

CIVIL RIGHTS ACT OF 1991

The Civil Rights Act of 1991 reversed five 1989 Supreme Court rulings which, taken together, significantly limited the scope of the federal civil rights laws. The law also abandoned Title VII's traditional back pay remedy in favor of compensatory and punitive damages and trial by jury. The Civil Rights Act of 1990 was a more radical measure which Congress passed, but President Bush's veto was sustained by one vote in the Senate. The 1991 Act was a compromise on various important subjects, reached between the White House, various influential Senators (notably Senators Dole, Danforth and Kassebaum) and the civil rights and business communities. The compromise imposed monetary caps on the amounts plaintiffs could recover in Title VII litigation, and eschewed any alteration in the level of "business necessity" required to justify employment practices that screen out a disproportionate number of minorities or women.

II. HIGHLIGHTS/SENSITIVE POINTS

- The 1990 Act was vetoed as a "quota" bill, because the availability of large damage recoveries coupled with heightening the employer's burden of proof would force employers to hire minorities and women by the numbers. Senator Dole opposed the 1990 Act, but supported the 1991 compromise legislation which limited the amount of damages available and restored the traditional definition of "business necessity." The 1991 Act provides clearly that nothing in the law shall be interpreted as requiring preferential treatment because of a numerical imbalance in the workplace.
- The bill outlawed the process of "race-norming", whereby test scores were altered on the basis of minority group status. This required substantial changes on in federal employment practices.
- The Act also contained the Glass Ceiling Act of 1991, creating a "glass ceiling" commission designed to study artificial barriers to the promotion of minorities and women in American business, and to award the "Frances Perkins-Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management".
- This is the first time federal civil rights legislation approved of the concept of "disparate impact" discrimination, whereby an employer must justify as a "business necessity" any employment practice that screens out a disproportionate number of women or minorities. Although part of the law since the Supreme Court's 1971 ruling in *Griggs v. Duke Power Co.*, this theory previously had not received official congressional sanction. This concept of "proof by the numbers" has come under recent attack as causing employers to abandon merit hiring in favor of preferences for minorities and women.

III. KEY VOTES

- In 1990, Sen. Dole voted with the majority (including Senators Gramm and Lugar) to extend the Act's coverage to Senate employees and to authorize the Senate Ethics Committee to handle their complaints (1990 Vote No. 144). In 1991, he supported extending all labor laws to Senate employees, along with Senators Gramm and Lugar (1991 Vote No. 234) as well as provisions specifically addressing Senate employee rights under the new law (1991 Vote No. 236). In 1990, however, he voted as part of a minority to allow Senate employees a private right of action in court against Senators or supervisors, (1990 Vote No. 145), a measure opposed by Senators Gramm and Lugar. In 1991 as well, Sen. Dole voted in favor of several proposals designed to allow Senate employees limited judicial review of their complaints (1991 Vote Nos. 235, 237), and again was opposed by Senators Gramm and Lugar.
- In 1990, all three Senators voted against the bill (1990 Vote No. 161), to sustain the veto (1990 Vote No. 304) and in favor of changes proposed by Senator Hatch to allow white males to challenge consent decrees thought to discriminate against them (1990 Vote No. 159).

- In 1991, all three Senators voted in favor of the compromise bill (1991 Vote No. 238); in favor of a resolution condemning sexual harassment (1991 Vote No. 231); in favor of Senator Dole's own amendment which created the Glass Ceiling Commission (1991 Vote No. 232); and in favor of technical amendments designed to preserve the compromise bill (1991 Vote No. 244).
- In 1991, Senator Dole voted with the majority against placing a cap on attorneys' fees recoverable in civil rights cases, in order to preserve the compromise bill (1991 Vote No. 233). He was opposed by Senators Gramm and Lugar.

IV. REBUTTALS

- The Civil Rights Act of 1991 does not require preferential treatment; it specifically provides to the contrary. Nothing in the bill requires quotas.
- The 1990 bill was changed from a quota bill into a strong civil rights measure guaranteeing the rights of all Americans by reversing the impact of a series of erroneous rulings by the Supreme Court.

June 5, 1995

Z. Fasman (202) 508-9545