THE ORIGIN AND RATIONALE OF THE IOWA CIVIL RIGHTS ACT*

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This year is the fiftieth anniversary of an important event in the history of human rights in this state—the enactment of the Iowa Civil Rights Act. That statute was first proposed in 1964. It was enacted in 1965, and has subsequently been amended in a number of significant respects. Today, the Act broadly prohibits discrimination on the basis of race, religion, national origin, sex, age, disability, sexual orientation, and gender identity in access to all of the essentials of life—employment, housing, and accommodations, facilities, and services generally used by the public at large; and it creates effective mechanisms for the enforcement of those prohibitions. In doing so, the Iowa Civil Rights Act enshrines in the law of this state a fundamental moral principle. By virtue of their humanity, every person deserves to be treated on the basis of his or her own individual capacities and attributes rather than on the basis of harmful prejudices and stereotypes that ignore the person’s relevant individual qualifications and accomplishments.

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The Origin and Rationale of the Iowa Civil Rights Act

Because I was the principal draftsman of the 1965 and 1967 Iowa Civil Rights Acts which established the basic framework for the substantive prohibitions contained in the Act and created the Civil Rights Commission and its enforcement mechanisms, and I was also the principal draftsman of the 1978 amendment which considerably strengthened its enforcement mechanisms, I will focus my remarks on their origin and rationale and on the origin and rationale of the 1970 amendment with which I was also heavily involved. While I will not deal with them now, I want to stress the great importance of the other additions to the Iowa Civil Rights Act over the years such as the provisions prohibiting discrimination on the basis of sex, age, disability, sexual orientation, and gender identity. You should understand that the Iowa Civil Rights Act has become a significant vehicle over the years for securing equal opportunity for all of our people by helping to eliminate unjust discriminations in addition to those that were of dominant concern in the early years of this statute.

It probably seems obvious to most people today that the state should enact comprehensive legislation broadly prohibiting discrimination in access to the necessities of life on the basis of factors like race, religion, national origin, sex, age, disability, sexual orientation, and gender identity and should create effective legal mechanisms to enforce those prohibitions. You are probably firmly convinced that the community should use its legal system to ensure that people do the right thing in this regard. However, in the early 1960s the conclusion that legislation should be enacted on this subject did not seem so obvious to the general public or to our legislators. Indeed, they had to be convinced that the enactment of such a statute in Iowa was both justifiable and worthwhile. That task was not easy. Nevertheless, I first attempted to convince the relevant decisionmakers in this state that an Iowa Civil Rights Act was necessary in a 1964 article I wrote in the Iowa Law Review copies of which were distributed at the time to every member of the Iowa General Assembly.
The Origin and Rationale of the Iowa Civil Rights Act

We start with the facts. In 1960 there was widespread and pervasive discrimination in the United States and in Iowa on the basis of race, religion, national origin, and gender. That discrimination occurred with respect to all of the basic necessities of life—employment, housing, and accommodations and services generally used by the public at large. The objects of prejudicial and stereotypical discrimination of this kind suffered greatly as a result of their disparate treatment. After all, pervasive discrimination against people solely because of their race, religion, national origin, or gender not only prevents them from obtaining the necessities of life. It also prevents them from developing fully their individual potential and from sharing in the fruits of our society on the basis of their individual abilities and efforts. In addition, disparate treatment of disfavored groups stamps their members with a badge of caste, or unwarranted inferiority. So, treatment of that kind necessarily causes ill feeling among the victims, dampens their motivation and ambition, and creates an attitude of discouragement. Such discriminatory action also subjects members of the excluded groups to frequent humiliation, inconvenience, and expense not suffered by other persons in the society.

