

New Frontiers for Title VI

On this 50th anniversary of the Civil Rights Act of 1964, we are taking a forward look at Title VI of the Act, which prohibits discrimination by recipients of federal funds, and which also created its own administrative enforcement infrastructure in each federal agency's "Office of Civil Rights." As the articles below discuss, despite some serious setbacks, Title VI is adapting in new and important ways to the shifting landscape of civil rights in the 21st Century. – the editors

Walk a Mile in My Shoes: Los Angeles Celebrates Anniversaries of the Civil Rights Movement

Robert García

*"If you can't fly then run,
if you can't run then walk,
if you can't walk then crawl,
but whatever you do,
you have to keep moving forward."
Dr. Martin Luther King, Jr.*

Communities in Los Angeles are celebrating the civil rights revolution with public art and green space: A new parks project, called "Walk a Mile in My Shoes," commemorates the movement by honoring local and national heroes. The civil rights park transforms two traffic islands one mile apart from each other. The space

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evokes the March on Washington for Jobs and Freedom in 1963, and the March on Selma that led to the Voting Rights Act of 1965. The traffic island in the Baldwin Hills in African-American Los Angeles on Rodeo Drive and Martin Luther King Boulevard focuses on national heroes of the Civil Rights Movement, while the island a mile away on Rodeo and Jefferson Boulevard focuses on local heroes. The "Walk a Mile" project is inspired in part by the National Park Service's International Civil Rights Walk of Fame. Los Angeles celebrated the ribbon-cutting for the project—the only monument in the city dedicated to the Civil Rights Movement—on June 26, 2014.

More than symbolic, the civil rights park is itself the result of the successful civil rights and environmental justice struggle for clean water justice and green access in African-American and Latino Los Angeles. The Baldwin Hills and South Central Los Angeles are the historic heart of African-American Los

Angeles. These communities have long strived for equal access to public resources, including parks, recreation and public art. These communities have struggled to be free of environmental degradation, including sewage odors and overflows, and the risks of urban oil fields. Although Baldwin Hills may

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be comparatively well-off financially, it is plagued by the inequality and environmental injustice common to South Central and other communities that are of color or low-income. “Walk a Mile in My Shoes” reflects the community struggle for both: freedom to enjoy the benefits of green space, and freedom from the risks of sewer odors, spills and oil fields.

The project is the result of an epic 40-year community struggle to fix the sewer system citywide, and eliminate noxious odors that plagued African-American and Latino communities for decades. The odors smell like rotten eggs and are caused by hydrogen sulfide escaping from the sewers. Community leaders working with civil rights lawyers and the United States Environmental Protection Agency (EPA) reached a \$2 billion court-ordered consent decree and agreement with the City of Los Angeles to settle a lawsuit under the Clean Water Act. Civil rights attorneys intervened in the action to fully represent the interests of the affected community. This was the first time the Clean Water Act was used to address sewage odors, separate from overflows. The Los Angeles sewer system is one of the largest in the U.S., making this work significant to the nation well beyond Southern California. This is one of the largest sewage cases in U.S. history, ac-

ording to EPA. Experts from around the world visit Los Angeles to learn how the city has fixed up the sewer system, spills and odors.

The settlement agreement calls for multi-benefit city green and blue park and water projects to improve the sewer system citywide, clean up sewer odors, and create park, creek and wetland projects to improve water quality and quality of life. These supplemental environmental projects are part of the settlement agreement. The SEP projects include the *South Central L.A. Wetlands Park*, which transformed a bus parking lot into green space; the

The Civil Rights Movement is not over; it is alive and kicking.

North Atwater Creek Park, which has helped kick off the revitalization of the L.A. River; and the *Garvanza Park Stormwater project* in Highland Park, which captures and cleans one million gallons of rain and runoff with cisterns under the park that filter and replenish groundwater, irrigate the park, and keep polluted runoff out of the L.A. River and the ocean.

These green and blue projects directly benefit the community along the River and in Baldwin Hills, South Central Los Angeles, Northeast L.A. and beyond. The civil rights art project by artist Kim Abeles enhances those communities and the city as a whole.

Diverse allies helped fix the sewer system citywide to eliminate noxious odors and create park and clean water projects through the Clean Water Justice agreement. Allies include Baldwin Hills/Crenshaw Homeowners’ Coalition, Baldwin Hills Estate Homeowners Association (HOA), Baldwin Hills Village Gardens Homes HOA, Concerned Citizens of South Central Los Angeles, Crenshaw Neighborhoods HOA, Expo Neighbors Block Club, United HOA, Village Green Homes HOA, and civil rights attorneys at The City Project and English,

Munger, and Rice. More broadly, Concerned Citizens of South Central Los Angeles, represented by The City Project and diverse allies, have fought for over a decade to protect the community and the Baldwin Hills Park, the largest urban park designed in the U.S. in a century. They have stopped a power plant in the park, stopped a garbage dump there, and saved the Baldwin Hills Conservancy. They have fought in and out of court to regulate the adjoining Baldwin Hills oil fields to better protect human health and the environment, in an action separate from the Clean Water Justice case. According to the County of Los Angeles, as a result of that settlement agreement, the Baldwin Hills is the most heavily regulated oil field in the nation.

With the ribbon-cutting for “Walk a Mile in My Shoes,” the Clean Water Justice consent decree is coming to an end after ten years. The City’s Bureau of Sanitation, the members of the Baldwin Hills/Crenshaw Homeowners’ Coalition, and The City Project have agreed to continue working together voluntarily to keep the community clean and green. The City and the people have learned to trust each other, to listen to each other, and to work together. That is a testament to the transformative power of the Civil Rights Movement.

