

June 24, 1994

Memorandum to Brian Burke
Steve Warnath

From: Indra Caudle

Subject: Title VI of the Civil Rights Act of 1964
Provisions dealing with Nondiscrimination in
Federally Assisted Programs

I. PURPOSE

The purpose of this memorandum is to examine the application of Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, ethnicity, or national origin by federally assisted programs.

II. BACKGROUND

Title VI of the Civil Rights Act of 1964 was enacted to achieve a peaceful end to the racial discrimination practiced by agencies that receive federal monies. It is an extension of the spending clause and is premised on the notion that since taxes are collected from people without discrimination, they should be spent without discrimination. Guardians Association v. Civil Service Commission of City of N.Y., 463 U.S. 582, 599, 103 S.Ct. 3221, 3231 (1983) ("Guardians"). The Act seeks to "enforce the constitutional right to vote, confer jurisdiction upon the courts to provide injunctive relief against discrimination in public accommodations, authorize the Attorney General to institute suits to protect constitutional rights in education, ... to prevent discrimination in federally assisted programs, to establish the [EEOC]...." Civil Rights Act of 1964, Pub. L. No. 88-352, Title VI, § 601, 42 U.S.C. § 2000d (1964), reprinted in Legislative History of the Civil Rights Act of 1964, at 2355, 2391 (1964).

III. GENERAL OVERVIEW OF TITLE VI

Title VI prohibits any program or activity receiving Federal financial assistance from discriminating against people based on race, color or national origin and directs agencies to take action to effectuate this principal consistent with the objective of the statute authorizing the federal assistance. Civil Rights Act of 1964, Pub. L. 88-352, Title VI, § 601, 42 U.S.C. § 2000d (1964). Title VI applies to racial classifications which violate the equal protection clause of U.S.C.A., and the 5th or 14th Amendments. Regents of the University of California v. Bakke, 438 U.S. 265, 287; 98 S.Ct. 2733, 57 L.Ed. 750 (1978) ("Bakke").

The objective of Title VI is to protect people's right to be free of discrimination and to halt federal funding of programs which practice racial discrimination. 42 U.S.C. § 2000d, Legislative History, at 2394. A recipient of Federal funding is in violation of Title VI when:

- (1) it denies a person service, aid or benefits;
- (2) provides inferior or discriminatory service;
- (3) subjects an individual to segregation or different treatment in relations to service, aid or benefits;
- (4) restricts or discourages a person's enjoyment of facilities;
- (5) treats an individual differently; or
- (6) uses a criteria that inhibits the accomplishment of the objectives of Title VI because of a person's race, color or national origin. Antieau, Chester, Federal Civil Rights Acts: Civil Practice 524 (The Lawyers Co-operative Publishing Co. 1980).

IV. APPLICATION OF TITLE VI

A. When Title VI Takes Effect

An agency's actions are subject to Title VI once it accepts financial assistance from the Federal government, whether it is private or federal. Title VI is not retroactive. By accepting federal financial assistance, after its enactment, agencies, such as hospitals and schools, agree to abide by Title VI and/or honor the penalties it is assessed for violating it. Bossier Parish School Board v. Lemon, 370 F.2d 847, 850, 851 (5th Cir. 1967) ("Bossier").

B. Causes of Action Under Title VI

i. Private Causes of Actions

Title VI is applicable to private remedy due to judicial interpretation; nowhere in Title VI does Congress specifically grant private citizens remedy. Guardians Association v. Civil Service Commission of City of N.Y., 463 U.S. at 597. The early interpretations of Title VI are varied, with some courts holding that Title VI applies only to government agencies, while others hold that it applies to private citizens. As early as 1965 courts provided private citizens remedy under Title VI such as in Bossier. Regents of the University of California v. Bakke, 438 U.S. at 282. The Bossier court held that, in the absence of another procedure, individuals that are protected by Title VI can assert their rights, under Title VI in a court of law. Bossier Parish School Board v. Lemon, 370 F.2d at 852. The Supreme Court addressed the issue of private remedy in two cases: Bakke and Cannon v. University of Chicago, 463 U.S. 677, 99 S.Ct. 1946, 60 L.Ed. 560 (1978). The Bakke court assumed Title VI provided for