The community as a whole also suffers from discriminatory action grounded on prejudices and stereotypes relating to race, religion, national origin, or gender. It loses the contributions that might have been made by members of those groups who are arbitrarily excluded from the main channels of the community’s activities. Disparate treatment of individuals on these bases also retards the overall growth of the economy by disabling those sectors of our society that are the objects of such discrimination from accumulating the resources necessary to purchase goods and services or from obtaining access to them. In addition, those persons who are arbitrarily denied an opportunity to develop their own potential cannot be as self-sufficient or satisfied as those who were not so treated and, therefore, are likely to become unnecessarily dependent and aggressive towards the world around them. So, the denial of equal opportunity to an entire class of
people solely on the basis of factors such as race, religion, national
origin, or gender often results in increased poverty, disease, crime,
irresponsible behavior, and unrest. All of the members of our
society must then pay the price for those conditions.

In light of this factual predicate, something had to be done
to eliminate the discrimination that produced these serious evils.
The most obvious tool with which to accomplish this result was the
legal system. However, many people—including many people who
were instinctively opposed to such discrimination on moral
grounds—were nervous about relying upon the law to deal with this
problem. They had doubts about the appropriateness of imposing
legal sanctions on people solely because of their prejudicial and
stereotypical beliefs, and they had doubts about the capacity of the
law to eliminate the particular kinds of discrimination that caused
these serious evils. Reformers argued, however, that these doubts
were unjustified.

It is true that in a democracy the freedom to think as one
pleases should be respected. But it does not follow that all
behavior prompted by opinion must be tolerated by the community,
or that society acts improperly if it attempts to educate its
members. It is one thing to permit people to believe as they
choose and another to permit them to act as they choose. This is
especially so when the conduct involved has a demonstrably ill
effect on both the community at large and on a particular group of
its members. The appropriate sphere for law, therefore, is the
control of action—not belief. Law can be effective as an
instrument to control conduct, the external behavior of people.
However, if the particular conduct sought to be controlled cannot
be discovered or identified, the law will be impotent to deal with it.
Unenforceable laws are not desirable, because they breed
disrespect for our legal institutions. But statutes proscribing
discrimination of the kind under discussion here are not of this
kind; refusals to do business on the basis of a person’s race,
religion, national origin, or gender, are sufficiently discoverable
and identifiable to be dealt with effectively. This does not suggest
The Origin and Rationale of the Iowa Civil Rights Act

that statutes prohibiting such discrimination do not present difficult enforcement problems. But they are no greater than the difficulties encountered in the application of numerous other kinds of laws with which we are satisfied.

Furthermore, law can be used and should be used to educate people about the inappropriateness of the kind of prejudicial and stereotypical thinking that causes the discriminatory conduct we wish to eliminate. In doing so, the law may effectively reduce the incidence of such conduct. For example, employers barred from discriminating against persons of color may learn for themselves that the color of a person’s skin does not automatically dictate his or her capacity, reliability, or integrity. As a result, nondiscriminatory behavior induced by law can be self-perpetuating, because it tends to shatter the preconceptions of prejudice. Laws prohibiting discriminatory conduct are also likely to reduce the prejudice that causes the harmful conduct. People usually internalize values embodied in law because most people are conformists and because considerable moral and symbolic weight is added to a principle when the principle is formally adopted by the community in its laws.

Nevertheless, in the early 1960s many people—including many people who believed that discrimination of this kind was wrong—argued that society should seek to eliminate such discrimination only through educational programs. Iowa reformers of the period replied that education is a long drawn-out process and that the injury suffered in the interim period as a result of such discriminatory conduct would be irremediable and unconscionable. On the other hand, the reformers argued, legislation, with appropriate enforcement provisions, could assure a relatively substantial and immediate lessening of that discrimination. Furthermore, education alone will never be one-hundred per cent effective. Effective legal proscriptions on such discriminatory conduct are necessary because there will always be a substantial number of individuals who cannot be persuaded to cease their prejudicial conduct.
In addition, the reformers of the early 1960s argued that legislation in this area is necessary because many people would discontinue their discriminatory practices if they could find a sufficient excuse to resist pressure from others. The law provides such people with a crutch upon which they can rely in rationalizing to others their failure to discriminate. Similarly, legislation is desirable to assure that those who treat all persons equally are not disadvantaged as a result of their actions. By assuring that everyone must conduct business by the same rule, pressure to discriminate that is placed on those who do not do so will be substantially relieved. Finally, the reformers argued that if we really believe that success in this society should be based on individual merit rather than on prejudicial and stereotypical thinking unrelated to individual merit, we should embody that principle in law so that it will be clearly understood by the whole community.

