by the prosecution in death-penalty cases was like trying to explain why a disproportionate number of recent presidents were left-handed. The majority said that "[t]o suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective black jurors and black defendants...."

The federal courts continue to be an important place for people to challenge racial discrimination and to protect the vitality of our nation's civil rights laws. Recently the Supreme Court narrowly upheld a key section of the Voting Rights Act from a challenge. At the same time, the Court's decision raised questions about whether the longevity of the Voting Rights Act is at risk. New evidence of voting discrimination continues to emerge.

It is critical that the courthouse doors remain open to victims of discrimination. **For more information on racial justice and the courts, please contact the National Campaign to Restore Civil Rights at: rollback@nylpi.org.**

For detailed case information, please see the below:

- *Bray v. Marriott Hotels*, 110 F.3d 986 (3d Cir. 1997).
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=3rd&navby=case&no=971559P>
- *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001).
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=3rd&navby=case&no=989009v3&exact=1>
- *Ricci v. DeStefano*, 129 S.Ct. 2658 (2009).
http://www.oyez.org/cases/2000-2009/2008_07_1428
- *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).
<http://www.law.cornell.edu/supct/html/05-908.ZS.html>
- *Meredith vs. Jefferson County Board of Education*, 551 U.S. 701 (2007).
<http://www.law.cornell.edu/supct/html/05-908.ZS.html>
- *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (1954).
http://www.oyez.org/cases/1950-1959/1952/1952_1/