NEW YORK CITY BAR

STATEMENT ON THE TRUMP ADMINISTRATION'S ATTACKS ON CIVIL RIGHTS

The laws governing and protecting civil rights in the United States are being upended. Through a series of Executive Orders, the Trump Administration is seeking to roll back civil rights protections for historically marginalized groups in direct contravention of Congress's intent. The New York City Bar Association stands against the reversal of these critical rights and calls on Congress and state and local governments to do the same.

I. THE INTENT BEHIND THE CIVIL RIGHTS ACTS

The Civil Rights Movement forced Congress to confront the reality of the "unfortunate and ignominious" aspects of this country's history, which included slavery, segregation, and deeply embedded social, economic exclusion, and hierarchy.[1] Sixty-one years ago, Congress enacted the Civil Rights Act of 1964.[2] The Voting Rights Act of 1965[3] and the Civil Rights Act of 1968[4] followed suit. Their primary purpose was to address the widespread policies and practices of segregation and exclusion, by both private and governmental actors, that worked to subordinate Black people and other people of color and force them to remain in a permanent underclass.[5] They were drafted and enacted with the explicit recognition that the effects of slavery were still felt, 100 years later, and that the "roots of injustice run deep."[6] To uproot this injustice, the Civil Rights Acts necessarily intended to confront and repair effects of past discrimination and to invalidate present discriminatory policies and practices.

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[1] *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

[2] Pub. L. 88–352, 78 Stat. 241.

[3] Pub. L. 89-110, 79 Stat. 437.

[4] Pub. L. 90–284, 82 Stat. 73.

[5] Lyndon B. Johnson, *Remarks upon Signing the Civil Rights Bill* (July 2, 1964), https://millercenter.org/the-presidency/presidential-speeches/july-2-1964-remarks-upon-signing-civil-rights-bill (All websites last accessed on May 30, 2025).

[6] Lyndon B. Johnson, *Remarks upon Signing the Civil Rights Act* (Apr. 11, 1968), https://www.presidency.ucsb.edu/documents/remarks-upon-signing-the-civil-rights-act

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

While the initial impetus of the Civil Rights Acts was to respond to racial discrimination and slavery's enduring impacts, the various Civil Rights Acts—including Title VII (employment),[7] Title VIII (housing),[8] Title IX (education),[9] and, later, the Rehabilitation Act of 1973,[10] the Americans with Disabilities Act,[11] and other similar laws—prohibit governmental and private actors alike from excluding people from democratic and public participation, economic life, and educational opportunities based on characteristics such as race, sex, disability status, or religion. Combined, these momentous laws aimed, and still aim, to address the corrosive and prejudicial effects of the historical and ongoing social and economic exclusion of marginalized groups in the United States.[12] In particular, they sought, and still seek, to "break down old patterns of . . . segregation and hierarchy"[13] and to remove barriers for those who had "been excluded from the American dream for so long."[14]

Thus, the Civil Rights Acts sought to transform American society by eliminating the effects of deep-seated discrimination and biases. For example, the legislative record for Title VII reflects a deep concern for and intent to redress the exclusion of Black Americans from the labor market and the consequential worsening life conditions that accompany such exclusion.[15] Title VII's concerns extend to redressing the labor-market exclusion of other historically marginalized groups, such as indigenous people, Latinx and other people of color, and women.[16] Similarly, Title IX was intended to be a first step toward rectifying the widespread exclusion of women from educational opportunities driven by stereotyped views of their role in society, which in turn limited their future prospects and reinforced these stereotypes.[17] By expanding access to scholarships, academic choice, and athletics, Title IX promotes "cultural transformation by expanding who is considered an athlete [or, for example, an engineer] and expanding the cultural understanding of what it means to be a woman [i.e., a category that includes athletes and engineers]."[18] Title IX's legislative history

[7] Part of the Civil Rights Act of 1964.

[8] Part of the Civil Rights Act of 1968.

[9] Pub L. 92-318, 86 Stat. 235.

[10] Pub. L. 93–112, 87 Stat. 355.

[11] Pub. L. 101-336, 104 Stat. 327.

[12] 110 Cong. Rec. 6548 (1964) (remarks of Sen. Humphrey).