The Civil Rights Revolution

The year 2014 marks major milestones in the Civil Rights Movement: It is both the 50th anniversary of the Civil Rights Act of 1964 and the 20th anniversary of Executive Order 12898 on environmental justice and health. Of more recent vintage, the Affordable Care Act’s Section 1557 reflects a renewed commitment to combat health discrimination by any health program or activity that receives federal funding, or is administered by a federal executive agency. Section 1557 references Title VI of the 1964 Act,

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Title VI of the Civil Rights Act at 50: An Unfulfilled Promise at EPA

Marianne Engelman Lado

In 1987, *Toxic Waste and Race in the United States*, a report of the United Church of Christ's Commission for Racial Justice, served as a wake-up call about the unequal distribution of health hazards in the United States. Researchers analyzed demographic factors and found that the race of the nearby population was the single most significant explanatory factor associated with the location of commercial hazardous waste facilities and uncontrolled toxic waste sites. Commission for Racial Justice, United Church of Christ, *Toxic wastes and Race in the United States: A National Report on Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (1987). This finding has been replicated and further substantiated over time. See Luke W. Cole & Sheila R. Foster, "An Annotated Bibliography of Studies and Articles That Document and Describe the Disproportionate Impact of Environmental Hazards by

Race and Income," in *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (2001), 167-183; see also U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice* (2003), pp. 17-20; see also Manuel Pastor, Jr., Rachel Morello-Frosch & James Sadd, The Center for Justice, Tolerance & Community, Univ. of Cal. Santa Cruz, *Still Toxic After All These Years...Air Quality and Environmental Justice in The Bay Area* (2007); Joint Center For Political and Economic Studies, *Breathing Easier: Community-Based Strategies To Prevent Asthma 2* (2004); Robert D. Bullard & Glenn S. Johnson, "Just Transportation," in *Just Transportation* at 10 (Robert D. Bullard & Glenn S. Johnson eds., 1997). Most recently, a study published by the Environmental Justice and Health Alliance for

Chemical Policy Reform found that residents living in proximity to facilities that store or use highly hazardous chemicals are disproportionately African-American or Latino. "Who's In Danger? Race, Poverty and Chemical Disasters" (2014), at 2. Researchers and residents have analyzed the reasons for the fundamental inequality in exposure to toxic contaminants, which in turn leads to disparities in health, property value and basic quality of life. Urban affairs professor Myron Orfield wrote, for example: "The existence of racially segregated and high poverty neighborhoods, along with political powerlessness, contributes to serious environmental risks for communities of color." Orfield, "Segregation and Environmental Justice," 7 *Minn. J.L. Sci. & Tech.* 147, 153 (2006). Mary Lou Mares, a California activist who fought a toxic dump near her Latino neighborhood, commented: "I thought

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A Title VI Diversity Assessment at the Department of Education?

Philip Tegeler

Title VI of the Civil Rights Act of 1964 was designed to end discrimination and segregation in federally-funded programs and facilities—with a special focus on segregated schools and hospitals. But the framers of Title VI did not limit their vision to intentional or de jure segregation. For example, in his speech introducing the Civil Rights Act in 1963, President Kennedy noted that "difficulties over segregation and discrimination exist in every city, in every State of the Union, producing in many cities a rising tide

of discontent that threatens the public safety," and six years later, Congress declared that the provisions in Title VI and the Elementary and Secondary Education Act "dealing with conditions of segregation...whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation."

When Title VI was initially implemented, its regulations established a

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it was just us until I began to hear about the Untied Church of Christ study and other studies.... Then I realized we were part of a national pattern.” Cole & Foster, at 25.

Reflecting on the sweeping promise of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color and national origin by recipients of federal funds, it is impossible to ignore continuing and extreme inequality in exposure to health hazards. Every day, across the country, states and localities approve permits for the operation of toxic facilities, and private actors—owners and operators of incinerators, refineries, scrap metal recycling sites, landfills—make decisions about where to site such facilities and also what safety precautions they are willing to take. Every day, school districts decide whether to locate a new school on a contaminated site and, if so, how far they’ll go to clean up the grounds, and municipalities are reopening brownfields for development. Yet even today, rarely do they analyze the potential risks and impacts on nearby communities and whether this permit, this facility, this decision exacerbates long-standing inequalities—for example, whether the facility will contribute additional risks to a population that is already exposed to multiple health hazards and suffering from poor health.

Title VI of the Civil Rights Act of 1964 prohibits discrimination by all persons—including public and private actors, with bold language:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Title VI can be seen as a vehicle for accountability: If a state, locality or private actor takes federal money, it cannot engage in exclusionary or discriminatory activities on the basis of race, color or national origin. The legislation also empowers each federal agency that disburses federal funds to

issue rules and regulations to achieve the objectives of the statute. With so much federal money from the Environmental Protection Agency (EPA), the Department of Energy, the Department of Agriculture and other federal agencies flowing to state and local agencies, as well as facilities that have environmental impacts, Title VI is a powerful tool for fighting discrimination based on race and ethnicity. As now Secretary of Labor Tom Perez wrote: “Title VI has been called the ‘sleeping giant’ of civil rights law. Title VI’s breadth of coverage is extensive and it can address a huge array of injustices....” Thomas Perez, Memorandum to Federal Funding Agency Civil Rights Directors (August 19, 2010), at 4. Yet, as Mr. Perez went on to say, “[A]ll too frequently this authority is underutilized.”

EPA has not yet made enforcement of civil rights a priority.

Historically, agencies were charged with implementing Title VI and ensuring that recipients of their funding complied with the law, and private parties could also go to court and challenge discriminatory practices. In 2001, the Supreme Court sharply curtailed the ability of victims of discrimination to enforce the law. In *Alexander v. Sandoval*, the Supreme Court ruled that victims of discrimination could only go to court if they could demonstrate that the discrimination was intentional, *see Alexander v. Sandoval*, 532 U.S. 275 (2001), despite the broad language of the statute and the fact that federal agencies such as EPA had interpreted Title VI to prohibit actions that have an unjustified disproportionate impact on the basis of race and ethnicity. As a result of the ruling, the public must rely on miniscule offices of civil rights (OCRs) at each federal agency for enforcement. According to a government website, EPA, for example, disburses more than \$1.9 billion in federal money to more than 15,500 individual transactions, and yet

Title VI compliance at EPA is theoretically policed by approximately seven or eight staff, who are also charged with responsibility for the agency’s equal opportunity in employment program. If the country were serious about addressing discrimination by recipients of federal funds, oversight of these federal dollars wouldn’t depend exclusively on such an anemic effort. The level of funding and staffing at EPA’s OCR is grossly inadequate.

