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Department of Justice

STATEMENT

BY

ATTORNEY GENERAL RAMSEY CLARK

BEFORE

SUBCOMMITTEE ON EMPLOYMENT, MANPOWER AND POVERTY

OF THE

SENATE LABOR AND PUBLIC WELFARE COMMITTEE

ON

S. 1308, "THE EQUAL EMPLOYMENT
OPPORTUNITIES ENFORCEMENT ACT"

THURSDAY, MAY 4, 1967

Mr. Chairman and Members of the Subcommittee:

President Theodore Roosevelt told us that "far and away the best prize that life offers is the chance to work hard at work worth doing." Some Americans are denied this prize simply because of race, color, religion, national origin or sex.

In recent years, the Congress has acted to eliminate racial discrimination in voting, in education and in access to public accommodations and facilities. While Congress has also acted to eliminate discrimination in employment, enforcement has proved relatively ineffectual because of inadequate sanctions. Yet, without an equal

opportunity to obtain employment many other opportunities may mean little.

More effective action is needed to secure equal opportunity in employment. While the unemployment rate in 1965 was twice as high for nonwhites as for whites, the disparity increased to a ratio of 2.2 to 1 by the end of 1966. At least one reason for this is racial discrimination in employment.

Equal employment opportunity is vital to the accomplishment of many important national goals. Efforts to reduce crime are hampered by frustrations resulting from discrimination in employment. Indeed, one of the recommendations of the President's Crime Commission was to eliminate barriers to employment posed by discrimination. Hence, the bill could be called an anti-crime measure. The war on poverty is hindered when jobs are not open on an equal basis to those who make up a substantial percentage of the poor in our land. Hence, the bill could be called an anti-poverty measure. To reduce the alarming number of school dropouts is more difficult when many have reason to believe that education leads nowhere for them. Hence, the bill could be called an education

measure. An end to job discrimination would permit full use of our nation's manpower and increase the national productivity. Hence, the bill could be called an economic measure.

Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for employers, labor organizations, joint-apprenticeship committees and employment agencies to engage in enumerated acts of discrimination based upon race, color, religion, national origin or sex. The Act established an Equal Employment Opportunity Commission to receive claims of unlawful discrimination. However, the Commission is authorized to seek compliance only by informal methods of conference, conciliation and persuasion. Where these methods prove unsuccessful, the victim of discrimination is left to seek relief in the federal courts.

S. 1308 retains the Commission's present functions under Title VII of the 1964 Act and continues to give priority to enforcement by these informal, non-public methods. Where these methods fail, however, the Commission will have enforcement powers. The Commission will be authorized to issue a complaint against the party

charged with unlawful discrimination and to hold a public hearing. Respondents at such hearings will be entitled to all the protections afforded by the Administrative Procedure Act, including the right to counsel and the right to call and examine witnesses. If, based on the evidence presented at such hearing, the Commission determined that the law had been violated, it can issue an order requiring the respondent to cease and desist its discriminatory practices. The Commission's orders will be enforceable or reviewable in the courts of appeals, both as to the Commission's findings of fact under the usual "substantial evidence" rule, and the Commission's interpretations of law.

The enforcement authority to be conferred on the Commission by S. 1308 closely parallels that given to and long exercised by federal agencies, such as the National Labor Relations Board, Federal Trade Commission and Federal Power Commission.

The present authority of the Department of Justice to institute civil suits to restrain patterns and practices of discrimination is retained. This authority--lodged in a Department with years of experience in the enforcement

of civil rights--is an important supplemental tool in the attack on a widespread national problem.

The bill will permit the Department of Justice to inspect employment records prior to institution of suit. This provision is patterned after one in the Civil Rights Act of 1960 which was helpful in combatting racial discrimination in voting. The determination by investigation of whether a pattern of discrimination exists is extremely difficult without an analysis of employment records. The bill at the same time provides safeguards to protect these records from public disclosure.

That S. 1308 will create more effective enforcement machinery is clear. It will permit a more expeditious handling of cases by an administrative agency dealing solely with discrimination in employment than is possible by courts whose dockets are already overcrowded with other cases.

The bill will reduce costs for an aggrieved person. Under the current law, the aggrieved may have to pay fees, security and costs for himself and, if unable to prove

discrimination, for the defendant. Most victims of employment discrimination are in no position to take such an economic risk.

The experience of the Equal Employment Opportunity Commission substantiates the need for this legislation. The Commission has had only limited success in obtaining voluntary compliance. Enforceable cease and desist authority will undoubtedly lead to greater success. The Commission's effectiveness as a conciliator would be enhanced. Those subject to the Act will be more willing to negotiate. Experience of the State fair employment agencies support this proposition.

Of the 36 states with enforceable FEP legislation, 31 provide enforcement by means of agency cease and desist powers. So do the District of Columbia and Puerto Rico.

Several of these 31 states--including Kansas, Nevada, Colorado, Wisconsin, Indiana, and most recently, West Virginia--whose statutes did not originally confer such enforcement powers later found it necessary to amend their laws to provide for such powers. The Model Anti-Discrimination Act of the Commissioners for Uniform State Laws, which is directed at employment discrimination, also contains enforcement provisions of the type proposed by S. 1308.

Three states--Arizona, Oklahoma, and Tennessee-- currently have FEP provisions which are either completely or partially unenforceable. The responsible agencies in all three of these states have informed us of the handicap under which they work and the need for agency enforcement power to help solve the problem of discrimination in their states. In at least one of these states, legislation is now pending which would provide these agencies with enforceable cease and desist authority.

Enactment of this bill will lead to development of a needed expertise in the area of equal employment. Charges of discrimination under Title VII often raise complex issues concerning company structure, seniority and promotion. Expertise will help resolve these. The legislation would also achieve a greater uniformity of result and legal interpretation--a more unified implementation of a truly national policy.

This policy recognizes that it is not easy for a man who is unemployed solely because of his color to maintain his faith in this nation's institutions. He cannot support his family, he cannot afford a suitable place to

live, he cannot enjoy the material benefits of his society. Worst of all, he cannot hope to improve his condition -- and in that respect he is denied the most valuable opportunity America has in the past held out to the deprived and dispossessed.

I urge the prompt, favorable consideration of S. 1308.