

Civil Rights and Liberties

BACKGROUND

The basic function of civil rights legislation in the United States has been to protect minorities from the tyranny of discriminatory treatment by the majority. In general, the federal laws set minimum standards; states are free to set higher but not lower standards of inclusion.

GLOSSARY

Affirmative action

A policy or program that seeks to ensure that all people have equal opportunity, as in education and employment.

Civil rights

The nonpolitical rights of a citizen, especially the rights of personal liberty guaranteed to U.S. citizens by the 13th and 14th amendments to the Constitution and by acts of Congress.

Civil union

Legal agreement granting recognition and relationship rights that mirror many of those granted through marriage.

Domestic partnership

A documented living arrangement in which same-sex and unmarried opposite-sex partners register as a couple in order to obtain such municipal or employer benefits as health insurance, library privileges, or housing eligibility.

Hate crime

A criminal act provoked by the actual or perceived race, color, national origin, ethnicity, gender, disability, or sexual orientation of the victim.

Racial profiling

Generally, the practice of using race or ethnicity as an indicator of criminality.

The civil rights movement—the most publicized and political civil rights struggle of longest standing in the United States—concerned the status of the nation’s black minority and resulted in federal legislation that improved the status of ethnic and religious minorities, women, and immigrants. The first federal civil rights law since Reconstruction was enacted in 1957 and established the Commission on Civil Rights in the U.S. Department of Justice. A 1964 federal statute—the Civil Rights Act—specifically outlaws race-based discrimination in public accommodations and by employers, unions, and voting registrars. It also applies to gender-based discrimination against women (women had won the right to vote in this country only 44 years earlier). The federal Indian Civil Rights Act of 1968 gives Native Americans access to the courts for restoration of rights to their ancestral lands and reparation for lost land and natural resources.

The Michigan Civil Rights Commission was formed in 1963, when guarantees against discrimination were added to the Michigan Constitution. Article V, section 29, mandates that the commission investigate discrimination against any person because of religion, race, color, or national origin, and “secure the equal protection of such civil rights without such discrimination.” This is unique in the nation: Only in Michigan does a state agency have a *constitutional* (as opposed to legislative or regulatory) mandate to eliminate unlawful discrimination in nearly all aspects of public life.

The Michigan Department of Civil Rights (MDCR) was established by legislation in 1965 to provide the staff needed to implement the policies of the Civil Rights Commission. The department is authorized under the Elliott-Larsen Civil Rights Act (Public Act 453 of 1976, as amended) and the Persons with Disabilities Civil Rights Act (P.A. 220 of 1976, as amended) to receive and investigate complaints based on unlawful consideration of religion, race, color, national origin, sex, age, marital status, physical or mental disability, arrest record, or retaliation in the areas of employment, education, housing, public accommodation, or public service (government). In addition, complaints may be based on unlawful consideration of height, weight, and arrest record in employment matters as well as unlawful consideration of family status in housing matters.

Affirmative Action

The phrase “affirmative action” first was used in President Johnson’s 1965 Executive Order 11246, requiring federal contractors to “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.” An important Constitutional issue causing fairly continuous public controversy has been whether and to what degree public and private institutions may use affirmative action to help members of minority groups obtain jobs or schooling.

Marriage/Union/Registration

Marriage

In the United States, marriage is a restricted institution in which only one man and one woman may be joined. There are 1,049 federal statutes governing benefits, rights, and privileges for such legally married couples, and every state has up to 350 similar laws. Currently, none of these laws provides protection for same-sex couples in domestic partnerships.

Same-sex marriage is not legal anywhere in the country, and about 35 states, including Michigan, have enacted defense-of-marriage acts (DOMAs) that ban it; six have similar legislation pending. The federal DOMA (1996) holds that marriage benefits are exclusively reserved for opposite-sex couples and permits states to ignore same-sex marriages sanctioned elsewhere.

The only place where gay and lesbian couples may marry and adopt with the full privileges enjoyed by heterosexual married couples is The Netherlands. Same-sex marriages were legal briefly, during 1996, in Hawaii, but Hawaiians passed a constitutional amendment prohibiting them.

