

# Civil Rights

## BACKGROUND

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A social commentator at the turn of the last century opined that “the one pervading evil of democracy is the tyranny of the majority.” The basic function of civil rights legislation in the United States has been to seek to protect minorities from the tyranny of discriminatory treatment by the majority. Most civil rights law initially was enacted as federal statute. In general, the federal laws set minimum standards; states are free to set higher standards of inclusion, but they may not fall below those set out in the federal law.

The most publicized and politically fractious civil rights struggle of longest standing in the United States has been over the status of its black minority. The first federal civil rights law since Reconstruction was enacted in 1957 and established a U.S. Commission on Civil Rights. A 1964 federal statute—the Civil Rights Act—specifically outlawed race-based discrimination in public accommodations and by employers, unions, and voting registrars. It also applied to gender-based discrimination against women. (Women had won the right to vote in this country only 44 years earlier.) The federal Indian Civil Rights Act of 1968 gave Indians access to the courts for restoration of rights to their ancestral lands and reparation for lost land and natural resources.

The Michigan Civil Rights Commission was formed in 1963, when guarantees against discrimination were added to the Michigan Constitution. Article V, section 29 mandates that the commission investigate discrimination against any person because of religion, race, color, or national origin, and “secure the equal protection of such civil rights without such discrimination.” This is unique in the nation: Only in Michigan does a state agency have a *constitutional* (as opposed to legislative or regulatory) mandate to eliminate unlawful discrimination in nearly all aspects of public life.

The Michigan Department of Civil Rights was established by legislation in 1965, to provide the means to implement the commission’s policies. In 1996 (the most recent year for which statistics are available), just over 5,300 new complaints were filed. Of these, 1,200 were referred from the Equal Employment Opportunity Commission as part of a work-sharing agreement with that agency to avoid duplicating effort.

The department is authorized to receive and investigate complaints based on unlawful consideration of race, color, national origin, sex, age, marital status, or handicap in the areas of employment, education, housing, public accommoda-

## GLOSSARY

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### **Affirmative action**

*A policy or program that seeks to redress past discrimination through active measures to ensure equal opportunity, as in education and employment.*

### **Civil right**

*The term has no precise meaning in law but generally is understood to be a guarantee of freedom, justice, and equality extended by a government to its citizenry.*

### **Reverse discrimination**

*Discrimination against members of a dominant group, especially if it results from policies established to correct discrimination against members of a minority group.*

tion, or public service (government). In addition, complaints may be based on unlawful consideration of height, weight, and arrest record in employment. Complaints are investigated primarily under the authority of two state statutes: The Elliott-Larsen Civil Rights Act (Public Act 453 of 1976) and the Michigan Handicappers' Civil Rights Act (P.A. 220 of 1976).

Although Michigan does not, the District of Columbia and ten states have civil rights legislation protecting gay and lesbian citizens from job discrimination. Approximately 160 local municipalities—including six in Michigan—have followed suit. In 80 percent of the country, including Michigan, employers may fire or refuse to hire or promote an employee based only on their perception of the employee's sexual orientation.

### **Affirmative Action**

An important constitutional issue causing fairly continuous public controversy has been whether and to what degree public and private institutions may use "affirmative action" to help members of minority groups obtain jobs or schooling. A 1978 U.S. Supreme Court decision held that using racial preferences as a remedy for past discrimination was not unconstitutional and also upheld a federal statute requiring a certain percentage of government contracts be given to minority-owned businesses.

### **Domestic Partnership and Same-Sex Marriage**

Virtually unheard of a decade ago, domestic partnerships—same-sex couples who formalize their relationship by registering it with their employers and/or their municipality—are achieving growing recognition. Such large employers as IBM, Walt Disney, and Northwest Airlines, along with large municipalities including New York City and San Francisco, extend to the same-sex partners of employees some or all benefits afforded to the spouses of married workers. The University of Michigan (UM), Michigan State University, and Wayne State University offer benefits to their employees' domestic partners.