[13] *United Steelworkers of Am., AFL-CIO-CLC v. Weber*, 443 U.S. 193, 195 (1979).

[14] 110 Cong. Rec. 6552 (1964) (remarks of Sen. Humphrey).

[15] *Id.* at 6547-6548, 6552 (remarks of Sen. Humphrey); *id.* at 7204-7205 (remarks of Sen. Clark); *id.* at 7379–7380 (remarks of Sen. Kennedy).

[16] Pub. L. 88–352, § 703.

[17] 118 Cong. Rec. 5808 (remarks of Sen. Bayh); Deborah Brake, *Title IX's Trans Panic*, 29 William & Mary J. Race, Gender, & Soc. Just. 41, 74 (2023) (footnotes omitted).

[18] Brake, *supra* note 17, at 74 (citing Kimberly A. Yuracko, *One for You and One for Me: Is Title IX's Sex-Based Proportionality Requirement for College Varsity Athletic Positions Defensible?*, 97 N.W. Univ. L. Rev. 731, 737 (2003)).

emphasizes that socialization and pressure on girls and women to conform to sex stereotypes, not simply biology, play a role in the lack of equal academic, athletic, and other opportunities.[19] As to athletics, Title IX was intended to redress the "societal reality that girls and women have not had the benefit of anywhere near the same opportunities as boys and men to develop their athleticism."[20]

The Administration's interpretation of Title VII, which deems modest attempts to address structural and historical inequities and barriers to equal opportunity as "pernicious discrimination,"[21] is at odds with Title VII's intent: Title VII is rooted in the recognition that eliminating these barriers is necessary to ensure that people are judged by what they are "capable of doing," rather than how they "were born."[22] Similarly, the fixation on a solely biological rationale for Title IX[23] ignores that Title IX was intended to combat societal exclusion and pressure to conform to sex stereotypes by ensuring that girls and women have access to educational opportunities. The use of Title IX to exclude transgender girls and women undermines this purpose.[24]

II. THE ADMINISTRATION'S REPUDIATION OF CIVIL RIGHTS PROTECTIONS FOR HISTORICALLY MARGINALIZED PEOPLE

The Administration has not just disregarded the Civil Rights Acts' mandates, slashing funding for the enforcement of fair housing,[25] equal employment,[26] and environmental justice,[27]

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[19] See, e.g., 94 Cong. Rec. 189 (1975) (Statement of Sen. Bayh); *id.* at 197 (Statement of Rep. McKinney); Nancy Leong, *Against Women's Sports*, 95 Wash. U. L. Rev. 1, 16 (2018).

[20] *Id.* at 70.

[21] Exec. Order, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/.

[22] *Compare id.* ("Yet in case after tragic case, the American people have witnessed first-hand the disastrous consequences of illegal, pernicious discrimination that has prioritized how people were born instead of what they were capable of doing."), *with Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) ("What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.").

[23] Exec. Order, *Keeping Men out of Women's Sports* (Feb. 5, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/ .

[24] *See* Brake, *supra* note 17, at 74.

[25] Debra Kamin, *Cuts to Housing Nonprofits Will Spur Discrimination, Democrats Say*, NY Times (Mar. 17, 2025), https://www.nytimes.com/2025/03/17/realestate/warren-waters-hud-doge-budget-cuts.html.

[26] Julian Mark et al., *Trump Officials Start Dismantling Civil Rights Offices, as Part of DOGE's Secret Plan*, Washington Post (Feb. 28, 2025), https://www.washingtonpost.com/nation/2025/02/28/doge-trump-civil-rights-office-closing-eeoc/.

[27] Lisa Friedman, *E.P.A. Plans to Close All Environmental Justice Offices*, NY Times (Mar. 11, 2025), https://www.nytimes.com/2025/03/11/climate/epa-closure-environmental-justice-offices.html.

