

Editor’s Note: In Chapter XII of this Manual, entitled “Private Right of Action and Individual Relief through Agency Action,” the text notes that there was a split among the federal Circuits as to whether plaintiffs had a private right of action to enforce disparate impact regulations implementing section 602 of Title VI. The text further notes that the Supreme Court had granted certiorari in one of these cases, Sandoval v. Hagan, 197 F.3d 484 (11th Cir. 1999), and that the Court would “likely definitively decide the issue when it hears Sandoval.”

In 2001, the Supreme Court decided the issue. In Alexander v. Sandoval, 532 U.S. 275 (2001), the Court held that there is no private right of action to enforce Title VI disparate impact regulations; that only the funding agency issuing the disparate impact regulation has the authority to challenge a recipient’s actions under this theory of discrimination. The Court held that although Congress clearly intended to create a private cause of action to enforce section 601 of Title VI, id. at 279-280, 283, the question before the Court was whether Congress had also intended these particular regulations to be privately enforced. The Court noted that there were two types of regulations. Regulations that simply “apply,” “construe,” or “clarify[]” a statute can be privately enforced through the existing cause of action to enforce the statute because a “Congress that intends the statute to be enforced through a private cause of action intends the authoritative interpretation of a statute to be so enforced as well.” Id. at 283-85. But regulations that go beyond the statute require a separate cause of action, even if those regulations were a valid exercise of Congress’s grant of rulemaking authority. Id. at 285-86.

In applying this dichotomy, the Court relied on its uncontested holding in prior cases that section 601 prohibits only disparate treatment (i.e., intentional discrimination). Id. at 280. Since the Title VI regulations expanded the section 601 definition of discrimination to include effects, the disparate impact regulations could not be viewed merely as an interpretation or application of section 601. Id. at 285-86. Accordingly, the Court concluded that Congress would have had to create (either explicitly or implicitly) a separate private cause of action to enforce such regulations. Id. at 285-87. Assessing the text and structure of the statute, the Court concluded that Congress had intended only agency enforcement of disparate impact regulations and had not intended to create a private right of action to enforce those regulations that went beyond the statute. Id. at 290-93.

On October 26, 2001, the Assistant Attorney General for the Civil Rights Division issued a memorandum for “Heads of Departments and Agencies, General Counsels and Civil Rights Directors” that clarified and reaffirmed the vitality of the disparate impact regulations in light of Sandoval. The memorandum noted that although Sandoval foreclosed private judicial enforcement of Title VI disparate impact regulations, it did not undermine the validity of those regulations or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations. Therefore, the agencies’ disparate impact regulations continue to be a vital administrative enforcement mechanism.