private remedy. Guardians Association v. Civil Service Commission of City of N.Y., 463 U.S. at 593. The Cannon analyzed Title VI and held that it provided for private remedies. In Cannon, the plaintiff sued the University of Chicago for violating Title IX. In her suit, the plaintiff alleged that the school failed to admit her because she was a woman thus violating Title IX. Cannon v. University of Chicago, 463 U.S. at 680. In deciding if Title IX permitted private causes of action, the Supreme Court concluded that the language in Title IX was almost identical to that in Title VI and examined the application of Title VI to make their determination. Cannon v. University of Chicago, 463 U.S. at 684.

The Supreme Court held that both Title VI and Title IX permit private causes of actions. Cannon v. University of Chicago, 463 U.S. at 703. To reach its conclusion, the Court examined the statutes and applied the Cort test. The Cort test derived from Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed. 26. It is used to determine if a statute violation gives rise to private causes of action. Cannon v. University of Chicago, 463 U.S. at 688. The Cort test says a private cause of action is available if the statute:

- (1) benefits plaintiffs in a special class;
- (2) legislative history demonstrates an intention by Congress to permit private causes of action;
- (3) a private remedy will not undermine the purpose of the legislation; and
- (4) the application of a federal remedy is appropriate. Cannon v. University of Chicago, 463 U.S. at 689-705.

According to the criteria as stated in Cort, Title VI provides for private remedy.

ii. Associations as representatives of private citizens

An association can bring a Title VI suit on behalf of its constituents if it has standing. Neighborhood Action Coalition v. City of Canton, Ohio, 882 F.2d 1015, 1016 (6th Cir. 1989) ("NAC"). An association has standing if it can demonstrate that its individual members have standing to sue; the interests the association seeks to protect are relevant to its purpose; and neither the claim nor the relief being sought requires individual members to participate in the suit. Neighborhood Action Coalition v. City of Canton, Ohio, 882 F.2d at 1016; Freedom Republicans v. Federal Elections Commission, 13 F.3d 412, 415 (D.C. Cir. 1994). Individual members have standing to sue if they can show that their injury is traceable to the defendant's conduct and the injury can be redressed by the judicial remedy. Neighborhood Action Coalition v. City of Canton, Ohio, 882 F.2d at 1016. In NAC, the NAC appealed a district court decision to dismiss their

case. The NAC filed suit under the Fair Housing Act, the Civil Rights Act of 1866 and Title VI among other federal laws alleging that the city provides inferior federal assistance and municipal services to minority communities. The plaintiffs asserted that they suffered deteriorating neighborhoods and decreasing property values as a result of the city's discriminatory practices. Neighborhood Action Coalition v. City of Canton, Ohio, 882 F.2d at 1014. The 6th Circuit Court dismissed the plaintiffs' claims under the Fair Housing Act and the Civil Rights Act of 1866 but held that the plaintiffs had a valid claim under Title VI. Neighborhood Action Coalition v. City of Canton, Ohio, 882 F.2d at 1017. The Court permitted the NAC to sue on behalf of the residents of the affected community because it met the above criteria. The residents had standing to sue because their injury could be traced back to the defendant's actions; the NAC was formed to protect the interest of the affected communities so the interests it seeks to protect are germane to its purpose; and as long as the NAC only sought injunctive relief, it was not necessary to bring individual members into the suit.

