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ABSTRACT

On this 20th anniversary of the passage of the Arizona Civil Rights Act, the State is to be congratulated for its successes in civil rights enforcement. The significance of the passage of the Act is twofold: (1) it added the full weight of State law enforcement to the battle against unlawful discrimination; and (2) it underscored the continuing vitality of the Federalist system of Government. The Reagan Administration is committed to the Federalist system, and has fostered a newer and more lasting appreciation of the sovereignty of State and local governments, insisting that there is more than enough room for effective law enforcement at the Federal level without preempting all State and local powers. Congress, however, does not agree. The Civil Rights Restoration Act of 1985 proposed by Congress would introduce more comprehensive Federal civil rights legislation and usurp many of the State law protections already in place. Instead of going ahead with this legislation, Congress should survey the civil rights scene carefully and erect new legislative protections only as needed and only if carefully tailored to meet a demonstrated need. (RDN)

Department of Justice

REMARKS

OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

AT

THE

TWENTIETH ANNIVERSARY OF THE ARIZONA CIVIL RIGHTS ACT SYMPOSIUM

WEDNESDAY, APRIL 24, 1985
12:00 P.M.
RAMADA SAFARI RESORT
PHOENIX, ARIZONA

It is a special pleasure for me to have the opportunity to participate in this 20th anniversary commemoration of the Arizona Civil Rights Act. In gathering today for this celebrated event, we are able not only to join together to memorialize passage of the Arizona Civil Rights Act twenty years ago this month, but also to reaffirm a shared commitment to the noble task of ensuring that all individuals -- whatever may be their race, color, gender, religion or national origin -- are accorded equal treatment under law.

In thinking about what to say to this gathering on so auspicious an occasion, it struck me that it might be most appropriate to toast Arizona for a job well done in the area of civil rights enforcement. There is, I understand, a film to follow that documents the State's historic achievements in this highly-charged arena, and I will not undertake to preempt that field. Nor will I allow anyone to leave this room under a misapprehension that Arizona -- or, for that matter, the Federal Government -- has engaged in this struggle for 20 years and can now declare victory. The fight goes on.

But, what too few people seem to recognize -- or too many refuse to acknowledge -- is that the fight against unlawful discrimination is multi-dimensional. It is not, as some would have it, a war waged only at the Federal level, with all the calls made in Washington. While that is certainly one battlefield -- and a critically important one at that --

Arizona (and scores of states like Arizona) have drawn up their own civil rights battle lines and are standing firm.

There is a special significance to this "turn of events." I call it a "turn of events" because little more than 20 years ago, "civil rights" was in most quarters a little-used phrase that had no meaningful application at the state and local levels. Indeed, it was precisely because discriminatory conduct was so openly condoned, not condemned, that the Federal Government -- with enactment of a series of Federal civil rights laws in the early and mid 1960's -- stepped forward to provide much needed statutory protections. Under our Federalist system -- in fact, this is one of its abiding strengths -- the national government is empowered to intervene in areas delegated to it by the Constitution when state and local governments fail to respond to real wrongs and provide redress. The Civil Rights Act of 1964, the Voting Rights Act of 1965, and other Federal statutes of that era provide ready examples.

But acknowledging the legitimacy of the Federal presence in the 1960's (and today) is not to surrender for all time (or even any extended time) the civil rights terrain to the Feds. The great State of Arizona did not elect to abdicate its sovereign responsibilities in such manner, and most other states followed suit. The significance of that decision -- leading here to passage of the Arizona Civil Rights Act some 20 years ago -- is twofold and thus doubly worthy of

commemoration. First, it added the full weight of state law enforcement to the battle against unlawful discrimination, a matter of no small moment. Second, it served to underscore the continuing vitality of the Federalist system of government that shaped so much of the thinking of our Founding Fathers.

We tend too conveniently to lose sight of this latter point -- to forget that under our Constitution the national government is assigned only limited powers, and in language that is largely proscriptive (i.e., "Congress shall make no law"), not prescriptive. It is, nonetheless, the states that are granted by the Constitution by far the largest measure of power, not by implication but by explicit command in the Tenth Amendment. Thus, the Tenth Amendment proclaims: "The powers not delegated to the United States are reserved to the states, respectively, or to the people." And, lest one should regard such language as but an afterthought, no less a figure than James Madison himself, the principal architect of our Constitution, shared his understanding of our system of federalism with these words from The Federalist Papers, No. 45:

> The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; . . . . The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.

