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Civil Rights - Legislation - The Civil Rights Act of 1957

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COMMENTS

CIVIL RIGHTS—LEGISLATION—THE CIVIL RIGHTS ACT OF 1957—The enactment by Congress of the Civil Rights Act of 1957 indicates movement in an area which has long remained dormant.

It is the purpose of this comment to note the nature of the prior legislation in the civil rights area, the provisions of the new act and the effect of the new act upon civil rights protection.

I. *Prior Legislation*

The passage of the Civil Rights Act of 1957 ended an eighty-two year period marked by the absence of federal civil rights legislation. The former legislation consisted of five acts passed in the nine-year period between 1866 and 1875. These acts, passed by the post-Civil War Reconstruction Congress, were intended to secure a status of equality to the Negro whose freedom from slavery was secured by the Thirteenth Amendment.[1] Measured by the standard of achievement of this objective, however, they were a dismal failure.[2]

Shortly after the Civil War ended, the ratification of the Thirteenth Amendment emancipated the Negro and abolished slavery forever from the United States[3] The southern states soon discovered that what could no longer be done by means of institutionalized slavery could still be substantially accomplished by means of restrictive state legislation.[4] It was to combat such so-called "Black Codes" that the first civil rights act was passed in 1866.[5] In it Congress provided that all citizens, without regard to color, were entitled to the same rights to contract, sue, give evidence, take, hold and convey property, and to the equal benefit of all laws for the security of person and property.[6] The doubts raised as to the constitutionality of this act impelled Congress to propose the Fourteenth and Fifteenth Amendments.[7] Within a

1 See CARR, FEDERAL PROTECTION OF CIVIL RIGHTS (1947); Gressman, "The Unhappy History of Civil Rights Legislation," 50 MICH. L. REV. 1323 (1952).

2 See REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS (TO SECURE THESE RIGHTS) (1947); CARR, FEDERAL PROTECTION OF CIVIL RIGHTS 41 (1947).

3 This amendment was adopted by Congress February 1, 1865, and ratified on December 18, 1865.

4 See Maslow and Robison, "Civil Rights Legislation and the Fight for Equality 1862-1952," 20 UNIV. CHI. L. REV. 363 at 366, 367 (1953).

5 See Fraenkel, "The Federal Civil Rights Laws," 31 MINN. L. REV. 301 at 304 (1947); Maslow and Robison, "Civil Rights Legislation and the Fight for Equality 1862-1952," 20 UNIV. CHI. L. REV. 363 at 367 (1953).

6 14 Stat. 27 (1866), 42 U.S.C. (1952) §1982, 18 U.S.C. (1952) §242.

7 The Fourteenth Amendment was adopted June 16, 1866, and ratified July 21, 1868. The Fifteenth Amendment was adopted February 26, 1869, and ratified March 30, 1870. See Clark, "A Federal Prosecutor Looks at the Civil Rights Statutes," 47 COL. L. REV. 175 at 177 (1947); Biddle, "Civil Rights and the Federal Law," SAFEGUARDING CIVIL LIBERTIES TODAY 109 at 122 (1945).

year after ratification of the Fifteenth Amendment by the states, two more civil rights acts were written into law: those of May 31, 1870, and February 28, 1871. The former reenacted the 1866 act to place it under the authority of the Fourteenth Amendment, and endeavored to effectuate the right of free suffrage without discrimination as to race, color, or previous condition of servitude.[8] The latter of the two acts supplemented the former and gave further effect to its voting provisions by providing for the supervision of elections by officials to be appointed thereunder.[9]

Once again, however, Congress discovered its intent being frustrated; this time by the activities of the Ku Klux Klan and similar organizations which had arisen.[10] Congress's response to the situation was the enactment of the fourth civil rights act on April 20, 1871, aimed at regulating these groups by imposing penalties for depriving any person of the equal protection of the law, or equal privileges and immunities under the law by conspiracy or under color of law.[11] The culmination of the legislative program came on March 1, 1875, with the adoption of the fifth and last of the civil rights acts which required all inns, public conveyances and other places of public amusement to accommodate all persons, subject only to such conditions as were applicable to citizens of every race and color.[12]

Thus, Congress had evolved a broad plan for the protection by the federal government of the rights of the recently emancipated slaves. However, the basic question which had to be answered before the civil rights acts could effectuate their purpose was whether, pursuant to the constitutional amendments as drafted and judicially interpreted, the federal government had the authority to protect the kinds of rights enumerated in the acts and against whom the government could enforce such rights.

