

to law, the Financial Plan and Budget for Fiscal Year 1998; to the Committee on Governmental Affairs.

EC-2300. A communication from the Director, U.S. Office of Personnel Management, transmitting, a draft of proposed legislation relative to judicial review to protect the merit system; to the Committee on Governmental Affairs.

EC-2301. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12-79 adopted by the Council on May 6, 1997; to the Committee on Governmental Affairs.

EC-2302. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12-80 adopted by the Council on May 15, 1997; to the Committee on Governmental Affairs.

EC-2303. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report under the Inspector General's Act for the period October 1, 1996 through March 31, 1997; to the Committee on Governmental Affairs.

EC-2304. A communication from the Federal Co-Chairman, Appalachian Regional Commission, transmitting, pursuant to law, a report under the Inspector General's Act for the period October 1, 1996 through March 31, 1997; to the Committee on Governmental Affairs.

EC-2305. A communication from the Chairman and General Counsel, U.S. Government National Labor Relations Board, transmitting, pursuant to law, a report for the period October 1, 1996 through March 31, 1997; to the Committee on Governmental Affairs.

EC-2306. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law a report relative to the period ending March 31, 1997; to the Committee on Governmental Affairs.

EC-2307. A communication from the Secretary of Energy, transmitting, pursuant to law, sixteen reports relative to the period of October 1, 1996 through March 31, 1997; to the Committee on Governmental Affairs.

EC-2308. A communication from the Public Printer, U.S. Government Printing Office, transmitting, pursuant to law, a report relative to the period from October 1, 1996 through March 31, 1997; to the Committee on Governmental Affairs.

EC-2309. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, three rules including a rule entitled "Correction of Implementation Plans" (FRL5847-8, 5848-4, 5844-3) received on June 23, 1997; to the Committee on Environment and Public Works.

EC-2310. A communication from the Regulatory Policy Official, National Archives and Records Administration, a report of a rule relative to Reproduction Fee Schedule (RIN3095-AA71), received on June 17, 1997; to the Committee on Governmental Relations.

EC-2311. A communication from the Regulatory Policy Official, National Archives and Records Administration, transmitting, pursuant to law, a report of a rule entitled "Domestic Distribution of United States Information Agency Materials in the Custody of the National Archives" (RIN3095-AA55), received on June 17, 1997; to the Committee on Governmental Affairs.

EC-2312. A communication from the Chairman, National Endowment for the Arts, transmitting, pursuant to law, a report relative to the period of October 1, 1996 to March 31, 1997; to the Committee on Governmental Affairs.

EC-2313. A communication from the Inspector General, U.S. Office of Personnel Management, transmitting, pursuant to law,

a report relative to the period October 1, 1996 through March 31, 1997; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MCCONNELL (for himself, Mr. HATCH, Mr. KYL, and Mr. SESSIONS):

S. 950. A bill to provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in Federal actions, and for other purposes; read the first time.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL (for himself, Mr. HATCH, Mr. KYL and Mr. SESSIONS):

S. 950. A bill to provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in Federal actions, and for other purposes; read the first time.

THE CIVIL RIGHTS ACT OF 1997

Mr. MCCONNELL. Mr. President, I am pleased today to announce the introduction of the Civil Rights Act of 1997. President Clinton has asked for a national dialog on the issue of race in America. I applaud his efforts and welcome this opportunity.

Any discussion of race must begin with the basic principle that all are created equal. In fact, the Constitution, our Nation's most cherished document, mandates that all individuals receive the equal protection of the laws.

No one in our history understood the principle of equality better than the Reverend Martin Luther King, Jr. Reverend King spoke eloquently about a time when people would be judged by the "content of their character" and not the "color of their skin." He, like so many of us do today, prayed for America to become a colorblind society.

This fundamental principle of equality is the foundation for the Civil Rights Act of 1997, which declares that: the Federal Government shall not discriminate against or grant a preference to any individual or group based on race, color, national origin, or sex.

