



CRS Issue Statement on Civil Rights and Discrimination

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Under federal law, an array of civil rights statutes, as well as several constitutional provisions, are available to protect individuals from discrimination. Notably, the types of discrimination that these laws prohibit and the circumstances under which they operate vary considerably. Whether to amend these statutes and how to respond to constitutional developments in this area are two important questions that will confront the second session of the 111th Congress as it considers whether it wishes to expand or contract the civil rights of protected individuals.

One civil rights issue in which Congress has demonstrated a long-standing interest is race discrimination, and the 111th Congress is no exception. For example, Congress is likely to remain interested in affirmative action issues and may wish to consider additional strategies to promote minority opportunity in jobs and governmental contracting. In the wake of a Federal Circuit ruling curtailing the use of minority contracting preferences, Congress may also wish to consider legislative changes that encourage constitutionally permissible methods of promoting racial diversity in government programs. Meanwhile, in light of various discrimination lawsuits filed against the U.S. Department of Agriculture by black, Native American, Hispanic, and female farmers, Congress may also wish to consider legislative options for assisting minority farmers who may have suffered discrimination when seeking to obtain farm loans.

Issues involving sex discrimination are also high on the congressional agenda. For example, some Members have a longstanding concern about the comparatively low pay of women and the pace at which the gender wage gap has shrunk, and the 111th Congress has already taken significant action on two bills relating to such pay discrimination. One of these bills, which would amend the Equal Pay Act, has passed the House of Representatives and may be taken up by the Senate during the second congressional session. The other bill, the Lilly Ledbetter Fair Pay Act of 2009, has already been enacted into law. This legislation supersedes the controversial 2007 Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, that made it more difficult for employees to sue for pay discrimination under Title VII of the Civil Rights Act. The Supreme Court has also recently issued decisions in at least three other cases involving sex discrimination, and Congress may wish to continue monitoring legal developments in this area.

In recent years, the debate about the rights and protections that should be afforded to gay people has been intense, and the second session of the 111th Congress is likely to confront controversial questions regarding this issue. For example, current employment discrimination laws exclude sexual orientation as a protected class, and legislation that would amend such laws to cover sexual orientation passed the House in the 110th Congress and may be taken up again by the 111th Congress, which has already held several hearings on the proposed Employment Non-Discrimination Act. Meanwhile, although legal developments regarding same-sex marriage and same-sex adoption have largely taken place at the state level, Congress may contemplate federal legislation on these subjects. Congress may also take action on other legislative proposals that address issues involving sexual orientation, including a bill that would repeal the current ban on gays in the military, a bill that would extend certain federal benefits to the domestic partners of federal employees, and a bill that would repeal the Defense of Marriage Act. Finally, the 111th Congress passed legislation that expands the scope of hate crime statutes to cover crimes based on sexual orientation or gender identity, and legislators may wish to monitor the implementation of these amendments.

In addition to these controversial legislative proposals, other civil rights issues may appear on the congressional agenda during the second session. For example, as a result of the recent Supreme Court decision in *Gross v. FBL Financial Services, Inc.*, it may be more difficult for employees to

bring claims under the Age Discrimination in Employment Act (ADEA) when age is only one of several factors motivating an adverse employment decision. As it did in response to the *Ledbetter* decision, the 111th Congress may wish to legislatively repeal the *Gross* decision by amending the ADEA, and several bills that would do so have been introduced. In addition, the issue of whether religious organizations that receive federal funds may discriminate on the basis of religion when hiring has generated significant legislative controversy in recent years and may continue to do so during the second session of the 111th Congress. Meanwhile, amendments to the Americans with Disabilities Act were enacted in the 110th Congress to respond to Supreme Court decisions that limited the definition of disability. Proposed regulations have been published regarding the definition of disability, and the 111th Congress will continue to be involved in oversight. Congress may also want to consider reauthorizing the U.S. Commission on Civil Rights, which has been reauthorized a number of times since its creation in 1957. Although Congress has continued to appropriate funds for the Commission, its most recent authorization expired on September 30, 1996. Finally, a recent Supreme Court decision restricted the protective scope of Section 2 of the Voting Rights Act to minority groups that constitute less than half the population of a legislative district, and this case may result in Congress considering legislation on the topic. This voting rights decision, as well as many other civil rights issues, may be addressed during the second session of the 111th Congress.

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