



EQUAL RIGHTS

A D V O C A T E

W i n t e r 2 0 0 1

from the
Executive Director



Dear Friends,

ERA POURS THE FOUNDATION FOR EQUALITY IN THE CONSTRUCTION TRADE

Even today in 2001, women's participation in particular industries is relatively obsolete because of deeply entrenched patterns of discrimination that enforce and perpetuate the existence of "men-only" jobs. One such industry is the construction trade, which includes occupations such as carpenters, electricians, painters and plumbers. The construction trade employs over 6 million workers nationwide, yet women comprise only 3% of those employed in the trade – a percentage that has remained relatively stagnant over the past 20 years.

The passage of welfare reform in 1996 forced thousands of women into the workforce; most women were required to accept the first available job, which primarily were low-wage, unstable, unskilled jobs that did not provide the women with the means to move and remain out of poverty. Welfare rights and women's rights organizations, including ERA, advocated for the development and implementation of effective welfare reform policies that support skill enhancement and higher wage jobs. One such strategy was to encourage, train and assist women in obtaining nontraditional occupations, including those in the construction trade. The construction trade, unlike many other occupations

The efforts to improve the options for women moving from welfare to work served as a catalyst for tradeswomen activities



across the country. Feeding off this momentum, ERA helped form a national tradeswomen coalition consisting of legal advocates, private attorneys tradeswomen and social scientists. ERA is one of the litigating arms of the coalition, and will pursue impact litigation to expand access and improve the working conditions for women in the trades. ERA's impact litigation will focus on the practices of one or all of the industry players - the apprenticeship programs, the unions and the contractors – all of which engage in discriminatory behavior against women.

DENIAL OF ACCESS TO APPRENTICESHIP PROGRAMS

Apprenticeship programs prepare participants to become skilled in a trade through on-the-job training and related classroom instruction. Only 7% of the apprentices in the United States are women. Women rarely hear about apprenticeship opportunities because many programs rely on closed-door communication mostly by word of mouth, from man to man.

Few, if any, steps are taken to inform women about the existence of such programs. The few women who are enrolled in apprenticeship programs do not

Continued on next page

With the New Year upon us, I am filled with hope that ERA's legal advocacy efforts will prove successful and improve the lives of the thousands of women we serve. We got off to an early good start when at the end of the year, we got encouraging news from the court in the case of *Dukes v. Wal-Mart Stores*.

In our last newsletter, we reported on the class-action lawsuit brought by our clients against the nation's largest private employer, Wal-Mart Stores. ERA and its co-counsel filed the suit in the Northern District of California, and Wal-Mart sought to have the nationwide lawsuit either dismissed or transferred to the federal court in the Western District of Arkansas – the home of Wal-Mart's headquarters (Bentonville, Arkansas). In late December, the Court rejected Wal-Mart's extreme proposal to throw out or transfer the entire case and described the request as "too harsh" and "not in the interests of justice". This ruling enables our clients to move forward with their case in California, and allows the California plaintiffs to represent female employees of Wal-Mart from across the United States.

We will keep you posted on this and other ERA activities throughout the year. On behalf of our Staff and Board of Directors, I send you best wishes throughout the year, and our deepest thanks for your support.

Very truly yours,

Irma D. Herrera

Even employers who previously trained and hired women, have retreated to the discriminatory practice of denying highly qualified women jobs, solely based on their gender.

that predominantly employ non-college educated workers, provides relatively high hourly wages, overtime opportunities, union membership, booming growth, and opportunities for skill development.

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EQUALITY IN THE CONSTRUCTION TRADE

Continued from page 1

receive fair and equal treatment. For example, when female apprentices are placed at a job site, they are often given menial tasks, including clerical tasks, which do not provide them with the on-the-job training they need to perform their trade. As a result, female apprentices often do not successfully complete their apprenticeships or graduate with insufficient training and experience.

THE UNION'S ROLE IN BLOCKING WOMEN'S ACCESS TO JOBS

For the select few women who complete the apprenticeship programs, they face other hurdles as they attempt to find work. Employers' requests for workers are processed through the union; unions refer people to job sites from their union lists, and thus determine who gets work. Women are repeatedly the last selected for available work. Some women are placed on a job only a handful of days per year.

