

**NLWJC - Kagan**

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**Race-Affirmative Action:  
Legislation**

## Calendar No. 93

105TH CONGRESS  
1ST SESSION

# S. 950

To provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in Federal actions, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

JUNE 23, 1997

Mr. McCONNELL (for himself, Mr. HATCH, Mr. KYL, and Mr. SESSIONS)  
introduced the following bill; which was read the first time

JUNE 24, 1997

Read the second time and placed on the calendar

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## A BILL

To provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex in Federal actions, 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 1997".

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) **FINDINGS.**—Congress finds that—

3 (1) the fifth and fourteenth amendments to the  
4 Constitution guarantee that all individuals are enti-  
5 tled to equal protection of the laws, regardless of  
6 race, color, national origin, or sex;

7 (2) the Supreme Court, in *Adarand Construc-*  
8 *tors, Inc. v. Peña*, 515 U.S. 200 (1995), recently af-  
9 firmed that this guarantee of equality applies to  
10 Federal actions;

11 (3) the Federal Government currently conducts  
12 over 150 programs, including contracting programs,  
13 that grant preferences based on race, color, national  
14 origin, or sex; and

15 (4) the Federal Government also grants pref-  
16 erences in employment based on race, color, national  
17 origin, or sex.

18 (b) **PURPOSE.**—The purpose of this Act is to provide  
19 for equal protection of the laws and to prohibit discrimina-  
20 tion and preferential treatment in the Federal Government  
21 on the basis of race, color, national origin, or sex.

22 **SEC. 3. PROHIBITION AGAINST DISCRIMINATION AND**  
23 **PREFERENTIAL TREATMENT.**

24 Notwithstanding any other provision of law, neither  
25 the Federal Government nor any officer, employee, or  
26 agent of the Federal Government shall—

1 (1) intentionally discriminate against, or grant  
2 a preference to, any person or group based in whole  
3 or in part on race, color, national origin, or sex, in  
4 connection with—

5 (A) a Federal contract or subcontract;

6 (B) Federal employment; or

7 (C) any other federally conducted program  
8 or activity; or

9 (2) require or encourage a Federal contractor  
10 or subcontractor, or the recipient of a license or fi-  
11 nancial assistance, to discriminate intentionally  
12 against, or grant a preference to, any person or  
13 group based in whole or in part on race, color, na-  
14 tional origin, or sex, in connection with any Federal  
15 contract or subcontract or Federal license or finan-  
16 cial assistance.

17 **SEC. 4. AFFIRMATIVE ACTION PERMITTED.**

18 This Act does not prohibit or limit any effort by the  
19 Federal Government or any officer, employee, or agent of  
20 the Federal Government—

21 (1) to encourage businesses owned by women  
22 and minorities to bid for Federal contracts or sub-  
23 contracts, to recruit qualified women and minorities  
24 into an applicant pool for Federal employment, or to  
25 encourage participation by qualified women and mi-

1 norities in any other federally conducted program or  
2 activity, if such recruitment or encouragement does  
3 not involve granting a preference, based in whole or  
4 in part on race, color, national origin, or sex, in se-  
5 lecting any person for the relevant employment, con-  
6 tract or subcontract, benefit, opportunity, or pro-  
7 gram; or

8 (2) to require or encourage any Federal con-  
9 tractor, subcontractor, or recipient of a Federal li-  
10 cense or Federal financial assistance to recruit quali-  
11 fied women and minorities into an applicant pool for  
12 employment, or to encourage businesses owned by  
13 women and minorities to bid for Federal contracts  
14 or subcontracts, if such requirement or encourage-  
15 ment does not involve granting a preference, based  
16 in whole or in part on race, color, national origin, or  
17 sex, in selecting any individual for the relevant em-  
18 ployment, contract or subcontract, benefit, oppor-  
19 tunity, or program.

20 **SEC. 5. CONSTRUCTION.**

21 (a) **HISTORICALLY BLACK COLLEGES AND UNIVER-**  
22 **SITIES.**—Nothing in this Act shall be construed to prohibit  
23 or limit any act that is designed to benefit an institution  
24 that is an historically Black college or university on the

1 basis that the institution is an historically Black college  
2 or university.