In a series of decisions between 1873 and 1909 the Supreme Court answered that question in a manner which in the end fatally impaired the effectiveness of Congress's plan. A death blow was dealt the privileges and immunities clause of the Fourteenth Amendment by the holding of the Court in the *Slaughterhouse*

8 16 Stat. 140 (1870), 18 U.S.C. (1952) §241, 42 U.S.C. (1952) §1988.

9 16 Stat. 433 (1871).

10 See Clark, "A Federal Prosecutor Looks at the Civil Rights Statutes," 47 COL. L. REV. 175 at 177 (1947); Maslow and Robison, "Civil Rights Legislation and the Fight for Equality 1862-1952," 20 UNIV. CHI. L. REV. 363 at 369 (1953).

11 17 Stat. 13 (1871), 42 U.S.C. (1952) §§1983, 1985.

12 18 Stat. 336 (1875).

Cases[13] that only rights of national citizenship received protection from the privileges and immunities clause and such national citizenship did not comprehend any of the fundamental rights of the individual.[14] Three years later, in *United States v. Cruikshank,*[15] the Court held that the Fourteenth Amendment rights were restrictions only upon the states and not on private individuals and that the power of Congress to enforce its provisions was accordingly limited.[16] Furthermore, the Thirteenth Amendment had fallen beneath the onslaught of strict construction. As early as the *Slaughterhouse Cases,*[17] the Court had refused to extend the concept of slavery and involuntary servitude beyond the bounds of forced labor so as to include the subjection of one to a badge of servitude by discrimination. Moreover, as might well be expected in an atmosphere of strict construction, defects were discovered in the drafting of the civil rights acts.[18]

Thus, the pattern of strict construction had been set. Even though relatively few sections of the acts had been specifically declared unconstitutional,[19] the majority of the sections had been based originally upon a much broader interpretation of congressional authority. Recognition was extended only to those provisions dealing with rights protected against state action and with rights which could be guaranteed against individ-

13 16 Wall. (83 U.S.) 36 (1873).

14 See Gressman, "The Unhappy History of Civil Rights Legislation," 50 MICH. L. REV. 1323 at 1333 (1952). The Court indicated that such rights of national citizenship included the rights to travel to the national capitol, to sue in federal courts, and to be protected while abroad or on the high seas.

15 92 U.S. 542 (1876).

16 This elimination of redress against private action served to strike down many of the other provisions of the acts. It was on this basis that the Court in United States v. Harris, 106 U.S. 629 (1883), declared void the conspiracy section of the Ku Klux Klan Act of 1871. In a similar fashion, the Court in the Civil Rights Cases, 109 U.S. 3 (1883), declared unconstitutional the first two sections of the Civil Rights Act of 1875.

17 16 Wall. (83 U.S.) 36 (1873).

18 See, e.g., United States v. Reese, 92 U.S. 214 (1876), in which the Court held that since the terms of the act of 1870 attempted to enforce voting rights at both state and federal elections, the failure to limit interference to cases based solely on race, color, or previous condition of servitude rendered the act without the scope of the Fifteenth Amendment, and consequently, unconstitutional. *Accord:* Baldwin v. Franks, 120 U.S. 678 (1887); James v. Bowman, 190 U.S. 127 (1903).

19 Four sections were completely eradicated by decisions holding them unconstitutional: §§3 and 4 of the act of May 31, 1870, by United States v. Reese, 92 U.S. 214 (1876); §§1 and 2 of the act of March 1, 1875, by the Civil Rights Cases, 109 U.S. 3 (1883). Section 5 of the act of May 31, 1870, which had been held unconstitutional by James v. Bowman, 190 U.S. 127 (1903), was subsequently repealed by 35 Stat. 1153 (1909). Two other sections were revised to enable them to withstand a constitutional attack: §2 of the act of April 20, 1871, 42 U.S.C. (1952) §1985, and §16 of the act of May 31, 1870, 42 U.S.C. (1952) §1981.

ual action because they were created by the Constitution or federal laws.[20] Furthermore, it was not only the decisions of the Court which inhibited the effectiveness of the acts. The administrative difficulty of getting local prosecutors to prosecute, judges to adjudicate impartially and jurors to convict,[21] and the action of Congress in revising and repealing earlier legislation[22] aided in frustrating the plan for the protection of rights established by the three constitutional amendments and the five original acts.