Indeed, perhaps no agency has as infamous a record on civil rights enforcement as the EPA. As with other federal agencies, EPA is both responsible for enforcing Title VI and is also governed by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 Fed. Reg. 7629, Feb. 16, 1994), requiring that each agency “shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on low-income and minority populations” and must develop an “agency-wide strategy” to effect this.

Despite clear legal mandates, however, EPA has not yet made civil rights enforcement a priority. One explanation for this failure may be that EPA was established in 1970, at the tail end of the civil rights revolution. Unlike the Department of Education and the Department of Health and Human Services, each of which have their roots in what was formerly known as the Department of Health, Education and Welfare, which brought enforcement actions under Title VI to desegregate hospitals receiving federal funds as well as schools, *see David Barton Smith, Health Care Divided: Race and Healing a Nation* (1999), EPA came of age during the backlash to the Civil Rights Movement and ultimately found itself on the defensive as it attempted to implement environmental laws. Civil rights complaints filed with EPA have simply languished. In *Rosemere* (Please turn to page 10)

Reflecting on the 50th Anniversary of the Civil Rights Act of 1964

Derek Black

The Civil Rights Act of 1964 has had the largest impact on racial equality of any legislation passed. Although the Supreme Court had declared school segregation unconstitutional a decade earlier in *Brown v. Board of Education*, no significant school desegregation occurred prior to the Act. In fact, a mere 1% of African-American children attended integrated schools in the South in 1964. With passage of the Civil Rights Act of 1964, things changed quickly. School desegregation began occurring at a rapid pace, and those titles of the Act aimed at employment and public accommodations likewise began to fundamentally change opportunity for African Americans and other minorities across the country.

Title VI

The Civil Rights Act included eleven titles, each aimed at discrimination in some different context or granting the federal government authority to address it. Title VI of the Civil Rights Act was one of the most sweeping titles. It prohibits racial discrimination in any program receiving federal funds. As federal money began to flow more widely in education during the 1960s, Title VI's prohibitions quickly applied to all of the nation's public schools, and eventually applied to a substantial number of private schools as well. It likewise extended its reach beyond education to various other public and pri-

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vate industries, such as transportation, health and the environment, that receive federal funds. The strategy was simple: The further the federal government spread its money, the greater its leverage to address racial equity and discrimination in all facets of public life.

For nearly four decades, Title VI did more than just root out obvious invidious discrimination; it helped promote racially equitable results. Under Title VI, complainants could pursue administrative and litigation remedies

In 2001, the Supreme Court reversed course.

for racial inequality, even when they could not demonstrate the existence of malevolent design by some particular actor. It was enough that a federal funding recipient had enacted a policy or engaged in a practice that produced racially disparate results that could not be justified by the practical necessity of achieving some important goal. Complainants relied on agency regulations that prohibit disparate impact. Agencies had enacted those regulations pursuant to their authority under Section 602 of the Civil Rights Act, which provides that agencies shall enforce Section 601's prohibition on discrimination and guarantee of equal access by enacting regulations.

In 2001, the Supreme Court, in *Alexander v. Sandoval*, reversed course. It brought an end to private individuals' ability to use litigation as means to challenge racial inequality in federally-funded programs, save those instances when they could demonstrate intentional discrimination. The Court held, contrary to prior case law, that violations of disparate impact regulations do not give rise to a private cause of action. The Court did not question

agencies' authority to enforce their regulations administratively, but for private individuals seeking recourse in court, Title VI became largely redundant. It provided no more protection than the Fourteenth Amendment, to which state actors were already subject. The only meaningful vestige was litigants' ability to continue to sue private entities that received federal funds and engaged in intentional discrimination.

Response Needed

Such a monumental loss demands a response, particularly in the 50th anniversary year of the Civil Rights Act. Three major and distinct responses are possible: administrative action, litigation to evolve new doctrine, and legislative reform. Unfortunately, the most viable options may provide incomplete and indefinite remedies, while the least viable options may provide the most effective remedies. Given the limitation of each strategy, civil rights advocates must continue to press on all three fronts if Title VI of the Civil Rights Act of 1964 is ever to regain a modicum of its prior glory. □

Additional Resources

Derek W. Black, "A Framework for the Next Civil Rights Act: What Tort Concepts Reveal about Goals, Results, and Standards," 60 *Rutgers Law Review* 259 (2008).

Bradford C. Mank, "Can Administrative Regulations Interpret Rights Enforceable under Section 1983? Why Chevron Deference Survives *Sandoval* and *Gonzaga*," 32 *Florida State University Law Review* 843 (2005)

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and also protects against discrimination based on gender, disability and age. The Act also includes over 60 provisions that address social determinants of health through wellness and prevention. Social determinants of health include where people live, learn, work, play, pray and age.

The civil rights park and the work leading to it in and out of court present the opportunity to reflect on the myriad strategies of the Civil Rights Movement that have led to real change in people's lives. Historically and today, the Movement has included attorneys taking cases to court, ground-breaking judicial decisions, grassroots organizing, legislation by Congress, action by the President, implementation by administrative agencies, and people providing a mandate to support civil rights through the right to vote.

The civil rights park, the Clean Water Justice agreement, and the Baldwin Hills Park are parts of the Green Justice Movement in Southern California and beyond. As with the

Civil Rights Movement as a whole, Green Justice relies on multiple strategies, and—as discussed below—it has yielded successes and “best practices” that can contribute to a promising future for civil rights advocacy, particularly around Title VI.

Victories in Southern California and Beyond

Martin Luther King highlighted urban planning, parks and recreation, schools and education, human health, meaningful work, and democratic decision-making as genuine civil rights issues. There has been progress in these areas in Los Angeles. Healthy green land use, equitable development, and planning by and for the community are helping to change L.A.

Healthy green land use is helping to change L.A.

