Disability Rights Education & Defense Fund

Search

Section 504 of the Rehabilitation Act of 1973

Section 504 of the 1973 Rehabilitation Act was the first disability civil rights law to be enacted in the United States. It prohibits discrimination against people with disabilities in programs that receive federal financial assistance, and set the stage for enactment of the Americans with Disabilities Act. Section 504 works together with the ADA and IDEA to protect children and adults with disabilities from exclusion, and unequal treatment in schools, jobs and the community.

DREDF Materials

- Sample Section 504 Plan and Health Care Plan for a Student with Diabetes
- A Comparison of ADA, IDEA, and Section 504
- A sit-in and demonstrations in San Francisco and Washington DC, in 1977, changed the course of civil rights history, and resulted in the signing of the 1977 Health, Education, and Welfare (HEW) regulations implementing Section 504 of the Rehabilitation Act of 1973.

For More Information:

- U.S. Department of Education regulations implementing Section 504
- The U.S. Department of Education, Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities.
- The Civil Rights of Students with Hidden Disabilities Under Section 504 of the

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Civil Rights Act of 1964

The **Civil Rights Act of 1964** (Pub.L. 88–352 (http://legislink.org/us/pl-88-352), 78 Stat. 241 (http://legislink.org/us/stat-78-241), enacted July 2, 1964) is a landmark civil rights and U.S. labor law in the United States that outlaws discrimination based on race, color, religion, sex, or national origin.[5] It prohibits unequal application of voter registration requirements, and racial segregation in schools, employment, and public accommodations.

Initially, powers given to enforce the act were weak, but these were supplemented during later years. Congress asserted its authority to legislate under several different parts of the United States Constitution, principally its power to regulate interstate commerce under Article One (section 8), its duty to guarantee all citizens equal protection of the laws under the Fourteenth Amendment, and its duty to protect voting rights under the Fifteenth Amendment.

The legislation had been proposed by U.S. President John F. Kennedy in June 1963, but opposed by filibuster in the Senate. After Kennedy was assassinated in November 1963, U.S. President Lyndon B. Johnson pushed the bill forward, which in its final form was passed in the U.S. Congress by a Senate vote of 73–27 and House vote of 289–126. The Act was signed into law by President Johnson on July 2, 1964, at the White House.

Contents

Civil Rights Act of 1964

Long title	An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States of America to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.
Enacted by	the 88th United States Congress
Effective	July 2, 1964
	Citations
Public law	88-352 (http://library.clerk.house.gov/reference-files/PPL_CivilRightsAct_1964.pdf)
Statutes at Large	78 Stat. 241 (http://legislink.org/us/stat-78-241)
	Codification
Acts amended	Civil Rights Act of 1957 Civil Rights Act of 1960
Titles amended	42

Legislative history

- **Introduced in the House as** H.R. 7152 **by** Emanuel Celler (D–NY) **on** June 20, 1963
- **Committee consideration by** Judiciary
- **Passed the House on** February 10, 1964[1] (290–130)
- **Passed the Senate on** June 19, 1964[2] (73–27) **with amendment**
- **House agreed to Senate amendment on** July 2, 1964[3] (289–126)
- **Signed into law by President** Lyndon B. Johnson **on** July 2, 1964

Major amendments

Equal Employment Opportunity Act of 1972[4]
Civil Rights Act of 1991
No Child Left Behind Act
Lilly Ledbetter Fair Pay Act of 2009

United States Supreme Court cases

Heart of Atlanta Motel, Inc. v. United States (1964)
Katzenbach v. McClung (1964)
Alexander v. Holmes County Board of Education (1969)
Griggs v. Duke Power Co. (1971)
Ricci v. DeStefano (2009)

Background

In the 1883 landmark *Civil Rights Cases* the United States Supreme Court had ruled, that Congress did not have the power to prohibit discrimination in the private sector, thus stripping the Civil Rights Act of 1875 of much of its ability to protect civil rights.[6]

In the late 19th and early 20th century, the legal justification for voiding the Civil Rights Act of 1875 was part of a

larger trend by members of the United States Supreme Court to invalidate most government regulations of the private sector, except when dealing with laws designed to protect traditional public morality.

In the 1930s, during the New Deal, the majority of the Supreme Court justices gradually shifted their legal theory to allow for greater government regulation of the private sector under the commerce clause, thus paving the way for the Federal government to enact civil rights laws prohibiting both public and private sector discrimination on the basis of the commerce clause.

