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## **Letter from Lillian C. Parrish to Ann Hopkins, January 19, 1990**

Lillian C. Parrish

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# The Woman CPA

January 19, 1990

Ms. Ann Hopkins  
World Bank Group PBD/N-7069  
801 19th Street NW  
Washington, DC 20433

Dear Ms. Hopkins:

Thank you for making it financially possible for us to print your picture in our journal article about your court case. Your picture really added a great deal to the article.

The two societies (American Woman's Society of Certified Public Accountants and American Society of Women Accountants) that sponsor The Woman CPA will hold their Joint Annual Meeting in Washington, DC on October 17-21, 1990. I have not received a schedule of events, but there will be luncheons and dinners on various days. I would very much like for you to be my guest at one of these times. I want to thank you publicly for your support of our journal, and I also want to give our members an opportunity to recognize you for the contribution that you have made for all women in accounting. I will be in touch with you about a specific time for lunch or dinner when the registration materials arrive in July or August.

I am enclosing the slide obtained from Time Magazine and the negatives and the black and white print we had made from the slide. The two copies of our journal will be mailed to you under separate cover.

I'm looking forward to the possibility of meeting you when our conference is in Washington, DC.

Sincerely,



Lillian C. Parrish, Ph.D., CPA  
Editor, 1986-89

LCP:sg

Enclosures

101ST CONGRESS  
2D SESSION

# S. 2104

To amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 23), 1990

Mr. KENNEDY (for himself, Mr. JEFFORDS, Mr. METZENBAUM, Mr. HATFIELD, Mr. SIMON, Mr. DURENBERGER, Mr. PELL, Mr. PACKWOOD, Mr. GORE, Ms. MIKULSKI, Mr. ADAMS, Mr. BIDEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BURDICK, Mr. COHEN, Mr. CONRAD, Mr. CRANSTON, Mr. DODD, Mr. FOWLER, Mr. HARKIN, Mr. INOUE, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. MATSUNAGA, Mr. MITCHELL, Mr. MOYNIHAN, Mr. RIEGLE, Mr. SARBANES, Mr. SPECTER, and Mr. WIRTH) introduced the following bill: which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled.*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Civil Rights Act of  
5 1990".

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) Findings.—Congress finds that —

- 3 (1) in a series of recent decisions addressing em-
- 4 ployment discrimination claims under Federal law, the
- 5 Supreme Court cut back dramatically on the scope and
- 6 effectiveness of civil rights protections; and
- 7 (2) existing protections and remedies under Fed-
- 8 eral law are not adequate to deter unlawful discrimi-
- 9 nation or to compensate victims of such discrimination.

10 (b) Purposes. — The purposes of this Act are—

- 11 (1) to respond to the Supreme Court's recent deci-
- 12 sions by restoring the civil rights protections that were
- 13 dramatically limited by those decisions; and
- 14 (2) to strengthen existing protections and remedies
- 15 available under Federal civil rights laws to provide
- 16 more effective deterrence and adequate compensation
- 17 for victims of discrimination.

18 SEC. 3. DEFINITIONS.

19 Section 701 of the Civil Rights Act of 1964 (42 U.S.C.

20 2000e) is amended by adding at the end thereof the following

- 21 new subsections:
- 22 (d) The term 'complaining party' means the Com-
- 23 mission, the Attorney General, or a person who may
- 24 bring an action or proceeding under this title.
- 25 (e) The term 'demonstrates' means meets the

26 burdens of production and persuasion.

1 " (n) The term 'group of employment practices'

2 means a combination of employment practices or an

3 overall employment process.

4 (o) The term 'required by business necessity'

5 means essential to effective job performance.

6 (p) The term 'respondent' means an employer,

7 employment agency, labor organization, joint labor-

8 management committee, or those Federal entities sub-

9 ject to the provisions of section 717."

