EDITORIALS

John J. Oliver, Jr.
Chairman of the Board
Frances M. Draper
President

Civil Rights Act

There has been little publicity on the pending legislation in the U.S. House of Representatives of HR 4000, the Civil Rights Act of 1990. The companion measure in the U.S. Senate, S 2104 was approved by the Human Resources Committee on April 4.

Known as the Kennedy-Hawkins bill, it would reverse or modify six 1989 Supreme Court decisions that sharply narrowed job discrimination laws, and would broaden the most important of those laws, Title VII of the 1964 Civil Rights Act.

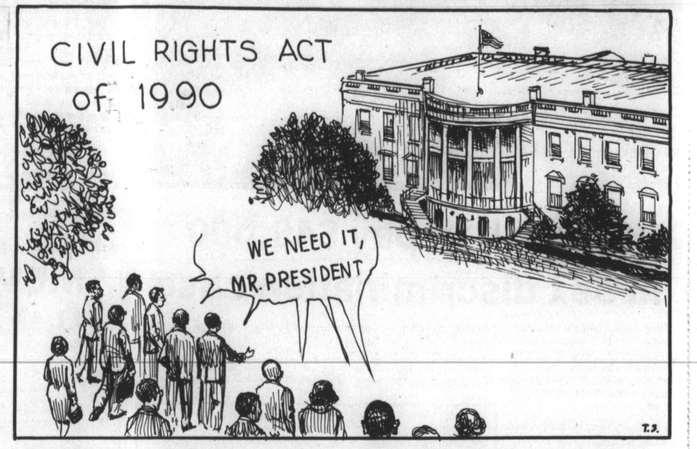
Last June, the Supreme Court in a 5-4 decision, said that Section 1981 could be used to pursue damages only for discrimination in hiring, not for other job - related bias. This is just one of the measures the Kennedy - Hawkins bill is designed to address.

The Administration, via Attorney General Dick Thornburgh has attacked major portions of the S. 2104/H.R. 400 measure. In a letter, 16-pages long, he states the Administration's opposition to the legislation.

The Leadership Conference on Civil Rights, in its detailed legal analysis of the points made in the Administration's letter, says that the Attorney General's letter fails to substantiate its criticism of the measure.

The time has come for the constituency to stand up and be counted — the time has come for a massive barrage of letters, telegrams to our elected officials, demanding that the Civil Rights Act of 1990 be passed. It needs a margin large enough to override a possible Presidential veto.

Time is getting short — action is needed now!



DO THE WRITE THING

Black History

Why not have Black history taught from September to June? Why must there be a particular month designated to study Black history?

In the Baltimore City Public School System, there is a majority population of Black pupils that don't know their history. Even in February Black students don't care about the Black history taught to them.

But, these Black pupils are made to learn about colonial and European history the entire school year. Black students know that George Washington worked all year long.

But, these same students think that Frederick Douglass went from being a slave to a free man all in the month of February. I used a little exaggeration to make the point.

The point is that Black children don't know about the heroes from the African continent. Yes, they should know that Black history starts in Africa, and not in America.

Black and White pupils should be taught the truth about Christopher Columbus, Alexander the Great, Greece, Rome, Portugal, and Europe. Tell the Black and White pupils about the African discovery of ore, and introduced it to the world.

This is the beginning of the industrialized world. Also, teach them about the Egyptian developing the alphabet, thus the beginning of the written word.

It is important that Black children feel that their own history is as significant as any other history. The truth should be told about Blacks, and how they have contributed to this world before they were brought to America.

If Black children aren't taught that significant contributions have been, and continue to be made by Blacks, they will not feel the worth of making a contribution in this world. It is a fact that people who know who they are, know where they are going.

Knowing your own history helps one know themselves. Also, the Black children knowing their own history will help them to understand someone else's history.

For those who say that there are no qualified history teachers to teach Black history the entire school year, I say go out, and recruit some, they are out there.

MARK G. MAXFIELD

The Truth or else

African - American people who are descendents of Africa, the continent who gave the world civilization need a good long drink of the *Truth* so our minds and spirits can be quenched.

African - Americans are suffering from European - Inflicted Amnesia, we don't know who we are, where we came from, and without *Truthful* information, we stand no chance of reaching our potential as individuals or as a people.