John F. Kennedy addresses the nation about civil rights on June 11, 1963

The 1964 bill was first proposed by U.S. President John F. Kennedy in his Report to the American People on Civil Rights on June 11, 1963.[7] Kennedy sought legislation "giving all Americans the right to be served in facilities which are open to the public—hotels, restaurants, theaters, retail stores, and similar establishments"—as well as "greater protection for the right to vote". Kennedy delivered this speech in the aftermath of the Birmingham campaign and the growing number of demonstrations and protests throughout the southern United States. Kennedy was moved to action following the elevated racial tensions and wave of black riots in the spring 1963.[8]

Emulating the Civil Rights Act of 1875, Kennedy's civil rights bill included provisions to ban discrimination in public accommodations, and to enable the U.S. Attorney General to join in lawsuits against state governments which operated segregated school systems, among other provisions. However, it did not include a number of provisions deemed essential by civil rights leaders, including protection against police brutality, ending discrimination in private employment, or granting the Justice Department power to initiate desegregation or job discrimination lawsuits.[9]

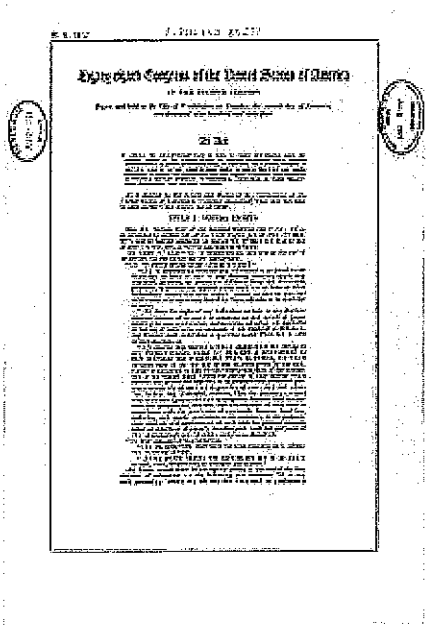
History

House of Representatives

On June 11, 1963, President Kennedy met with Republican leaders to discuss the legislation before his television address to the nation that evening. Two days later, Senate Minority Leader Everett Dirksen and Senate Majority Leader Mike Mansfield both voiced support for the president's bill, except for provisions guaranteeing equal access to places of public accommodations. This led to several Republican Representatives drafting a compromise bill to be considered. On June 19, the president sent his bill to Congress as it was originally written, saying legislative action was "imperative".[10][11] The president's bill went first to the House of Representatives, where it was referred to the Judiciary Committee, chaired by Emanuel Celler, a Democrat from New York. After a series of hearings on the bill, Celler's committee strengthened the act, adding provisions to ban racial discrimination in employment, providing greater protection to black voters, eliminating segregation in all publicly-owned facilities (not just schools), and strengthening the anti-segregation clauses regarding public facilities such as lunch counters. They also added authorization for the Attorney General to file lawsuits to protect individuals against the deprivation of any rights secured by the Constitution or U.S. law. In essence, this was the controversial "Title III" that had been removed from the 1957 Act and 1960 Act. Civil rights organizations pressed hard for this provision because it could be used to protect peaceful protesters and black voters from police brutality and suppression of

free speech rights.

Kennedy called the congressional leaders to the White House in late October 1963 to line up the necessary votes in the House for passage.[12] The bill was reported out of the Judiciary Committee in November 1963 and referred to the Rules Committee, whose chairman, Howard W. Smith, a Democrat and staunch segregationist from Virginia, indicated his intention to keep the bill bottled up indefinitely.



First page of the Civil Rights Act of 1964

Johnson's appeal to Congress

The assassination of John F. Kennedy on November 22, 1963, changed the political situation. Kennedy's successor as president, Lyndon Johnson, made use of his experience in legislative politics, along with the bully pulpit he wielded as president, in support of the bill. In his first address to a joint session of Congress on November 27, 1963, Johnson told the legislators, "No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long."[13]

Judiciary Committee chairman Celler filed a petition to discharge the bill from the Rules Committee; it required the support of a majority of House members to move the bill to the floor. Initially Celler had a difficult time acquiring the signatures necessary, with many Representatives who supported the civil rights bill itself remaining cautious about violating normal House procedure with the rare use of a discharge petition. By the time of the 1963 winter recess, 50 signatures were still needed.

After the return of Congress from its winter recess, however, it was apparent that public opinion in the North favored the bill and that the petition would acquire the necessary signatures. To avert the humiliation of a successful discharge petition, Chairman Smith relented and allowed the bill to pass through the Rules Committee.

