

Civil Rights and Health Care: Title VI and Health Care Discrimination

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Presentation Outline

- I. Overview of Title VI of the Civil Rights Act of 1964
- II. Title VI's Limitations
- III. The Case of *Alexander v. Sandoval*
- IV. Title VI Enforcement: Looking Ahead

Overview of Title VI

Title VI:

- has dominated legal analysis of race and health care
- prohibits discrimination on the basis of race, color, and national origin by recipients of federal financial assistance (FFA)
- via statute, reaches intentional discrimination (i.e., disparate treatment); via regulations, reaches conduct that has unintended disproportionate adverse impact on racial and ethnic minority groups (i.e., disparate impact)
 - intent vs. consequences of conduct or policy
- defines *virtually* all sources of public health care financing as a form of federal assistance

Title VI Limitations

Although in theory little of the modern health care enterprise lies beyond the scope of Title VI given the reach of federal funding, Title VI has limitations:

- It does not reach purely private conduct
- Medicare Part B exemption (direct payments to beneficiaries, rather than FFA to providers)
- Federal enforcement machinery is broken (OCR is underfunded, understaffed, and is operationally distinct from the agencies overseeing financing)
- Disparate treatment claims are very difficult to win, since proving intent often requires “smoking gun” evidence
- Enforcement of disparate impact protections undercut by the U.S. Supreme Court decision in *Alexander v. Sandoval*

Alexander v. Sandoval

- Filed by non-English-speaking residents of Alabama who claimed that the state discriminated against them on the basis of national origin by refusing to offer drivers' licensing exams in any language other than English.
- Plaintiffs alleged that although Alabama's law not intentionally discriminatory, its *effect* was to discriminate against non-English-speakers.
- Federal trial court ruled that the English-only policy could not be enforced; appellate court affirmed the decision.

Alexander v. Sandoval (cont.)

- In 5-4 decision, U.S. Supreme Court overturned the lower courts.
- Also overturned decades of precedent: All 9 federal Courts of Appeals to address the question prior to *Sandoval* concluded that a private right of action existed to enforce the rights guaranteed by both the text of Title VI and its regulations.
- *Sandoval* majority: Private enforcement of Title VI is available only for intentional discrimination. Majority reasoned that since the statute explicitly outlaws only intentional discrimination, the regulations can only be an extension of the part of the law which empowers federal administrative agencies to enforce the law.

Improving Title VI Enforcement

- Title VI vests federal agencies with considerable discretion to design, implement, and evaluate civil rights enforcement standards and procedures.
- Why have agencies overseeing some sectors—e.g., environment, housing, education—fared better than the Department of Health and Human Services?
- Enforcement machinery needs to be fixed
 - Legislative fix for *Sandoval*
 - OCR needs far more resources, more authority
 - Collect more data (authority exists under Title VI)
- Strengthen federal, state, and private health care civil rights infrastructure
- Better educate providers and patients