

An Introduction to Title VI of the Civil Rights Act of 1964

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TITLE VI IN A NUTSHELL

- **Title VI prohibits discrimination in services and programs against people in the United States on the basis of race, color, and national origin by recipients of federal financial assistance.**
- Codified at 42 USC §2000d
- (Title VII covers employment discrimination)
- (Title VIII covers housing discrimination)

TITLE VI IN A NUTSHELL

- Title VI, separate from and in addition to the strictures of state and local law, both authorizes and requires recipients to manage their programs in a way that avoids discriminatory cumulative burdens and distributional patterns.
- Title VI also authorized all federal agencies to adopt regulations to implement its ban on discrimination by recipients.

Constitutional Origin of Title VI

- Title VI rests on the power of Congress to fix the terms on which federal funds are made available to prohibit entities that receive federal funds from engaging in discrimination (Spending Clause)

Title VI Bans Discrimination

- Discrimination is an act or failure to act, intentional or unintentional, the effect of which is to exclude from participation; deny access, benefits, opportunities, services; or otherwise subject to unequal, disparate, or adverse treatment a person or group because of a legally identified and protected characteristic.

Title VI Bans Discrimination

- Discrimination is a harm to real live people; it is not theoretical.
- Not all different treatment is discrimination. Sometimes extra services are provided to people, such as those with disabilities.
- If the recipient treats everyone equally badly, that isn't discrimination.

Who Is Protected by Title VI?

- Title VI bans discrimination on the basis of race, color or national origin.
- National origin includes ethnicity, limited English proficiency, and sometimes accent.
- Everyone has a race. Everyone has a national origin. A white or Anglo person can file a complaint under Title VI.
- Title VI protects citizens and non-citizens alike.

Who is a Recipient of Federal Funds?

- Recipient is an entity that receives money and/or a transfer of goods from the federal government
- All activities of a recipient are covered by Title VI—not just the particular program that receives and uses the federal money.
- Also covered are sub-recipients of recipients—entities that the basic recipient passes along money to.
- Recipients of federal funds have to sign assurances, saying they won't discriminate.

What doesn't Title VI cover?

- **Income, religion, sex, disability.** Other federal laws cover those, except almost no federal laws cover low income discrimination.
- Religion isn't covered much, except by the Constitution.
- Almost no federal laws cover sexual orientation and gender identity.

Examples of Unlawful Discrimination

- Segregation
- Denial of services
- Exclusion from services
- Decreased services
- Poor services, low quality services, unsafe services
- Denying a person the opportunity to participate as a member of a planning or advisory body

EPA's Title VI Regulations

40 CFR § 7.30 General prohibition.

- No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin . . .

EPA's Title VI Regulations

40 CFR § 7.35 Specific Prohibitions.

- (b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, [or] national origin.

EPA Title VI Regulations

40 CFR § 7.35 Specific Prohibitions.

- (c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

EPA Title VI Regulations

40 CFR § 7.35 Specific Prohibitions.

- (a)(7) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of race, color, sex, or national origin, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

EPA Title VI Regulations

40 CFR § 7.90. Grievance Procedures

- Each recipient shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.

How do you prove discrimination under Title VI?

- **Disparate impact:** Statistically high and disproportionate adverse or negative effect. A rule that is neutral on its face, but which has a discriminatory effect. **STANDARD APPLIES ONLY TO ADMINISTRATIVE COMPLAINTS**
- **Intent:** “No Irish need apply.” “Colored Only” water fountains, swimming pools, buses, schools. A rule that is discrimination on its face and in its plain language.
- **NOTE:** Title VI law suits can only be brought under the intent standard

Factors to consider in determining an adverse effect

- Pervasiveness, extent, severity, persistence of the impact on the protected population.
- Duration of impact: Is the adverse impact historical, or did it come into exist solely because of the proposed project?
- An inconvenience, or limits major life activities?
- Does it limit the protected population's ability to participate in or benefit from some aspect of their environment?

Factors to consider in determining an adverse effect

- Must the protected population incur economic or monetary costs to cope with the adverse impact, compared to little or no cost to the general population?
- Limited in geographic scope or wide-spread?
- Avoidable or unavoidable by the protected population?
- Reversibility: Is the impact reversible, or irreversible?
- Is the impact on the protected population foreseeable? Predictable?