II. *Surviving Prior Legislation*

The legislation which survived and serves to give present protection of civil rights, exclusive of the Act of 1957, can be placed into four basic categories: (1) those sections which merely declare rights but carry no remedial sanctions, (2) those which create remedies in the form of civil causes of action, (3) those which impose criminal sanctions, and (4) those which are procedural and implement the effectiveness of the other sanctions.

Included in the first category would be sections 1971, 1981, and 1982 of title 42, United States Code (1952).[23] These three sections merely declare the existence of equality without distinction as to race, color, or previous condition of servitude in such matters as voting, owning property, ability to sue, give evidence, contract, and the like.

Sections 1983, 1985, and 1986 of title 42, United States Code (1952), are placed in the second category. Section 1983 provides a civil remedy for the deprivation of rights by persons acting under color of law while section 1985 gives similar causes of action for conspiracy to interfere with or deprive a person of his federal rights. Similarly, section 1986 allows a civil recovery against those who, having the power to prevent the commission of such acts, refuse or neglect to do so.

The third category is composed of sections 241, 242, 243, and 594 of title 18, United States Code (1952). Section 241 makes a conspiracy to injure a citizen in the exercise of his federally se-

20 Gressman, "The Unhappy History of Civil Rights Legislation," 50 MICH. L. REV. 1323 at 1342 (1952).

21 CUMMINGS AND MCFARLAND, FEDERAL JUSTICE 230 (1937).

22 In 1873 when all federal laws were recodified and published as the Revised Statutes, the civil rights acts were separated under unrelated chapters. In 1894, most of the provisions protecting suffrage were repealed by 28 Stat. 36, and in 1909, when the federal criminal laws were recodified, more provisions were eliminated by 35 Stat. 1092.

23 14 Stat. 546 (1867), 42 U.S.C. (1952) §1994, declares peonage to be abolished in the United States and might be included in this category.

cured rights a felony, and section 242 states that willful action, under color of law, to deprive an inhabitant of his federally secured or protected rights is a misdemeanor. Section 243 forbids disqualification for jury service because of race or color and renders such action by officers charged with selecting jurors a crime punishable by a fine. Section 594 imposes a fine upon persons who interfere with the right to vote in elections at which federal officials are chosen.

The last category includes sections 1343 and 1443 of title 28, United States Code (1952). The former section vests jurisdiction in the district courts over civil actions commenced by a person for the redress of any right given him under the Constitution or act of Congress, and the latter section allows removal of state proceedings to the federal district court by the defendant on the ground that he is being deprived of his equal civil rights as a citizen of the United States.[24]

Out of the foregoing provisions, it would appear that only three sections assume any great importance insofar as active enforcement is concerned, i.e., sections 241 and 242 of title 18, United States Code (1952), and 1983 of title 42, United States Code (1952).[25] Of these three sections, only section 241 extends to the actions of individuals and, even then, only when they are acting in conspiracy. The scope of its protection includes only the rights "secured by the Constitution and federal laws." It is clear that this would include those rights created directly by the Constitution or Congress in the exercise of its substantive powers.[26] On the other hand, it is still doubtful whether the federally protected rights guaranteed against state action by the Fourteenth Amendment's due process and equal protection clauses are incorporated into this section, even though the individuals involved had been acting under color of law. This issue was presented in *United States v. Williams*,[27] where the defendants, acting under color of law, had obtained confessions by the use of force and were indicted under section 241 for having interfered with a right aris-

24 18 Stat. 337 (1875), 42 U.S.C. (1952) §1984, also provides for appeal to the Supreme Court and, hence, could be included within this category.

25 17 Stat. 13 (1871), 42 U.S.C. (1952) §1985(3), was rendered practically useless by the Court's decision in Collins v. Hardyman, 341 U.S. 651 (1951).