Civil rights advocates, including The City Project with diverse allies, have been applying the lessons of the Civil Rights Movement in Southern California and beyond for 20 years. The strategies include organizing, translating policy, law and social science into real changes in people's lives, media, advocacy outside the courts, legislation, and access to justice through the courts. The discussion here will focus on equal access to public resources, and the intersection of civil rights, health and the environment.

Transportation Justice

In the historic environmental justice class action *Labor Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (MTA), the parties reached a settlement agreement and court-ordered consent decree in which MTA agreed to invest over \$2 billion to improve the bus system countywide. The MTA case, filed 20 years ago in 1994 under Title VI of the Civil Rights Act of 1964

and its regulations, set the stage for other public resource victories at the intersection of civil rights, health and the environment. MTA agreed to reduce overcrowding on buses, lower transit fares, and enhance countywide mobility. Plaintiffs and the class documented MTA's pattern and history of inequitable, inefficient and environmentally destructive allocation of resources. The Bus Riders Union organized the movement in the streets and on the buses. The legal team led by the NAACP Legal Defense Fund documented the continuing history and pattern of transit disparities in a massive 211-page legal memo filed in court in 1996. Prof. Edward Soja's book *Seeking Spatial Justice* (2010) described the case as a “remarkable moment in American urban history....[I]t is hard to imagine a stronger team of advocates for the lawsuit.”

Healthy Green Land Use

The site of the Los Angeles State Historic Park downtown was nearly filled with warehouses. Instead, largely thanks to Title VI, the land is a much-needed park. Andrew Cuomo, who was Secretary of the U.S. Dept. of Housing and Urban Development (HUD) at the time in 2001, withheld any federal subsidies for the proposed warehouse project unless there was a full environmental study that considered the park alternative and the impact on people who were of color or low-income. Secretary Cuomo acted in response to an administrative complaint, citing Title VI and the President's Order on Environmental Justice. As a result, the state bought the land for the park. The *L.A. Times* called the community victory a heroic monument and a symbol of hope. As reported in the *Times*, The City Project with diverse allies “organized a civil rights challenge that claimed the project was the result of discriminatory land-use policies that had long deprived mi-

New on PRRAC's website

Discrimination and Segregation in Housing: Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (Report to the U.N. Committee on the Elimination of Racial Discrimination, July 2014)

CERD Shadow Report: Education in the United States and the Federal Responsibility to Reduce School Segregation and Address the Achievement Gap (Report to the U.N. Committee on the Elimination of Racial Discrimination, July 2014)

[The U.N. CERD Committee's review of U.S. Compliance with the CERD treaty will take place on August 13-15 in Geneva]

nority neighborhoods of parks.” L.A. State Historic Park “is not here because of the vision of politicians, or some design or plan. This park is here because of the struggle and agitation by the community. Deservedly, their action is renowned as one of the most significant environmental justice victories in Los Angeles, and is the catalyst for the revitalization of the Los Angeles River,” according to State Senator Kevin de León.

HUD’s action was a seminal moment in the greening and history of Los Angeles for planning, parks and people. HUD’s decision represents a best practice that other federal agencies can continue by pursuing voluntary compliance with civil rights laws in the planning process. The Army Corps of Engineers, for example, has come out in support of a billion dollar plan to revitalize the Los Angeles River. Its 2013 draft river study recognizes that there are unfair disparities in access to parks and recreation in the Los Angeles region; that these disparities contribute to human health disparities; and that public agencies need to address the disparities, citing the Environmental Justice Order. Similarly, the National Park Service, in its 2013 study recommending a new national recreation area in the San Gabriel Mountains on the east side of L.A. County, recognizes that there are unfair disparities in access to parks and recreation in the region; that these disparities contribute to human health disparities; and that public agencies need to address the disparities, citing the Environmental Justice Order. Congresswoman Judy Chu has introduced pending legislation to create the national recreation area, citing health and environmental justice as two of the main justifications.

HUD’s action inspired the green justice movement that is helping create or save great urban parks, including L.A. State Historic Park downtown, Rio de Los Angeles State Park along the L.A. River, Vista Hermosa Park in Pico Union (a best practice for the joint use of parks, schools and pools), the Native American sacred site of Panhe and San Onofre State Beach

in San Diego, Kellogg Park in park-poor, income-poor Ventura, and the 140-acre Ascot Hills Park (before Ascot Hills, the largest green space in park-poor East L.A. was Evergreen Cemetery) .

The community’s environmental victory was a heroic moment and a symbol of hope.

Quality Education

Physical Education. Physical education is a civil rights issue. California law requires physical education in public schools, yet half the districts audited did not enforce those physical education requirements. The Los Angeles Unified School District has adopted a physical education plan to provide physical education in compliance with the education code and civil

rights laws. Ninety-two percent of the students in the district are of color, and 74% are low-income and qualify for free or reduced-price meals. This is a health and civil rights issue because districts that do not provide physical education disproportionately serve African-American and Latino students. Students in noncompliant school districts were less likely to meet or exceed fitness standards than those in policy-compliant districts, and were more likely to be black or Hispanic and eligible for free or reduced-price meals. If students of color don’t get physical education in school, they typically do not engage in physical activity. They live in neighborhoods without safe places to play in parks or schools, according to mapping, demographic analyses, and policy reports by The City Project. The school district voluntarily adopted the physical education plan in response to an administrative complaint under state and fed-

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Resources

A new wave of studies on the Civil Rights Movement is emerging during the 60th anniversary of *Brown v Board of Education* and *Hernandez v Texas*, and the 50th anniversary of the Civil Rights Act. See, for example, Gavin Wright, *Sharing the Prize: The Economics of the Civil Rights Revolution in the American South* (2013); Bruce Ackerman, *The Civil Rights Revolution* (2014); Robert Caro, *The Years of Lyndon Johnson: The Passage of Power* (2012); Clay Risen, *The Bill of the Century: The Epic Battle for the Civil Rights Act* (2014); Todd S. Purdum, *An Idea Whose Time Has Come: Two Presidents, Two Parties, and the Battle for the Civil Rights Act of 1964* (2014). Leading earlier works include, for example, Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (1994); Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality* (1975 and 2004); and Taylor Branch, *The King Years: Historic Moments in the Civil Rights Movement* (2013). On health justice and the Civil Rights Movement, see D. B. Smith, *Health Care Divided: Race and Healing a Nation* (1999); J. Dittmer, *The Good Doctors: The Medical Committee for Human Rights and the Struggle for Social Justice in Health Care* (2009).