Civil Union

DOMAs do not preclude a state from enacting laws covering a different type of relationship—typically called a civil union—for same-sex couples. A civil union formalizes a same-sex relationship and may grant to same-sex couples some or all of the state benefits previously granted only to married couples, but the more than 1,000 federal rights and privileges are withheld from civil-union couples. No current civil-union plan offers the broad responsibilities, benefits, and legal and social protections that marriage does. In Vermont, legislation established a civil-union system in 2000 that offers to the partners the rights, obligations, and benefits that the state gives to heterosexual married couples. California is considering such legislation.

Domestic Partnership

Another means by which gay, lesbian, or unmarried heterosexual couples may obtain some of the legal benefits offered by marriage is through domestic-partnership registration and affidavits. More than 100 municipalities nationwide, including Ann Arbor and East Lansing, offer such registration, allowing opposite- and same-sex couples to go on public record as a non-married couple. The primary benefit of registering is to document the relationship so as to establish eligibility for partner benefits from an employer or municipality. Some employers (e.g., Ford Motor Company, DaimlerChrysler, General Motors, IBM, Walt Disney, Northwest Airlines) offer domestic-partner benefits to their workers if they sign an affidavit that defines an economic relationship. Michigan State Univer-

sity, the University of Michigan, and Wayne State University also offer benefits to employees' domestic partners.

Hate Crimes

Congress defines a hate crime as one in which the defendant intentionally selects a victim because of his/her actual or perceived race, color, national origin, ethnicity, gender, disability, or sexual orientation. The federal Hate Crime Statistics Act of 1990 asks states and municipalities to voluntarily report all such crimes to the FBI. The federal Hate Crimes Sentencing Act of 1994 provides for tougher sentencing in federal courts when it is proved that the offense was a hate crime. In Michigan, the Ethnic Intimidation Act of 1988 added to the state penal code the crimes of physical contact, destruction of personal property, or the threat of either with malicious intent based on the victim's race, color, religion, gender, or national origin.

Racial Profiling

Although "racial profiling" is a relatively new term and does not yet have a single, universally accepted definition, it generally refers to the practice of using race or ethnicity as an indicator of criminality. The most familiar instance is what some have dubbed "driving while black," or DWB. Such profiling occurs when law-enforcement officers stop minority motorists for minor traffic violations, but the stop really is a pretext to search for drugs or other contraband in the vehicle or to harass the occupant(s). The most common context in which racial profiling occurs is traffic stops, but there are others, including

- airport checks and searches of people/luggage by airport security or drug enforcement officials;
- questioning and searching pedestrians in public places (usually in urban areas);
- immigration-status checks of people crossing national borders; and
- ID checks of bar or club patrons.

Sexual Harassment

Sexual harassment is a form of discrimination prohibited under federal law: Title VII of the federal Civil Rights Act of 1964 and the Violence Against Women Act of 1994. Court cases have sorted sexual harassment into two basic categories.

- *Quid pro quo* harassment occurs when the perpetrator makes an aspect of employment (hiring, promotion, retention, and so on) contingent on the victim's providing sexual favors.
- A *hostile work environment* is deemed to be the case when, as defined in a unanimous 1993 U.S. Supreme

Court opinion, there is a certain frequency and severity of discriminatory conduct, it is physically threatening (not a “mere offensive utterance”), and it unreasonably interferes with an employee’s work performance.

Sexual-Orientation Discrimination

Starting in the 1960s, Congress passed a number of laws designed to eradicate discrimination and prohibit employers from basing employment decisions on stereotypes or assumptions about the ability, traits, or performance of individuals with a disability or of a certain sex, race, age, religion, or ethnic group, but no federal law prohibits discrimination on the basis of sexual orientation. Although Michigan is not among them, 21 states and the District of Columbia prohibit public-employment discrimination based on sexual orientation; 12 states and the District extend this protection to the private sector. In Michigan, employers are not prohibited from firing or refusing to hire or promote an employee based on a perception of the employee’s sexual orientation.

