



IMPACT FUND 25TH ANNIVERSARY
2018 ANNUAL REPORT



IMPACT FUND

Strategic Litigation for Social Justice

Our *mission* is to provide grants, advocacy, and education to support impact litigation on behalf of marginalized communities seeking economic, environmental, racial, and social justice.

Our *vision* is that these communities will have the same access to justice as corporations or governmental entities, to ensure that their rights are protected.

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COVER PHOTOGRAPH: Impact Fund Class Action Training Institute, Los Angeles, Class of 2018.

Welcome From the Executive Director



I am, by nature, an optimist. After several decades in this fight, I have learned not to panic at setbacks but, instead, to wait until the pendulum eventually swings back towards greater justice and progress towards social equality. But the events that have unfolded over the last two years – innocent children taken from their parents, environmental regulations discarded at the behest of polluters, voter suppression tactics aimed directly at minority communities – have tested even the most hopeful among us.

Yet, despite these difficult times, I am encouraged as I see courts continuing to uphold the rule of law, providing a check on some of the administration's worst excesses. Lawyers are using the tools of litigation to pierce through bureaucratic cover to reveal motivation and, at times, malfeasance.

Courts provide the venue where political rhetoric and fear-mongering are put to the side in favor of sober and evidenced-based fact-finding. From that adversarial testing emerges both an historical record and a determination of the truth, a precious commodity central to our democratic

system, but in short supply in our current political discourse.

What we do every day is work to preserve the ability of ordinary people to use the courts in just this way, to tell their stories and find justice for their communities. As part of that work, we joyfully devote our time to training the new generation of advocates, who eagerly attend our training programs to learn the complex strategy of impact litigation.

But in our twenty-fifth anniversary year, it has not been business as usual – new this year on the grantmaking side is Just Earth, a quantum scaling up of our environmental justice grantmaking to meet the increasing needs of grassroots groups in the U.S., Canada, and Mexico.

Also, for the first time in our history, we are able to support two Law Fellows, one working on the Clean Water Project, and the other starting work on Impact LGBTQ to meet the needs of low-income workers in rural California.

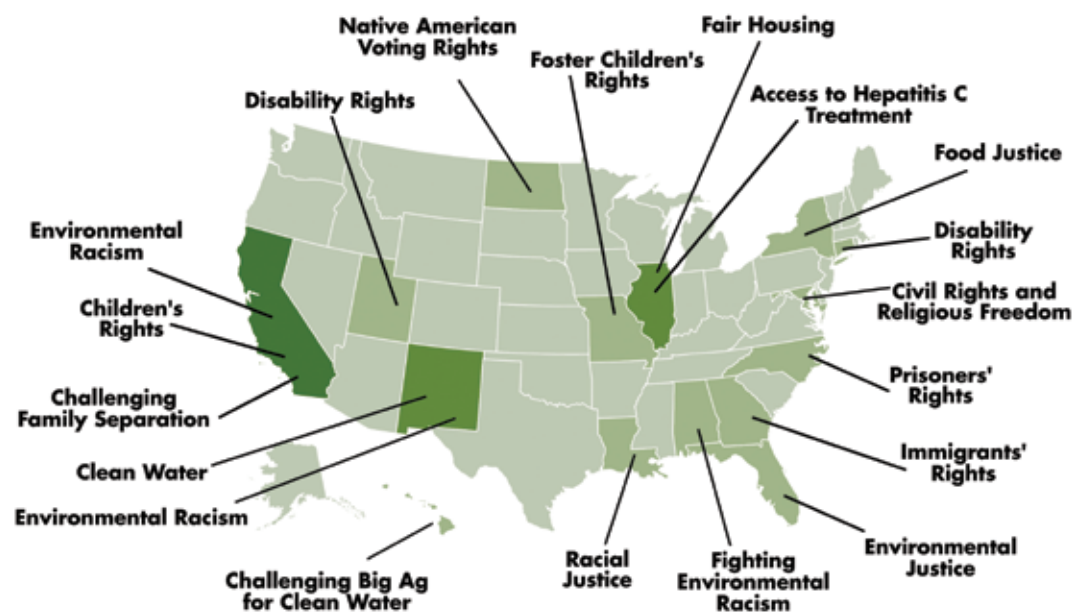
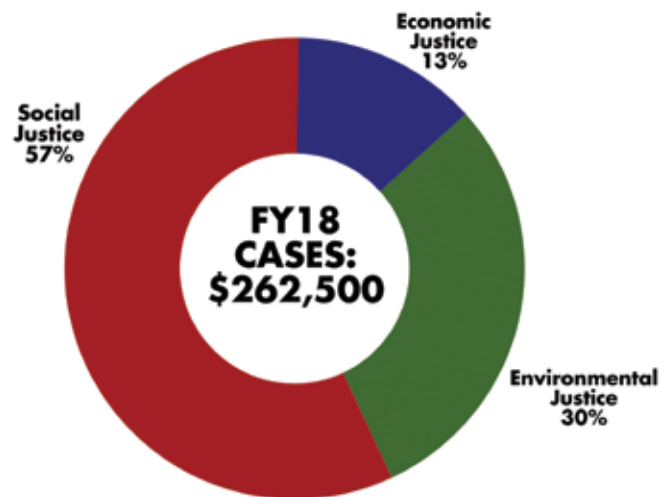
We celebrate twenty-five years of advancing social justice with enthusiasm, but also vigilance. With you by our side, we are primed for the tests to come.

A handwritten signature in black ink that reads "Jocelyn Larkin".

Jocelyn D. Larkin
Executive Director, Impact Fund

Grant Program

The Impact Fund began with an idea: achieve social change by funding impact litigation. While we've grown significantly since our early days of grant reviews, our commitment to thoughtful case selection and valuable consultation throughout the funding process has remained strong. Thanks to your ongoing contributions and support, the Impact Fund stands out not only for the cases we fund, but for the quality of our process. Here's to another year of strength in our unyielding fight for economic, environmental, racial, and social justice.



Grantees

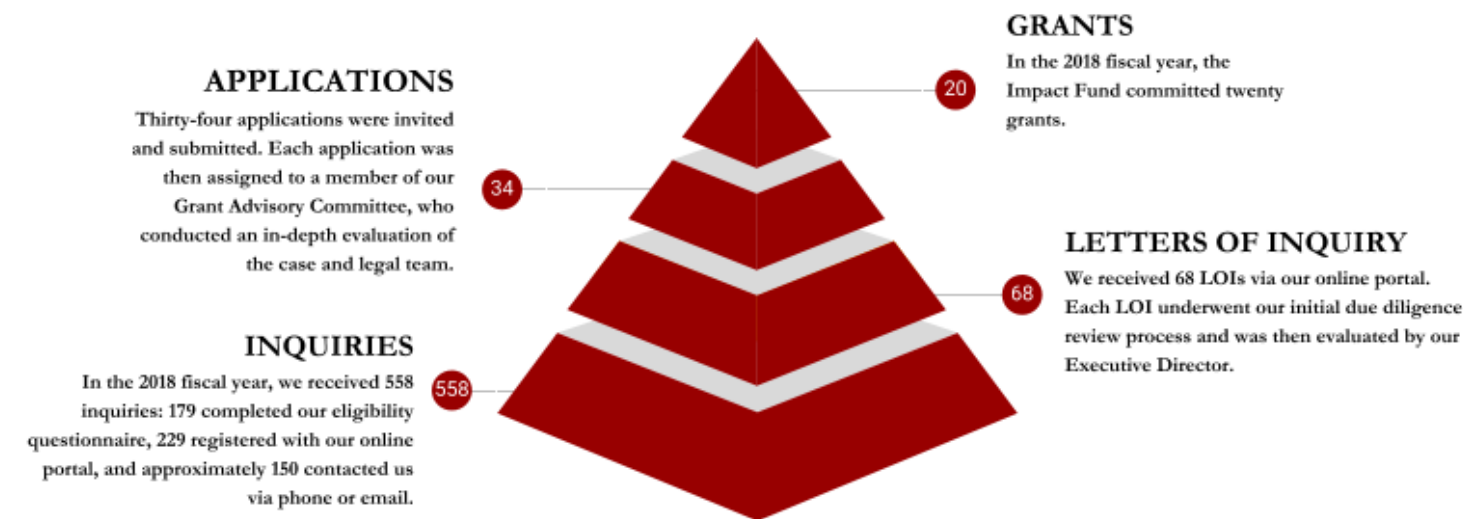
Al Otro Lado - Asian Americans Advancing Justice-Atlanta - Center for Food Safety - Chicago Lawyers' Committee for Civil Rights Under Law - Children's Rights - Connecticut Legal Rights Project - Constitutional Law Center for Muslims in America - Disability Law Center - Empire Justice Center - Law Office of William Most - Leadership Counsel for Justice & Accountability - Learning Rights Law Center - Legal Council for Health Justice - National Community Reinvestment Coalition - Native American Rights Fund - New Mexico Environmental Law Center - North Carolina Prisoner Legal Services - Our Children's Earth Foundation - Southwest Research and Information Center