Lobbying efforts

Lobbying support for the Civil Rights Act was coordinated by the Leadership Conference on Civil Rights, a coalition of 70 liberal and labor organizations. The principal lobbyists for the Leadership Conference were civil rights lawyer Joseph L. Rauh Jr. and Clarence Mitchell Jr. of the NAACP.[14]

Passage in the Senate

Johnson, who wanted the bill passed as soon as possible, ensured that the bill would be quickly considered by the Senate. Normally, the bill would have been referred to the Senate Judiciary Committee, chaired by Senator James O. Eastland, Democrat from Mississippi. Given Eastland's firm opposition, it seemed impossible that the bill

Martin Luther King, Jr. and Malcolm X at the United States Capitol on March 26, 1964. Both had come to hear the Senate debate on the bill. This was the only time the two men ever met; their meeting lasted only one minute.[15]

would reach the Senate floor. Senate Majority Leader Mike Mansfield took a novel approach to prevent the bill from being relegated to Judiciary Committee limbo. Having initially waived a second reading of the bill, which would have led to it being immediately referred to Judiciary, Mansfield gave the bill a second reading on February 26, 1964, and then proposed, in the absence of precedent for instances when a second reading did not immediately follow the first, that the bill bypass the Judiciary Committee and immediately be sent to the Senate floor for debate.

When the bill came before the full Senate for debate on March 30, 1964, the "Southern Bloc" of 18 southern Democratic Senators and one Republican Senator led by Richard Russell (D-GA) launched a filibuster to prevent its passage.[16] Said Russell: "We will resist to the bitter end any measure or any movement which would have a tendency to bring about social equality and intermingling and amalgamation of the races in our (Southern) states."[17]

Strong opposition to the bill also came from Senator Strom Thurmond (D-SC): "This so-called Civil Rights Proposals, which the President has sent to Capitol Hill for enactment into law, are unconstitutional, unnecessary, unwise and extend beyond the realm of reason. This is the worst civil-rights package ever presented to the Congress and is reminiscent of the Reconstruction proposals and actions of the radical Republican Congress."[18]

Lyndon B. Johnson signs the Civil Rights Act of 1964. Among the guests behind him is Martin Luther King, Jr.

After 54 days of filibuster, Senators Hubert Humphrey (D-MN), Mike Mansfield (D-MT), Everett Dirksen (R-IL), and Thomas Kuchel (R-CA), introduced a substitute bill that they hoped would attract enough Republican swing votes in addition to the core liberal Democrats behind the legislation to end the filibuster. The compromise bill was weaker than the House version in regard to government power to regulate the conduct of private business, but it was not so weak as to cause the House to reconsider the legislation.[19]

On the morning of June 10, 1964, Senator Robert Byrd (D-W.Va.) completed a filibustering address that he had begun 14 hours and 13 minutes earlier opposing the legislation. Until then, the measure had occupied the Senate for 60 working days, including six Saturdays. A day earlier, Democratic Whip Hubert Humphrey of Minnesota, the bill's manager, concluded he had the 67 votes required at that time to end the debate and end the filibuster. With six wavering senators providing a four-vote victory margin, the final tally stood at 71 to 29. Never in history had the Senate been able to muster enough votes to cut off a filibuster on a civil rights bill. And only once in the 37 years since 1927 had it agreed to cloture for any measure.[20]

On June 19, the substitute (compromise) bill passed the Senate by a vote of 73–27, and quickly passed through the House–Senate conference committee, which adopted the Senate version of the bill. The conference bill was

passed by both houses of Congress, and was signed into law by President Johnson on July 2, 1964.[21]

Vote totals

Totals are in "*Yea–Nay*" format:

- The original House version: 290–130 (69–31%)
- Cloture in the Senate: 71–29 (71–29%)
- The Senate version: 73–27 (73–27%)
- The Senate version, as voted on by the House: 289–126 (70–30%)

By party

The original House version:[22]

- Democratic Party: 152–96 (61–39%)
- Republican Party: 138–34 (80–20%)

Cloture in the Senate:[23]

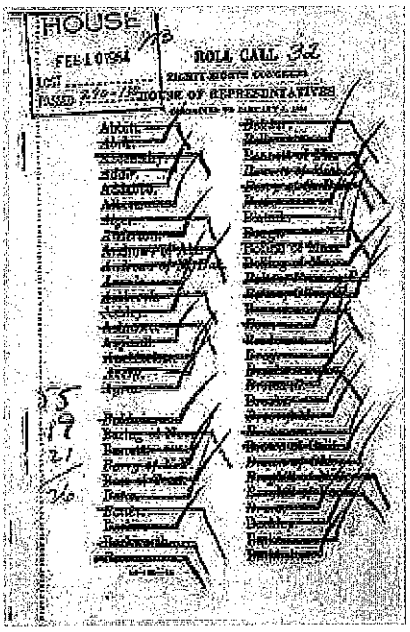
- Democratic Party: 44–23 (66–34%)
- Republican Party: 27–6 (82–18%)

The Senate version:[22]

- Democratic Party: 46–21 (69–31%)
- Republican Party: 27–6 (82–18%)