There was a lecture given by Ashra Kwesi a couple of weeks go. Mr. Kwesi discussed the *African Origin of Civilization* and also the *African Origin of Judco - Christianity*. The AFRO-AMERICAN Newspaper should have been there. This information should have been headlines!

Dr. Frances Welling has important information concerning the A.I.D.S. virus. Information suggesting the man-made origin of the disease as a means of biological warfare.

Ivan Van Sertima, historian, anthropologist and egyptologist has information. Cheikh Anta Diop, who wrote "*The African Origin of Civilization,*" is another important figure who knows the *Truth* and has documented it. We need this information.

In closing, I would like to urge you to reveal the *Truth* or cease to exist.

ANTHONY WILLIAMS

Student Solution

Joseph Shilling, State Superintendent of Schools for Maryland, has put forth many costly educational proposals for the 1990s. One of the most costly would be extending the school year an extra month.

As a social studies teacher at Parkville Middle School in Baltimore County, my students discussed Mr. Shilling's proposals with a great deal of attention given to the extra month of school.

Realizing that extending the school year for all students would result in great financial difficulties for all local school systems, the students suggested the following plan:

The 180 day school year would remain in effect for all students who earned Cs or betteron their report card. Students who failed to earn Cs would be required to attend school for an extra month.

The students felt that such a requirement would result in all students working harder during the 180 days in order to be free for the normal summer vacation.

As a teacher, the students' plan makes more sense in that the cost is less and the element of motivation has been introduced.

Maybe, asking students for their opinions on other educational concerns would result in providing a better educational program for the 1990s.

RAY HOFMANN

Kweisi Mfume
U.S. Congressman

Foreign service

The Reagan Administration had no will to correct any minority representation problem and his legacy in the Supreme Court bodes ill for the future of civil rights in America as recent Court rulings have further eroded any incentive that the public sector might take in leading the way and setting an example for the private sector in hiring and promoting minorities.

The foreign service is widely (and correctly) perceived as a "White male elitist" institution and little is being done to correct this reality. Job opportunities in the near future are severely limited while leadership posts remain ever remote for minorities.

Chronic causes of rare minority representation in the foreign service include a dearth of role models for guidance, no formal (or even informal) mentorship program:

Job insecurity, slow promotions, poor assignments, absence of a recruitment plan or educational policy and the denial of viable managerial assignments, a prerequisite for leadership posts.

Until systemic racism is defeated there are a number of approaches that the interested student can pursue.

Minority undergraduates should understand that international relations is not confined to the diplomatic corps, but also to international business, finance, academia, development and agriculture.

Minority students interested in the foreign service or international relations career should develop excellent written and oral communication skills, as well as course work in economics, finance, liberal arts, world cultures, languages and participate in exchange programs, internships and leadership training.

Personally, minority students should develop the ability to project the societal norms and patterns of behavior which pervade the United States while realizing the assumptions of Eurocentric teachings pervasive in most American educational institutions.

Plans are now being finalized for a follow up meeting at Lincoln University of Pennsylvania with my fellow panelists Lincoln College President, Niara Sudarkasa, President Johnnetta Cole of Spelman College and TransAfrica Director, Randall Robinson to further discuss the educational needs of African - American students in preparation for a career in the foreign service or international relations.

Americans of African descent have been members of the foreign service since emancipation. These rare appointments were made exclusively to African capitals; the exception in the western hemisphere is Haiti's capital.

In 1958, Clifton R. Wharton, a Baltimorean, was the first Black appointed to head diplomatic mission outside of Haiti or Africa by serving in Romania.

Throughout the world African - Americans continue to serve in a wide variety of posts, nevertheless, we are grossly underrepresented.

Available data indicates that government, universities, think-tanks, foundations and private representation overseas do not reflect the ethnic diversity of the United States.

I recently participated in a panel discussion on Capitol Hill sponsored by TransAfrica on increasing minority participation in the foreign policy process.

TransAfrica's eighth annual Foreign Policy Conference panel was entitled, "Blacks in Foreign Affairs: The Role of Education."

The major cause of the dearth of minorities in the foreign service is the absence of a consistent recruiting policy and commitment from Executive Branch agencies.