Once the case for antidiscrimination legislation was accepted, it was easy for Iowa reformers of the early 1960s to conclude that it should ensure equal access to employment, housing, and to all of those accommodations, facilities, and services generally available to the public at large. After all, access to each of these things is necessary for a person to survive and prosper in this society. And the discriminations with respect to these things that seemed most egregious, or at least that attracted the most attention in the early 1960s, were those involving race, with religion and national origin a closely linked second. Recall that in the early 1960s the civil rights movement in the south was constantly in the national news. That movement focused on the emancipation of African-Americans rather than on other kinds of harmful discrimination. So, the publicity surrounding the Black civil rights movements at that time helped to bring racial discrimination to the consciousness of the general public in Iowa and to make that kind of discrimination the central concern of contemporary reformers. Sex discrimination had not yet been recognized in Iowa as the serious problem it was. The fact that
The Origin and Rationale of the Iowa Civil Rights Act

sex discrimination had been added at the last moment to the Federal Civil Rights Act of 1964 did not immediately have any significant effect on the consciousness of the people of this state. However, some of the Iowa reformers at the time realized the need for and wanted legislative action prohibiting gender discrimination as well. But in the early 1960s, age, disability, sexual orientation, and gender identity discriminations were wholly ignored—mostly because of a lack of awareness of those serious problems or an unjustified insensitivity to them.

When the time came to determine the precise form of the state civil rights legislation they would support, Iowa reformers of fifty years ago agreed on four general principles. First, they believed that legislation on this subject should be comprehensive rather than piecemeal, broadly prohibiting discrimination on the basis of race, religion, or national origin, (and some would have added sex), with respect to all of the necessities of life—employment, housing, and accommodations, facilities, and services generally available to the public at large.

Second, the reformers of the early 1960s believed that such legislation should be effective, that is, capable in practice of actually accomplishing its specific substantive objectives. This meant that it had to contain an enforcement scheme that would really work.

Third, Iowa civil rights advocates of that era believed that the provisions of such legislation should embrace and advance the principle of equal opportunity. They did not assume, however, that equal opportunity would always produce equal results because they knew that people varied widely in their individual abilities and personal attributes. The idea that motivated them was the idea that racial, religious, and national origin discrimination seriously interfered with the realization of a meritocratic society based on individual qualifications and efforts. They wanted all people to have a fair chance to make of themselves what they could, free of arbitrary constraints imposed by overbroad prejudicial
The Origin and Rationale of the Iowa Civil Rights Act
determinations on the basis of factors like race, religion, or national origin. But Iowa reformers of the early 1960s realized that even after formal discrimination on the basis of those factors was ended by newly enacted, effective civil rights legislation, most of the victims of such prior discrimination would be left in disproportionately deprived circumstances and, therefore, would be unfairly handicapped in any competition based wholly on individual qualifications and attributes. After all, by virtue of their circumstances, persons of the lowest socioeconomic status in our society do not usually have a fair opportunity to obtain the education, experience, and other attributes necessary to compete effectively on the basis of their individual merits.

As a result, most Iowa civil rights advocates of fifty years ago urged the enactment of two different kinds of legislation. They wanted legislation prohibiting any discriminatory treatment of people solely on the basis of their race, religion, or national origin in employment, housing, and public accommodations. They also wanted legislation that would give special governmental help to all of those people in our society who were socioeconomically disadvantaged—whether that disadvantage was a product of prior discrimination or other factors—so that these people would also have a fair chance to acquire the education, experience, or other attributes necessary to compete effectively on the basis of their own individual characteristics. The civil rights legislation would end the use of invidious factors like race, religion, or national origin in important societal decisionmaking, ushering in an era in which only a person’s individual merits would determine his or her personal success; and the legislation declaring war on poverty would make it possible for all people—including those who had been disproportionately disadvantaged by prior unfair discrimination—to compete effectively on the basis of their individual attributes.

