

118TH CONGRESS  
1ST SESSION

# S. 2008

To amend section 1977 of the Revised Statutes to protect equal rights under law.

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## IN THE SENATE OF THE UNITED STATES

JUNE 15, 2023

Mr. BLUMENTHAL (for himself, Mr. BOOKER, Mr. WYDEN, Ms. WARREN, Ms. HIRONO, Mr. WHITEHOUSE, Mr. SANDERS, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend section 1977 of the Revised Statutes to protect equal rights under law.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Economic Inclusion  
5 Civil Rights Act of 2023”.

6 **SEC. 2. EQUAL RIGHTS.**

7 Section 1977 of the Revised Statutes (42 U.S.C.  
8 1981) is amended to read as follows:

1 **“SEC. 1977. EQUAL RIGHTS UNDER LAW.**

2       “(a) FINDING.—Congress finds that the decisions of  
3 the Supreme Court of the United States in *Comcast Corp.*  
4 *v. National Ass’n of African American-Owned Media*, 140  
5 S. Ct. 1009 (2020), and *General Building Contractors*  
6 *Ass’n v. Pennsylvania*, 458 U.S. 375 (1982), have weak-  
7 ened the scope and effectiveness of Federal civil rights  
8 protections.

9       “(b) PURPOSE AND AUTHORITY.—

10           “(1) AUTHORITY.—This section is an exercise  
11 of congressional authority under section 5 of the  
12 14th Amendment, section 2 of the 13th Amendment,  
13 and the Commerce Clause of section 8 of article I,  
14 of the Constitution of the United States.

15           “(2) PURPOSE.—The purpose of this section is  
16 to protect civil rights, including to enact into law key  
17 portions of the concurring opinion of Justice Gins-  
18 burg in *Comcast Corp. v. National Ass’n of African*  
19 *American-Owned Media*, 140 S. Ct. 1009 (2020),  
20 and the dissenting opinion of Justice Marshall in  
21 *General Building Contractors Ass’n v. Pennsylvania*,  
22 458 U.S. 375 (1982).

23       “(c) DEFINITIONS.—In this section:

24           “(1) DEMONSTRATES.—The term ‘dem-  
25 onstrates’ means meets the burdens of production  
26 and persuasion.

1           “(2) ECONOMIC ACTIVITY.—The term ‘economic  
2 activity’ shall have the broadest meaning permissible  
3 under the Constitution, including—

4                   “(A) making, performing, and enforcing  
5 contracts;

6                   “(B) producing, consuming, browsing for,  
7 shopping for, or waiting for goods or services;

8                   “(C) soliciting, selecting, hiring, or dealing  
9 with a vendor, supplier, contractor, or subcon-  
10 tractor;

11                   “(D) dealing with or serving (including re-  
12 fusing to serve) a shopper, patron, or customer;

13                   “(E) accessing, processing, or granting (in-  
14 cluding denying) access to loans, credit, bond-  
15 ing, or insurance; and

16                   “(F) purchasing, leasing, selling, holding,  
17 or conveying real or personal property,

18 whether the activities described in this paragraph  
19 occur on the internet, at a physical location, or  
20 through any other medium.

21           “(3) FULL AND EQUAL BENEFIT AND ENJOY-  
22 MENT OF ECONOMIC ACTIVITY.—The term ‘full and  
23 equal benefit and enjoyment of economic activity’  
24 means the benefit or enjoyment, respectively, of the  
25 same benefits, privileges, advantages, preferences,

1 opportunities, terms, conditions, goods, services, fa-  
2 cilities, accommodations, service and treatment, em-  
3 ployment, and rights to make, enforce, perform,  
4 modify, and terminate contracts, and freedom from  
5 intimidation, harassment, and profiling as white citi-  
6 zens benefit from or enjoy, respectively.

7 “(4) INCLUDING.—The term ‘including’ means  
8 including, but not limited to, consistent with the  
9 term’s standard meaning in Federal law.

10 “(5) SECURITY OF PERSON AND PROPERTY.—  
11 The term ‘security’, used with respect to person and  
12 property, includes protection from physical harm  
13 and a threat of harm to one’s body or property, and  
14 protection against exposure to or a disproportionate  
15 burden from the negative human health and environ-  
16 mental impacts of pollution or an environmental  
17 hazard.