among others. It has sought to repudiate disparate impact discrimination[28] despite the Supreme Court having held that both Title VII and the Fair Housing Act prohibit such discrimination.[29] Furthermore, it inverts the purpose of the Civil Rights Acts, interpreting them in a manner that reinforces historical discrimination against minority groups and favors historically privileged groups. The Administration issued an executive order mandating "colorblindness" and labeling "diversity, equity, and inclusion" as unlawful discrimination,[30] and has launched widespread investigations into educational institutions[31] and law firms.[32] Another executive order recognizes only two "biological sexes," and the Administration has sought to impose penalties against entities that allow transgender athletes to participate in sports.[33] The mission statements of the Department of Justice's Civil Rights Division now in some cases do not even mention the statutes that the Division is bound to enforce; instead, as former division head Vanita Gupta has observed, the mission statements indicate that the Administration intends to use the Civil Rights Division "as a weapon against the very communities it was established to protect."[34]

The common thread running through all these orders and actions is that the civil rights laws can and should be invoked to justify protecting a dominant group (i.e., white people or cisgender girls) at the expense of the rights of minority groups and in contravention of the transformative purpose of these laws. They elevate the claim of reverse racism into constitutional principle and recast efforts to promote equity for marginalized people as unlawful favoritism. If left unchecked,

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[28] Exec. Order, *Restoring Equality of Opportunity and Meritocracy* (Apr. 23, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/.

[29] *E.g.*, *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971); *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 534 (2015). These decisions rest on the text of the statutes.

[30] Exec. Order, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*; *Fact Sheet: President Donald J. Trump Protects Civil Rights and Merit-Based Opportunity by Ending Illegal DEI* (Jan. 22, 2025), https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-protects-civil-rights-and-merit-based-opportunity-by-ending-illegal-dei/. Here and elsewhere, the Trump Administration decries "DEI" as cloaking "dangerous, demeaning, and immoral race- and sex-based preferences" without defining it.

[31] Collin Binkley, *More than 50 Universities Face Federal Investigations as Part of Trump's Anti-DEI Campaign*, Associated Press (Mar. 14, 2025), https://apnews.com/article/trump-dei-universities-investigated-f89dc9ec2a98897577ed0a6c446fae7b.

[32] Tatyana Monnay et al., *Trump EEOC Hits Big Law Firms With DEI Bias Investigations*, Bloomberg News (Mar. 17, 2025), https://news.bloomberglaw.com/business-and-practice/trump-eeoc-hits-big-law-firms-with-bias-probes-over-dei-programs.

[33] *E.g.*, Jenna Russell, *Trump Administration Says Maine Broke Law by Allowing Transgender Athletes on Teams*, NY Times (Mar. 6, 2025), https://www.nytimes.com/2025/03/06/us/trump-maine-title-ix-transgender-athletes.html; Exec. Order, Keeping Men out of Women's Sports (Feb. 5, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/.

[34] Devlin Barrett, *Trump Recasts Mission of Justice Dept.'s Civil Rights Office, Prompting 'Exodus'*, NY Times (Apr. 28, 2025), https://www.nytimes.com/2025/04/28/us/politics/trump-doj-civil-rights.html; *see also* Sam Levine, *Trump Ally Pushes DoJ Unit to Shift Civil Rights Focus, New Messages Show*, The Guardian (Apr. 18, 2025), https://www.theguardian.com/us-news/2025/apr/18/justice-department-civil-rights-division-trump.

this interpretation of the Civil Rights Acts will not just dampen their effectiveness— it will allow them to be used as a mechanism of segregation and exclusion, the opposite of what was intended.

The current contraction of civil rights echoes past movements in American history that rolled back civil rights advances. Following the abolition of slavery and the passage of the Fourteenth and Fifteenth Amendments, many states passed Jim Crow laws to cement existing systems of racial hierarchy and to reverse Black Americans' gains.[35] Courts upheld these laws by redefining "equality" and recasting the resultant enforced racial segregation and inequality as merely "social" inequality.[36] These decisions had their roots in equal application theory–the legal theory that maintains that statutes that rely on classifications based on race, gender or sexuality are lawful if the statute applies "equally" to all classes. Equal application theory has been used to justify anti-miscegenation laws,[37] anti-pregnancy discrimination laws, prohibitions on same-sex marriage, and laws that prevent transgender people from obtaining gender-affirming documents.[38] As discussed above, the Civil Rights Acts were intended to prevent such laws that exclusively or disproportionately affected certain groups and the parallel practices which, even if not enshrined in law, had the same exclusionary and discriminatory effect.[39] Now, under the auspices of restoring "equality of opportunity" and preventing "favoritism,"[40] the Administration appears to be relying on the same misconception of equality underlying equal application theory to undo the progress made under the Civil Rights Acts.