Fourth, in the early 1960s Iowa advocates of antidiscrimination legislation believed that it should work a satisfactory accommodation between two public values which they
The Origin and Rationale of the Iowa Civil Rights Act

recognized as very important. Legislation of this kind should reconcile the interest of society in permitting people to choose freely those with whom they wish to associate with the interest of society in assuring an equal opportunity for all people to succeed.

As a result, they believed that the ideal civil rights law should seek to preserve, as far as possible, each of these values while minimizing, as far as possible, the conflicts between them. The precise contours of the prohibitions that should be incorporated in antidiscrimination legislation would, therefore, be a product of an effort to accomplish this goal with respect to employment, housing, and accommodations, facilities, and services used by the public at large. However, consistent with this formula, Iowa civil rights reformers of a half of a century ago believed that broad scoped and comprehensive prohibitions on discrimination in each of these areas were fully justified, and that any exceptions from those prohibitions that might be warranted should be of very narrow and limited amplitude.

When they examined existing Iowa legislation in light of these principles, civil rights advocates of that era found it to be wholly inadequate. Prior to 1965 Iowa had two statutory provisions prohibiting private sector discrimination on the basis of race, religion, or national origin, (and none relating to sex, age, disability, sexual orientation, and gender identity). The first of these laws dealt with access to places of public accommodation. The main difficulty with the coverage of this statute was that it was grossly under-inclusive. Because it purported to cover only specified establishments such as “inns,” “restaurants,” and “places of amusement,” the statute necessarily excluded from its operation all those establishments that were not so listed. Consequently, this statute permitted many kinds of establishments offering, for their own profit, goods, services, or facilities to the general public, to discriminate among patrons on the bases of their race, religion, or national origin. Those establishments that were free to discriminate on such bases because of the narrow coverage of this old Iowa law included retail stores of all kinds, health clinics and hospitals, banks and loan companies, real estate brokers,
employment agencies, and schools. Yet, in light of the serious harm caused by their actions, there was no justification for permitting these kinds of establishments to continue to discriminate against potential patrons on such grounds.

In 1964 Iowa also had a fair employment statute of sorts. The coverage of this statute was also seriously defective. The statute was under-inclusive because it did not clearly prohibit efforts by employers to discourage persons of minority status from applying for jobs. Employers sometimes engaged in such action in order to avoid violating the statute which, on its face, might be read as prohibiting such denials of employment on the grounds of race, religion, or national origin only to persons who had actually applied for a job. The statute was also under-inclusive because it did not clearly cover the activities of employment agencies that instigated or facilitated employment discrimination on the prohibited grounds. Finally, the statute also appeared to be over-inclusive because it did not even attempt to deal with those very rare and unusual situations in which the interest of employers in choosing those with whom they wished to associate might outweigh the interest of potential employees to equal opportunity in the job market. While situations of this kind are likely to be very rare and of narrow scope, a good faith effort to deal with them in such a statute seemed desirable.

Consequently, Iowa reformers of the early 1960s believed that entirely new state legislation should be substituted for the existing state public accommodations and fair employment laws because their coverage was wholly inadequate. They also believed that a state fair housing statute was urgently needed because no Iowa law of that era prohibited discrimination in housing. New state civil rights legislation was also desired because the existing Iowa laws on this subject were, as a practical matter, wholly unenforceable.