3 (b) INDIAN TRIBES.—This Act does not prohibit any  
4 action taken—

5 (1) pursuant to a law enacted under the con-  
6 stitutional powers of Congress relating to the Indian  
7 tribes; or

8 (2) under a treaty between an Indian tribe and  
9 the United States.

10 (c) CERTAIN SEX-BASED CLASSIFICATIONS.—This  
11 Act does not prohibit or limit any classification based on  
12 sex if—

13 (1) the classification is applied with respect to  
14 employment and the classification would be exempt  
15 from the prohibitions of title VII of the Civil Rights  
16 Act of 1964 by reason of section 703(e)(1) of such  
17 Act (42 U.S.C. 2000e-2(e)(1)); or

18 (2) the classification is applied with respect to  
19 a member of the Armed Forces pursuant to statute,  
20 direction of the President or Secretary of Defense,  
21 or Department of Defense policy.

22 (d) IMMIGRATION AND NATIONALITY LAWS.—This  
23 Act does not affect any law governing immigration or na-  
24 tionality, or the administration of any such law.

1 **SEC. 6. COMPLIANCE REVIEW OF POLICIES AND REGULA-**  
2 **TIONS.**

3 Not later than 1 year after the date of enactment  
4 of this Act, the head of each department or agency of the  
5 Federal Government, in consultation with the Attorney  
6 General, shall review all existing policies and regulations  
7 that such department or agency head is charged with ad-  
8 ministering, modify such policies and regulations to con-  
9 form to the requirements of this Act, and report to the  
10 Committee on the Judiciary of the House of Representa-  
11 tives and the Committee on the Judiciary of the Senate  
12 the results of the review and any modifications to the poli-  
13 cies and regulations.

14 **SEC. 7. REMEDIES.**

15 (a) **IN GENERAL.**—Any person aggrieved by a viola-  
16 tion of section 3 may, in a civil action, obtain appropriate  
17 relief (which may include back pay). A prevailing plaintiff  
18 in a civil action under this section shall be awarded a rea-  
19 sonable attorney's fee as part of the costs.

20 (b) **CONSTRUCTION.**—This section does not affect  
21 any remedy available under any other law.

22 **SEC. 8. EFFECT ON PENDING MATTERS.**

23 (a) **PENDING CASES.**—This Act does not affect any  
24 case pending on the date of enactment of this Act.

25 (b) **PENDING CONTRACTS AND SUBCONTRACTS.**—  
26 This Act does not affect any contract or subcontract in

1 effect on the date of enactment of this Act, including any  
2 option exercised under such contract or subcontract before  
3 or after such date of enactment.

4 **SEC. 9. DEFINITIONS.**

5 In this Act, the following definitions apply:

6 (1) **FEDERAL GOVERNMENT.**—The term “Fed-  
7 eral Government” means executive and legislative  
8 branches of the Government of the United States.

9 (2) **PREFERENCE.**—The term “preference”  
10 means an advantage of any kind, and includes a  
11 quota, set-aside, numerical goal, timetable, or other  
12 numerical objective.

13 (3) **HISTORICALLY BLACK COLLEGE OR UNI-**  
14 **VERSITY.**—The term “historically Black college or  
15 university” means a part B institution, as defined in  
16 section 322(2) of the Higher Education Act of 1965  
17 (20 U.S.C. 1061(2)).



## **THE CIVIL RIGHTS ACT OF 1997**

The Civil Rights Act of 1997 is designed to bring the Federal Government into compliance with the Equal Protection Clause of the United States Constitution, and to ensure that the federal government treats all people equally, without regard to their race or sex.

The bill contains two main operative provisions:

- 1.) Prohibits the Federal Government from discriminating against, or granting preferences to, individuals based in whole or in part on race, color, national origin, or sex, in connection with federal contracts, employment, or other programs or activities.
- 2.) Prohibits the Federal Government from requiring or encouraging federal contractors, subcontractors, licensees, or recipients of federal assistance, to discriminate, or grant preferences to individuals on the basis of their race, color, national origin, or sex.

The Act defines "preference" as "an advantage of any kind" including quotas, set-asides, goals, timetables, and other numerical objectives.

The bill expressly protects the Federal Government's ability to engage in outreach, recruiting, and marketing efforts--the original form of affirmative action.

The bill maintains the full range of judicial remedies currently available to proven individual victims of race or sex discrimination.