The Senate version, voted on by the House:[22]

- Democratic Party: 153–91 (63–37%)
- Republican Party: 136–35 (80–20%)



The record of the roll call vote kept by the House Clerk on final passage of the bill

By party and region

Note: "Southern", as used in this section, refers to members of Congress from the eleven states that had made up the Confederate States of America in the American Civil War. "Northern" refers to members from the other 39 states, regardless of the geographic location of those states.[24]

The original House version:

- Southern Democrats: 7–87 (7–93%)
- Southern Republicans: 0–10 (0–100%)
- Northern Democrats: 145–9 (94–6%)
- Northern Republicans: 138–24 (85–15%)

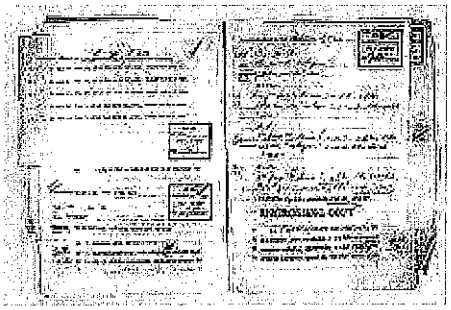
The Senate version:

- Southern Democrats: 1–20 (5–95%) (only Ralph Yarborough of Texas voted in favor)
- Southern Republicans: 0–1 (0–100%) (John Tower of Texas)
- Northern Democrats: 45–1 (98–2%) (only Robert Byrd of West Virginia voted against)

- Northern Republicans: 27–5 (84–16%)

Aspects

Women's rights



Engrossing copy of H.R. 7152, which added sex to the categories of persons against whom the bill prohibited discrimination, as passed by the House of Representatives[25]

Just one year earlier, the same Congress had passed the Equal Pay Act of 1963, which prohibited wage differentials based on sex. The prohibition on sex discrimination was added to the Civil Rights Act by Howard W. Smith, a powerful Virginia Democrat who chaired the House Rules Committee and who strongly opposed the legislation. Smith's amendment was passed by a teller vote of 168 to 133. Historians debate Smith's motivation, whether it was a cynical attempt to defeat the bill by someone opposed to civil rights both for blacks and women, or an attempt to support their rights by broadening the bill to include women.[26][27][28][29] Smith expected that Republicans, who had included equal rights for women in their party's platform since 1944,[30] would probably vote for the amendment. Historians speculate that Smith was trying to embarrass northern Democrats who opposed civil rights for women because the clause was opposed by labor unions. Representative Carl Elliott of Alabama later claimed, "Smith didn't give a damn about women's rights...he was trying to knock off votes either then or down the line because there was always a hard core of men who didn't favor women's rights,"[31] and the *Congressional Record* records that Smith was greeted by laughter when he introduced the amendment.[32]

Smith asserted that he was not joking; he sincerely supported the amendment and, indeed, along with Rep. Martha Griffiths,[33] he was the chief spokesperson for the amendment.[32] For twenty years Smith had sponsored the Equal Rights Amendment (with no linkage to racial issues) in the House because he believed in it. He for decades had been close to the National Woman's Party and its leader Alice Paul, who was also the leader in winning the right to vote for women in 1920, the author of the first Equal Rights Amendment, and a chief supporter of equal rights proposals since then. She and other feminists had worked with Smith since 1945 trying to find a way to include sex as a protected civil rights category. Now was the moment.[34] Griffiths argued that the new law would protect black women but not white women, and that was unfair to white women. Furthermore, she argued that the laws "protecting" women from unpleasant jobs were actually designed to enable men to monopolize those jobs, and that was unfair to women who were not allowed to try out for those jobs.[35] The amendment passed with the votes of Republicans and Southern Democrats. The final law passed with the votes of Republicans and Northern Democrats. Thus, as Justice William Rehnquist explained in *Meritor Savings Bank v. Vinson*, "The prohibition against discrimination based on sex was added to Title VII at the last minute on the floor of the House of Representatives... the bill quickly passed as amended, and we are left with little legislative history to guide us in interpreting the Act's prohibition against discrimination based on 'sex.' "[36]