The Federal Government must lead by example. We must promote a nation where our citizens are seen as individuals and not as mere members of a group. We must declare that the immutable traits of race and sex will not be relevant in Federal contracting and employment. Simply put, the Federal Government should not decide who gets the contract or who gets the job based on race and gender.

NO WINNERS IN A WORLD OF GOVERNMENT PREFERENCES

Throughout our nation's long history, we have established that certain immutable traits should be irrelevant

in life. Yet, in direct defiance of this principle, the Federal Government has engineered policies and programs to award valuable Federal dollars, jobs, and contracts to individuals based on the immutable traits of race and gender. In fact, last summer, the Congressional Research Service found that the Federal Government runs approximately 160 race and gender preference programs.

These preference practices and programs serve to divide, rather than unite. There are no winners in a world of government-sponsored set-asides and quotas.

First, Government preferences harm the very ones it seeks to help. Minorities who receive affirmative action preferences are often stigmatized and stereotyped. And, the stigma doesn't stop with those who receive the preferences. The cloud also unfairly hovers over the heads of all the other minorities whose accomplishments are not based on their race or gender, but purely on merit. All of this serves to reinforce group stereotypes at a time when we so desperately need to move beyond division.

Second, every time the Government grants a preference to one person based on race or gender, it discriminates against another based on race and gender. Discrimination by any other name is still discrimination. And, it still strikes at the very heart and soul of the person being discriminated against.

Let me put a face on this discrimination, as reported recently in the Wall Street Journal:

Michelle Doe is a 16-year-old girl and a straight-A student from a humble background in Corpus Christi, TX. She decided that she wanted to go to summer camp. The camp was called Camp Planet Earth, and was funded by the Federal Government's National Science Foundation.

Michelle applied and became a finalist. Her hopes were dashed, however, during the interview stage where it became clear that she wasn't eligible for the camp. Why wasn't she eligible? Was it her grades? No, she was a straight-A student. Was it her application form? Did she forget to answer a question on her application? No.

Michelle was denied the opportunity to go summer camp because of her race. You see, "the program was for 'minorities' only," and Michelle was not a minority.

In the words of the Wall Street Journal, "[w]hen Michelle went looking for some productive way to spend her summer, she soon discovered that the government divides people according to skin color."

Third, race and gender preferences create a downward spiral of division and animosity in our national melting pot. Government preferences put individuals into little group boxes and then pit them against each other. African-Americans against Hispanic-Americans against Asian-Americans against Caucasian-Americans.

Some have even gone so far to calculate the amount of money that one race owes to another. For example—and I promise that I'm not making this up—Richard America, a lecturer at the

Georgetown University School of Business, has written a book that he calls, "Paying the Social Debt: What White America Owes Black America." According to the Washington Post, Mr. America has estimated that "White America Owes Black America" five to ten trillion dollars.

With all due respect to Mr. America, I cannot imagine a mentality that is more un-American. Our Nation cannot survive and thrive with this type of ledger sheet mentality. Justice Scalia summed up this point very poignantly in *Adarand*, and I quote:

Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor race. * * * In the eyes of the government, we are just one race here. It is American.

COURTS AND THE AMERICAN PEOPLE UNDERSTAND THE DANGER AND DIVISIVENESS OF RACIAL PREFERENCES

The courts and the American people understand the danger and divisiveness of racial preferences.

First and foremost, the Supreme Court has ruled that racial preferences deserve the most exacting and strict scrutiny. In the landmark case of *Adarand*, the Court ruled that racial preferences will be allowed to stand only where they meet a compelling government interest that is narrowly tailored to redress specific past discrimination.

Just this month, the district court in *Adarand* ruled that the Federal highway construction program at issue in that case did not meet the Supreme Court's strict scrutiny standard and, thus, violated of the equal protection clause.

Second, lower courts, including the third, fourth, and fifth circuits, have recently struck down affirmative action programs. Additionally, a panel of the ninth circuit has upheld the decision of the California voters to ban preferences in California State government.