C. Level of Evidence Required for Title VI Cases

i. Racially Neutral Policies

The level of evidence needed to prevail in a Title VI claim varies according to the court. The discrepancy in the level of proof required can be traced to inconsistencies in the Supreme Court rulings. The case most associated with this discrepancy is Lau v. Nichols, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed. 1 (1974) ("Lau"). In Lau, a group of non-English speaking Chinese students sued the San Francisco school system for failure to provide English instruction to all Asian students. Lau v. Nichols, 414 U.S. at 564. In concurring opinions, the Supreme Court held that the San Francisco school system was in violation of Title VI and must provide English instruction to the entire Asian student population. Lau v. Nichols, 414 U.S. at 569, 570. While the majority held that the discriminatory effect of a policy alone is enough to prevail in a Title VI claim, the concurring opinions held that the violation of Title VI alone may not be enough to render a private remedy. Lau v. Nichols, 414 U.S. at 568, 570. Most courts follow the reasoning in the concurring opinion.

The Supreme Court analyzed the Lau opinions in Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed. 596 (1976) ("Washington"). In Washington, the plaintiffs filed suit against D.C. officials under the Fourteenth Amendment. Seeking declaratory relief, the officers alleged that the Police Department's recruiting practices discriminated against blacks. Washington v. Davis, 426 U.S. at 232, 233. The court held that in cases where an act or policy is neutral on its face it is necessary to prove how the racially neutral classification

violates the equal protection laws. Washington v. Davis, 426 U.S. at 245. In other words, just because an action has a discriminatory impact, does not mean that the court will find that the action violates the plaintiff's rights.

To prevail, the plaintiff must show that the defendant actions had "[a] purpose to discriminate... which may be proven by systematic exclusion of eligible [persons] of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination." Washington v. Davis, 426 U.S. at 239. The holding in Washington hints that, in cases where the action or policy is neutral on its face, it will probably be necessary for the plaintiff to prove that the defendant's policy not only violated Title VI, but that the defendant implemented the policy in such a way that it would have a discriminatory effect.

The effect of Washington is unclear because of the Supreme Court's unwillingness to overrule Lau. The Supreme Court revisited the issue of intent in Guardians Association v. Civil Service Commission of City of N.Y. ("Guardians"). In Guardians, a group of minority police officers filed a class action suit against New York City alleging that the entry-level written exams had a discriminatory impact. Guardians Association v. Civil Service Commission of City of N.Y., 463 U.S. at 585-586. The court sought to clarify the level of evidence necessary to prevail under a Title VI claim but instead created more confusion. The majority held that "discriminatory intent is not an essential element of a Title VI violation..." stating that the holdings of Bakke and Lau are consistent, the majority ruled that "[a]bsent some more telling indication in the Bakke opinions that Lau was overruled, [the court] would not so hold." Guardians Association v. City Service Commission of City of N.Y., 463 U.S. at 590, 607.

The enforcement of Title VI varies, among circuit courts, according to on how the court interprets the Supreme Court holdings. Latinos Unidos de Chelsea en Accion v. Secretary of HUD, 799 F.2d 774 (1st Cir. 1986) ("Latinos") and the Coalition of Concerned Citizens Against I-670 v. Damian ("Coalition"), 608 F. Supp. 110 (S.D. Ohio 1984) serve as excellent examples of how differently lower courts interpret the Supreme Court's holding on intent. In Latinos, minority residents brought action against HUD alleging that the agency's contracting system was denying them equal opportunity for employment, housing and government contracts. Latinos Unidos de Chelsea en Accion v. Secretary of HUD, 799 F.2d at 775-777. Citing to Guardians, the court held that "to prevail with a direct claim under the statute [Title VI], plaintiffs must show that defendants acted with discriminatory intent." Latinos Unidos de Chelsea en Accion v. Secretary of HUD, 799 F.2d at 783.

