

115TH CONGRESS
2D SESSION

H. RES. 902

Expressing the sense of the House of Representatives regarding the obligation of the Office for Civil Rights of the Department of Education and the Civil Rights Division of the Department of Justice to enforce title VI of the Civil Rights Act of 1964 and its implementing regulations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2018

Mr. SCOTT of Virginia (for himself, Mr. NADLER, Ms. PELOSI, Mr. HOYER, Mr. CLYBURN, Ms. JUDY CHU of California, Mr. RICHMOND, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. TAKANO, Mr. DANNY K. DAVIS of Illinois, Mrs. WATSON COLEMAN, Ms. WILSON of Florida, Mr. BUTTERFIELD, Ms. SEWELL of Alabama, Mr. GRIJALVA, and Mr. SOTO) submitted the following resolution; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, 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

RESOLUTION

Expressing the sense of the House of Representatives regarding the obligation of the Office for Civil Rights of the Department of Education and the Civil Rights Division of the Department of Justice to enforce title VI of the Civil Rights Act of 1964 and its implementing regulations, and for other purposes.

Whereas 64 years ago, in the case of *Brown v. Board of Education of Topeka, Kansas*, a unanimous Supreme Court

held that segregated school systems based on race are inherently unequal and violate the 14th amendment to the Constitution;

Whereas the Congress passed the Civil Rights Act of 1964, in part, to address “Massive Resistance”, a collection of State laws passed in response to the Brown decision that aggressively tried to forestall and prevent school integration, and the “Declaration of Constitutional Principles” (known colloquially as the “Southern Manifesto”) signed on March 12, 1956, by Members of the House of Representatives and the Senate that attacked the decision and opposed integrated schools;

Whereas title VI of that law prohibits programs and activities that receive Federal funds from discriminating based on race, color, or national origin;

Whereas former President John F. Kennedy eloquently explained the need for title VI by stating that “[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But, indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.”;

Whereas racial discrimination in educational systems continues, as demonstrated by, among others, a recent appellate court decision holding that a White community’s attempt to secede from a majority Black Alabama school district was racially discriminatory in violation of the Constitution, and a recent Department of Education Of-

Office for Civil Rights resolution of a complaint filed against Durham Public Schools in North Carolina regarding discrimination against Black students and students with disabilities in the application of school discipline requiring Durham Public Schools to take actions to end discriminatory discipline practices;

Whereas recent reports by the Government Accountability Office and other national reports detail racial disparities in the Nation's educational systems as follows:

(1) The percentage of schools that are isolated by poverty and race increased from 9 percent during the 2000–2001 school year to 16 percent during the 2013–2014 school year.

(2) High-poverty schools that are majority Black and Latino are less likely to offer a range of math courses and such lack of access is linked to lower completion rates for higher-level math and science courses in high school, which is a critical component of preparing students for college and careers.

(3) Only 12 percent of students took AP courses at high-poverty schools that are majority Black and Latino and offer such courses, compared to 24 percent of all students in low-poverty schools with lower Black and Latino enrollment.

(4) Students of color on average have lower enrollment in prekindergarten programs, and attend lower quality prekindergarten programs, than their White peers.

(5) Black students are disproportionately excluded from school, beginning as early as preschool, and students who are suspended are more likely to fail a grade, drop out of school, and become involved in the juvenile justice system.

(6) With few exceptions, Black students, boys, and students with disabilities experience disparities in the administration of school discipline, regardless of the type of disciplinary action, poverty level of the school, or type of public school attended.

(7) Research suggests that implicit biases—stereotypes or unconscious associations that people, including teachers and other school staff, hold about other people—are a contributing factor to these discipline disparities because they cause school staff to judge students differently based on their race.

Whereas the Office for Civil Rights of the Department of Education and the Civil Rights Division of the Department of Justice are charged with enforcing title VI and its regulations, which prohibit both intentional discrimination and unintentional discrimination resulting from policies and practices that have a discriminatory effect, or disparate impact, on students based on race, color, or national origin; and

Whereas the Supreme Court’s decision in *Alexander v. Sandoval* overturned four decades of statutory protections against discrimination by removing a private right of action under title VI to challenge disparate impact, leaving Federal agencies as the only entities that can enforce disparate impact regulations, a duty acknowledged by both Democratic and Republican administrations: Now, therefore, be it

- 1 *Resolved*, That the House of Representatives—
- 2 (1) reaffirms its commitment to ensuring that
- 3 the educational systems of the United States prepare

1 all students for college and career regardless of their
2 race, color, or national origin;

3 (2) recognizes that the Office for Civil Rights
4 of the Department of Education and the Civil Rights
5 Division of the Department of Justice have an obli-
6 gation to enforce title VI of the Civil Rights Act of
7 1964 and its implementing regulations;

8 (3) expects the Department of Education and
9 the Department of Justice to enforce title VI of the
10 Civil Rights Act of 1964 and its implementing regu-
11 lations, as they have done in the past under Demo-
12 cratic and Republican administrations, using all
13 legal theories, including different treatment and dis-
14 parate impact, given the growing evidence that racial
15 discrimination in education continues;

16 (4) will hold oversight hearings to ensure that
17 the Department of Education and the Department
18 of Justice enforce title VI of the of the Civil Rights
19 Act of 1964 and its implementing regulations, in-
20 cluding enforcement with respect to unintentional
21 discrimination resulting from policies and practices
22 that have a discriminatory effect, or disparate im-
23 pact, on students based on race, color, or national
24 origin; and

1 (5) commits to considering H.R. 2486, the Eq-
2 uity and Inclusion Enforcement Act, a bill that re-
3 stores the title VI right to individual civil actions in
4 cases involving disparate impact, creates title VI
5 monitors to ensure that every school has at least one
6 employee responsible for investigating any com-
7 plaints of discrimination based on race, color, or na-
8 tional origin, and creates a position of Assistant Sec-
9 retary in the Department of Education to coordinate
10 and promote title VI enforcement of equity and in-
11 clusion in education.

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