This was especially true under the Reagan Administration in contrast to President Carter's often stated goal and genuine efforts to actively increase the numbers and visibility of Blacks in the foreign service.

Remembering our history:

Another look at Lincoln and Douglass

By Edward C. Smith

On April 16, 1862, ten years after the publication of *Uncle Tom's Cabin*, slavery was abolished in Washington, D.C. by an Act of Congress. In a sense, the American Civil War was a tale of two cities; Richmond, Va. vs. Washington, D.C. and during the first full year of the war, slavery was legal in both capitals.

In 1857 the U.S. Supreme Court ruled in the Dred Scott Decision that slaves were property and as such could not become citizens. The following year the highlight of the 1858 Illinois Senate race were the seven Lincoln-Douglas Debates. Interestingly, Stephen Douglas had been an early suitor of Mary Todd before her marriage to Abraham Lincoln. As Professor James McPherson points out in his best-selling book on the civil war era, "Battle Cry of Freedom":

The theme of the debates was nothing less than the future of slavery and the Union. Tariffs, banks, internal improvements, corruptions, and other staples of American politics received not a word in these debates — the sole topic was slavery.

In 1859 the fiery abolitionist John Brown raided the federal arsenal at Harper's Ferry, West Va. He was quickly captured by a contingent of Union soldiers under the command of Col. Robert E. Lee and Lt. J.E.B. Stuart and summarily tried for treason and executed on Dec. 16.

The following November, Abraham Lincoln was elected President of the United States. A few months later on Feb. 4, 1861, seven southern states met in Montgomery, Ala. to secede from the Union and to form a new nation, the Confederate States of America.

In his Inaugural Address, President Lincoln declared that he had no purpose, "directly or indirectly, to interfere with the institution of slavery where it exists. Even after the firing on Fort Sumter on April 12 when the war began in earnest, President Lincoln said:

However, as the war progressed, the President's views changed significantly. After the Union victory at Antietam on Sept. 17, 1862, he was determined to free the slaves. And on Sept. 22, he signed a "preliminary Proclamation" which was designated to take effect on Jan. 1, 1863.

On that New Year's Day -with ushered in a whole new social order for the nation- and just before he affixed his signature to the document, he said, "I never in my life felt more certain that I was doing right than I do in signing this paper."

The following month, Febraury 1863, the first Black regiment, the 54th Massachussetts, entered the war.

More than any other abolitionist, Frederick Douglass pressed President Lincoln on the need to convert the war into a crusade against slavery.

In articles in his paper, The North Star, in lectures and letters, Douglass urged that the Union cause would not prosper nor prevail until the war assumed an anti-slavery posture.

During his sons' service in the war, Frederick Douglass worked tirelessly to raise unite of black troops so that black men could fight for their freedom.

Over 40,00 Black soldiers died fighting to preserve the Union. At the war's conclusion Blacks were immediately rewarded for their bravery and loyalty. In 1865 the 13th Amendment was ratified which outlawed slavery, in 1867 Howard University (named in honor of Union General Oliver O. Howard) was founded, and in 1868 Congress ratified the 14th Amendment which extended citizenship to the former slaves and the right vote to black males. This was accomplished 52 years before women -white or black- achieved the right to vote in 1920.

PROFESSOR EDWARD C. SMITH teaches at The American University where he is also the Director of the Office of Minority Affairs. He is also an Afro-American Heritage Study Tour Leader for The Smithsonian Institution.

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COMMENTARY & OPINIONS

COMMENTARY:

Different visions of society and the law

By Dick Thornburgh
Attorney General of the United States

The two civil rights bills pending before Congress represent extremely different visions of our society and our Nation's legal system.

The Bush Administration's bill, focusing on the *Patterson* and *Lorance* cases decided by the Supreme Court last year, would:

- extend an often-used civil rights law to cover on-the-job racial harassment,
- make it possible for employees to challenge seniority systems they believe are discriminatory when they become covered or affected by them — not just when such plans are put in place — giving anyone who believes he or she is victimized by this kind of discrimination the full opportunity to be heard in court.

The second bill, introduced by Sen. Edward Kennedy (D.-MA) and Rep. Augustus Hawkins (D.-CA), covers these changes as well.