Another problem for tradeswomen is the unions' "right of refusal" clause, which allows employers to reject workers that have been sent by unions to their job site. Tradeswomen commonly experience rejection by employers when they present themselves at the job site, presumably based on employer preference for male workers.

EMPLOYER'S DISCRIMINATORY PRACTICES

Women who have overcome the barriers to training and gained access into the "brotherhood" are finding that in a post Proposition 209 California, women need not apply. The attitude of many employers is "we're just not interested in hiring women, and we don't have to." Even employers who previously trained and hired women, have retreated to the discriminatory practice of denying highly qualified women jobs, solely based on their gender.

Women on the job face another host of problems. Similar to women's experiences in apprenticeship programs, they tend to be assigned menial tasks unrelated to their trade. Tradeswomen also face severe sexual harassment, denial of basic equipment and bathrooms, pay inequity, a lack of overtime opportunities and a hostile environment that can be tantamount to life-threat-

ening situations. Tradeswomen also report that the industry is not family-friendly; tradeswomen with children find the industry does not provide them with the flexibility needed to deal with childcare problems that periodically arise. Tradeswomen who report problems on the job can face various forms of retaliation, such as demotion, harassment, being fired, and even being blacklisted from other job sites.

ERA'S PLAN OF ACTION

The overarching goal of ERA's Tradeswomen Legal Advocacy Project is to expand the opportunities and improve the working conditions for women in the trades through impact litigation. Impact litigation is particularly effective in changing employment practices and has forced even the most recalcitrant employers to change their discriminatory employment practices. A successful case can result in the establishment of long-term remedies, such as the use of goals, timetables and other injunctive relief.

In our efforts to develop litigation, ERA has assumed a prominent role in local and national tradeswomen activities. ERA staff attorneys have attended tradeswomen conferences and meetings, including the October 2001 National Tradeswomen Conference in Denver, Colorado where they organized and facilitated a legal workshop and strategy session. As a result of ERA's increased participation in the tradeswomen movement, tradeswomen from across the country with discrimination claims are contacting ERA - a process through which we are learning about the most pervasive problems affecting tradeswomen. ERA is also currently collecting statistical data on the gender and race composition of the workforce of several federal apprenticeship programs and select Bay Area contracting companies. The diverse sets of data will provide us with a comprehensive picture of the presence of women in the trades and enable us to identify patterns of discrimination, as well as the major discriminatory actors in the industry. From this information, ERA intends to develop an effective litigation strategy that will hammer away the discrimination women experience.



AMICUS CURIAE BRIEF UPDATE

As part of a strategy to utilize the courts to engender change for women and girls, ERA wrote or signed Amicus Curiae Briefs (Friends of the Court) in key impact cases that presented the perspectives of ERA and other interested organizations that might not otherwise have been made to the Court by the parties in the cases.

MORGAN V. NATIONAL RAILROAD PASSENGER CORPORATION

Issue: Whether an employee has a cause of action for race discrimination and racial harassment for conduct that occurred over a five-year period.

Abner Morgan Jr., an employee of Amtrak, suffered race discrimination and harassment for a five-year period. ERA, along with other civil rights organizations, joined an amicus brief to the U.S. Supreme Court that argued that Title VII employment discrimination cases – which are barred by statute of limitation – be revived under the continuing violation theory if the plaintiffs first seek to resolve their claims informally with their employees. The brief also argued that the U.S. Supreme Court should apply the Ninth Circuit's standard of individual incidents raised in the case are part of the same continuing violation and/or the analysis used by the California Supreme Court that rejected the notion that the plaintiff should have initially known the employer's conduct was discriminatory.

ERA joined the brief because of its potential impact on sexual harassment claims. Research indicates that women frequently seek to pursue informal, non-confrontational avenues to resolve their sexual harassment claims before resorting to the courts. Consequently, if the Court were to adopt the "know or should have known" standard, women who have sexual harassment claims would be forced to either waive their right to sue or file lawsuits while seeking to resolve their claims internally with their employers.

SMITH V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Issue: Is the National Collegiate Athletic Association (NCAA) subject to Title IX of the Education Amendments of 1972?

