

The Civil Rights Act of 1964 Turns 50

BY DAVID F. GOMEZ



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ACT TURNS 50



John F. Kennedy addresses the nation about civil rights on June 11, 1963.

“We are confronted primarily with a moral issue. It is as old as the Scriptures and it is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and opportunities, whether we are going to treat our fellow Americans as we want to be treated.”

—John F. Kennedy
June 11, 1963¹

This is the 50th anniversary of our nation’s monumental achievement in civil rights—enactment on July 2, 1964, of the Civil Rights Act of 1964, which was the culmination of a great moral and human rights struggle. In the Spring of that year, I was a Catholic seminarian at the Paulist Fathers House of Studies, St. Paul’s College, in Washington, D.C. With hundreds of others from 75 cooperating seminaries, we formed trios of Catholic, Protestant and Jew to cover in shifts a round-the-clock prayer vigil at the Lincoln Memorial. We were praying for passage of HR 7152, which would later become the 1964 Civil Rights Act. Just 50 yards from us were members of the American Nazi Party, staging a counter-demonstration in the name of race hatred, unalterably opposed to the proposition that race, color, national origin, religion and gender have no place in American life or law.²

During this demonstration, Lincoln’s somber marble gaze would have taken in much more than this symbolic struggle between angels and demons—religious faith and degrading hatred. Looking down the Mall past the Washington Monument to the Capitol building, he would have seen where a legislative Battle of Armageddon was being waged—the longest filibuster in U.S. history, the South’s last stand to block the Civil Rights Act from reaching a vote in the Senate. It lasted 13 weeks until June 10, when a historic cloture vote of 71–29 (four more than the needed two-thirds) finally broke the once-invincible power of the Southern Senators and their allies to prevent passage of any civil rights legislation.³

A year earlier, in early June 1963, President Kennedy had said he would ask Congress to enact a strong civil rights bill. His murder in November of that year could not stop what he had begun. On November 27, 1963, only five days after President Kennedy’s assassination in Dallas, President Lyndon Baines Johnson addressed a joint session of Congress, beginning with the sor-

rowful words, “All I have I would have given gladly not to be standing here today.” He went on, in the course of his address, to irrevocably commit himself to seeing John F. Kennedy’s bill enacted into law. Noting that “no memorial oration or eulogy could more eloquently honor [his] memory than the earliest passage of the civil rights bill for which he fought for so long,” Johnson went on to say, “We have talked long enough in this country about equal rights. We have talked for 100 years or more. It is time now to write the next chapter, and to write it in the books of law.”⁴

The Golden Anniversary of the 1964 Civil Rights Act is cause for reflection on what one scholar has likened to a constitutional amendment in its effect on civil rights.⁵ Even in the early part of the 21st century, the unprecedented significance and effect of the law—along with the 24th Amendment (abolishing the poll tax in 1964) and the Voting Rights of 1965—so empowered African Americans and Hispanic Americans that it led directly to the election in 2008 of our nation’s first African American president, Barack Obama.⁶

The heroes of conscience and courage⁷ who brought about its passage against all odds are too numerous to name but would of course include Jackie Robinson, Rosa Parks, the Rev. Martin Luther King, Jr., President Kennedy and President Johnson. And there were many heroes behind the scenes such as Justice William Brennan, who intentionally delayed the U.S. Supreme Court decision in *Bell v. Maryland*, a civil rights case, so as not to affect Congress as it considered the Civil Rights Act. Had the Supreme Court already weighed in on that case, it would have been easy for the naysayers to argue that new legislation was not needed because the Supreme Court was already doing the job. Above all, there were the men, women and children who protested and demonstrated against racial injustice in the South and in other regions of this country—through Freedom Rides and sit-ins—some of whom gave their lives and all of whom believed “We shall Overcome.” They did and, in doing so, they forever changed the world we live in.