Both of the existing Iowa civil rights laws were criminal statutes. However, experience clearly demonstrated that the
The Origin and Rationale of the Iowa Civil Rights Act

criminal process was a wholly unsuitable means with which to enforce legislation of this particular type. In the first place, the relevant facts must be proved beyond a reasonable doubt in criminal cases. It is usually difficult to demonstrate beyond a reasonable doubt that a defendant refused to employ or to serve a person because of the person’s race, religion, or national origin. Furthermore, trial by jury is available in criminal prosecutions. This permits culpable defendants to rely upon a body that may also be prejudiced or that may be out of sympathy with the objectives or approach of civil rights legislation. In addition, effective enforcement of a criminal law requires a prosecutor willing and able to act. But prosecutors tend to be preoccupied with the more traditional crimes against person or property and, therefore, tend to give a relatively low priority in the allocation of their limited prosecutorial resources to the enforcement of laws of this kind. They also may be unsympathetic with use of the criminal process to enforce these kinds of statutes or with their objectives.

Finally, in practice, the imposition of criminal penalties for the violation of this type of statute will not secure the elimination of this kind of discrimination as effectively as other approaches. Enforcement of antidiscrimination laws by the imposition of fines on convicted offenders makes the right to equal opportunity depend upon the size of the fine and the violator’s willingness to pay it. Consequently, members of minority groups may still be denied equal opportunity in practice because some people may be willing to pay a significant price for a continued ability to discriminate. The availability of imprisonment as an alternative sanction for the enforcement of these laws did not significantly alter the conclusion that criminal laws were unlikely in practice to end discriminatory conduct. Experience indicated the unwillingness of judges and juries to actually imprison people for violating this type of antidiscrimination legislation.

So, Iowa civil rights advocates of fifty years ago wanted an entirely new state civil rights law both because the coverage of existing laws was deemed to be wholly inadequate and also
The Origin and Rationale of the Iowa Civil Rights Act

because the existing means used to enforce those laws made them wholly ineffective in practice. To ensure that the new state civil rights law really was enforceable, reformers wanted the legislature to create an administrative agency—a Civil Rights Commission—to enforce the new law through an administrative process. In that administrative process, action against a discriminating party would begin with the filing of a formal complaint with the Commission which would immediately investigate the complaint. After a finding of probable cause to believe the truth of the complaint, the Commission would seek to obtain a binding and enforceable conciliation agreement between the parties.

Where efforts at conciliation were unsuccessful or unwarranted, the Commission would order a public hearing. After such a hearing was ordered, the procedures would become more formalized: parties would be served, witnesses would be sworn, both sides would present evidence, objections and motions would be made, and the Commission would make formal findings of fact and issue an order. If the Commission found that unlawful discrimination had occurred, it would issue an appropriate order to remedy the violation. A court would enforce the Commission’s order by issuing an appropriate injunction if there was substantial evidence in the Commission’s hearing record to support that order. Violation of the injunction enforcing the order of the Commission would be punishable by a contempt citation, which would usually mean a heavy fine or jail.

An administrative process approach to the enforcement of antidiscrimination statutes is advantageous in a variety of ways. The expense of the investigation and proceeding is borne by the government. No jury is required anywhere in the enforcement process; on the contrary, the Commission will become expert at discerning bias and its orders will be upheld by the courts if they are supported by substantial evidence. Moreover, the Commission may be authorized to seek out discrimination on its own and to take complaints from persons in addition to those who are the direct victims of unlawful discrimination. Such an agency is also
The Origin and Rationale of the Iowa Civil Rights Act

in a position to keep a constant check on recalcitrant individuals. Furthermore, reliance upon the administrative process facilitates the use of conciliation and education programs as well as more traditional law enforcement mechanisms as a means to secure compliance with these laws. Use of the administrative process also permits law enforcement officials to issue flexible cease-and-desist orders that can ensure more effectively than other mechanisms the effective termination of the prohibited discriminatory practices.

Reliance upon the administrative process to enforce these laws has other advantages. In administrative proceedings proof is satisfied by the preponderance of the evidence, thereby avoiding the insuperable burden of proof required in criminal cases. The truth is also easier to find in commission hearings because the strict and overly technical rules of evidence do not apply. Lastly, statutes enforced by administrative agencies can be made sufficiently general to catch novel attempts at evasion or subterfuge because they are not penal, and they can be construed broadly to effectuate their purpose.