What We Fund and How

The Impact Fund makes grants to nonprofit organizations, lawyers, and law firms representing communities involved in impact litigation. Most of our grants are for one case, but occasionally we fund a series of cases bound by a common strategy. We fund civil rights, economic justice, human rights, anti-poverty, and environmental justice cases that affect marginalized groups. Most of our grants are for class actions, but we also fund multi-plaintiff and environmental justice cases that aim to significantly affect a larger system. Impact Fund grants may be used for out-of-pocket litigation expenses such as expert fees and discovery costs, but not for attorney's fees, most staff costs, or other overhead.

Each quarter, our 17-strong Grant Advisory Committee meets to deliberate, analyzing the peer reviews of each case with both passion and precision. We salute them for their commitment to justice.

Our Process



Grantee Stories

Addressing Systemic Segregation of People with Disabilities in Utah

NO WAY OUT: CLASS ACTION SEEKS INTEGRATION



*Christensen, Weakly, &
DLC v. Miner*

Grant: \$15,000



Nate Crippes, Staff Attorney, Disability Law Center of Utah.

In Utah, there are roughly 650 individuals with intellectual and developmental disabilities living in intermediate care facilities, segregated from their larger communities. Over the last four years, staff from the Disability Law Center of Utah have, under their federal authority, visited individuals with intellectual and developmental disabilities living in these facilities. Their message was clear: people desperately wanted out.

In January 2018, the Utah Disability Law Center, along with the law firm Parsons Behle & Latimer, filed a class action lawsuit against the state to address the violations of intermediate care facility residents' rights. Residents have little to no privacy and often live in crowded facilities where two to four adults are packed into small rooms. Their schedules are highly regimented, not even getting to decide when or what to eat. Further, they have very little interaction with their non-disabled peers. Two of these individuals, named plaintiffs Staci and John, have been denied support to attend college, live independently, control their schedules, and dictate their relationship status.

The state's transition program, the only way out of these care facilities, is critically flawed, underfunded, and poorly publicized. This system has left Staci and John trapped in a life of segregation that they cannot escape.

We expect the state to meet its obligations under federal law to those like Staci and John. With help from a grant by the Impact Fund, our lawsuit is underway to address this systemic segregation and gain justice for all intermediate care facility residents in Utah.



Staci is fighting to end lives of segregation for people with disabilities.

Challenge to the California Department of Food and Agriculture

In 2007, the California Department of Food and Agriculture used airplanes to spray communities in Monterey and Santa Cruz counties with an untested pesticide. Hundreds reported illnesses afterward, including a previously healthy infant who nearly died from respiratory arrest. The spray, which repeated monthly for seven years, was for the light brown apple moth, which the department had deemed an emergency threat to California agriculture. Notably, that moth has to this day done no documented damage to crops or, for that matter, wildland plants.

Shocked that the state would even consider spraying pesticides over populated and environmentally sensitive areas, grassroots groups including the California Environmental Health Initiative filed an initial lawsuit, which became a ten-year battle to enforce environmental regulations around pesticide use in California.

In January 2018, the California Environmental Health Initiative and co-plaintiffs won a resounding victory when the judge in this suit condemned the department's analysis as fatally flawed in numerous fundamental ways, including basing conclusions on "unsupported assumptions and speculation." After more than 30 years of disregard for state environmental laws, the agency's chemical weapons were finally taken off the table.



In 2007, communities in California were sprayed with an untested pesticide.

HALTING THE SPRAYING OF PESTICIDES OVER CALIFORNIA COMMUNITIES



*Environmental Working
Group, et al v.
California Department
of Food and Agriculture*

Grant: \$10,000



Nan Wishner, Pesticide Action Network of North America & founding board member of the California Environmental Health Initiative.

Grantee Stories (CONTINUED)

Kids Win Big, Holding the State Accountable for Public Schools

Like all parents, Wilhelmina Yazzie wanted her children to have an education experience that gives them the opportunities they need to learn and thrive. Unfortunately, harmful budget choices by the State of New Mexico left public schools, like the one attended by Wilhelmina's 15-year-old son, Xavier, woefully underfunded and unsupported. The state's neglect of public schools deprived children of their constitutional right to an education that makes them college- or career-ready.

In response to this inequality, Wilhelmina decided, with support from the Impact Fund, to sue the state for its failure to uphold its legal obligation to give all students a sufficient education. Several other families and school districts across New Mexico joined her, and the New Mexico Center on Law and Poverty represented them. The case, *Yazzie v. State of New Mexico*, was consolidated with a similar case, *Martinez v. State of New Mexico*, brought by the Mexican American Legal Defense and Education Fund.

This past July, the court ruled in their favor that the responsibility for repairing New Mexico's education system lies squarely on the state and that the state has until April 2019 to take immediate steps to ensure that at-risk students have the resources they need to succeed in school.

These changes must include addressing the historic and systemic discrimination that has plagued New Mexico's public education system since its inception. The state has to meet its constitutional obligation to provide all students a sufficient education. The court has directed the state to put this constitutional obligation ahead of other funding concerns the state may have. In terms of state revenue, education must come first. It cannot be short-changed.



Wilhelmina and Xavier have won a victory for all of New Mexico's children.

Upholding Due Process Rights for Low-Income Homeowners

In 2011, mortgage foreclosures in Detroit were at an all-time high and housing prices were at an all-time low. Under these economic conditions, Cynthia, a lifelong renter, bought a single-family home. Cynthia had no idea the house's modest price was the result of negligence by the city to assess the value of properties each year. Her dream home quickly became a nightmare as she incurred surprisingly high property taxes she could not afford to pay.

Under Michigan law, low-income homeowners can apply for a hardship exemption that reduces or eliminates their tax burden. But when Cynthia sought the exemption, she encountered an utterly broken process. Cynthia was not alone in her experience, as few eligible homeowners even knew about the exemption. Tens of thousands of low-income Detroiters ultimately lost their homes for inability to pay taxes they should have never been charged. This foreclosure crisis had a disproportionately devastating effect on African-American homeowners, who are more likely to be foreclosed on than non-black homeowners.