The bill contains exemptions for historically Black colleges and universities, Indian tribes, and for sex-based bona fide occupational qualifications that are already exempt under Title VII of the Civil Rights Act of 1964 or applied in the Armed Forces.

The Act requires the heads of each department or agency to modify all existing policies and regulations to comply with the Act and report to the Senate and House Judiciary Committees the results of the modification.

The Act is limited to Federal Government actions and would not affect voluntary programs adopted by State and local governments, or private sector entities.

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105TH CONGRESS  
1ST SESSION

**H. R.** 1909

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IN THE HOUSE OF REPRESENTATIVES

Mr. CANADY of Florida introduced the following bill; which was referred to  
the Committee on \_\_\_\_\_

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**A BILL**

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discrimination and preferential treatment on the basis  
of race, color, national origin, or sex in Federal actions,  
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
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5 1997".

1 SEC. 2. PROHIBITION AGAINST DISCRIMINATION AND  
2 PREFERENTIAL TREATMENT.

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4 the Federal Government nor any officer, employee, or  
5 agent of the Federal Government shall—

6 (1) intentionally discriminate against, or grant  
7 a preference to, any person or group based in whole  
8 or in part on race, color, national origin, or sex, in  
9 connection with—

10 (A) a Federal contract or subcontract;

11 (B) Federal employment; or

12 (C) any other federally conducted program  
13 or activity; or

14 (2) require or encourage a Federal contractor  
15 or subcontractor, or the recipient of a license or fi-  
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22 SEC. 3. AFFIRMATIVE ACTION PERMITTED.

23 This Act does not prohibit or limit any effort by the  
24 Federal Government or any officer, employee, or agent of  
25 the Federal Government—

1           (1) to encourage businesses owned by women  
2           and minorities to bid for Federal contracts or sub-  
3           contracts, to recruit qualified women and minorities  
4           into an applicant pool for Federal employment, or to  
5           encourage participation by qualified women and mi-  
6           norities in any other federally conducted program or  
7           activity, if such recruitment or encouragement does  
8           not involve granting a preference, based in whole or  
9           in part on race, color, national origin, or sex, in se-  
10          lecting any person for the relevant employment, con-  
11          tract or subcontract, benefit, opportunity, or pro-  
12          gram; or

13          (2) to require or encourage any Federal con-  
14          tractor, subcontractor, or recipient of a Federal li-  
15          cense or Federal financial assistance to recruit quali-  
16          fied women and minorities into an applicant pool for  
17          employment, or to encourage businesses owned by  
18          women and minorities to bid for Federal contracts  
19          or subcontracts, if such requirement or encourage-  
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21          in whole or in part on race, color, national origin, or  
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4 or limit any act that is designed to benefit an institution  
5 that is an historically Black college or university on the  
6 basis that the institution is an historically Black college  
7 or university.

8 (b) INDIAN TRIBES.—This Act does not prohibit any  
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12 tribes; or

13 (2) under a treaty between an Indian tribe and  
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23 (2) the classification is applied with respect to  
24 a member of the Armed Forces pursuant to statute,  
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26 or Department of Defense policy.

1 (d) IMMIGRATION AND NATIONALITY LAWS.—This  
2 Act does not affect any law governing immigration or na-  
3 tionality, or the administration of any such law.

4 **SEC. 5. COMPLIANCE REVIEW OF POLICIES AND REGULA-**  
5 **TIONS.**

6 Not later than 1 year after the date of enactment  
7 of this Act, the head of each department or agency of the  
8 Federal Government, in consultation with the Attorney  
9 General, shall review all existing policies and regulations  
10 that such department or agency head is charged with ad-  
11 ministering, modify such policies and regulations to con-  
12 form to the requirements of this Act, and report to the  
13 Committee on the Judiciary of the House of Representa-  
14 tives and the Committee on the Judiciary of the Senate  
15 the results of the review and any modifications to the poli-  
16 cies and regulations.

17 **SEC. 6. REMEDIES.**

18 (a) IN GENERAL.—Any person aggrieved by a viola-  
19 tion of section 2 may, in a civil action, obtain appropriate  
20 relief (which may include back pay). A prevailing plaintiff  
21 in a civil action under this section shall be awarded a rea-  
22 sonable attorney's fee as part of the costs.

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20 university” means a part B institution, as defined in  
21 section 322(2) of the Higher Education Act of 1965  
22 (20 U.S.C. 1061(2)).