Of course, enforcement of these kinds of statutes by a private civil action for damages or other relief filed directly in the courts also has certain advantages over a criminal approach. Injured parties can themselves institute such a civil action to vindicate their legal rights. Possible economic gain in the form of compensatory and punitive damages may also increase the likelihood that the injured parties will do so. In addition, in civil suits proof need only be by the preponderance of the evidence. Further, if punitive civil damages are awarded, the pecuniary detriment to the defendant will be greater than the nominal fines normally imposed under criminal civil rights statutes. A greater deterrent effect may therefore be achieved. However, civil suits prosecuted directly in the courts by the injured party suffer from severe defects which render them undesirable as the primary mode for enforcing antidiscrimination legislation. Like criminal prosecutions, they usually give the defendant a right to jury trial.
The Origin and Rationale of the Iowa Civil Rights Act

As previously noted, this may permit a culpable defendant to rely upon a body that may also be prejudiced or may be out of sympathy with the objectives or approach of antidiscrimination legislation. Additionally, private civil suits will involve the expense of engaging counsel; and plaintiff’s lawyer’s fees are unlikely to be recompensed by the relatively small amount of damages awarded, even if they are won. Further, the burden of going forward in such suits remains on the members of minority groups who may be reticent about doing anything to vindicate their rights. In some situations private suits will also be a relatively ineffective means of enforcing antidiscrimination statutes because, as with criminal fines, the payment of the usually insubstantial damages awarded in such cases by juries will not operate as a deterrent to prosperous individuals who are strongly committed to a discriminatory course of conduct.

So, the early 1960s advocates of Iowa civil rights legislation were convinced that it should be enforced primarily by the administrative process. However, many of them believed that a private action for its enforcement in the courts should also be created as a supplemental remedy for aggrieved parties under certain circumstances. Such an alternative remedy could ensure the vindication of an injured party’s rights where the administrative agency charged with its enforcement was unable or unwilling to act on the merits of an alleged violation of the Act. Existence of such a supplemental remedy for the enforcement of this law could also serve as a prod to more vigorous action by the Commission. However, the reformers believed that aggrieved parties should be required to resort initially to the administrative process and that the supplemental remedy should become available to them as an alternative only if that process did not dispose of a particular complaint on its merits within a specified time period.

Iowa civil rights advocates in the early 1960s were realists. They were prepared to make the compromises necessary to obtain new state legislation and to avoid futile wrangling over provisions that had no hope of enactment and that might interfere with the
The Origin and Rationale of the Iowa Civil Rights Act

enactment of those provisions that were politically feasible. Enactment of the 1964 Federal Civil Rights Act provided a substantial political boost for efforts to obtain new Iowa legislation on this subject because the national consensus that had been built for support of that legislation had spillover effects in Iowa, increasing the receptivity of the people in this state to the enactment of such laws. However, the Federal Act did not displace the need for wholly new state legislation because it was inapplicable to most Iowa employers and to most Iowa accommodations and facilities catering to the public at large for a fee; it did not apply to housing; and it provided for federal referral of certain types of discrimination cases to state civil rights agencies where they existed and Iowa had no such civil rights agency at that time.

In the fall of 1964, the Iowa support for entirely new state civil rights legislation had matured to the point where success seemed possible. I hoped that such legislation would broadly prohibit discrimination on the basis of race, religion, national origin, and sex, in employment, housing and accommodations, facilities, and services generally used by the public at large. I also hoped that it would create an Iowa Civil Rights Commission empowered to enforce that legislation through the administrative process, and that the administrative remedy would be supplemented, in certain situations and with certain limitations, by a private right of action in the courts for damages and injunction.