It also seeks, however, to "overrule" three other cases that the Supreme Court decided last year and to expand the focus of Title VII of the 1964 Civil Rights Act into the area of providing compensatory and punitive damage awards.

In doing so the Kennedy-Hawkins' bill would undermine fundamental legal principles that ensure fairness to all Americans.

Interestingly, neither bill deals with perhaps the most highly - publicized decision of the Court last year — the *Croson* case that declared unconstitutional a 30 percent minority contractor set - aside program in Richmond, VA.

Both sides on this issue — from liberal Democrats on the hill to the Bush Administration — appear to agree that the establishment of quotas in hiring and contracting is not desirable.

We believe the Kennedy-Hawkins bill ventures too far from fairness principles in three specific areas.

First, our legal system dictates that the person who brings a case has the burden of proving his or her claim. Put most simply, someone who makes an accusation against another is required to prove it.

In the *Wards Cove* case, the Supreme Court reaffirmed this basic concept. The Court rejected the contention that if an employer's workforce is not racially "balanced," then that employer must prove non - discrimination.

Although the Kennedy - Hawkins bill carefully avoids use of the word quota, it would, as noted, shift the burden of proof from the employee to the employer.

The outcome of such legislation would be to drive employers to replace legitimate hiring practices with quotas in order to have a "balanced" workforce. How else could employers prove the negative of non-discrimination?

Second, as Americans we believe in the basic principle that every person is entitled to his or her day in court. In *Wilks*, the Supreme Court ruled that certain White firefighters who had not been parties to a consent decree mandating racial preferences should have the opportunity to contest that agreement if they believe it unfairly denied them opportunities because of their race.

Kennedy - Hawkins would "overrule" *Wilks* and make it virtually impossible for persons adversely affected by consent decrees in civil rights cases to obtain judicial review of actions in which they did not participate.

Third, the American system is based on the belief that people should be accountable for what they do, not for what they think. Our law punishes bad deeds, not bad thoughts.

In the *Price Waterhouse* case, the Supreme Court made clear that an employee cannot succeed in challenging an employment action based on allegations of improper motives if there were legitimate reasons for the action as well.

Kennedy - Hawkins, however, would allow recovery of damages based solely on the thoughts of an employer.

For example, under Kennedy - Hawkins, an employee fired for stealing could collect damages from the company if he or she could show that one of the supervisors involved in the termination decision also harbored an improper motive.

Finally, in providing for compensatory and punitive damage awards in Title VII cases, Kennedy-Hawkins would upset a scheme of relief that has worked well for 25 years.

The present Title VII remedies of back-pay and rightful place seniority have proved effective in fighting exclusion of women and minorities from the workplace through a process that encourages conciliation.

Adding new and potentially burdensome damages to the remedies already available under Title VII inevitably will provide an incentive for claims of pain and suffering, emotional harm, and the like as a matter of course.

The result would be to foster confrontation and litigtion rather than conciliation.

The phrase "Equal Justice Under Law" is carved on the facade of the Supreme Court building, and it is a principle central to our legal system.

That system operates on the premise that certain basic rules of fairness — such as those noted above — apply in *every* case, regardless of the nature of the litigants.

The Kennedy - Hawkins legislation would radically alter our system by categorizing Americans and by reshaping the basic rules of fairness.

ANALYSIS OF JUSTICE:

Dept. letters on Civil Rights Act

By Ralph G. Neas
Executive Director
Leadership Conference on Civil Rights

The Justice Department's analysis of the Civil Rights Act of 1990, as reflected in Attorney General Thornburgh's letter of April 3 and 4, 1990 to Senator Edward Kennedy and Representative Augustus Hawkins, is highly inaccurate and misleading.

It virtually ignores the testimony and other evidence submitted to Congress documenting the critical need for and effectiveness of this legislation.

It seeks to defend several of the Supreme Court's 1989 decisions which, as the hearings before Congress have demonstrated, have overturned existing law and have already had a devastating impact on victims of job bias.

In fact, the Thornburgh Justice Department's position is even contradicted by arguments of the Justice Department under the Reagan Administration, which in some respects was more supportive of civil rights protections than the current Justice Department.