10 SEC. 4. RESTORING THE BURDEN OF PROOF IN DISPARATE

11 IMPACT CASES.

12 Section 703 of the Civil Rights Act of 1964 (42 U.S.C.

13 2000e-2) is amended by adding at the end thereof the follow-

14 ing new subsection:

15 (k) PROOF OF UNLAWFUL EMPLOYMENT PRACTICES

16 IN DISPARATE IMPACT CASES.—

17 (1) An unlawful employment practice is estab-

18 lished under this subsection when —

19 (A) a complaining party demonstrates that

20 an employment practice results in a disparate

21 impact on the basis of race, color, religion, sex, or

22 national origin, and the respondent fails to demon-

23 strate that such practice is required by business

24 necessity; or

“(B) a complaining party demonstrates that a group of employment practices results in a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practices are required by business necessity, except that—

“(i) if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; and

“(ii) if the respondent demonstrates that a specific employment practice within such group of employment practices does not contribute to the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

“(2) A demonstration that an employment practice is required by business necessity may be used as a defense only against a claim under this subsection.”

1 SEC. 5. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE  
2 CONSIDERATION OF RACE, COLOR, RELIGION,  
3 SEX OR NATIONAL ORIGIN IN EMPLOYMENT  
4 PRACTICES.

5 (a) IN GENERAL.—Section 703 of the Civil Rights Act  
6 of 1964 (42 U.S.C. 2000e-2) (as amended by section 4) is  
7 further amended by adding at the end thereof the following  
8 new subsection:

9 “(l) DISCRIMINATORY PRACTICE NEED NOT BE SOLE  
10 MOTIVATING FACTOR.—Except as otherwise provided in  
11 this title, an unlawful employment practice is established  
12 when the complaining party demonstrates that race, color,  
13 religion, sex, or national origin was a motivating factor for  
14 any employment practice, even though such practice was also  
15 motivated by other factors.”

16 (b) ENFORCEMENT PROVISIONS.—Section 706(g) of  
17 such Act (42 U.S.C. 2000e-5(g)) is amended by inserting  
18 before the period in the last sentence the following: “or, in a  
19 case where a violation is established under section 703(l), if  
20 the respondent establishes that it would have taken the same  
21 action in the absence of any discrimination”.

SEC. 6. FACILITATING PROMPT AND ORDERLY RESOLUTION  
OF CHALLENGES TO EMPLOYMENT PRACTICES  
IMPLEMENTING LITIGATED OR CONSENT JUDG-  
MENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C.  
2000e-2) (as amended by sections 4 and 5) is further amend-  
ed by adding at the end thereof the following new subsection:

"(d) FINALITY OF LITIGATED OR CONSENT JUDG-  
MENTS OR ORDERS.—

"(1) Notwithstanding any other provision of law,  
and except as provided in paragraph (2), an employ-  
ment practice that implements a litigated or consent  
judgment or order resolving a claim of employment dis-  
crimination under the United States Constitution or  
Federal civil rights laws may not be challenged in a  
claim under the United States Constitution or Federal  
civil rights laws—

"(A) by a person who, prior to the entry of  
such judgment or order, had—

"(i) notice from any source of the pro-  
posed judgment or order sufficient to apprise  
such person that such judgment or order  
might affect the interests of such person; and

"(ii) a reasonable opportunity to present  
objections to such judgment or order;

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"(B) by a person with respect to whom the  
requirements of subparagraph (A) are not satis-  
fied, if the court determines that the interests of  
such person were adequately represented by an-  
other person who challenged such judgment or  
order prior to or after the entry of such judgment  
or order; or

"(C) if the court that entered the judgment  
or order determines that reasonable efforts were  
made to provide notice to interested persons.

A determination under subparagraph (C) shall be made  
prior to the entry of the judgment or order, except that  
if the judgment or order was entered prior to the date  
of the enactment of this subsection, the determination  
may be made at any reasonable time.

"(2) Nothing in this subsection shall be construed  
to—

"(A) alter the standards for intervention  
under rule 24 of the Federal Rules of Civil Proce-  
dure;

"(B) apply to the rights of parties to the  
action in which the litigated or consent judgment  
or order was entered, or of members of a class  
represented or sought to be represented in such  
action, or of members of a group on whose behalf

relief was sought in such action by the Federal government; or

“(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction.

“(3) Any action, not precluded under this subsection, that challenges an employment practice that implements a litigated or consent judgment or order of the type referred to in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order.”.

SEC. 7. STATUTE OF LIMITATIONS: APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.