NCAA, a membership organization that is responsible for governing all aspects of intercollegiate athletics at public and private colleges and universities, denied Renee M. Smith a waiver for a NCAA bylaw that prohibits athletes from participating in athletics while enrolled in a graduate program outside their undergraduate institutions. Ms. Smith filed a lawsuit alleging that the NCAA violated Title IX – the federal law that prohibits discrimination in educational institutions based on sex - by granting a disproportionate number of waivers of eligibility requirements to male student athletes.

In February 1999, the U.S. Supreme Court ruled that dues payments from recipients of federal funds are insufficient to qualify the NCAA as a recipient under Title IX. *Smith v. NCAA* was remanded to the U.S. Third Circuit Court of Appeals and on August 22, 2001, the Third Circuit Court denied Ms. Smith's claims, based on the Third Circuit Court's earlier decision in another case (*Cureton v. NCAA*) that the NCAA was not subject to Title VI. However, it also held that the NCAA could be held liable for funding it received from the U.S. Department of Health and Human Services, thereby allowing Ms. Smith to proceed with her sex discrimination claim. The Third Circuit's ruling now sets the stage for Ms. Smith to challenge the NCAA's discriminatory waiver policy.

RAGSDALE V. WOLVERINE WORLDWIDE

Issue: Can an employer designate an employee's leave as Family and Medical Leave Act ("FMLA") leave after the leave is taken and without providing the employee with advance notice as required by federal regulations.

Plaintiff Tracy Ragsdale was an employee of Wolverine Worldwide, a shoe factory in Arkansas, when she was diagnosed with cancer. After her diagnosis, Ms. Ragsdale requested and obtained seven months of employer-provided medical leave without any notification that she had the right to FMLA leave or that the leave she took was leave under FMLA. Wolverine terminated Ms. Ragsdale after she had exhausted her seven months of company leave and

Continued on page 7

Save the Date

University of San Francisco
Law Review Symposium 2002

SHIFTING THE SCALES OF JUSTICE

Saturday March 16, 2002

Co-Sponsor
Equal Rights Advocates

Keynote Speaker
Professor Lani Guinier
Harvard Law School

The University of San Francisco Law Review symposium will address the changing dynamics of the legal profession as women become the majority of law students. Views on the issue are divergent, some believing the change demonstrates a closing of the inequality gap between the sexes, while others believe it indicates simply a change in the composition of the profession.

For more information, please call (415) 422-6154 or e-mail usflrev@usfca.edu.

THE PRICE OF MOTHERHOOD

By Ann Crittenden

ANN CRITTENDEN'S BAY AREA SPEAKING ENGAGEMENT

As part of UCSF's Center for Gender Equity speaker series, award-winning economics journalist Ann Crittenden will speak about her new provocative book *The Price of Motherhood: Why the Most Important Job in the World is Still the Least Valued*. The talk will be held on Tuesday January 29, 2002 from 3:00 p.m. to 4:30 p.m. at UCSF's Main Parnassus Campus in the Health Science West (HSW) Building, Room 302 (enter through 513 Parnassus Avenue).

For more information, please call (415)476-5222 or email vauer@genderequity.ucsf.edu.

Americans love to complain about taxes, but they are surprisingly silent about the heaviest personal tax of all. This is the "Mommy tax," paid by anyone who becomes the primary caregiver of a child or other dependent family member. For a college-educated American woman — or man — the Mommy tax can easily amount to more than \$1 million in lifetime income.

To illustrate how it works, I have calculated my own Mommy tax. After my son was born in the mid Eighties, I decided to quit my job as a reporter for The New York Times. At the time I was earning roughly \$50,000. Had I not had a child, I would probably have worked full-time at least another fifteen years, maybe taking early retirement to pursue other interests. Under this scenario, I would have earned a pension, which I lost by leaving the paper before I was vested.

My annual income after leaving the New York Times has averaged about \$15,000 from free-lance writing, or \$35,000 less than I had been making. Very conservatively, then, my decision to do what I felt was best for my child cost me \$600,000 to \$700,000 in lifetime income, not counting the loss of a pension.

I am not sure that, knowing then what I know now, I would have made the same decision. I very well might have, for I did what seemed best for my child. But I firmly believe that losing that much income and my financial security was unnecessary. The Mommy tax is too high, and it sends all the wrong signals about our so-called family values.