Both the President and Congress should reject the Justice Department's analysis and should support the Civil Rights Act of 1990.

Section 4 — Restoring the Burden of Proof in Disparate Impact Cases

This section is intended to reverse the Supreme Court's decision in *Wards Cove Packing Co. v. Atonio*, 109 S Ct. 2115 (1989).

Wards Cove overruled the Supreme Court's unanimous holding in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), that where a plaintiff can prove that a particular job practice or set of practices have a substantial disparate impact in excluding minorities, the practices are illegal unless the employer can prove that they are justified by "business necessity."

Ward Cove is having a devastating impact on job bias victims injured by systemic discriminatory practices. Section 4 would restore the *Griggs* rule.

The Justice Department asserts that *Wards Cove* did not change the law. This is flatly wrong. For example, former Transportation Secretary William Coleman presented to Congress a list of over 300 court decisions which were overruled by *Wards Cove*, which the Justice Department has simply ignored.

In several cases, job bias victims had prevailed in discrimination claims based on *Griggs*, only to have their decisions reversed as a result of *Wards Cove. See, e.g., Allen v. Seidman*, 881 F.2d 375 (7th Cir. 1989).

The consensus that *Wards Cove* substantially changed the law extends even to conservative judges such as appellate court judge Richard Posner, who recently wrote that *Wards Cove* "modified the ground rules that most lower courts had followed in disparate impact cases" under *Griggs* and effectively removed the "necessity" from the business necessity defense. *Allen, supra*, 881 F.2d at 381. Section 4 is intended to restore these previously accepted ground rules.

The Justice Department's three specific criticisms of Section 4 are similarly without merit. First, the Department claims that it would "permit plaintiffs to allege simply that the end product of all the employer's practices was statistically disparate workforce," contrary to the alleged pre-*Wards Cove* rule that *Griggs* could be applied only to individual hiring practices. This mischaracterizes both the pre-*Wards Cove* law and the effect of Section 4.

Under Section 4, a plaintiff would be required to show that a particular employment practice, or the combined effect of a specified group of practices, actually causes a disparate impact in order to prove discrimination. This was the law prior to *Wards Cove* as well.

In addition, the Department criticizes Section 4 for providing that once disparate impact is proven, a job practice is unlawful unless the employer can persuade the court that it is justified by "business necessity." This was clearly the law under *Griggs* prior to *Wards Cove*, and not even Attorney General Thornburgh's letter argues directly to the contrary.

Finally, the Department criticizes the bill's provision that in order to prove business necessity, an employer must show that a practice is "essential to effective job performance," claiming that this was not the law prior to *Wards Cove*, and asserts that *Wards Cove* simply restated the law in providing that a challenged practice must significantly serve "legitimate employment goals of the employer."

This suggestion that *Wards Cove* is grounded in previous law is little more than sophistry. The "business *necessity*" standard of *Griggs* cannot mean only "business *Legitimacy*" as asserted by the Department, and the cases on which it relies do not support its claim.

Moreover, the Department ignores more than 40 court decisions listed by former Secretary Coleman and ABA President - elect John Curtin which support the Section 4 standard prior to *Wards Cove*, including the decision by the Supreme Court itself in *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

Walter E. Williams
Minority Viewpoint

Masking evil

Whenever people seek to do evil, they give it a godly name. In Nazi Germany and Russia, evil went under the phrase "purge the enemies of the people" where dissenters were rounded up and shot.

In South Africa, it was the "Immorality Act" that helped reinforce racism. Neat titles for evil acts are useful. After all, who can be against purging the enemies of the people? Who can be for immorality?

The same strategies are used in our country. The latest version has the godly title: The 1990 Civil Rights Restoration Act, which is quietly making its way through Congress with help from the White House. After all, who can be against restoring "lost" civil rights?

If the Civil Rights Restoration Act becomes law, Title VII of the 1964 Civil Rights Act, which guarantees individuals equal opportunity, will be amended to command equal results for groups based on race, gender, and sex preference.

For example, an electrical contracting company might have employment requirements like: trade school graduation, a test, and two years experience.

A Minority plaintiff might assert that only 4 percent of the company's electricians are Black while 15 percent of the electricians in the city are Black.

