



**CIVIL RIGHTS ACT OF 1991  
(HR 1)**

The American Association of University Women (AAUW) supports passage of The Civil Rights Act of 1991, legislation that will restore anti-discrimination employment law to its full strength and ensure equal remedies for all victims of employment discrimination.

The Civil Rights Act of 1991 was introduced in response to several 1989 U.S. Supreme Court decisions that blunted the effectiveness of the two most important laws standing between Americans and employers who practice discrimination. Those laws are:

- Section 1981 of chapter 42 of the U.S. Code, the only federal law that allows a victim of racial bias in the workplace to sue for compensatory and punitive damages; and
- Title VII of the 1964 Civil Rights Act, which protects against workplace discrimination on the basis of race, color, religion, gender, and national origin. Title VII does not provide relief in the form of damages, but offers more limited relief, such as back pay or reinstatement in a job.

**The Civil Rights Act of 1991 addresses six specific concerns related to fair employment:**

- Legalized discrimination on the job – In *Patterson v. McLean Credit Union*, the Supreme Court ruled that Section 1981 prohibits discrimination only in the making, not the enforcement of employment contracts. Under that interpretation, blatant on-the-job discrimination may go unremedied under federal law. The Civil Rights Act of 1991 restores Section 1981's protections to the full extent originally intended by Congress by barring discrimination at any point in the employer-employee or other contractual relationship.
- Onerous burden of proof – In a unanimous 1971 decision in *Griggs v. Duke Power Co.*, the Supreme Court ruled that employers bore the burden of establishing that practices that harmed minorities or women were essential to the needs of business. In 1989, the Court held in *Wards Cove Packing Co. v. Atonio* that employees must prove that discriminatory practices have no business justification. The Civil Rights Act of 1991 would restore the earlier standard of proof established in the *Griggs* case.
- Loophole for discrimination – Under basic legal principles, employers have been held liable for discriminatory actions against employees, even if other more legitimate considerations were also mixed into their employment decisions. The Court's 1989 ruling in *Price Waterhouse v. Hopkins* appears to suggest that as long as employers can prove they had a legitimate reason for an action that is also tinged with bias, they may not be held liable for discrimination. The Civil Rights Act of 1991 would make it always illegal for an employer to use race, ethnicity, gender or religion as a motivating factor in employment decisions.
- Open season on anti-discrimination plans – Before the Court's action in *Martin v. Wilks*, fair employment settlements and court-ordered remedies usually represented a permanent resolution of bias cases. The *Wilks* ruling opened such plans to challenges at any time, even years later, by anyone who claims to be affected, spawning endless litigation and reducing the incentive to settle discrimination lawsuits. The Civil Rights Act of 1991 would set fair standards to be met by interested persons who weren't

parties to the original lawsuit, but who want to challenge court-approved plans to remedy discrimination.

- Unfair deadlines for challenges – In *Lorance v. AT&T Technologies, Inc.*, the Supreme Court arbitrarily cut off anti-discriminatory efforts by setting an unreasonable time limit for challenging policies that may be discriminatory. Under *Lorance*, employees must file Title VII claims of discrimination within 300 days of when a policy is adopted by an employer, even if the discriminatory impact is not felt for years. Workers are thus asked to somehow predict the impact of a new policy on their long-term employment status. After the time limit is up, there is no Title VII remedy available to employees who suffer discrimination as a result of the policy. The Civil Rights Act of 1991 would correct the effects of the *Lorance* decision by reestablishing fair rules for determining the time period in which victims of discrimination must file claims.
- Unequal treatment for victims – Apart from the damage inflicted by the Supreme Court, our nation's civil rights laws contain a serious flaw: equal redress for proven discrimination is not available to all groups. Victims of racial discrimination in the making of contracts can sue for compensatory and punitive damages under Section 1981, as well as other forms of relief (such as back pay) under Title VII. In contrast, other victims of discrimination – such as those who suffer sexual harassment on the job – are limited to the Title VII remedy (back pay or reinstatement). The Civil Rights Act of 1991 would amend Title VII to allow victims to sue for compensatory and punitive damages, where employers have intentionally violated the law.

**AAUW believes that passage of the Civil Rights Act of 1991 is critical to restoring and strengthening fair employment protections. Only by addressing all of the areas weakened by the Supreme Court's 1989 decisions, and by correcting pre-existing weaknesses in employment law, will all Americans be assured of equal employment opportunity.**

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