

CIVIL RIGHTS ACT OF 1991
105 Stat. 1071 (1991)

In 1989, the Supreme Court handed down a half-dozen decisions making it more difficult to prevail on claims arising under several pieces of ANTIDISCRIMINATION LEGISLATION. Congress responded by passing the Civil Rights Act of 1990, only to have President GEORGE H. W. BUSH veto it and an override effort fail. Civil rights legislation reintroduced in the spring of 1991 might have suffered a similar fate, but for the bruising confirmation hearing of Supreme Court Justice CLARENCE THOMAS. In the wake of the hearings, which cast the administration in a negative light with regard to CIVIL RIGHTS while simultaneously revealing fractures within the civil rights coalition, both sides sought compromise. The Civil Rights Act of 1991 was quickly passed and signed into law on November 21, 1991.

Broadly speaking, the act sought to achieve two goals: (1) restore civil rights law to its pre-1989 contours; and (2) end inconsistencies in the remedies available under different antidiscrimination statutes. The latter it achieved by providing that, as under 42 U.S.C. § 1981, parties prevailing upon a claim of intentional discrimination under either Title VII or the AMERICANS WITH DISABILITIES ACT could recover compensatory and PUNITIVE DAMAGES, albeit subject to certain caps. As to the former, the act's success was more limited.

The act responded to a number of Court decisions, and as a result, consists of many bits and pieces. Among these, two stand out. First, the act reworked the Court's restrictive reading of section 1981 announced in PATTERSON v. MCCLEAN CREDIT UNION (1989). In *Patterson*, the Court reaffirmed the holding in RUNYON v. MCCRARY (1976) that section 1981 prohibits RACIAL DISCRIMINATION in the making and enforcement of private contracts, but held that it offered no relief from workplace discrimination that occurred after the formation of a contract. In contrast, the 1991 act insists that section 1981 applies to "the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." Second, the 1991 act responded to *Wards Cove Packing Co. v. Atonio* (1989). In

Wards Cove, the Court undermined the disparate impact approach developed in *GRIGGS v. DUKE POWER COMPANY* (1971) for showing systematic, as opposed to intentional, discrimination. It did so out of concern that a robust disparate impact DOCTRINE would encourage employers to adopt hiring quotas in order to avoid potential liability. The 1991 act went some distance toward undoing the changes wrought by *Wards Cove*, but stopped short of restoring the doctrine to its previous vigor. For example, the act accepted an increased burden imposed by the Court on those bringing claims by adopting the requirement that plaintiffs disaggregate sources of discrimination and establish "causation," while it potentially eased the burden on employers by failing to define what exactly they needed to show in order to establish a "business necessity" justification for otherwise discriminatory practices.

The Civil Rights Act of 1991 slowed the conservative assault on civil rights laws. Nevertheless, by virtue of its various compromises, the act achieved limited success in restoring antidiscrimination law to its pre-1989 state.

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Bibliography

- GUERON, NICOLE 1995 Note: An Idea Whose Time Has Come: A Comparative Procedural History of the Civil Rights Acts of 1960, 1964, and 1991, *Yale Law Journal* 104:1201-1234.
- LEWIS, HAROLD, JR. 1997 *Civil Rights and Employment Discrimination Law*. St. Paul, Minn.: West.