CRS Issue Statement on Civil Rights and Discrimination

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nder federal law, an array of civil rights statutes, as well as several constitutional provisions, are available to protect individuals from discrimination. Notably, the types of discrimination that these laws prohibit and the circumstances under which they operate vary considerably. Whether to amend these statutes and how to respond to constitutional developments in this area are two important questions that will confront the second session of the 111th Congress as it considers whether it wishes to expand or contract the civil rights of protected individuals.

One civil rights issue in which Congress has demonstrated a long-standing interest is race discrimination, and the 111th Congress is no exception. For example, Congress is likely to remain interested in affirmative action issues and may wish to consider additional strategies to promote minority opportunity in jobs and governmental contracting. In the wake of a Federal Circuit ruling curtailing the use of minority contracting preferences, Congress may also wish to consider legislative changes that encourage constitutionally permissible methods of promoting racial diversity in government programs. Meanwhile, in light of various discrimination lawsuits filed against the U.S. Department of Agriculture by black, Native American, Hispanic, and female farmers, Congress may also wish to consider legislative options for assisting minority farmers who may have suffered discrimination when seeking to obtain farm loans.

Issues involving sex discrimination are also high on the congressional agenda. For example, some Members have a longstanding concern about the comparatively low pay of women and the pace at which the gender wage gap has shrunk, and the 111th Congress has already taken significant action on two bills relating to such pay discrimination. One of these bills, which would amend the Equal Pay Act, has passed the House of Representatives and may be taken up by the Senate during the second congressional session. The other bill, the Lilly Ledbetter Fair Pay Act of 2009, has already been enacted into law. This legislation supersedes the controversial 2007 Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, that made it more difficult for employees to sue for pay discrimination under Title VII of the Civil Rights Act. The Supreme Court has also recently issued decisions in at least three other cases involving sex discrimination, and Congress may wish to continue monitoring legal developments in this area.

In recent years, the debate about the rights and protections that should be afforded to gay people has been intense, and the second session of the 111th Congress is likely to confront controversial questions regarding this issue. For example, current employment discrimination laws exclude sexual orientation as a protected class, and legislation that would amend such laws to cover sexual orientation passed the House in the 110th Congress and may be taken up again by the 111th Congress, which has already held several hearings on the proposed Employment Non-Discrimination Act. Meanwhile, although legal developments regarding same-sex marriage and same-sex adoption have largely taken place at the state level, Congress may contemplate federal legislation on these subjects. Congress may also take action on other legislative proposals that address issues involving sexual orientation, including a bill that would repeal the current ban on gays in the military, a bill that would extend certain federal benefits to the domestic partners of federal employees, and a bill that would repeal the Defense of Marriage Act. Finally, the 111th Congress passed legislation that expands the scope of hate crime statutes to cover crimes based on sexual orientation or gender identity, and legislators may wish to monitor the implementation of these amendments.

In addition to these controversial legislative proposals, other civil rights issues may appear on the congressional agenda during the second session. For example, as a result of the recent Supreme Court decision in *Gross v. FBL Financial Services, Inc.*, it may be more difficult for employees to
bring claims under the Age Discrimination in Employment Act (ADEA) when age is only one of several factors motivating an adverse employment decision. As it did in response to the *Ledbetter* decision, the 111th Congress may wish to legislatively repeal the *Gross* decision by amending the ADEA, and several bills that would do so have been introduced. In addition, the issue of whether religious organizations that receive federal funds may discriminate on the basis of religion when hiring has generated significant legislative controversy in recent years and may continue to do so during the second session of the 111th Congress. Meanwhile, amendments to the Americans with Disabilities Act were enacted in the 110th Congress to respond to Supreme Court decisions that limited the definition of disability. Proposed regulations have been published regarding the definition of disability, and the 111th Congress will continue to be involved in oversight. Congress may also want to consider reauthorizing the U.S. Commission on Civil Rights, which has been reauthorized a number of times since its creation in 1957. Although Congress has continued to appropriate funds for the Commission, its most recent authorization expired on September 30, 1996. Finally, a recent Supreme Court decision restricted the protective scope of Section 2 of the Voting Rights Act to minority groups that constitute less than half the population of a legislative district, and this case may result in Congress considering legislation on the topic. This voting rights decision, as well as many other civil rights issues, may be addressed during the second session of the 111th Congress.

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For detailed information select from the following topical links.

**Civil Rights and Discrimination**

**General Civil Rights Laws**

- Federal Civil Rights Statutes: A Primer
- The U.S. Commission on Civil Rights: History, Funding, and Current Issues
- Hate Crime Legislation
- Constitutional Limits on Hate Crime Legislation
- State Statutes Governing Hate Crimes
- Survey of Federal Laws Containing Goals, Set-Asides, Priorities, or Other Preferences Based on Race, Gender, or Ethnicity

**Race Discrimination, Affirmative Action, and Minority Contracting**

- Federal Affirmative Action Law: A Brief History
- Race Discrimination and the Supreme Court: A Legal Analysis of Ricci v. DeStefano
- Affirmative Action in Employment: A Legal Overview
- Affirmative Action and Diversity in Public Education: Legal Developments
- Minority Contracting and Affirmative Action for Disadvantaged Small Businesses: Legal Issues
- The Pigford Case: USDA Settlement of a Discrimination Suit by Black Farmers
- Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case
- Proposals for Reparations for African Americans: A Brief Overview

**Sex Discrimination, Pay Discrimination, and Title IX**

- Pay Equity Legislation
- Pay Discrimination Claims Under Title VII of the Civil Rights Act: A Legal Analysis of the Supreme Court’s Decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc.
- Sex Discrimination and the United States Supreme Court: Developments in the Law
- Sexual Harassment: Developments in Federal Law
Title IX, Sex Discrimination, and Intercollegiate Athletics: A Legal Overview

Title IX and Single Sex Education: A Legal Analysis

Sexual Orientation Discrimination, Same-Sex Marriage, and Gays in the Military

Sexual Orientation and Gender Identity Discrimination in Employment: A Legal Analysis of the Employment Non-Discrimination Act (ENDA)

Same-Sex Marriages: Legal Issues

Same-Sex Adoptions

Don’t Ask, Don’t Tell: The Law and Military Policy on Same-Sex Behavior

Don’t Ask, Don’t Tell: A Legal Analysis

Military Recruitment on High School and College Campuses: A Policy and Legal Analysis

The Effect of State-Legalized Same-Sex Marriage on Social Security Benefits and Pensions

Age Discrimination, Housing Discrimination, Religious Discrimination, Voting Rights, and National Origin or Language Discrimination

The Age Discrimination in Employment Act (ADEA): A Legal Overview

Cash Balance Pension Plans and Claims of Age Discrimination

The Fair Housing Act (FHA): A Legal Overview

Religion and the Workplace: Legal Analysis of Title VII of the Civil Rights Act of 1964 as It Applies to Religion and Religious Organizations

The Voting Rights Act of 1965, As Amended: Its History and Current Issues

Congressional Redistricting: A Legal Analysis of the Supreme Court Ruling in League of United Latin American Citizens (LULAC) v. Perry

English as the Official Language of the United States: Legal Background and Recent Legislation