Minorities  
Minorities in government  
Minority business enterprises  
Public contracts  
Racial discrimination  
Recruiting of employees  
Sex discrimination  
Sex discrimination in employment  
Subcontractors  
Wage restitution  
Women  
Women in business  
Women in government

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HR 1909

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67 COSPONSORS:

Rep Hyde - 06/17/97  
Rep Roukema - 06/17/97  
Rep Campbell - 06/17/97  
Rep Fowler - 06/17/97  
Rep Cox - 06/17/97  
Rep Boehner - 06/17/97  
Rep Paxon - 06/17/97  
Rep Solomon - 06/17/97  
Rep Goodlatte - 06/17/97  
Rep Hutchinson - 06/17/97  
Rep Emerson - 06/17/97  
Rep Wicker - 06/17/97  
Rep Bliley - 06/17/97  
Rep Rogan - 06/17/97  
Rep Doolittle - 06/17/97  
Rep McIntosh - 06/17/97  
Rep Sensenbrenner - 06/17/97  
 Rep Ballenger - 06/17/97  
Rep Barr - 06/17/97  
Rep Istook - 06/17/97  
Rep Coble - 06/17/97  
Rep Goss - 06/17/97  
Rep Bono - 06/17/97  
Rep Herger - 06/17/97  
Rep Norwood - 06/17/97  
Rep Cunningham - 06/17/97  
Rep Bunning - 06/17/97  
Rep Thune - 06/17/97  
Rep King - 06/17/97  
Rep Packard - 06/17/97  
Rep Christensen - 06/17/97  
Rep Callahan - 06/17/97  
Rep Riggs - 06/17/97  
Rep Bartlett - 06/17/97  
Rep Miller, D. - 06/17/97  
Rep Hillary - 06/17/97  
Rep Spence - 06/17/97  
Rep Oxley - 06/17/97  
Rep Rohrabacher - 06/17/97  
Rep Barrett, B. - 06/17/97



Rep Snowbarger - 06/17/97  
Rep Aderholt - 06/17/97  
Rep Young, D. - 06/17/97  
Rep Everett - 06/17/97  
Rep Riley - 06/17/97  
Rep Brady - 06/17/97  
Rep Cubin - 06/17/97  
Rep Bachus - 06/17/97  
Rep Lewis, R. - 06/17/97  
Rep Collins, M. - 06/17/97  
Rep Cannon - 06/17/97  
Rep Cook - 06/17/97  
Rep Smith, Linda - 06/17/97  
Rep Royce - 07/11/97  
Rep Deal - 07/11/97  
Rep Hostettler - 07/11/97  
Rep Rynn - 07/11/97  
Rep Gallegly - 07/11/97  
Rep Archer - 07/11/97  
Rep Pitts - 07/11/97  
Rep Linder - 07/11/97  
Rep DeLay - 07/11/97  
Rep Calvert - 07/11/97  
Rep Paul - 07/11/97  
Rep Bryant, E. - 07/11/97  
Rep Johnson, S. - 07/31/97  
Rep Graham - 07/31/97

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**DIGEST:**

\*\*\*NONE\*\*\*

## **LAW/JUDICIARY**

### **PANEL OKS BILL TO OUTLAW PREFERENCES IN FEDERAL HIRING**

A House Judiciary subcommittee yesterday approved legislation banning racial and gender preferences in federal contracting and hiring. The voice vote on the bill (HR 1909) followed three hours of members arguing at cross-purposes and voting along party lines.

Constitution Subcommittee Chairman Charles T. Canady, R-Fla., said afterwards that he fully expected this year's bill to make it to the House floor. In the 104th Congress, a virtually identical bill stalled in subcommittee because Speaker Newt Gingrich, Ga., and other key Republicans thought it might undercut the party's message of inclusion.

This year, Gingrich has given qualified public support for the bill, though there is still a debate within the party over whether conservative principles or practical political

consideration should take precedence.

Democrats on the subcommittee offered several amendments, all of which were defeated along party lines.

Robert C. Scott, D-Va., proposed language saying the bill did not apply to judicial and administrative remedies

specifically addressing cases of proven discrimination. It was defeated, 5-7.

Several attempts to add congressional findings that discrimination continues to exist were beaten back by similar margins.