Factors to consider whether discrimination is “intentional”

- 1. The impact of the official decision-- whether it bears more heavily on one race than another.
- 2. The historical background of the decision.
- 3. The series of events prior to the decision, which could reveal the decisionmaker’s purpose.
- 4. Any departures, substantive or procedural, from the normal decisionmaking process.
- 5. The legislative and administrative history of the decision.

How Is Title VI Enforced?

- Every federal agency is supposed to enforce the law by conducting prompt and equitable investigations of complaints, and to resolve the issues under dispute.
- The Civil Rights Division of US Department of Justice is supposed to oversee federal agencies, and can litigate (file lawsuits).
- Title VI can be enforced by private persons in Court, but only where “intentional” discrimination alleged.

Filing an Administrative Title VI Complaint

- Complaints can be filed by individuals and groups.
- The person or organization filing the complaint need not be a victim of the alleged discrimination but may complain on behalf of another person or group.
- There is no cost to file a Title VI complaint.
- A complaint need not be filed by a lawyer.

More on Filing Title VI Complaints With EPA

- **Mail Information to:**
Director of the Office of Civil Rights
U.S. Environmental Protection Agency
Mail code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
- **Email information to:**
Title_VI_Complaints@epa.gov
- **Or Fax:**
(202) 565-0196
(202) 501-1836

What must be in a Title VI complaint?

- In writing, signed, and filed within 180 days of the last act of alleged discrimination. The complaint should say when the discrimination took place.
- Include contact information for the people filing the complaint. Complaints can't be anonymous.
- Description of the entity the complaint is against, in sufficient detail so the federal agency can know what it is and where.
- Need to allege something, which if true, would violate the regulations or the statute.

Pointers for Filing Complaints

- The more facts, dates, and examples of discrimination provided, the better, and easier to prove (who, what, where, when)
- Provide names/addresses of witnesses
- Point the agency to useful documents (maps, studies, etc).
- Don't threaten in the complaint, and don't use overheated rhetoric.
- Don't count on the federal employees working on your complaint to know what they're doing, or understand the program.

Say What You Want the Agency to Do (Relief Requested)

- Stop the discrimination.
- Make the injured parties whole.
- Training for the recipient.
- Creation of a civil rights advisory committee with review, comment, and veto powers over proposed new projects.
- Withdraw, withhold, or refuse to provide new federal funds. This is the nuclear weapon. It is almost never used.

What Happens After the Complaint Is Filed?

- You should hear from the federal agency (Office of Civil Rights or OCR) within 15 days of their receipt of your complaint, with an acknowledgement letter, saying whether they will investigate the complaint, and what they will investigate.
- If no investigation conducted your complaint will be closed.

Investigation of the Complaint

- The federal agency should send out a data request letter to the recipient, with a long list of questions.
- You don't have a right to be present during the actual investigation, but you can suggest that the federal agency hold a public meeting to hear from witnesses and victims at your site.

Investigation of the Complaint

- You can also offer to take the investigator to the site of the discrimination, see things as they are for themselves, and meet real live injured people.
- The witnesses you listed should be interviewed by the federal investigator.
- The federal investigator should be able to conduct the in-person parts of the investigation in the language spoken by the local people.
- You may be given a chance to rebut what the recipient—the institution you complained about

Settlement of Complaints

- Federal agencies will try to get voluntary compliance with the law through settlement discussions.
- Complainants aren't party to the settlement negotiations.
- Sometimes, a recipient will want to negotiate directly with the victim's representative. The recipient will want the victims to withdraw their complaint from the federal agency, in return for some value received.

Completing the Investigation

- You should hear from the federal agency within 180 days of the time they received the complaint, with the results of their investigation.
- EPA rarely completes an investigation within 180 days.
- If you haven't heard back from the federal agency in a timely way, write to the head of the agency and contact your Congressperson with the details.

Title VI Compliance Reviews

- Federal agencies can also do **compliance reviews**—self-initiated investigations.
- Compliance review does not require a complaint, but may be commenced in connection with a complaint.
- OCR may require recipients to submit data and information specific to certain programs or activities to determine compliance where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance.
40 CFR § 7.85(b)

Problems with Title VI enforcement by federal agencies

- Some agencies have big backlogs of uninvestigated complaints, like EPA = Over 100 cases, including some complaints dating back to 1994 and 1995.
- Many agencies are very slow to investigate complaints and make findings.
- Often, the federal agency has a very close relationship with the industry or group its supposed to regulate and investigate.

THANK YOU

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