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In signing the Act on July 2, 1964, President Johnson described the meaning enshrined in the law:

Each generation must fight to renew and enlarge the meaning of freedom. While Americans of every race and color have died in battle to protect our freedom, many have been denied equal treatment because of their race and color. The reasons for discrimination are deeply embedded in history and tradition and human nature. We understand—without rancor or hatred—how this happens. But our Constitution forbids discrimination; the principles of our freedom forbid it; morality forbids it; and the law I now sign (the Civil Rights Act of 1964) forbids it. Those who are equal before God shall now also be equal in the polling booths, classrooms, in hotels, restaurants, movie theaters, and in the workplace.⁸

The End of Jim Crow

For 100 years, from Appomattox to July 2, 1964, the evils of race discrimination in this country were unbroken. “What finally broke the back of segregation wasn’t the Supreme Court. ... It was the Civil Rights Act of 1964,” Ian Millhiser has written.⁹ We cannot, of course, underestimate the powerful legal and historic significance of *Brown v. Board of Education* (1954), but, as Justice Hugo Black famously stated, there was “entirely too much deliberation and not enough speed in enforcing” the integration process mandated by *Brown*.¹⁰

Ten years after *Brown*, only 1.17 percent—1 in 85—of Southern black children attended an integrated school.¹¹ Individual black families had to file their own lawsuits if they wanted to enforce their rights under *Brown*, a daunting, if not impossible, task in the face of Klan intimi-



<http://bjlibrary.org/collections/photo-archive/photolab-detail.html?id=1107> (Lyndon Baines Johnson Library & Museum photo archive, serial number C522-2-WH64)

President Lyndon B. Johnson at the signing the 1964 Civil Rights Act. White House East Room. People watching include Attorney General Robert Kennedy, Senator Hubert Humphrey, First Lady “Lady Bird” Johnson, Rev. Martin Luther King, Jr., F.B.I. Director J. Edgar Hoover and Speaker of the House John McCormack. Television cameras are broadcasting the ceremony.

dation and violence. Under the 1964 Civil Rights Act, the federal government was empowered to sue in the name of the United States to enforce desegregation and to withhold federal education funding from segregated school districts. By 1973, 90 percent of Southern black children were attending integrated schools.¹²

Hotels, restaurants, movie theaters and other public accommodations were almost immediately desegregated, prompting a major challenge to the law’s validity. In *Heart of Atlanta Hotel v. United States* (1964), the Supreme Court by a vote of 9–0 upheld the 1964 Civil Rights Act based on the plenary power of the Commerce Clause and Congress’s “national police power” to legislate against moral wrongs. The Court stated, “In framing Title II [public accommodations] of this Act, Congress was also dealing with what it considered a moral problem, ... a moral and social wrong.”¹³

Equal Rights in Employment

The purpose of the 1964 Civil Rights Act was not only to guarantee equal rights in

public education, voting, voter registration and public facilities, but also in employment. Title VII of the law’s 11 titles lays out the employment provisions that guarantee freedom from discrimination on the bases of such personal characteristics as gender, race, color, religion or national origin. The law guarantees freedom from employer interference with our efforts to secure or advance these basic rights; and it guarantees freedom to meaningfully seek federal administrative and judicial remedies to redress rights that have been trampled.¹⁴

Is Title VII of the 1964 Civil Rights Act Still Needed?

The changes wrought 50 years ago were indeed monumental, yet human nature remains the same, and so do the ongoing challenges of enforcement of workplace rights. The United States Equal Employment Opportunity Commission (EEOC) enforces Title VII of the 1964 Civil Rights Act, along with certain other federal employment statutes. A review of EEOC’s case statistics¹⁵ over past years shows a dramatic rise in Title VII charges.



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Enforcement of the law is needed now more than ever, particularly Title VII retaliation claims, which have become a priority in EEOC's Strategic Enforcement Plan. As Justice Sonia Sotomayor recently said, "Race matters" and will continue to matter because of ongoing racial bias and inequality.¹⁶

Among the problems to be addressed are not only retaliation and race discrimination but also gender and pregnancy discrimination. The courts have increasingly interpreted Title VII broadly to encompass gender—socially constructed roles, attributes and behaviors—and to protect the LGBT workforce against gender prejudice, stigma and stereotyping (for more on this issue, see page 30).¹⁷ And the EEOC, on July 14, 2014, aggressively updated and strengthened its guidelines to provide greater protections and reasonable accommodations to pregnant women workers and parental leave for similarly situated male workers. The

The record of the roll call vote kept by the House Clerk on final passage of the bill.