In July 2016, the NAACP Legal Defense Fund, the ACLU of Michigan, and Covington & Burling LLP sued the City of Detroit on behalf of low-income homeowners like Cynthia and Walter Hicks.

In a major win, a settlement was reached in August that provided financial relief to residents at risk of losing their homes. The agreement resolved the lawsuit, *MorningSide Community Organization v. Sabree*, required increased clarity for the tax relief process, and saved the homes of more than 300 homeowners and their families this year alone – and will save thousands more in the years ahead.



Named plaintiff: Walter Hicks sued the city of Detroit and won.

ADDRESSING SYSTEMIC INEQUALITY IN NEW MEXICO EDUCATION SYSTEM



Yazzie et al. v. State of New Mexico et al.

Grant: \$20,000



Gail Evans, Lead Counsel for Education, New Mexico Center on Law and Poverty.

ECONOMIC JUSTICE FOR HOME OWNERS IN DETROIT



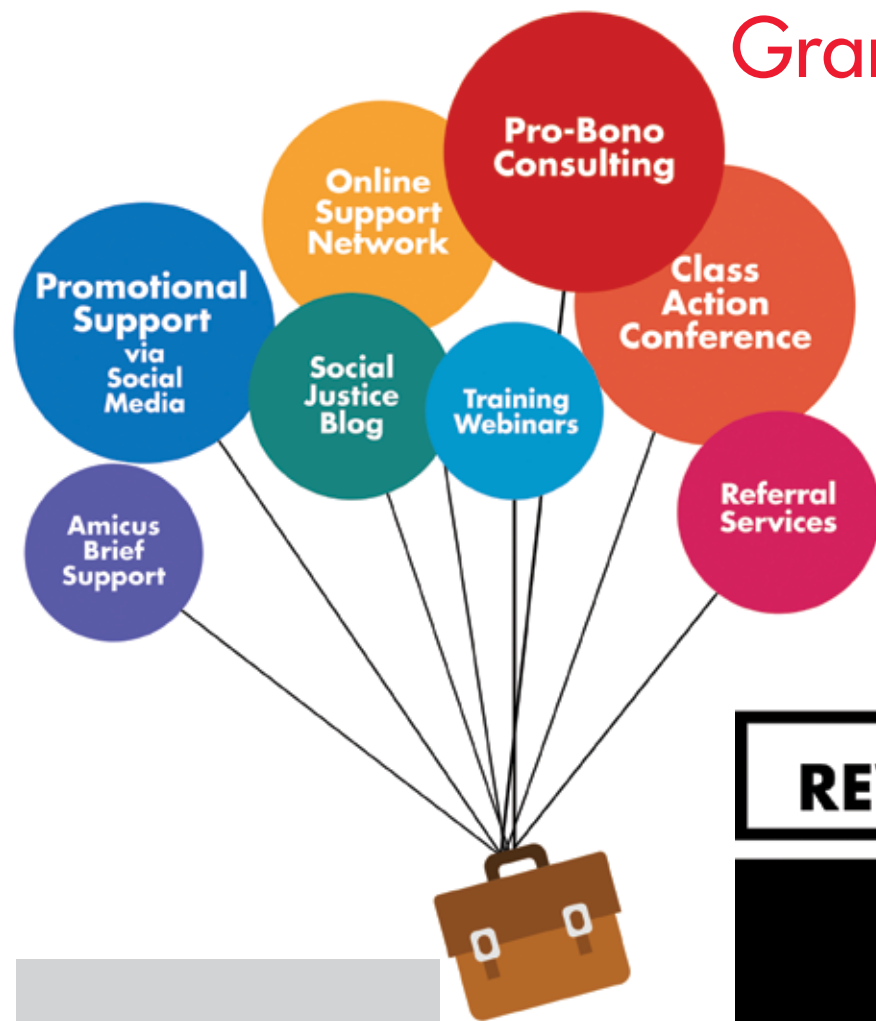
MorningSide Community Organization et al v. Sabree Tax Foreclosure et al

Grant: \$20,000



Ajmel Quereshi, Senior Counsel at the NAACP Legal Defense Fund.

Grantee Services and Revolving Fund



OUR

REVOLVING FUND

\$1.2M

CURRENTLY SUPPORTING

107

IMPACT CASES

WORKING THEIR WAY THROUGH THE JUSTICE SYSTEM

“The Impact Fund provided not only a financial support but an emotional one... Thank you for all you do, not just for us but for other small groups that are looking for justice.”
— A grantee



This year, the Impact Fund, with the support of the Mosaic collaborative of funders, launched the expansion of our environmental justice grantmaking with the creation of the Just Earth Fund. Through the Just Earth Fund, we are increasing our maximum grant size to \$50,000, our grant criteria to include some pre-filing costs, and widening the geographic scope to encompass Canada and Mexico. We look forward to supporting

the diverse litigation needs of grassroots groups in pursuit of environmental justice.

For more information, go to www.impactfund.org/just-earth

To watch the six-minute launch video, go to <http://bit.ly/JustEarthVid>

“Today, more than ever, we are grateful to support grassroots communities and organizations who are utilizing impact litigation as a tool for systemic change.”
— Jocelyn D. Larkin, Executive Director, Impact Fund

IMPACT FUND Clean Water Project



As part of the Clean Water Project, funded by the State Bar of California and spearheaded by our Law Fellow Daniel Nesbit, we will be making grants to fund clean water lawsuits that address systemic contamination and lack of access to clean water for communities of 250 or more people in unincorporated areas of the San Joaquin Valley. These lawsuits are part of the project’s larger goal to provide comprehensive strategic support to practitioners and community groups addressing water justice and impact litigation in this area.

For more information go to www.impactfund.org/clean-water-project



“Taking on powerful corporations and government entities is a daunting prospect. The lead plaintiffs have to endure just about every legal strategy that the wallet of big business and government can pay for, and often years of uncertainty, court appearances, and stress. That takes both guts and spirit – qualities our inductees have in abundance.”

— Michael Caesar,
Grant Advisory
Committee Chair

IMPACT FUND

Class Action Hall of Fame

On February 16, at our annual Class Action Conference, we inducted ten civil rights heroes into the Class Action Hall of Fame - lead plaintiffs whose commitment and determination has led to significant advances in economic, environmental, racial, and social justice:

- **Christian Rodriguez**, who challenged an unconstitutional curfew provision, putting himself in the forefront of a very public battle with LAPD.
- **Vicki Butler and Kim Stoddard**, who challenged gender discrimination on behalf of 6,000 women at a retail giant and changed stereotypes about what jobs women can perform.
- **D’Angelo Foster and Amanda Underwood**, who challenged a local debtors’ prison and mobilized the resistance of those wrongfully jailed for their inability to pay parking fines and court fees.
- **Lynne Coates**, who championed equal pay for women attorneys employed as in-house counsel.
- **Dustin Jones**, who challenged the New York subway system to become accessible to people with disabilities.
- **Elaine and Walter Barry**, who challenged the practice of denying food assistance to those mistakenly classified by administrative red tape.
- **Patrice Daniels**, who led the challenge for adequate treatment for over 11,000 mentally ill prisoners in Illinois.

The Impact Fund Class Action Hall of Fame was conceived early in 2016 as a way to acknowledge the exceptional courage and sacrifice of lead plaintiffs in civil rights class actions. We’re grateful to be bringing the faces of class action litigation to the fore.