However, I became aware that the politicians who supported such legislation were convinced that the only legislation that was feasible at the time was legislation that was limited to discrimination on the basis of race, religion, and national origin. They believed that in 1965 the state political process was not prepared to prohibit sex discrimination despite its inclusion in the recently enacted Federal Civil Rights Act of 1964. They also believed that in 1965 a law prohibiting discrimination in the sale or rental of housing had no chance of enactment. The view of these friendly politicians was that if a civil rights bill were introduced
The Origin and Rationale of the Iowa Civil Rights Act

into the General Assembly that included prohibitions on sex
discrimination and on discrimination in the sale or rental of
housing, the entire bill would fail. In addition, there was a feeling
that an effort to create a private civil action in the courts to
supplement an administrative process scheme for the enforcement
of these laws might endanger the acceptability of the state agency
enforcement scheme.

As a result, in December 1964, when I drafted a civil rights
bill for introduction into the Iowa General Assembly, the bill
included only employment and public accommodations provisions,
and only applied to racial, religious, and national origin
discrimination. Those substantive provisions and the
administrative enforcement mechanisms I included in the bill were
all based on the specific proposals contained in my earlier Iowa
Law Review article. To increase their acceptability to legislators,
the enforcement provisions of the bill also had some similarities to
the enforcement provisions contained in the civil rights act of
another largely rural, mid-western state—Colorado. Accommodating
the political realities, the bill explicitly
excluded from its coverage discrimination in the sale or rental of
housing (although it covered transient housing), did not mention
sex discrimination, and made the administrative process the
exclusive means of enforcement.

That bill was then transmitted to Donald Boles, who was
Chair of the Iowa Governor’s Commission on Human Rights. He
successfully enlisted the support of Governor Hughes who became
committed to its enactment and had the bill introduced into the
legislature as a compromise measure that was worthy of broad
support. Under the leadership of Senator John Ely and
Representative Roy Gillette, the bill passed both houses of the
legislature in relatively unscathed form. The vote on final passage
was unanimous in both the House and the Senate. It was signed
by the Governor on April 29, 1965. The overwhelming vote in
favor of the Iowa Civil Rights Act of 1965 was a tribute to the
leadership of Governor Hughes and of people like Senator Ely and
The Origin and Rationale of the Iowa Civil Rights Act

Representative Gillette, and to the successful behind the scenes political compromises over the scope and coverage of the bill. It was also a reflection of the national consensus on these issues that had been built as a result of the civil rights movement in the south during that period.

Within a year after the enactment of the 1965 Iowa Civil Rights Act, I became embroiled in a public dispute over its applicability to real estate brokers and home mortgage lenders. I took the position that while direct discrimination in the sale or rental of housing by the owners and lessors of housing was clearly excluded from the 1965 Act in order to accommodate to the political necessities of the time, that Act did not exclude from its prohibitions discrimination by real estate brokers and home mortgage lenders who furnished services in connection with the sale or rental of housing. I argued that they were clearly covered by the provisions of the Act prohibiting discrimination by “public accommodations” which was a term defined by the Act in very broad, all-inclusive terms. The newly created Iowa Civil Rights Commission agreed with my interpretation. The Des Moines Register dissented, arguing that the legislature intended to exclude from the 1965 Act discrimination that related in any way to housing. In a published Letter to the Editor of the Register at the time I pointed out that the language of the statute excluded only discrimination in the actual sale or rental of housing rather than discrimination by establishments furnishing services in relation to the sale or rental of housing. The Register editorial and my reply agreed, however, that what was needed was an amendment to the newly enacted 1965 Iowa Civil Rights Act that would clearly prohibit discrimination in housing.

Shortly thereafter, I drafted a fair housing amendment to the newly enacted Iowa Civil Rights Act. It, too, was based on my 1964 Iowa Law Review article. In early 1967 I sent a copy of that amendment to Senator Ely who readily agreed to move forward with it in the 1967 legislative session. At the same time, the political support for a fair housing amendment to the Iowa Civil
The Origin and Rationale of the Iowa Civil Rights Act

Rights Act was increasing. As a result, the fair housing amendment passed the Senate by a vote of 49-11 in April 1967. However, opponents of the measure in the Senate successfully added a provision that was intended to weaken it by requiring a person to post a $500 bond in order to file a complaint of housing discrimination with the Civil Rights Commission. The House unanimously approved the bill with this amendment. Governor Hughes signed it on April 27, 1967. The bond provision was unfair because it put a price tag on justice, making it more difficult for the poor than for the rich to obtain access to the legal processes necessary to vindicate their civil rights. Fortunately, the legislature repealed the bond provision two years later.