Economist Shirley Burggraf has calculated that a husband and wife who earn a combined income of \$81,500 per year will lose \$1.35 million if they have a child, largely because of the wages foregone by the primary parent. In low-income families, the Mommy tax can push a couple over the brink. A former head of the U.S.

Census, Martha Richie, told me that there is anecdotal evidence that "for a lower-earning married couple the decision to have a child, or a second child, throws them into poverty."

In fact, low-income families may not even be able to afford the loss of one parent's salary. In a situation where mothers' remain in the workforce, including single mothers, they still pay the Mommy Tax by taking part-time jobs and/or foregoing promotions. The income of mothers in the

workforce suffer because of problems on the job — such as tardiness, absences and the inability to work overtime — caused by their childcare responsibilities.

It is important to point out that similar economic penalties are incurred by people who care for sick, disabled, or elderly relatives. A small survey of individuals who provided informal, unpaid care for family members found that it cost them on average \$659,139 in lost wages, Social Security, and pension benefits over their lifetimes. Like mothers, these caregivers reported having to pass up training and promotion opportunities, reduce their workload to part-time, and in many cases giving up their paid employment altogether. This exorbitant "caring tax" is being paid by an increasing number of people, three-quarters of whom are women. In short, we urge people to devote more time and energy to their families, and then hit them hard when they do. When it comes to caring, no good deed goes unpunished.

The Mommy tax is much lower in countries where the costs of care are more widely shared, through such policies as paid family leave (which is now six months in comparable countries like Canada and Great Britain). The United States is one of only six countries in the world that doesn't provide paid parental leave, forcing many women to quit their jobs in order to spend time with their infants. The U.S. also allows part-time workers, most of whom are women, to be paid lower hourly wages for equal work, with no benefits. An equal pay for equal work rule would go far in preventing that kind of exploitation.

Finally, a shorter working day would enable many mothers to combine work and family more easily, without forcing them to make the harsh, either-or decisions so many American mothers face. All of the European countries are moving toward a 35-hour work week, while the U.S. is moving in the opposite direction, toward longer and longer work days. Putting a stop to that trend would probably do more for mothers and children, and everyone else as well, than any other single policy.

*Ann Crittenden is the author of *The Price of Motherhood: Why the Most Important Job in the World is Still the Least Valued* and *Killing the Sacred Cows: Bold Ideas for a New Economy*. A former reporter for *The New York Times* and a Pulitzer Prize nominee, she has also been a reporter for *Fortune*, a financial writer and foreign correspondent for *Newsweek*, a visiting lecturer at M.I.T. and Yale, and an economics commentator for CBS News.*

For a college-educated American woman — or man — the Mommy tax can easily amount to more than \$1 million in lifetime income.

CALIFORNIA LEGISLATIVE HIGHLIGHTS

Although ERA's strategic shift to litigation has resulted in a decrease in the amount of time and resources we dedicate to legislative advocacy, we kept a close watch on the 2001 California legislative term. ERA tracked and supported legislative bills related to pay equity, affirmative action and gender discrimination – issues associated with our broader goal of advancing equal rights and improving economic opportunities for women and girls.

Below are highlights of bills from the 2001 session that were signed into law:

PAY EQUITY

AB 43 (Wesson) requires the California Commission on the Status of Women to contract for a gender-based study to evaluate the compensation and classification of California state government employees. The purpose of the study is to assess which California state institutions and departments, if any, have pay and classification inequities based on gender and hopefully motivate the State to rectify those disparities. ERA believes the data generated from this study, specifically the information on the situation of female employees in the University of California and California State University systems, will better enable us to advocate for women who face discrimination in higher education.

EQUAL ACCESS TO CONTRACTING OPPORTUNITIES

AB 1084 (Wesson) expands public contracting preferences for small businesses to include microbusinesses, many of which are owned by women and minorities. This bill requires state agencies to collect gender, race and

ethnicity data on the contracts it awards, which will strengthen the ways to identify and remedy discrimination in public contracting. The data will be particularly useful for ERA as we continue to monitor the impact of Proposition 209 on women, and advocate for the inclusion of women-owned businesses in awarded contracts.

LESBIAN RIGHTS

AB 25 (Migden and Hertzberg) expands the rights of registered domestic partners to include the right to make medical decisions in the hospital, to act as a conservator, to utilize the procedures applicable to step-parent adoption, to use sick leave to care for a domestic partner and to provide partners with employer-based health coverage.

