

116TH CONGRESS
1ST SESSION

H. RES. 66

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 expressing the sense of the House of Representatives regarding the obligation of the Department of Housing and Urban Development to “build inclusive and sustainable communities free from discrimination”, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2019

Mr. SCOTT of Virginia (for himself and Mr. NADLER) submitted the following resolution; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, 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 expressing the sense of the House of Representatives regarding the obligation of the Department of Housing and Urban Development to “build inclusive

and sustainable communities free from discrimination”,
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 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 title VI requires policies and practices to be developed and administered in a manner that does not intentionally discriminate against students on the basis of race, color, or national origin, and that does not “have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or . . . of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”;

Whereas racial discrimination in the public school systems nationwide continues to persist, as exemplified by—

(1) 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

(2) a recent Department of Education 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 education advocacy organizations detail racial disparities in the Nation’s education systems, including that—

(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 are critical components of preparing students for college and careers;

(3) only 12 percent of students took Advanced Placement 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; and

(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 disparate impact analysis is an essential tool to combat discrimination across other areas of the Civil Rights Act of 1964;

Whereas the Environmental Protection Agency (EPA) has acknowledged that the disproportionate placement of industrial polluters in low-income and minority neighborhoods in Flint, Michigan, is discriminatory, and whereas the entirety of the environmental justice movement is premised on a disparate impact analysis;

Whereas Federal appellate courts have determined that violations of title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act (FHA), may be established through the disparate impact theory of liability;

Whereas, in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Supreme Court held that disparate impact claims are cognizable under the FHA, with Justice Kennedy writing, “Recognition of disparate-impact claims is also consistent with the central purpose of the FHA, which, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of the Nation’s economy. Suits targeting unlawful zoning laws and other housing restrictions that unfairly exclude minorities from certain neighborhoods without sufficient justification are at the heartland of disparate-impact liability. . . . Recognition of disparate-impact liability under the FHA plays an important role in uncovering discriminatory intent: it permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”;

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;

Whereas racial discrimination cases decided under title VIII of the Civil Rights Act of 1968 and title VII of the Civil Rights Act of 1964 provide guidance on how to analyze intentional discrimination and unintentional discrimination based upon disparate impact claims brought under title VI;

Whereas the Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity is charged with administration of the FHA, and has promulgated rules to clarify the application of disparate impact to FHA cases;

Whereas the EPA's External Civil Rights Compliance Office (ECRCO) (formerly Office of Civil Rights (OCR)), within the Office of General Counsel, is charged with enforcing civil rights under title VI and since 1973 has prohibited recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect;

Whereas the Department of Transportation's Office of Civil Rights is responsible for ensuring that recipients of Federal funds from that agency conduct their federally assisted programs and activities in a nondiscriminatory manner in compliance with title VI;

Whereas the Office for Civil Rights for the Office of Justice Programs (OJP) of the Department of Justice (DOJ) ensures that recipients of financial assistance from OJP comply with Federal antidiscrimination laws, including title VI;

Whereas a DOJ memo was recently leaked to the Washington Post in which senior Civil Rights Division officials were directed “to examine how decades-old ‘disparate impact’ regulations might be changed or removed . . . and what the impact might be”;

Whereas the Washington Post reports that similar directives to eliminate regulations using disparate impact analysis are being considered at the Department of Education and are already underway at the Department of Housing and Urban Development;

Whereas Federal agencies under both Democratic and Republican administrations have a history of bringing title VI disparate impact claims; and

Whereas the Supreme Court’s decision in *Alexander v. Sandoval* overturned four decades of statutory protections against discrimination by eliminating an implied private right of action under title VI to challenge disparate impact, leaving Federal agencies as the only entities that can bring disparate impact claims: Now, therefore, be it

1 *Resolved*, That the House of Representatives—

2 (1) reaffirms that the original intent of the
3 Civil Rights Act of 1964 was to broadly prohibit all
4 forms of discrimination by providing for both the
5 Federal Government and private attorneys general
6 to bring cases under causes of action to enforce
7 against both disparate treatment and disparate im-
8 pact;

9 (2) reaffirms its commitment to ensuring that
10 the elementary, secondary, and college educational

1 systems of the United States prepare all students for
2 successful careers, regardless of their race, color, or
3 national origin;

4 (3) reaffirms its commitment to ensuring that
5 all communities are inclusive, sustainable, and free
6 from discrimination;

7 (4) recognizes that the Office for Civil Rights
8 of the Department of Education, the Civil Rights
9 Division and Office of Justice Programs of the De-
10 partment of Justice, the Department of Housing
11 and Urban Development, the Environmental Protec-
12 tion Agency, and other Federal agencies have an ob-
13 ligation to enforce title VI of the Civil Rights Act of
14 1964 and its implementing regulations;

15 (5) expects the Department of Education, the
16 Department of Justice, and other Federal agencies
17 to enforce title VI of the Civil Rights Act of 1964
18 and its implementing regulations, as they have done
19 in the past under Democratic and Republican ad-
20 ministrations, using all legal theories including dis-
21 parate treatment and disparate impact, given the
22 growing evidence that racial discrimination in edu-
23 cation, housing, and other aspects of public life con-
24 tinue to adversely impact individuals and commu-
25 nities;

1 (6) will hold oversight hearings to ensure that
2 the Department of Education, the Department of
3 Justice, the Department of Housing and Urban De-
4 velopment, the Environmental Protection Agency,
5 and other Federal agencies enforce title VI of the
6 Civil Rights Act of 1964 and its implementing regu-
7 lations, including enforcement with respect to unin-
8 tentional discrimination resulting from policies and
9 practices that have a discriminatory effect, or dis-
10 parate impact, on individuals and communities based
11 on race, color, or national origin; and

12 (7) will consider legislation that acknowledges
13 and reaffirms the original intent of the Civil Rights
14 Act of 1964 and the original intent to prohibit all
15 forms of discrimination and discriminatory effects,
16 including H.R. 2486 (115th Congress), the Equity
17 and Inclusion Enforcement Act, a bill that restores
18 the title VI private right of action in cases involving
19 disparate impact, creates title VI monitors to ensure
20 that every school has at least one employee respon-
21 sible for investigating any complaints of discrimina-
22 tion based on race, color, or national origin, and cre-
23 ates a position of Assistant Secretary in the Depart-

- 1 ment of Education to coordinate and promote title
- 2 VI enforcement of equity and inclusion in education.

