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THE 40TH ANNIVERSARY OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

SYMPOSIUM

INTRODUCTION

Justice Ruth Bader Ginsburg[*]

Of the various state and federal measures developed to combat employment discrimination in our nation's workplaces, Title VII of the Civil Rights Act of 1964 has had the greatest impact. It is therefore fitting that the editors of the *Hofstra Labor & Employment Law Journal* chose to devote this issue to gains made under Title VII's banner since the measure became law forty years ago.

Notably, in the South, where opposition to the 1964 Act once ran high, newspapers commenting on the fortieth anniversary praised the legislation. The *Sun-Sentinel* in Fort Lauderdale, Florida, wrote last summer: "The law spurred America to tap into its rich and diverse talents. Individuals whose sex or skin color once prevented them from fully participating in society now grace the highest echelons of the arts, business, government, science and technology."[1] *The Herald-Sun* in Dur-

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1. *No Time to Retreat*, SUN-SENTINEL (Fort Lauderdale), July 3, 2004, at 18A.

ham, North Carolina, called the passage of the Act "a landmark legal and cultural event in American history. . . ."[2] And a writer in *The Charlotte Observer* observed that the Act "sowed the seeds for the Sun Belt South and prosperous, modern-day cities such as Charlotte, North Carolina."[3]

Title VII was conceived, along with other parts of the 1964 Act, as a weapon primarily against race discrimination once endemic, and still too often encountered, in United States economic and social life. Just a year before, in 1963, Congress had enacted the Equal Pay Act, legislation specifically designed to accord women equal pay for equal work.[4] The national legislature had no plans to advance further in promoting gender equity in the job market.

Then, in an odd twist of fortune, two days before the House of Representatives passed the 1964 Civil Rights bill, 81-year-old Congressman Howard Smith, originally an opponent of the legislation, moved to amend the bill. He proposed adding "sex" to Title VII's catalog of "race, color, religion, and national origin" as characteristics that could not be used to deny evenhanded access to job opportunities. The proposer's aim, many thought, was to kill the entire bill.

The last minute endeavor so irritated Congresswoman Edith Green, a leading proponent of women's rights, that she voted against the amendment.[5] But five other Congresswomen were ready to seize the opportunity, never mind the sponsor's intention.[6] They spoke in favor of the amendment, perhaps mindful that the text had been drafted by leaders of the National Woman's Party, the group that, annually since 1923, had proposed adding to the Constitution an Equal Rights Amendment.[7] The amendment to Title VII passed, as did the entire Civil Rights bill. Thus the word "sex" was installed in Title VII without any explanatory House or Senate report to guide administrative and judicial interpretation. Over the years, the meaning of the ban on sex discrimination emerged from the efforts of brave women who became complainants in

2. *Turning Rights into Law*, THE HERALD-SUN (Durham), July 2, 2004, at A10.

3. Tim Funk, *Civil Rights Act of 1964 Paved Way for Prosperity*, THE CHARLOTTE OBSERVER, July 6, 2004, at 1A.

4. Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (current version at 29 U.S.C. § 206(d) (2000)).

5. Jo Freeman, *How "Sex" Got into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 LAW & INEQ. 163, 177 (1991).

6. "A bipartisan coalition of five Congresswomen spoke out in favor of the amendment: Francis B. Bolton (R-OH), Martha W. Griffiths (D-Mich.), Catharine May (R-WA), Edna F. Kelley (D-NY), and Katharine St. George (R-NY)." Robert C. Bird, *More than a Congressional Joke: A Fresh Look at the Legislative History of Sex Discrimination of the 1964 Civil Rights Act*, 3 WM. & MARY J. WOMEN & L. 137, 155 n.120 (1997).

7. Freeman, *supra* note 5, at 165-69, 174.

Title VII cases, their lawyers,[8] and legal scholars who developed key theories and winning arguments.[9]

From the start, advocates of equal opportunity understood that the proscriptions on race and sex discrimination could work synergistically. Precedent set in race discrimination cases supported plaintiffs challenging sex discrimination, and successful sex discrimination litigation aided attacks on race discrimination. It was not coincidental that the first Title VII sex discrimination case to reach the Supreme Court, *Phillips* v. *Martin Marietta Corp.*,[10] was launched by a white woman represented by the NAACP Legal Defense and Educational Fund.

Commenting on the changes Title VII has prompted, the lawyer who argued the *Phillips* case before the Supreme Court, William Robinson, expressed a view I share: "[A]s we look at the achievements that have occurred under this title, there is a lot of reason to be awfully proud."[11]

8. *E.g.*, NAN ROBERTSON, THE GIRLS IN THE BALCONY (1992) (describing the 1970s sex discrimination suit against *The New York Times* and the skill and determination of the plaintiffs' lawyer, Harriet Rabb).

9. *E.g.*, CATHERINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN (1979).

10. 400 U.S. 542 (1971) (per curiam).

11. William Robinson, Remarks at the EEOC Celebrating the 40th Anniversary of Title VII (June 22, 2004), *at* http://www.eeoc.gov/abouteeoc/40th/panel/40thpanels/panel1/transcript.html.