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SUPPORT CIVIL RIGHTS RESTORATION!

ACT TO RESTORE ENFORCEMENT OF CIVIL RIGHTS

Why Massachusetts needs a civil rights restoration act:

Sometimes government policies or practices discriminate or have a disproportionately harmful effect on individuals based on their race, color, national origin, or sex. Civil rights laws are meant to help people seek redress against such policies or practices that have a disparate impact, even when the discrimination is unintentional. Unfortunately, it is increasingly difficult for the victims of civil rights abuses to vindicate their rights in federal court. One solution is to ensure that aggrieved parties can bring their claims alleging discriminatory effect in state court.

What the civil rights restoration act does:

The Massachusetts Civil Rights Restoration Act, filed by Rep. Byron Rushing in the 2009 legislative session, restores the right of an individual to bring a claim where a governmental policy or activity has the effect of unlawfully discriminating on the basis of race, color, national origin or sex. The bill allows an aggrieved person to challenge such a policy or activity in state court.

Why we need to restore civil rights at the state level:

Federal civil rights laws prohibit discrimination in such areas as voting, employment, education and housing. Under Title VI of the federal Civil Rights Act of 1964, individuals can challenge intentional discrimination based on race, color, and national origin by state and local governmental programs that receive federal funds. For over 30 years, individuals were also able to use Title VI's disparate impact regulations to challenge government policies and activities that had the effect of discriminating on the basis of race, color or national origin, even where discrimination was not intentional.

Unfortunately, in *Alexander v. Sandoval*, 532 U.S. 275 (2001), the U.S. Supreme Court ruled in a five-to-four decision that while private parties may bring suit under Title VI for intentional acts of discrimination, aggrieved parties may no longer bring claims based on the disparate impact regulations under Title VI. Subsequent decisions have applied this reasoning to Title IX of the Education Amendments of 1972 that prohibits discrimination based on sex.

Because the Supreme Court held that the disparate impact regulations are enforceable in federal court only by the federal government, not the beneficiaries of the civil rights statutes, the decision has seriously limited challenges to government policies and practices having a disparate impact in such areas as environmental justice, transportation, and housing.

How the act restores rights that were previously established:

The Civil Rights Restoration Act proposes to restore enforcement of civil rights by allowing private citizens to challenge in state court policies and activities of any governmental unit that have the effect of discriminating on the basis of race, color, national origin, or sex through exclusion from participation, denial of benefits, use of criteria or methods of administration. A government entity defending such a case must either sufficiently justify or change practices and policies which have been demonstrated to have a disparate adverse impact.

Bill Summary:

This bill would amend Section 11 of Chapter 12 of the Massachusetts General Laws by inserting a new section 11M.

Specifically, the Civil Rights Restoration Act aims to:

- 1) Bar discrimination under any state government program or activity on account of race, color, national origin, or sex;
- 2) Bar methods of administration that have the effect of discriminating against an individual on a prohibited basis;
- 3) Allow an aggrieved person to file a civil action in state court to redress said discrimination.

Frequently Asked Questions

If this problem comes from a failure of federal civil rights law, why not fix it on the federal level?

Unfortunately, despite a similar legislative proposal on the federal level,¹ the present Congress is unlikely to cure this problem through statutory amendment. Meanwhile, civil rights are languishing. The Civil Rights Restoration Act would solve this problem by creating a Massachusetts-based means for aggrieved parties to challenge disparate impacts in government programs.

Have other jurisdictions restored civil rights protections in this way?

Yes. In 2004, Illinois addressed the problems created by Alexander v. Sandoval by enacting a civil rights statute permitting aggrieved parties to bring a civil suit to redress patterns and practices resulting in discrimination.²

Should we be concerned about burdening the state with new litigation?

No. Disparate impact lawsuits do not impose an unreasonable burden on the government. First, the aggrieved party bears the heavy burden of proving that the challenged policy caused a statistically significant disparate impact. Second, the government may prevail by proving its policy is justified. Finally, the Illinois experience indicates that restoring civil rights will not result in a flood of litigation; only a handful of lawsuits have been filed since the Illinois law was passed in 2004.

Does federal law pre-empt Massachusetts from passing such legislation?

No. This bill does not raise any problem of federal pre-emption because it would only affect the state government, not the federal government.

Why does the bill permit the award of attorneys' fees in successful litigation?

Everyone should have access to the Massachusetts courts to redress violations of their basic civil rights. Unfortunately, many victims of civil rights violations cannot afford to hire an attorney. For such persons, the doors of justice are effectively closed. For this reason, all meaningful civil rights laws include a provision for awarding attorneys' fees. Such fee awards will benefit all citizens of Massachusetts, by encouraging private parties to enforce our civil rights laws, promoting swift settlement of meritorious lawsuits, and deterring future unlawful conduct.

¹ Civil Rights Act of 2008 (H.R. 2159 & S. 2554)

² Illinois Public Act 093-1017 (2004)