Coalition was a suit filed by residents living near a proposed construction site. In their suit, the residents made a prima facie showing of the discriminatory effects the construction would have. Citing to the same case, the Coalition court found that the "Supreme Court held that a private party could bring suit for prospective relief to enforce regulations under Title VI...without having to prove discriminatory intent on the part of the defendants." Coalition of Concern Citizens Against I-670 v. Damian, 608 F. Supp. at 126.

ii. Policies that are Discriminatory on their Face

For a plaintiff to prevail under a Title VI claim, he or she must prove that the defendant's policy is blatantly discriminatory. An example of a policy that is discriminatory on its face is Bakke. In Bakke, the plaintiff challenged the university's special admissions program. In his complaint, the plaintiff alleged that the university's special admissions program violated Title VI among other federal laws. Regents of the University of California v. Bakke, 438 U.S. at 278. The university's program set aside 16 seats to be applied for by disadvantaged applicants only. If the university could not find 16 applicants that met its requirements, the seats were not open to other applicants. Meanwhile, the disadvantaged applicants could apply for all of the available seats. Regents of the University of California v. Bakke, 438 U.S. at 276. The court ruled in the plaintiff's favor because the university's policy provided an opportunity to disadvantaged applicants at the expense of the other applicants. However, the Supreme Court held racial classifications to correct past wrongs were okay as long as the classifications could withstand a constitutional challenge and did not deny individuals opportunities available to others because of their race. In these situations, the agency must justify the policy by proving that its "purpose or interest is both constitutionally permissible and substantial and that ... [the activity] is 'necessary...to the accomplishment' or the safeguarding of its interest." University of California Regents v. Bakke, 438 U.S. at 265, 305.

D. When A Title VI Claim Can Be Filed In Court

A person can seek remedy under Title VI before exhausting the administrative process. In Cannon, the University of Chicago sought to have the plaintiff's complaint dismissed asserting that the plaintiff failed to exhaust the administrative process. The Supreme Court held that a plaintiff can pursue a cause of action under Title VI in a court of law before exhausting the administrative process because the plaintiff can not be assured that the "administrative process will reach a decision on their complaints within a reasonable time, [hence] it makes little sense to require exhaustion." Cannon, 441 U.S. at 706-07;

Neighborhood Action Coalition v. Canton, Ohio, 882 F.2d 1012, 1015 (6th Cir. 1989). This ruling permits a person to pursue a Title VI claim in the judicial system without seeking remedy through the administrative process.

E. REMEDY

The type of remedy granted is dictated by the type of discrimination a plaintiff can prove. The Supreme Court has held that Title VI is a statute passed by Congress under the Spending Clause of the Constitution. It places conditions on the acceptance of federal funds. Guardians Association v. Civil Service Commission of City of N.Y., 463 U.S. at 596. Because it is an extension of the spending clause, monetary remedies are not usually appropriate in private causes of action. Guardians, 463 U.S. at 596. In Guardians, the Supreme Court held that, in private causes of action, a plaintiff is only entitled to compensatory relief if the plaintiff can prove the discrimination was intentional. Once a court has held that a program is discriminatory, the plaintiff is entitled to prospective relief if the agency continues to operate the program in the same manner. In cases where the discrimination was unintentional and resulted from discriminatory impacts, remedy should be limited to declaratory and/or injunctive relief. Guardians Association v. Service Commission of City of N.Y., 463 U.S. at 597.

F. CONCLUSION

Title VI has been an effective tool in the fight to eliminate discrimination by federally funded agencies and programs. Although Title VI was originally written to address discrimination faced by African Americans, the courts have interpreted Title VI to apply to many different races, colors and national origins.

The groups of people seeking relief from discriminatory practices have expanded to include the disabled and the poor. However, courts have been uneven in their application of Title VI. Liberal courts have upheld and/or expanded the application of Title VI; while conservative courts have narrowed its scope. Today, the outcome of a Title VI case depends largely on the court.

To prevail under a Title VI claim, all courts require plaintiffs to prove that the agency's action violated Title VI. The difference is the level of proof required in order for the plaintiff to sustain his or her claim. Conservative courts require the plaintiff to prove discriminatory intent, while liberal courts will permit a claim to proceed if the plaintiff can prove the defendant's action has a discriminatory impact. As the political and social climate continue to change, so will the court's interpretation of Title VI. However, if this issue came

before the Supreme Court today, it is likely that the Court would be overruled Lau and future plaintiffs would be required to show that the agency not only violated Title VI but had a discriminatory intent.