26 E.g., United States v. Classic, 313 U.S. 299 (1941) (right to vote in and have one's vote counted in a federal election); Logan v. United States, 144 U.S. 263 (1892) (right to freedom from mob violence while in the custody of a federal officer); United States v. Waddell, 112 U.S. 76 (1884) (right to establish a claim under the Homestead Act).

27 341 U.S. 70 (1951). See Gressman, "The Unhappy History of Civil Rights Legislation," 50 MICH. L. REV. 1323 at 1348 (1952).

ing from the due process clause of the Fourteenth Amendment. The Court split four to four on the issue and, thus, did not determine whether the rights mentioned in section 241 included those protected by the Fourteenth Amendment. Consequently, the ultimate scope of section 241 protection remains to be determined by future Court decisions. Both of the remaining sections, sections 242 and 1983, involve action under color of law where either federally secured or protected rights are involved. It would seem clear that the rights given under the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment as well as those rights given by national citizenship and federal laws can be protected under both of these sections.[28] The effectiveness of the protection under section 242 is limited by the requirement that the action be willful.[29]

Hence, at the time of the enactment of the Civil Rights Act of 1957, the broad plan for the protection of rights envisioned and pronounced by the Reconstruction Congress had been narrowed to these few provisions.

III. *The Civil Rights Act of 1957*[30]

In essence the act consists of four main provisions: (1) the creation of a Civil Rights Commission,[31] (2) the addition of an assistant attorney general,[32] (3) the further protection of voting rights,[33] and (4) the elimination of the requirement that federal jurors be competent as such under the state law.[34]

One of the important problems confronting the Congress at the present time is the need for an intensive study in the field of civil rights to determine what, if any, steps need to be taken in the enactment of future legislation.[35] Consequently, the act provides for the appointment by the President of a six-man bipartisan Civil Rights Commission[36] which is to have two main

28 Section 242 was applied in United States v. Classic, 313 U.S. 299 (1941), to voting in a primary election which involved the selection of federal officials; and in Screws v. United States, 325 U.S. 91 (1945), to the alleged brutality of state police officers.

29 It was by a strict interpretation of the requirement of willful action that the Supreme Court warded off an attack on §242 because of vagueness in Screws v. United States, 325 U.S. 91 (1945).

30 71 Stat. 634 (1957).

31 71 Stat. 634 (1957), 42 U.S.C.A. (Supp. 1957) §§1975 to 1975e.

32 71 Stat. 637 (1957), 5 U.S.C.A. (Supp. 1957) §295—1.

33 71 Stat. 637 (1957), 42 U.S.C.A. (Supp. 1957) §1971.

34 71 Stat. 638 (1957), 28 U.S.C.A. (Supp. 1957) §1861.

35 H. Rep. 291 on H.R. 6127, 85th Cong., 1st sess., p. 5 (1957).

36 71 Stat. 634 (1957), 42 U.S.C.A. (Supp. 1957) §1975.

objectives: (1) to investigate allegations that citizens are being deprived of their right to vote by reason of their race, color, religion or national origin, and (2) to study the development of the laws and policies of the federal government with respect to insuring equal protection of the laws as guaranteed by the Constitution.[37] To accomplish such objectives, the commission is authorized to conduct hearings whenever and wherever it deems such to be necessary[38] and has the power by subpoena to compel the attendance of witnesses from anywhere in the state in which such hearings are being held.[39] Its activities will culminate in a final report and recommendation to the President and Congress within two years from the date of enactment.[40] Sixty days thereafter the commission will cease to function.[41]

Closely associated with a desire for information regarding future legislation is the recognition of a need for the immediate strengthening of the enforcement of existing rights.[42] For that reason, the act provides for the appointment by the President of an additional assistant attorney general in the Department of Justice.[43] Although the act does not so provide, it is understood that there will be created in the Department of Justice a new Civil Rights Division to replace the present Civil Rights Section of the Criminal Division.[44]

In order further to secure and protect the citizens' right to vote and prohibit the unjust infringement thereof, the act declares it to be unlawful for an individual, whether acting under color of law or otherwise, to interfere with the right to vote in any general, special, or primary election concerning federal officers.[45] Congress realized that such a declaration would be ineffective without a remedy for such interference, and, hence, has conferred upon the Attorney General the authority to institute a civil action to prevent an act which would deprive a person of such rights.[46] This includes the use of injunctive relief. Moreover,