On the Green Justice movement in Southern California, see Robert García, “The George Butler Lecture: Social Justice and Leisure” 45(1) *Journal of Leisure Research* 7-22 (Winter 2013), goo.gl/dg2QY; The City Project et al., *Public Comments on Health and Environmental Justice along the Los Angeles River* (Nov. 18, 2013), www.cityprojectca.org/blog/archives/23454; Robert García & Seth Strongin, *Healthy Parks, Schools and Communities: Green Access and Equity for Southern California* (The City Project Policy Report 2011), www.mapjustice.org.

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eral education and civil rights laws by The City Project, the teachers' union, advocates for students and health advocates.

Dr. Robert Ross, President of The California Endowment, has called this work "a best practice example for districts across the state to provide a quality education for the children of California." The City Project with diverse allies is implementing the Institute of Medicine's recommendations to provide physical education minutes, monitor compliance, alleviate disparities, improve teacher education, make physical education a core subject, and improve physical activity in the whole school environment. The IOM recommendations appear in their 2013 report *Educating the Student Body*.

Schools as Centers of their Communities. The Los Angeles Unified School District has raised \$27 billion for school construction and modernization through local ballot measures and matching federal and state funds. The district has built 130 new schools and modernized hundreds more, cleaned up polluted sites, and created meaningful work. Joint use of schools, pools and parks makes optimal use of

scarce land and resources. Most importantly, the future has become brighter for generations of students.

Health Justice

Ethnic and racial health inequities remain persistent and pervasive. Civil rights laws are part of the solution to improve health outcomes. From a health perspective, civil rights laws offer important, underused tools to support health-based recommendations. From a civil rights perspective, the health lens offers a powerful way to improve compliance and protect people's civil rights. The City Project is working with Charles Drew University and UCLA Medical School on health justice. The goal is to develop best practices for health professionals to work with civil rights attorneys to promote better understanding of the civil rights dimension of health inequities, and to improve health outcomes. Public health research too often stops at documenting health inequities, without addressing what to do about them. Healthy green land use and physical education are some examples of what can work.

Meaningful Work and Economic Vitality

Triple bottom-line infrastructure investments can promote equity, economics and the environment. The Los Angeles Unified School District has raised \$27 billion for school construction and modernization, as discussed above. Each \$50 million has created 935 annual jobs, \$43 million in wages, and \$130 million in local business revenue. Best practices create meaningful work through apprenticeships and contracts for small, women-, minority- and veteran-owned enterprises.

National Parks support more than \$30 billion in spending and more than a quarter million private-sector jobs each year in rural and urban communities that are gateways to the parks. Each dollar invested in park operations generates about \$10 for local communities, and every two National Parks Service jobs generate one job outside the park. According to a survey by Sacramento State University, visitors to California's state parks spend an average of \$4.32 billion per year in park-related expenditures. People of color and low-income communities must receive their fair share of public investments in infrastructure projects. Solutions to many social problems—unemployment, environmental degradation, no place to play, little hope for disadvantaged youth, obesity, rebuilding the nation's infrastructure for generations to come—must be tied to a vision for a new America that includes stimulus projects to improve the lives of all residents. As communities become greener and more desirable, it is necessary to guard against gentrification and displacement of low-income homes and businesses.

Conclusion

As the examples discussed above show, the Civil Rights Movement continues to offer hope for equal justice, democracy and livability for all. □

A Non-Anniversary at the Treasury Department

It has been 50 years since Congress directed all federal agencies that provide "federal financial assistance" to "issu[e] rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance." To date, the Treasury Department has ignored this directive, effectively shielding its largest housing program, the Low Income Housing Tax Credit (LIHTC), from civil rights oversight.

State agency allocations of federal LIHTC have allowed developers to exchange tax credits for tens of billions of dollars in cash contributions to projects by private investors since 1987, funding the construction of over two million housing units. But the Treasury Department has hidden behind the fiction that the massive LIHTC program is not "federal financial assistance" in spite of judicial precedent and Department of Justice regulations that define financial assistance as "any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance."

The Treasury Department may be the last "holdout" among federal agencies in its failure to adopt Title VI regulations. Perhaps the 50th anniversary will prompt the Department to take this long overdue step.

Breaking The Low-Wage Syndrome

S. M. Miller

To the Editor:

The Justin Steil summary of what might be done to decrease income inequalities (see March/April 2014 issue) is exemplary, covering the wide field of what is currently on the liberal-progressive agenda. As is the practice now, the proposals do not deal with the underlying causes of low wages but only with measures that would augment the wages if—a big if—Congress voted favorably.

But they are a welcome shift from the heavy but largely unsuccessful effort to tax the 1%, the Leveling Down strategy. Increasing tax rates on the 1% would yield some federal revenue but ineffectively combat the continuing production of wide-ranging poverties and inequalities.

The more significant approach is that of Leveling Up, improving the situation of many of the 99%.

While it is certainly very important to press for the Steil measures, is it not time to bring into political debate and begin to act on the underlying causes of our continuing high degree of poverty and inequality? The measures on the legislative board would make an important dent in them but not undermine their continuing production.

A startling fact raises questions about the shaping of the economy and the structural basis of the sad income-wealth scene. In a recent year, financial industries captured 40% of all business profits! And they certainly did not provide 40% of all jobs while making a substantial contribution to income and wealth disparities.

The American economy is shaping up as a low-wage economy producing the poverties that current proposals seek to alleviate but not to displace. The

enormous contraction of manufacturing industries decreased the percentage of jobs that provided a decent level of living and benefits, particularly in firms that once had strong unions.