Class of 2018



LEFT TO RIGHT, CLOCKWISE: Patrice Daniels, Vicki Butler, Christian Rodriguez, Amanda Underwood, Dustin Jones, Kim Stoddard, D’Angelo Foster, Lynne Coates, and Elaine and Walter Barry (center).



At the awards ceremony.

“Every day, ordinary people put their lives and livelihoods on hold to champion the interests of those who have traditionally been denied a voice and marginalized as ‘other’ by the privileged and the powerful. It’s time they were recognized for their bravery and endurance in the face of overwhelming odds. They are the unsung heroes of our movement.”

— Jocelyn D. Larkin,
Executive Director,
Impact Fund

In Memoriam: Sheila Thomas

Our friend and former Impact Fund board member, Sheila Thomas, passed away on August 8 from complications due to breast cancer. Anyone who knew Sheila, and even those who met her in passing, knew she was a force. Sheila was thoughtful, insightful, funny, loving, smart... I loved being around Sheila; when I saw her across the room, I knew I had to make my way over to her because I'd leave with a laugh, or an opinion, and usually both.

She spent her life trying to make the world better, and she understood that the task required her to be an example of what we can become with introspection, hard work, and compassion. She was such an example of these traits. She cared about serious things, but she knew that life was too short to pass through without joy. Her passing is a deep loss for our community.

Christian Schreiber
Impact Fund Board Chair



Become a Member of the Impact Fund Social Justice League!



“I always wanted to help and now understand that my affordable monthly gift, over time, can have a long-lasting and steady impact that makes a difference in the fight for justice.”

— Magdalena Bordeaux

Join a special community of kindred spirits, committed to sustaining Impact Fund services and programs that advance economic, environmental, racial, and social justice.

YOUR COMMUNITY, YOUR IMPACT Consider what your monthly gift can accomplish:

Bronze Level – \$5 to \$19. A suggested donation of \$14 per month will pay the court filing fee in a case challenging abuses in a state’s broken foster care system, or pay for fifteen non-profit attendees at our summer webinar series.

Silver Level – \$20 to \$34. A suggested donation of \$27 per month will pay for a deposition translator, allowing an immigrant worker to provide testimony in her native tongue, or will pay for two scholarships for non-profit attorneys to attend our annual two-day Class Action Conference.

Gold Level – \$35 to \$83. A suggested donation of \$50 per month will pay to help gather vital scientific evidence of contaminated water on Native American land, or pay for a scholarship to train a new lawyer (fresh out of law school) at our Training Institute to become a social justice advocate.

Titanium Level – \$84 or more. A suggested donation of \$84 per month will pay to get an advocate into the field to gather testimony of voter suppression, or pay to underwrite a webinar for 50 law students.

THE IMPACT FUND SOCIAL JUSTICE LEAGUE

TITANIUM

Rob & Teddy
Basham-Witherington

GOLD

Robin Godfrey
Clarence Mazza
Tina Oman

SILVER

Tim Derry
Lindsay Nako
David Oppenheimer
Kiki Poe
Christine Sun
Catha Worthman

BRONZE

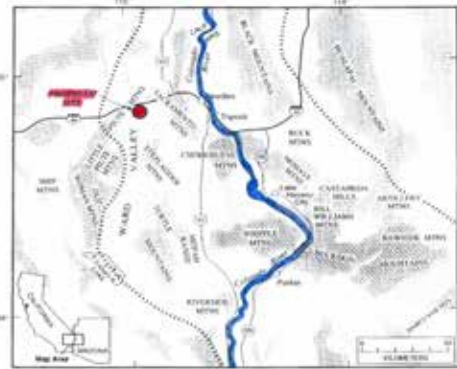
Magdalena Bordeaux
Johanna Callard
Rosa Maria Castillo Kesper
Maryanne Davies
Maria Hoisington-Bingham
Scott Hugo

Glenn Katon
Diane Lee
Zachary McCoy
Heather McKimmie
Jennifer Reisch & Javier Amaro
Marci Seville
Sela Steiger
Julie Wilensky & Rachel Berger

Take the next step: become an Impact Fund Social Justice League member by completing and returning the envelope in this report or go online at www.impactfund.org/monthly-giving

25th Anniversary Blogs

In celebration of our 25th Anniversary, we take a look back at two of the cases we're grateful to have supported.



We Saved the Desert Tortoise!

In 1989, the State of California asked the federal government to sell 1,000 acres of land in Ward Valley for the construction of a nuclear waste dump. Environmentalists were quick to sound the alarm. Not only was the land sacred to Native American tribes, there was the risk of contaminating the drinking water for 15 million Southern Californians. It was also home to the desert tortoise. Action was needed.

In the final days of the George H.W. Bush presidency, the newly formed Impact Fund made an emergency grant to provide the vital funds needed to go to court. Judge Marilyn Patel blocked the land transfer based on the Endangered Species Act and designated 6.5 million acres of critical habitat for the Desert Tortoise.

In 2002, the California State Assembly passed Assembly Bill 221, finally cancelling the Ward Valley Project, a full decade after its first proposal.

What stands out for activist Philip Klasky about the case is clear. "The privilege of working with the Native people, and having won a real David and Goliath type of fight," he said. "We didn't know how we were going to win because the odds were stacked. Impact Fund was essential in providing exactly what we needed when we went to court."



Bus Riders Triumph in Los Angeles

Only the poor do not own a car in L.A. Only the desperately poor took the historically overcrowded, poorly maintained Metropolitan Transportation Commission (MTA) buses to work or to shop. By 1990, over 95 percent of bus riders were minority black or Latino.

The case was a classic civil rights case involving poor minorities whose need for basic travel to jobs and for everyday life fell victim to the desire of public officials to serve rail riders from the better-off, mostly white suburbs and the lure of flashy new trains and ribbon-cutting at sparkling new train stations.

A singular collaboration between heavyweight organizers as clients and the original civil rights litigation law firm founded by Thurgood Marshall, the case evolved into a collaboration reminiscent of the March on Selma. The lawyers had to learn to litigate in an environment where the clients were constantly planning and mounting demonstrations.

The Impact Fund made a series of grants to the Labor/Community Strategy Center to campaign against disinvestment in Los Angeles' bus system. By the time the court relinquished jurisdiction two decades later, the case had resulted in over two billion dollars in benefits to the class of over 500,000 bus riders in Los Angeles, including replacing 2,000 diesel buses with over 2,500 green ones.

To read the full story of these cases check out our Social Justice Blog at: <https://www.impactfund.org/social-justice-blog/>



Thought Leadership Conversations

In honor of the Impact Fund's 25th Anniversary, we curated a series of Thought Leadership Conversations with leaders in the field of public interest litigation to explore the litigation landscape, the threats and opportunities in the movement for social justice, and potential areas of focus moving forward.

The first in the series, "Litigation as Resistance," took place on October 25, 2017, at Howard University School of Law in Washington, D.C. **Lindsay Nako**, Impact Fund's Director of Litigation and Training, moderated a conversation between **Professor Alexandra Lahav**, law professor at the University of Connecticut School of Law and author of *In Praise of Litigation*, and Impact Fund board member, **Deepak Gupta**, founding principal of Gupta Wessler PLLC, a boutique firm specializing in Supreme Court, appellate, and complex litigation. The conversation explored the importance of litigation in a democratic society, from the effort to provide a level playing field for litigants to the requirement of transparency before the court to the accountability it establishes for public actors.