CELEBRATING WOMEN

ACR 14 (Migden and Daucher) proclaims February 7, 2001, as California Girls and Women in Sports Day – a day to recognize the important contribution of female athletes, coaches, officials, and sports administrators in promoting the value of sports in the achievement of full human potential.

ACR 31 (Strom-Martin) proclaims March 2001 Women's History Month – a month for schools and communities to recognize the important historical role and accomplishments of women.

ACR 105 (Strom-Martin) proclaims October 10, 2001, as the 90th Anniversary of Women's Suffrage in California – a day to celebrate women achieving the right to vote.

Hold the Date

Equal Rights Advocates' Luncheon 2002

Economics of Inequality

June 13, 2002

11:30 a.m. – 1:30 p.m.

Westin St. Francis San Francisco

Keynote Speaker
Barbara Ehrenreich

This year's luncheon will feature keynote speaker Barbara Ehrenreich, renowned author of the current bestseller *Nickel and Dimed: On (Not) Getting By in America*. Ms. Ehrenreich will discuss this work of participatory journalism for which she worked at a Wal-Mart in Minneapolis, waited tables in the Florida Keys, and cleaned houses in Maine. She will describe the difficulties, and often the impossibilities, of making ends meet while working in low-wage "female" service jobs. Ms. Ehrenreich is the author of ten other books including *Fear of Falling*, which was nominated for a National Book Critics Circle Award, and is a frequent contributor to *Time*, *Harper's Magazine*, *The New Republic*, *The Nation*, and *The New York Times Magazine*.

For more information about ERA's luncheon, please call Amber Robinson at (415) 575-2381 or email her at arobinson@equalrights.org.



A CONVERSATION WITH BOARD MEMBER LUZ BUITRAGO

How did you become involved with ERA?

I first became involved with ERA during my first year of practice while I was working at Instituto Laboral de La Raza. Several ERA attorneys provided me with invaluable technical assistance with sexual harassment and other employment discrimination cases that I was pursuing on behalf of women of color.

What attracted you to ERA?

I was particularly impressed by ERA's commitment to protecting and securing equal rights for low-income women, immigrant women and women of color. ERA was one of the first women's organizations to recognize the double or triple burden of discrimination that occurs when gender discrimination intersects with race, sexual orientation, ethnicity, or economic status. I decided to become an ERA supporter because I realized that ERA was not only a valuable legal resource for me, but also an important organization for all women and girls.

As the Litigation Committee Chair, what do you envision for ERA's litigation efforts?

ERA will continue its renewed emphasis on utilizing litigation to address emerging and entrenched practices that discriminate against women and girls and prevent them from achieving their full potential. We will aggressively pursue litigation to expand employment opportunities and to ensure fair treatment for women in the following industries: retail, restaurant, high-tech electronics assembly, the construction trades and other non-traditional work, and colleges and universities. We will also take on cases that will enforce hard won rights. For example, despite our prior victories that established the right of women and girls to be free of sexual harassment, which continues to be a serious problem for women.

What do you see as the strengths of litigation as opposed to other advocacy strategies?

There are many issues that do not lend themselves to legislative or other advocacy efforts. Often recalcitrant agencies and corporations are unwilling to change long-standing discriminatory practices unless forced to do so through litigation. The Wal-Mart case is one such example. Despite

its great and long economic success, Wal-Mart continues to systematically deny women advancement, training opportunities, and pay equity. I am confident that ERA's litigation will correct these practices and restore the rights of thousands of women to be treated fair and equally.

Tell us about your professional career.

I have over a decade of commitment to promoting social justice through the provision of legal services to low-income individuals and other marginalized members of our community. I am currently the Executive Director of Law Center for Families, a non-profit legal services provider in Alameda County. I am also on the Board of the Northern California and National American Civil Liberties Union and a member of the California Advisory Committee to the United States Civil Rights Committee. I am also very active with the Latino community.

As the Executive Director of Law Center for Families, what do you see as the relationship between your organization and ERA?