Desegregation

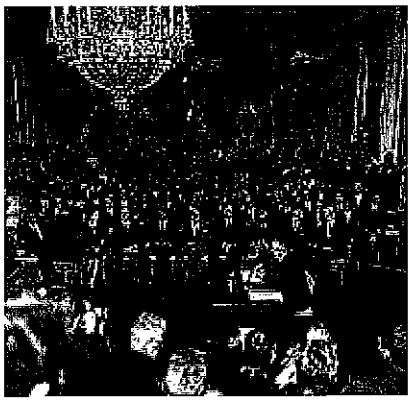
One of the most damaging arguments by the bill's opponents was that once passed, the bill would require forced

busing to achieve certain racial quotas in schools.[37] Proponents of the bill, such as Emanuel Celler and Jacob Javits, said that the bill would not authorize such measures. Leading sponsor Senator Hubert Humphrey (D-MN) wrote two amendments specifically designed to outlaw busing.[37] Humphrey said "if the bill were to compel it, it would be a violation [of the Constitution], because it would be handling the matter on the basis of race and we would be transporting children because of race."[37] While Javits said any government official who sought to use the bill for busing purposes "would be making a fool of himself," two years later the Department of Health, Education and Welfare said that Southern school districts would be required to meet mathematical ratios of students by busing.[37]

Reaction

Political repercussions

The bill divided and engendered a long-term change in the demographic support of both parties. President Johnson realized that supporting this bill would risk losing the South's overwhelming support of the Democratic Party. Both Attorney General Robert Kennedy and Vice President Johnson had pushed for the introduction of the civil rights legislation. Johnson told Kennedy aide Ted Sorensen that "I know the risks are great and we might lose the South, but those sorts of states may be lost anyway."[38] Senator Richard Russell, Jr. later warned President Johnson that his strong support for the civil rights bill "will not only cost you the South, it will cost you the election".[39] Johnson, however, went on to win the 1964 election by one of the biggest landslides in American history. The South, which had five states swing Republican in 1964, became a stronghold of the Republican Party by the 1990s.[40]



President Johnson speaks to a television camera at the signing of the Civil Rights Act

Although majorities in both parties voted for the bill, there were notable exceptions. Though he opposed forced segregation,[41] Republican Senator Barry Goldwater of Arizona voted against the bill, remarking, "You can't legislate morality." Goldwater had supported previous attempts to pass civil rights legislation in 1957 and 1960 as well as the 24th Amendment outlawing the poll tax. He stated that the reason for his opposition to the 1964 bill was Title II, which in his opinion violated individual liberty and states' rights. Democrats and Republicans from the Southern states opposed the bill and led an unsuccessful 83-day filibuster, including Senators Albert Gore, Sr. (D-TN) and J. William Fulbright (D-AR), as well as Senator Robert Byrd (D-WV), who personally filibustered for 14 hours straight.

Continued resistance

There were white business owners who claimed that Congress did not have the constitutional authority to ban segregation in public accommodations. For example, Moreton Rolleston, the owner of a motel in Atlanta, Georgia, said he should not be forced to serve black travelers, saying, "the fundamental question [...] is whether or not Congress has the power to take away the liberty of an individual to run his business as he sees fit in the selection and choice of his customers".[42] Rolleston claimed that the Civil Rights Act of 1964 was a breach of the Fourteenth Amendment and also violated the Fifth and Thirteenth Amendments by depriving him of "liberty and

property without due process".[42] In *Heart of Atlanta Motel v. United States* (1964), the Supreme Court held that Congress drew its authority from the Constitution's Commerce Clause, rejecting Rolleston's claims.

Resistance to the public accommodation clause continued for years on the ground, especially in the South.[43] When local college students in Orangeburg, South Carolina attempted to desegregate a bowling alley in 1968, they were violently attacked, leading to rioting and what became known as the "Orangeburg massacre."[44] Resistance by school boards continued into the next decade, with the most significant declines in black-white school segregation only occurring at the end of the 1960s and the start of the 1970s in the aftermath of the *Green v. County School Board of New Kent County* (1968) court decision.[45]

Titles

(The full text of the Act is available online (http://www.ourdocuments.gov/doc.php?flash=true&doc=97&page=transcript).)

Title I—voting rights

This title barred unequal application of voter registration requirements. Title I did not eliminate literacy tests, which acted as one barrier for black voters, other racial minorities, and poor whites in the South or address economic retaliation, police repression, or physical violence against nonwhite voters. While the Act did require that voting rules and procedures be applied equally to all races, it did not abolish the concept of voter "qualification". It accepted the idea that citizens do not have an automatic right to vote but would have to meet standards beyond citizenship.[46][47] The Voting Rights Act of 1965 directly addressed and eliminated most voting qualifications beyond citizenship.

Title II—public accommodations

Outlawed discrimination based on race, color, religion, or national origin in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce; exempted private clubs without defining the term "private".[48]

Title III—desegregation of public facilities

Prohibited state and municipal governments from denying access to public facilities on grounds of race, color, religion, or national origin.

Title IV—desegregation of public education

Enforced the desegregation of public schools and authorized the U.S. Attorney General to file suits to enforce said act.

Title V—Commission on Civil Rights

Expanded the Civil Rights Commission established by the earlier Civil Rights Act of 1957 with additional powers,

rules and procedures.