We can with a fair amount of cynicism and considerable doses of disappointment argue today that the intended allocation of enumerated powers has become so altered as to escape recognition. Certainly, the Supreme Court's recent decision in Garcia v. San Antonio Metropolitan Transit Authority, 53 (U.S.L.W.), casts a dark shadow on the vitality of federalism. Yet, the principle itself remains alive and, if not totally well, at least not suffering from any malady that is terminal.

For this Administration has undertaken to resurrect the constitutional understanding of a Federalist system of government and to foster a newer and more lasting appreciation for the sovereignty of state and local governments. There is more than enough room for effective law enforcement at the Federal level without preempting all state and local powers.

This brings me back to today's commemoration. Arizona is not unique in its enactment 20 years ago of a civil rights statute. Nor is it alone in the impressive civil rights enforcement record that it has compiled under that statute. The protection of individual rights against class-based demands of groups (or representatives of groups) remains uppermost on the State's legal agenda, and serves to compliment the nondiscrimination commands available under Federal law.

We in Washington, D.C., would be well-advised to take a hard look at such state and local activity (here in Arizona and elsewhere) before launching yet another major effort in

Congress for more comprehensive Federal civil rights legislation. There is pending in both Houses right now a proposal to expand greatly Federal civil rights enforcement in both the public and private sectors, effectively rendering superfluous and, by implication, largely ineffectual the Arizona Civil Rights Act, and others like it.

Masquerading under the title "The Civil Rights Restoration Act of 1985," this proposed legislation would open to Federal investigators any and all "programs and activities" of an entity once that entity received federal financial assistance, either directly or indirectly, and no matter how fleetingly. The bills are being promoted on Capitol Hill as "modest" legislative responses to the Supreme Court's decision two years ago in the Grove City case -- which held that, under Title IX of the Education Amendments of 1972, only the programs of an educational institution that are actually funded with Federal dollars are subject to the statute's prohibition against sex discrimination.

The point here is not to debate the relative merits and demerits of proposed Grove City legislation. Rather, the point to be made is that Members of Congress have, without any empirical evidence or meaningful fact-gathering, introduced sweeping new federal civil rights legislation that intrudes on, interferes with, and plainly seeks to usurp many of the state law protections already in place. There has yet to be any demonstrated need for so dramatic a shift in law enforcement emphasis; no effort

has been made to scrutinize existing laws at both the Federal and State levels and determine where civil rights coverage fails to accord the protections promised. Indeed, Congress appears all too ready to shy away from such a considered inquiry -- perhaps because the single most glaring exemption from our body of Federal laws that prohibit discrimination is, curiously, Congress itself. The "rules of the game" that apply to all others in this area have no application to our Legislative Branch -- which insists in the civil rights arena on playing by its own rules.

That is a problem to be dealt with separately. If there are other, similar problems of non-coverage under the nondiscrimination statutes, they, too, deserve a swift and meaningful legislative response. But the Federal government can no longer assume -- as perhaps it could some 20 years ago -- that the states remain inattentive to protecting fundamental individual rights. As Arizona's example makes clear, we live today in a much different climate than we did in the 1950's and 1960's. State nondiscrimination laws are every bit as much a part of the current civil rights landscape as the Federal Civil Rights Act of 1964 and other such statutes in the U.S. Code. Most are being vigorously enforced, and at all levels -- not as special interest legislation that caters to the preferences of some while paying little heed to others similarly situated, but as

all purpose legislation aimed at insuring to every individual the right to enjoy in full measure equal opportunity, whatever might be his or her race, color, religion, sex or national origin.

It is within this framework -- and this framework alone -- that Congress should look to additional laws in the area of civil rights, erecting new legislative protections only as needed and only if carefully tailored to meet a demonstrated need. Our Federalist system of government requires a fuller appreciation at the Federal level of the ongoing, energetic state enforcement activities that now exist in this area. We cannot, and will not, abandon the fight against discrimination. Rather, it seems to me, we must renew our resolve to hasten the day when discriminatory treatment of individuals on the basis of skin pigmentation, religion or gender is the exlusive concern of historians.

We are moving closer to that day. And progress will surely continue, at an even accelerated rate, as we marshal our considerable forces at both the State and Federal levels and together combat unlawful discrimination in whatever form, under whatever guise, and for whatever motive. I am proud to be able to stand before you today and confirm that the Federal government has over the past four years made dramatic strides against the evil of discrimination, compiling a remarkable -- indeed in many respects unprecedented -- record of civil rights enforcement. I am equally proud to attest that the great State

of Arizona has been an able and respected partner in that civil rights endeavor and has much to commemorate in this 20th anniversary of passage of the Arizona Civil Rights Act.

Thank you.