The Law Center for Families (LCFF) is committed to improving the quality of life, enhancing economic opportunity, protecting the social safety net, and alleviating economic inequality through the provision of legal services and advocacy on behalf of low-income residents in Alameda County. LCFF utilizes a combination of systemic advocacy, community education, direct representation and advice in the areas of housing, family, and consumer law, economic support and improving access to benefits and services to limited English speaking members of the community. Many of the Law Center's clients are women who are kept or pushed into poverty by sexual harassment, pregnancy discrimination, and lack of equal educational and employment opportunities. While focusing on different legal aspects that affect these women's lives, both organizations strive to remove discriminatory barriers that prevent women from reaching their potential fully or beneficially participating in our economic system.

Tell us about your personal life.

I live in Berkeley and enjoy walking my two Australian shepherd dogs. I like to ski, bicycle ride, dance and read. I enjoy visiting my mother, sister, brother and many nieces in Southern California.

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Thank you to all our donors who contributed or pledged during the period August 1, 2001 through December 1, 2001. We could not continue our work without your support.

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AMICUS ROUNDUP

Continued from page 3

was unable to return to work. Ms. Ragsdale then requested FMLA leave, but Wolverine informed her that she had requested and utilized all of her available leave. Ms. Ragsdale then filed suit against Wolverine.

Both the trial court and the Eighth Circuit Court of Appeals struck down the U.S. Department of Labor's regulations requiring employer notification of FMLA leave to employees. The case is now to be heard by the U.S. Supreme Court and the amicus brief that ERA joined argues that the DOL's notification requirements are valid and that the Eight

Circuit erroneously concluded that Congress unambiguously expressed its intent in the statute. This issue is of particular interest to ERA because women, who are more likely to take leave to care for family members, are often unaware of their legal rights regarding family and medical leave.

REAL STORIES

Sexual harassment in the workplace is one of the issues most frequently raised by women calling ERA's Advice and Counseling Line. While sexual harassment occurs across a wide range of industries, it is especially difficult for women working in service industries, such as the restaurant industry, to report the harassment because they are economically vulnerable and their employment options are limited. When women in these industries do report the harassment, they often risk facing retaliation and/or losing their jobs. Although it is illegal under federal anti-discrimination law for an employer to retaliate against an employee who complains about discrimination or harassment, the fact of the matter is that women do face retaliation, most often in the form of losing their jobs.

In the past few months, ERA has received numerous calls from female restaurant employees facing sexual harassment on the job. Whether they work for a small family-owned

restaurant or a large corporate hotel chain, their concern is the same: "How can I complain about this and still keep my job?"

One caller told us that she reported being sexually harassed after months of suffering her manager's comments about her breasts and his requests for her to cheat on her boyfriend with him. The restaurant investigated her complaint, but instead of suspending the harassing supervisor during the investigation, the caller was given the choice to either temporarily stop working or to continue working under the harassing supervisor. ERA advised her of her right to file a sexual harassment complaint against her employer and was referred to private attorneys in her area.

Another caller, who worked at a very small restaurant, told us that she endured her manager's almost-daily advances, which continued despite her repeated requests that he stop. She complained to the owner, who responded by saying that the restaurant was going out of business and that he would not investigate her claim of harassment. The woman called the restaurant

the next day, at which time she found out that she had been replaced. The owner told her he did not fire her, but rather insisted that she had quit by leaving the restaurant when he said it was going out of business. Unfortunately, under both federal law and the anti-discrimination law of her state, this woman was not entitled to a remedy because of the restaurant's small staff.

A third caller, who works for a national restaurant chain, was accused of lying when she complained to her manager that a co-worker had been harassing her, even though the manager witnessed some of the incidents. She submitted a written complaint about the harassment, including a complaint against her manager for refusing to do anything to make her workplace safe. One week later, she was completely removed from the work schedule. When she asked why, she was told, "Because you are unwilling to work with [the harasser]." ERA advised the young woman about her legal right to file a charge of discrimination with the Equal Employment Opportunity Commission and referred her to attorneys in her geographic area.

ERA POURS THE
FOUNDATION FOR
EQUALITY IN THE
CONSTRUCTION TRADE
PAGE 1

AMICUS CURIAE BRIEF
ROUNDUP
PAGE 3

THE PRICE OF
MOTHERHOOD
PAGE 4

CALIFORNIA LEGISLATIVE
HIGHLIGHTS
PAGE 5

A CONVERSATION WITH
BOARD MEMBER
LUZ BUITRAGO
PAGE 6

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