Unless the company can prove that its hiring requirements did not cause racial imbalance or that those requirements are essential to job performance, the company would be prosecuted and found guilty of racial discrimination.

Suppose a university requires that, in order to receive tenure, a professor must have a Ph.D., publish in scholarly journals, and have five years experience.

Under the proposed Civil Rights Restoration Act, any one of these requirements could be found racially discriminatory if the university could not prove them necessary for job performance.

In several states, civil service tests, for some jobs, have been eliminated because the tests were deemed to be racially or sexually discriminatory. Airline companies have abandoned traditional cockpit experience requirements in order to have more female pilots.

New York City has already created different passing requirements for civil service jobs, depending on the race of the applicant. We will see much more of this behavior by government and private employers if the Civil Rights Restoration Act becomes law.

What's more, courts will hold companies liable for mistakes and injuries made by the unqualified employees that companies are required to hire.

The push for the Civil Rights Restoration Act is a result of several recent U.S. Supreme Court decisions that impede the imposition of race and sex quotas.

The Bush administraton and conservative Republicans are lying low because they've been duped and intimidated by the civil rights establishment. After all, anyone who comes out against the Civil Rights Restoration Act would be caricatured as a racist.

Open debate might compromise President Bush's popularity and threaten Republican efforts to attract more Blacks, Hispanics, women, and homosexuals into the Party.

It's the same old story. Politicians are short on backbone and scruples. Most only care about being re-elected. In pursuit of that goal, they don't give a damn about what they do to our country.

The Civil Rights Restoration Act will add more combustible kindling for some future racial arsonist to use to pit Americans against one another.

Dr. Ramona H. Edelin
On The Cultural Offensive

Commitment

Someone has made and kept a fundamental commitment when personal, familial, or business relationships last over time. Someone has bound and obligated herself or himself emotionally, intellectually and physically to the goal of keeping the relationship strong, whole and productive.

Similarly, someone has made and kept a fundamental commitment to an idea, ideal, process or methodology when social, political, economic and educational progress occur.

In the context of the African American cultural offensive, it is essential and necessary that we as elders, adults, young adults and children, make and keep some fundamental commitments to our uplift and advance as a group, and work toward them together, if we are to succeed.

In the "Me Generation," "I need my space" and "I want to be free" era, values like commitment, duty, faithfulness and responsibility sometimes get tossed aside.

Particularly when the larger society rewards selfish individualism, greed and opportunism while punishing and mocking compasion, altruism, self-sacrifice and programmatic or policy work on behalf of the least advantaged, pledges of devotion to one's whole group can seem mushy, sentimental and passe.

We can get paid, promoted and popularized in the media when we undercut, denigrate and double-cross our own people. We can go from unknown to always heralded when we are willing to spy, lie, and cast aspersions particularly upon the local and national leadership which our own people choose, elect and revere.

But we can get fired, demoted, de-funded, and shut out of the mainstream media when our message is one of solidarity and the intention that all — each and every one — of our group shall be self - defined and self - sufficient.

And so the first commitment required by the African American cultural offensive is to the idea of impenetrable unity, and the unchanging truth that our freedom is indivisible; until each of us is free, none of us is free.

Some believe that this first requirement is in fact the most difficult to achieve; add to our natural diversity in complexion, dress, and creativity in style and perspective, our different religious preferences, socioeconomic classes, political affiliations, regional ethos, and memberships in organizations, lodges and clubs — and added to that the realities of enslavement, sergregation, desegregation and European cultural hegemony — and we see that unification itself is the biggest single challenge facing the African American group.

The quintessential paradox facing us is that we will only advance as a group; yet we will have to make the decision to unify personally, one by one.

Perhaps it will help us to realize that in our historic cultures, personality or individual talents and gifts were seen as tools given to us or shared with us by our Creator for the purpose of making our unique contribution to the harmony and good of the whole.

Our power resides in precisely this diversity, so long as we choose to use it for the co-creation of harmony, uplift, and the good of all.

The success of our group, and the rectifying of rewards and punishments which are in keeping with our values and our advancement, depend in clear and inescapable ways upon our personal choices, and willingness to make and keep positive commitments to each other and to our whole group.

Let us think on these ideas, and communicate with one another more and more about strengthening the bond of devotion and obligation which we share.