(a) STATUTE OF LIMITATIONS.—Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by striking out “one hundred and eighty days” and inserting in lieu thereof “2 years”;

(2) by inserting after “occurred” the first time it appears “or has been applied to affect adversely the person aggrieved, whichever is later.”;

(3) by striking out “, except that in” and inserting in lieu thereof “. In”; and

(4) by striking out “such charge shall be filed” and all that follows through “whichever is earlier, and”.

(b) APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.—Section 703(h) of such Act (42 U.S.C. 2000e-2) is amended by inserting after the first sentence the following new sentence: “Where a seniority system or seniority practice is part of a collective bargaining agreement and such system or practice was included in such agreement with the intent to discriminate on the basis of race, color, religion, sex, or national origin, the application of such system or practice during the period that such collective bargaining agreement is in effect shall be an unlawful employment practice.”.

SEC. 8. PROVIDING FOR DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) is amended by inserting before the last sentence the following new sentences: “With respect to an unlawful employment practice (other than an unlawful employment practice established in accordance with section 703(k))—

“(A) compensatory damages may be awarded; and

1           “(B) if the respondent (other than a government,  
2 government agency, or a political subdivision) engaged  
3 in the unlawful employment practice with malice, or  
4 with reckless or callous indifference to the federally  
5 protected rights of others, punitive damages may be  
6 awarded against such respondent;

7 in addition to the relief authorized by the preceding sentences  
8 of this subsection, except that compensatory damages shall  
9 not include backpay or any interest thereon. If compensatory  
10 or punitive damages are sought with respect to a claim aris-  
11 ing under this title, any party may demand a trial by jury.”.

12 **SEC. 9. CLARIFYING ATTORNEY'S FEES PROVISION.**

13       Section 706(k) of the Civil Rights Act of 1964 (42  
14 U.S.C. 2000e-5(k)) is amended—

- 15           (1) by inserting “(1)” after “(k)”;
- 16           (2) by inserting “(including expert fees and other  
17 litigation expenses) and” after “attorney’s fee.”;
- 18           (3) by striking out “as part of the”; and
- 19           (4) by adding at the end thereof the following new  
20 paragraphs:

21           “(2) A court shall not enter a consent order or  
22 judgment settling a claim under this title, unless the  
23 parties and their counsel attest that a waiver of all or  
24 substantially all attorneys’ fees was not compelled as a  
25 condition of the settlement.

1           “(3) In any action or proceeding in which any  
2 judgment or order granting relief under this title is  
3 challenged, the court, in its discretion, may allow the  
4 prevailing party in the original action (other than the  
5 Commission or the United States) to recover from the  
6 party against whom relief was granted in the original  
7 action a reasonable attorney’s fee (including expert fees  
8 and other litigation expenses) and costs reasonably in-  
9 curred in defending (as a party, intervenor or other-  
10 wise) such judgment or order.”.

11 **SEC. 10. PROVIDING FOR INTEREST, AND EXTENDING THE**  
12 **STATUTE OF LIMITATIONS, IN ACTIONS**  
13 **AGAINST THE FEDERAL GOVERNMENT.**

14       Section 717 of the Civil Rights Act of 1964 (42 U.S.C.  
15 2000e-16) is amended—

- 16           (1) in subsection (c), by striking out “thirty days”  
17 and inserting in lieu thereof “ninety days”; and
- 18           (2) in subsection (d), by inserting before the period  
19 “, and the same interest to compensate for delay in  
20 payment shall be available as in cases involving non-  
21 public parties”.

22 **SEC. 11. CONSTRUCTION.**

23       Title XI of the Civil Rights Act of 1964 (42 U.S.C.  
24 2000h et seq.) is amended by adding at the end thereof the  
25 following new section:



1 "SEC. 1107. RULES OF CONSTRUCTION FOR CIVIL RIGHTS  
2 LAWS.

3 "(a) EFFECTUATION OF PURPOSE.—All Federal laws  
4 protecting the civil rights of persons shall be broadly con-  
5 strued to effectuate the purpose of such laws to eliminate  
6 discrimination and provide effective remedies.