No domestic partnership plan offers the broad responsibilities, benefits, and legal and social protections that marriage does, however, and same-sex marriage is not yet legal anywhere. The Netherlands is expected to enact enabling legislation in 1998. In the United States, the Hawaii Supreme Court is expected to rule in 1998 on a pending suit in which the plaintiffs argue that denying marriage rights to a particular class of citizens violates their constitutional rights. Since 1996, 22 states have passed laws restricting marriage to opposite-sex couples and refusing to honor the legality of same-sex marriages performed in another state. Also in 1996, Congress passed the Defense of Marriage Act, which holds that marriage benefits are exclusively reserved for opposite-sex couples and permits states to ignore gay marriages sanctioned by other states.

### **Hate Crimes**

"Hate crimes" generally are understood to be threats or assaults on people because of their perceived race or ethnicity, gender or sexual orientation, or other minority status. The federal Hate Crime Statistics Act of 1990 asks states and municipalities to voluntarily report all hate crimes to the FBI. The federal Hate Crimes Sentencing Act of 1994 provides for tougher sentencing in federal courts when it is proved that the offense was a hate crime. In Michigan, the Ethnic Intimidation Act of 1988 added to the state penal code the crime of physical contact or destruction of personal property or the threat of either with malicious intent based on the victim's race, religion, gender, or national origin.

### **Sexual Harassment**

Sexual harassment is prohibited under Title VII of the federal Civil Rights Act of 1964 as well as under the federal Violence Against Women Act of 1994. Court cases have sorted sexual harassment into two basic categories.

- *Quid pro quo* harassment occurs when the perpetrator makes an aspect of employment (hiring, promotion, retention, and so on) contingent on the victim's providing sexual favors.

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- A *hostile work environment* is deemed to be the case when, as defined in a unanimous 1993 U.S. Supreme Court opinion, there is a certain frequency and severity of discriminatory conduct, it is physically threatening (not a “mere offensive utterance”), and it unreasonably interferes with an employee’s work performance.

Although sexual harassment law was formulated to address discrimination against women, more than 200 men file harassment charges each year with the U.S. Equal Employment Opportunity Commission—roughly one-tenth the number of cases filed by women.

## DISCUSSION

### Affirmative Action

A state representative is leading a petition campaign to nullify racial and gender preference laws statewide. Backers must collect 308,908 signatures by July 6 to have language outlawing affirmative action in Michigan government and universities on the November 1998 ballot.

The outcome of two pending lawsuits, both brought in 1997, at the University of Michigan may set important national precedents regarding affirmative action.

- Two undergraduate applicants have sued the university, alleging “reverse discrimination” because they were not admitted; they charge that minority students presenting the same grades and test scores they possess were offered admission.
- An unsuccessful UM Law School applicant has filed suit against the school, alleging that minorities with lower test scores and grades than hers were admitted.

In both cases, the students are being represented by the Washington-based Center for Individual Rights, which won a similar suit against the University of Texas Law School in 1996. The Texas case was decided by a federal appeals court; observers predict

the UM case could end up before the U.S. Supreme Court and serve as a basis for reversing the high court’s *Bakke* decision of two decades ago, which holds that race may be used as a positive factor on admissions decisions. The court is more conservative in composition today, and no justice who supported *Bakke* still is serving. In fact, the Court is seen by some as becoming increasingly skeptical of efforts to give minorities special help without proof of specific discrimination. (For example, recently, the Court refused to hear a Florida case that had argued that there is sufficient discrimination in that state’s construction industry to justify such help for minority-owned companies as a “set-aside”—a requirement that a certain percentage of government funds and contracts be reserved for businesses owned by women and minorities.)

The UM has revised its admissions policies, making clear that racial or ethnic underrepresentation is just one category in which an applicant may receive extra consideration. Candidates also may receive special consideration by writing an outstanding application essay, having parents or other close relatives who are UM alumni, and having a record of outstanding personal achievement or community service.

In California in 1996, voters approved a measure banning any “preferential treatment” in state-sponsored programs; the measure was aimed at affirmative action in the state’s public higher-education system. In the Michigan Senate a resolution has been introduced to similarly amend the Michigan Constitution; the measure would prohibit preferential treatment based on race or gender in public contracting, public employment, and university admissions.

In 1997 a *New York Times*/CBS News poll found that a majority of Americans favor affirmative action programs but not the practice of basing employment and admissions decisions on race or gender. Instead, a majority of both blacks and whites responded that preferential employment/admission treatment should be based on economic class.