The majority of jobs are now in the low-wage “service sector”—even if the federal government had a more useful and less broad definition of that sector. (Should “construction,” for example, be included in the “service” category?) Yes, we should definitely seek to improve wages in that sector with the proposals that Steil provides, but long-time production of these low-wage jobs is a great obstacle to substantial and continuing contraction of poverties and inequalities.

Those concerned about the sad story of low wages have to pay more attention to their production. If low-wage industries characterize too much of the American economy, legislative efforts to reduce poverties and inequalities are very likely to be too little and too late to make a significant difference—even

if political support is great enough to somewhat overcome opposition to such measures.

In addition to promoting these measures, those concerned about poverty and inequalities, particularly the low-wage situations of people of color and women, should be opening up issues of what kind of economy would make a positive difference in the well-being of more Americans.

Current proposals are worthy and important, hence they experience strong opposition to their legislative enactment. But the neglected need is to go beyond improving low-wage jobs to produce more good jobs. Too many Americans are stuck in a labor market ghetto of low-wage, dead-end jobs.

Increasing the rate of growth in Gross Domestic Product is an inadequate though important objective if the majority of additional jobs contribute to that labor market ghetto or worsen the quality of the environment.

(Please turn to page 10)

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S.M. Miller is member of PRRAC's Board of Directors.

(LOW-WAGE: Cont. from page 10)

That situation prevails to a disturbing extent. The objective is not just the level or rate of growth of Gross Domestic Product but how it is produced (environmental issues) and who benefits (the financially rich or ordinary workers). The quality of jobs as well as the unemployment rate are key issues.

One step is building an effective political case for substantial governmental spending on the infrastructure. Highways, bridges, railroad tracks and the like need dramatic upgrading—the U. S. lags far behind comparable nations in the quality of our transportation linkages. Our low infrastructure quality impedes the country's international competitive-

ness. A serious effort to deal with our transportation lacks would generate more better-quality jobs as well as stimulating the economy to higher levels of production and a lower unemployment rate.

Would a higher rate of growth in Gross Domestic Product increase the percentage of good jobs? Not in today's economy of the prominence of low-wage job production. Needed are deliberate efforts to produce more good jobs. This broader focus would bring back and build support for "industrial policy" which for a while had considerable support. The government could do more to promote new technologies and industries (e.g., its crucial role in the hi-tech fields in their beginnings) that would stimulate economic growth and quality employments.

Improving the current situation of too few good jobs particularly affects the less-educated, though many of the higher-educated are not doing well. Since so many are threatened with poor job prospects, improving the current situation could gain political attention and action.

We do not have to choose between trying to improve low wages and building a macro economy that provides good jobs. We should be striving to do both. Improving lousy jobs is important but insufficient. The nation should act to produce good jobs and not only to improve somewhat poor-paying jobs.

Today's need is to begin to promote tomorrow's desirable employment outcomes.

(TITLE VI AND EPA: Cont. from page 4)

Neighborhood Association v. EPA (9th Cir. 2009), a federal appellate court observed that the "EPA failed to process a single complaint from 2006 or 2007 in accordance with its regulatory deadlines," and showed a "pattern of delay." In fact, EPA still has not completed investigations of at least four cases filed in the 1990's. See "Complaints Filed with EPA Under Title VI of the Civil Rights Act of 1964," available at <http://www2.epa.gov/ocr/complaints-filed-epa-under-title-vi-civil-rights-act-1964>. In 2012, an audit by Deloitte Consulting, LLP, which was requested by Administrator Lisa Jackson, reported that just keeping cases on track is a challenge for the agency. Deloitte characterized EPA's OCR as "inadequate" and found that EPA lacked the skills and expertise necessary to accomplish its civil rights work. Deloitte, "Developing a Model Civil Rights Program for the Environmental Protection Agency," at 8, 12.

To develop a meaningful civil rights enforcement program, EPA has work to do. The agency will need to develop and train skilled staff, clarify the applicable legal standards, work with recipients of federal funds to ensure com-

pliance at the front end, when funds are disbursed, and engage stakeholders in a manner consistent with principles of environmental justice. Most of all, EPA needs to develop the political will to establish zero tolerance for discrimination and to impose meaningful remedies.

Meanwhile, communities of color across the country are bearing the burden of air pollution, water contamination and exposure to toxic sources. Whether or not lawyers can prove that

EPA's OCR staffing is grossly inadequate.

governmental and private decisions affecting their lives are intentionally discriminatory, no community should be the dumping ground for hazardous waste, landfills and polluting industries.

In the words of Dr. Robert Bullard, often called the father of the environmental justice movement: "All Americans, white or black, rich or poor, are entitled to equal protection under the law. Just as this is true for such areas as education, employment and housing, it also applies to one's physical environment." Bullard, "Dumping in Dixie," (1990), at 7. After 50 years, it is now time to fulfill the promise of

Title VI.

As we look ahead to the future of civil rights in this country, there are signs of change, but the need to enforce the Civil Rights Act cries for action. The Environmental Justice Movement itself is reason for hope. Since the 1980s, when members of Warren County Citizens Concerned About PCBs protested against the construction of a PCB landfill in their neighborhood, people in overburdened urban and rural areas all across the country have been a force for change at the local, state and national levels. They have protested, testified, gathered evidence, educated the public, mobilized and even gone to court. Moreover, there are some signs of change at EPA, and advocates are hopeful that EPA can finally develop and implement a program to ensure civil rights compliance among recipients of its funds. While robust administrative enforcement of Title VI is critical, Congress should also restore a right of action for private parties to bring Title VI disparate impact claims in the courts. We have waited 50 years for meaningful enforcement of Title VI—equality and the right of all people to clean air, clean water and healthy environments demand action now. □

(DEPT. OF EDUC.: Cont. from page 3)

basic administrative complaint process within each federal agency. This model was usually passive, with the filing of an administrative complaint leading to an investigation, conciliation and eventual adjudication. Until recently, this complaint-driven approach to Title VI was the norm at most federal agencies, including the Department of Education. But in the last decade, several federal agencies have taken a more proactive approach and have required state and local governments to assess the racial impacts of their policies in advance, and evaluate less discriminatory alternatives. Title VI regulations and guidance at the Federal Transit Administration, the Environmental Protection Agency and the Department of Agriculture exemplify this new approach. PRRAC Board member Olati Johnson has termed these new, affirmative regulations “equality directives,” opening up a new, non-traditional advocacy front in civil rights enforcement.