The second in the series, "Class Actions & Civil Rights: Past, Present, and Future," was presented at our Class Action Conference on February 16, 2018. We were honored to be joined by **Sherrilyn Ifill**, President and Director-Counsel for NAACP Legal Defense & Educational Fund (NAACP-LDF); **Thomas A. Saenz**, President and General Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF); and **Joseph M. Sellers**, Chair of Cohen Milstein Sellers & Toll PLLC's Civil Rights & Employment



Practice Group, to discuss the past and future importance of class actions in the fight for greater equality and civil rights in our country. The inspiring conversation, moderated by Impact Fund Executive Director, **Jocelyn D. Larkin**, counseled us toward greater empathy and a deeper understanding of the undeniable intersectionality of civil rights in our country.

The third and final in the series, "Equal Pay 3.0: New Frontiers in Combatting the Wage Gap," was presented at the University of California Berkeley School of Law on October 29, 2018. Trailblazing thinkers **Professor Catherine Albiston**, UC Berkeley Professor of Law and Sociology; **Lori Andrus**, Andrus Anderson LLP; and **Patricia Shiu**, former Director of the Office of Federal Contract Compliance Programs (OFCCP) under President Barack Obama, explored the wage gap and the workplace patterns that create pay inequality. In a conversation moderated by **Lindsay Nako**, they shared their thoughts on the intersectional nature of pay gaps, the need for a national equal pay movement, and the role of litigation in addressing this inequity. The conversation was presented in association with the Thelton E. Henderson Center for Social Justice and the Civil Justice Research Initiative.

Watch all three conversations at the Impact Fund YouTube Channel: <http://bit.ly/IF-YouTube>



Deepak Gupta



Professor Alexandra Lahav



Thomas A. Saenz



Joseph M. Sellers



Lindsay Nako



Jocelyn D. Larkin



Professor Catherine Albiston



Sherrilyn Ifill



Lori Andrus



Patricia Shiu

Equal Justice Litigation

ELLIS v. COSTCO WHOLESALE CORP.

Fourteen years after the Impact Fund and co-counsel filed the *Ellis v. Costco Wholesale* lawsuit and six years after it was certified as a nationwide class action, the \$8 million settlement fund has been distributed to members of the class.

The women who received shares of the settlement fund raised their hands and told the stories of their careers at Costco, the challenges they faced as they sought promotions, and the men who passed them by with less experience and qualification. The women responded to the company's claims that gender played no role in its failure to promote them. Based on the evidence submitted in individual arbitrations, independent arbitrators had to find in each woman's favor before she was approved to share in the fund.

We were honored to represent all of the women who described the ways Costco's promotion practices failed women. Every woman who participated in the settlement claims process fiercely and eloquently advocated for herself and others.

We are grateful for the support of our hardworking co-counsel, including the Law Offices of Elizabeth A. Lawrence, Lief Cabraser Heimann & Bernstein LLP, Outten & Golden LLP, and Nichols Kaster LLP.



Shirley "Rae" Ellis, named plaintiff.

KILLIAN v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

Earlier this year, the Impact Fund and Bay Area Legal Aid filed a lawsuit against a local school district to help ensure qualified job applicants with past criminal convictions have the opportunity to demonstrate rehabilitation and address inaccurate information in their background reports.

The lawsuit alleges that West Contra Costa Unified School District failed to allow all applicants the opportunity to make these showings as required by the California Education Code, the District's own administrative regulations, the California Constitution, and the City of Richmond's "ban-the-box" ordinance. The lawsuit was filed by Walter Killian, a qualified applicant with a nearly 20-year old prior conviction, and Safe Return Project, a local organization of formerly incarcerated people who fight for successful community reintegration for those with prior convictions.



The stigma associated with a conviction has a lasting, detrimental impact on employment opportunities.

& Advocacy

IMPACT FUND Clean Water Project



This year, the Impact Fund launched the Clean Water Project with the support of the State Bar of California. The Project supports local efforts to address residential water quality in unincorporated communities in California's San Joaquin Valley.

Through the Clean Water Project, the Impact Fund will approve \$25,000 in grants this year to support litigation fighting for clean water in the Central Valley.

On December 6, the Impact Fund will host a Clean Water Forum in Fresno. The Forum will bring together practitioners from a variety of backgrounds to discuss clean water litigation. The day-long gathering will cover a range of topics, including recent developments in litigation and policy, the state of water-related science, legal pathways to combat contamination and lack of access to clean water, and the intersection of water justice with other civil rights. We are grateful to support this important work.



Communities in the San Joaquin Valley should not have to put up with contaminated drinking water.

IMPACT FUND Impact LGBTQ

Impact LGBTQ is the Impact Fund's new initiative expanding the network of advocates for low-wage LGBTQ workers in the Central Valley and throughout California. Though prohibited by state law, sexual orientation and gender identity discrimination at work and in the provision of healthcare remains rampant. With federal law in flux, low-income LGBTQ communities need advocates more than ever.

Impact LGBTQ is organizing legal trainings on LGBTQ rights with community centers, legal organizations, and bar associations in the Central Valley and the Bay Area, providing legal updates to practitioners, and developing a litigation docket of impact and amicus cases. We aim to equip workers and attorneys with the knowledge needed to defend LGBTQ rights in California.

Impact LGBTQ is generously supported by a grant from Justice Catalyst.



Advocates from the San Joaquin Pride Center march to the Stockton Unified School District in support of LGBTQ-affirming policies.

CLEAN WATER PROJECT

IMPACT LGBTQ

New Amicus Cases

Monk v. Shulkin (Court of Appeals for Veterans Claims)



Veterans now have the protection of class actions.

The backlog of veterans' benefits claims has slowed benefit applications for hundreds of thousands of veterans. In 2015, Conley F. Monk, Jr., challenged the lengthy wait for a decision in his administrative appeal, and asked the U.S. Court of Appeals for Veterans Claims to hear his claim collectively with others in similar circumstances. The Court of Appeals initially denied Mr. Monk's request because it did not believe it could hear claims collectively.

After a higher court indicated the Court of Appeals could hear multiple claims in a single proceeding, it asked amici to weigh in on the best way to design a process for doing so. In February 2018, the Impact Fund, Justice in Aging, and others filed an amicus brief that recommended the class action mechanism under Federal Rule of Civil Procedure 23. Highlighting its promotion of efficiency, fairness, and systemic relief, our brief describes the benefits of class actions and how they have been used by other federal agencies, including the Social Security Administration.

In August 2018, the Court of Appeals for Veterans Claims held that, in a "seismic shift in [its] precedent," veterans may use class actions and that it will use Rule 23 as a guide, calling it a "watershed decision."

American Diabetes Association v. U.S. Department of the Army (Ninth Circuit Court of Appeals)



Many of the US's 193,000 children with diabetes live on military bases.

In 2016, the United States Army barred military base personnel from providing essential care to children with diabetes in its childcare services program. The American Diabetes Association, represented by Disability Rights Advocates, filed a lawsuit alleging that the policy was unlawful disability discrimination in a federal government program. During litigation, the Army revised its policy to create a lengthy review process that allowed certain accommodations.

The ADA filed an amended complaint challenging the new policy. The district court dismissed the case in part because the ADA lacked standing to challenge the new policy, pointing to the lack of sufficient injury and the relative harm to the organization.

In June 2018, the Impact Fund and others filed an amicus brief in the Ninth Circuit challenging the district court's creation of a quantitative threshold for standing and describing the importance of organizational standing in civil rights enforcement.

Good v. Iowa Department of Human Services (Iowa Supreme Court)



Carol Ann Beal Tree, one of the plaintiffs, has identified as female since a young child.