In 1967, the Iowa Civil Rights Act still did not bar discrimination on the basis of sex, and its enforcement provisions were still short of their original objectives in a number of respects. However, the pressure for the addition to the Act of provisions prohibiting sex discrimination and provisions strengthening its enforcement mechanisms continued. In the following years, I repeatedly made submissions to the legislature calling for amendments to deal with both problems – to add prohibitions on sex discrimination to the Civil Rights Act, and to strengthen its enforcement mechanisms. By 1970, women’s groups in the state had become sufficiently organized to generate the necessary political pressure to overcome the resistance of those who opposed legal prohibitions on sex discrimination. So, finally, in the 1970 session, the General Assembly amended the Iowa Civil Rights Act by adding prohibitions against discrimination on the basis of “sex.” The Governor signed that bill on April 10, 1970. It took six years after passage of the 1964 Federal Civil Rights Act for the Iowa General Assembly to accept the proposition that sex discrimination is as harmful and indefensible as discrimination on the basis of race, religion, or national origin, and should be prohibited by law for the same reasons that justify the prohibitions on the latter types of discrimination.
The Origin and Rationale of the Iowa Civil Rights Act

While the Iowa Civil Rights Act was amended in 1972 to add provisions prohibiting discrimination on the grounds of age and disability, and in 1974 to add provisions barring defined unfair credit practices, the General Assembly could not be persuaded to significantly strengthen the enforcement mechanisms of the Act until 1978. In 1977 I again presented the appropriate legislative committee with a bill that would substantially enhance the mechanisms used by the Iowa Civil Rights Commission to enforce the substantive provisions of the Civil Rights Act. This time, the legislature was receptive. Senator Robert Carr and Representative Diane Brandt led the fight for enactment of this amendment to the Civil Rights Act.

This amendment included provisions to improve the effectiveness and speed of the Commission’s administrative law enforcement process; provisions that significantly broadened the remedial powers of the Commission after issuance of a finding of unlawful discrimination; and provisions providing for an alternative civil remedy in the courts for complainants who have timely filed a complaint with the Commission and who have met certain other requirements. It was enacted by the legislature in May 1978 and was signed by the Governor on June 28, 1978. The 1978 amendment to the Iowa Civil Rights Act also contained a number of other important provisions strengthening the substantive provisions of the Act. Most important was a special provision dealing with sex discrimination in education. It took too many more years before the Iowa Civil Rights Act was amended to prohibit the harmful and unjustified discrimination against people because of their sexual orientation or gender identity. That finally happened in 2007.

In 2015 the Iowa Civil Rights Act is far from perfect. It can be improved in a number of substantive and procedural respects; and I have some specific ideas about how that might best occur. However, the enactment of the Iowa Civil Rights Act fifty years ago was an important landmark in the struggle for human rights in this state. On a practical level, it helped to reduce the
The Origin and Rationale of the Iowa Civil Rights Act

deleterious discrimination in this state against individuals on the basis of their race, religion, national origin, sex, age, disability, sexual orientation, and gender identity. It also formally committed us as a community to the protection of individual human dignity by firmly embedding in our law the principle that each person should be treated on the basis of his or her own particular merits, capacities, and accomplishments, and not on the basis of overbroad, unjust, and harmful stereotypes or prejudicial judgments. If everyone in our society would act righteously, which is to say according to that principle, we would not need the law to declare and enforce the principle. Until that day, however, we need the Iowa Civil Rights Act and should be grateful for its enactment fifty years ago.