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[35] Christopher W. Schmidt, *Brown, History and the Fourteenth Amendment*, 97 Notre Dame L. Rev. 1477 (2022)

[36] *Plessy v. Ferguson*, 163 U.S. 537, 544 (1896).

[37] Proponents of anti-miscegenation laws treated race as a biological fact that could be objectively and genetically determined rather than a social construct. *See, e.g.*, Paul A. Lombardo, *Miscegenation, Eugenics, and Racism: Historical Footnotes to Loving v. Virginia*, 21 U.C. Davis L. Rev. 421, 433-436 (1987-1988). Science has conclusively repudiated the claim that race is a "biological reality." *See, e.g.*, Heidi Lujan & Stephen DiCarlo, *Misunderstanding of Race as Biology Has Deep Negative Biological and Social Consequences*, Experimental Physiology (May 2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11291859/. Yet President Trump's Executive Order regarding the Smithsonian appears to adhere to this discredited and dangerous view, criticizing an exhibit in part because it "promotes the view that race is not a biological reality but a social construct, stating 'Race is a human invention.'" Exec. Order, *Restoring Truth and Sanity to American History* (Mar. 27, 2025), https://www.whitehouse.gov/presidential-actions/2025/03/restoring-truth-and-sanity-to-american-history/.

[38] Jared Trujillo, *Equal Application Theory: A Revamped 1880's Legal Theory Being Used to Attack Trans Rights*, CUNY Law Review Blog, *available* at https://www.cunylawreview.org/equal-application-theory-a-revamped-1880s-legal-theory-being-used-to-attack-trans-rights/; *see generally* Jeffery Williams, *The Equal Application Defense: The Equal Application Defense*, 9 U. Pa. J. Const. L. 1207 (2007).

[39] For example, the diploma and test requirements in *Griggs* applied "equally" to everyone. 401 U.S. at 427-428.

[40] Exec. Order, *Restoring Equality of Opportunity and Meritocracy* (Apr. 23, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/.

III. CONGRESS AND STATE AND LOCAL GOVERNMENTS MUST PROTECT CIVIL RIGHTS

Congress makes laws, while the president must faithfully execute them.[41] However, through the use of Executive Orders and other unilateral acts, the Administration is effectively rewriting the Civil Rights Acts and applying them in a manner contrary to their purpose. This recasting of the Civil Rights Acts is not only undoing decades of civil rights reform, but is also weakening the separation of powers undergirding our constitutional system. Congress must reject these actions and proclaim that civil rights are not a partisan issue and that laws duly passed by the legislature must not be undone by executive action.[42]

Additionally, state and local governments must play a critical role. The erosion of federal constitutional and statutory guarantees has underscored the necessity of strong, independent protections at the state and local level. State and local governments need to enact and enforce protections that reflect the needs and values of their diverse communities. The recent passage of the Equal Rights Amendment in New York[43] exemplifies this imperative: by constitutionalizing protections against discrimination on the basis of sex, gender identity, reproductive autonomy, and disability, New York has taken an affirmative step to ensure that its residents retain essential civil rights. Similarly, New York City and State's past decoupling of their human rights laws from similar federal laws—emphasizing that federal laws are only the floor for the independent protections offered at the city and state level—helps to ensure that New York residents retain robust protections against discrimination.[44] We urge lawmakers and government officials, in New York and throughout the country, to stand firm in support of civil rights protections for marginalized people and to take the bold legislative and enforcement action necessary to oppose rollbacks of these essential rights and to foster true equality.

Civil Rights Committee
Evan Henley and Molly Thomas-Jensen, Co-Chairs

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[41] U. S. Const. art. II, § 3; *Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 327 (2014).

[42] 110 Cong. Rec. 6553.

[43] New York City Bar Ass'n, *Prop 1 New York Equal Rights Amendment: What the Amendment Will and Won't Do* (Oct. 30, 2024), https://www.nycbar.org/reports/prop-1-ny-equal-rights-amendment-what-the-amendment-will-and-wont-do/ .

[44] New York City Admin. Code § 8-130; Executive Law § 300.