### Domestic Partnership and Same-Sex Marriage

In 1996 Michigan lawmakers enacted legislation prohibiting same-sex marriage and denying legal recognition here of those performed elsewhere. In 1997 legislation was enacted prohibiting state funds from being used to pay benefits to unmarried partners of state employees. Opponents to extending partner benefits and the protection of civil marriage to gays and lesbians contend that sexual orientation is a chosen behavior and, unlike race, age, and gender, not an immutable characteristic. Others point out that there is significant scientific evidence that suggests that people do *not* choose their sexuality, and, moreover, religion is not an immutable characteristic, yet one's choice/practice of it is vigorously defended by federal, state, and local civil rights law.

### Hate Crimes

In 1994 Governor Engler directed the Civil Rights Commission and the department to establish the Bias Crime Response Task Force. One of the group's initial findings is that only a few organizations in the state formally collect data relating to crimes in which bias is believed to be a factor, and there is no uniformity in collecting or reporting the data. The task force proposed that it become a permanent entity within the Department of Civil Rights and, in partnership with the Michigan Justice Statistics Center at the Michigan State University School of Criminal Justice, collect and interpret bias crime data; the executive branch has not acted on the recommendation.

Nationally, of all reported hate crimes in 1996 (the most recent year for which statistics are available), race accounted for 62 percent of all incidents, religion for 16 percent, sexual orientation for 12 percent, and all others 10 percent. From 1996 to 1997, in Michigan, the Triangle Foundation, a gay-lesbian watchdog organization, reports that its statistics show a 12 percent increase in hate crimes against homosexuals. In recording 130 reported incidents of anti-gay violence, the foundation states, "extensive empirical evidence show that anti LGTB (lesbian, gay, transgendered, bisexual) violence is vastly

underreported. We know from dozen of prevalence surveys, academic studies, and government-funded reports conducted over the past two decades that gay men and lesbians are disproportionately the victims of hate-motivated violence." Thirty-eight states have laws in regard to hate crimes. Michigan's—the Ethnic Intimidation Act—deals with malicious intent based on the victim's race, religion, gender, or national origin but not sexual orientation (18 other states similarly exclude sexual orientation).

House Bill 4674 would amend the state's ethnic intimidation statute by adding sexual orientation to the law's coverage and changing references in the penal code from "ethnic intimidation" to "felonious intimidation." Ann Arbor, Birmingham, Detroit, East Lansing, Flint, and Grand Rapids have adopted local nondiscrimination ordinances that include sexual orientation. Similar ordinances passed in Lansing and Ypsilanti were overturned by referendum and petition, respectively.

### Sexual Harassment

Critics of efforts to eliminate sexual harassment charge that such efforts represent an excess of political correctness that curbs free speech. Sexual harassment procedures, they charge, often abrogate due process rights (including one's right to confront his/her accuser and the presumption of innocence) on the theory that such protections might discourage people from filing and pursuing harassment complaints. Although, historically, the overwhelming majority of cases have involved women's complaints against men, some experts believe men increasingly will experience sexual harassment as more women assume positions of corporate power.

Recently, in a precedent-setting case, the U.S. Supreme Court ruled unanimously that sexual harassment cases may be filed against a perpetrator who is the same gender as the victim. Some argue that this is a setback for employers because it opens them to additional lawsuits. Although the case on which the Court ruled involved heterosexuals, gay civil rights advocacy groups hail the ruling as a potentially important means to redress workplace discrimination.

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See also AIDS and HIV Infection; Genetic Cloning and Testing; Mental Health Funding and Services.

### FOR ADDITIONAL INFORMATION

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[www.aarp.org](http://www.aarp.org)

American Civil Liberties Union  
125 Broad Street  
New York, NY 10004  
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[www.aclu.org](http://www.aclu.org)

Center for Individual Rights  
1233 20th Street N.W., Suite 300  
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[www.wdn.com/cir](http://www.wdn.com/cir)

Human Rights Campaign  
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[The department houses the Commission on Indian Affairs (517/373-0654), Commission on Spanish Speaking Affairs (517/373-8339), and Michigan Women's Commission (517/373-2884)]

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