37 71 Stat. 635 (1957), 42 U.S.C.A. (Supp. 1957) §1975(c).
38 71 Stat. 636 (1957), 42 U.S.C.A. (Supp. 1957) §1975(d).
39 71 Stat. 635 (1957), 42 U.S.C.A. (Supp. 1957) §§1975(a) and (d).
40 71 Stat. 635 (1957), 42 U.S.C.A. (Supp. 1957) §1975c(b).
41 71 Stat. 635 (1957), 42 U.S.C.A. (Supp. 1957) §1975c(c).
42 H. Rep. 291 on H.R. 6127, 85th Cong., 1st sess., p. 5 (1957); H. Hearings Before Subcommittee No. 5 of the Committee on the Judiciary, 85th Cong., 1st sess., p. 569 (1957).
43 71 Stat. 637 (1957), 5 U.S.C.A. (Supp. 1957) §295—1.
44 H. Rep. 291 on H.R. 6127, 85th Cong., 1st sess., p. 9 (1957).
45 71 Stat. 637 (1957), 42 U.S.C.A. (Supp. 1957) §1971(b).
46 71 Stat. 637 (1957), 42 U.S.C.A. (Supp. 1957) §1971(c).

the act protects the right to vote for state and local officials by extending the injunctive remedy to that portion of section 1971 of title 42, United States Code, which was already in existence. To prevent frustration of such remedial action by administrative processes, it is clearly stated that the district courts are to have jurisdiction over action brought thereunder without regard to whether any administrative remedies have been provided or pursued.[47] Nevertheless, some of the effectiveness of the civil remedy given to the Attorney General has been circumscribed by the inclusion in the act of the so-called "jury trial amendment." Cases of criminal contempt[48] arising under the act are subject to a maximum penalty of six months imprisonment and a fine of $1,000. In the first instance, the district court may determine whether or not trial shall be before a jury; however, if the trial is held without a jury and the penalty inflicted exceeds an imprisonment of more than forty-five days or a fine of $300, the accused, upon demand, may have a trial *de novo* before a jury.[49]

Finally, the act amended the Judicial Code, section 1861 of title 28, United States Code (1952) to eliminate the requirement that federal jurors be competent as petit or grand jurors under the law of the state in which the district is located. Thus, the standard for federal jury service has become uniform. However, one requirement, i.e., one year's residence within the judicial district, has been added to that section.[50]

IV. *Effect of the Present Act*

Insofar as the further protection of civil rights is concerned, the present act has accomplished essentially three substantive changes in existing law: (1) extending effective protection against interference with the right to vote to include action by individuals alone as well as those acting in conspiracy or under color of law, (2) providing a more flexible remedy to the At-

[47] 71 Stat. 637 (1957), 42 U.S.C.A. (Supp. 1957) §1971(d).

[48] This provision does not apply to contempts committed in the presence of the court or so near thereto as to interfere with the administration of justice, or to the misbehavior of any officer of the court in respect to the writs, orders, or process of the court. Likewise, it does not affect the power of the court to secure compliance with its orders by the usual type of civil contempt proceedings.

[49] 71 Stat. 638 (1957), 42 U.S.C.A. (Supp. 1957) §1995.

[50] 71 Stat. 638 (1957), 28 U.S.C.A. (Supp. 1957) §1861. The effect of section 122 of the new act which repeals section 1989 of the Revised Statutes [42 U.S.C. (1952) §1993] which gave to the President authority to use armed forces will not be discussed since it has been treated in 56 MICH. L. REV. 249 at 261, 262 (1957).

torney General by permitting suits for injunction upon threatened interference with voting rights, and (3) eliminating the requirement that federal jurors be competent under state law.

Prior to the new act, the statute[51] giving to all citizens the right to vote in all elections without discrimination based on race or color had been subject to two major defects: failure to protect voters from unlawful interference by private individuals and failure to lodge any authority in the federal government to obtain preventive relief by the use of civil remedies.[52] The new act has corrected both of these defects by prohibiting any person whether acting under color of law or otherwise from interfering with the right to vote for federal officials,[53] and providing the Attorney General with the authority to bring a civil action for or in the name of the United States for a threatened interference with such right.

