MEMORANDUM

To: George Flores
From: Robert García, Michael Rodriguez, Daphne Hsu, Marc Brenman, Marianne Engelman Lado
Date: May 19, 2014
Re: Recommendations on how to use civil rights laws to address health inequities

We submit this memo to the Endowment detailing considerations and opportunities on how to use civil rights laws to address health inequities in compliance with grant 20122137.

1. The California Endowment should incorporate compliance with civil rights laws into its programs and activities, including grant making, where there is evidence of health disparities. Civil rights laws offer tools to address health inequities and improve health outcomes in order to improve health outcomes based on race, color, or national origin. Ethnic and racial health inequities are persistent and pervasive. Voluntary compliance is the preferred means to achieve the goals of the civil rights laws including health equity. Civil rights laws offer dual benefits to alleviate health inequities through compliance, planning, administrative, and judicial processes. From a civil rights perspective, the health lens offers a powerful way to improve compliance and protect civil rights. From a health perspective, civil rights law offer an important and underutilized tool to argue for adoption and implementation of health-based recommendations. Health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, according to the World Health Organization.

2. Discrimination based on race, color, or national origin is a cause of health inequities, and a comprehensive strategy by the Endowment to eliminate these inequities must incorporate a strong civil rights component.

3. The Endowment should require recipients of its funding to work with stakeholders on a compliance and equity plan that describes what is to be done in each program or activity; analyze the impact on all communities, including the impact based on race, color, or national origin; analyze alternatives; include full and fair participation by diverse communities; and include an implementation plan to alleviate health inequities, and distribute the burdens and benefits fairly.

4. The Endowment should encourage stakeholders to work together on a compliance and equity plan for health programs or activities (a) under the Affordable Care Act, (b) by recipients of federal or California state funding, or (c) administered by the state of California. The plan should describe what is to be done in each program or activity; analyze the impact on all communities, including the impact based on race, color, or national origin; analyze alternatives; include full and fair participation by diverse communities; and include an implementation plan to alleviate health inequities, and distribute the burdens and benefits fairly.

5. Compliance and equity plans should guard against unjustified and unnecessary discriminatory impacts, as well as intentional discrimination. The discriminatory impact standard can ferret out subtle

and structural practices that have demonstrably discriminatory health effects. A thoughtless policy can be as unfair as, and functionally equivalent to, intentional discrimination. As a matter of common sense, discriminatory programs or activities should be avoided in favor of those that serve everyone's interests fairly, effectively, and without discrimination.

6. The Endowment should encourage federal agencies to ensure compliance with civil rights laws through the many avenues they have available. This includes data collection, analyses, and publication; planning; rules, regulations, and guidance documents; review of funding applications; contractual assurances of compliance by recipients; compulsory self-evaluations by recipients; compliance reviews after funding; prompt investigation and resolution of administrative complaints; full and fair public participation in the compliance and enforcement process; and denial or termination of funding if violations are found. The Endowment should encourage state and local agencies to use similar tools to ensure compliance with federal and parallel state laws.

7. Health impact assessments (HIA) offer a promising way to factor health considerations decision-making through compliance, planning, administrative, and judicial processes. HIAs use scientific data, professional expertise, and stakeholder input to identify and evaluate public health consequences, and suggest actions to minimize adverse health impacts and optimize beneficial ones.

8. The Endowment should support and encourage civil rights lawyers to use comprehensive problem-solving strategies to address health inequities. This includes planning, data collection and analysis, coalition building, media, negotiation, policy and legal advocacy out of court, and access to justice through the courts. This can strengthen philanthropic efforts across a range of programs. Funding for organizational capacity is needed. Strategic funding of national, regional and local groups can have a significant impact to promote health equity.

9. The Endowment should support and encourage attorneys and public health experts to work together to promote better understanding of the civil rights dimension of the challenge of health inequities, and to show how to address these civil rights concerns.

10. The Endowment should support the enforcement and strenghtening of civil rights laws against discrimination in health and other publicly funded programs and activities, and oppose rolling back these protections. For example, the Endowment should support the implementation of the health discrimination provision of the Affordable Care Act by the US Department of Health and Human Services. In addition, cases challenging the disparate impact standard under the Fair Housing Act are now percolating through the courts. The Endowment should support the disparate impact standard under the Fair Housing Act. The Endowment should support a private cause of action to enforce the disparate impact standard under Title VI of the Civil Rights Act of 1964 and its regulations.