Iowa state law prohibits low-income transgender residents from accessing gender affirming surgeries through the state Medicaid program. EerieAnna Good and Carol Beal, two transgender women from Iowa represented by the ACLU, challenged the restriction as a violation of their state constitutional right to equal protection and their state civil right to be free from sex and gender identity discrimination. The state trial court agreed on most of their claims, but held that it was bound by a 35-year-old Iowa Supreme Court decision excluding transgender people from state prohibitions on sex discrimination.

In September 2018, the Impact Fund, the National Women's Law Center, and others filed an amicus brief in the Iowa Supreme Court urging the Court to overturn this archaic decision. We argued that it was no longer good law after decades of decisions from federal and state courts holding that discrimination against transgender people is unlawful sex discrimination, and that transgender people should be entitled to the full array of civil rights protections under Iowa law.

Noel v. Thrifty Payless, Inc. (California Supreme Court)



When Noel got home and inflated the pool (right) he was surprised to discover that it was not as advertised (left).

James A. Noel purchased an inflatable pool from a Rite Aid store based on the photograph on the package. After getting home and inflating the pool, he discovered it was much smaller than depicted. In November 2013, he sued the store under California's consumer protection laws on behalf of himself and other California purchasers. The state trial court held the case could not be certified as a class action because Mr. Noel failed to show that individual class members could be individually identified using existing records. The court of appeals affirmed the decision, based on an earlier decision in *Sotelo v. Medianews Group, Inc.* Mr. Noel appealed to the California Supreme Court, represented by Public Justice.

In October 2018, the Impact Fund, the California Employment Lawyers Association, and others filed an amicus brief describing why the "ascertainability" standard created in *Sotelo* is an incorrect and imprudent formulation, endangers employment class actions, and stands at odds with state public policy favoring the use of class actions and the vindication of worker rights.

New Amicus Cases

Moussouris v. Microsoft Corp.

(Ninth Circuit Court of Appeals)



Women to Microsoft: How many #MeToo's does it take?

Katherine Moussouris and Holly Muenchow challenged gender discrimination in pay and promotion on behalf of 8,600 women in technical positions at Microsoft. The district court denied class certification, in part citing an insufficient number of individual statements from affected women. The court demanded a larger number of statements, rather than viewing them in the context of internal complaints, statistical analysis, and expert testimony, as the law requires.

In July 2018, Moussouris and Muenchow asked the Ninth Circuit to review the denial of class certification. The Impact Fund, Equal Rights Advocates, the Queen's Bench Bar Association, and others filed an amicus brief supporting their request. Our brief argued that it was improper for the court to count the number of individual statements rather than weigh their content. Anecdotes of discrimination provide critical, persuasive evidence in class cases, and the court's quantitative measure created an arbitrary hurdle that could threaten future efforts to combat systemic discrimination.

In September 2018, the Ninth Circuit agreed to consider the appeal.

Movement Building and Issue Advocacy



We are opposing a citizenship question on the 2020 census.

Impact Fund team members present seminars and trainings across the nation and are frequent speakers on impact litigation, civil rights, and class actions.

The Impact Fund serves as a national clearinghouse for our community and provides many hours of free consulting. We are privileged to host an online community, the Impact Fund Class Action Forum: a unique resource for nearly 700 advocates. The Forum allows plaintiff-side class action practitioners to share successes, progress, setbacks and challenges they encounter in their day-to-day practice. Whether it's updates on new cases or legislation, inquiries regarding possible co-counsel, searching for expert witnesses or other technical advice, the Forum is the go-to resource.

It's also been a busy year with the continued assault on civil justice and vulnerable communities in both Congress and via executive action. We have helped to author and have signed on to many initiatives resisting the roll back of civil rights and other protections. Whenever and wherever civil justice is under attack, Impact Fund is there to defend it.

In addition to those listed in our 2017 Annual Report, here are some of the bills, actions, and proposals we've opposed (or supported) this year:

Family Separation at the Border – Like most people we are disgusted by the thoughtless and heartless policy that has effectively left hundreds of children orphaned.

"No" to a citizenship question on the 2020 census. We joined with over 300 philanthropic leaders to say that such a question would "significantly undermine efforts to achieve a fair and accurate census in 2020."

As members of the Clean Budget Coalition, we pushed for a clean spending bill without partisan poison pills.

As members of the No Adoption Discrimination and National Policy Coalition, we successfully opposed an amendment to the Labor-HSS appropriations bill that would have made it legal to discriminate against both children and foster parents based on their religious and/or moral beliefs.

Opposition to HUD's suspension of the Affirmatively Furthering Fair Housing Rule and support for HUD's Disparate Impact Rule.

Federal Court Reform – four bills all designed to neuter state courts, making vast changes to the federal judiciary and in most cases, making it more difficult for Americans to enforce their legal rights.

HR 848 (S. 2421) – the "Farm Regulatory Certainty Act," a horrible bill that seeks to deny rural communities the right to protect themselves from waste produced by Concentrated Animal Feeding Operations (CAFOs).

HR 5468, the deceptively named "Permitting Litigation Efficiency Act of 2018." This bill undercuts public participation and also access to justice through the courts.

We also supported efforts to advance social justice such as the Campaign to Remove Forced Arbitration Provisions in Private Sector Employment Contracts, the Civil Liberties Protection Act, the Fairness for Farm Workers Act, the House's bipartisan #MeToo legislation (H.R. 4822), and defended the "Johnson Amendment."

Finally, we also took part in a lobby day in Sacramento, California to preserve State funding for legal aid.



The Impact Fund is a grateful member of:



Summer Webinar Series



The Impact Fund’s Summer Webinar Series makes the most of your lunch hour, delivering interesting and practical trainings on hot topics during the summer months.

The series opened in July with a primer on “Writing Effective Amicus Briefs,” presented by **Aimee Feinberg** from the California Department of Justice – Solicitor General’s Office, and **Lindsay Nako**, the Impact Fund’s Director of Litigation and Training. The two discussed the ins and outs of amicus briefs, including when to file them (and when not to), tips for preparing your amicus strategy, and advice on effectively presenting your views to the court.

In early August, **Beth Avery** of the National Employment Law Project and **Christopher M. McNerney** of Outten & Golden LLP discussed the new California Fair Chance

Act and similar laws and regulations in “Applying for Work in California with a Prior Conviction.” They shared their insights into the policy and legal landscape informing employers’ ability to consider convictions in making hiring decisions, the rights of job applicants with prior convictions, and how to counsel clients with prior convictions and enforce their fair opportunity to work.

In late August, the series concluded with an innovative discussion of “Advanced Class Notice Issues” with **Amy F. Robertson** of the Civil Rights Education and Enforcement Center and **Shana Scarlett** of Hagens Berman Sobol Shapiro LLP. These experienced class action litigators encouraged creativity and innovation in the notice process, and provided valuable advice on crafting effective notice plans.

We recorded all the webinars and they are available at: www.impactfund.org/legal-training-webinars



Aimee Feinberg Lindsay Nako Beth Avery Christopher M. McNerney Amy F. Robertson Shana Scarlett

Training Institutes



The Training Institutes were made possible by the generous support of:



The Impact Fund had another great year training future class action litigators at our Class Action Training Institutes in Oakland and Los Angeles. The three-day intensive training covers the fundamentals of class action litigation. Students explore the technical, strategic, and practical skills needed to litigate social justice class actions. Our interactive training model allows students to identify possible class cases, evaluate potential plaintiffs, construct a discovery plan, outline a class certification motion, and ultimately negotiate a class-wide settlement. They also build a network of colleagues from non-profit organizations and private plaintiff-side firms that lasts long after the Institute ends.