With respect to the prohibition upon individuals acting privately, insofar as federal elections are concerned, it has become clear that the right of qualified voters in a state to cast their ballots and have them counted is within the right secured by the Constitution to choose federal officers.[54] Since the constitutional command is not restricted or limited, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as states.[55] Hence, the present act is within the bounds of constitutional authority in governing the actions of individuals acting privately in interfering with federal elections. The injunctive remedy may also be utilized in state and local elections since it is made applicable to the previously existing provisions of section 1971. In this instance, however, it would appear to be applicable only to those individuals acting under color of law since the constitutional authority of the federal government to regulate state elections is given only by the Fifteenth Amendment. The only means of encompassing private individual action at state elections would be by extending the present concepts of state action to include an obligation on the states to guarantee free access to state elections.

The ability of the Attorney General to bring a separate civil

51 16 Stat. 140 (1870), 42 U.S.C. (1952) §1971.

52 H. Rep. 291 on H.R. 6127, 85th Cong., 1st sess., p. 11 (1957); H. Hearings Before Subcommittee No. 5 of the Committee on the Judiciary, 85th Cong., 1st sess., p. 570 (1957).

53 71 Stat. 637 (1957), 42 U.S.C.A. (Supp. 1957) §1971.

54 U.S. CONST., art. I, §§2, 4.

55 Ex parte Yarbrough, 110 U.S. 651 (1884); United States v. Classic, 313 U.S. 299 (1951).

action for injunctive relief should result in a substantial extension of protection. As has been noted previously in the discussion, until the advent of the new act, the only sanctions which were authorized for use by the federal government itself were the criminal remedies in sections 241 and 242 of title 18, United States Code (1952). Because criminal prosecutions cannot be instituted until the harm has been done, they are effective as a deterrent only insofar as the threat of successful imposition of punishment can serve as an inhibiting influence.[56] The only civil remedies available to the government were those obtained by intervention to secure contempt citations against those who interfered with injunctions obtained by private persons from the federal courts under section 1983 of title 42, United States Code (1952). Under the new act, it is not necessary that a private person initially institute civil proceedings before the government can take action.

The greatest source of interpretative difficulty with the act would appear to be with regard to the contempt provisions. The jury trial option is made applicable only to an indirect criminal[57] contempt, and, hence, the somewhat nebulous distinctions between civil and criminal contempt assume major importance. Congress has endeavored to alleviate the problem by stating the usual distinction between civil and criminal contempt, i.e., civil proceedings are designed to secure compliance with or prevent obstruction of, as distinguished from punishment for violations of, any court order.[58] This, however, does not alleviate the difficult problems of applying the distinction to given factual situations.

The removal of the requirement that federal jurors be competent as grand or petit jurors under the qualifications set up by the states should prohibit any attempt by the states to bar any particular minority group from federal jury service.

Perhaps the element of the new act which assumes the greatest importance is the indication which it gives of the increased interest in and recognition of the need for protection of civil rights on the national level by the federal government and the fact that civil rights legislation can survive a journey through both houses of Congress, withstanding even the weapon of filibuster. In addition, the act makes substantial strides outside the sphere

[56] H. Hearings, note 52 supra, p. 590.
[57] See note 48 supra.
[58] 71 Stat. 638 (1957), 42 U.S.C.A. (Supp. 1957) §1995.

of effective remedial protection of civil rights. The activities of the Civil Rights Commission in both studying the laws and policies in regard to civil rights protection and investigating specific allegations of deprivation of voting rights may lead to a better understanding of the nature and scope of the problem which will, in turn, indicate the path to its alleviation. Likewise, the increased emphasis which undoubtedly will be placed upon enforcement by the new Civil Rights Division of the Department of Justice will aid in making more effective use of the remedies which are available to the government. Moreover, the provision for the appointment of an assistant attorney general to lead such division will permit responsibility for the complex problems of the civil rights field, involving delicate problems of the federal-state relationship, to be centered in a person with the status of a presidential appointee who will be able to devote full time and attention to the legal aspects of civil rights problems within the area of federal jurisdiction.

It is, of course, difficult and perhaps premature to attempt to determine or define the exact impact of the act upon federal protection of civil rights. Nevertheless, it is a step forward, and after eighty-two years, any step in this direction is a substantial accomplishment.

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