11. Why are civil rights protections necessary to protect health and life itself? The documented costs of health inequalities are great. Between 2003 and 2006, for example:

- The combined costs of health inequalities and premature death in the U.S. were $1.24 trillion.
- Eliminating health disparities for people of color would have reduced direct medical care expenditures by $229.4 billion.
- 30.6% of direct medical care expenditures for African Americans, Asians, and Hispanics were excess costs due to health inequalities.

- Eliminating health inequalities for people of color would have reduced indirect costs associated with illness and premature death by more than one trillion dollars.

12. Civil rights laws that address health inequities include the following. Title VI of the Civil Rights Act of 1964 and its regulations prohibit discrimination by recipients of federal funding based on race, color, or national origin.[1] The principles underlying the law are simple and compelling. According to President John F. Kennedy, "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." As Senator Hubert Humphrey said in the Congressional debate on the Civil Rights Act, we "do not have to be lawyers to understand, 'Do unto others as you would have them do unto you.'" California law provides similar protections.[2] The Affordable Care Act's section 1557 prohibits health discrimination by any health program or activity that receives federal funding, or is administered by a federal executive agency. The Act includes over 60 provisions geared towards wellness and prevention.[3] The President's Executive Order 12898 on environmental justice and health requires each federal agency to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.[4]

13. It takes a movement. The myriad of strategies of the Civil Rights Movement started the process of dismantling health discrimination. A similar health justice movement, drawing on history, is needed to seek racial equity and overcome discrimination and structural barriers to a more equitable society. The Civil Rights movement included atttorneys taking cases to court, judicial decisions, grass roots organizing, legislation by Congress, action by the President, and voting by the people. This is the 60th anniversary of *Brown v Board of Education* and *Hernandez v Texas*, the 50th anniversary of Title VI, and the 20th anniversary of the Executive Order on environmental justice and health.

Thus, civil rights attorneys successfully challenged "separate and unequal" schools for African American and Latino children through the courts, led by the NAACP Legal Defense & Education Fund, Inc., and League of United Latin American Citizens. The United States Supreme Court abolished the separate but equal doctrine as unconstitutional in *Brown v Board of Education*. The Court also in 1954 held that the Equal Protection Clause prohibits discrimination based on race, color, national origin, ancestry, or descent in *Hernandez v Texas*. Martin Luther King, Jr., Southern Christian Leadership Conference, Student Nonviolent Coordinating Committee, Students for a Democratic Society, and others organized the Movement in the streets, culminating in the March on Washington for Jobs and Freedom and the passage of landmark legislation. Congress passed the Civil Rights Act of 1964, Medicare in 1965, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. President Lyndon Johnson pushed the '64 Act through Congress. The 1964 election provided a mandate by the people to support the Civil Rights Movement. Yet ten years after Brown, schools in the South had taken virtually no steps to comply with desegregation. Once the federal government began using federal funding under Title VI to ensure compliance in 1964, Southern schools became the most integregated schools in the nation by 1970.

Similarly, public health officials working with civil rights attorneys and federal officials in and out of court have historically addressed health discrimination. For example, the federal Hill-Burton Act of 1944 provided more than $100 million per year in direct aid to states for "separate but equal" health services and facilities. A federal court of appeals struck down the "separate but equal" provision in 1963 in *Simkins v. Moses H. Cone Memorial Hospital*, applying the logic of *Brow*n. After Congress passed Title VI and Medicare, the federal government used federal funding to fight health discrimination. The struggle continues.

12. The Endowment should support and fund the following specific matters:

a. Physical education compliance in public schools under education and civil rights laws.
b. Including a robust analysis of health disparities based on race, color, or national origin in the forthcoming Plan for a Healthy Los Angeles and the General Plan by the City of Los Angeles. The study was funded by the Centers for Disease Control, and by the Endowment.
c. Healthy green land use, equitable development, and planning by and for the community to alleviate health inequities. This includes supporting the revitalization of the Los Angeles River, the creation of the national recreation area in the San Gabriel Mountains and Watershed, the expansion of the Santa Monica Mountains National Recreation Area and the Rim of the Valley study, and reform of California State Parks through the Parks Forward initiative.
d. Compliance with civil rights laws in food stamp programs to alleviate health insecurity for all.
e. Compliance with access to health care based on limited English proficiency.

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[1] See, for example, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; 43 C.F.R. § 17.1 (U.S. Department of Interior Title VI regulations).
[2] See Ca. Govt. Code § 11135; 22 CCR § 98101.
[3] Affordable Care Act, § 1557, 42 U.S.C. § 18116. See also §§ 4001, 4201, 4306.
[4] Executive Order 12898, § 1-101 (Feb. 11, 1994).