Title VI—nondiscrimination in federally assisted programs

Prevents discrimination by programs and activities that receive federal funds. If a recipient of federal funds is found in violation of Title VI, that recipient may lose its federal funding.

General

This title declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments and agencies to take action to carry out this policy. This title is not intended to apply to foreign assistance programs. Section 601 – This section states the general principle that no person in the United States shall be excluded from participation in or otherwise discriminated against on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance.

Section 602 directs each Federal agency administering a program of Federal financial assistance by way of grant, contract, or loan to take action pursuant to rule, regulation, or order of general applicability to effectuate the principle of section 601 in a manner consistent with the achievement of the objectives of the statute authorizing the assistance. In seeking the effect compliance with its requirements imposed under this section, an agency is authorized to terminate or to refuse to grant or to continue assistance under a program to any recipient as to whom there has been an express finding pursuant to a hearing of a failure to comply with the requirements under that program, and it may also employ any other means authorized by law. However, each agency is directed first to seek compliance with its requirements by voluntary means.

Section 603 provides that any agency action taken pursuant to section 602 shall be subject to such judicial review as would be available for similar actions by that agency on other grounds. Where the agency action consists of terminating or refusing to grant or to continue financial assistance because of a finding of a failure of the recipient to comply with the agency's requirements imposed under section 602, and the agency action would not otherwise be subject to judicial review under existing law, judicial review shall nevertheless be available to any person aggrieved as provided in section 10 of the Administrative Procedure Act (5 U.S.C. § 1009 (https://www.law.cornell.edu/uscode/text/5/1009)). The section also states explicitly that in the latter situation such agency action shall not be deemed committed to unreviewable agency discretion within the meaning of section 10. The purpose of this provision is to obviate the possible argument that although section 603 provides for review in accordance with section 10, section 10 itself has an exception for action "committed to agency discretion," which might otherwise be carried over into section 603. It is not the purpose of this provision of section 603, however, otherwise to alter the scope of judicial review as presently provided in section 10(e) of the Administrative Procedure Act.

Title VII—equal employment opportunity

Title VII of the Act, codified as Subchapter VI of Chapter 21 of title 42 of the United States Code, prohibits discrimination by covered employers on the basis of race, color, religion, sex or national origin (see 42 U.S.C. § 2000e-2 (https://www.law.cornell.edu/uscode/text/42/2000e-2)[49]). Title VII applies to and covers an

employer "who has fifteen (15) or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year" as written in the Definitions section under 42 U.S.C. §2000e(b) (https://www.law.cornell.edu/uscode/text/42/2000e). Title VII also prohibits discrimination against an individual because of his or her association with another individual of a particular race, color, religion, sex, or national origin, such as by an interracial marriage.[50] The EEO Title VII has also been supplemented with legislation prohibiting pregnancy, age, and disability discrimination (*See* Pregnancy Discrimination Act of 1978, Age Discrimination in Employment Act,[51] Americans with Disabilities Act of 1990).

In very narrowly defined situations, an employer is permitted to discriminate on the basis of a protected trait where the trait is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of that particular business or enterprise. To prove the bona fide occupational qualifications defense, an employer must prove three elements: a direct relationship between the protected trait and the ability to perform the duties of the job, the BFOQ relates to the "essence" or "central mission of the employer's business", and there is no less-restrictive or reasonable alternative (*United Automobile Workers v. Johnson Controls, Inc.*, 499 U.S. 187 (https://supreme.justia.com/cases/federal/us/499/187/) (1991) 111 S.Ct. 1196). The Bona Fide Occupational Qualification exception is an extremely narrow exception to the general prohibition of discrimination based on protected traits (*Dothard v. Rawlinson*, 433 U.S. 321 (https://supreme.justia.com/cases/federal/us/433/321/) (1977) 97 S.Ct. 2720). An employer or customer's preference for an individual of a particular religion is not sufficient to establish a Bona Fide Occupational Qualification (*Equal Employment Opportunity Commission v. Kamehameha School — Bishop Estate*, 990 F.2d 458 (9th Cir. 1993)).