EEOC's increased enforcement recognizes and is intended to address a 46 percent increase in pregnancy-related EEOC complaints from 1997 to 2011.¹⁸

Cause for Celebration, Re-Dedication

There is much cause for celebration but also need for recommitment. When John F. Kennedy took the oath of office on January 20, 1961, he committed his administration and himself to the unending struggle in the cause of civil rights: "All this will not be finished in the first hundred days. Nor will it be finished in the first thousand days, nor in the life of this Administration, nor even perhaps in our lifetime on this planet. But let us begin."¹⁹

We look back on 50 years of enforcement of civil rights with gratitude for those whose sacrifices made it possible. And, in the spirit of what they accomplished in 1964, we should recognize the challenges of

the 21st century and re-dedicate ourselves to the ongoing struggle to "renew and enlarge the meaning of freedom" for our generation.

Let us continue **AZ**

endnotes

1. CHARLES & BARBARA WHALEN, *THE LONGEST DEBATE: A LEGISLATIVE HISTORY OF THE 1964 CIVIL RIGHTS ACT* xx (1985).
2. *Id.* at 164.
3. *Id.* at 215-216.
4. *Address of the President of the United States to Joint Session of House and Senate* (Nov. 27, 1963); ROBERT CARO, *THE YEARS OF LYNDON JOHNSON: THE PASSAGE OF POWER* 429-432 (2012).
5. BRUCE ACKERMAN, *WE THE PEOPLE, VOL. 3: THE CIVIL RIGHTS REVOLUTION* 61-62 (2014).
6. CARO, *supra* note 4, at 569.
7. See Michael O'Donnell, *How LBJ Saved the Civil Rights Act*, ATLANTIC (March 2014), www.theatlantic.com/magazine/archive/2014/04/what-the-hells-the-presidency-for/358630. See also CARO, *supra* note 4, at 558-570 (detailing LBJ's significant role in passage of the Act); and SETH STERN & STEPHEN WERMIEL, *JUSTICE BRENNAN: LIBERAL CHAMPION* 216-219 (2010) (Justice Brennan's role in slowing down the Court so as to not affect Congress's consideration of the Act). The history of the civil rights movement during the King years has been masterfully chronicled in three Taylor Branch works: *PARTING THE WATERS, AMERICA IN THE KING YEARS 1959-1963* (1988); *PILLAR OF FIRE, AMERICA IN THE KING YEARS 1963-1965* (1998); and *AT CANAAN'S EDGE, AMERICA IN THE KING YEARS 1965-1968* (2006).
8. en.wikipedia.org/wiki/civil_rights_act_of_1964 (contains video of LBJ's remarks on signing the Act into law on July 2, 1964.)
9. Ian Millhiser, *Brown Turns 60*, NATION, Vol. 298, no. 22 (June 2, 2014), at 8.
10. *Id.*; Black, J., in *Griffin v. County School Board of Prince Edward County (Va.)*, 377 U.S. 218, 229 (Mar. 25, 1964).
11. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION* 758 (1976); Millhiser, *supra* note 9.
12. Millhiser, *supra* note 9.
13. *Heart of Atlanta Hotel v. United States*, 379 U.S. 241, 257 (1964).
14. Title VII is codified at 42 U.S.C. § 2000e *et seq.* and was amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991, 42 U.S.C. § 1981a and 42 U.S.C. § 2000e-2(k)-(n). Title VII was also amended to prohibit discrimination against women because of pregnancy, childbirth or medical conditions related to pregnancy and childbirth.
15. EEOC Charge Statistics for FY1997-FY2013 may be found at www.eeoc.gov/statistics/enforcement/charges.cfm
16. *Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (BAMN), et al.*, 527 U.S. ___ (April 22, 2014).
17. The increasing protections under Title VII for Lesbian, Gay, Bisexual, and Transgender (LGBT) individuals may be seen in such cases as *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Serus*, 523 U.S. 75(1988); *Smith v. City of Salem*, 378 F. 3d. 566 (6th Cir. 2004); and *Macy v. Department of Justice*, EEOC DOC 0120120821 (April 2012), 2012 WL 1435995, p. 5 (EEOC).
18. *EEOC Ups Protections for Pregnant Workers*, ARIZ. REP. (July 16, 2014) at A6; see also eeoc.gov/laws/guidance/pregnancy_guidance.cfm
19. *Whalen, supra* note 1 at 229.