DISCUSSION

Affirmative Action

Affirmative action was meant to redress a long history of racial and gender discrimination in the United States. In the past decade, however, the concept seems to incite, rather than ease, the nation’s internal divisions. An increasingly assertive opposition movement argues that the battle to guarantee equal rights for all citizens has been fought and won—and that favoring members of one group over another goes against the American grain. Defenders of affirmative action say that the playing field is not yet level—that granting modest advantages to minorities and women is more than fair given the historic discrimination that benefited whites and men.

Currently, a particularly contentious issue is whether considering race in higher-education admission decisions may be used as a means to achieve student-body diversity. Race-based admissions policies, supported by the U.S. Supreme Court’s landmark 1978 decision in *University of California v. Bakke*, have been under legal attack for a decade. Most recently, two lawsuits have been brought against the University of Michigan (UM) for using race as a factor in undergraduate and law school admission. In December 2000, the UM’s undergraduate admissions policy was upheld, but four months later its law school admissions policy—which is only slightly different—was struck down. The two cases, consolidated for appeal, were heard in December 2001 by the 6th U.S. Circuit Court of Appeals, which had not ruled at this writing. Regardless of the outcome, the case is expected to go to the Supreme Court.

Anti-Terrorism Efforts

Immediately following the September 11, 2001, terrorist attacks, anti-terrorism legislation was introduced at the federal and state levels. The federal USA PATRIOT Act of 2001 was signed into law on October 26, 2001, and

- allows investigators to use roving wiretaps (following a suspect rather than tapping just a particular phone);
- gives the government the power to detain immigrants for up to seven days (increased from two days) if they are suspected of being involved with terrorists;
- triples the number of immigration and border-patrol agents along the 3,000-mile border with Canada;
- provides new tools to fight money laundering by terrorists;
- allows government agencies to more easily share information about suspects and track their communications; and
- increases penalties for terrorism-related crimes.

On the three-month anniversary of the terrorist attacks, the Michigan Legislature introduced the Michigan Anti-Terrorism Act, a package of legislation to fight terrorism, improve public safety, and strengthen the state’s response to emergencies. The more controversial measures would increase law enforcement’s authority to investigate—including use of wiretaps—terrorist threats. Most of the bills have been enacted (among the exceptions are the wire-tap measures).

Civil rights organizations such as the American Civil Liberties Union (ACLU) of Michigan and the NAACP strongly opposed the USA PATRIOT Act because they believe it infringes on civil liberties. These organizations believe that the act undermines due process and point out that it gives law enforcement extraordinary new powers, including telephone and Internet surveillance, unchecked by meaningful judicial review. The organizations also have expressed serious reservations about the Michigan anti-terrorism measures, arguing that they raise questions about the Constitutional guarantees of the Sixth Amendment right to counsel for criminal suspects and the Fourth Amendment right to be free from unreasonable search and seizure. Editorials in the *Detroit Free Press* and *Detroit News* have commented that some of the state’s efforts to address terrorism may be unnecessary due to the federal action that has been taken.

Sexual-Orientation Discrimination

The Employment Non-Discrimination Act (ENDA), which had been introduced in Congress in various forms in the four previous sessions, again was introduced in 2001.

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It would extend current discrimination protections to sexual orientation. Similar legislation in Michigan (HB 4661) would amend the Elliott-Larsen Civil Rights Act to define and include sexual orientation (perceived or actual orientation toward heterosexuality, homosexuality, or bisexuality) as a protected category.

Opponents, such as the Family Research Council, believe that such legislation would give homosexual and bisexuals “special rights,” equate their orientation with heterosexuality as being “normal,” criminalize free speech, threaten religious freedom, and encourage lawsuits that could bankrupt small businesses. Supporters, such as the Human Rights Campaign and the ACLU, contend that affording to all citizens basic employment protection from discrimination based on irrational prejudice is not a special right. They point to a 1999 Gallup study that reports that 83 percent of Americans believe that gay people should have equal job opportunities and that more than half of the Fortune 500 companies have passed nondiscrimination policies that include sexual orientation.