Last, and most importantly, the American people understand that preferences forever defer the dream of a colorblind society. Public opinion polls show that large majorities of Americans oppose racial preferences, including a large percentage of minorities. For example, a recent Washington Post-ABC News survey showed that not even a majority of African-Americans favor preferences.

A recent Zogby poll asked Americans about their view of this legislation. The question asked "Would you support a federal law to ban discrimination and preferential treatment in the government?" An overwhelming 83 percent of Americans stated that they would support such a law, including 79 percent of African-Americans.

The American people and the courts understand this issue and I am hopeful that the Congress and the President will understand this issue as well as they do.

CONCLUSION

The President said over the weekend that he wants to "break down the bar-

riers in our lives, our minds, and our hearts." The President must realize that the Federal Government has to take the lead in removing these barriers. He must realize what the American people know—that is—race and gender preferences serve only to raise barriers and to widen the breach.

I firmly believe that, in a matter of years, we will look back upon our Government's current race and gender preferences and shake our heads and wonder how we could have ever allowed such discriminatory and divisive practices to occur for so long. The Civil Rights Act of 1997 is the next step in our Nation's struggle to overcome discrimination and to achieve unity as a nation of individual Americans, not groups.

We must provide genuine opportunities to all disadvantaged individuals, regardless of race or gender. These opportunities can become a reality through a comprehensive empowerment strategy that includes: strict enforcement of the laws against discrimination, court-ordered remedial action for victims of specific acts of discrimination, and targeted outreach and recruiting efforts to encourage all qualified minorities to apply for Federal employment and contracts. We must also: improve our education system through competition and school choice, provide economic opportunities through reduced regulatory and tax burdens, move more and more persons from the welfare roll to the payroll, and finally, make the streets safer for every American child.

I would like to close today by quoting Ward Connerly, who so valiantly led the fight in California to end discriminatory preferences. In his recent letter to the President, Mr. Connerly wrote:

For the American experiment with democracy to succeed and for every American to have an equal chance to compete to fulfill our dreams, it will be necessary for the factory worker, the bus driver, the police officer, the fire official, the secretary, and all other Americans to embrace the principle of equality and to believe fervently in the proposition that "race has no place in American life or law."

I also want to say a special word of gratitude to Senators HATCH, KYL, and SESSIONS for their co-sponsorship of this civil rights legislation. Their leadership and integrity will be invaluable in our fight for all Americans to be treated as equal in the eyes of the law.

I ask unanimous consent that the text of the bill and a summary of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1997".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the fifth and fourteenth amendments to the Constitution guarantee that all individuals are entitled to equal protection of the laws, regardless of race, color, national origin, or sex;

(2) the Supreme Court, in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), recently affirmed that this guarantee of equality applies to Federal actions;

(3) the Federal Government currently conducts over 150 programs, including contracting programs, that grant preferences based on race, color, national origin, or sex; and

(4) the Federal Government also grants preferences in employment based on race, color, national origin, or sex.

(b) PURPOSE.—The purpose of this Act is to provide for equal protection of the laws and to prohibit discrimination and preferential treatment in the Federal Government on the basis of race, color, national origin, or sex.

SEC. 3. PROHIBITION AGAINST DISCRIMINATION AND PREFERENTIAL TREATMENT.

Notwithstanding any other provision of law, neither the Federal Government nor any officer, employee, or agent of the Federal Government shall—

(1) intentionally discriminate against, or grant a preference to, any person or group based in whole or in part on race, color, national origin, or sex, in connection with—

(A) a Federal contract or subcontract;

(B) Federal employment; or

(C) any other federally conducted program or activity; or

(2) require or encourage a Federal contractor or subcontractor, or the recipient of a license or financial assistance, to discriminate intentionally against, or grant a preference to, any person or group based in whole or in part on race, color, national origin, or sex, in connection with any Federal contract or subcontract or Federal license or financial assistance.

SEC. 4. AFFIRMATIVE ACTION PERMITTED.