This year, we were excited to be joined by forty attorneys from across the country, including litigators from Southern Poverty Law Center, Centro Legal de la Raza, multiple ACLU affiliates, Disability Rights California, the Texas Fair Defense Project, and private firms such as Cohen Milstein Sellers & Toll PLLC and Lieff Cabraser Heimann and Bernstein, LLP.

We owe many thanks to the members of the bench who shared inspiring words with this year’s Institute attendees, including Impact Fund founder, **Judge Brad Seligman** of the Alameda Superior Court; **Magistrate Judge Donna M. Ryu** of the United States District Court for the Northern District of California; **Judge Virginia Keeny** of the Los Angeles Superior Court; **Judge Fernando M. Olguin** of the Central District of California; and **Judge Carla M. Woehrle**, retired Magistrate Judge for the Central District of California.

OAKLAND

Our faculty included **Jocelyn D. Larkin**, Impact Fund’s Executive Director; **Dara Schur**, Litigation Counsel at Disability Rights California; **Robert Schug**, partner at Nichols Kaster LLP; and **Lindsay Nako**, Impact Fund’s Director of Litigation and Training.

The faculty was joined by an array of distinguished guests. Centro Legal de la Raza’s Director of Litigation, **Jesse Newmark**, shared his valuable experience representing undocumented workers. Impact Fund’s Deputy Director, **Teddy Basham-Witherington**, provided insight into media strategy. **Relic Sun**, Associate at Outten & Golden LLP, described her practical approach to discovery. We also were joined by Impact Fund Class Action Hall of Fame inductee, **Vicki Butler**, a named plaintiff in the landmark gender discrimination class action *Butler v. Home Depot*, who inspired everyone with her commitment to achieving equality in the workplace.

LOS ANGELES

In Los Angeles, Jocelyn and Lindsay were joined by **Anne Richardson**, Directing Attorney of Public Counsel’s Consumer Law Project, and **Jason Marsili**, named partner at Rosen Marsili Rapp LLP.

The faculty was again privileged to be joined by distinguished guests. **Sandra Muñoz** of the Law Offices of Sandra C. Muñoz shared lessons learned in representing undocumented workers. **Joshua Busch**, Director of Communications at Public Counsel, described the elements of a successful media campaign. We also were joined by Class Action Hall of Fame inductee **Jessy Cruz**, a named plaintiff in the education equity class action *Cruz v. California*, who impressed us all with his desire to help obtain educational resources for his community.

Class Action Conference

The Sixteenth Annual Class Action Conference was Impact Fund’s largest convening of plaintiff-side class action attorneys ever. Over 250 public interest litigators came together in San Francisco’s Japantown to learn, strategize, and network.

The Conference opened with our introductory program, “Rule 23 Class Action Basics,” designed to welcome attorneys newer to class action practice. Then we got right to work with **Jocelyn D. Larkin**’s annual update on “Recent Developments in Class Action Law,” which covered everything from judicial nominees to notable decisions from the past year. We rounded out day one with inspiring updates from a few Impact Fund grantees – **Emily Gerrick** of Texas Fair Defense Project, who is challenging debtors’ prisons across Texas; **Ashley Werner** of Leadership Counsel for Justice and Accountability, whose advocacy secured clean drinking water for the unincorporated town of Matheny Tract, California; and **Jay Shin** of Wage Justice Center, who fought for over 400 misclassified truck drivers and followed the defendants into bankruptcy court and won.



Our full day of panels emphasized persistence, innovation, and strategic thinking in the pursuit of justice. Practical advice overflowed from the dais on topics including FOIA requests, electronic discovery, and class action settlement ethics. We received insightful updates and a few crystal ball predictions on the next steps in the fight for equal rights for the LGBTQ community and the future of mandatory arbitration.

We are grateful for the generosity of our presenters, including **Saba Bireda** and **Deborah Marcuse**, Sanford Heisler Sharp, LLP; **Patrick D. Llewellyn**, Public Citizen; **Linda Lye**, ACLU of Northern California; **Johnathan Smith**, Muslim Advocates; **Dena C. Sharp**, Girard Sharp, LLP; **Michael Rubin** and **Eve H. Cervantez**, Altshuler Berzon, LLP; **Joshua Friedman**, Friedman & Houlding, LLP; **Kelly M. Dermody**, Lieff Cabraser Heimann & Bernstein, LLP; **Flor Bermudez**, Transgender Law Center; **Elizabeth O. Gill**, ACLU LGBT & HIV Project; **Bryan Schwartz**, Bryan Schwartz Law; **Jahan C. Sagafi**, Outten & Golden, LLP; **Catha Worthman**, Feinberg Jackson Worthman & Wasow, LLP; **Hassan A. Zavareei**, Tycko & Zavareei, LLP; **F. Paul Bland**, Public Justice; and **Catherine K. Ruckelshaus**, National Employment Law Project.

Thank you to all of this year’s conference sponsors, panelists, and attendees for your dedication to excellence and your commitment to using the legal system to create a more just and inclusive society.



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Cy Près Awards

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WHY THE IMPACT FUND IS AN IDEAL CHOICE

Our **Mission:** As one of the nation’s few foundations providing broad support for complex public interest litigation, we are committed to the idea that ordinary people should be able to join together and use the courts to protect their jobs and communities. Our unique ability to use public interest litigation as a tool to secure economic, environmental, racial, and social justice makes us an effective charitable investment.

Our **Reach:** We provide training and technical assistance to over eighty legal services programs in California. We also present a national class action conference and host a listserve for a network of plaintiff-side class action practitioners. We present an annual three-day training institute for practitioners seeking practical and strategy skills for litigating public interest class actions. We also provide hundreds of hours of pro-bono consulting to those working in the field.

Our **Distinct Programs:** Through our Grants Program, we’ve provided over \$6 million to advocates to bring cases advancing economic, environmental, racial, and social justice. We also provide litigation and consulting services – counseling, advice, and assistance on complex litigation issues. We serve as counsel and regularly file multiple amicus briefs every year. We present a wide variety of training programs to support practitioners and our curriculum includes topics such as new case developments, legal writing, and appellate practice.

Our **Proven Track Record:** We have been approved as a cy près recipient in more than seventy cases in both state and federal courts. We ensure good stewardship of funds that we receive.

Our **Impact:** Because we support litigation in many substantive areas (e.g., employment, civil rights, disability access, consumer, poverty, environmental, and criminal justice), we have a nexus to many kinds of class actions. Cy près awards allow us to continue this vital work.

Help us continue to make a real impact!

For more information contact:

Teddy Basham-Witherington

510.845.3473 ext. 302

twitherington@impactfund.org

cy près [si: ‘pray]

n. The legal doctrine that allows funds remaining after the distribution of a class action settlement to be given to a charitable organization (or more than one) whose mission dovetails with the original purpose of the case. Cy près is an important source of funding for non-profits and legal services.

Thank you to the following firms for naming us as cy près beneficiaries in cases that have made distributions during the past year:

- Berger & Montague, P.C.
- The Gardner Firm, P.C.
- Hadsell Stormer & Renick, LLP
- Hoyer & Hicks
- Nichols Kaster, PLLP
- Trush Law Office
- Zelle, LLP



25th Anniversary Gala

On May 8, 2018 we returned to one of San Francisco's most beautiful venues – the top floor of the Westin St. Francis on Union Square – to celebrate 25 years of making change! We thank all those who attended and sponsored for helping us rise to the challenge of this new age.

We look forward to seeing you next year on May 7, 2019.