18 “(d) STATEMENT OF EQUAL RIGHTS.—All non-  
19 White persons within the jurisdiction of the United States  
20 shall have the same right in every State and territory as  
21 is enjoyed by White citizens to the full and equal benefit  
22 and enjoyment of economic activity, to security of their  
23 persons and property, to make and enforce contracts, in-  
24 cluding carrying out the contract formation process, and  
25 to sue, be parties, and give evidence, and to the full and

1 equal benefit of all laws and proceedings, and shall be sub-  
2 ject, in comparison to White citizens, to like punishment,  
3 pains, penalties, taxes, licenses, and exactions of every  
4 kind, and to no other.

5 “(e) DISCRIMINATORY EFFECTS ALSO PROHIB-  
6 ITED.—

7 “(1) IN GENERAL.—No person shall use a cri-  
8 terion, method of administration, practice, or policy  
9 that has a disparate impact in violation of sub-  
10 section (d).

11 “(2) DEMONSTRATION.—A challenged criterion,  
12 method of administration, practice, or policy that  
13 has an impact described in paragraph (1) shall be  
14 unjustifiable unless its user demonstrates that—

15 “(A) the use serves a legitimate purpose,  
16 which is both required by a substantial business  
17 necessity and not a pretext for discrimination;  
18 and

19 “(B) if the complaining party proffers an  
20 alternative, that that alternative is either incon-  
21 sistent with substantial business necessity or  
22 would produce an equal or greater disparate im-  
23 pact on the basis of a classification protected by  
24 subsection (d).

1           “(3) LIMITATION ON SUBSTANTIAL BUSINESS  
2           NECESSITY DEFENSE.—A demonstration that a cri-  
3           terion, method of administration, practice, or policy  
4           is required by a substantial business necessity may  
5           not be used as a defense against a claim of inten-  
6           tional discrimination under this section.

7           “(f) PROTECTION AGAINST IMPAIRMENT.—All rights  
8           protected by this section are protected against impairment  
9           by nongovernmental discrimination and impairment under  
10          color of State law.

11          “(g) BURDEN OF PROOF FOR DISCRIMINATORY  
12          TREATMENT ACTIONS.—

13                 “(1) PROTECTED CLASSIFICATION.—In this  
14                 subsection, the term ‘protected classification’ means  
15                 a classification protected by subsection (d).

16                 “(2) DEMONSTRATION.—The equal rights guar-  
17                 anteed under subsection (d) shall be considered to be  
18                 denied when the complaining party demonstrates  
19                 that race or a protected classification was a moti-  
20                 vating factor for the denial of such rights even  
21                 though other factors also motivated the denial. A de-  
22                 nial of equal rights guaranteed under subsection (d)  
23                 may be established with comparator evidence or any  
24                 other evidence that sufficiently demonstrates a de-

1 nial of such rights, including evidence of conduct  
2 that a reasonable person would find racially hostile.

3 “(h) STANDING.—Any person suffering injury in fact  
4 as a result of the alleged violation of this section may  
5 bring a claim or cause of action for damages, or for equi-  
6 table or for declaratory relief, under this section. Standing  
7 shall not be limited to victims who were parties to, or  
8 third-party beneficiaries of, a contract with the defendant.

9 “(i) RESPONDEAT SUPERIOR LIABILITY.—Principals  
10 shall be liable for violations of this section by their agents,  
11 and local governments shall be liable for violations of this  
12 section by their employees, acting within the scope of their  
13 duties.

14 “(j) JURY TRIAL RIGHT.—All persons within the ju-  
15 risdiction of the United States shall have the right to en-  
16 force a right provided under this section in a court of law  
17 and before a jury of their peers, and no joint-action waiver  
18 or pre-dispute arbitration agreement shall be valid or en-  
19 forceable with respect to any alleged violation of this sec-  
20 tion.

21 “(k) STATUTE OF LIMITATIONS.—All causes of ac-  
22 tion under this section shall be governed by the 4-year  
23 statute of limitations provided by section 1658(a) of title  
24 28, United States Code.

1       “(1) REMEDIATING PAST DISCRIMINATION.—Nothing  
2 in this section shall be construed to prohibit or limit a  
3 lawful effort, under a provision other than this section,  
4 to remedy the effects of discrimination that has occurred  
5 or is occurring.”.

6 **SEC. 3. APPLICATION TO CLAIMS.**

7       This Act, and the amendment made by this Act, shall  
8 apply to all claims of violations of section 1977 of the Re-  
9 vised Statutes that are pending on or after the date of  
10 enactment of this Act.

11 **SEC. 4. SEVERABILITY.**

12       If any provision of this Act, an amendment made by  
13 this Act, or the application of such provision or amend-  
14 ment to any person or circumstance is held to be unconsti-  
15 tutional, the remainder of this Act, the amendments made  
16 by this Act, and the application of such provision or  
17 amendment to any person or circumstance shall not be af-  
18 fected thereby.

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