Title VII allows for any employer, labor organization, joint labor-management committee, or employment agency to bypass the "unlawful employment practice" for any person involved with the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.[52]

There are partial and whole exceptions to Title VII for four types of employers:

- Federal government; (Comment: The proscriptions against employment discrimination under Title VII are now applicable to certain federal government offices under 42 U.S.C. Section 2000e-16 (http://finduslaw.com/civil_rights_act_of_1964_cra_title_vii_equal_employment_opportunities_42_us_code_chapter_21#17))
- Federally recognized Native American tribes[53]
- Religious groups performing work connected to the group's activities, including associated education institutions;
- Bona fide nonprofit private membership organizations

The Equal Employment Opportunity Commission (EEOC) as well as certain state fair employment practices agencies (FEPAs) enforce Title VII (see 42 U.S.C. § 2000e-4 (https://www.law.cornell.edu/uscode/text/42/2000e-4)).[49] The EEOC and state FEPAs investigate, mediate, and may file lawsuits on behalf of employees. Where a state law is contradicted by a federal law, it is overridden.[54] Every state, except Arkansas and Mississippi, maintains a state FEPA (see EEOC and state FEPA directory (http://www.eeocoffice.com)). Title VII also provides that an individual can bring a private lawsuit. An individual must file a complaint of discrimination with the EEOC within 180 days of learning of the discrimination or the individual may lose the right to file a lawsuit. Title VII only applies to employers who employ 15 or more employees for 20 or more weeks in the current or preceding calendar year (42 U.S.C. § 2000e(b) (https://www.law.cornell.edu/uscode/text/42

/2000e(b))).

Precedents and history

In the early 1980s, the EEOC and some federal courts began holding that sexual harassment is also prohibited under the Act. In 1986, the Supreme Court held in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (https://supreme.justia.com/cases/federal/us/477/57/) (1986), that sexual harassment is sex discrimination and is prohibited by Title VII. This case filed by plaintiff Mechelle Vinson was the first in the history of the court to recognize sexual harassment as actionable.[55] Following 1986, court cases in which the plaintiff suffers no economic loss can potentially argue for a violation of Title VII if the discrimination resulted in a hostile work environment.[55] Same-sex sexual harassment has also been held in a unanimous decision written by Justice Scalia to be prohibited by Title VII (*Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (https://supreme.justia.com/cases/federal/us/523/75/) (1998), 118 S.Ct. 998).

In 2012, the EEOC ruled that employment discrimination on the basis of gender identity or transgender status is prohibited under Title VII. The decision held that discrimination on the basis of gender identity qualified as discrimination on the basis of sex whether the discrimination was due to sex stereotyping, discomfort with the fact of an individual's transition, or discrimination due to a perceived change in the individual's sex.[56][57] In 2014, the EEOC initiated two lawsuits against private companies for discrimination on the basis of gender identity, with additional litigation under consideration.[58] As of November 2014, Commissioner Chai Feldblum is making an active effort to increase awareness of Title VII remedies for individuals discriminated on the basis of sexual orientation or gender identity.[59][60]

On December 15, 2014, under a memorandum issued by Attorney General Eric Holder, the United States Department of Justice (DoJ) took a position that aligned with the EEOC, namely the prohibition of sex discrimination under Title VII encompassed the prohibition of discrimination based on gender identity or transgender status. DoJ had already stopped opposing claims of discrimination brought by federal transgender employees.[61]

In October 2017, Attorney General Jeff Sessions issued a directive that withdrew the Holder memorandum.[62] According to a copy of the directive reviewed by *BuzzFeed News*, Sessions stated that Title VII should be narrowly interpreted to cover discrimination between "men and women". Attorney General Session stated as a matter of law, "Title VII does not prohibit discrimination based on gender identity per se."[63] Devin O'Malley, speaking on behalf of the DoJ, stated "the last administration abandoned that fundamental principle [that the Department of Justice cannot expand the law beyond what Congress has provided], which necessitated today's action." Sharon McGowan, a lawyer with Lambda Legal who previously served in the Civil Rights division of DoJ, rejected that argument, saying "[T]his memo is not actually a reflection of the law as it is — it's a reflection of what the DOJ wishes the law were" and "The Justice Department is actually getting back in the business of making anti-transgender law in court."[62]

On December 11, 2017, the United States Supreme Court refused to hear an appeal in *Evans v. Georgia Regional Hospital*, in which a lower court ruled against the plaintiff, who had argued Title VII protections applied to sexual orientation. The 11th U.S. Circuit Court of Appeals stated in its earlier ruling that only the Supreme Court could determine if Title VII applied.[64]

Title VIII—registration and voting statistics

Required compilation of voter-registration and voting data in geographic areas specified by the Commission on Civil Rights.

Title IX—intervention and removal of cases

Title IX made it easier to move civil rights cases from state courts to federal court. This was of crucial importance to civil rights activists who contended that they could not get fair trials in state courts.

Title X—Community Relations Service

Established the Community Relations Service, tasked with assisting in community disputes involving claims of discrimination.

Title XI—miscellaneous

Title XI gives a defendant accused of certain categories of criminal contempt in a matter arising under title II, III, IV, V, VI, or VII of the Act the right to a jury trial. If convicted, the defendant can be fined an amount not to exceed $1,000 or imprisoned for not more than six months.

