

112TH CONGRESS
2D SESSION

H. R. 4275

To amend the Civil Rights Act of 1991 with respect to the application
of such Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2012

Mr. McDERMOTT introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Civil Rights Act of 1991 with respect to
the application of such Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Wards Cove
5 Workers Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) In 1974, Frank Atonio, a United States cit-
9 izen of Samoan descent, and 9 other minority salm-

1 on workers filed a class-action employment discrimi-
2 nation suit under the Civil Rights Act of 1964
3 against Wards Cove Packing Company that eventu-
4 ally involved 2,000 workers of Filipino, Samoan,
5 Chinese, Japanese, and Alaska native descent.

6 (2) The lawsuit represented workers who
7 charged that minority employees at Wards Cove's
8 seasonal cannery in Ketchikan, Alaska, were dis-
9 criminated based on their race.

10 (3) Nearly all of the company's unskilled, lower-
11 paid cannery-line workers were ethnic minorities.
12 Nearly all of the higher-paid machinists, engineers,
13 and quality-control personnel were Caucasian.

14 (4) The 2 groups lived in separate dormitories
15 and ate in separate mess halls. One machine was
16 dubbed the "Iron Chink," and living quarters for
17 Filipino workers were referred to as the "Flip
18 House."

19 (5) In 1989, the Supreme Court in Wards Cove
20 Packing Co. v. Atonio ruled in the company's favor,
21 5–4, rolling back plaintiff's rights in discrimination
22 cases. The court ruling shifted the burden of proof
23 from employers to employees alleging workplace dis-
24 crimination.

1 (6) Undoing the legal precedent established by
2 that court ruling became a critical impetus for the
3 Civil Rights Act of 1991.

4 (7) Section 402(b) of the Civil Rights Act of
5 1991 contained an exception clause for cases in
6 which a complaint was filed in 1975 and decided in
7 1983: “Notwithstanding any other provision of this
8 Act, nothing in this Act shall apply to any disparate
9 impact case for which a complaint was filed before
10 March 1, 1975, and for which an initial decision was
11 rendered after October 30, 1983.” Only 1 case falls
12 within this exclusion, that being the Wards Cove
13 case.

14 (8) Section 402(b) of such Act effectively
15 blocked the expansion of procedural and substantive
16 rights provided by the Civil Rights Act of 1991 from
17 taking effect to the very people whose lawsuit shed
18 light into discrimination in the workplace.

19 (9) In March 1993, President William Jefferson
20 Clinton announced his support to remove the exemp-
21 tion, stating that “It is contrary to all of our ideas
22 to exclude any American from the protection of our
23 civil-rights laws”.

24 (10) The Civil Rights Act of 1991 is considered
25 to be the most comprehensive civil rights legislation

1 to pass Congress since the Civil Rights Act of 1964.
2 Like the 1964 landmark Act, the 1991 Act prohibits
3 all discrimination in employment based on race, gen-
4 der, color, religious, or ethnic considerations.

5 (11) Yet so long as Section 402(b) of such Act
6 remains in place, the Civil Rights Act of 1991 will
7 always be marred as a law that is deeply discrimina-
8 tory.

9 (12) Section 402(b) of such Act remains a po-
10 tent symbol of injustice among Asian-Americans and
11 civil rights groups.

12 **SEC. 3. AMENDMENTS.**

13 Section 402 of the Civil Rights Act of 1991 (42
14 U.S.C. 1981 note) is amended—

15 (1) in subsection (a) by striking “(a) IN GEN-
16 ERAL.—”; and

17 (2) by striking subsection (b).

18 **SEC. 4. APPLICATION AND CONSTRUCTION.**

19 (a) APPLICATION.—For purposes of determining the
20 application of the amendments made by the Civil Rights
21 Act of 1991, such amendments shall apply to a case that
22 was subject to section 402(b) of the Civil Rights Act of
23 1991 (as in effect on the day before the date of enactment
24 of this Act) in the same manner and to the same extent
25 as such amendments apply to any case brought under title

1 VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et
2 seq.) that was not subject to section 402(b) of the Civil
3 Rights Act of 1991.

4 (b) CONSTRUCTION.—Nothing in this Act shall be
5 construed to alter, or shall be considered to be evidence
6 of, congressional intent regarding the application of such
7 amendments to any case that was not subject to section
8 402(b) of the Civil Rights Act of 1991.

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