This Act does not prohibit or limit any effort by the Federal Government or any officer, employee, or agent of the Federal Government—

(1) to encourage businesses owned by women and minorities to bid for Federal contracts or subcontracts, to recruit qualified women and minorities into an applicant pool for Federal employment, or to encourage participation by qualified women and minorities in any other federally conducted program or activity, if such recruitment or encouragement does not involve granting a preference, based in whole or in part on race, color, national origin, or sex, in selecting any person for the relevant employment, contract or subcontract, benefit, opportunity, or program; or

(2) to require or encourage any Federal contractor, subcontractor, or recipient of a Federal license or Federal financial assistance to recruit qualified women and minorities into an applicant pool for employment, or to encourage businesses owned by women and minorities to bid for Federal contracts or subcontracts, if such requirement or encouragement does not involve granting a preference, based in whole or in part on race, color, national origin, or sex, in selecting any individual for the relevant employment, contract or subcontract, benefit, opportunity, or program.

SEC. 5. CONSTRUCTION.

(a) HISTORICALLY BLACK COLLEGES AND UNIVERSITIES.—Nothing in this Act shall be construed to prohibit or limit any act that is designed to benefit an institution that is an historically Black college or university on the basis that the institution is an historically Black college or university.

(b) INDIAN TRIBES.—This Act does not prohibit any action taken—

(1) pursuant to a law enacted under the constitutional powers of Congress relating to the Indian tribes; or

(2) under a treaty between an Indian tribe and the United States.

(c) CERTAIN SEX-BASED CLASSIFICATIONS.—This Act does not prohibit or limit any classification based on sex if—

(1) the classification is applied with respect to employment and the classification would be exempt from the prohibitions of title VII of the Civil Rights Act of 1964 by reason of section 703(e)(1) of such Act (42 U.S.C. 2000e-2(e)(1)); or

(2) the classification is applied with respect to a member of the Armed Forces pursuant to statute, direction of the President or Secretary of Defense, or Department of Defense policy.

(d) IMMIGRATION AND NATIONALITY LAWS.—This Act does not affect any law governing immigration or nationality, or the administration of any such law.

SEC. 6. COMPLIANCE REVIEW OF POLICIES AND REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the head of each department or agency of the Federal Government, in consultation with the Attorney General, shall review all existing policies and regulations that such department or agency head is charged with administering, modify such policies and regulations to conform to the requirements of this Act, and report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the results of the review and any modifications to the policies and regulations.

SEC. 7. REMEDIES.

(a) IN GENERAL.—Any person aggrieved by a violation of section 3 may, in a civil action, obtain appropriate relief (which may include back pay). A prevailing plaintiff in a civil action under this section shall be awarded a reasonable attorney's fee as part of the costs.

(b) CONSTRUCTION.—This section does not affect any remedy available under any other law.

SEC. 8. EFFECT ON PENDING MATTERS.

(a) PENDING CASES.—This Act does not affect any case pending on the date of enactment of this Act.

(b) PENDING CONTRACTS AND SUBCONTRACTS.—This Act does not affect any contract or subcontract in effect on the date of enactment of this Act, including any option exercised under such contract or subcontract before or after such date of enactment.

SEC. 9. DEFINITIONS.

In this Act, the following definitions apply:

(1) FEDERAL GOVERNMENT.—The term "Federal Government" means executive and legislative branches of the Government of the United States.

(2) PREFERENCE.—The term "preference" means an advantage of any kind, and includes a quota, set-aside, numerical goal, timetable, or other numerical objective.

(3) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term "historically Black college or university" means a part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

THE CIVIL RIGHTS ACT OF 1997—SUMMARY

The Civil Rights Act of 1997 is designed to bring the Federal Government into compliance with the Equal Protection Clause of the United States Constitution, and to ensure that the federal government treats all people equally, without regard to their race or sex.

The bill contains two main operative provisions:

(1). Prohibits the Federal Government from discriminating against, or granting

preferences to, individuals based in whole or in part on race, color, national origin, or sex, in connection with federal contracts, employment, or other programs or activities.