One of the best known of these proactive rules is the Federal Transit Administration’s 2012 Title VI Guidance. The FTA Guidance requires a Title VI “equity analysis” for the siting of new transit facilities, proposed fare changes and some other actions by larger transit systems, requiring detailed assessments of racial impacts. If the transit provider forecasts a potential disparate impact associated with a proposed action, it must “determine whether alternatives exist that would serve the same legitimate objectives but with less of a disparate effect on the basis of race, color or national origin.” If alternatives exist, “the transit provider must revisit the service changes and make adjustments that will eliminate unnecessary disparate effects. ...”

What would a similar Department of Education Title VI assessment look like as applied to conditions of racial isolation and poverty concentration in public schools? With consistent national research linking attendance in racially isolated schools to a wide range of negative educational outcomes (in-

cluding lower student achievement results, higher dropout rates, lower college completion rates, less qualified teachers, high rates of teacher turnover, less challenging curriculum, and higher rates of student discipline), the Department would certainly be justified in demanding that its grantees account for the predictable impacts their policies and planning decisions have on school segregation patterns.

A Title VI “school diversity assessment” analogous to the FTA Guidance could require prospective assessments by states and local school districts of school construction spending decisions, school siting plans, and school districting and boundary proposals—all of which can have significant impacts on patterns of racial and economic school segregation.

PRRAC Update

- We are pleased to welcome two new members to the PRRAC Board of Directors: **ReNika Moore** is currently serving as director of the Economic Justice Program at the NAACP Legal Defense and Educational Fund in New York, and **David Hinojosa** is Regional Counsel in the Southwest Regional office of the Mexican American Legal Defense and Educational Fund (MALDEF) in San Antonio.

- We are grateful to **Catherine Tactaquin**, Executive Director of the National Network for Immigrant and Refugee Rights, who is stepping down from the PRRAC Board after many years of service to PRRAC. We will miss her!

- PRRAC Board member **Craig Flournoy** has been appointed as Assistant Professor of Journalism, University of Cincinnati. The National Endowment for the Humani-

ties recently awarded him a fellowship to write a book examining how the white press, particularly the *New York Times*, and the black press covered the Civil Rights Movement.

- PRRAC Board member **John Brittain** has published “Reducing Reliance on Testing to Promote Diversity,” a chapter in *The Future of Affirmative Action* (Richard Kahlenberg, Ed.) (Century Foundation 2014)

- PRRAC Board member **Rachel Godsil** was recently appointed Chair of the NYC Rent Guidelines Board, which sets allowable rent increases for over a million rent-regulated apartments in the city.

- Former PRRAC Board member **Victor Bolden** was recently nominated by President Obama to the U.S. District Court in the District of Connecticut.

The Department of Education has already taken some steps toward prospective racial impact assessment in its recent guidance on school discipline. Extending the “equity assessment” principle to state and local actions significantly affecting school segregation would be a welcome next step. □

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Race/Racism

- **Navajo Code Talkers:** Chester Nez, originator of the Navajo Code Talkers, so important for confidential communication during WWII (for which Pres. George W. Bush awarded him the Congressional Gold Medal in 2001), passed away in June at age 93. The 6/5/14 *NY Times* obituary details his work, but also notes the irony of then-extant discrimination against Native Americans. [14701]
- **1964 Civil Rights Act:** Todd Purdum, formerly at *NY Times*, now at *POLITICO*, has just published *An Idea Whose Time Has Come: Two Presidents, Two Parties, and the Battle for the Civil Rights Act of 1964* (Henry Holt, 2014, 398 pp.) [14702]
- **"Segregation Now,"** by Nikole Hannah-Jones, appeared in *ProPublica*, April 2014; available at <http://www.propublica.org/article/segregation-now-full-text> [14703]
- **Life Cycles of Inequity: A Series on Black Men** is a monthly series exploring how injustice shapes the lives of black men, from birth to death, using short films, investigative journalism & infographics to illustrate the issues. Produced by ColorLines, published by Race Forward, available at <http://colorlines.com/life-cycles-of-inequity/> [14704]
- **"The Case for Reparations,"** by Ta-Nehisi Coates, appeared in the May 2014 *Atlantic*, available at <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/> [14705]
- **"Justice for Blacks and Whites,"** by Sheryll Cashin, an op-ed, appeared in the July 2, 2014 *NY Times* [14709]
- **"Lack of Order: The Erosion of a Once-Great Force for Integration,"** by Nikole Hannah-Jones, appeared in *ProPublica*, available at <http://www.propublica.org/article/lack-of-order-the-erosion-of-a-once-great-force-for-integration> [14723]

Poverty/Welfare

- **"Inequality Is Not Inevitable,"** by Joseph E. Stiglitz, is a long, good article in the June 29, 2014 *Sunday NY Times* [14711]

Criminal Justice

- **On the Run: Fugitive Life in an American City,** by Alice Goffman, a Univ. Wisc. Madison sociologist (Univ. Chi. Press, 2014, 288 pp.), "offers a fascinating and disturbing portrait of the econ. constraints & incentives faced by a large subset of Americans: those who are hiding from the law." See article on it in June 1, 2014 *NY Times*, p. 6. [14697]

Economic/Community Development

- **The Inevitable City: The Resurgence of New Orleans and the Future of Urban America,** by Scott Cowen & Betsy Seifter (2014, 242 pp., \$27), has been published by Palgrave Macmillan [14713]