Amendments

Equal Employment Opportunity Act of 1972

Between 1965 and 1972, Title VII lacked any strong enforcement provisions. Instead, the Equal Employment Opportunity Commission was authorized only to investigate external claims of discrimination. The EEOC could then refer cases to the Justice Department for litigation if reasonable cause was found. The EEOC documented the nature and magnitude of discriminatory employment practices, the first study of this kind done.

In 1972, Congress passed the Equal Employment Opportunity Act. The Act amended Title VII and gave EEOC authority to initiate its own enforcement litigation. The EEOC now played a major role in guiding judicial interpretations of civil rights legislation. The commission was also permitted for the first time to define "discrimination," a term excluded from the 1964 Act.[65]

Case law

Heart of Atlanta Motel, Inc. v. United States

After the Civil Rights Act of 1964 was passed, the Supreme Court upheld the law's application to the private sector, on the grounds that Congress has the power to regulate commerce between the States. The landmark case *Heart of Atlanta Motel v. United States* established the constitutionality of the law, but it did not settle all of the legal questions surrounding the law.

Phillips v. Martin Marietta Corp.

In *Phillips v. Martin Marietta Corp.*, a 1971 Supreme Court case regarding the gender provisions of the Act, the Court ruled that a company could not discriminate against a potential female employee because she had a preschool-age child unless they did the same with potential male employees.[29] A federal court overruled an Ohio state law that barred women from obtaining jobs which required the ability to lift 25 pounds and required women to take lunch breaks when men were not required to.[29] In *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, the United States Supreme Court decided that printing separate job listings for men and women was illegal, which ended that practice among the country's newspapers. The United States Civil Service Commission ended the practice among federal jobs which designated them "women only" or "men only."[29]

Other cases

In 1974, the Supreme Court also ruled that the San Francisco school district was violating non-English speaking students' rights under the 1964 act by placing them in regular classes rather than providing some sort of accommodation for them.[66] In 1975, a federal civil rights agency warned a Phoenix, Arizona school that its end-of-year father-son and mother-daughter baseball games were illegal according to the 1964 Civil Rights Act.[29] President Gerald Ford intervened, and the games were allowed to continue.[29]

In 1977, the Supreme Court struck down state minimum height requirements for police officers as violating the Act; women usually could not meet these requirements.[29] On April 4, 2017, the United States Court of Appeals for the Seventh Circuit in Chicago, sitting *en banc*, ruled that Title VII of the Act forbids discrimination on the basis of sexual orientation by a vote of 8–3.[67][68] Over the prior month, panels of both the United States Court of Appeals for the Eleventh Circuit in Atlanta and the United States Court of Appeals for the Second Circuit in New York City had reached the opposite conclusion, finding that Title VII sex discrimination does not include claims based on sexual orientation.[69]

Influence

Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990—which has been called "the most important piece of federal legislation since the Civil Rights Act of 1964"—was influenced both by the structure and substance of the previous Civil Rights Act of 1964. The act was arguably of equal importance, and "draws substantially from the structure of that landmark legislation [Civil Rights Act of 1964]". The Americans with Disabilities Act paralleled its landmark predecessor structurally, drawing upon many of the same titles and statutes. For example, "Title I of the ADA, which bans employment discrimination by private employers on the basis of disability, parallels Title VII of the Act". Similarly, Title III of the Americans with Disabilities Act, "which proscribes discrimination on the basis of disability in public accommodations, tracks Title II of the 1964 Act while expanding upon the list of public accommodations covered." The Americans with Disabilities Act extended "the principle of nondiscrimination to people with disabilities",[70] an idea unsought in the United States before the passage of the Civil Rights Act of 1964. The Act also influenced later civil rights legislation, such as the Voting Rights Act of 1965 and the Civil Rights Act of 1968, aiding not only African Americans, but also women.

See also

- US labor law
- Civil Rights Movement
- Affirmative action in the United States
- Bennett Amendment
- Bourke B. Hickenlooper
- Post-civil rights era African-American history

Other civil rights legislation

- Civil Rights Act of 1866
- Civil Rights Act of 1871
- Civil Rights Act of 1875
- Civil Rights Act of 1957
- Civil Rights Act of 1960
- Civil Rights Act of 1968
- Civil Rights Act of 1991
- Employment Non-Discrimination Act
- Equal Pay Act of 1963
- Equality Act of 2015
- Enforcement Act of 1870
- First Enforcement Act of 1871
- Second Enforcement Act of 1871
- Voting Rights Act of 1965

Other related court cases

- *Katzenbach v. McClung* (1964)
- *Griggs v. Duke Power Co.* (1971)
- *Washington v. Davis* (1976)
- *Wards Cove Packing Co. v. Atonio* (1989)
- *Ricci v. DeStefano* (2009)

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