(2). Prohibits the Federal Government from requiring or encouraging federal contractors, subcontractors, licensees, or recipients of federal assistance, to discriminate, or grant preferences to individuals on the basis of their race, color, national origin, or sex.

The Act defines "preference" as "an advantage of any kind" including quotas, set-asides, goals, timetables, and other numerical objectives.

The bill expressly protects the Federal Government's ability to engage in outreach, recruiting, and marketing efforts—the original form of affirmative action.

The bill maintains the full range of judicial remedies currently available to proven individual victims of race or sex discrimination.

The bill contains exemptions for historically Black colleges and universities, Indian tribes, and for sex-based bona fide occupational qualifications that are already exempt under Title VII of the Civil Rights Act of 1964 or applied in the Armed Forces.

The Act requires the heads of each department or agency to modify all existing policies and regulations to comply with the Act and report to the Senate and House Judiciary Committees the results of the modification.

The Act is limited to Federal Government actions and would not affect voluntary programs adopted by State and local governments, or private sector entities.

Mr. HATCH. Mr. President, last year, I stated on the Senate floor that "our country stands at a crossroads on the path it travels in relations among the different races and ethnic groups that make up the American people. Down one path is the way of mutual understanding and goodwill; the way of equal opportunity for individuals; the way of seriously and persistently addressing our various social problems as America's problems. * * * Down the other path is the way of mutual suspicion, fear, ill will, and indifference; the way of group rights and group preferences."

I am proud to stand today with my colleagues in the House and the Senate, and others who have worked so hard for the cause of equal opportunity, to announce the introduction of the Civil Rights Act of 1997. The act represents our best efforts to recommit the Nation to the ideal of equal opportunity for every American—to emphasize that we must resist the temptation to define the Nation's problems in narrow racial terms, and rather must roll up our sleeves and begin the hard work of dealing with our problems as Americans, and as fellow human beings.

Of course, our critics will imply that those of us who today reject divisive racial preferences and distinctions do so because we underestimate the social, economic, and discriminatory obstacles some Americans face. President Clinton, for example, told his audience in San Diego last week that "[t]he vast majority of [Californians who supported that state's Proposition 209] did it with a conviction that discrimination and isolation are no longer barriers to achievement." But that is just plain wrong.

To the contrary, last week in the Senate Judiciary Committee we heard from a panel of ordinary citizens who movingly told us of their experiences with discrimination in America. Among them was a Chinese-American mother from San Francisco, Charlene Loen, who told us how her young son Patrick was denied admission to an elite public magnet school, Lowell High School, because he is Chinese. The school district's efforts to ensure diversity among its students led it to employ a system of racial preference that had the effect of capping Chinese enrollment in many of its schools, forcing Chinese children to score much higher on entrance exams than children of other races. At virtually every public school Ms. Loen approached, she was first asked whether Patrick was Chinese, and when learning that he was, would inform Ms. Loen that Patrick need not apply. The Chinese quota was in effect full. Ladies and gentlemen, that is not the promise of America.

There should be no question that discrimination indeed continues to deny opportunities to too many Americans. At the Judiciary Committee's recent hearing we heard from black Americans, white Americans, Asian-Americans, and even a victim of an outrageous hate crime. But the question that we all must answer is whether one American's racial suffering should be valued above another's. It is a question that will only become more complicated and more urgent as our population grows ever more diverse.

As we in the Judiciary Committee now know, when we prefer individuals of one race, we must by definition discriminate against individuals of another. But America's great social divide can never be crossed until we begin the work of building a bridge of racial reconciliation. By saying today, with the introduction of this act, that the Federal Government stands for the principle that racial discrimination in all its forms is wrong, we hope to take a small step forward on the path to healing the Nation's racial wounds by recognizing that every American is equal before the law.

ADDITIONAL COSPONSORS

S. 278

At the request of Mr. GRAMM, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 278, a bill to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in Federal, State, and local elections.

S. 348

At the request of Mr. MCCONNELL, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 348, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of