7 "(b) NONLIMITATION.—Except as expressly provided,  
8 no Federal law protecting the civil rights of persons shall be  
9 construed to restrict or limit the rights, procedures, or reme-  
10 dies available under any other Federal law protecting such  
11 civil rights."

12 SEC. 12. RESTORING PROHIBITION AGAINST ALL RACIAL DIS-  
13 CRIMINATION IN THE MAKING AND ENFORCE-  
14 MENT OF CONTRACTS.

15 Section 1977 of the Revised Statutes of the United  
16 States (42 U.S.C. 1981) is amended—

17 (1) by inserting "(a)" before "All persons within";  
18 and

19 (2) by adding at the end thereof the following new  
20 subsection:

21 "(b) For purposes of this section, the right to 'make and  
22 enforce contracts' shall include the making, performance,  
23 modification and termination of contracts, and the enjoyment  
24 of all benefits, privileges, terms and conditions of the contrac-  
25 tual relationship."

1 SEC. 13. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE  
2 ACTION AND CONCILIATION AGREEMENTS NOT  
3 AFFECTED.

4 Nothing in the amendments made by this Act shall be  
5 construed to affect court-ordered remedies, affirmative action,  
6 or conciliation agreements that are otherwise in accordance  
7 with the law.

8 SEC. 14. SEVERABILITY.

9 If any provision of this Act, or an amendment made by  
10 this Act, or the application of such provision to any person or  
11 circumstances is held to be invalid, the remainder of this Act  
12 and the amendments made by this Act, and the application of  
13 such provision to other persons and circumstances, shall not  
14 be affected thereby.

15 SEC. 15. APPLICATION OF AMENDMENTS AND TRANSITION  
16 RULES.

17 (a) APPLICATION OF AMENDMENTS.—The amend-  
18 ments made by—

19 (1) section 4 shall apply to all proceedings pend-  
20 ing on or commenced after June 5, 1989;

21 (2) section 5 shall apply to all proceedings pend-  
22 ing on or commenced after May 1, 1989;

23 (3) section 6 shall apply to all proceedings pend-  
24 ing on or commenced after June 12, 1989;

1 (4) sections 7(a)(1), 7(b), 8, 9, 10, and 11 shall  
 2 apply to all proceedings pending on or commenced  
 3 after the date of enactment of this Act;

4 (5) paragraphs (2) through (4) of section 7(a) shall  
 5 apply to all proceedings pending on or commenced  
 6 after June 12, 1989; and

7 (6) section 12 shall apply to all proceedings pend-  
 8 ing on or commenced after June 15, 1989.

9 (b) TRANSITION RULES. —

10 (1) IN GENERAL. — Any orders entered by a court  
 11 between the effective dates described in subsection (a)  
 12 and the date of enactment of this Act that are incon-  
 13 sistent with the amendments made by sections 4, 5,  
 14 7(a)(2) through (4), or 12, shall be vacated if, not later  
 15 than 1 year after such date of enactment, a request for  
 16 such relief is made.

17 (2) SECTION 6. — Any orders entered between  
 18 June 12, 1989 and the date of enactment of this Act,  
 19 that permit a challenge to an employment practice that  
 20 implements a litigated or consent judgment or order  
 21 and that is inconsistent with the amendment made by  
 22 section 6, shall be vacated if, not later than 6 months  
 23 after the date of enactment of this Act, a request for  
 24 such relief is made. For the 1-year period beginning on  
 25 the date of enactment of this Act, an individual whose

1 challenge to an employment practice that implements a  
 2 litigated or consent judgment or order is denied under  
 3 the amendment made by section 6, or whose order or  
 4 relief obtained under such challenge is vacated under  
 5 such section, shall have the same right of intervention  
 6 in the case in which the challenged litigated or consent  
 7 judgment or order was entered as that individual had  
 8 on June 12, 1989.

9 (c) PERIOD OF LIMITATIONS. — The period of limita-  
 10 tions for the filing of a claim or charge shall be tolled from  
 11 the applicable effective date described in subsection (a) until  
 12 the date of enactment of this Act, on a showing that the  
 13 claim or charge was not filed because of a rule or decision  
 14 altered by the amendments made by sections 4, 5, 7(a)(2)  
 15 through (4), or 12.

○