HONOREES

Regina (Gina) McCarthy has been a leading advocate for common sense strategies to protect public health and the environment for more than 30 years. Most recently, she served under President Barack Obama as the 13th Administrator of the EPA from 2013–2017. She led EPA initiatives that cut air pollution, protected water resources, reduced greenhouse gases and strengthened chemical safety to better protect more Americans, especially the most vulnerable, from negative health impacts. McCarthy signed the Clean Power Plan, which set the first-ever national standards for reducing carbon emissions from existing power plants, underscoring the country's commitment to domestic climate action and spurring international efforts that helped secure the Paris Climate Agreement.

We honored her for her public service and her commitment to environmental justice.



We honored **Leadership Council For Justice & Accountability** for its success in the case, *City of Tulare v. Pratt Mutual Water Company and Matheny Tract Committee*. After years of community-led struggle, residents of Matheny Tract – a historical farmworker community in unincorporated Tulare County immediately outside of Tulare City limits – finally saw clean drinking water run from their faucets. This was a big victory not only for the Matheny Tract community but for all Californians, because it showed that implementation of SB 88 was possible and that there were feasible solutions for communities that don't have access to clean drinking water. Ashley Werner and Phoebe Seaton attended to accept the award.



We also continued the tradition of our Fund-the-Future live auction with celebrity auctioneer Michael Tate and were able to fund two more grants as a result.



CLOCKWISE FROM TOP LEFT: Keynote Speaker Gina McCarthy; Gina, Jocelyn, Phoebe, and Ashley; Auctioneer, Michael Tate, with stage hosts Chris Schreiber and Cornelia Dai.

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Thank you to our generous donors without whom our work in advancing economic, environmental, racial, and social justice would not be possible. Your support helps to build a fairer and more just society.

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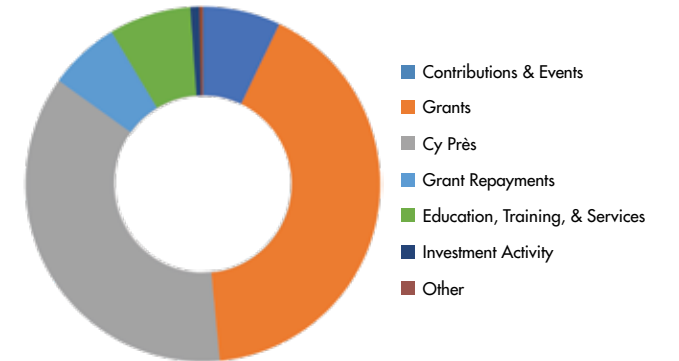


Financial Highlights

INCOME

Contributions & Events	\$157,923	7.11%
Grants	\$918,521	41.35%
Cy Près	\$809,715	36.46%
Attorney Fees	\$0	0%
Grant Repayments	\$144,211	6.49%
Education, Training, & Services	\$166,137	7.48%
Investment Activity	\$18,309	0.82%
Other	\$6,319	0.28%
Total	\$2,221,135	

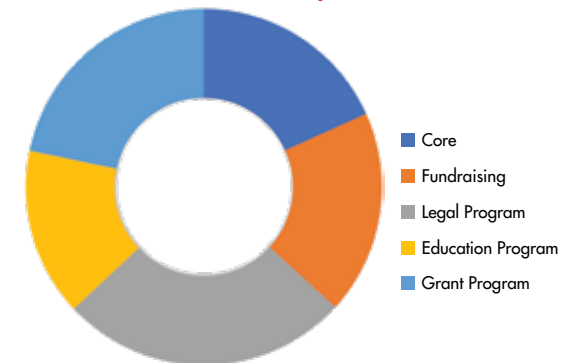
FY 2017-2018 Income



EXPENSES

Core	\$280,329	18.26%
Fundraising	\$284,027	18.50%
Legal Program	\$403,234	26.27%
Education Program	\$234,212	15.26%
Grant Program	\$333,241	21.71%
Total	\$1,535,043	
Change in Net Assets	\$686,092	

FY 2017-2018 Expenses



NOTE: Our Fiscal Year 07.01.17 – 06.30.18 saw two extraordinary Cy Près awards, which will provide working capital for future projects. In addition, \$1M is held in an endowment fund. For more information and a full copy of our audited financial statements contact us at impactfund@impactfund.org.

Team Impact Fund

STAFF ENTRANCES AND EXITS

We miss you...



Chanel Cornett: After spending her summer with us as a Summer Law Clerk, Chanel returned to Washington, D.C. to complete her third year of law school at Howard University School of Law. We can't wait to see the impact she will have as a litigator for social justice.



Mary Zhou: Mary served as the Development & Executive Assistant, steering our monthly giving program and ensuring our office runs smoothly. She departed in May for a whirlwind international world tour, traveling across several continents. Happy adventuring, Mary!

...and welcome...



Linda Gordon: Linda, formerly a 2017 Impact Fund Intern, joins us in the brand-new role of Grant Specialist as we scale up our grantmaking. She brings experience in the non-profit world and deep engagement with social justice and human rights work.



David Nahmias: David graduated from UC Berkeley School of Law with an extensive background in legal services after working for a global non-profit as a Fulbright Scholar. His project focuses on low-income and underserved LGBTQ communities in California's Central Valley.



Kat Vidt: Kat joins us as our new Development and Executive Assistant, building on her experience working in California legal firms and a solid background in editing and writing. Welcome, Kat!

STAFF



ROBERT BASHAM-WITHERINGTON PHOTOGRAPHY

FROM LEFT TO RIGHT: Amy Daniewicz, Jason Soto, Linda Gordon, Jocelyn D. Larkin, Kat Vidt, Teddy Basham-Witherington, Daniel Nesbit, David Nahmias, Lindsay Nako, Kellye Denson.

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*Also serves on the Grant Advisory Committee



BACK ROW FROM LEFT TO RIGHT: Michael Caesar, Dara Schur, Christian Schreiber, Abby Ginzberg, Eric Havian.
FRONT ROW FROM LEFT TO RIGHT: Arlene Mayerson, Cecilia Mansilla, Cornelia Dai, Marc Van Der Hout, Helen Kang, Dena Sharp.

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Thomas A. Saenz
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The board members indicated above, together with:

Impact Fund bids a bittersweet farewell to board members **Maria Anguiano** and **Julia Campins**. We would also like to give a warm welcome to new board members **Helen Kang** and **David Lopez**. And we welcome back **Alan Ramo** to our Grant Advisory Committee.



Helen Kang is a Professor of Law at Golden Gate University School of Law and is the Director of the Environmental Law and Justice Clinic there. She brings over two decades of experience in litigation, including serving as a trial attorney for the U.S. Department of Justice enforcing federal environmental statutes, and as a partner at Goodman Kang, LLP.



David Lopez joined Rutgers Law School as Co-Dean in August 2018 and was the longest-serving General Counsel of the U.S. Equal Employment Opportunity Commission. He most recently worked as a partner at Outten & Golden in Washington D.C. and is a nationally-recognized expert in Civil Rights and Employment Law.



Professor Alan Ramo is an Emeritus Dean and Professor of Golden Gate University School of Law in San Francisco. Ramo was the legal director for Communities for a Better Environment before joining the Golden Gate faculty and founding the school's Environmental Justice Clinic. He also co-founded the Western States Legal Foundation and is currently a board member of the Rose Foundation.

See You In 2019!

Impact Fund Annual Class Action Conference
San Francisco Bay Area
February 21-22, 2019

Annual Gala
Westin St. Francis, Union Square, San Francisco
May 7, 2019

Training Institute
San Francisco Bay Area
September 11-13, 2019
Los Angeles
September 25-27, 2019

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