Education

- **"For Lessons About Class, a Field Trip Takes Students Home"** heads an article in the May 31, 2014 *NY Times*, p. B1, on a Manhattan private school program to have 5 4&5-year olds visit one another's homes during the school day to learn and talk about social class. "Spending time with families who have much less or more than you do can be illuminating." [14699]
- **"Segregation and peers' characteristics in the 2010-2011 kindergarten class: 60 years after Brown v. Board,"** by Emma Garcia & Elaine Weiss (19 pp., June 2014), from the Economic Policy Inst., is available at <http://epi.org/publication/segregation-and-peers-characteristics/> [14714]
- **Implicit Bias in School Discipline** is a new website from the Kirwan Inst. for the Study of Race & Ethnicity, <http://kirwaninstitute.osu.edu/school-discipline/> [14715]
- **"Housing and Education Advocates Work Together to Improve Education,"** by David Zisser & Brenda Shum (10 pp., April 2014), appeared in *Clearinghouse Review: Journal of Poverty Law and Policy*, available at <http://www.lawyerscommittee.org/newsroom/publications?id=0046> [14719]
- **"How a 'New Secessionist' Movement Is Threatening**

to **Worsen School Segregation and Widen Inequalities**,” by Susan Eaton (May 2014), appeared in *The Nation*, available at <http://www.thenation.com/article/179870/how-new-secessionist-movement-threatening-worsen-school-segregation-and-widen-inequal> [14720]

- **“Sixty Years Later, We Need a New Brown,”** by Lee C. Bollinger (May 2014), appeared in *The New Yorker*, available at www.newyorker.com/online/blogs/newsdesk/2014/05/sixty-years-later-we-need-a-new-brown.html [14721]
- **“High Stakes in the Classroom, High Stakes on the Street: The Effects of Community Violence on Students’ Standardized Test Performance,”** by Patrick Sharkey, Amy Ellen Schwartz, Ingrid Gould Ellen & Johanna Lacoë (22 pp., May 2014), appeared in *sociological science*, available at www.sociologicalscience.com/download/volume%201/may%283%29/high-stakss-in-the-classroom-high-stakes-on-the-street.pdf [14726]
- **“Equity, Excellence and Inclusiveness in Education Policy: Lessons from Around the World,”** by Andreas Schleicher (80 pp., July 2014), appeared in *International Summit on the Teaching Profession* (OECD Publishing), available at 10.1787/9789264214033-en [14727]

Employment/Labor/Jobs Policy

- **“Twenty-Three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage”** (27 pp., July 2014), by Sylvia A. Allegretto & David Cooper, from the Economic Policy Inst., is available at <http://www.epi.org/publication/waiting-for-change-tipped-minimum-wage> [14729]
- **“The Low-Wage Recovery: Industry Employment and Wages Four Years into the Recovery”** (13 pp., April 2014), from the Natl. Employment Law Project, is available at www.nelp.org/page/content/uploads/2014/07/DignifiedJobs-report1.pdf [14730]
- **“The Low-Wage Recovery: Industry Employment and Wages Four Years into the Recovery”** (13 pp., April 2014), from the Natl. Employment Law Project, is available at www.nelp.org/page/content/lowwagerecovery2014/ [14731]
- **“Dignified Jobs and Decent Wages: The Next 50 Years of Civil Rights and Economic Justice,”** by Maryann Adamu, (July 2014, 23 pp.), from the Ctr. for American Progress, is available at cdn.americanprogress.org/wp-content/uploads/2014/07/DignifiedJobs-report1.pfd [14732]

Health

- **Healthy People 2020**, released by HHS in 2011, puts forth Leading Health Indicators covering 1200 objectives, grouped into 12 topic areas, in which are a subset of 42

topics (on such issues as diet, preterm births, medical insurance, suicide, etc.) Further inf. and webinar schedule at www.healthypeople.gov/2020/LHI and www.healthypeople.gov/2020/learn [14698]

- **“Adolescents with and without Gestational Cocaine Exposure: Longitudinal Analysis of Inhibitory Control, Memory and Receptive Language,”** by Laura M. Betancourt, Wei Yang, Nancy L. Brodsky, Paul R. Gallagher, Elsa K. Malmud, Joan M. Giannetta, Martha J. Farah & Hallam Hurt (Jan. 2012, 24 pp.), appeared in *33 Neurotoxicol Teratology*36, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3052975/> [14734]
- **“Acute aerobic exercise: an intervention for the selective visual attention and reading comprehension of low-income adolescents,”** by Michele Tine, (10 pp., June 2014), appeared in *5 Front.Psychol.*1, available at <http://journal.frontiersin.org/Journal/10.3389/fpsyg.2014.00575/full> [14735]

Homelessness

- **“Lava Me”** is a recent San Francisco invention, going international, to recondition decommissioned buses into mobile showers, with fixed daily stops, so homeless people can take showers. Great story on it in July 13, 2014 *SF Chronicle*. p. C1. A page 1 *Chronicle* story 2 days later (7/15), headed “Mobile bathrooms are being deployed to clean up streets,” reported a complementary city program: mobile bathrooms (equipped as well with sink, needle disposals, dog wash station), well-lighted, transferred to appropriate locations (close to meal centers, etc.) on flatbed trucks, cleaned every night, with attendants from 2-9 4 days a week. [14710]

Housing

- **“The Home Foreclosure Crisis and Rising Suicide Rates, 2005 to 2010,”** by Jason N. Houle & Michael T. Light, appeared in the June 2014 issue of *Amer. J. of Public Health*. Really disturbing phenomenon, triggered by failure/shame, loss of home and networks, loss of equity, movement toward poverty. [14696]
- **“Race Discrimination Is Not Risk Discrimination: Why Disparate Impact Analysis of Homeowners Insurance Practices Is Here to Stay,”** by Stephen M. Dane, has been published in the 2014 edition of *Banking and Financial Services Policy Report*. Available at <http://www.relmanlaw.com/attorneys/sdane.php>

Miscellaneous

- **“Louder Than Words: Lawyers, Communities and the Struggle for Justice,”** by Penda D. Hair (March 2001, 176 pp.), is available at <http://www.advancementproject.org/resources/entry/louder-than-words-lawyers-communities-and-the-struggle-for-justice> [14736]

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