Hate Crimes

When the Michigan Ethnic Intimidation Act (EIA) of 1988 was introduced, it included a prohibition on hate crimes motivated by sexual orientation, but the language was removed before passage. In 1994 the governor directed the Civil Rights Commission and the Department of Civil Rights to establish the Bias Crime Response Task Force to study the issue. One of the group’s recommendations was to amend the EIA to protect against crimes committed because of the victim’s actual or perceived sexual orientation and change the act’s name to the Bias Crime Act. HB 4662 would implement the task force’s recommendation and also classify a hate crime as a felony, thereby adding up to two years of prison time or up to a \$5,000 fine to a sentence. The bill is pending; if passed, Michigan would become the 26th state to adopt anti-gay hate-crime legislation.

Gay and lesbian rights entities, such as the Triangle Foundation and the Human Rights Campaign, believe HB 4662 is necessary because hate violence against gays and lesbians is increasing in Michigan, up 36 percent in 2000. They cite numerous studies conducted by the U.S. Department of Justice and others that show that gays and lesbians are the most frequent victims of bias-motivated criminal activity. Opponents say a crime is a crime and should be prosecuted without regard to—or special consideration for—the type of motivation or victim.

Racial Profiling

There is serious concern about racial profiling. In 1999 the Michigan Civil Rights Commission adopted a policy position encouraging the collection of racial data for the

purpose of determining problem areas with respect to racial profiling.

Sensitivity to the issue has prompted many law-enforcement agencies and jurisdictions to take steps to address it. Since 2000, the Michigan State Police and some local police departments (including Washtenaw County, Ann Arbor, and Grand Rapids) have been voluntarily recording gender and race at primary traffic stops. Michigan State University began collecting racial data on all campus police stops in January 2001 as part of a 12-point plan to combat the racial profiling issue before it became a problem for the university; other steps include installing video cameras in squad cars, police-student partnerships that give students a glimpse of police life and vice versa, sensitivity training for officers, pamphlets informing students of their rights when stopped by officers, and public forums on the subject.

Anti-racial profiling legislation at the state and federal level is supported by many individual-rights supporters and by such organizations as the ACLU and NAACP. In Michigan, civil rights advocates believe that the practice is widespread, citing a statewide poll conducted in 2000 by EPIC/MRA for the Michigan State Police, which found that African-Americans are more likely than Caucasian drivers to be stopped and ticketed.

Several bills addressing racial profiling have been introduced in Congress in the last several years, but none has been enacted. In terms of pending state action, HB 4927 would create the Michigan Racial Profiling and Report Statistics Act, to define and prohibit racial profiling and provide for monitoring and investigating police agencies’ stop-and-search patterns. The bill also would require police to report the race of drivers in every traffic stop for at least three years and require local police departments to provide racial-sensitivity training as well as retraining for officers guilty of racial profiling. Several law-enforcement organizations denounce racial profiling, but they do not support mandated data collection on motorist stops; they express concern about how the data are interpreted and by whom, pointing out that there is no proven, empirical way to analyze the data and, therefore, misinterpretation may result.

Many organizations representing law-enforcement officers (e.g., the National Association of Police Organizations, International Association of Chiefs of Police, Michigan Association of Chiefs of Police) oppose such actions as pulling over an automobile, searching personal property, or detaining an individual solely on the basis of his/her race, ethnicity, gender, or age. Nevertheless, many in and outside the law-enforcement community believe that cer-

tain racial profiling can be lawfully used as a statistical device in preventing crimes and apprehending criminals. They cite court opinions finding, for example, that it is legitimate to consider race or ethnic background as part of a profile in airport-security measures. Criminal justice experts say that law-enforcement officers always have and always will rely in part on profiles to identify criminals, so rather than deny that racial (and other) profiling exists, it would be more constructive to accept its usefulness and inevitability and codify when and how it may be used.

See also Crime and Corrections; Emergency Preparedness and Response; Privacy.

FOR ADDITIONAL INFORMATION

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